

RWANDA / JUDGMENT

ASSOCIATION POUR LE DÉVELOPPEMENT ET LA TRANSFORMATION SOCIALE (ADTS) V. UMUZAYIRE

RSOCAA 0004/14/CS

COURT

Supreme Court

DECIDED

14 October 2014

CASE / FILE NUMBER

RSOCAA 0004/14/CS

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-10-14
- Case/document no.: RSOCAA 0004/14/CS
- Collection: Supreme Court

Text

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ASSOCIATION POUR LE DÉVELOPPEMENT ET LA TRANSFORMATION SOCIALE (ADTS) V. UMUZAYIRE [Rwanda SUPREME COURT – RSOCAA 0004/14/CS (Mukanyundo, P.J., Rugabirwa, na Hitiyaremye, J.) October 14, 2014] Law determining the jurisdiction of the Court – The jurisdiction of the Supreme Court – the relied damages in determining the jurisdiction of the Court – The requested damages in the document instituting a claim, are not to be based on awarding the jurisdiction of the Court rather it would be based on what awarded in the previous Court – The Supreme Court shall have appellate jurisdiction over cases heard and decided in the first instance by the High Court if that cases involve a judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (50,000,000 Rwf), or when the value of

the case, as determined by the judge in case of a dispute, is at least fifty million Rwandan francs (50,000,000 Rwf). Fact: Association pour le Développement et la Transformation Sociale (ADTS) concluded an open end contract with Umuzayire for performing as director of administration and finance. After ADTS terminated that contract because she did not fulfil her duties. Umuzayire wrote to ADTS for requesting it to give her the justice but it was impossible which led her to seek a help to inspector of labor but they did not reach to the agreement again. Gasabo requesting to be given the various damages because she was unlawfully dismissed, then the Court decided that Umuzayire was unlawful dismissed and it ordered ADTS to pay her damages for unlawful dismissal, notice, dismissal compensation, leave allocation, the salary which she did not be remunerated, the employment certificate, procedural and counsel fees and other for communication. ADTS appealed against that judgement in the High Court then it decided that ADTS dismissed Umuzayire unlawful and the judgement is overturned in part, therefore it must pay her the various damages. ADTS appealed again in the Supreme Court in stating that it should not be charged the damages by the previous Court because it did not dismiss unlawful Umuzayire Cécile, but rather she must pay it of the counsel fees in additional of the moral damages, transport and communication. Umuzayire raised the objection for not admitting the appeal of ADTS because the Supreme Court does not have the competence to hear them but ADTS states that its appeal is in the jurisdiction of this Court because in the document instituting the claim in the High Court Umuzayire requested to be paid the damages which is excessive to 50,000,000Rwf. Held : The requested damages in the document instituting a claim, are not to be based on determining the jurisdiction of the Court rather it would be based on what awarded in the previous Court and also the Supreme Court shall have appellate jurisdiction over cases heard and decided in the first instance by the High Court if that cases involve a judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (50,000,000 Rwf), or when the value of the case, as determined by the judge in case of a dispute, is at least fifty million Rwandan francs (50,000,000 Rwf); therefore the requested damages in the document instituting a claim, are not to be

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based on awarding the jurisdiction of the Court rather it would be based on what awarded in the previous Court. The objection of the lack of jurisdiction raised by the defendant has the merit. The appeal of the respondent is not in competence of the Supreme Court. With the Court fees to the respondent. Statutes and statutory instruments referred to: Organic law n0 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 28(7) No cases referred to.

Judgment

BRIEF BACKGROUND OF THE CASE [1] On 04 february, 2008, Association pour le Développement et la Transformation Sociale (ADTS) concluded an open end contract with Umuzayire Cécile for performing as director of administration and finance. ADTS terminated that contract because she did not fulfil her duties due to not provide the report of how its property was used in 2011, at

time, and also when she provided it, it contains many errors. [2] Umuzayire Cécile wrote to ADTS for requesting it to give her the justice but it was impossible which led her to seek a help to inspector of labor but they did not reach to the agreement again. [3] Umuzayire Cécile sued ADTS in Intermediate Court of Gasabo requesting the various damages amounting to 89,361,264Rwf which includes by unlawful dismissal, that Court ruled that ADTS dismissed Umuzayire Cécile unlawful, ordered it to pay her damages of 2,489,772 Rwf for unlawful dismissal, 414,962Rwf of the dismissal notice, 829,924Rwf of the dismissal compensation, 782,773 Rwf of leave allocation, 188,619Rwf of the salary which she was not remunerated, 500,000Rwf of the employment certificate she was not be given, 750,000Rwf of procedural fees and the damages of the counsel fees, all together are 5,956,050Rwf. [4] ADTS appealed for that judgment in High Court, it rendered the judgment and declared that ADTS dismissed unlawful Umuzayire Cécile, it ordered that the case overturned in part and it ordered ADTS to pay her the damages of 2,489,772Rwf for unlawful dismissal, 208,743Rwf of the difference between the final liquidation and what she was awarded in appealed judgment, 90,537Rwf of the difference between the salary of March 2013 which she was awarded in final liquidation and what she should be awarded, 905,371Rwf of leave allocation for 48 she did not enjoy, 750,000Rwf of transport, for communication and counsel fees which she was awarded in appealed judgment, all together are 4,444,423Rwf. [5] ADTS appealed again in the Supreme Court stating that it should not be charged the damages by the previous Court because it did not dismiss unlawful Umuzayire Cécile, but rather

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she must pay it 3,000,000Rwf of the counsel fees in additional of 15,800,000Rwf for the moral damages, transport and communication. [6] In her submission and the time of hearing of the judgment, Umuzayire Cécile raised the objection for not admitting the appeal of ADTS because there is no judge who was ever awarding the damage of 50,000,000Rwf in appealed judgement, whereas ADTS argues that its appeal is in the jurisdiction of this Court because in the document instituting the claim Umuzayire Cécile requested that ADTS should pay her the damages amounting to 89,361,264Rwf. [7] The hearing of the case was held in public on 14 October, 2014, Association pour le Développement et la Transformation Sociale(ADTS) is represented by the counsel Mutunzi Donat whereas Umuzayire Cécile is represented by counsel Nduwamungu JMV.

II. ANALYSIS OF THE LEGAL ISSUES Determine whether the appeal of ADTS is in competence of the Supreme Court. [8] Nduwamungu Jean Marie Vianney, the Counsel for Umuzayire Cécile states that he raised the objection for not admitting the appeal of ADTS based on 28 (7) of the organic law n° 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court because the court did not award the damages amounting to 50,000,000Rwf, the High Court awarded her the damages amounting to 4,444,423Rwf. [9] It has no merit because its appeal is in the jurisdiction of the Supreme Court basing on article 28(7) of the organic law n° 03/2012/OL of 13/06/2012 which has already mentioned due to the reason that the document instituting a claim in the Intermediate Court of Gasabo, Umuzayire Cécile requested to be given the damages excessive to 50,000,000Rwf because she requested ADTS to pay her 89,361,264Rwf. THE VIEW OF THE COURT [10] Article 28(7) of the organic law n° 03/2012/OL of

13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court which both parties relied on, provides that “the Supreme Court shall have appellate jurisdiction over cases heard and decided in the first instance by the High Court if that cases involve a judgment in respect of which there was an award of damages of at least fifty million Rwandan francs (Rwf 50,000,000), or when the value of the case , as determined by the judge in case of a dispute, is at least fifty million Rwandan francs (Rwf 50,000,000)”. [11] Concerning this case, the documents in file including the copy of the judgement RSOC 0087/13/TGI/GSBO rendered on 15 november, 2013 by the Intermediate Court of Gasabo demonstrating that Umuzayire Cécile was awarded the damages amounting to 5,956,050Rwf whereas the High Court awarded her 4,444,423Rwf as it is showed by the copy of the judgment RSOCA 0251/13/HC/KIG rendered by that Court on 02 May, 2014 which is appealed in this Court.

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The Court finds that the appeal of ADTS should not be admitted because of it is not under its jurisdiction basing on article 28(7) of the organic law n0 03/2012/OL of 13/06/2012 determining the organisation, functioning and jurisdiction of the Supreme Court since the damages which Umuzayire Cécile is awarded at the High Court are amounting to 4,444,423Rw, is very low comparing to damages of 50,000,000Rwf which is provided by that organic law so that the appeal be in the jurisdiction of the Supreme Court. III. DECISION OF THE COURT [12] Decides that the objection of the lack of jurisdiction of the Supreme Court raised by Umuzayire Cécile has the merit; [13] Decides that the appeal of Association pour le Développement et la Transformation Sociale(ADTS) is not in the jurisdiction of the Supreme Court; [14] Declares that the judgment RSOCA 0251/13/HC/KIG rendered on 02 May, 2014 is not overtuned; [15] Ordered Association pour le Développement et la Transformation Sociale (ADTS) to pay the court fees amounting to 10,000Rwf

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Prepared on 14 October 2026 · Esheria