

RWANDA / JUDGMENT

IRST vs Uwituze et al. english version

RADA0028/13/HC/NYA

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High Court

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Text

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IRST vs Uwituze et al. [Rwanda HIGH COURT, NYANZA CHAMBER – RADA0028/13/HC/NYA (Manirakiza, J.) May 22, 2014] Labour law – employment contract – termination of the employment contract – Any unlawful termination of contract may result in damages which are paid to the unlawfully dismissed worker cannot go below his/her three months salary but they cannot exceed the six (6) month salary – it is the right of an employee to be given the work certificate – Law no 13/2009 of 27/05/2009 regulating labour in Rwanda, article 2,5,8,10,27,33,38 and 83 Labour law – applicability of labour law Labour law – The labour law governs the concluded contract between workers and employers, latter could not draft the law which are contrary to that law with pretext of depriving the rights to the employees – law no 13/2009 of 27/05/2009 regulating labour in Rwanda, article 2. Law of contacts and obligation – damages– awarding of procedure and counsel fees – those damages are awarded by the person who causes damage to another obliges the person by whose fault it happened to repair it – Law of 30/07/1888 relating to contracts or obligations, article 258 Fact: Uwitije, Dusabe, Uwimana, Kampire, Kagabo, Ntahonkuriye, Nyiramihamana, Ingabire and Mukankaka sued IRST at the intermediate court of huye because it terminated unlawful the employment contract of one year renewable, they

request the various damages. That Court ruled that IRST lose the case, and ordered it to pay to the plaintiff. IRST did not satisfy with the ruling it appealed at High Court Nyanza chamber, stating that the previous court charged it excessive damages while the plaintiffs did not prove the loss they suffered, also it states that if the fixed term contract was terminated before its expiration, the employer must pay the salary of the rest period, also the plaintiffs were not deserve because their contract with IRST in article five stipulates that the employer can at any time to terminate the contract when the worker does not perform well, thus there was the issue of interpreting the laws they request to the Court the interpretation of that laws. The respondents defends in stating that the previous Court respected article 28 of the labour law, and in case IRST dismissed them illegally it must give to them the damages and the Court determined them according to what provided for by the law. Held : 1. Any unlawful termination of contract may result in damages which are paid to the unlawfully dismissed worker cannot go below his/her three months salary but they cannot exceed the six (6) month salary.

2. The labour law governs the concluded contract between workers and employers, latter could not draft the law which are contrary to that law with pretext of depriving the rights to the employees, therefore the statement of IRST that it dismissed the on the basis of article 5 of the contract has no merit.
3. The fact that the employee got the leave cannot be awarded the leave allowance so the damages Dusabe, Ingabire, Kampire, Uwimana and Kagabo were awarded of not getting the leave of 2009 should not be given the value because they get the leave.
4. IRST must pay the procedure fees.

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5. IRST should deliver to every respondent the employment certificate as provided for by the law. The appeal has merit. IRSR must the deliver the work certificate to the every respondent; With the court fees to the public treasury. Statutes and statutory instruments referred to: Law no 13/2009 of 27/05/2009 regulating labour in Rwanda, article 2,5,8,10,27,33,38 and 83. Law of 30/07/1888 relating to contracts or obligations, article 258 No cases referred to.

Judgment

I.BACKGROUND [1] The judgment RAD0020/013/TGI/HYE rendered on 31/10/2013 by the intermediate Court of Huye, Uwitije Claudine, Dusabe Jeanette, Uwimana Joselyne, Kampire Valentine, Kagabo Bernard, Ntahonkuriye Jacqueline, Nyirahabimana Ingabire Francoise, Mukankaka Chantal brought the case against IRST for the termination of employment contract of one year renewable, from 2007 that contract was supposed to come to an end on 03/11/2010, IRST terminated it unfairly and claimed various damages as indicated in their claim. The court admitted the claim of the respondents and after examining it the court found that founded on some points and held that IRST in the name of its Director General has to award Uwitije Claudine

386,564 Frw, Dusabe Jeanette 386,564 Frw , Uwimana Joselyne 386,564 Frw, Kampire Valentine 521,082 Frw , Kagabo Bernard 521,082 Frw, Ntahonkuriye Jacqueline 521,082 Frw , Nyiramihamu 521,082 Frw, Ingabire Francoise 521,082 Frw and Mukankaka Chantal 386,564 Frw, it ruled that IRST lost the case and ordered it pay to the respondents a certain amount as stated above [2]

2. IRST was not satisfied with that ruling and appealed before the high Court, the Chamber of Nyanza. On the day of hearing of 5/05/2014 IRST represented by Counsel Mbonera Theophile and all respondents were represented by Me Munyemana G. Pascal. Counsel Mbonera Theophile asserts that IRST was condemned to the payment of excessive damages yet they are provided for by the law because those dismissed were dismissed in accordance with the law, leave compensations were awarded yet they were some of the respondents who passed those leaves. Counsel Pascal Munyemana asserts that the damages awarded by the court are provided by the law because the dismissed employees did not commit any fault. That with regard to 2009 leave the employees were yet to receive it by the time IRST dismissed them. [3]
3. In this case, it will be examined whether damages awarded to the respondents are provided for by the law, whether they are some who were awarded the leave compensation yet they passed it, and whether the damages claimed in the incidental appeal can be awarded. II. LEGAL ISSUES AND THEIR ANALYSIS

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- a. To know whether damages awarded to the respondents are not provided for by the law [4] Counsel Mbonera the counsel of IRST asserts that the grounds of their appeal are included in the court submissions filed to the court where they assert that the court condemned the IRST to the payment of excessive damages yet there was no loss proven by the respondents. He asserts that when the employment contract with a determined period is terminated before the lapse of the determined period the employer pays the salary of the remaining period, whereas the court at the first instance based on article 33 of the law no 13/2009 of 27/05/2009, and that therefore there have the issue of interpretation of the law, which they request this court to interpret. Moreover, that in any case the dismissal of an employee one month before the termination of the contract cannot entitle him damages equal to 5 times of their salary. He further argues that they did not deserve any damage because their employment contract with IRST in its article 5 stipulated that the employer can terminate the contract any time the employee is not performing well, that this article read together with article 28 of the law no 13/2009 of 27/05/2009, they dismissal is justified. [5] Munyemana Pascal the counsel of the respondents asserts that the ruling was in accordance with article 28 of the labour law, that in case IRST unfairly dismissed the employees, they have to be awarded damages and the court awarded them according to the provisions of the law. That the employees were dismissed without any fault since IRST failed to prove that. He asserts that there is no other way to prove the sufferance of the respondents than proving that they were dismissed one month before and IRST failed to tolerate that. He asserts that the

argument that the dismissal was based on article 5 of the employment contract and article 28 of the labour code is founded because no agreement was there before the termination before the termination of the contract. [6] As held in the first instance court, the court finds that IRST in terminating the employment contract with the respondents did not provide any just cause. This is the case on the appellate level because the counsel of IRST argues that what was not satisfied more especially is that in awarding damages to the respondent, they were awarded excessively. The assertion that when the employment contract of determined period is terminated before the lapse of the determined period, the employer pays the salary of the remaining period as provided under article 28 of the law no 13/2009 of 27/05/2009 regulating labour in Rwanda, the court cannot consider it because under that article it is also provided that after the payment of that salary, other damages that can be paid are not ignored. [7] The fact that article 33 of the law no 13/2009 of 27/05/2009 regulating labour provides that any unfair termination of the employment contract can lead to the payment of damages awarded to the employee who was unfairly dismissed, that they shall not be less than the salary of 3 months or more than 6 months, the court finds that damages awarded to the respondents in this case were just and provided for by the law. The argument that there has been the award of excessive damages, the court find that it is not founded because their loss can be seen from the dismissal and also in the dishonour resulted from the dismissal before the lapse of the determined period. [8] The argument that the respondents were dismissed according to the article of their employment contract with IRST and article 28 of the labour code, the court finds that it is not founded because the labour code is the one that regulate the employment contract between the employer and the employee as provided under article 2 of the aforementioned law. Therefore,

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IRST cannot conclude the employment that is in violation of the labour code and invoke it in the violation of their employees' rights.

- b. To know whether there were some who were awarded the leave compensation yet they received it [9] Mbonera the counsel of IRST argues that court ordered the payment of the leave compensation to all yet they were some of them who received their leaves, he asserts that like Uwimana Joselyne, Kampire Valentine, Dwasbe Jeanette, Ingabire Francoise and Kagabo Bernard. He asserts that the disputed leave is that of 2009, that the salary of the last dues paid to them included the leave of 2010 of which they were awarded the leave compensation. Me Pascal asserts that with regard the leave of 2009, the respondents were yet to receive it by the time the IRST dismissed them. He further asserts that if they paid they can prove that before the court because no evidence was produced. And that the documents produced given in 2009 were for the previous years. [10] The court finds that the counsel of IRST demonstrate that Dwasbe Jeannette, Ingabire Francoise, Kampire Valentine, Uwimana Joselyne and Kagabo Bernard received the leave of 2009 as proven by the writing on which they were given the leave. The argument that the leave letters produced before the court are for previous years cannot be considered by the court because there is

no evidence as provided under article 3 of the law 15/2004 of 12/06/2004 of evidence and its production before courts, is produced. It also finds that the assertion that the produced letters are for previous years should not be considered because the respondent signed a one year contract, therefore they cannot fail to claim their contract ends with the year. [11] It therefore finds that damages awarded to Dusabe Jeannette, Ingabire Francoise, Kampire Valentine, Uwimana Joselyne and Kagabo Bernard because they did not receive the leave of 2009 should not be considered because they were awarded those damages while they received the leave.

- c. To know whether damages claimed in the incidental appeal can be awarded. [12] Counsel Pascal asserts that IRST appealed for abusing proceedings, he further argued that it has not given the respondents their work certificates yet they were dismissed five years ago and the court awarded the damages equal to 50,000 Frw, for that they claim 500,000 Frw for each, they also claim 100,000 Frw of transport and meals and the court ordered IRST to deliver that work certificate in addition to moratory damages and the counsel's honorary equal to 500,000 Frw. Me Mbonera argues that the work certificate the respondents did request it to IRST and fail to give it to them, and further argues the damages equal to 50,000 Frw suffice though they have no basis and as for the proceedings fee that there is no evidence that amount was spent and the counsel's honorary should not be awarded because they appealed in seeking justice, he moreover asserted that in case the court may find it otherwise it can award them between two hundred thousand and three hundred thousand. [13] The court finds that damages claimed by the respondents in the incidental appeal those that are justified are 100,000 Frw of proceedings fees that the respondents in the proceedings of this case. It also finds that the counsel's honorary equal to 400,000 Frw has to be awarded because they were represented in this case. All these amounts is awarded basing on article 258 of the civil code book 3 that provides that any act of an individual that causes a damage to another imputes to its author the fault resulting from it, to pay damages.

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[14]

14. As for damages of not being given the work certificate, the court finds that, those awarded equal to 50,000 Frw suffice. It also finds that IRST has to give each the work certificate as provided under article 38 of the law no 13/2009 of 27/05/2009 regulating labor in Rwanda because it is their provided for by the law. The assertion they were not claimed in the first instance court and therefore should not be claimed at the appellate level, the court finds that it should be ignoring that the subject matter also includes claim the damages of refusal to deliver the work certificate. III.DECISION OF THE COURT [15] It holds that the appeal of IRST is founded on some points; [16] It holds that no 2009 leave compensation should be awarded to Dusabe Jeannette, Ingabire Francoise, Kampire Valentine, Uwimana Joselyne and Kagabo Bernard; [17] It orders that IRST has to give its employees the work certificate; [18] It orders that IRST has to pay Uwitije Claudine, Dusabe Jeannette, Uwimana Joselyne, Kampire

Valentine, Kagabo Bernard, Ntahonkuriye Jacqueline, Nyiramihama Constance, Ingabire Francoise and Mukankaka Chantal 100,000 Frw of proceedings fees and 400,000 Frw of the counsel's honorary for all of them; [19] It orders that the judgment appealed not be modified except the rulings under paragraphs 15, 16 and 17; [20] It ordered that the court fees equal to 5950 Frw be borne the Public Treasure

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