

RWANDA / JUDGMENT

GOVERNMENT OF RWANDA v. NTAHORUGIYE

RADA 0001/15/CS

COURT

Supreme Court

DECIDED

22 April 2016

CASE / FILE NUMBER

RADA 0001/15/CS

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-04-22
- Case/document no.: RADA 0001/15/CS
- Collection: Supreme Court

Text

Page 1

GOVERNMENT OF RWANDA v. NTAHORUGIYE [Rwanda SUPREME COURT – RADA 0001/15/CS (Rugege, P.J., Ngagi, and Mukandamage, J.) April 22, 2016] Administrative procedure – Termination of labour contract – The effect for dismissing an employee on the basis of a letter in case he was appointing on post by Prime Minister Order – the employees who were appointed on post by the Prime Minister Order should be removed by it – Constitution Law of the republic of Rwanda of 04 August 2003as it is amended to date, article 118(8) ,121(2) Administrative procedure – Unlawful dismissal – It is unlawful dismissal when an employee did not be informed to faults he committed so that he could present in writing his/her means of defense and be liable – Law N° 22/2002 of 09/07/2002 on general statutes for Rwanda public service, article 90 and 94. Damages – Dismissal compensation – Damages resulted from unlawful dismissal – The damages for unlawful dismissal are awarded in court discretion – When there was no job suppression or discontinuance, the dismissal compensation was no awarded – Law n° 86/2013 of 11/09/2013 establishing general statutes for public service, article 95. Fact: Ntahorugiye was appointed on

service by Prime Minister's order of 31/12/2007 appointing the servant of branch and service at public institution and commission, it is in that cadre he was appointed as the director of ONATRACOM. Latter he was dismissed by the letter of Prime Minister n° 875/03.0 of 20/06/2011, also he was ordered to perform the transfer of power by his successor. Ntahorugiye wrote to the Prime Minister for requesting him to be given the justice but did not produce anything, this led him to file a claim to the High Court in stating that he was unlawful dismissed, he requested the damages resulted from that decision which treat him unfairly, the bonus of six years he was not paid and dismissal compensation. That Court held that Ntahorugiye was not temporally suspended rather he was dismissed for good and unlawful because the decision of his dismissal should not be indicated in the letter; rather it should be in Prime Minister Order signed on attachment by the ministers, state ministers and the others who have the duty to implement it; indeed the procedures for giving the disciplinary sanction was not followed, according to those the Court awarded to him the various damages, procedural and counsel fees but it did not award to him the bonus and the dismissal compensation. Government of Rwanda appealed against the Supreme Court stating that the person who would signed the Order which dismiss Ntahorugiye, was the one who signed the dismissal letter, that the effects are the same and also the awarded damages have no basis because nothing which proves that he would continue to work for ONATRACOM until he will be retired. Ntahorugiye filed a cross appeal argues that he prays for being given the dismissal compensation he filed for but not be given and the counsel fees

Page 2

Held : 1. the employees who were appointed on post by the Prime Minister Order should be removed by it, therefore as it was used for appointing Ntahorugiye on service, it was the one which Prime Minister would use when an employee is dismissed instead of using the ordinary letter.

2. It is unlawful dismissal when an employee did not be informed to faults he committed so that he could present in writing his/her means of defense and be liable
3. The damages for unlawful dismissal are awarded in court discretion, then what Ntahorugiye awarded by the Previous Court have no basis because nothing proves that whatever may happen he would still work for ONATRACOM till he get the retirement, it is in that way he was awarded the damages which are equal to the salary of six months in the Court discretion.
4. The dismissal compensation should not be awarded in case there was no job suppression or discontinuance, therefore Ntahorugiye should not be awarded them because he was not dismissed due to the job suppression or discontinuance rather he was dismissed on service.
5. Counsel fees are awarded in Court discretion Appeal has merit in part; Cross appeal has merit in part; With the Court fees to the public treasury. Statutes and statutory instruments referred to: Constitution Law of the republic of Rwanda of 04 August 2003as it is amended to date, article 118(8) ,121(2) Law N° 22/2002 of 09/07/2002 on general statutes for Rwanda

public service, article 90 and 94. Law n° 86/2013 of 11/09/2013 establishing general statutes for public service, article 95. Decree law 30/07/1888 relating to Contracts or obligations, article 258. Cases referred to.

Judgment

BRIEF BACKGROUND OF THE CASE [1] Ntahorugiriye Damien was an employee of ONATRACOM, who was appointed on service by Prime Minister's order of 31/12/2007 appointing the servant of branch and service at public institution and commission, and he was dismissed by the letter of Prime Minister n° 875/03.0 of 20/06/2011, he was ordered to perform the transfer of power by his successor. [2] Ntahorugiye Damien wrote to the Prime Minister for requesting him to be given the justice but did not produce anything, this led him to file a claim to the High Court in stating that

Page 3

he was unlawful dismissed, he requested the damages amounting to 138,576,772Frw resulted from that decision which treat him unfairly, the bonus of six years he was not given and dismissal compensation. [3] On 11 September 2014, High Court rendered the judgment n° RAD 0091/13/HC/KIG and found that Ntahorugiye Damien was not temporally suspended rather he was dismissed for good by the Prime Minister based on the authority he was given by the 118 of Constitution. [4] Concerning the judgment on merit, the Court found that the decision of his dismissal should not be visible in the letter; rather it should be in Prime Minister Order signed on attachment by the ministers, state minister and the others who have the duty to implement it. It also found that the procedures for giving the disciplinary sanction to an employee provided by article 90 and 94 of Law N° 22/2002 of 09/07/2002 on general statutes for Rwanda public service which was in force that time was not followed, because they provide for that no disciplinary sanction can be pronounced without the concerned person having had the possibility to present in writing his/her means of defence also no sanction can be effective for the period prior to its pronouncement, in addition to that a second degree disciplinary sanction must be notified in draft first to the concerned person who will provide additional explanations. [5] Concerning the damages which Ntahorugiye filed for, the Court found that he should be given the salary of 72,655,740Frw he was not paid for 7,5 years remained for being retired, because he was unlawful dismissed on service and if he was not dismissed, he would work till the retirement, especially that the State attorney did not propose the other way, and it will add on the moral damages of 1,000,000Frw for being and unjustifiable manner dismissed since he was not given the possibility to provide the defense on the faults he committed, 500,000Frw of the procedure and counsel fees. [6] But the Court found that Ntahorugiye should not be awarded the bonus of every year of 3% and the dismissal compensation which he requested because it they has no merit. [7] The Government of Rwanda appealed against the Supreme Court in stating that the person who would signed the order which dismiss Ntahorugiye Damien, was the one who signed the dismissal letter therefore the effects are the same and also the awarded damages have no basis because nothing which proves that he would continue to work for ONATRACOM until he will be retired. [8] On cross appeal, Ntahorugiye Damien states that he prays to be given the dismissal compensation he filed for but

not be given together with the counsel fees. [9] The hearing was conducted in public on 22 March 2016 the Government of Rwanda represented by State attorney Umwali M.Claire whereas Ntahorugiye Damien represented by Counsel Karake Canisius. II. ANALYSIS OF THE LEGAL ISSUES A. APPEAL OF GOVERNMENT OF RWANDA Determining whether Ntahorugiye Damien was unlawful dismissed

Page 4

[10] State attorney Umwali M. Claire states that the High Court held that the decision which is in the letter dismissed Ntahorugiye of Prime minister has the defect, it disregarded that the person who would sign the order that dismissed him on service is the one who wrote the dismissal letter, that the prime minister took that decision on basis of the authority he is granted by the Constitutional Law in it's article 118, thus if it would be the prime minister order to dismiss him on service also it will have the similar effects like those the letter suffered him. [11] He continues in arguing that even the letter of the Prime Minister or his order, both could be used in dismissing Ntahorugiye Damien on service, he realizes that there is no defect in the decision which is taken by the Prime minister because the resulted effects are similar if it will used the prime minister order, all is to be dismissed on work. [12] Karake Canisius, the Counsel for Ntahorugiye Damien state that there is no provision of the law which State attorney bases on in contradicting the ruling of the Court which she appealed for, that the appealed judgment may remain its validity. [13] He states in addition that normally the Prime Minister Order was debated on by the cabinet meeting, they sign on it together with the State Ministers who have the duties to implement it, that it drafted with prudence which is high than the ordinary letter, that it was drafter with the prudence like that Ntahorugiye Damien would not be dismissed on service. He adds that the Constitutional Law does not provide that the issues which are resolved by the Prime Minister order, they could be replaced by the ordinary letter or one of them should be taken in place of other, the fact that in it's article 118 wished to implemented as it is provided, to change it in stating that you have the authority to use one of them should first require that the article to be repealed and be drafted like that, therefore the procedure of the prime minister pass through is different from that of the ordinary letter, also their titles are different. The complementarily of the Laws and the administrative decisions, the procedure which the decision passed through to be taken is similar to the procedure for abrogating it, that the Prime Minister should not abrogate his order by using his ordinary letter. [14] He realizes in additional that the Government should not drag such disputes because it has duty to protect all population, and independence of the Constitution law and to comply with the other laws, rather it must prove the fault which Ntahorugiye suffered for in order to say that even if it would be used the procedure of Prime Minister order, he should be dismissed and the cause of unlawful dismissing abruptly him. VIEW OF THE COURT [15] The appeal filed by the Government of Rwanda on this ground has the purpose to prove that Ntahorugiye Damien was dismissed by the Prime Minster basing on the authority he is granted from the Constitution law, also the fact that he used the ordinary letter instead of using his order have no defect because it can

be used one of them because the effects are the same. [16] Article 118 of the Constitution Law of the republic of Rwanda of 04 August 2003, al 8(d) as it is amended to date which was in force at the time Ntahorugiye was dismissed on service in 2011, which provides for that the Prime Minister signs orders relating to the appointment and termination of service for senior public servants in case it is not provide otherwise.

Page 5

[17] Whereas article 90 of Law N° 22/2002 of 09/07/2002 on general statutes for Rwanda public service which was in force that time, it provides for that no disciplinary sanction can be pronounced without the concerned person having had the possibility to present in writing his/her means of defence. No sanction can be effective for the period prior to its pronouncement. Also article 94 paragraph one of that law provides for that a second degree disciplinary sanction must be notified in draft first to the concerned person who will provide additional explanations. [18] As it is indicated in the dismissal letter n°875/03.0 of 20/06/2011 of Prime Minister wrote to Ntahorugiye, basing on article 118 of the Constitution law mentioned above, he informs him that from 20 June 2011 is dismissed on work he performed as technical director of ONATRACOM, that after he received that letter he is requested to perform the handover to his successor. [19] The Court is finding that article of the Constitution law which was based on for dismissing Ntahorugiye provides that in his obligation, Prime Minister signs orders relating to the appointment and termination of service for senior public servants. Also the prime minister order must be scanned by the cabinet meeting before it will be implemented as it is provided for by article 121,20 of constitution law mentioned, therefore as it is the one used for appointing on service he served, the Prime minister must use it for dismissing him instead of using the ordinary letter. [20] In addition the Court finds that as the previous Court motivated them; the procedure provided by the articles of general statutes for Rwanda public service mentioned above were not followed because Ntahorugiye did not be informed to faults he committed so that he could present in writing his/her means of defense, and be liable, therefore he was unlawful dismissed. Determining whether Ntahorugiye Damien was awarded excessive damages without reason [21] The State attorney Umwari M.Claire states that Ntahorugiye should not given the damages, that in awarding damages the High Court considered his dismissal like he was deprived the rights, capacity and competency for performing another job, it seems like the dismissal decision changed him to total disability so that he can be able to do anything else. [22] she asking herself how an employee how was dismissed at the age like 25 would be computed his salary of 40 years remains so that he gets the retirement, she finds it does not have the justification, because if the damages should base on the certain damage, the Court did not have the basis of confirming that in 7,5 years that Ntahorugiye remains to get the retirement, whatever may be happen he should be continued to work for ONATRACOM and be remunerated the same salary like what he got at his dismissal. [23] Concerning the moral damages of 1,000,000Frw which Ntahorugiye was awarded by the Court, the state attorney Umwali Claire comes across also that they have no basis. [24]

Counsel Karake Canisius states that Ntahorugiye Damien served the Government from the beginning till the time he remains 7,5 years to go to the retirement, he did not commit any

Page 6

disciplinary fault, nothing prove that he would not spend those years at the salary he received because apart from the disciplinary sentence, the employee is promoted in salary not to be degraded. [25] Concerning the damages caused by the decision to dismiss him, Counsel Karake argues that he loose the job which made him and his family live, he unfairly lost it while he cannot get the job elsewhere since he was going to be retired. [26] He concludes in stating that the Government of Rwanda must concur that he committed the fault to dismiss unfairly an employee and also unlawfully, then the damages be calculated as the previous Court did because Ntahorugiye spent 31 years in work should not be compared to young man of 25 years who begins to work. VIEW OF THE COURT [27] Article 258 of the civil code book III provides for that “any act of man, which causes damage to another obliges the person by whose fault it happened to repair it”. [28] The damages which Ntahorugiye filed for at the High Court, as it is included in the submission of his claim, they are based on article mentioned above, they are grounded on the act indicates in the written letter of Prime Minister which unjustly and unlawfully treated him clearly to everyone. [29] As it is motivated above, the letter Prime Minister wrote to Ntahorugiye for dismissing him has the defect and he unlawfully dismissed him, consequently the Government of Rwanda should give to him the damages because it is understandable that they resulted the bad effects in his life. [30] The Court is finding that the moral damages he was awarded by the previous Court worth to the salary Ntahorugiye was not paid of 7,5 years remained so that he be retired equals to 72,655,740Frw, and the other which is equal to 1,000,000Frw, they have no basis because nothing prove that whatever may happen he would still work at ONATRACOM till he get the retirement, and at the position he was on, in the Court discretion he should be awarded the damages which are equal to the salary of six months, which means $807,286\text{Frw} \times 6 = 4,843,716\text{Frw}$ B. CROSS APPEAL OF NTAHORUGIYE DAMIEN Dismissal compensation [31] At cross appeal, Karake Canisius, the Counsel for Ntahorugiye Damien states that Ntahorugiye should be given the dismissal compensation, which the High Court refused to award to him because the ground it based on for refusing to award them to him is that he did not demonstrate the laws he based on, it has no basis because the Court knows the law so it could not be ordered to follow the given law, what the party has to demonstrate is the brief background of the issue he suffered, then it chooses the applicable law. He adduces that the fact the party may demonstrate the applicable law it is advantage, but to no do that it will not be the sentence so that it deprived him his rights.

Page 7

[32] He continues stating that at the High Court, Ntahorugiye calculated the dismissal compensation by relying on article 95 and 96 of the Law n° 86/2013 of 11/09/2013 establishing general statutes for public service, in the following procedure: $970,524\text{Frw of the salary} \times 6 \text{ months} = 5,823,144\text{Frw}$. [33] State attorney, Umwali M. Claire states that an employee who is

dismissed should not be given the dismissal compensation because it is different from when the post is discontinuance or replaced by another, that the articles they demonstrates will not help them because they not not in conformity with the subject matter. VIEW OF THE COURT [34] Article 95 of the Law n° 86/2013 of 11/09/2013 establishing general statutes for public service provides for that “where a public servant is automatically removed from office as a result of job suppression or discontinuance, he/she shall be entitled to termination benefits allocated by the institution where he/she has been working up to his/her departure. Termination benefits for a public servant shall be calculated on the basis of his/her last gross salary with only the deduction of tax and depending on his/her experience in public service as follows: (...) ”, whereas article 96 stipulates about Requirements for granting of dismissal compensation. [35] The Court finds that those provisions of the Law which Ntahorugiye bases on for praying the dismissal compensation should not be based on in this judgment so that he could be awarded them because he was not dismissed due to the job suppression or discontinuance rather he was dismissed for the reason explained above. In addition to that it is obvious that he was dismissed before the promulgation of this law, thus he may not use it in this judgment because it does not concern with retroactivity, and therefore his ground of appeal has no merit. Counsel fees [36] Counsel Karake Canisius states that on this level of appeal Ntahorugiye Damien must be given 3,000,000Frw of the Counsel fees which will be add on 500,000Frw ordered at the first instance, all together are amounting to 3,500,000Frw. [37] Regarding the Counsel fees, the State attorney Umwali M. Claire states that the contract Ntahoruguye Damien concluded with his Counsel concerns them only, and also the Government of Rwanda did not drag him into lawsuits because he is the one who filed a claim and also it has the right to appeal. VIEW OF THE COURT [38] Basing on article 258 of the Civil Code Book mentioned above, the Court is finding that the Government of Rwanda committed the faults against Ntahorugiye which led him to seek for a Counsel for pleading in the Court for his behalf, it appeal in this judgment has the merit only on what concerns with the way damages were awarded, but in general he lost the case, it should pay to him the counsel fees who pleaded for him in this instance, but those he requests are

Page 8

excessive, in Court discretion he is awarded 500,000 which adds on 500,000Frw he was awarded by the High Court, all together are amounting to 1,000,000Frw. III. DECISION OF THE COURT [39] It decides that the appeal of the Government of Rwanda has merit in part; [40] It rules that the cross appeal of Ntahorugiye Damien has merit in part; [41] It orders the Government of Rwanda to pay to Ntahorugiye Damien the moral damages equals to 5,823,144Frw adding on 1,000,000Frw of the Counsel fees for both instance, all together are amounting to 6,823,144Frw. [42] It orders that the court fees be on the side of public treasury.

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Prepared on 13 October 2026 · Esheria