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THE RWANDAN COURTS POSITION ON IMPACT OF CRIMINAL PROCEEDINGS ON ARBITRATION CASES

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ABSTRACT

Rwandan courts, including the Supreme Court, have confirmed that a principle known in French as "Le criminel tient le civil en état", which is provided by the law relating to the criminal procedure and determines the relationship between criminal matter and civil matter that has a public order character. This means that neither the parties to the case nor the court can derogate from it whenever it comes to the knowledge of each. As a consequence, the criminal case has suspensive effect on the arbitration case as a civil case and ignoring this can lead to the award being set aside by a court. However, when it comes to its applicability, courts defer in interpretation on where and when to apply it.

The Rwandan Supreme Court, in a case Soras Assurances Generales Ltd v. Tromea Ltd, refused to set aside the arbitral award in 2017, putting some limitation on the applicability where it maintained that this principle does not apply to every civil case involved by criminal action. However, in a case Kalpataru Power Transmission vs. Rwanda Energy Group held on 12.04.2024, the High Commercial Court set aside the arbitral award due to this principle, despite parties citing the Supreme Court jurisprudence in their pleadings, but the court advanced that the limitations are not clearly exhaustive.

Therefore, since the Supreme Court did not clearly elaborate in which cases, the principle should be used and in which it should not, the present research, with the support of critical analysis of these two cases, is to probe into which effects the criminal case has on the arbitration case. The article proposes the possible recommendation of which criteria this principle can be applied for the limitation provided by the Supreme Court to be clear and exact.

INTRODUCTION

Rwanda is positioning itself at the international terrain for investment. This means that not only infrastructure should be developed and improved, but also the justice sector must be considered. In doing so, Rwanda has enhanced judicial independence towards justice with zero tolerance to corruption. The current judicial policy encourages the parties to use the settlement of disputes in a way other than the one known court system, where other alternatives like mediation, arbitration, and conciliation have been advanced and encouraged to be used.

Moving forward, Rwanda became a signatory to the 1976 United Nations Commission on International Trade Law (UNCITRAL) arbitration rules by becoming the 143rd State Party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention.[1] As a result of the accession, Rwanda also passed law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters.

In this regard, Rwanda established the Kigali International Arbitration Center (KIAC) as a sole arbitration institution in Rwanda to provide institutional support to domestic and international dispute resolution proceedings using Arbitration, Mediation, and other Alternative Dispute Resolution (ADR) mechanisms in 2010 through the law n°51/2010 of 10/01/2010 establishing the Kigali International Arbitration centre and determining its organisation, functioning and competence.

In the arbitration, a party may use institutional arbitration where they submit their case to institutional rules to be governed by them,[2] or ad hoc Arbitration where the parties and arbitrators independently determine the procedure without the help of an established arbitral institution.[3] As arbitration has both statutory justification and contractual justification, parties' choice has a significant consideration in this matter concerning the arbitral tribunal, whether it will be institutional or ad hoc. In Rwanda, Kigali International Arbitration Center (KIAC) is the sole arbitration institution with that mandate.[4]

However, in the law N° 005/2008 of 14.02.2008 on arbitration and conciliation in commercial matters[5] and UNCITRAL arbitration rules 1976[6], which is the international model, the issue of public policy is observed diligently while empowering the arbitrators to decide on the case.

In Rwanda, one of the public policy rules found in Rwandan laws is a principle known in French as "Le criminel tient le civil en état" which is found in criminal law[7] and determines the relationship of criminal matter and civil matter.

This said principle means that civil action is suspended until the criminal case is finally adjudicated, if the criminal action was instituted in a court, before or during the civil proceedings. This rule has a public order character as the Supreme Court of Rwanda confirmed it in case of Soras Ltd Vs Tromea Ltd[8] and scholars like Michel Franchimont, Ann Jacobs et Adrien Masset in their book Manuel de procédure pénale[9] and the Belgian court.[10]

Although people do agree that this principle "Le criminel tient le civil en état" is of public policy character, its applicability is viewed differently especially in Rwandan courts. For example, in case Soras Assurances Generales Ltd Vs. Tromea Ltd,[11] mentioned above, the Supreme Court in 2017 refused to set aside the arbitral award maintaining

1 United Nations. (03.11.2008). Rwanda Accedes to UN Convention on Commercial Arbitration. Available at <https://news.un.org/en/story/2008/11/280302> [Last seen: 17.11.2024].

2 See meaning of institutional arbitration, available at <https://kiac.org.rw/> [Last seen: 17.11.2024].

3 LexisNexis. Introduction to the Key Features of ad hoc Arbitration. Available at <https://www.lexisnexis.co.uk/legal/guidance/ad-hoc-arbitration-an-introduction-to-the-key-features-of-ad-hoc-arbitration#> [Last seen: 17.11.2024].

4 Law (Rwanda) Nº 51/2010 of 10.01.2010 Establishing the Kigali International Arbitration Centre and determining its organisation, functioning and competence (O.G n°09 bis of 28.02.2011). Article 4.

5 Law (Rwanda) Nº 005/2008 of 14.02.2008 on Arbitration and Conciliation in Commercial Matters (Year 47 n° special of 06.03.2008). Article 51(2)(b).

6 The New York Convention. (10.06.1958). Article 5(2)(b).

7 Law (Rwanda) Nº 027/2019 of 19.09.2019 relating to the Criminal Procedure (O.G n° Special of 08.11.2019). Article 115.

8 Soras Assurances Generales Ltd v. Tromea Ltd, RCOMAA0020/16/CS. Ruled on 21.10.2016. Available in Law Report, V. 4 – 2017, October 2017, p. 33.

9 Franchimont, M., Jacobs, A., Masset, A. (2006). Manuel de Procédure Pénale. 2e édition, Larcier, p. 203.

10 Cour du Travail de Mons (Belgium). Cass., 23.03.1992. Pas., I, p. 664; et Cour du Travail de Mons (Belgium). Cass., 01.02.1951, Pas., I, p. 357. Que "les parties ne peuvent pas y renoncer et le juge civil doit même surseoir d'office".

11 Supra note 9.

that this principle does not apply to every civil case involved by criminal action. However, in a case Kalpataru Power Transmission vs. Rwanda Energy Group[12] held on 12.04.2024, the High Commercial Court set aside the arbitral award due to this rule despite parties citing the Supreme Court jurisprudence in their pleadings, and the court also cited it and interpreted it in another way.

Since the Supreme Court did not elaborate in which cases that this principle should be used and in which it should not, this pushes the present researcher under this article to probe into which circumstance this principle can be applied concerning arbitration procedings and when should not be applicable and which effects can this rule have on arbitration case.

1. DEFINITION OF KEY CONCEPTS

In this paper, the concept rule "Le criminel tient le civil en état", the term Public policy, and arbitration will be the center of the discussion. That is why it is very important to see their definitional meaning in the case of arbitration, as the researcher refers to them in this research.

1.1. The Rule "Le Criminel Tient le Civil en État"

This is a maxim provided in the Law relating to the Rwandan Criminal Procedure, which means that as soon as the civil and criminal courts were seized, and the two actions related to the same facts, the civil judge has to stay the ruling.[13] This means that the civil judge is obliged to wait for the criminal judge to rule on the public action before ruling himself, as criminal matters enjoy priority over civil, commercial, labor, or administrative matters in court. In the Rwandan court, this principle has attained the value of public order (public policy) character that should not be derogated from by any party or court and it can be raised at any stage of trial.[14]

1.2. Public Policy in Arbitration Concept

The term public policy in the Rwandan arbitration act of 2008 is used interchangeably with the term public order used in Rwanda law on civil procedure of 2018. Although this law N° 005/2008 of 14.02.2008 on arbitration and conciliation in commercial matters did not provide a meaning of the concept public policy, it referred to in its article 51; the law N° 22/2018 of 29.04.2018 relating to the civil, commercial, labour and administrative procedure did. This law No 22/2018 of 29.04.2018 mentioned above stated in its article 2(1) that public order (policy) is a set of rules governing life in society that are set out for reasons of public interest and from which parties cannot mutually agree to derogate.

1.3. The Arbitration Concept

This concept may have several definitions as per the forum and researchers. For instance, Mayer Brown defines arbitration as an alternative form of dispute resolution to litigation, which does not require recourse to the Courts and is a consensual process in the sense that it will only apply if the parties agree it should.[15] According to the US Supreme Court, the arbitration is a matter of contract where parties to a contract can agree to resolve disputes privately through arbitration, rather than through the judicial system.[16]

According to Butler, the arbitration is a procedure whereby parties to a dispute refer that dispute to a third party, known as an arbitrator, for a final

12 Kalpataru Power Transmission v. Rwanda Energy Group, RCOMA 00049/2021/HCC. Ruled on 12.04.2024. Available at <https://jusmundi.com/en/document/decision/rw-kalpataru-power-transmission-kpt-v-rwanda-energy-group-reg-urubanza-rwurukiko-rwikirenga-friday-12th-april-2024> [Last seen: 17.11.2024].

13 (O.G n° Special of 08.11.2019). Supra note 8. See also, Code of French Criminal Procedure (1994 as amended in 2020), Article 4. Available at <https://legislationline.org/france#section-3> [Last seen: 17.11.2024].

14 (O.G n° Special of 08.11.2019). Supra note 8. Article 127(5).

15 Mayer-Brown. An Introduction to Arbitration. LexisNexis. Available at <https://www.mayerbrown.com/-/media/files/news/2012/12/an-introduction-to-arbitration/files/lexisnexis_2012_intro-to-arbitration/fileattachment/lexisnexis_2012_intro-to-arbitration.pdf> [Last seen: 17.11.2024].

16 United Steelworkers of America v. Warrior & Gulf Navigation Company. 363 U.S. 574, 582 (1963).

decision, after the arbitrator has first impartially received and considered evidence and submissions from the parties.[17] In Rwanda, the concept is defined as a procedure applied by parties to the disputes requesting an arbitrator or a jury of arbitrators to settle a legal, contractual or another related issue.[18]

Therefore, to sum up, arbitration can be summarized as an alternative dispute resolution (ADR) method, whereby a dispute is referred by parties to a private neutral third party, subject to existing legal framework, to adjudicate on the matter and render an enforceable and binding award.

1.4. Meaning of Arbitral Award

The other concept that has to be defined is the Award. Since Rwandan arbitration act, the New York Convention, and UNCITRAL Model Law on International Commercial Arbitration nkown as (the Model Law), do not provide a definition of 'award' it is useful to describe what qualifies as an award and what does not, to get a real definition of an arbitration award.

For lay people, the award is understood as simply a decision rendered by an arbitral tribunal, not by the court. However, not all decisions rendered by an arbitral tribunal are awards. It happens that the institution makes certain decisions as to prima facie jurisdiction of either the institution or the arbitral tribunal yet to be constituted. Those decisions are not considered as arbitral awards, as the actual decision on jurisdiction is usually reserved for the competence of an arbitral tribunal.[19] Instead, an award is a decision addressing a specific request by the parties to the arbitration. The tribunal may also issue a procedural order dealing with procedural provisions to be applied in the arbitration, and that order is not necessarily based on a request by one of the parties. Thus, an arbitral award is a tribunal's decision about a specific request that a party has put to it.[20]

Then an award should be final and binding on the parties to the arbitration; which means it has res judicata effect. Therefore, once an award is rendered, except the procedures on correction of an award or rendering an additional award, the award may not be later revised by a tribunal. Furthermore, the arbitral award is also binding on the arbitrators themselves and they may not, except for the correction of specific errors – amend or revise it on their initiative.[21]

This means an arbitration award is a final decision made by an arbitral tribunal on a dispute. It's similar to a court judgment and is usually binding and final. Once the arbitrator decides that all of the parties' evidence and arguments have been presented, the arbitrator will close the hearings. This means no more evidence or arguments will be allowed. Then the arbitrator will issue the decision referred to as an award.[22]

To sum up, one can define an arbitral award as a ruling made by an arbitral tribunal, at the express request of the parties, which renders a final and binding decision on the matter. It may be subject to judicial review in setting-aside or enforcement actions.

2. THE POSITION OF THE PRINCIPLE THAT "LE CRIMINEL TIENT LE CIVIL EN ÉTAT" ON ARBITRATION PROCEEDINGS IN RWANDAN COURTS

This principle that "Le criminel tient le civil en état", which is translated as "the criminal holds the civil in its state", which means that civil action is suspended until the criminal case is finally adjudicated, if the criminal action was instituted before or in the course of civil proceedings.[23]

The principle "Le criminel tient le civil en état"

17 Butler, D. (1994). South African Arbitration Legislation: The Need for Reform. CILSA. Available at <https://journals.co.za/doi/pdf/10.10520/AJA00104051_444> [Last seen: 17.11.2024].

18 (Year 47 n° special of 06.03.2008). Article 3(1).

19 Wong, V.V., Valincic, D. (2023). The Guide to Challenging and Enforcing Arbitration Awards. Global Arbitration Review, 3rd ed., p. 3. Available at <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/the-arbitral-award-form-content-effect#footnote-037-backlink> [Last seen: 17.11.2024].

20 Ibid.

21 Ibid.

22 American Arbitration Association. (2023). What Happens after the Arbitrator Issues an Award. Available at <https://www.adr.org/sites/default/files/document_repository/AAA229-After_Award_Issued.pdf> [Last seen: 17.11.2024].

23 (O G, n° Special of 08.11.2019). Article 115.

is not only known in Rwanda but also in other countries, especially civil law countries like France,[24] Belgium, etc.[25] Its objective was to ensure consistency in civil and criminal court decisions. Anyone who could claim damages as a result of another person's illegal activities could file a civil case in court to seek compensation. To avoid contradicting verdicts, the legislature ordered the civil judge to suspend the ruling.[26]

However, the problem in different countries adopting this principle has been to know whether this rule applies to all cases, including arbitration, and to what extent. The need to explore the impact of this principle "Le criminel tient le civil en état" on arbitration proceedings in Rwanda has been stimulated by the emergence of two cases, one is of the Supreme Court ruled in 2016, and the other is of the High Commercial Court ruled in 2024.

2.1. The Rule "Le criminel Tient le Civil en État" under Soras Assurances Generales Ltd Vs. Tromea Ltd Case

2.1.1. Summary of the Case

The case of Soras Assurances Generales Ltd Vs. Tromea Ltd is a result of the insurance policy of which SORAS AG Ltd had with TROMEA Ltd on 03.01.2014 covering fire and theft in that building. On 11.11.2014, TROMEA Ltd had an experience of a theft on its minerals in its stock equivalent to 14T and a value of 263,735 USD. Based on the insurance policy on 21.11.2014, TROMEA Ltd applied for indemnification price of stolen minerals to SORAS AG Ltd. However, both parties failed to reach an agreement.

Based again on that insurance policy which included an arbitration clause, TROMEA Ltd filed a case to the arbitrators claiming to be indemnified as per contract. The arbitral tribunal ordered SORAS AG Ltd to pay TROMEA Ltd 173,236,343 Frw as the value of mineral stolen and 12.992.726 Frw as interest and 5,000,000 Frw of contract breach damages. SORAS AG Ltd was not happy and appealed the award to the Commercial High Court, requesting the court to set the award aside. The court decided on the matter on 17.12.2015 but found the appeal unsubstantiated.

Soras AG Ltd appealed again in the Supreme Court claiming that the High Commercial Court ignored that the arbitral tribunal violated the rule of "Le criminel tient le civil en état", which is of public policy. It added that the court failed to observe as there was a criminal case pending in court, but the arbitral tribunal refused to stay while waiting for the criminal case RP0643/14/TB/KMA outcome, which is a violation of public policy. Soras continued that in this regard the arbitral tribunal award should be set aside as per article 47 of the Arbitration Act of 2008 in Rwanda.

On the other hand, Tromea Ltd contested that this principle should not apply in this case because the case is not a civil damage resulting from a crime, instead it is a civil action based on contractual duty.

2.1.2. Court Decision

In deciding on the matter, the Supreme Court under paragraph 19 of its decision stated that what Soras AG Ltd argues regarding the public policy of the rule "Le criminel tient le civil en état" is correct. The court also cited different scholars like Michel Franchimont, Ann Jacobs, Adrien Masset, and foreign court decisions such as Cass., 23.03.1992, Pas., I, p. 664 and Cass., 01.02.1951, to support this decision.

Nevertheless, in the Paragraph 20 of a copy of the judgment, the court continued examining whether the rule of being of public policy is enough to be applied to the arbitration case in question. In Paragraphs 24 and 25, the court decided that the fact of the rule being of public order character is not enough to be invoked against any civil case, including the case under arbitration proceedings. Instead, the rule should only be applied when it is a civil action seeking damages resulting from a crime.

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24 French Code of Criminal Procedure (1994, as amended on 05.03.2007). Article 4.

25 Cour du Travail de Mons (Belgium). Cass., 23.03.1992, Pas. I, p. 664; La Cour de Cassation a admis que la règle du criminel tient le civil état est "d'ordre public". See also Cour du Travail de Mons (Belgium). Cass. 01.02.1951, Pas. I, p. 357, que "les parties ne peuvent pas y renoncer et le juge civil doit même surseoir d'office", <https://www.terralaboris.be/IMG/pdf/ctm_2012_05_16_2010_am_208.pdf> [Last seen: 17.11.2024].

26 Supra note 10.

2.1.3. Analysis from the Case

Although this ruling has significant meaning on this issue but the court did not provide clear guidance as under which circumstance this principle should be applied because it is not principle that when the person sues in criminal action is requesting the damage since the criminal action can also be used in seeking the evidence to establish the truth to support the civil action which may include even the arbitration proceedings.

Parties to the contract may disagree on the performance of contractual obligations, and one party may present some specific piece of evidence that the other party claims to have obtained in criminal ways.

An example is when two parties conclude a supply contract for construction materials. In case of disagreement on payment, one party is advancing to have a delivery note, which the other party thinks to be a forged document. The same can be true of payment receipt being contested, where some say to have paid, whereas others claim the document is forged. In this scenario, the criminal action needs to establish proof of who is right and the outcome from the criminal case is the one to solve the problem, as no civil action is competent to qualify a document as forged. How can then the arbitral tribunal decide without this piece of evidence, and what should be the justification of the award?

On the other hand, one can say that the party may resort to an expert to clarify the authenticity of the document, but still the arbitrator has no power to judge on the matter relating to a criminal act as it is of public policy where even parties have no say about it.

Then it seemed that the Supreme Court still left the ambiguity on when to use the rule "Le criminel tient le civil en état" while it confirmed that the rule is a public policy.

2.2. The Rule "Le Criminel Tient le Civil en État" under Kalpataru Power Transmission v. Rwanda Energy Group Case

Despite the ruling of the Supreme Court on the rule "Le criminel tient le civil en état" of 2016, recently in 2024 the High Commercial Court took another position which also appears to have a meaning concerning criminal action vis a vis arbitral proceedings on the said rule.

2.2.1. Summary of the Case

The Kalpataru Power Transmission v. Rwanda Energy Group has started when Rwanda Energy Group sued Kalpataru Power Transmission according to the contract relating to building an electric power plant and towers for electric wires to DRC of 19.11.2013 in Dispute Board proceedings as per their contract.

In this contract, parties have a dispute on Price Adjustment Claim where REG disagrees that it does not have remaining unpaid amount to KPTL. There was also a security guarantee of 02.10.2019 REG requested its payment. Both parties also had an issue on how the project was implemented, where REG claimed that it had been implemented with defects. REG again accused KPTL of fraud and bribery to provide misleading result of concrete strength test results.

On 25.10.2017, KPTL started DAB ("Dispute Board") proceedings as per the contract on the issue of "Price Adjustment Claim" as article 8.2 of General Conditions". KPTL claiming that the decision taken to know whether it has not complied with time frame to make a "Price Adjustment Claim" and to examin whether "Settlement Agreement" should be invalidated because it has been concluded under duress as per the Articles 55, 56 of contract law in Rwanda.

On 01.09.2019, DAB ("Dispute Board") took a decision that REG failed to prove that KPTL has engaged in fraud and corruption, and that KPTL did not go beyond the time limit for making a "Price Adjustment Claim" on money equivalent to 24 million USD. The DAB ("Dispute Board") confirmed that the settlement agreement became invalid as it was done under duress.

After the decision REG was not dissatisfied. On 04.11.2019, it filed a case under ad hoc arbitration as per UNCITRAL claiming that the arbitral tribunal has to order that KPTL delayed to provide Price Adjustment in 28 days provide in article 8.1.1 of General Conditions; confirms that Settlement Agreement is valid; and to get miscellaneous damages which the arbitral tribunal may find appropriate. In

rebutting the allegations, KPTL maintained that all the allegations are false accusations and claimed damages.

On 20.09.2021 the arbitral tribunal took a decision that REG loses the case as it failed to prove its allegations. The tribunal held also that Price Adjustment was made on time as per article 8.1.1. General Conditions. On the fact of the validity of the Settlement Agreement, the tribunal held that it was done under duress, therefore invalidated it. The tribunal also stated that REG failed to prove the fraud or corruption act of KTPL.

REG was not satisfied again and filed a case to the Commercial High Court on 15.10.2021 seeking to set aside the Arbitration Award N° 2020-2021/155 which was taken. REG was based on the fact that arbitral tribunal did not observe the public policy rule under the principle "Le pénal tient le civil en état" which is of public order character. It continued also that the tribunal did not give time to explain their case as Article 47 of the arbitration act in Rwanda states, and the 34 UNCITRAL Model Law on International Commercial Arbitration. It pointed out that there is a criminal case in court for this matter registered as RP/ECON 00012/2021/TGI/NYGE which condemned some employees of KPTL for those crimes although they appealed in the High Court and the case was registered as RPA/ECON 00059/2023/HC/KIG.

However, KPTL defended that this incident or objection should not have been admitted. They cited a case law of Engen Rwanda Ltd vs ETELEC Ltd[27] showing that the court in this case refused to set aside the arbitral award due to what was said to be public policy when an arbitral tribunal took a decision based on unsigned document and expert who did not take oath as per the law on evidence.

KPTL added also that although the rule le penal tient le civil en etat' is of public policy, it is only applied in procedure of case not in substance as a civil party want that a criminal case to be ruled first so that he/she can use it at the merit of the civil case. Then for KPTL the rule is not applicable if civil case is not aimed at claiming damages resulting from criminal case and cited the position of Supreme Court under Soras Assurances Generales Ltd vs Tromea Ltd case.

27 Rwanda Ltd vs Etelec Ltd. RCOMA 0006/2017/CS, ruled on 24.11.2017 (unpublished).

2.2.2. Court Decision

In taking a decision, the court first reminded that the law No 22/2018 of 29.04.2018 relating to the civil, commercial, labour and administrative procedure, its Article 2(1) states that public order is a set of rules governing life in society that are set out for reasons of public interest and from which parties cannot mutually agree to derogate. The court depicted that this public order rule binds not only parties to the case but also the court and everyone at the arbitral tribunal, including.

The court also finds the parties agreed that in case public policy was ignored during arbitration proceedings, the arbitration award was set aside. Concerning this "Le Criminel tient le civil en état", the court cited the case position of Supreme Court RCOMAA 0020/16/CS between Soras AG Ltd vs Tromea Ltd maintaining that it has confirmed that this rule is of public order character. The court maintained also that the Supreme Court in this case did not provide an exhaustive list to consider in applying the respective rule, instead, every court has left with appreciation to consider whether the rule will be applied or not. The High Commercial Court based on the fact that the arbitral tribunal took a decision based on the fact that there is no proof of fraud and corruption while the proof was under criminal trial; this was a violation of the aforementioned rule. Therefore, the court set aside the arbitration award.

2.2.3. Analysis from the case

It seems that in ruling on the matter, the court analysed the Article 2(1) of the law No 22/2018 of 29.04.2018 relating to the civil, commercial, labour and administrative procedure which explained the rule of public order and its effects in ruling on the matter, and the article 115 of the Nº 027/2019 of 19.09.2019 relating to the criminal procedure which provides for the principle "Le Criminel tient le civil en état". Then the court also considered Article 47 of the law N° 005/2008 of 14.02.2008 on arbitration and conciliation in commercial matters; and visiting the case Soras AG Ltd vs Tromea Ltd ruled by the Supreme Court and all together with the UNCITRAL Module rules.

However, the interpretation of the "Le Criminel tient le civil en état" rule by combining both Aritcle 2(1) of the law No 22/2018 of 29.04.2018 relating

to the civil, commercial, labour and administrative procedure which explained the rule of public oreder and its consequesnce; and that of article 115 of the Nº 027/2019 of 19.09.2019 relating to the criminal procedure which provides for the principle "Le Criminel tient le civil en état"; using also the Supreme Court jurisprudence, the court took an other intereting different decion depected that this caselaw did not fully answer the question regarding this rule.

The interpretation of this High Court judge also has a meaning and does not contravene the Supreme Court decision, and the principle of stare decisis, which is maintained in Chief Justice's directive nº001/2021 of 15.03.2021, that cases reported in the judicial report should be followed by lower courts. The Supreme Court in examining the rule tried to limit the applicability of the rule of "Le Criminel tient le civil en état" by not making it a strict applicability but also did not make a list of factors to be examined exhaustive to solve the problem. This gives an arbitral tribunal a duty to be vigilant while ruling on the arbitration case before them to avoid or minimize the rendering of awards that can be set aside by the court.

3. THE EFFECT OF DIVERGING VIEW OF RWANDAN COURTS TO THE RULE "LE CRIMINEL TIENT LE CIVIL EN ÉTAT" ON THE ARBITRATION CASE

The spirit of Article 7 of the law stating that all matters governed by the law on arbitration, no court shall intervene except where the law so provide; was to minimize the court intervention in arbitration cases, which party may employ as a duratory tactics jeopardise the purpose and importance of arbitration as arternative dispute resolution.

It seems also that the Supreme Court was with the same view when ruled on the matter of "Le Criminel tient le civil en état" by putting limitation to its use.[28] However, the way the limitation was initiated in the judgment did not solve the issue well. The court confirmed that, truly, the rule is of public policy that the law allows the court to set aside the arbitral award based on this ground.[29] The court said that the principle should be used or invoked if the civil case would have an impact on the criminal ruling, and the court pointed out damages resulting from the criminal act. However, the Supreme Court failed to confirm whether the limitation stopped on this criterion, which made the High Commercial Court in a similar case take a different path.

As the Supreme Court focused on nature of the case, where it ruled that the fact filing criminal case in court which has the relationship with a civil case should not only be enough to suspend a civil case until the criminal case is adjudicated;[30] it should directly depict what a criminal case has to suspend a civil case and under which circumstance, to guide the lower courts and arbitrators. Failing of clear guidance, the High Commercial court added an interpretation on the Supreme Court ruling where in its decision, Paragraphs 88-93 included where it appeared that the criminal action may produce the evidence to the civil action, it will be another factor for civil court to wait the criminal court to take decision.[31]

This ruling of the High Commercial Court does

28 Soras Assurances Generales Ltd v. Tromea Ltd, RCOMAA0020/16/CS, ruled on 21.10.2016. Available in Law Report, V. 4 – 2017, October 2017, p. 47, par. 24, "Urukiko rurasanga rero kuba ihame rya "Le criminel tient le civil en état", ari ndemyagihugu, iyi kamere yonyine idahagije kugira ngo ibirivugwamo byubahirizwe mu rubanza urwo arirwo rwose, kuko hashingiwe ku biteganywa n"ingingo ya 160 yavuzwe haruguru, indishyi zivugwa zigomba kuba zikomoka ku cyaha".

29 Law (Rwanda) N° 005/2008 of 14.02.2008 on Arbitration and Conciliation in Commercial Matters (Year 47 n° special of 06.03.2008). Articles 47, 51.

30 Soras Assurances Generales Ltd v. Tromea Ltd, RCOMAA0020/16/CS, ruled on 21.10.2016. Available in Law Report, V. 4 – 2017, October 2017, p. 47.

31 Kalpataru Power Transmission v. Rwanda Energy Group, RCOMA 00049/2021/HCC, ruled on 12/04/2024, paras. 88-93. It says "…Rusanga kandi ihame rya "Le Criminel tient le civil en état" ryarasobanuwe neza mu rubanza RCOMAA 0020/16/CS rwaciwe ku wa 21 Ukwakira 2016 mugika cya (19), aho Urukiko rw'Ikirenga rw'u Rwanda rwavuze ko ari ihame ndemyagihungu ababuranyi badashobora kwivutsa ko rikoreshwa ndetse ko n'umucamanza uburanisha ikirego cy'indishyi aryubahiriza abyibwirije. Urukiko rusanga Urukiko rw'Ikirenga muri urwo rubanza rwarabasobanuye ko mu gusuzuma ko ihame rya "Le criminel tient le civil en état", ari ndemyagihugu hakwitabwa ku miterere y'ikirego, kuko rwavuze ko iyi kamere yonyine idahagije kugira ngo ibirivugwamo byubahirizwe mu rubanza urwo arirwo rwose, ahubwo igomba kuzuzwa n'ibindi bishobora gushingirwaho".

not contravene the stare decisis rule, which provides that the lower court should abide by the decision of the higher court. Instead, it further analysed and clarified the ruling of the Supreme Court because of a loophole in the Supreme Court ruling on this principle.

Therefore, this creates a complex effect on the arbitration case. One is that the confidentiality that parties seek when they opt for arbitration will no longer exist. Second, the delay the parties avoided while choosing arbitration will catch them. Lastly, the confidence of finality of arbitral award will be at risk.

3.1. The Confidentiality

The main purpose that parties choose to refer their case to an independent arbitrator is that their business will not be exposed to the risk of damaging their names, which can ruin public confidence and image. The fact that arbitral proceedings are held in private settings and are attended only by those designated by the parties and their counsel, in contrast to trial proceedings held at the courthouse, which are open to the public, makes parties feel at ease.[32] Having a good image in business is a good capital in itself. So, because the hearing in most courts is public unless the law provides otherwise, this put an image of a business person and their company at risk, which they did not want when they opted for an arbitration tribunal.

3.2. The Delay

According to figures provided by a renowned arbitration service, in U.S. District Court cases took more than 12 months longer from filing to the start of the trial than it took from filing an arbitration to receiving an award.[33] In some states with higher caseloads, the period is significantly longer. In New York, for example, it took 22 months longer to reach a trial than it did to issue an arbitration award.[34]

When considering the length of an appeal, cases considered on appeal in federal court took an average of 21 months longer than filing to award. Again, in states with higher caseloads, the waiting period is significantly longer. In New York, for example, the appeal process took 33 months longer than the issuance of the award.[35] This exactly happens in Rwanda, where a case may spend 2 years or more considering all available remedies to be exhausted.[36]

Then for business people to avoid this durational way, which can have financial implications to their business, they opt for arbitration, which does not allow many legal remedies as ordinary and extraordinary appeals. The arbitration act also, while limiting the court intervention, wanted to ensure that this purpose is achieved.

Therefore, if the Supreme Court limited the use of "Le Criminel tient le civil en état" rule with the same purpose, it should have determined the factor to be considered for this rule to apply. Failing to determine and state that it should be determined case by case, will give parties a chance to use it as a delay tactic and become a hindrance to the alternative dispute resolution policy.

3.3. Finality of Arbitral

The finality and binding nature of arbitral procedures are crucial to each arbitration case. Arbitration allows parties to settle disputes without going through the court system. Arbitration is considered superior to litigation due to its finality and binding character, with a short time compared to litigation.[37]

Parties that submit their case to arbitration do so with the assumption that the process will resolve the dispute rapidly and finally. Finality is a

32 Sarles, J.W. Solving the Arbitral Confidentiality Conundrum in International Arbitration. Available at <https://www.josemigueljudice-arbitration.com/xms/files/02_TEXTOS_ARBITRAGEM/01_Doutrina_ScolarsTexts/confidentiality/Confidentiality_in_International_Arbitrations_-_Sarles.pdf> [Last seen: 20.12.2024].

33 Roy, W. et al. (2017). Efficiency and Economic Benefits of Dispute Resolution through Arbitration Compared with US District Court Proceedings. Micronomics, pp. 2-3.

34 Ibid.

35 Ibid.

36 The Judiciary Performance for the year 2023-2024. Available at <https://www.judiciary.gov.rw/index.php?eID> [Last seen: 20.12.2024].

37 Nguyo, P.W. (2015). Arbitration in Kenya: Facilitating Access to Justice by Identifying and Reducing Challenges Affecting Arbitration. University of Nairobi, p. 46.

core feature of arbitration and a crucial component that motivates many parties to choose arbitration as a contractual dispute mechanism.[38] This is because with the minimum challenge of an arbitral award, it helps a party, especially a Claimant, to save valuable time and costs.[39]

Therefore, the ruling of Supreme Court on the said principle did not safeguarded this purpose even if the court acted as if it wanted to limit the resort to court under the umbrella of the rule of "Le Criminel tient le civil en état" because it did not provide clear and concise factor which arbitrators as well as courts should consider when they face with this principle. Hence, still parties can use this rule as a tactic to make the arbitral award not be binding and final by subjecting it to judicial appeals that disadvantage parties to go to arbitration.

CONCLUSION

As it has appeared, the Supreme Court in case of Soras AG Ltd vs Tromea Ltd tried to limit the strict applicability of the rule "Le Criminel tient le civil en état" which to same extent has a reason to believe.

However, the problem becomes the factor to consider while determining that the criminal case should not enjoy the priority over this civil or arbitration case.

The fact of saying that the rule being of public policy is not enough to be applied to any civil case, arbitration case inclusive; without indicating that these are at least minimum criteria to consider while determining whether this criminal case should hold a civil case, creates ambiguity and each court may create its interpretation of this Supreme Court ruling as the High Commercial court did in Kalpataru Power Transmission v. Rwanda Energy Group case.

Therefore, as long as we do not have a clear ruling on this issue, we will continue to have some arbitration cases decided being set aside while others will survive.

However, as the Supreme Court confirmed that the rule "Le Criminel tient le civil en état" is of public policy character, and even though it limited its applicability, it would be good advice for arbitral tribunal facing a case in which this rule is invoked to assess with all due diligence the rule. Where necessary, the tribunal may hold its ruling until the criminal case is decided to avoid delivering an award with probability to be set aside by the court.

It is submitted as a recommendation to the Supreme Court that there should be a clear interpretation on this principle, stating criteria to be based on while examining whether the criminal case should hold a civil, commercial, or arbitration case, to avoid different interpretations and have the same court position on this principle. These criteria may be when the case is of a civil party claiming damages resulting from the crime; or when it is a criminal case that may establish material evidence to the civil or arbitration case in progress.

This will bestow a confidence to the arbitral tribunal that the award is delivered with zero or minimum probability for being set aside on this criminal principle rule.

38 Richmond, F. (2009). When is an Arbitral Award Final? Kluwer Arbitration Blog, p. 1 <https://arbitrationblog.kluwerarbitration.com/2009/09/10/when-is-an-arbitral-award-final/?print=pdf> [Last seen: 20.12.2024].

39 Ibid.

BIBLIOGRAPHY:

Books/Articles:

1. Franchimont, M., Jacobs, A., Masset, A. (2006). Manuel de Procédure Pénale. 2e édition, Larcier.
2. Mayer-Brown. An Introduction to Arbitration. LexisNexis. Available at <https://www.mayerbrown.com/-/media/files/news/2012/12/an-introduction-to-arbitration/files/lexisnexis_2012_intro-to-arbitration/file-attachment/lexisnexis_2012_intro-to-arbitration.pdf> [Last seen: 17.11.2024].
3. Butler, D. (1994). South African Arbitration Legislation: The Need for Reform. CILSA. Available at <https://journals.co.za/doi/pdf/10.10520/AJA00104051_444> [Last seen: 17.11.2024].
4. Wong, V.V., Valincic, D. (2023). The Guide to Challenging and Enforcing Arbitration Awards. Global Arbitration Review, 3rd ed. Available at <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/the-arbitral-award-form-content-effect#footnote-037-backlink> [Last seen: 17.11.2024].
5. Wong, V.V., Valincic, D. (2023). The Guide to Challenging and Enforcing Arbitration Awards. Global Arbitration Review, 3rd ed. Available at <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/the-arbitral-award-form-content-effect#footnote-037-backlink> [Last seen: 17.11.2024].
6. American Arbitration Association. (2023). What Happens after the Arbitrator Issues an Award. Available at <https://www.adr.org/sites/default/files/document_repository/AAA229-After_Award_Issued.pdf> [Last seen: 17.11.2024].
7. Sarles, J.W. Solving the Arbitral Confidentiality Conundrum in International Arbitration. Available at: <https://www.josemigueljudice-arbitration.com/xms/files/02_TEXTOS_ARBITRAGEM/01_Doutrina_Scolars-Texts/confidentiality/Confidentiality_in_International_Arbitrations_-_Sarles.pdf> [Last seen: 20.12.2024].
8. Roy, W. et al. (2017). Efficiency and Economic Benefits of Dispute Resolution through Arbitration Compared with US District Court Proceedings. Micronomics.
9. Nguyo, P.W. (2015). Arbitration in Kenya: Facilitating Access to Justice by Identifying and Reducing Challenges Affecting Arbitration. University of Nairobi.
10. Richmond, F. (2009). When is an Arbitral Award Final? Kluwer Arbitration Blog; <https://arbitrationblog.kluwerarbitration.com/2009/09/10/when-is-an-arbitral-award-final/?print=pdf> [Last seen: 20.12.2024].

Legal Acts:

1. Law (Rwanda) Nº 51/2010 of 10.01.2010 Establishing the Kigali International Arbitration Centre and determining its organisation, functioning and competence (O.G n°09 bis of 28.02.2011).
2. Law (Rwanda) Nº 005/2008 of 14.02.2008 on Arbitration and Conciliation in Commercial Matters (Year 47 n° special of 06.03.2008).
3. Law (Rwanda) Nº 027/2019 of 19.09.2019 relating to the Criminal Procedure (O.G n° Special of 08.11.2019).
4. Soras Assurances Generales Ltd v. Tromea Ltd, RCOMAA0020/16/CS. Ruled on 21.10.2016. Available in Law Report, V. 4 – 2017, October 2017.
5. French Code of Criminal Procedure (1994, as amended on 05.03.2007).
6. Law (Rwanda) N° 005/2008 of 14.02.2008 on Arbitration and Conciliation in Commercial Matters (Year 47 n° special of 06.03.2008).
7. The New York Convention. (10.06.1958).

Court Decisions:

1. Cour du Travail de Mons (Belgium). Cass., 23.03.1992. Pas., I.
2. Cour du Travail de Mons (Belgium). Cass., 01.02.1951, Pas., I.
3. Kalpataru Power Transmission v. Rwanda Energy Group, RCOMA 00049/2021/HCC. Ruled on 12.04.2024. Available at <https://jusmundi.com/en/document/decision/rw-kalpataru-power-transmission-kpt-v-rwanda-energy-group-reg-urubanza-rwurukiko-rwikirenga-friday-12th-april-2024> [Last seen: 17.11.2024].
4. United Steelworkers of America v. Warrior & Gulf Navigation Company. 363 U.S. 574, 582 (1963).
5. Cour du Travail de Mons (Belgium). Cass., 23.03.1992, Pas. I.
6. Cour du Travail de Mons (Belgium). Cass. 01.02.1951, Pas. I; <https://www.terralaboris.be/IMG/pdf/ctm_2012_05_16_2010_am_208.pdf> [Last seen: 17.11.2024].

7. Rwanda Ltd vs Etelec Ltd. RCOMA 0006/2017/CS, ruled on 24.11.2017 (unpublished).
8. Soras Assurances Generales Ltd v. Tromea Ltd, RCOMAA0020/16/CS, ruled on 21.10.2016. Available in Law Report, V. 4 – 2017, October 2017.

Web Resources:

1. United Nations. (03.11.2008). Rwanda Accedes to UN Convention on Commercial Arbitration. Available at <https://news.un.org/en/story/2008/11/280302> [Last seen: 17.11.2024].
2. Kigali International Arbitration Centre <https://kiac.org.rw/> [Last seen: 17.11.2024].
3. LexisNexis. Introduction to the Key Features of ad hoc Arbitration. Available at <https://www.lexisnexis.co.uk/legal/guidance/ad-hoc-arbitration-an-introduction-to-the-key-features-of-ad-hoc-arbitration#> [Last seen: 17.11.2024].