

RWANDA / JUDGMENT

MUTWARE v. GUARANTY TRUST BANK (RWANDA) Ltd

RLR V.2-2023

COURT

Supreme Court

DECIDED

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MUTWARE v. GUARANTY TRUST BANK (RWANDA) Ltd [Rwanda SUPREME COURT – RS/INJUST/RSOC 00002/2022/SC– (Cyanzayire, P.J., Nyirinkwaya and Karimunda, J.) October 21, 2022] Labour law– Salary of an employee – Equality of employees in relation to salaries – In case an employee proves that he/she is not paid the same salary as others performing the same work, it is the obligation of the employer to provide evidence that contradicts the employee's allegations or proving that the non-payment is based on objective and reasonable grounds. Such grounds shall be approved by the Court at its discretion. Labour law – Salary of an employee – Equality of employees in relation to salaries – In case an employee proves that he/she is not paid the same salary as other employees who are at the same level and perform the same work is possessed by the employer, he/she may request the Court to order to the respondent to produce it when it has not been produced, and the Court shall hold liable the respondent for such behavior or refusal to provide such evidence to the side of the respondent. Labour law – Employment contract –

Termination of employment contract – In case the Court declares that an employee who was illegally dismissed has to be paid salaries, those salaries are equal to the net salary instead of the gross salary. Facts: This case was initiated by Mutware arguing that he was an employee of GT Bank Rwanda Plc, he worked as a cashier, but he was promoted to the position of Cash Management Officer, a position he held for 20 months. He explained that due to unreasonable and incomprehensible grounds, the employer continued paying him the cashier's salary, he requested to be paid the difference between the salaries that were not given, and the Cash Management Officer's salary should be based on the calculation of notice allowance and termination benefits. On that issue, the Intermediate Court of Nyarugenge found that his claim was justified. GT Bank Rwanda Plc appealed to the High Court. After examining its appeal, the High Court found that the claimant failed to prove that the respondent had the obligation to pay him for the position of Cash Management Officer. This is what prompted the respondent to apply for a review of the judgment rendered by the High Court on grounds of injustice. In this case, the Court first examined whether the respondent should have increased the claimant's salary because he claims that he spent 20 months in the position of Cash Management Officer without being paid for that position, but he continued to be paid the salary of the position he previously held as a cashier. He further adds that he wrote to the Bank's Management requesting for being remunerated for the position he was promoted to, instead of considering it as defending his rights, the Bank considered it as misconduct, it repeatedly invited him to the Disciplinary Committee until he was illegally dismissed. Therefore, he requests the Court to award him the unpaid difference of the salaries of the position of the Cash Management Officer. The respondent explains that the evidence on which the claimant relied to prove the salary that was given to the person he replaced in the position of Cash Management Officer was produced for the first time in the Supreme Court and therefore it should not be considered to prove that he suffered from injustice. He further avers that the fact that the claimant replaced someone else in

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that position does not necessarily mean that they must be paid the same salary, because the employees in the same position may be paid different salaries due to many reasons including work experience. On the issue of whether the notice allowance and termination benefits awarded to the claimant were inadequately calculated, the latter argues that the respondent should have paid him the notice allowance equal to one month's salary, and termination benefits equal to his salary of two months, so he prays this instant Court to order him to award to him the difference of the salaries he should be paid. The respondent claims that the final pay indicates that the claimant has been paid one month's notice allowance and two months' termination benefits. He explains that in paying him he had given him a net salary, so to claim that he should be paid the notice allowance and the termination benefits equal to the gross salary is to seek unjustified benefits. Held: 1. The principle is that all individuals, without any form of discrimination, have the right to equal pay for equal work.

2. In case an employee proves that he/she is not paid the same salary as others performing the same work, it is the obligation of the employer to provide evidence that contradicts the employee's allegations or proves that the non-payment is based on objective and reasonable grounds. Such grounds shall be approved by the Court at its discretion.
3. In case an employee proves that he/she is not paid the same salary as other employees who are at the same level and perform the same work possessed by the employer, he/she may request the Court to order the respondent to produce it, when it has not been produced, and the Court shall hold liable the respondent for such behavior or refusal to provide such evidence to the side of the respondent.
4. In case the Court declares that an employee who was illegally dismissed has to be paid some salaries, those salaries are equal to the net salary instead of the gross salary. The application for review of the judgment rendered by the High Court on grounds of injustice is grounded. Statutes and statutory referred to: Constitution of the Republic of Rwanda of 2003 was revised in 2015, article 30. Universal Declaration of Human Rights of 10/12/1948, article 23. The African Charter on Human and Peoples' Rights of 27/06/1981 as ratified by Law n° 10/1983 of 01/07/1983, article 15. Law n° 66/2018 of 30/08/2018 regulating labour in Rwanda, articles 9 and 40. Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 12 and 111. Law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, articles 75 and 140. Domestic cases referred to: RS/INJUST/RSOC 00001/2022/SC SONARWA Life Assurance Company Ltd v Rugina decided by the Supreme Court on 08/07/2022.

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RS/INJUST/RSOC 00001/2019/SC; Niwemugeni v KCB Rwanda Ltd decided by the Supreme Court on 31/01/2019. Foreign case referred to: Pinkas and Others v. Bosnia and Herzegovina, (Application number. 8701/21), 04/10/2022, para 63. Cour de cassation, civile, Chambre sociale, 12 juin 2013, 11-14.458. Galina Meister contre Speech Design Carrier Systems GmbH, numero C-415/10, Cour de Justice de l'Union Européene, 12 Janvier 2012, para 47. Cour de cassation, Chambre sociale, numéro 08-43.088, 17 Mars 2010. Cour de cassation, Chambre sociale, numéro 04- 40.169, 25 Mai 2005. Cour de Cassation, Chambre sociale, numéro 00-41.63326 Novembre 2002.

Judgment

I. BACKGROUND OF THE CASE

The case started in the Intermediate Court of Nyarugenge, Mutware Jean de Dieu claimed that he was an employee of GT Bank Rwanda Plc and was illegally dismissed from the job. He adds that on 15/07/2017 and 04/09/2017 he wrote to the Bank's Staff Delegates for the issue settlement, but he did not get a response, so he filed a claim requesting the Court to order GT Bank Rwanda Plc to

pay him the termination benefits, the notice allowance, the leave compensative indemnity, the overtime, the arrears of salaries, SORAS contributions and damages. GT Bank Rwanda Plc pleaded that Mutware Jean de Dieu would have waited for the response of the employees' delegates, and it requests the Court to declare inadmissible the claim.

In the case RSOC 00468/2017/TGI/NYGE decided on 14/03/2018, the Intermediate Court of Nyarugenge found that Mutware Jean de Dieu was dismissed on 21/09/2017, while the employees' delegate in the Bank was notified on 15/07/2017 and 04/09/2017, which means that it was done before he was dismissed but the illegal dismissal was the subject- matter before the courts, it declared inadmissible the claim because it was illegally filed based on the fact that it did not comply with the modality stipulated by article 140 of Law n013/2009 of 27/05/2009 regulating labour in Rwanda.¹

On 11/05/2018, Mutware Jean de Dieu filed another claim in the same Court, saying that he was fired because he requested to be paid the salary at the level he had been promoted to and that he was unfairly accused of deleting 32,726 Frw from the account of the Rwanda Revenue Authority, and he is seeking to be entitled to the termination benefits, the notice allowance, the leave compensative indemnity, the overtime, the arrears of salaries, SORAS contributions and damages. GT Bank Rwanda Plc states that Mutware Jean de Dieu was characterized by unethical

1 That article provided that "should there be any individual labour dispute between a worker and an employer; the concerned party shall request the workers' delegate to settle it amicably. Where the workers' delegates fail to settle the dispute, the concerned party shall refer the matter to the Labour Inspector for an out-of-court settlement. When conciliation efforts fail, the dispute may be taken before the competent court. When all the steps referred to above have not gone through, the court may declare the claim inadmissible".

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behavior, he was repeatedly warned for mistakes that were otherwise intolerable but he did not change, he requests the Court to declare that he was fired for reasonable grounds.

In the case RSOC 00184/2018/TGI/NYGE decided on 10/01/2019, the Intermediate Court of Nyarugenge found that: - The fact that Mutware Jean de Dieu wrote to the Bank's management requesting to be paid for the position he was promoted to, the fact that he attended the Disciplinary Committee three times, or that he did not pay the loan received from the Bank should not be considered as misconduct that would lead to his dismissal because Mutware Jean de Dieu did not violate the law while defending his right to a fair salary, and GT Bank Rwanda Plc does not prove that after the mistakes that Mutware Jean de Dieu was punished for, there are others he committed or prove that there is the relationship between the employment contract and the loan contract; - Mutware Jean de Dieu was required to provide explanations about 32,727 Frw deleted from the account of the Rwanda Revenue Authority, he provided them but they were not admitted, he was punished to that effect, he was removed from his position and transferred

to Muhanga, so it would not be a reasonable ground for being dismissed; - Mutware Jean de Dieu should not be paid the leave compensative indemnity, the overtime because he does not prove that he did not take a leave or that he worked for overtime; - Mutware Jean de Dieu was working as Cash Management Officer but he was paid as a cashier, so he should receive the difference of unpaid money for 20 months amounting to 5,540,180 Frw, and he should be given SORAS contributions seized by GT Bank Rwanda Plc.

The Court concluded that Mutware Jean de Dieu was fired without reasonable grounds, it ordered GT Bank Rwanda Plc to pay him 331,825 Frw for the notice allowance, 663,650 Frw for the termination benefits, 995,475 Frw for the damages, 5,540,180 Frw for unpaid salaries, 1,200,000 Frw of the seized contributions and 800,000 Frw of the counsel's and procedural fees.

GT Bank Rwanda Plc appealed to the High Court praying for a prudent review of the grounds leading Mutware Jean de Dieu to be dismissed from his job, and declaring that they are objective, and nullifying all damages awarded because he did not deserve them. Mutware Jean de Dieu filed a cross-appeal for damages that were not granted in the first instance.

In the case RSOCA 00033/2019/HC/KIG decided on 12/09/2019, the High Court found that: - The Intermediate Court of Nyarugenge did not err in upholding that Mutware Jean de Dieu was dismissed without reasonable grounds and awarded him moral damages because the fact that he did not pay the loan for July 2017 was not a reasonable ground for being dismissed;

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- The Intermediate Court of Nyarugenge should not have awarded Mutware Jean de Dieu 331,825 Frw for the notice allowance, and 663,650 Frw for the termination benefits because the document entitled the final pay and the memorandum of disagreement made by the Labour Inspector indicate that they were given to him, therefore they are canceled; - Mutware Jean de Dieu never wrote to GT Bank Rwanda Plc requesting payment for the position he had been promoted to but he requested an increase in salary due to a social problem (an increase of at least a certain percentage in my annual pay, as the cost of living increased within years), therefore, the Court would not have awarded him the unpaid difference of salary and there was no evidence proving that he should have been paid 548,160 Frw; - GT Bank Rwanda Plc was not allowed to seize the insurance contributions of Mutware Jean de Dieu in SORAS because the employment contract is different from the loan contract, so the Bank must take them back; - Mutware Jean de Dieu does not deserve any other moral damages because the damages equal to the three months' salary fall within the amount stipulated by the law, and he has not entitled to the leave compensative indemnity because he failed to prove that he did not take leave in 2015, 2016 and 2017.

The Court concluded that the appeal of GT Bank Rwanda Plc is grounded in parts, while the cross-appeal filed by Mutware Jean de Dieu is unfounded, it held that 331,825 Frw for the notice allowance, 663,650 Frw for the terminal benefits and 5,540,180 Frw for the difference in salary awarded to Mutware Jean de Dieu by the Intermediate Court of Nyarugenge are canceled.

Mutware Jean de Dieu wrote to the President of the Court of Appeal, requesting that the case RSOCA 00033/2019/HC/KIG decided by the High Court on 12/09/2019 be reviewed on grounds of injustice. Having reviewed the request, the President of the Court of Appeal wrote to the President of the Supreme Court requesting the judgment to be reviewed. In decision number 015/CJ/2022 of 26/01/2022, the President of the Supreme Court decided that the judgment shall be sent to the Registry of the Supreme Court to be re-adjudicated.

The hearing was held in public on 13/09/2022, Mutware Jean de Dieu assisted by Counsel Nyirasuku Jeanne and GT Bank Rwanda Plc represented by Counsel Safari Jean Bosco, and it examined whether GT Bank Rwanda Plc would increase the salary of Mutware Jean, whether the notice allowance and the termination benefits were inadequately calculated and the issues related to the counsel's and procedural fees claim in this case. II. ANALYSIS OF LEGAL ISSUES

1. Determine whether GT Bank Rwanda Plc had the obligation to increase the salary of Mutware Jean de Dieu

Mutware Jean de Dieu and his Legal Counsel Nyirasuku Jeanne state that Mutware Jean de Dieu was an employee of GT Bank Rwanda Plc working as a Cashier, he was paid 331,825 Frw, on 04/02/2016 he was promoted to the position of Cash Management Officer replacing

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Uwantege Yvonne who was paid 548,160 Frw. They explain that Mutware Jean de Dieu spent 20 months as Cash Management Officer at the same level as Uwantege Yvonne, whom he replaced, but he continued to be paid the salary of a Cashier. They submit that on 06/08/2017, without exceeding two years in that position, Mutware Jean de Dieu sent an email to the management of GT Bank Rwanda Plc, requesting to be remunerated for the position to which he was promoted, instead of considering it as defending his rights, the Bank considered it as misconduct, it repeatedly invited him to appear in the Disciplinary Committee until he was illegally dismissed on 09/21/2017.

They aver that in addition to that email Mutware Jean de Dieu wrote to the Bank's management which is the reason for being accused of misconduct, GT Bank Rwanda Plc accused him of not properly paying the loan he received, they wonder about the link between the loan contract and the employment contract so that defaulting on the loan would result in his dismissal. They pray this instant Court to support the principle that the salary is the price for the work done, based on the provisions of article 75 of Law n0 13/2009 of 27/05/2009 regulating labour in Rwanda², and hold that Mutware Jean de Dieu would be awarded the difference in unpaid salaries for the

position of Cash Management Officer, equal to 558,160 Frw–331,825 Frw x 20 = 5,540,180 Frw.

Counsel Safari Jean Bosco, representing GT Bank Rwanda Plc, avers that the evidence that Mutware Jean de Dieu presented to prove that Uwantege Yvonne was paid 558,160 Frw was produced for the first time in the Supreme Court and therefore it should not be considered to prove that he suffered from injustice. He explains that the evidence proves that Uwantege Yvonne was appointed to the position of Cash Management Officer on 14/04/2014, but Mutware Jean de Dieu disregards that on 17/12/2014, GT Bank Rwanda Plc revised the salaries and established a new method of where each employee started to be paid based on the current level, and that on 15/06/2016, Mutware Jean de Dieu was informed that he is at the grade of Operation Officer One, the document entitled Grading Harmonization and Salary Structure dated 17/12/2014 indicates that the employee at that grade was paid a net salary equal to 278,094 Frw.

On the issue of whether the document entitled Grading Harmonization and Salary Structure does not appear in the previous case files and whether this document changed the salary of Uwantege Yvonne by the time she was still in the position of Cash Management Officer, he replied that he did not have time to review it, but the fact that Mutware Jean de Dieu replaced Uwantege Yvonne at the position of Cash Management Officer does not mean that they should necessarily be paid the same salary, because the employees in the same position may be paid different salaries due to many reasons including the work experience. DETERMINATION OF THE COURT

Paragraph 2 of article 30 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 states that “all individuals, without any form of discrimination, have the right to equal pay for equal work”.

2 The salary is the price for the work done. Unless agreed upon between the concerned parties or for cases provided for by this law, no salary is to be paid in the event of absence from work.

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The Court finds that the employees who perform the same work should be paid the same salary, which is a goal that Rwanda has committed to since September 18, 19623, when it ratified the Universal Declaration on Human Rights dated 10 /12/19484, where in its paragraph 2 of article 23 it states that “Everyone, without any discrimination, has the right to equal pay for equal work”. This goal was reaffirmed by Rwanda when it signed the African Convention on Human and People's Rights, which also states in article 15 that “Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work”.⁵

Such right to equal treatment of employees of the same level performing the same work is what has been reiterated in paragraph 2 of article 30 of the Constitution as stated above. In order to strengthen this principle and ensure that it is properly respected by all employers, the Legislator referred to it in paragraph 36 of article 9, and paragraph 27 of article 40 of Law N0 66/2018 of 30 /08/2018 regulating labour in Rwanda which is into force where these articles provide that all

individuals, without any form of discrimination, have the right to equal pay for equal work of the same value.

In the case of *Rugina Jason v. SONARWA Life Insurance Company Plc*, this instant Court analysed the issue related to the enforcement of the principle of equal pay of employees for equal works⁸, this instant Court set the following broad positions: - The employees performing the same work, with equal knowledge, experience, and skills must be paid the same salary, otherwise, there would be discrimination; - An employee with knowledge, experience, and skills equal to his/her colleague, who is not paid the same salary as those at the same level, has the right to claim the same pay as his/her colleagues or for a fair salary; - Although nothing bars an employer from granting a bonus to some employees, if the bonus is included in the salary, it has to be given to all employees; - An employee who has been promoted but since being promoted has not been paid the same salary as his/her colleagues in the same position were being paid, he/she should be paid the difference of all unpaid salaries; - The difference in the salaries of employees at the same level is justified when the employer can objectively prove to the Court that the employees who were paid a higher salary have special and particular knowledge that is useful for the work they do, and this is approved by the Court in its discretion.

3 See Déclaration du Président de la République relative au respect des accords et traités conclus par la Belgique, in Codes et Lois du Rwanda, Vol I, p. 50. 4 See Déclaration Universelle des Droits de l'Homme du 10 décembre 1948, in Codes et Lois du Rwanda, Vol I, p. 66 5 «Toute personne a le droit de travailler dans des conditions équitables et satisfaisantes et de percevoir un salaire égal pour un travail égal. » 6 That article provides that "Every employer must pay employees equal salary for work of equal value without discrimination of any kind". 7That article provides that "the rights of an employee include the following: 2 ° to receive equal salary for works of equal value without discrimination of any kind". 8See Judgment RS/INJUST/RSOC 00001/2022/SC decided by Supreme Court on 08/07/2022, paragraphs 19 and 20.

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Regarding the one who must provide evidence when a discrimination claim is filed, the Court finds the general principle mentioned in article 12 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure which provides that "the claimant must prove a claim, failing which the respondent wins the case. Likewise, a party who alleges that he/she has been discharged from an obligation established by evidence must justify the cause as a result of which the obligation has been extinguished. Failure to do so, the other party wins the case".

In the case of *Pinkas and Others v. the State of Bosnia and Herzegovina* before the European Court of Human Rights, the claim was based on the fact that the registrars and judges of the State Courts were not provided with allowances for transport, meals, and remoteness from their families. The claim was heard by two different courts. The Court that examined the judges' claim

held that they should be awarded the allowances from before January 2013⁹ and the Court which examined the registrars' claim held that they should be awarded the allowances from January 2013. The European Court of Human Rights found that these employees had not been equally treated and the claim filed based on the same provisions of the law was the discrimination not based on objective and reasonable grounds. The Court declared that if the claimant proves that he/she was not equally treated like others, the respondent is the one who must prove that the unequal treatment is based on objective and reasonable grounds. If the evidence is not produced, the Court would reach no other conclusion than to uphold that the grounds on which these people were discriminated against are not objective nor reasonable.¹⁰

The Court also finds that the Court of Justice of the European Union has found that the failure to provide information by a respondent may constitute one of the factors to be taken into account in establishing the facts from which it may be presumed that there has been direct or indirect discrimination. It added that at that time it is the responsibility of the appellate court to take into account all the circumstances of the case before it examines whether there has been real discrimination.¹¹

Regarding the discrimination related to salary, the Court of Cassation in France finds that even though the employee has to prove that he/she is not equally paid like other employees for

9 “The special feature of the instant case is that the judges and the judicial clerks at the State Court brought a joint civil action relying on the same legal provisions, that the civil courts then severed their case into two cases on the grounds of their status (...) and reached opposite conclusions regarding one of the key legal issues raised in those cases. As a result of that special set of circumstances, all of the judicial clerks at the State Court were granted meal, travel, and family separation allowances in respect of the period after January 2013 only, whereas all of the judges were granted those benefits also for the period before January 2013”. See Judgment *Pinkas and Others v. Bosnia and Herzegovina*, (Application no. 8701/21), 04/10/2022, para 63. 10 “...the Court reiterates that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (...). The Government did not offer any justification for this difference in treatment (see paragraph 56 above). The same is true in respect of the domestic courts (...). That being the case, the Court cannot but conclude that this difference in treatment had no objective and reasonable justification.” See Judgment *Pinkas and Others v. Bosnia and Herzegovina*, (Application number. 8701/21), 04/10/2022, para 65. 11 “(...) il ne saurait être exclu qu’un refus de tout accès à l’information de la part d’une partie défenderesse peut constituer l’un des éléments à prendre en compte dans le cadre de l’établissement des faits qui permettent de présumer l’existence d’une discrimination directe ou indirecte. Il incombe à la juridiction de renvoi, en prenant en considération toutes les circonstances du litige dont elle est saisie, de vérifier si tel est le cas dans l’affaire au principal. » See, *Galina Meister contre Speech Design Carrier Systems GmbH*, n° C-415/10, Cour de Justice de l’Union Européenne, 12 janvier 2012, para 47.

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equal work if the employee proves that the evidence is held by the respondent, he/she may request the Court to order to the respondent to produce it. If the respondent does not produce it, the Court shall hold liable the respondent for such behavior or refusal to provide such evidence to the side of the respondent.¹²

The Court also found that while the employee proves that he/she was paid less than other employees at the same level for equal work, the employer is not limited to stating that the employee was not producing satisfactory results. Instead, the employer must provide evidence proving that the discrimination is based on objective and reasonable grounds that would make the employee's salary different from that of others at the same level¹³. One of the objective and reasonable grounds is that the employee who is being highly paid has a high degree so he/she is more productive at work than the employee who complains.¹⁴

The Court finds that linking the above-mentioned statements with the principle of equal pay of employees for equal work denotes that the employee should prove that he/she performs the same work as others of the same level like him and that the employer does not pay him as he/she pays other employees of the same level. In that case, the employer has the obligation to provide evidence that contradicts the employee's allegations. When the employee claims that the evidence is in the possession of the employer, he/she must request the Court to order him/her to provide it, if he/she fails to do so, the Court will carefully examine the elements of evidence produced by the employee to prevent the discrimination in the labour market.

The Court finds that the evidence produced by Mutware Jean de Dieu to prove the basis of his claim is the letter dated 14/04/2014 appointing Uwantege Yvonne to the position of Cash Management Officer and notifying her that she will be paid 548,160 Frw. On the issue of whether it is the first time that Mutware Jean de Dieu has produced the evidence, and therefore it could not be relied on in examining the injustice he alleges to have suffered, the Court finds that in the case

12 "(...) Mais attendu qu'il appartient au salarié qui invoque une atteinte au principe "à travail égal, salaire égal" de soumettre au juge des éléments de fait susceptibles de caractériser une inégalité de rémunération ; que lorsque le salarié soutient que la preuve de tels faits se trouve entre les mains d'une autre partie, il lui appartient de demander au juge d'en ordonner la production; que ce dernier peut ensuite tirer toute conséquence de droit en cas d'abstention ou de refus de l'autre partie de déférer à une décision ordonnant la production de ces pièces;..." See Judgment Cour de cassation, civile, Chambre sociale, 12 juin 2013, 11-14.458. 13 "Mais attendu que la cour d'appel, qui a constaté que depuis de nombreuses années le salarié, employé en qualité de câbleur au niveau 2, coefficient 185 de la convention collective, percevait une rémunération inférieure à celles de ses collègues n'ayant pas plus d'ancienneté que lui, occupant strictement le même poste et exerçant les mêmes fonctions, avec les mêmes niveau et coefficient, a retenu que l'employeur qui ne contestait pas cette situation de fait ne fournissait

comme seule explication que la prétendue médiocre qualité du travail accompli par l'intéressé ; qu'elle a ainsi fait ressortir, abstraction faite du motif surabondant critiqué par la première branche du moyen, que l'employeur ne rapportait pas la preuve que l'inégalité de traitement dont le salarié a été la victime, reposait sur un critère objectif tenant à la différence du travail fourni ; que le moyen n'est pas fondé ..." See Judgment Cour de Cassation, Chambre sociale, numero 00-41.63326 novembre 2002. See also Cour de cassation, Chambre sociale, n° 04- 40.169, 25 mai 2005. 14 "Mais attendu qu'ayant constaté que Mme X... avait obtenu un BTS "expression visuelle" ayant nécessité deux années d'études et que le salarié auquel elle se comparait était titulaire d'un diplôme d'études supérieures spécialisées en ingénierie multimédia obtenu après cinq années de formation, la cour d'appel a pu en déduire que ces diplômes utiles à l'exercice des fonctions occupées, sanctionnant des formations professionnelles de niveaux et durées inégales, constituaient une raison objective et pertinente justifiant la différence de rémunération ; que le moyen n'est pas fondé..." See Judgment Cour de cassation, Chambre sociale, numero 08-43.088, 17 mars 2010.

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file, RSOC 00468/2017/TGI/NYGE decided on 14/03/2018 by the Intermediate Court of Nyarugenge, the evidence is on number four on the list of other elements of evidence he produced.

The Court finds that GT Bank Rwanda Plc, as a party to the case, was represented, this means that it was aware of such evidence especially that it produced it, so its allegations that Mutware Jean de Dieu could not rely on it to prove his injustice are unfounded because although that evidence has not been included in each Court's file, it is evident that it was produced at the beginning of the trial.

On the issue of whether Mutware Jean de Dieu was in the same position as Uwantege Yvonne, former Cash Management Officer, the Court finds that in the case file, there is a letter dated 04/02/2016, by which GT Bank Rwanda Plc notified Mutware Jean de Dieu that from 05/02/2016 he is appointed to the position of Cash Management Officer. This is also upheld by the employment certificate dated 21/09/2017, which indicates that Mutware Jean de Dieu worked as a Cash Management Officer from 05/02/2016 to 25/06/2017, which means that until 26/06/2017, when MUTWARE Jean de Dieu was appointed to the position of Teller in GT Bank Rwanda Plc, Muhanga Branch, he had been for about seventeen (17) months on the position of Cash Management Officer.

On the issue of whether Mutware Jean de Dieu, for the period he was Cash Management Officer, should have been paid 548,160 Frw as was the case for UWANTEGE Yvonne, the Court finds that the letter dated 04/02/2016 appointing Mutware Jean de Dieu to the position of Cash Management Officer does not mention his salary and grade, as it was the case for Uwantege Yvonne, who was placed at grade 13, and she was paid a gross salary of 548,160 Frw. On 15/06/2016, four months and ten days later, Mutware Jean de Dieu, being in a new position, was notified that he is at the

grade of Operation Officer One according to the new job structure in the Bank, but the Bank has not indicated that this position is equivalent to the position of Cash Management Officer he held. However, GT Bank Rwanda Plc alleges that the new grades were effective from 17/12/2014, which means that they were also applied to Uwantege Yvonne from that date until when she left the position of Cash Management Officer, but the Bank does not indicate that Uwantege Yvonne, who was Cash Management Officer was appointed to the grade of Operation Officer One and given a salary of 331,825 Frw as it was the case for Mutware Jean de Dieu.

Based on the aforementioned explanations, the Court finds that by the time Mutware Jean de Dieu was an employee of GT Bank Rwanda Plc to the position of Cash Management Officer from 04/02/2016 to 26/06/2017, and the employee to that position was paid a gross salary equal to 548,160 Frw, Mutware Jean de Dieu would have been paid a such salary for a period equal to 17 months, so he should be given the difference between the unpaid salary and he was paid the salary equal to 331,825 Frw. However, based on the position set by this instant Court in the case of Niwemugeni Jeannette v. KCB Bank Rwanda Plc, a dismissed employee is not given a gross salary but is given a net salary¹⁵, Mutware Jean de Dieu should be given an unpaid net salary, calculated on the difference of the gross salary calculated as follows: 548,160 Frw-331,825 Frw x 17 months = 3,677,695 Frw. This also means that the income tax and social security contributions will be paid by the Employer in accordance with the provisions of the law.

¹⁵ See judgment RS/INJUST/RSOC 00001/2019/SC decided by the Supreme Court on 31/01/2019, paragraph 36.

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2. Determine whether the notice allowance and the termination benefits awarded to Mutware Jean de Dieu were inadequately calculated

Mutware Jean de Dieu and his legal counsel state that GT Bank Rwanda Plc would have paid him the notice allowance amounting to 331,825 Frw, and the termination benefits equal to his two months' salary, that is 331,825 Frw x 2 = 663,650 Frw, all totaling to 995,475 Frw, but GT Bank paid him 587,803 Frw, so he is praying this instant Court to order to it to pay to him the difference amounting to 407,672 Frw.

Counsel Safari Jean Bosco representing GT Bank Rwanda Plc, submits that the document entitled the final pay indicates that Mutware Jean de Dieu was paid one month's notice allowance and two months of termination benefits. He explains that in paying him he was given a net salary, so to claim that he should be paid the notice allowance and the termination benefits of a gross salary is not justified. DETERMINATION OF THE COURT

Article 12, paragraph one of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “the claimant must prove a claim, failing which the respondent wins the case”.

The case file contains a document entitled the Final Pay (Notice & Leave Days & Dismissal Allowance) prepared by GT Bank Rwanda Plc on 21/09/2017, which indicates that the gross salary of Mutware Jean de Dieu is 331,825 Frw so that he is awarded 331,825 Frw for the notice allowance and 663,650 Frw for the termination benefits, all amounting to 995,475 Frw. After deducting 30% of taxes, meaning 298,843 Frw, the social security contributions equal 59,928 Frw and 36,034 Frw of the five days of leave which had been granted, the remaining amount is 587,803 Frw.

The Court finds that, based on the position set in the case of Niwemugeni Jeannette v. KCB Bank Ltd mentioned above, the dismissed employee receives the amount of money equal to the net salary instead of the gross salary¹⁶. This means that the taxes, the social security contributions, or other legal or contractual obligations with the employer must first be deducted from the gross salary, so except for the amount of gross salary which serves for calculation, GT Bank Rwanda Plc did not commit any mistake in paying to Mutware Jean de Dieu the notice allowance and terminal benefits equal to the net salary.

However, the Court finds that in calculating the notice allowance and termination benefits, GT Bank Rwanda Plc based on the gross salary of 331,825 Frw, instead of basing on the gross salary of the employee in the position of Cash Management Officer of 548,160 Frw, so these mistakes must be corrected, the notice allowance and the termination benefits are calculated based on the gross salary equal to 548,160 Frw as explained above, after deducting the taxes and the social security contributions, Mutware Jean de Dieu is awarded a net salary calculated on the difference of the gross salary calculated as follows: $(548,160 \text{ Frw} \times 3) - (331,825 \times 3) = 645,475 \text{ Frw}$.

¹⁶ See judgment RS/INJUST/RSOC 00001/2019/SC decided by the Supreme Court on 31/01/2019, paragraph 36.

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3. Determine whether the counsel's and procedural fees should be awarded in this instant case

Mutware Jean de Dieu argues that GT Bank Rwanda has dragged him into unnecessary lawsuits, and therefore he is praying this Court to pay 500,000 Frw as counsel's fee in addition to the fees granted by the lower courts.

GT Bank Rwanda Plc submits that Mutware Jean de Dieu filed an unfounded claim because he is requesting what he was awarded, and it finds that GT Bank Rwanda Plc should be awarded 1,000,000 Frw as counsel and procedural fees for having been dragged into unnecessary lawsuits.

DETERMINATION OF THE COURT

Article 111 of Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, provides that "the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time as the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted".

The Court finds that the amount of 500,000 Frw for counsel's fee claimed by Mutware Jean de Dieu is founded and reasonable, while all the damages claimed by GT Bank Rwanda Plc are not grounded because it loses the case. III. DECISION OF THE COURT

Holds that the claim filed by Mutware Jean de Dieu seeking the review of the judgment RSOCA 00033/2019/HC/KIG decided by the High Court on 12/09/2019 is grounded.

Orders to GT Bank Rwanda Plc to pay Mutware Jean de Dieu an unpaid net salary equal to 3,677,695 Frw.

Orders to GT Bank Rwanda Plc to pay to Mutware Jean de Dieu the net salary of notice allowance for one month and the termination benefits of two months calculated on a gross salary equal to 645,475 Frw.

Orders to GT Bank Rwanda Plc to pay Mutware Jean de Dieu 500,000 Frw for counsel's fee at this instance.

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