

RWANDA / JUDGMENT

ASSOCIATION DES ASSUREURS DU RWANDA (ASSAR) v. GOVERNMENT OF RWANDA (MIFOTRA)

RLR V.1-2021

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ASSOCIATION DES ASSUREURS DU RWANDA (ASSAR) v. GOVERNMENT OF RWANDA (MIFOTRA)

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Text

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ASSOCIATION DES ASSUREURS DU RWANDA (ASSAR) v. GOVERNMENT OF RWANDA (MIFOTRA) [Rwanda SUPREME COURT – RS/PIL/SPEC 00001/2019/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye and Rukundakuvuga., J.) June 19, 2020] Procedure for special claims – Public interest litigation – The role of the Government in the of public interest litigation – A public interest litigation must be aimed at respecting the rights of others rather than that of the petitioner's issues, even if the petitioner also has an interest in the subject matter, that interest must be shared by other people – In the petitions of public interest, the State is summoned to present an opinion but not as a party that may claim or charged costs Procedure for special claims – Public interest litigation – The public interest arises when an action or omission infringes on the rights of many persons or adversely affects them, which is remedied by petitioning a competent court. Facts: The Association des Assureurs du Rwanda (in this case to be

referred to as ASSAR) filed a claim against the Government of Rwanda (MIFOTRA) to the Supreme Court requesting that the latter, should be compelled to remove all barriers that hinder the implementation of the Minimum Wage (SMIG) in Rwanda because article 68 of the Law N° 66/2018 of 30/08/2018 regulating labour in Rwanda provides that the Minimum Wage (SMIG) is established by a Ministerial order having labour in his/her attribution but it has not been established yet and there is no explanation as to why it has not been done. It explains that the absence of a Minimum Wage affects the public interest of Rwandans and is contrary to articles 49 and 121 of the Constitution of the Republic of Rwanda of 04/06/2003 amended in 2015. The Court first examined whether ASSAR sued the right party. Regarding this issue, ASSAR argues that the Government should be a party to this case because the gist of the action is of public interest and it is the one responsible for the wellbeing of Rwandans. The State Attorney argues that normally in such cases, the State does not appear as a party but it only appears to give its opinion on the litigated issue and that if the Court finds that it is not a party, in this case, it can be guided by the opinion it will give. The Amicus curiae also argues that public interest litigation is a unilateral petition, and therefore, the state should appear to give its opinion to the court. After solving the issue of determining how the State should be treated in this case, the hearing focused solely on the issue of admissibility of the petition in accordance with the provisions of the law. ASSAR, argues that currently there is no minimum wage in Rwanda, which affects the public interest of Rwandans in general and in particular to a large extent the part of the Rwandan population dealing in insurance business, which are insurance companies and that due to the lack of employment, the employees are not able to negotiate with the employer the wage to be paid, which has a negative impact as he or she may be paid meagre salary, which is another indication that this issue is detrimental to the public interest.

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The State Attorney argues that the fact that the Ministerial Order establishing the Minimum Wage (SMIG) has not yet been enacted do not negatively affect the public interest because currently there is no legal vacuum because there is a case law of the Supreme Court in which it pronounced its position on that issue and determined the Minimum Wage, in doing this the Supreme Court based on its competence to act as a Legislature in the absence of a law. The State Attorney further added that the compensation is done in accordance with the Presidential Order N° 31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by a motor vehicle which provides for the minimum compensation for pension and accident related to work. The Amicus Curiae argues that claiming that there is no Minimum Wage in Rwanda is misleading because since 2012, the Supreme Court through its judgment fixed the Minimum Wage and in the year 2016 it was revised based on market prices. Concerning the study conducted which was annexed on the petition, the petitioner argues that the study demonstrates that there is no Minimum Wage because that study was used by MIFOTRA trying to solve the issue of Minimum Wage and that before petitioning the Court, it had tried to find a way the issue of establishing the Minimum Wage can be solved but failed. The State Attorney argues that the petitioner did not produce the study conducted by the experts to demonstrate the seriousness of the issue because

the study annexed was not carried out purposely to demonstrate the negative consequences of not having a Minimum Wage in the country. On the part of the Amicus Curiae, it also finds that the study annexed on the petition was carried out by the Ministry in charge of labour and it does not demonstrate the negative consequences of not establishing the minimum wage. Held: 1. In public interest litigation, the State is summoned to present an opinion but not as a party that may claim or charged costs.

2. A public interest litigation must be aimed at respecting the rights of others rather than that of the petitioner's issues, even if the petitioner also has an interest in the subject matter, that interest must be shared by other people.
3. The public interest arises when an action or omission infringes on the rights of many persons or adversely affects them, which is remedied by petitioning a competent court.
4. The objectives of the study set out in the annex to the petition are not intended to demonstrate the dire consequences of not having a Minimum Wage, but to consider the basis for determining the base salary in various categories of work. Therefore, since that study does not indicate all that, means that it does not meet the requirements provided by the Law. The petition dismissed. Statute and statutory instruments referred to: Constitution of the Republic of Rwanda of 4 June 2003 as amended in 2015, article 49 and 121. Law N° 66/2018 of 30/08/2018 regulating labour in Rwanda, articles 2 and 3. Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts, article 68 and 80. Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, article 12. Law N° 005/2015 of 30/03/2015 governing the organization of pension schemes, article 27.

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Minimum wage-fixing machinery convention, 1928 n° 26” ratified on 1976. Presidential Order N°069/01 of 13/04/2018 increasing pension and occupational hazards benefits granted by Rwanda Social Security Board, article 2. Presidential Order N° 31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicle. Cases referred to: Nyetera Jean Baptiste v. CORAR, RCAA 0202/07/CS rendered by Supreme Court on 09/04/2009 SORAS AG Ltd v. Umuhiza Pacifique et, al. RCAA 0049/14/CS rendered by Supreme Court on 25/11/2016 Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236 Author cited: Albert Ruturi & Another v. Minister for finance and others, (2002) IK.LR 61 (Kenya) and Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General) 2012 SCC 45 (2012) 2 S.C.R 524. Something in which the public as a whole has a stake (...), Black’s Law Dictionary, Ninth Edition, p. 1350. Wadehra, Basant Lal. Public Interest Litigation: A Handbook, with Model PIL Formats. Universal Law Publishing, 2009, p. 46. A Study on the Establishment and the Determination of the Minimum Guarantee Wage (MGW/SMIG) per Occupational Categories, Last Version, July 2018.

Judgment

I. BACKGROUND OF THE CASE

Association des Assureurs du Rwanda (ASSAR) filed a case in the Supreme Court against the Government of Rwanda (MIFOTRA) seeking that the respondent be compelled to remove all obstructions to the establishment of a minimum wage in Rwanda because not having it in place prejudices the public interest.

ASSAR argues that paragraph 271 of article 2 of the law N°66/2018 of 30/08/2018 regulating labour in Rwanda explains what is meant by a minimum wage where it states that it is the minimum wage recognized by Law based on each category of occupation, and such definition is somehow similar to that of the International Labour Organization where it defined the minimum wage as the minimum amount of remuneration an employer is required to pay a wage earner for the work performed during a given period which cannot be reduced by collective agreement or an individual contract.

1 It is article 3 of the law N° 66/2018 of 30/08/2018 regulating labour in Rwanda

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ASSAR) submits that article 68 of the Law N° 66/2018 of 30/08/2018 regulating labour in Rwanda provides that an Order of the Minister in charge of labour determines minimum wage and that even the other previous labour laws also had similar provisions like article 76 of the Law N° 13/2009 of 27/05/2009 and article 83 of the law N° 51/2001 of 30/12/2001 both provided that the ministry in charge of labour has the duty to determine the minimum wage, however, this was not implemented, and no reasonable ground to that effect was given.

SSAR maintains that apart from the national law that governs labour which mandates the Ministry having labour in its attributions to determine the minimum wage, there is also the "Minimum wage-fixing machinery convention, 1928 n° 26" which was ratified by Rwanda in 1976 which also provided under article one that each member which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of trades or parts of trades existing in member states.

Furthermore SSAR goes on to explain that the fact that there is no minimum wage in Rwanda yet the Law provides for it, is contrary to article 49 and 121 of the Constitution of Rwanda of 04/06/2003 revised in 2015, which provides that every Rwandan has the duty to respect the Constitution and all leaders implement laws through Orders when it is in their responsibilities and it finds this a serious public issue, therefore it decided to petition the Supreme Court seeking the removal of all existing barriers to the implementation of a minimum wage.

The case was heard in public on 19/05/2020, ASSAR was represented by Counsel Butare Emmanuel and Umugwaneza Claudine whereas the Government of Rwanda was represented by State Attorney Kabibi Spéciose.

After the examination of the application of the School of Law /University of Rwanda to appear as Amicus Curiae in this case, and after both counsels, for ASSAR and the Government of Rwanda not objecting to it, the court allowed its application.

The Court also examined the issue related to the fact that ASSAR sued the Government of Rwanda yet according to paragraph 4 of article 80 of the Law N°30/2018 of 02/06/2018 governing the competence of courts provides that in such cases, the hearing is conducted in public and the in the presence of a government representative. On this matter counsel Kabibi Spéciose states that usually, in such petitions, the Government does not appear as a party to the case, but to give opinion, however, based on the spirit in which ASSAR's representatives are explaining, it is as if they lodged the claim against the Government, accordingly, she prays to the court to reject the petition of ASSAR, and in case the court finds that the Government is not a party to the petition she prays that this court can be guided by its opinion.

Counsel Emmanuel argues that the reason as to why the Government was sued in this case is because the subject matter thereof is of public interest, and it is the government that is responsible for the wellbeing of the people, and it is the reason why the legislator provided that in such cases, the hearing is done in public and the presence of the Government representative. Counsel Umugwaneza Claudine explains that the fact that it's the responsibility of MIFOTRA to implement the minimum wage, the Government could not have appeared in the case to give opinion only because it would be contrary to article 13 of the Law N° 22/2018 of 29/04/2019 relating to the civil, commercial, labour and administrative procedure

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Counsel Sebucensha Leonard representing the School of law argues that petitions in connection with the rights relating to the general interest should not have respondents because if it's the case, it would imply that there should be someone liable and have to restore those rights to the petitioner, but rather the Government should appear to give opinion.

After hearing the submission of both parties on this issue, the court adjourned and held that the Government appears in this case to give its opinion on the matter, but not as a party to the case who might be liable or hold other party liable.

After deciding on the issue of allowing the school of law to appear as Amicus curiae and the one relating to the status of the government in this case, the court held that the issue to be examined should only to determine whether ASSAR's petition is admissible pursuant to the provisions of article 80 of the Law No 30/2018 mentioned hereinabove. II. ANALYSIS OF THE LEGAL ISSUES

Relying on the provisions of article 80 of the Law No 30/2018 mentioned hereinabove, and after considering ASSAR's submissions and the School of law's representative opinion on the same, the court finds that the following are the legal issues to be examined:

- a. Whether ASSAR's petition demonstrates a public legitimate interest pursued, and the legal basis for its action.

- b. Whether ASSAR's study report annexed to its submission complies with what is provided under paragraph 2 of article 80 of the law No 30/2018 of 02/06/2018 governing the competence of the courts. The court shall therefore examine the legal issues one by one.
- a. Whether ASSAR's petition demonstrates a public legitimate interest pursued, and the legal basis for the rights pursued/ the legal basis for its action.

Counsel Kabibi Speciose, representing the Government of Rwanda submits that much as it is reasonable that the Order determining the Minimum wage be enacted because it is provided under the law, the fact that it is not yet enacted have not violated the general interest of Rwandans as purported by ASSAR for the following reasons: - There is no legal vacuum created by the fact that there is no minimum wage put in place because the judgment RCAA 0049/14/CS rendered on 25/11/2016 by Supreme Court, the Court put the minimum wage to three thousand Rwandan Franc (3,000Frw) per day. The court based its ruling on the fact that it has inherent authority to act as a legislator in the event of the legal vacuum - She gave an example that in determining the compensation for injuries due to accidents caused by motor vehicles etc. the 3000Frw put in place by the Supreme Court is based upon by the insurance companies in computing the compensation. - Whereas on matters regarding pension, she maintains that in the event where a person earns below 13,000Frw, it is raised to 13,000 to avoid that the pensioner may not go below the poverty line, and in advancing this she relied on the

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Presidential Order n° 31/01 of 25/08/2003 on compensation for personal injuries due to accidents caused by motor vehicles which state that: Pension and occupational hazard benefits granted to the insured person cannot go below thirteen thousand Rwandan francs (13,000) per month

The State Attorney KABIBI Speciose goes on to submit that based on the foregoing explanations, she is convinced that there is no general interest that is violated due to the absence of the Order determining the minimum wage given that the criteria for determining it, is available. She explains that normally; the minimum wage is determined for salaried workers to prevent workers from going below the poverty line.

She demonstrates that a Labour force survey conducted in 2018, indicated that the average monthly salary from paid employment is 56,982, whereas “the Fifth Integrated Household Living Conditions Survey” (EICV5) on the wellbeing of the households shows that at least 159,375 a person has to earn for that person not to be below the poverty line. This survey demonstrates that the salaried workers in Rwanda, are paid the salary which is not below the poverty line.

She concludes stating that given all the foregoing explanations, she is of the view that there is no serious issue with adverse effects to people in general caused by the fact that the order determining the minimum wage is not yet enacted, on the contrary, it demonstrates that the forces of demand and supply establish a minimum wage in proportion to the work performed by the worker, which is current. Therefore, she finds that the fact that the Order is not yet enacted does not by itself constitute a deprivation of general interests of Rwandans.

Counsel Umugwaneza Claudine submits that, the fact that there is no minimum wage in Rwanda, prejudice the general interest of Rwandans in general and the Insurance companies in particular. She goes on to argue that the general interest deprived is manifested in the fact that article 68 of the Law No 66/2018 of 30/08/2018 regulating labour in Rwanda provides that an order of the Minister in charge of labour determines minimum wage and moreover the labour law has been repealed three times, but still, the minimum wage has not been implimeted.

On matters related to the effects resulting from the fact that there is no minimum wage in Rwanda, Counsel Umugwaneza Claudine states that it prejudices the general interests to the insurance companies, and as a result, different courts including the Supreme Court undertook to set an amount as a threshold in determining the compensation for the victim of accidents.

She cited the judgment No RCAA 0202/07/SC between NYETERA Jean Baptiste and CORAR rendered by the Supreme Court on 09/04/2009 as an example in which par.78 of that case the Supreme Court put the minimum wage at 2,500Frw per day. In another case N° RCAA 0049/14/CS between SORAS AG Ltd and Umuhozo Pacifique, Izabayo Sylvie, Niyoyita Jacques rendered by the Supreme Court on 25/11/2016, in par. 27 and 28 held that until now there is no law determining the minimum wage, much as there are decided cases wherein an amount of money was set to be construed as the minimum wage, and in the very case, the court set 3,000Frw as the minimum wage.

She argues that in the insurance companies, affiliates pay their premiums from which compensations for personal injuries due to accidents caused by motor vehicles are got. The

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computation of such compensation based on the amount determined by the Supreme Court is unjust because is only in the discretion of the court.

She goes on to argue that even the Law N° 05/2015 OF 30/03/2015 governing the organization of pension schemes, article 27 provides that the old-age pension, disability, or early retirement benefits shall in no way be less than fifty percent (50%) of the minimum wage determined by an Order of the Minister in charge of labour. Accordingly, this implies that as long as the minimum wage is not yet determined, it will adversely affect the institution in charge of granting old age benefits, or the pension beneficiary given that it is hard to determine the amount.

Counsel Butare Emmanuel added that the 2018 Labour force survey that the Government attorney relied upon her arguments demonstrate that the unemployed people are 15.2%, it also shows the number of unemployed graduates implying that because of lack of unemployment, a job seeking employee cannot bargain a salary with the employer and consequently prejudicial by reasons of a meagre salary as there is no determined minimum wage, hence another proof that this matter is a matter of general interest.

Intervening as amicus curiae, Counsel Sebucensha Leonard contends that companies as well as other organisations, pursue their interests and those of their members, accordingly he finds ASSAR's petition not in the general interests because all Rwandans have no interest in insurance companies. He stressed that a general interest petition is one that is lodged before a competent court with the purpose of defending the general public interests and gave examples of how different jurisdictions resolved the matter of the eligible party to lodge a petition on the matters related to general public interests.²

Furthermore, Counsel Sebucensha Leonard submits that much as the of the Minister in charge of labour was mandated to determine the minimum wage, the fact that such Order is not yet enacted does not amount to a violation of laws, including Constitutional provisions cited by ASSAR or International conventions ratified by Rwanda given that the law did not determine the deadline for enacting such Ministerial Order, and the Government should in no way be pressured since enacting such an Order require a lot of things that need to be carefully considered.

Lastly, Counsel Sebucensha Leonard argues that ASSAR's allegation that there is no minimum wage in Rwanda is not true because since 2012, the Supreme Court determined the minimum wage, and in 2016, the minimum wage was raised based on the market price as evident in judgments RCAA 0202/07/CS, RCAA 0003/11/CS, RSOCAA 0112/10/CS and RCAA 0049/14/CS.

DETERMINATION OF THE COURT

Article 80 of Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that a natural person or a government institution, a political organization, a company, a non-governmental organization or association with legal personality may bring an action for preservation or deprivation of rights relating to the general interest of the country, its natural

² Albert Ruturi & Another v. Minister for finance and others, (2002) IK.L.R 61 (Kenya) and Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General) 2012 SCC 45,(2012) 2 S.C.R 524

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resources, it's entire or part of the population. The applicant must demonstrate in his/her submission the public legitimate interest pursued (...)"

Following the analysis of the contents of article 80 mentioned hereinabove, the court finds it compelling to give the interpretation of public legitimate interest pursued. Legal scholars and courts who analyzed such issue demonstrated the requirements necessary for the admissibility of the action for preservation or deprivation of rights relating to the general interest of the country, and such must be the basis in examining whether ASSAR is representing a public legitimate interest in the case.

Public interest is perceived as something in which the general public as a whole has a stake³ it is in the light of the foregoing that a legal scholar called Wadehra, Basant Lal. explains that public interest litigation means litigation which serves the public interest. It is litigation that vindicates a right of a large number of people, perhaps millions, or redresses a wrong done to them. He furthermore emphasises that for the existence of public interest litigation, four conditions are necessary:

- a. Some action, inaction, or state of affairs;
- b. Such action causes the deprivation of right to a large number of people, or causes a large number of people to suffer a similar wrong;
- c. Relief is sought by respecting that right or the wrong redressed, through a petition to the competent courts;
- d. By a public-oriented person or an association acting on behalf of those injured. He goes on to submit that in public interest litigation, the sine qua non is that it must be for the enforcement of rights of others not the individual grievances of the petitioner. Even if the petitioner is interested in the matter, it must be an interest that he/she shares with other members of the public. The relief, if granted must benefit a large section of society not a handful of individuals. ⁴

It is also in the finding of the court that the arguments of the legal scholar Wadehra, Basant Lal in respect with the conditions necessary for the existence of public interest litigation, were also held by the Canadian Supreme Court in case Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236, wherein the court held that the recognition of the need to grant public interest standing whether occasioned by either the gravity of the public rights or the desire to comply with the principles enshrined in the Constitution Act, 1982, in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue. A balance must be struck between ensuring access to the courts and preserving judicial resources. It would be disastrous if the courts were allowed to become hopelessly overburdened as a result of the unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations, pursuing their particular cases.⁶

3 Something in which the public as a whole has a stake (...), Blacks Law Dictionary, Ninth Edition, p. 1350 4 Wadehra, Basant Lal. Public Interest Litigation: A Handbook, with Model PIL Formats. Universal Law 5 Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236 (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/835/index.do>) 6 Ibidem

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Concerning the petition of SSAR as demonstrated in its submission and other documents in their case file, SSAR is an association with legal personality and as stipulated in clause 4 point 1, 2 and 4 of its Articles of Association, ASSAR's objective is to promote insurance business, defending the profession related interests of their members, to represent its members before Government organs and in other institutions wherein their general interests can be litigated.

The court finds that what to be construed in Article 4 mentioned in the preceding paragraph is that ASSAR is an association that pursues the interests of its members rather than the interests of Rwandans in general and the foregoing is emphasised by its counsel, Advocate Umugwaneza Claudine when she explained that the fact that there is no determined minimum wage, it greatly affects companies that offer insurance services and as a result, courts were prompted to determine it, based on their sole discretion, without basing on well-established standards and gave an examples of the Supreme Court cases, such as the case N° RCAA 0202/07/CS on 09/04/2009 which held that the minimum wage is 2,500Frw, and case N° RCAA 0049/14/CS rendered on 25/11/2016 where it held that the minimum wage is 3,000Frw.

It is also in the finding of the court that in its letter dated 14/11/2016 to MIFOTRA, the National Bank of Rwanda emphasised that not having the minimum wage is effects the insurance companies where it demonstrated that the Minister in charge of labour has not yet determined the minimum wage in Rwanda is detrimental to insurance companies especially on matters regarding compensation for injuries due to accidents caused by motor vehicles that are awarded based on the precedent set by the Supreme Court in case No RCAA 0202/07/CS rendered on 09/04/2009 that determined 2,500Frw per day moreover other courts undertook to determine a higher amount.

In respect to counsel Umugwaneza Claudine's argument that ASSAR pursues the general interests of Rwandans based on the fact that compensation for injuries due to accidents caused by motor vehicles by the Insurance Companies come from the contributions paid by the Rwandans, it is in the finding of the court that her explanations do not prove that it pursues the public legitimate interest given that as explained by the Government representative as well as the amicus curiae, that all Rwandans don't own vehicles to the point that they pay premiums to the insurance companies, in lieu it is a small part of Rwandans, especially that ASSAR did not adduce any evidence proving that the insurance policy holders submitted to it the matter regarding the fact that there is no minimum wage determined by an Order of the Minister in charge of labour.

Regarding the argument of the counsel for ASSAR that the absence of the minimum wage adversely affects the organ in charge of granting pension benefits and the beneficiary in accordance to article 27 of the Law N° 05/2015 Of 30/03/2015 Governing the Organization of pension schemes which states that “the old-age pension, disability or early retirement benefits shall in no way be less than fifty percent (50%) of the minimum wage”, the court finds that other than stating it verbally, ASSAR does not demonstrate the nature of such adverse effects caused by the absence

7 Article 7 of the law n° 005/2015 of 30/03/2015 governing the Organization of Pension Schemes provides that for the member referred to under Paragraph One of Article 5 of this Law, the salary used as the basis for calculating the contribution shall not be less than the base salary and may not exceed one hundred and thirty percent (130%) of final salary used as the basis for calculating contributions. This salary cannot increase by more than thirty percent (30%) every three (3) years. Article 27 of the same law stipulates that The old-age pension, disability, or early retirement benefits shall in no way be less than fifty percent (50%) of the minimum wage determined by an Order of the Minister in charge of labour.

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of the minimum wage determined by an Order of the Minister in charge of labour. Moreover, even if there are fears that the beneficiaries of pension benefits may be granted little amount as a result of the absence of the minimum wage which would determine the minimum amount, it is in the finding of the court that such an issue was settled by article 2 of the Presidential Order N° 069/01 of 13/04/2018 increasing pension and occupational hazards benefits granted by Rwanda Social Security Board where it provides that pension and occupational hazard benefits granted to the insured person cannot be less than thirteen thousand Rwandan francs (FRW 13,000) per month.

Regarding ASSAR's argument that their petition intends to protect the general interest because the determination of the minimum wage by an Order of the Minister in charge of labour is a way of complying with the law regulating labour and the international conventions ratified by Rwanda of which failure to comply, tantamount to violation of the Constitution, the court finds that it is indeed provided under article 68 of the above mentioned law that the Minister in charge of labour shall enact such Order, but as advanced by the amicus curiae, the same law does not give the deadline for such enactment to be effected and as evidenced in the case file, there some works done by MIFOTRA with the view of enacting such Order and in which ASSAR also participated

Pursuant to the motivations given above, the Court finds that the petition of ASSAR seeking the declaration that all deprivations of any kind that hinder the implementation of the SMIG/ Minimum Wage in Rwanda be removed, do not demonstrate the legitimate general interests pursue as provided by article 80 of the law No 30/2018 mentioned hereinabove.

- b. Whether ASSAR's study report annexed to its submissions fulfills all the requirements provided under article.80 paragraph 2 of the Law No 30/2018 of 02/06/2018 determining the jurisdiction of courts

Counsel Kabibi Speciose submits that ASSAR's petition does not contain a study report by experts demonstrating the gravity of the issue, how it tried to solve it in cooperation with the government institutions and failed and the effects of not solving that issue. She states that the study report that ASSAR annexed to the petition which it alleges that it was made by the Ministry of labour and civil servants (MIFOTRA), is a draft study report showing the market salaries of different levels of employment, different practices in place in determining the minimum wage and the gross domestic product, the minimum wage in reducing profit inequalities, poverty and so forth. She contends that such a report cannot be relied upon given that its initial purpose was not to demonstrate the effects of not having a minimum wage. She prays to the Court to reject the petition of ASSAR on the ground that it does not fulfil the conditions provided under article 80 paragraph 2 of the Law N° 30/2018 mentioned above.

Counsel Kabibi Speciose further argues that ASSAR does not demonstrate anything tangible it did in an attempt to solve the issue of not having the minimum wage, nor does it demonstrate whether it carried out any research about it, so that it can show its effects and how it can be solved and she concludes by requesting the Court to reject the petition filed by ASSAR on the ground that it does not fulfil the conditions required by the law.

In its defence against Counsel Kabibi Speciose's arguments, Counsel Butare Emmanuel argues that the study carried out by the Ministry in charge of labour demonstrates that there is no minimum wage, whereby in its preface the report highlights the problem and the problems caused by not having the minimum wage, implying that MIFOTRA referred to that study report in an

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attempt to solve the issue of the minimum wage. He argues that both the Government of Rwanda and the Amicus curiae, they concur that there is no minimum wage, and that the Ministry which has that responsibility is still studying the issue, however, considering the timeline set by the labour law to have implemented the minimum wage but which was not met, in his view he finds that MIFOTRA did not prioritize the matter.

In supporting his arguments, Counsel Umugwaneza Claudine argues that the study report on the minimum wage was conducted by the Ministry of labour and civil servants in July 2018, and on page 33 of the report, it is demonstrated that the minimum wage should be 1,400Frw per day, and they also demonstrate the advantages of implementing the minimum wage, whereby they emphasized that facilitates in uprooting poverty and other problems mentioned in that article, given that article demonstrates how different labour laws provided for the determination of the minimum wage and its importance in the national development and the citizens in general and accordingly finds such report sufficient to demonstrate the seriousness of the issue of not having

the minimum wage in Rwanda.

Counsel Umugwaneza Claudine furthermore submits that before ASSAR petitioned the Supreme Court, it had unsuccessfully tried to solve the issue related to the implementation of the minimum wage, this is demonstrated by various letters it wrote to the Ministry in charge of labour including the letter from the National Bank of Rwanda as the supervising organ of insurance companies that it wrote to the Minister of labour and civil servants on 14/11/2016 demonstrating that the fact that there is no standard minimum wage in place has led to different courts to determine the amount of money to be based on in determining the compensation for personal injuries due to accidents caused by insured motor vehicles, yet that is a duty entrusted to the Ministry in his charge by the labour law, and this has a negative impact on the insurance companies in Rwanda.

Counsel Umugwaneza Claudine explains that the Ministry of labour and civil servants responded to the foregoing letter on 23/01/2017 whereby in paragraph two, it stated that the implementation of the minimum wage is pending until the amendment of the law N° 13/2009 of 27/05/2009 governing labour in Rwanda. She maintains that much as that letter was promising, but the law governing labour was published in the official gazette 30/08/2018, and a year has elapsed when the matter relating to the minimum wage hasn't been solved, yet article 68 of the that law provides that an Order of the Minister in charge of labour determines minimum wage.

She goes on to explain that there is another letter that was written to MINECOFIN on 05/06/2019 and copied to MIFOTRA and MINIJUST, whereby ASSAR once again undertook to demonstrate the negative impact it suffers as a result of not having a standard minimum wage in Rwanda. Accordingly, the fact that ASSAR attempted to address this matter to different institutions, and the issue was not solved, ASSAR finds that only the Supreme Court can solve it.

In their respective submissions, Counsel Serugo Jean Baptiste and Counsel Sebucensha Leonard submit that ASSAR relies upon the study report made by the Ministry in charge of labor yet such a report does not demonstrate the grave impact of not having the minimum wage, that such a report was not meant to demonstrate that there is no minimum wage. They explain that such a study report cannot be construed as one that was made by experts and they furthermore explain that in order to be in accordance with the provisions of article 80 of Law N° 30/2018 mentioned

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hereinabove, such a study report should be made by a person with expertise on the matter under examination and accordingly the study report submitted by ASSAR does not fulfil the requirements laid down under article 80 of the law mentioned hereinabove.

They went on to remind that article 80 of the Law N° 30/2018 mentioned hereinabove strictly provides that the study report is annexed to the submissions of the applicant of a petition relating to the general interests demonstrating how he/she tried to solve the issue in cooperation with the government institutions and failed. On this point, they contend that the different letters produced by ASSAR as the evidence to prove its attempt to solve the issue of implementing the

minimum wage, should not be considered. They explain that the fact that the National Bank of Rwanda, the supervisory organ of the insurance companies, wrote to MIFOTRA concerning that issue, or the fact that ASSAR wrote to MINECOFIN and copied MIFOTRA and MINIJUST respectively, does not in itself demonstrate that ASSAR tried to solve the issue of the implementation of the minimum wage with the responsible institution which is MIFOTRA. Based on the foregoing explanations they request the court to reject the petition of ASSAR on the ground that it does not fulfil the conditions provided for by the law. DETERMINATION OF THE COURT

Article 80 of the Law N° 30/2018 mentioned hereinabove provides that [.....]. He/she must annex to his/her submissions a study report made by experts demonstrating the seriousness of the issue, its resolution attempts in cooperation with the institutions of the State that failed and the eventual consequences of the non-resolution.

The court finds that the study report alluded to in this Article is characterized by four parts which the legislator desired that they manifest therein for the action to be admitted: - It was made by the expert; - It demonstrates the seriousness of the issue; - It demonstrates resolution attempts in cooperation with the institutions of the State that failed; - It demonstrates the eventual consequences of the non-resolution on the general interests pursued

It is also in the finding of the Court that each of the four parts mentioned in the preceding paragraph has reasonable grounds for its establishment which must be complied with by the applicant:

- a. The study report must be made by the expert. This implies that it's not any kind of a study report. It's a study report done professionally, by an expert, based on substantiated information, to evidence the existence of the issue that a solution thereof be sought.
- b. To be demonstrating the seriousness of the issue raised by the applicant; this implies that such a study report does not stop at revealing the issue only, but it should also professionally demonstrate the seriousness (the magnitude) of the issue in proportion to the general interest expert/ the maker of the report wants to defend.

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- c. To demonstrate the applicant's resolution attempts in cooperation with the institutions of the State that failed. This connotes that the applicant demonstrates how he/she personally or those that he/she represents attempted by all means possible to solve the issue in cooperation with the institutions of the state that failed.
- d. To demonstrate the eventual consequences of the non-resolution: the eventual consequences alluded to herein are not those that the applicant thinks might occur just because he/she thinks so. Rather they should be premised on a critical analysis of the events and substantial examples demonstrating that the issues he seeks to solve are to a certain degree, consequential on the general interests he/she seeks to defend.

The case file demonstrate that the study report which ASSAR annexed to its petition was made by MIFOTRA, in July 2018 and it was assessing the establishment and the determination of the minimum Guarantee wage (MGW/SMIG) per occupational categories⁸. Such study intended to make a research on a national level on matters related to the establishment and computation of the minimum wage per occupational categories and the preparation of the draft of the Ministerial Order determining the minimum wage per every working category indicated. Based on different examples as well as common practices all establish the applicable procedures in determining the minimum wage, and the following are the main objectives the research focused on: i. Doing deep research on the nature of the salaries in different categories of the profession on the Rwandan labour market taking into consideration of categories of occupation; ii. Analysing different universal procedures applied in determining minimum wage; iii. Making research that draws a comparison between the salary and the product like gross domestic product per capita and gross domestic product; iv. To analyse the effects of a minimum wage on the distribution of the resources, poverty reduction, economic inequality in occupation categories; v. Based on the research results on the minimum guarantee wage, to prepare a draft of the Ministerial Order determining the minimum wage based on the categories of occupations in Rwanda.

In analysing the document mentioned hereinabove that ASSAR submitted to the court, the court finds that the foregoing document was not yet complete for it to be published, given that in its introductory pages, some parts were not filled for example the Disclaimer, Inquiries, Acknowledgments, Abstract and thus leading to a conclusion that study report was still a draft as argued by the by the Government representative. Furthermore, page one of this document features the statement: ‘Minisiteri y’ Abakozi ba Leta n’Umurimo’, Ministry of Public Service and Labor’. On the question of the expert that made the study, in his response Counsel Butare Emmanuel replied that it was MIFOTRA, therefore the Court finds that this is not sufficient enough for the Court to declare that the foregoing study was made by an expert provided under Art.80 of the Law No 30/2018.

8 A Study on the Establishment and the Determination of the Minimum Guarantee Wage (MGW/SMIG) per Occupational Categories, Last Version, July 2018.

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The Court also finds that the main objectives in the study report mentioned above was not to demonstrate the problem caused by not having minimum wage in Rwanda, instead they examined the basis for the determination of the minimum wage in different categories of occupation. Neither does such study report demonstrate the effect caused by not having a minimum wage whether in general or on the insurance companies in particular, which according to ASSAR, is the part of the citizens whose rights it is pursuing. As demonstrated by the Court in the preceding paragraphs, ASSAR only claims that the minimum wage vacuum has triggered the application of the minimum wage that was determined by the Supreme Court and thus caused it losses but fails to explain the nature of such loss, its magnitude and the effects it had on those

companies. If it had conducted a study report on such an issue it might have proved to the Court the seriousness of the issue and the reason it should be solved, so that it might not prejudice the rights of the part of the citizens (i.e. the insurance companies) whose interests ASSAR pursues and the citizens in general especially the insurance policy holders.

With regards to ASSAR's resolution attempts in solving the issue of having no minimum guarantee wage in cooperation with the government institutions and failed to be solved, the case file demonstrates that before the Law No. 66/2018 governing labour was published, the National Bank of Rwanda wrote to MIFOTRA on 14/11/2016 pointing out that the not having the minimum wage affects the insurance companies because the compensation for injuries due to accidents caused by motor vehicles are awarded based on the precedence of the minimum wage of 2,500Frw which was set by the Supreme Court in the Judgment No RCAA 0202/07/CS of 09/04/2009 and other courts determined even a higher amount. In the letter dated 23/01/2017, MIFOTRA responded to the National Bank of Rwanda, informing it that the enactment of an Order of the Minister in charge of labour determining the minimum wage is pending to the publication of the new labour law which will replace law No. 13/2009 of 27/05/2009. Law No. 66/2018 of 30/08/2018 regulating labour in Rwanda was published on 06/09/2018 but before that on 27/08/2018 MIFOTRA wrote to ASSAR and the insurance companies inviting them to a consultative meeting on a draft of the Ministerial Order determining the minimum wage, that meeting was supposed to be held on 06/08/2018. After that, on 29/08/2018 the director of ASSAR wrote to MIFOTRA informing them that following the consultative meeting they held on with MIFOTRA on 06/08/2018, he would like to appreciate the Hon. Minister in charge of labour for having presented to them the draft Ministerial Order determining the minimum wage, and requested that the following issues should be annexed to the Order: the occupation categories based on the economic activities; the minimum wage per category; the number of working days per month; employees working level of registered professions who are not in the scope of the Ministerial Order.

It is also evident that on 05/06/2019, the Director of ASSAR wrote to MINECOFIN whereby he/she submitted the draft of the law on the compensation for personal injuries due to accidents caused by motor vehicles, and pointed out that one of the obstacles faced by the insurance companies is the increase of compensation determined in the discretion of the court given that there is no standard minimum wage.

The Court finds that following the analysis of the letters mentioned in the preceding paragraphs, it is evident that before the publication of the new law governing labour in Rwanda, nothing proves that ASSAR made some attempts to address to MIFOTRA as the Ministry in charge of enacting the Order determining the minimum wage, the issue of not having the minimum wage and its effects. Following the publication of the new law, the letter ASSAR wrote to MIFOTRA

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on 29/08/2018 was to appreciate for sharing them the draft of the Ministerial Order determining the minimum wage, whereby it gave its opinion thereon on the annex of the Order.

Pursuant to the motivations in the preceding paragraphs, the Court finds that apart from one letter that ASSAR wrote to MIFOTRA on 27/7/2018 thanking it for sharing with it the draft of the Ministerial Order determining the minimum wage and as a result gave its inputs, there is no other letter that it wrote to MIFOTRA concerning the determination of the minimum wage. In explaining what ASSAR did to solve the issue but in vain, ASSAR begins with the letter of the National Bank of Rwanda of 14/11/2016 given that it is the supervisory organ of all insurance companies. The court finds this argument with no merit since the National Bank of Rwanda is not a party to this case who is required to demonstrate its resolution attempts to solve the issue. It is in this context that ASSAR cannot use the letter it wrote to MINECOFIN on 05/06/2019 as an excuse because, apart from the fact that the letter was not requesting MINECOFIN to establish the minimum wage, rather it was sending the drafts of laws relating to compensation for bodily injury, nothing prevented it from writing to the relevant Ministry which is MIFOTRA.

The Court finds that MIFOTRA already started the procedures of legislating the Ministerial Order determining the minimum wage and ASSAR was notified of that and it even gave its opinions accordingly, therefore it has no basis to claim that MIFOTRA did nothing on that issue nor that it did not prioritize it, especially that the Law No 66/2018 governing labour did not set the time limit for enacting that Order.

Based on the motivations given above, the Court finds in filing its petition, ASSAR requesting for the protection or removing the hindrances which it claims that they jeopardize the general interest, ASSAR was not able to demonstrate the legitimate general interests pursued and did not submit a study report made by experts demonstrating the seriousness of not having the minimum wage, its resolution attempts to remedy the issue and failed and the effect it has on the Rwandans in general and on the insurance companies in particular, the petition is rejected on the ground that it does not fulfil the conditions provided by the law. THE DECISION OF THE COURT Rejects the petition filed by Association des Assureurs du Rwanda (ASSAR), on the ground that it does not fulfil the conditions provided by the law.

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