

RWANDA / JUDGMENT

NSHIZIRUNGU v. RWANDA REVENUE AUTHORITY (RRA) engl_126748_en

[2015] 4 RLR

COURT

Supreme Court

DECIDED

23 January 2015

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RADA 0027/12/CS

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NSHIZIRUNGU v. RWANDA REVENUE AUTHORITY (RRA) [Rwanda SUPREME COURT – RADA 0027/12/CS (Kanyange, P.J., Gakwaya and Hitiyaremye, J.) January 23, 2015] Administrative procedure – Appeal – Overruling the appealed decision – The Court with the jurisdiction to hear the case on merits – When the appeal court overrules the appealed judgment the court shall hear the case in substance unless the overruling was done because there were irregularities in lodging the appeal or for lack of jurisdiction – Law n 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, article 171. Administrative procedure – Unfair dismissal – The claim requesting for the trial on merits of the case concerning the unfair dismissal and the related damages – A public employee is not required to make an administrative appeal before lodging a claim for unlawful dismissal and the related damages – Law n° 18/2004 of 20/6/2004 relating to the civil, commercial, labour and administrative procedure, article 339. Facts: The Commissioner General of Rwanda Revenue Authority (R.R.A) dismissed Nshizirungu without notice due to the gross misconduct of poor performance, disrespecting his superior in

the Eastern Province and delaying to reply to the letters he sent to him. After making an administrative appeal to the Commissioner General, the Labour Inspector, to the Executive Secretary of Public Service Commission and to the Minister of Public Service and Labour, he filed a claim with the High Court claiming damages for unfair dismissal, notice and moral damages but that Court rejected his claim. Nshizirungu appealed to the Supreme Court claiming that the previous Court misinterpreted the law when it ruled that the claim is inadmissible because he delayed to lodge it after the administrative appeal and on top of that he informed the Labour Inspector about his problem in the way that it interrupted the prescription of five years. In its defence, R.R.A argues that Nshizirungu first made a complaint to the Labour Inspector while he had to lodge an administrative appeal to administrative authority who took the decision to dismiss him and since, as for him, he did not want its nullification, the High Court therefore did not have the jurisdiction to hear that case. RRA also requested that in case the Supreme Court is of the view that the claim of Nshizirungu Bernard should have been admitted pursuant to article 171 and 172 of Law No 21/2012 of 14/6/2012 relating to civil, commercial, labour and administrative procedure the case should be referred to the High Court. Held: 1. when the appeal court overrules the appealed judgment the court shall hear the case in substance unless the overruling was done because there were irregularities in lodging the appeal or for lack of jurisdiction.

2. A public servant is not required to make an administrative appeal before lodging a claim for unlawful dismissal and the related damages. Appeal has merit; The claim should have been admitted by the High Court; The hearing of the case on merits shall resume later; Payment of court fees is suspended.

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Statutes and statutory instruments referred to: Law n 21/2012 of 14/6/2012 relating to the Civil, Commercial, Labour and Administrative ° Procedure, article 171. Law n 13/2009 of 27/5/2009 regulating labour in Rwanda, article 32. ° Organic Law n 51/2008 of 9/9/2008 governing Organization, Functioning and Jurisdiction of ° Courts, articles 93 and 94. Law n° 18/2004 of 20/6/2004 relating to the Civil, Commercial, Labour and Administrative Procedure, articles 33. No case referred to.

Judgment

I. BRIEF BACKGROUND OF CASE [1] This case started before the High Court, where on 1/12/2010 Nshizirungu Bernard brought the claim against Rwanda Revenue Authority (RRA) alleging that it dismissed him unfairly and claiming damages arising from that dismissal notice damages and moral damages. He explains that on 04/01/2007, the Commissioner General basing on the resolution of the Senior Management Team addressed a dismissal letter to Nshizirungu Bernard without notice due the gravity of his faults relating to poor productivity and insubordination to his superior in the Eastern Province and delayed reply to the letters the latter addressed to him. [2] He explains that he lodged an administrative appeal with the Commissioner General, Labour

Inspector, the Executive Secretary of the Public Service Commission and the Minister in Charge of Labour and after realizing that there is no response for annulling his dismissal, he seized the High Court. On 26/04/2012 that Court rendered the judgment RAD 0174/10/HC/KIG which decided to dismiss the claim of Nshizirungu Bernard. [3] Nshizirungu Bernard was not contended with the ruling and appealed before the Supreme Court on 24/05/2012 asserting that the Court erroneously applied article 339 of Law No 18/2004 of 20/6/2004 relating to civil, commercial, labor and administrative procedure, since it ruled that he delayed to seize the court after the administrative appeal. [4] The public hearing was held on 9/12/2014, where Nshizirungu Bernard was represented by Counsel Mutembe Protais and RRA represented by Counsel Kabibi Spéciose.

II. ANALYSIS OF LEGAL ISSUES A. Whether the claim of Nshizirungu Bernard should have been admitted before the High Court and whether this case can be referred to that Court to try it on merits. [5] Counsel Mutembe Protais asserts that the High Court erroneously applied article 339 of Law No 18/2004 of 20/6/2004 mentioned above since it held that the claim of Nshizirungu Bernard had expired because he instituted it after six months provided for under that article. [6] Counsel Mutembe Protais explains that in efforts to reach an amicable settlement with his employer, Nshizirungu Bernard had instituted the claim for annulment of the administrative decision dismissing him and after realizing that the administrative authority refused to reverse its decision he seized the court.

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[7] Counsel Mutembe Protais also explains that according to the law regulating labor in Rwanda, Nshizirungu Bernard notified that dispute to the labor inspector in August 2007 and that notification interrupted the prescription of 5 years. Therefore, he finds that since Nshizirungu Bernard instituted his claim in October 2010, the High Court should have admitted it as it had not yet legally expired. [8] Counsel Kabibi Spéciose asserts that Nshizirungu Bernard made an administrative appeal before the Minister in Charge of Labour who replied him on 10/10/2009 but he instituted the claim on 1/12/2010, after two months provided for under article 339 of Law No 18/2004 of 20/6/2004 stated above. [9] Counsel Kabibi Spéciose explains that Nshizirungu Bernard first took that dispute to the Labor Inspector and indicated that he is a civil servant who had to first make an administrative appeal against the decision to dismiss him. She further explains that the High Court based on article 339 of Law No 18/2004 of 20/6/2004 mentioned above since he himself lodged an administrative appeal before the authority that took the decision he challenges. [10] With regard to the arguments of Nshizirungu Bernard that he did not sue for the annulment of the decision dismissing him but he only instituted a claim regarding the damages, Counsel Kabibi Spéciose asserts that it is obvious that his claim is regards unfair dismissal based on Law No 13/2009 of 27/5/2009 regulating labor in Rwanda and article 258 of the civil code book III. Therefore, she finds that since he is not claiming for the annulment of that decision which was took against him, the High Court did not have the jurisdiction over his claim. [11] Counsel Kabibi Spéciose further adduces that basing on article 94 of Organic Law No 51/2008 determining organization, functioning and jurisdiction

of courts, that was in force by the time Nshizirungu Bernard instituted the claim, since the High Court can annul the dismissal of an employee and it can order for its squash, she finds that the civil servant has to abide by all procedures provided under article 339 of Law No 18/2004 of 20/6/2004 stated above as long as he finds that the decision dismissing him/her is contrary to the law. [12] Counsel Kabibi Spéciose concludes asserting that in case the Supreme Court finds that the claim of Nshizirungu Bernard should have been admitted, she requests that pursuant to article 171 and 172 of Law No 21/2012 of 14/6/2012 relating to civil, commercial, labour and administrative procedure the case should be transferred to the High Court. VIEW OF THE COURT [13] Article 1, paragraph 32 of Law No 13/2009 of 27/5/2009 regulating labor in Rwanda provides that “an employee is any person who undertakes to work for another person in return for payment of the salary and accepts to work under his subordination or a group of people, he/she can be employed by the State or a private person. [14] Article 93, 4 of Organic Law N° 51/2008 of 9/9/2008 determining the organization, functioning and jurisdiction of courts provides that the High Court shall have powers to hear administrative cases from the Provincial and Kigali City level to that of the President of the Republic relating to labour disputes between private individuals and the State or its institutions.

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- [15] Article 94 of Organic Law No 51/2008 of 9/9/2008 determining the organization, functioning and jurisdiction of courts provides that “the High Court shall examine whether the decisions, contracts or administrative acts within its jurisdiction issued by an administrative authority complied with the law. In case it finds that they were issued contrary to the law, it may annul them and award damages for the prejudiced caused. [16] Article 339 paragraph 1 Law No 18/2004 of 20/6/2004 relating to civil, commercial, labor and administrative procedure provides that “the action for annulment shall be accepted only if it relates to an explicit or implicit decision of an administrative authority. and its second paragraph provides that “Before filing a claim, the aggrieved party who is against the administrative decision shall be required to first lodge an informal appeal with the immediate superior authority vis-à-vis the one who took the concerned decision”. [17] Article 171 of Law n 21/2012 of 14/6/2012 relating to the civil, commercial, labour ° and administrative procedure provides that “when the appeal court overrules the appealed judgment, the court shall hear the case in substance unless the overruling was done because there were irregularities in lodging the appeal or for lack of jurisdiction”. [18] The Supreme Court finds that it is obvious from the employment contract between Nshizirungu Bernard and RRA that that contract is governed by Law of 28/2/1967 relating to labor and other laws relating to its implementation that was in force at the time of the conclusion of the contract. [19] With regard to the provisions of article 339 of Law No 18/2004 of 20/6/2004 mentioned above, the Supreme Court finds that, at the first glance, this article cannot be applied in this case because the claim of Nshizirungu Bernard at the first instance was not intended to request the court to annul the decision taken by the administration of RRA; but it aimed at the examination on

merit of the issue of his unfair dismissal and claim of related damages. [20] In addition, as mentioned above, the employment contract between RRA and Nshizirungu Bernard stipulates that it is governed by the law of 28/2/1967 relating to labor and other laws relating to its implementation and in the sense that the procedures relating to the law regulating labor in Rwanda should be applied in the settlement of individual labor disputes between the employee and the employer. [21] With regard to the provisions of article 94 of Organic Law No 51/2008 of 9/9/2008 determining the organization, functioning and jurisdiction of courts, the Supreme Court finds that this article does not emphasize that the civil servant has to follow the procedures provided under article 339 of Law no 18/2004 of 20/6/2004 mentioned above, but instead it demonstrate that in its duties to examine the legality of administrative decisions, contract and any other administrative acts, the High Court can annul them in case the litigant request the annulment of the administrative decision or the award of damages arising thereof or award of damages for the prejudice caused by the administrative decision. [22] Pursuant to the foregoing legal provisions and explanations put forward, the Supreme Court finds that the claim of Nshizirungu Bernard should have been admitted by the High Court. [23] With regard to the request of RRA to refer the case to the High Court in case it is held that the claim of Nshizirungu Bernard should have been admitted, the Supreme Court

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finds that pursuant to article 171 and 172 of Law No 21/2012 of 14/6/2012 relating to the civil, commercial, labor and administrative procedure this case has to be heard on its merits by this Court since the appealed decision is not overruled on the ground that there was irregularity in seizing the High Court or it lacked jurisdiction to hear that matter and it was not annulled by this Court. III. COURT DECISION [24] It holds that the appeal of Nshizirungu Bernard has merit. [25] It holds that the claim of Nshizirungu Bernard before the High Court should have been admitted. [26] It holds that the hearing of this case on its merit shall be resumed on 17/3/2015. [27] It holds that the court fees are suspended.

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