

RWANDA / JUDGMENT

BAKHRESA GRAIN MILLING RWANDA LTD v. RUTIKANGA - English version

R SOC A 0135/14/HC/KIG

COURT

High Court

DECIDED

12 May 2015

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Text

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BAKHRESA GRAIN MILLING RWANDA LTD v. RUTIKANGA [Rwanda HIGH COURT – R SOC A 0135/14/HC/KIG (JURU Rugema, P.J.) May 12 , 2015] Administrative procedure – The appeal Court – The parties can submit new elements of evidence that were not heard at the first level – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure , article 168. Labour law – Delegation of authority – An employee delegated with the authority from employer to dismiss the other employees is competent to do so. Labour law – The ground for the dismissal of an employee - The ground for the dismissal of an employee is embedded in the dismissal letter. Facts: Rutikanga resorted to courts, after his dismissal by Bakhresa Grain milling Rwanda LTD on the allegation that he committed gross misconduct of abandoning the vehicle and parking it where it was prohibited, he sued the company to the Intermediate Court of Gasabo claiming that he was unlawfully dismissed. That court held that that he was unlawfully dismissed because he was dismissed without a reasonable ground and he was dismissed by a person who did not have the competence to do so, thus the employer was charged various

damages. Bakhresa Grain milling LTD appealed in the High Court claiming that Rutikanga was dismissed by the Human resource Manager who was delegated power by the Managing Director in the letter dated January 1st ,2013 including that of dismissing an employee. In his defence Rutikanga adduce that the person who dismissed him is not the one who recruited him and the letter which delegates the power to the Human Resource Manager was not produced in the first instance. Held: 1. An employee delegated with the authority from employer to dismiss the other employees is competent to do so.

2. The motive for the dismissal of an employee is embedded in the dismissal letter, therefore an employer alleging that the employee was dismissed due to abandoning the vehicle and the dismissal letter mentions another ground renders it baseless.
3. The worker is not awarded damages for human Resource Manager signing on the employment certificate instead of the Managing Director when her was delegated the powers to sign on behalf of the him.
4. The appellant should pay to the respondent the procedural and counsel fees. awarded in the discretion of the Court. . Appeal has no merit; The appealed judgment has partially changed with regards to the damages the employee was awarded in that judgment; The employer should pay the employee the procedural and counsel fees.. Statutes and statutory instruments referred to:

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Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 168. Decree of 30/07/1888 relating to contracts or obligations, article 258. Doctine: Jean Pélissier, Alain Supiot, Antoine Jeammaud, Droit du travail, Dalloz, 22ème, 2004 p.529- 530:

Judgment

BACKGROUND OF THE CASE [1] This case begun in the Intermediate Court of Gasabo , were Rutikanga John sued Bakhresa Grain Milling Rwanda LTD in the name of its director for unlawfully dismissing him while Bakhresa Grain Milling Rwanda LTD insisted that he was dismissed due to gross negligent [2] The Intermediate Court of Gasabo adjudicated that Rutikanga John was dismissed for no reasonable ground and was dismissed by incompetent person and awarded the damages stated in the appealed judgment.. [3] Bakhresa Grain Milling Rwanda LTD appealed in the High Court assisted by Counsel Ndutiye claiming that Rutikanga was dismissed due to the gross negligent and dismissed by a delegated employee and was also given the employment certificate. [4] Nsabayezi the counsel RUTIKANGA John pleaded that there is no ground produced by the a appellant for the appealed judgment to be overruled. [5] In this case the issues examined are, whether Rutikanga was dismissed by the competent employee , for the reasonable ground and the ground for the damages mentioned in this case.. II. THE LEGAL ANALYSIS OF THE LEGAL ISSUES. Wether Rutikanga John was dismissed by a competent person.

[6] Bakhresa Grain Milling Rwanda LTD pleaded in the High Court that Rutikanga John was dismissed by the Human Resource Manager who was delegated various powers including the power to dismiss an employee by the Managing Director in the letter dated January 01, 2013 which Counsel Ndutiye produced to the Court. [7] Nsabayezu the counsel for RUTIKANGA John in his defence state that Rutikanga John was dismissed by the person who did not recruit him and that is unlawful dismissal and they don't recognise the letter delegating powers to the Human Resource Manager and it was not even produced in the Intermediate Court

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[8] The Intermediate Court ruled that Rutikanga was dismissed by the Human Resource Manager who did not recruit him. The High Court finds that there is an evidence which was produced to the High Court but was not produced before the Intermediate Court proving that Human Resource Manager was delegated the powers to do so, the High Court finds that article 168 par. 3 of the Law relating to the civil, commercial, labour and administrative procedure, accepts the parties to produce new elements of evidence at the appeals court which were not produced at the first instance court. pursuant to that evidence the High Court finds that the Human Resource Manager was delegated the powers to dismiss an employee, thus Rutikanga was dismissed by a competent employee.. Bowater Rutikanga John was dismissed due to a reasonable ground [9] Bakhresa Grain Milling Rwanda LTD appealed in the High Court , Its counsel Ndutiye arguing that Rutikanga John abandoned a vehicle worth 100.000.000 and parked it at a prohibited place and that fault is evident in the letter dated 0March 09th ,2013 Rutikanga wrote acknowledging the fault and the driver who went to pick it said that there was some of the things missing in the vehicle. [10] Nsabayezu the counsel for Rutikanga John in his defence argued that he did not abandon the vehicle on the roadside but he parked at at Muzizima where other vehicles for Bakhresa Grain milling Rwanda LTD do park there. And the letter they allege that its his is a forgery. [11] The Court is of the view that the motif for the dismissal of an employee is embedded in the dismissal letter , and these are stressed by the law scholar including Jean Pélissier, Alain Supiot, Antoine Jeammaud1,, the motive in the Rutikanga's dismissal letter is that they found him when he had packed in the vehicle goods which do not belong to Bakhresa Grain Milling LTD and they were told so by the Bakhresa Grain Milling dar- es – salam, ant the previous judge held that there is no evidence to prove it. [12] The High Court finds that Bakhresa Grain Milling Rwanda LTD appealed but it did not produce evidence to prove that indeed Rutikanga John had indeed packed goods which are not of Bakhresa Grain Milling Rwanda LTD, which demonstrates to the High Court that it did not oppose the motive of the previous judge who held that Rutikanga John was unfairly dismissed instead Bakhresa Grain Milling Rwanda LTD pleaded claiming that Rutikanga John parked the vehicle in an authorised place ,and the Court is of the view that the its not the motive of his dismissal because it does not appear in the dismissal letter.. [13] The High Court also finds that another motive for the dismissal of Rutikanga John metioned in the dismissal letter is that the reserve tyre and the radio were missing in the vehicle , the High Court finds that analysing the dismissal letter,

his dismissal was not based on this motive but it was based on packing goods which are not that of Bakhresa Grain Milling Rwanda LTD. 1 Jean Pélissier, Alain Supiot, Antoine Jeammaud, Droit du travail, Dalloz, 22ème, 2004 p.529-530: «...Cette obligation d'annoncer le ou les motifs du licenciement dans la lettre de licenciement concerne tous les licenciements, que ceux-ci aient un motif économique ou personnel, disciplinaire ou non disciplinaire. (...).

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[14] The High Court finds that the Bakhresa Grain Milling Rwanda LTD pleadings in the High Court that Rutikanga John was dismissed because of abandoning a vehicle worth amount of 100.000.000 and parked it at a place it should not be parked, the High Court is of the view that motive cannot be valued since it was not the same motive put in the letter dismissing Rutikanga John due to the fact that the motive for the dismissal of an employee is embedded in the dismissal letter as explained in paragraph 11 [15] The High Court finds no ground produced by Bakhresa Grain Milling Rwanda LTD for the damages awarded in the appealed judgment for the unfair dismissal of Rutikanga John to be set aside.. C. Cross appeal. [16] RUTIKANGA John filed a cross appeal claiming for the damages of 1.080.000Frw for being given an employment certificate which was wrongly drafted because it was signed by the Human Resource.. [17] The High Court finds that he should not be awarded those damages because the letter dated January 01, 2013 shows that the Human Resource Manager was delegated various powers including signing on behalf of the Managing Director. D.The procedural and counsel fees [18] RUTIKANGA John claimed for the 1.000.000 Frw for the procedural and counsel fees. [19] In the discretion of the Court, the High Court finds that Bakhresa Grain Milling Rwanda LTD should pay Rutikanga John 500.000Frw for the procedural and counsel fees on the appellate level because the 1.000.000Frw claimed by Rutikanga John is excessive ,in addition to the 300.000Frw which Bakhresa Grain Milling Rwanda LTD was ordered to pay to Rutikanga John on the instance level pursuant to article 258 of the decree of 30/07/1888relating to the contracts and obligations. III. THE DECISION OF THE COURT. [20] Decides that the appeal of Bakhresa Grain Milling Rwanda LTD has no merit. [21] Decides that the appealed judgment R SOC 0260/13/TGI/GSBO has partially changed with regards to the damages the employee was awarded in that judgment [22] Decides that Bakhresa Grain Milling Rwanda LTD pays to 500.000 Frw for the procedural and counsel fees Rutikanga John on the appellate level in the High Court in addition to the one he won against it at the Intermediate Court of Gasabo . [23] It decides that the 75.000 Frw equals to the expenses incurred on this judgment. [24] Declare that it was not delivered on time because of other activities of hearing and pronouncement of other judgments.

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