

CASE 168
IN THE GENERAL COURT

MENDES
RECEIVER

v.

KLEROS
SENDER

BRIEF OF AMICUS CURIAE
IN SUPPORT OF SENDER

SUBMITTED MARCH 28TH, 2020

Summary

Amicus respectfully submits this brief supporting Sender. This case poses two question, namely

- Is Kleros liable to pay damages to somebody who due to an error of the website interface could not fund an appeal?
- If that is the case, how much damages should Kleros pay?

This brief argues, that Kleros is indeed liable. However, Receiver fails to prove any losses they incurred so that they cannot be awarded any ETH.

1. About the *Amicus* and his Intentions

The *Amicus* who submits this brief is a Kleros user who has been following the Kleros project for about two years now and has an interest in its success. For this reason he is motivated to give advice on certain cases which he believes to be helpful for the overall development of Kleros. This case could, in *amicus* eye's, set a dangerous precedent that allows people to claim damages without being actually harmed. Since the calculation of damages is a fundamental principle of every legal order this precedent could threaten the use of Kleros as an arbitration platform as a whole.

2. Response to the Dispute Statement

Amicus notes that the submission by Receiver from March 27th, 2020 is ambiguous in its Dispute Statement. It remains unclear whether they were a party to the dispute they tried to appeal and whether, and if so how much ETH, they already paid in order to fund the appeal. As they rely so heavily on the bribe resistance of the protocol *Amicus* assumes that they are just a 3rd party who wanted to fund the losing party in *Case 164*.

3. Liability of Kleros

Amicus agrees with Receiver that Kleros is liable for damages when the UI does not work as promised. Both the UI and Kleros' publications indicate that everybody can appeal decisions. Therefore, any ordinary user of Kleros can expect the UI to work properly, if there are no disclaimers, and can trust that they have the opportunity to fund appeals.

Receiver, however, was not able to fund an appeal due to an error of the UI. Therefore, Kleros has breached its obligations towards them and can be held liable.

3. Amount of Damages to Pay

Receiver demands 5 ETH as “indemnification”, see Submission, p. 6. This amount is made up of three parts, these being

- Compensation for the revelation of an error based on the Kleros Coopérative’s bounty program
- damages “due to the lack of justice caused to the appellant”
- Compensation for a loss of profit.

None of these, however, justify granting Receiver 5 ETH.

a. Bounty Programme

This claim is surprising because it has little to do with the dispute statement. Claiming a bounty would require the Receiver to show that there is a bounty program running, that one has found a bug and is therefore eligible for compensation, that one followed the procedure for the bounty programme and was nevertheless denied the bounty. Receiver does none of this. Even if they were to claim a bounty for a minor bug in the Kleros Governor contract, Receiver have not shown that they followed the procedure to claim the bounty. Finally, just that somebody offers a bounty amounting to 5 ETH does not mean that someone can use this offer in order to calculate the damages for some other dispute.

b. Damages for “a lack of justice”

Receiver argue that since the appeal could not be executed there was a lack of justice and that they should, as a consequence, receive 5 ETH. The problem with this approach is that it does not put a limit on the number of claimants.

There could be an almost indefinite number of people who saw the outcome of *Case 164* and believed it to be unfair. However, since the appeal seemed to be funded they refrained from depositing their own money. How would we determine, who may claim 5 ETH in this case?

Usually, when there is an injustice the person who has suffered the injustice is eligible to get compensation. So in this case only the losing party could – potentially – claim damages for “a lack of justice”.

Even if Receiver was the losing party, *amicus* believe they could not be granted 5 ETH. Since the appeal mechanism does not work, they could have just resubmitted the case and present the evidence they present in this case to convince the jury to rule on the case a second time. This would have likely been cheaper than funding the appeal. Receiver, as a consequence, would not have incurred any losses due to the malfunctioning UI.

Some jurisdictions know “punitive damages” that do not actually compensate for losses but try to punish a wrongdoing. *Amicus* opposes this approach in the current case. First, the wrongdoing of Sender was a minor one that did not actually cause any harm to the security of the Kleros protocol or manufactured a wrong outcome of the dispute and second, if this Court wished to impose some sort of penalty on Kleros, there is no reason to give any money to Receiver. It would only be just to give it to the person who was actually harmed by this and that is the losing party of *Case 164*.

c. Compensation for losses of profit

This is the only plausible claim Receiver puts forward. As it was stated above Kleros had the obligation to allow Receiver to fund an appeal. Any losses Receiver himself incurs as a result of Kleros’ failure to do so can be recovered in this dispute. However, Receiver cannot just claim 5 ETH but they must show how much they actually lost. Since it is unclear whether Receiver already spend some money on the appeal there are two possible ways Receiver could have incurred losses. *Either*, Receiver had their money stuck in the contract for four days and could not use it for other investments, *or* they argue that if they could have fully funded the appeal they would have won.

Amicus believe that it is impossible to prove that one would have won a jury trial. Therefore the second way to claim compensation must fail in this case.

What remains are damages for losses incurred due to some money being stuck in the contract. Receiver does not prove how they would have used the money if they had received it earlier and how much they would have profited from that. Without

this information this Court cannot grant them anything. If Receiver put forward some new evidence over the course of the trial the jury will have to determine how much time Kleros should have had to release the funds and whether the time the money was stuck in the contract was inadequate.

4. Conclusion

Therefore I ask this Court to dismiss Receiver's claims unless they can prove actual losses incurred due to the UI bug.