

RWANDA / JUDGMENT

RUKUNDO v RWANDA BAR ASSOCIATION

RLR V.3-2024

COURT

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Text

Page 1

RUKUNDO v RWANDA BAR ASSOCIATION [Rwanda SUPREME COURT – RS/INJUST/RAD 00003/2022/SC – (Nyirinkwaya, J. P., Hitiyaremye and Karimunda, J.) April 14, 2023]

Administrative procedure – Informal appeal – An informal appeal that does not get a response by an Authority within the set time limit – Even though article 178, paragraphs 3 and 5 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure did not provide for an exception on the principle of “silence means acceptance” (silence vaut acceptation), this does not mean that failure to respond on that appeal should be construed as approving what the claimant was requesting for, whether they are entitled to it or not, and regardless of whether it is impossible to obtain it. Administrative procedure – Informal appeal – Informal appeal – The principle of silence means acceptance (silence vaut acceptation) – Exception on the principle of silence means acceptance – There is a need for an exception on this principle in order to determine the type of decisions where silence means acceptance, and on the others where silence means refusal, or to determine on the other type of decisions where silence means refusal, and then for the remaining other types of decisions, silence be construed as acceptance for what was appealed for. Administrative procedure – Informal appeal – The

principle of silence means acceptance (silence vaut acceptation) – Exception – Decisions where the principle of silence means acceptance is not applicable are those related to 1o national security, safety or public order, freedom of the public, the rights provided by the Constitution and other laws establishing basic rights; 2o State obligations on regional or international matters; 3o to make or ask payment to the Government organ; 4 o matters not related to the personal rights of the appellant; 5o existing legal provisions or regulations on where silence means acceptance for such an issue; 6o informal appeals against administrative decisions rejecting the request; 7o collaboration between an administrative organ and its employees; 8o documents or certificates issued by administrative organs. Laws governing Rwanda Bar Association – Advocate – Conditions of access to the profession of Advocates – Among the conditions required for the access to the Bar Association include having not been dismissed from duties due to misconduct, and if it the case, the applicant has to present a proof for rehabilitation. Facts: Rukundo applied for the enrollement to the roll of the Bar Association but sooner before the swearing in, he was removed from the list of candidates who had to take their oath. The Bar Association informed him that they learnt that he had been fired from the position of a prosecutor due to misconducts and the decision for his dismissal is still valid, that he was therefore not eligible to be admitted to the Bar Association. Rukundo lodged an informal appeal against that decision (*recours gracieux*), and unfortunately, the President of the Bar Association responded to him that his request was unfounded. Rukundo informal appealed that decision to the Council of the Bar Association. After a month with no response, Rukundo filed an *ex parte* application based on article 178, paragraphs 3 and 5 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure, requesting the High Court to rule that, since he informal appealed against the decision of the President of the Bar Association and did not get a response within the set time limit as per the law, his request is founded, thus the Court has to order that he take his oath as an Advocate. The High Court held that his application was inadmissible for it does not fall under its jurisdiction. Rukundo applied for the review of that judgment for being vitiated by injustice. After it was found

Page 2

that the High Court was competent to hear his case, the Supreme Court decided to resume the hearing of the case in merit, and the Bar Association was summoned to appear. In the merit of that case, Rukundo reiterated that the Supreme Court had to analyse nothing other than ruling that he had respected all procedures of informal appeal, and order that, since he did not get a response for his informal appeal within the time limit as per the law, he has to take his oath as an Advocate, that the silence meant that his requested was accepted. For the Bar Association, the Court should not only refer to the text of Article 178, paragraphs 3 and 5 of the aforementioned Law n° 22/2018 of 29/04/2018, by disregarding the purpose of the Legislator when establishing such a provision, since this should lead to the confirmation that the appellant is also given the right he/she is not entitled to or that is not possible, simply because he/she did not get a response with the time limit set by the Law. The instant Court analysed whether the fact that Rukundo has not received a response by the Bar Association Council on his request of swearing in as an

Advocate, his request should be accepted, regardless the basis of the right he informal appealed for, and whether the person who has been dismissed from his/her duties due to misconducts can be eligible to be admitted to the Bar Association. On the first issue, the very Court found no exception provided by article 178, paragraphs 3 and 5 of the aforementioned Law, meaning that once such article is used as it is written, it could make the appellant's request founded, be it under the right entitled to him/her or not, or even when it is not possible for him/her to enjoy such a right, and the same Court found this as gap in the Law, since the Legislator's purpose was not to allow anyone enjoy the right that is not normally entitled to him/her simply because he/she did not get a response for his/her request. To perform such a duty of matching the wording of the disputed article with the Legislator's purpose, it was in the finding of the Court that failure to get a response does not mean acceptance even on what a person has no right to, and the same Court gave examples of decisions where silence does not mean acceptance for the appellant request. With regard to the second issue, among the conditions required for the access to the Bar Association include having not been dismissed from duties due to misconduct, and if it the case, the applicant has to present a proof for rehabilitation. After finding that Rukundo has been dismissed by National Public Prosecution for the same misconducts, the Court ruled that he is not eligible to take his oath as an Advocate. Held: 1. Even though article 178, paragraphs 3 and 5 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure did not provide for an exception on the principle of "silence means acceptance" (silence vaut acceptation), this does not mean that failure to issue a decision on the lodged informal appeal should be construed as approving that the appellant has or not the right to what he/she informal appealed for or it is not possible for him/her to have such a right.

2. An exception is needed in order to determine the type of decisions where silence means acceptance, and that for all the other types of decisions silence means refusal, or to determine on the type of decisions where silence means refusal, and then for the remaining other types of decisions, silence be construed as acceptance for what was informal appealed for.
3. Decisions where the principle of silence means acceptance should not be applicable are those related to 1o national security, safety or public order, freedom of the public, the rights provided by the Constitution and other laws establishing basic rights; 2o State obligations on regional or international matters; 3o to make or ask payment to the Government organ; 4 o matters not related to the personal rights of the appellant; 5o existing legal provisions or regulations on where silence means acceptance for such an issue; 6o informal appeals against administrative decisions rejecting the

Page 3

request; 7o collaboration between an administrative organ and its employees; 8o documents or certificates issued by administrative organs.

4. Among the conditions required for the access to the Bar Association include having not been dismissed from duties due to misconduct, and if it the case, the applicant has to present a proof for rehabilitation. Therefore, the fact that Rukundo has been dismissed by National Public Prosecution for the same misconducts, he is not eligible to take his oath as an Advocate. Failure to get a response on one's informal appeal, does not mean that such an informal appeal is founded. Statutes and statutory instruments referred to: Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, articles 31 and 49; Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 178; Law N° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organisation and functioning, article 6 and 20. Other laws referred to: Organic-Law of 08/07/ on public centers for social action (CPAS), article 110; Article 20 de la Loi générale sur la procédure administrative du 7 Août 1990 (n° 241); Article 43 de la Loi N° 30/1992, du 26 novembre 1992, de régime Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (LRJAPC), BOE, n° 285, 27 nov.1992. Decree-Law n° 35/2005 determining explicitly decisions where silence means acceptance, and where the principle remains that silence means refusal, article 3. Cases referred to: Rutagarama Eliseus, RS/RECT/RC00001/2019/SC rendered by the Supreme Court on 31/05/2019; Prosecution v Nsengumuremyi Richard et al., RS/INJUST/RP 00005/2018/SC rendered by the Supreme Court on 23/11/2018; National Westminster Bank Plc V Spectrum Plus Ltd & Others [2005] UKHL 41, paragraphs 31, 36 and 41; Cour de Cassation (France), Civ 1er, 11 Mai 2017, n° 16-15.549 et 16-60115; Cour de Cassation (France), Chambre commerciale financière et économique, 3 mai 2018, Pourvoi n° 16-15.114; Conseil d'État (France), 6ème - 5ème chambres réunies, Lecture du jeudi 23 septembre 2021; Conseil d'État (Belgique), décision n° 58.810 du 26 mars 1996, Christiaens Auto-Industries et crts; Conseil d'État belge, décision n° 63.963 du 10 janvier 1997, Commune de Momignies. Authors quoted: Philippe Malaurie na Patrick Morvan, Introduction au droit, LGDJ, Paris, 2020, p.453; Armand Desprairies, La décision implicite d'acceptation en droit administrative français, Thèse de doctorate n droit, Université Paris 1, Panthéon Sorbone, 12 décembre 2019, pp; 154-155. Aurélien Desgree, Le silence de l'Administration: Recherche sur la décision implicite, Thèse de doctorate n droit, le 14 juin 2021, pp.321-322; Maryse Deguerge, Le silence de l'Administration en droit administratif français, in Les Cahiers de droit, Volume 56, numéro 3-4, Septembre-Décembre 2015; François Terré et Nicolas Molfessis, Introduction générale au droit, Paris, Dalloz, 2021, p.792-793; Tom Bingham, The Business of Judging: Selected Essays and Speeches 1985- 1999, Oxford, Oxford University Press, 2000, pp. 31-32.

Page 4

Romain Jordan, Le devoir de sincérité de l'Avocat, Anwalts Revue De L'avocat, Avril 2018, p.175.

Judgment

I. BACKGROUND OF THE CASE [1] The case emanates from the ex parte application filed by Rukundo Innocent to the High Court. Rukundo Innocent states that, through the President of the Bar Association, on 07/01/2022, he wrote to the Council of the Bar Association informal appealing against the decision of 04/01/2022 refusing him to be an advocate due his gross misconducts that led to his dismissal from his position as a prosecutor at the intermediate level. He states that, following failure to respond to his informal appeal, and based on article 178, paragraphs 3 and 5 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure, he filed a claim to the High Court requesting this Court to order Rwanda Bar Association to respect his right and allow him to take his oath, and be put on the roll of advocates, hence being permitted to perform the profession of advocates. [2] In the judgment RAD 00002/2022/HC/KIG rendered on 17/03/2022, the High Court found that the impugned decision was not made by the Council of the Bar Association, rather such decision was made by the President of the Bar Association, and those two organs are different as per article 20 of the Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda, and determining its organisation and functioning,¹ therefore, such a claim does not fall under the jurisdiction of the High Court. The Court found that, in light of the provisions of article 31, paragraph one, of the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts,² the claim filed by Rukundo Innocent should be considered as not being outside the jurisdiction of other courts. [3] Rukundo Innocent wrote to the President of the Court of Informal appeal requesting for the review of the judgment RAD 00002/2022/HC/KIG rendered by the High Court on 17/03/2022 for being vitiated by injustice. Following examination of that application, the President of the Court of Informal appeal wrote to the President of the Supreme Court requesting for the applied review. In the decision 153/CJ/2022 of 26/08/2022, the President of the Supreme Court ordered that the case be transferred to the Registry of the Supreme Court for being tried anew. [4] The hearing was conducted in public on 14/11/2022, Rukundo Innocent being assisted by Counsel Nsengiyumva Enos and Counsel Nkinzingabo Jotham, and the issue relating to whether the High Court was competent to hear the claim filed by Rukundo Innocent, was analysed first. [5] In the interlocutory judgement rendered on 02/12/2022, the very Court found that, since the informal appeal was lodged to the Council of the Bar Association, but that it failed to respond within the time limit as per the law, for the appellant to know whether his informal appeal had merit or not, this itself made the claim filed by Rukundo Innocent fall under the jurisdiction of the High Court as per article 49, subparagraph one, of the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts, and that Court ruled that the filed claim has to be admitted and examined, and it ordered that the hearing be resumed on the date and time that would be communicated by the Registry to parties, and the Bar Association was also summoned to appear.

1 Such article provides that organs of the Bar Association are the following: 1° the General Assembly; 2° the Council of the Bar Association; 3° the President of the Bar Association. 2 That article provides that “Intermediate Courts hear at the first instance all cases that are outside the jurisdiction of other courts”.

Page 5

[6] The case was reheard on 28/03/2023, Rukundo Innocent being assisted by Counsel Sebintu Nkinzingabo Jotham, whereas the Bar Association in Rwanda was represented by Counsel Bimenyimana Eric and Counsel Sebaziga Museruka Sophonie. [7] Parties debated on the issues relating to whether failure of an Authority to respond to the informal appeal within the time limit set by the law, makes such an informal appeal founded, and the issue of whether Rukundo Innocent has to be allowed to take his oath for him to be admitted to the Bar Association. II. ANALYSIS OF LEGAL ISSUES

1. Whether failure of an Authority to respond to the informal appeal within the time limit set by the law, makes such an informal appeal founded [8] Rukundo Innocent and his Counsel Sebintu Nkinzingabo Jotham state that he was communicated that he is not allowed to take his oath for being admitted to the Bar Association on 04/01/2022, and he lodged the informal appeal against it on 07/01/2022, and he waited in vain for the response. They state that, after waiting for the whole month without getting a response, Rukundo Innocent had the right to take his oath and be admitted to the Bar Association as per the Law, regardless the reason on which the Bar based on in removing him from the list of those who had to swear in. They aver that article 178, paragraph 53, of the Law No 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure does not provide that the Court has to examine whether his informal appeal has merit, rather, the Court should find that Rukundo Innocent informal appealed against the decision prohibiting him to take his oath, and that the whole month passed without a response, and then order that he be reinstated his right to swear in as an advocate. [9] Counsel Bimenyimana Eric representing the Bar Association states that normally a person who informal appealed to an Authority but does not get a response within the time limit set by the law, this means that his request is accepted, however, the Bar Association requested the court to examine as an alternative (“à titre subsidiaire”) whether Rukundo Innocent can be allowed to take his oath as an advocate because his request has not been answered or whether he can get such an authorization if his request has merit. DETERMINATION OF THE COURT [10] Article 178, paragraphs 3 and 5, of the Law no 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure reads that The authority is required to respond in a period of one (1) month which runs from the date he/she received the informal informal appeal. If he/she does not respond, the request is considered as founded... In case the applicant does not get response and not recover his/her rights, he/she can request an administrative court to order the appicant to be reinstated in his/her rights. The claim is filed whithin one (1) month by way of unilateral request. [11] The issue under the debate is of whether provision of an article can be used in requesting the Court hearing administrative cases to order that he be reinstated his rights provided under the aforementioned article 178 and that such provision is clear enough that the role of the Court is to approve only. A legal provision is clear when it is not such as to give rise to doubt in an enlightened mind (une règle est claire lorsqu'elle n'est pas de nature à faire naître un doute dans un esprit

3 That article reads that [...] In case the applicant does not get response and not recover his/her rights, he/she can request an administrative court to order the appicant to be reinstated in his/her rights. The claim is filed whithin one (1) month by way of unilateral request.

Page 6

éclairé),⁴ whether it is complete and self-sufficient That is the understanding of Rukundo Innocent for the above paragraph. For the Bar Association, though such paragraph is understandable and clear, the Court has the duty of examining whether the appellant had the right of what he informal appealed for. [12] The Court finds that provisions of the aforementioned article 178, paragraphs 3 and 5 are not a particularity of Rwanda, since such an issue of determining whether the appellant deserves the right that is not entitled to him/her or that is not possible simply because he/she did not receive a response on his/her informal appeal within the time limit set by the law. Italy, Spain and France are among European countries which adopted the principle of silence means acceptance. Such a principle was established by Article 2 of the Law n° 241 of 7/08/1990.⁵ However, article 20, paragraph 4, of the said law provides that such a principle should not be used for applications relating to culture, environment, national security, public order, migrants, refugees, application for nationality and public health or when there exist legislations of European Union ordering the Authority to respond to the informal appeal lodged to him/her.⁶ [13] The Court's determination is that a legal scholar named Aurélien Desgree affirms that the doctrine of "silence implies consent" was not initially established in Italy as an administrative principle. Instead, it was intended to address delays in administrative processes. Even after the adoption of this principle, the Administrative Court (Council of State) recognized the need to establish limitations. The Court itself ruled that in cases concerning administrative documents or certificates, silence in response to a filed informal appeal within the legally prescribed time frame should be interpreted as a rejection of the request.⁷ This is the purpose of an Italian Legislator in enacting the Decree-Law n° 35/2005 where silence means acceptance, and where the principle remains that silence means refusal.⁸ [14] In Spain, the principle of silence means acceptance ("silence vaut acceptation") established by article 43 of the Law n° 30/1992 of 26/11/1992.⁹ However, since 2015, it was introduced exceptions brought by article 24, paragraph one, of the Law n° 39/2015, of 1/10/2015 providing that silence means acceptance when it is provided under national legislations, international legislations, or European laws or when powers reserved for state organs or rights that are likely to affect the environment once entitled, are required.¹⁰ Aurélien Desgree further states that in Germany, the

4 See Philippe Malaurie na Patrick Morvan, Introduction au droit, LGDJ, Paris, 2020, p.453. 5 Loi générale sur la procédure administrative du 7 Août 1990 (n° 241). 6 l'article 20 alinéa 4 de la loi générale de la procédure administrative du 7 août 1990 prévoit que "le silence positif ne s'applique pas aux demandes des administrés en matière de patrimoine culturel et paysager, d'environnement, de défense nationale et de sécurité publique, d'immigration, d'asile et citoyenneté et de santé publique. Il en est de même quand le droit de l'Union européenne impose un acte administratif express." See Armand Desprairies, La décision implicite d'acceptation en droit administratif français, Thèse de doctorat en droit, Université Paris 1, Panthéon Sorbone, 12

décembre 2019, p. 155. 7 “...le Conseil d’État italien a précisé que le silence-acceptation constitue une *fictio iuris*, dans la mesure où c’est la loi qui octroie au silence le sens d’un consentement silencieux... De plus, il existe deux sens négatifs du silence en droit public italien: le refus et le rejet. L’illustration du silence-refus donnée par le Conseil d’État ... concerne la matière de l’accès aux documents administratifs ..., tandis que l’exemple donné pour le second concerne l’hypothèse du défaut de décision expresse dans le cadre d’un recours hiérarchique...” See Aurélien Desgree, *Le silence de l’Administration: Recherche sur la décision implicite*, Thèse de doctorat en droit, le 14 juin 2021, pp.321-322. 8 See article 3 of the Decret-loi 35/2005 (enteriné par la loi 80/2005). 9 Loi N° 30/1992, du 26 novembre 1992, de régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (LRJAPC), BOE, n° 285, 27 nov.1992. 10 “En Espagne, la décision implicite d’acceptation est, depuis 1992, le principe général pour l’ensemble des administrations publiques. Pourtant, de nombreux cas d’exceptions au principe ont récemment été mis en place Ainsi, le silence négatif s’applique si une norme législative, une norme internationale ou du droit de l’Union le prévoit expressément. Le silence de l’administration vaut également rejet s’agissant des demandes qui auraient pour conséquence de transférer au requérant, ou à des tiers, des prérogatives relatives au domaine public ou au service public, ainsi qu’aux

Page 7

principle of silence means acceptance is used for very few issues .11 The principle of silence means acceptance does not exist in Belgium. Article 110, paragraph 1, of the Organic Law of 08/07/1976 on public centers for social action (CPAS) provides that an Authority who failed to issue directives or a decision required in matters of construction in the Brussels region when mandated by laws, his/her silence is construed as he/she accepted the request.12 However, the Administrative Court (Council of State) later found it necessary to set limitations, and hence ruled that silence means acceptance when the applicant is able to prove that his/her request was lawful and that no other decision was taken on it and that his/her request was the only resort to his concern.13 [15] The Court finds that France used the principle of silence means refusal until 2014. This principle was later revised and it was added the principle of silence means acceptance introduced by article one of the Law n° 2013-1005 of 12/11/2013.14 On 23/10/2015, France again established an exception on the principle of silence means acceptance. Article D231-2 of the Decree (Ordonnance) n° 2015-1341 on 23/10/2015 providing that the list of decisions governed by the principle of silence means acceptance will be published online on the website of the office of the Prime Minister and it will specify the Authority to be addressed and the timeframe for him/her to respond.15 And article L231-4 of the same Decree provides that the following five reasons constitute exceptions on the principle of silence means acceptance, therefore, once such exceptions exist, silence will mean refusal: - Where the request is not for the adoption of a decision in the nature of an individual decision; - When the request does not form part of a procedure provided for by a legislative or regulatory text or is in the nature of a complaint or an administrative informal appeal; - If the request is of a financial nature, except, in social security matters, in the cases provided for by decree; - In cases, specified by decree in the Conseil d'Etat,

where implicit acceptance would not be compatible with compliance with France's international and European commitments, the protection of national security, the protection of freedoms and principles of constitutional value and the safeguarding of public order;

demandes qui endommageraient l'environnement.” See Armand Desprairies, *La décision implicite d'acceptation en droit administrative français*, Thèse de doctorat en droit, Université Paris 1, Panthéon Sorbone, 12 décembre 2019, pp. 154- 155. 11 “L'Allemagne qui, comme nous l'avons vu, n'ignorait pas la fiction juridique du silence avant l'intervention de la directive européenne mais qui, loin d'en faire une règle générale, lui reservait une place très marginale dans son droit public.” 12 “L'autorité qui émet un avis défavorable ou refuse son autorisation ou son approbation au sujet d'une délibération prise par un centre public d'aide sociale en application de la présente loi est tenue de motiver sa décision. Si aucun avis ou décision n'est notifié dans le délai prescrit par la loi, l'autorité de tutelle est censée avoir émis un avis favorable ou avoir donné l'autorisation ou l'approbation requises.” 13 See Conseil d'État belge, décision n° 58.810 du 26 mars 1996, Christiaens Auto-Industries et crts.; Conseil d'État belge, décision n° 63.963 du 10 janvier 1997, Commune de Momignies. 14 “Dans les conditions prévues à l'article 38 de la Constitution, le Gouvernement est autorisé, dans un délai de douze mois à compter de la promulgation de la présente loi, à modifier par ordonnances les dispositions législatives prévoyant que, en l'absence de réponse de l'administration dans un délai que ces dispositions déterminent, la demande est implicitement rejetée, pour disposer que l'absence de réponse vaut décision d'acceptation ou instituer un délai différent.” See Loi N° 2013-1005 du 12 novembre 2013 habilitant le Gouvernement à simplifier les relations entre l'administration et les citoyens. 15 “La liste des procédures pour lesquelles le silence gardé sur une demande vaut décision d'acceptation est publiée sur un site internet relevant du Premier ministre. Elle mentionne l'autorité à laquelle doit être adressée la demande ainsi que le délai au terme duquel l'acceptation est acquise.”

Page 8

- In relations between the administration and its employees.¹⁶ [16] The Court further finds that apart from examples provided in the previous paragraph, article L231-5 provides that In view of the purpose of certain decisions or for reasons of good administration, the application of article L. 231-1 providing for the principle of silence means acceptance may be waived by decree of the Council of State (Conseil d'Etat) and the Cabinet.¹⁷ A legal scholar named Maryse Deguergue state that in that year of 2015, the principle of silence means acceptance was established for exceptions 1.12518. In order to implement ann exception based on the complaint submitted to an Authority or an informal appeal against an administrative decision, Charente province in France explained that failure of an authority to respond to a request, a complaint or an informal appeal does not mean that the rejected request is now accepted, and this also goes for individual informal appeal on decisions rejecting their applications.¹⁹ [17] The Cassation Court in France found that the fact that the company that was mandated to represent the interests of other institutions as for intellectual matters, to give them annual awards and following up certifications on intellectual matters on the European level, such company applied for the extension of its set

period in INPI (Institut National de la Propriété Industrielle) and it was not answered within the legal timeframe, such a request cannot be considered as accepted, rather, that silence means that its request was not accepted.²⁰ The Council of State (Conseil d'Etat) also found that the livestock company applied for practicing its livestock activities in a certain area, knowing full well that after submitting its file, there were other requirements relating to submit on the impacts of their activities on that area before starting their livestock business, such a company should not use the delay of the Authority in responding to their first application, and state that its request is accepted.²¹

16 “Article L231-4: Par dérogation à l'article L. 231-1, le silence gardé par l'administration pendant deux mois vaut décision de rejet: 1° Lorsque la demande ne tend pas à l'adoption d'une décision présentant le caractère d'une décision individuelle; 2° Lorsque la demande ne s'inscrit pas dans une procédure prévue par un texte législatif ou réglementaire ou présente le caractère d'une réclamation ou d'un recours administratif; 3° Si la demande présente un caractère financier sauf, en matière de sécurité sociale, dans les cas prévus par décret; 4° Dans les cas, précisés par décret en Conseil d'Etat, où une acceptation implicite ne serait pas compatible avec le respect des engagements internationaux et européens de la France, la protection de la sécurité nationale, la protection des libertés et des principes à valeur constitutionnelle et la sauvegarde de l'ordre public; 5° Dans les relations entre l'administration et ses agents.” 17 “Article L231-5: Eu égard à l'objet de certaines décisions ou pour des motifs de bonne administration, l'application de l'article L. 231-1 peut être écartée par décret en Conseil d'Etat et en conseil des ministres.” 18 Maryse Deguerge, Le silence de l'Administration en droit administratif français, in Les Cahiers de droit, Volume 56, numéro 3-4, Septembre-Décembre 2015. 19 “Le seul silence gardé par l'administration sur les recours administratifs (recours gracieux, recours hiérarchiques et recours administratifs pénalement obligatoires) ne pourra transformer en décision favorable une première décision qui, par essence, ne l'aura pas été. Le législateur y a adjoint les réclamations des administrés contre les décisions individuelles qui leur sont défavorables.” See www.charente.gouv.fr visited on 07/04/2023. 20 “Encourt dès lors la cassation l'arrêt qui juge que le défaut de réponse par le directeur général de l'INPI à une lettre, adressée par une société tendant à ce qu'elle puisse continuer à exercer les mandats qui lui avaient été confiés par des entreprises pour le paiement des annuités et la réception de toutes notifications relatives au statut des brevets européens, valait décision implicite d'acceptation alors qu'elle constituait une réclamation, de sorte que le défaut de réponse du directeur de l'INPI valait décision implicite de rejet.” See Cour de cassation, Chambre commerciale financière et économique, 3 mai 2018, Pourvoi n° 16-15.114. 21 “la demande ainsi formée par l'exploitant, dès lors qu'elle est susceptible de rendre nécessaire le dépôt d'une nouvelle demande d'autorisation devant faire l'objet de l'étude d'impact préalable prévue à l'article L. 122-1 du code de l'environnement, relève des exceptions à l'application du principe selon lequel le silence gardé pendant deux mois par l'autorité administrative vaut décision d'acceptation.” See Conseil d'État, 6ème - 5ème chambres réunies, Lecture du jeudi 23 septembre 2021.

Page 9

[18] The Court finds that article 178, paragraphs three and five, of the Law no 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, did not provide any exception as it is the case in Italy, Spain and France. The use of this provision as it is written, could lead to the acceptance of the request, regardless of whether the appellant has such a right or not, or whether it is not possible to entitle to him/her such a right. Even though it can be construed that the said Law intended to rectify the negligence of the Authorities who refused to respond the appellant on time, or who intentionally refused to respond to the request while they were obliged to do so, or the set time expired for them because they were so busy in addressing other issues or because they had many backlog requests to deal with, therefore, allowing the appellant to be accorded to the right he/she is not entitled to or that is not possible to entitle such a right to him/her, could lead to problems instead of solving them. [19] It is in the finding of the Court that the wording of paragraphs three and five of the aforementioned article 178, are clear and understandable, therefore, based on the principle that interpretation stops when a text is clear (*interpretatio cessat in claris/l'interprétation cesse lorsqu'un texte est clair*), it is not necessary to interpret the impugned paragraphs. However, the Court finds that, in enacting the said paragraphs, the Legislator did not intend to allow the appellant to enjoy the acceptance of his/her request even when he/she has no such a right. The confusion arises from the consequences resulting from use of the wording of the provision and not the wording itself. It is clear to the Court that such consequences have not been provided in the impugned article. [20] With regard to the issue of whether the Court has the duty to interpret the text of a law while it is clear to it such text is linked to the purpose of the Legislator, meaning that the Law is insufficient, and article 9, paragraph 2, of the Law no 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, reads that a judge cannot refuse to decide a case on any pretext of silence, obscurity or insufficiency of the law. This article means that when it is the case, a judge fills the existing gap with the purpose of finding a solution to the raised issue. [21] They very Court adopted a legal position on this issue in various judgments. In the case of Rutagarama Eliseus, this Court found that article 140, paragraph, of the aforementioned Law n° 22/2018 of 29/04/2018, reads that applications for correction or interpretation of judgement are done within one month following its pronouncement. However, three years had passed after the judgment of Rutagarama Eliseus was rendered, and the bank which lost the case, refused to pay him for his identifications was not correct in the judgment. The Court found that the period of one month was meant for fair administration of justice, but this should not be construed as if the purpose of the Legislator was to maintain errors existing in judgments so that they cannot be executed or serve as a reference to others for different purposes.²² [22] The Court finds that the same legal position was upheld in the case of the Prosecution against Nsengumuremyi Richard et al., on the issue relating to whether forced intervention in the cases relating to injustice, this Court found the provisions of article 116, last paragraph, of the aforementioned Law n° 22/2018 of 29/04/2018, that it is prohibited to seek forced intervention in the Court of

Informal appeal or Supreme Court for cases relating to review due to injustice, rather, for such cases, anytime a Court finds necessary to resort to forced intervention with the interest of fair administration of justice, such a Court has to do it since not doing so, could lead to make decisions for parties who did not submit on thereof, hence leading to failure to execute a rendered judgment and even to new cases following the trial.²³

²² See judgment RS/RECT/RC00001/2019/SC rendered by the Supreme Court on 31/05/2019, from paragraph 6 to 11. ²³ See the interlocutory judgment RS/INJUST/RP 00005/2018/SC rendered by the Supreme Court on 23/11/2018 from paragraph 31 to 35.

Page 10

[²³] The Court finds that, on the issue of what should be done, when the use of the Law as it is written results in a solution that is different from the purpose of the Legislator to the extent that it can be questioned whether the achieved solution matches with the intended purpose in adopting such a Law, the Cassation Court of France found that when the meaning of the law, as it results from its wording, is neither obscure nor ambiguous, it must be held to be certain; there is an exception if the application of the text leads to some absurdity (lorsque le sens de la loi, tel qu'il résulte de sa rédaction, n'est ni obscure ni ambigu, (il) doit (...) être tenu pour certain, il y a exception si l'application du texte aboutit à quelque absurdité).²⁴ Legal scholars Francois Terré and Nicolas Molfessi also states that when the text (wording) of the Legislator, be that text clear and free from ambiguity, leads to confusing results, an exception thereof is adopted, and the principle of interpretatio cessat in claris (l'interprétation cesse en cas de clarté/interpretation ceases in the event of clarity) is replaced by the principle of claris cessat in absurditas (la clarté cesse en cas d'absurdité/clarity ceases in the case of absurdity).²⁵ [24] The Court finds that, in the case of National Westminster Bank plc against Spectrum Plus Limited and others, the Supreme Court of England found that disputes among citizens or between citizens and their Government should be settled based on the Law, and it is the duty of the Court to provide the real interpretation of the Law. The same Court elucidated that the main duty of the Court is to apply and analyse laws, however, referring only to the text of the law (declaratory principle) by ignoring its intended purpose (purposive principle) may lead to the weakening of such a law instead of making it stronger, due to failure to adapt it to the time, and this may lead to the poor performance of government institutions.²⁶ [25] However, it is in the finding of the Court that, Lord Tom Bingham states that while applying the purposive principle, the Court has to consider the following in order to avoid the abusive exercise of its power: (1) avoid to interfere in the agreements concluded between individuals on their will and at their own risk, in accordance with the laws that were applicable at the signing time; (2) not adopting legal provisions that are normally adopted by the Legislator in establishing fundamental principles, and their definitions and limitations; (3) not interfering in issues requiring the establishment of Government policy on a controversial matter in the society; (4) not interfering in the issue under examination by the Legislator; (5) not carrying out an analysis on issues which do not fall under the jurisdiction of the Court.²⁷

24 See judgment Civ 1er, 11 Mai 2017, n° 16-15.549 et 16-60115. 25 “Encore convient-il de ne pas exagérer cette exclusion de l’interprétation en cas de termes clairs, parce qu’il est souvent difficile de distinguer un terme clair d’un terme obscur et parce que le sens de certains termes, clair dans le langage courant, peut cesser de l’être dans le langage juridique. De toute façon, il est fait exception à la règle si l’application d’un texte clair aboutit à quelque absurdité: claris cessat in absurditas...” See François Terré et Nicolas Molfessis, *Introduction générale au droit*, Paris, Dalloz, 2021, p.792-793. 26 “When disputes arise, whether between citizens or between a citizen and the government, they are to be resolved in accordance with the law, and that is a matter for the judicial arm of the state. In this regard it is for the judiciary to decide what is the law, not the legislature or the executive...the essential function of the courts in respect of statutes is to apply and give effect to them. Rigidity in the operation of a legal system is a sign of weakness, not strength. It deprives a legal system of necessary elasticity. Far from achieving a constitutionally exemplary result, it can produce a legal system unable to function effectively in changing times.” See *National Westminster Bank Plc V Spectrum Plus Ltd & Others*

[2005] UKHL 41, paragraphs 31, 36 and 41. 27 “There are however various situations in which most judges, even the reformist, majoritarian tendency, would regard one or other of these signs as opposite. Such situations would include: (1) Where reasonable and right-minded citizens have legitimately ordered their affairs on the basis of a certain understanding of the law. As Lord Reid put it: And there is another sphere where we have got to be careful. People rely on the certainty of the law in settling their affairs, in particular in making contracts and settlements. It would be very wrong if Judges were to disregard or innovate on what can fairly be regarded as settled law in matters of this kind. (2) Where, although a rule of law is seen to be defective, its amendment calls for a detailed legislative code, with qualifications, exceptions and safeguards which cannot feasibly be introduced by judicial decisions. Such cases call for a rule of judicial abstinence, particularly where wise and effective reform of the law calls for research and consultation of a kind which no Court of law is fitted to undertake. (3) Where the

Page 11

[26] Based on the foregoing elucidations, it is in the finding of the Court that article 178, paragraphs three and five is not among the category of provisions concerned by the exception raised in the previous paragraph. It is the duty of the Court to complete it in order to match the text of that article with the purpose intended by the Legislators for what was intended was not to allow the appellant to be accorded the right that is not entitled to him/her or that is not possible to entitle it to him/her. [27] A joint view of the foregoing elucidations indicate that it is necessary to establish an exception on the principle of silence means acceptance (silence vaut acceptation) provided under paragraphs three and five of article 178, of the aforementioned Law no 22/2018 of 29/04/2018. An exception may be established in two ways: to determine the type of decisions where silence means acceptance, and that for all the other types of decisions silence means refusal, or to determine on the type of decisions where silence means refusal, and then for the remaining

other types of decisions, silence be construed as acceptance for what was informal appealed for. [28] The Court finds that, based on the fact that the Legislator wished to establish the principle of silence means acceptance (silence vaut acceptation), an exception should determine the type of decisions where silence means refusal, and that for all the other types of decisions where the applicant does not get a response, silence be construed as acceptance for what was requested for. Therefore, decisions where the principle of silence means acceptance can be categorized as follows: - Matters relating to national security, safety or public order, freedom of the public, the rights provided by the Constitution and other laws establishing basic rights; - Issues relating to State obligations on regional or international matters; - Matters related to making or asking payment to or from the Government organ; - Matters not related to the personal rights of the appellant; - Existing legal provisions or regulations on where silence means acceptance for such an issue; - complaints or administrative informal appeals against an unfavourable decision (*réclamations ou recours administratifs contre une décision défavorable*); - Collaboration between an administrative organ and its employees; - Documents or certificates issued by administrative organs. [29] With regard to instant case, the Court finds, as mentioned above, that the casefile contains the letter number/Ref.: Let 001/Bat/NM/01/2022 of 04/01/2022, Counsel Nkundabarashi Moïse as the President of Bar Association, wrote to Rukundo Innocent informing him that, after they found out that there exist an Order of the Prime Minister dismissing him from his position as the Prosecutor, a decision which is still, he cannot therefore be authorized to take his oath as an advocate. This is the decision against which Rukundo Innocent informal appealed or complained on 07/01/2022, but his informal appeal was not responded within one month. It is clear to the Court that Rukundo Innocent was provided with explanations for the reasons he was removed from the list, a decision he was not satisfied with, and he then informal appealed. [30] The Court finds that, even though Rukundo Innocent is fighting for his right to be admitted to the profession of advocates, the fact that he was not satisfied with the response given to him, hence

question involves an issue of current social policy on which there is no consensus within the community... (4) Where an issue is the subject of current legislative activity... (5) Where the issue arises in a field far removed far from ordinary judicial experience...” See Tom Bingham, *The Business of Judging: Selected Essays and Speeches 1985- 1999*, Oxford, Oxford University Press, 2000, pp. 31-32.

Page 12

informal appealing against the decision, this makes his informal appeal fall under the category of those which are not governed by the principle of silence means acceptance, rather, in this case, silence means refusal. Such a refusal for what he thinks is in his right pushed him to sue to the Court for it to examine the basis of his request towards the Authorities. [31] Based on the foregoing elucidations, it is in the finding of the Court that, as explained above, the purpose of the Legislator in establishing article 178, paragraphs three and five, of the aforementioned Law no 22/2018 of 29/04/2018, was not to allow the appellant who did not get a response for his/her

request to be accorded what is not in his/her right.

2. Whether Rukundo Innocent should be authorized to take his oath for admission to the Bar Association [32] Rukundo Innocent and his Counsel Sebintu Nkinzingabo Jotham argue that the decision of the Bar Association to refuse Rukundo Innocent to take his oath was based on his dismissal for the position of Prosecutor, however, they disregarded that article 6 of the Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning does not provides dismissal from public service as a reason for not being eligible to be admitted to the profession of advocate, in addition, such a dismissal does not make the dismissed person being excluded from performing any other duty in the country. They aver that his integrity should not be judged on the basis of his dismissal from his position, and such a dismissal should not be given more consideration that the penalty of imprisonment, since an imprisonment sentence that is less than six months does not disqualify a person to be admitted to the Bar Association. [33] They further add that it is not the first time for a person who was dismissed from public service to take his/her oath as an advocate, and examples include Kamagaju Béatrice and Kagabo Théoneste, who were authorized to be admitted to the Bar Association, though they have been fired from their positions as Prosecutors.²⁸ Another example is Sebintu Nkinzingabo Jotham who was refused to take his oath on ground that he had been dismissed from the position of a judge, and the President of the Supreme Court requested the Bar Association to respect the Law, which resulted in authorizing him to swear in as an advocate. For them, the Bar Association failed to prove that those dismissed from their positions and who later on sworn in as advocates are the ones with misconduct compared to other advocates, which should be the reason to not allow dismissed people to be admitted to the Bar Association. [34] They further state that courts have the duty to protect human rights and freedoms, and this is why they pray the Supreme Court to hold that Rukundo Innocent has to be treated equally with others, since in not doing so, should be inconsistent with article 15 of the Constitution of the Republic of Rwanda of 2003 revised in 2015. They find that, the arguments of the Bar Association that based on article 51 of the Law establishing the Bar Association in Rwanda and determining its organization and functioning, reading that in performing his/her profession, an Advocate shall have the obligation to exercise probity, dignity, delicacy, diligence, loyalty, to say the truth and to act for the benefit of his/her clients, therefore, that the dismissal of Rukundo Innocent from his position as Prosecutor, is a proof that he lacks the said values, however, those values are for sworn in advocates and not a candidate, in addition, the Bar Association is unable to prove that he portrayed any kind of misconduct since the time he was dismissed. [35] In their conclusion, they state that internal rules and regulations of the Bar Association should not be used in the instant case for the following reasons:

28Among those examples includes Kagabo Théoneste who was dismissed by the Order of the Prime Minister no 202/03 of 12/09/2019, and he is currently an Advocate with number 1670/T/2020, as well as Kamagaju Béatrice registered under 1407/T/2019, who was also dismissed by the Order of the Prime Minister no 33/03 of 18/03/2014.

Page 13

- The fact that the said internal rules and regulations have no validity for they were not published in the Official Gazette as per their article 213;29 - The fact that those internal rules and regulations especially its article 79 used by the Bar Association, cannot contradict provisions of article 6 of the Law establishing the Bar Association, which does not provide that for being admitted to the profession of advocates one has prove that he/she has never been dismissed from his/her position, and this has been elucidated by the letter of the President of the Supreme Court on the case of Sebintu Nkinzingabo Jotham. [36] Counsel Bimenyimana Eric and Counsel Sebaziga Museruka Sophonie representing the Bar Association argue that a document entitled “déclaration sur honneur” that is submitted to a candidate wishing to be an Advocate which serves as a proof of integrity, and by filling in it, a candidate is required to prove that he/she has never been given various sanctions including misconduct, and information provided thereof should coincide with the curriculum vitae and clearance certificate. They state that Rukundo Innocent filled in that document on 19/04/2021, of course after he had been dismissed, but he did not disclose that he had been dismissed from the Prosecution for gross misconduct, and furthermore, he did not use the form submitted to him by the Bar Association, and by doing so, he intended to conceal the truth. [37] They submit that it is in few days before the swearing in date, that the Bar Association learnt that Rukundo Innocent had been dismissed from the Prosecution, and among reasons for his dismissal includes asking corruption from citizens, and in its analysis, the Bar found out that there exists the Order of the Prime Minister n° 011/03 of 07/06/2021 published in the Official Gazette of 14/06/2021 dismissing him for gross misconduct. They state that all the foregoing reasons indicate that Rukundo Innocent is not a person of integrity in such a way that he could be authorized to be admitted to the Bar Association. [38] They further state that all the daily activities of the Bar Association are governed by Internal rules and regulations, that though they have not yet been published in the Official Gazette, they have been approved by the Council of the Bar Association, and they have been used immediately after they were approved, and in addition, article 79, subparagraph 6 a. and b. was based on in calling for appliactions to be admitted to the Bar Association, and that article provides that the person wishing to be enrolled to the roll of advocates has to certify that: - he/sheis not performing any activities declared by law incompatible with the practice of the profession of Advocate; - his/her activity neverled him/her to do an act which, if itwas known, would prevent his/her enrollment - he/she has never, in Republic of Rwanda or abroad, been convicted of any disciplinary or criminal offence or that he/she has been pardoned or rehabilitated following such conviction. [39] They state that, after Rukundo Innocent was refused to take his oath, he was asked to submit on the

reasons he refused to tell the truth, and replied that the impugned Order of the Prime Minister should not have an impact on him since it came out after the announcement of the Bar Association call for applying for being enrolled to the roll of advocates was already published, while such an Order executes the decisions of High Council of Prosecution as well as the Cabinet resolutions, which Rukundo Innocent was already aware of. They state that in the subparagraph 8 of the announcement,

29Article 213 reads that this Regulation shall take effect from the date of its adoption by the Council of the Bar. It shall be published in the Official of the Republic of Rwanda.

Page 14

candidates were reminded to fulfil the requirements provided under article 79 of the Internal rules and regulations, therefore, the fact that Rukundo Innocent does not deny that he was dismissed due to gross misconduct and that this information was known before he takes his oath, nothing prevent the Bar to suspend such a swearing in. [40] With regard to the existence of other employees of the Prosecution or the Judiciary who were also dismissed but later on authorized to be admitted to the Bar Association, as stated by Rukundo Innocent, Counsel Bimenyimana Eric and Counsel Sebaziga Museruka Sophonie submit that each candidate's file is examined in isolation, and the existence of people who were dismissed from their position for the same reasons like him and who were later on authorized to swear in, does not mean that the Bar Association is obliged to receive his oath also. They add that the Bar Association has initiated the process of rectifying its modus operandi, and the decision to refuse Rukundo Innocent from taking his oath corroborates with that vision of not allowing inappropriate people portraying questionable behaviors to be enrolled to the roll of advocates. DETERMINATION OF THE COURT [41] Article 6 of the Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning provides that nobody can practice the profession of Advocate nor other related duties without fulfilling the following requirements: - to be a Rwandan national; - to hold at least a bachelor's degree in Law or its equivalent; - to have a recognized certificate from Institute of Legal Practice and Development or its equivalence; - not to have been definitively sentenced to a term of imprisonment equal to or exceeding six (6) months; - to have passed the test conducted by the Bar Association; - not to have been convicted for the crime of genocide perpetrated against the Tutsi; - not to have been convicted for the crime of genocide ideology and related offences... [42] Article 79, subparagraph 6, of the Internal rules and regulations of the Bar Association in Rwanda reads that a written statement by which the person wishing to be enrolled to the roll of advocates or internee thereof certifies that he/she: - is not performing any activities declared by law incompatible with the practice of the profession of Advocate, that his/her activity never led him/her to do an act which, if it was known, would prevent his/her enrollment; - has never, in Republic of Rwanda or abroad, been convicted of any disciplinary or criminal offence or that he/she has been pardoned or rehabilitated following such conviction; [...] [43] The case file contains a public announcement of 15/04/2021 highlighting the requirements for a candidate to be admitted to the Bar Association. The subsection 8 of that public announcement requires every applicant to issue a written statement by which the person

concerned certifies that he/she has never, in Republic of Rwanda or abroad, been convicted of any disciplinary or administrative sanction due to gross misconduct or criminal offence or that he/she has been pardoned or rehabilitated following such conviction.

Page 15

[44] The case file also contains papers/certificates of Rukundo Innocent he submitted to the Bar Association. The certificate number eight submitted by Rukundo Innocent is entitled “Clearance Certificate”. That certificate reads that: “I, Innocent Rukundo, certify that I have never been definitely convicted of any offence in the Republic of Rwanda or abroad. I hereby declare that this statement contains nothing other than the truth.” [45] An issue to be analysed by this Court is of whether Rukundo Innocent fulfilled the requirements to be eligible to take his oath as an advocate. Rukundo Innocent states that he was challenged by his misconducts for which he was sanctioned when he was a Prosecutor, however, the foregoing misconducts and sanctions thereof are not listed among barriers to be endrolled to the roll of advocates as per the Law establishing the Bar Association. He further state that such a reason should not be applied on him only, since, as per the modus operandi of the Bar Association, it is clear that there are other former employees of the Prosecution and the Judiciary who were also faced similar sanctions but the Bar Association admitted them. The Bar Association states that, though they accepted the application of Rukundo Innocent, who sat for an exam and passed, just a little time before he took his oath, the Bar learnt that there are some requirements he did not fulfil mentioned in the subsection eight of the announcement for application namely not to have been imposed to disciplinary or administrative sanctions for gross misconducts. [46] It is in the finding of the Court that, in addition to seven criteria for being authorized to practice the profession of advocates listed in article 6 of the Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, for Rwandan candidates, the document entitled “Requirements for application to the Rwanda Bar Association” added the following more requirements: - Application letter addressed to the President of the Rwanda Bar Association (clearly indicating whether you are applying for the admission to the Roll of Advocates or to the list of intern advocates; - Curriculum vitae; - A written statement by which the person concerned certifies that he/she has never, in Republic of Rwanda or abroad been convicted of any disciplinary or administrative sanction due to gross misconduct or criminal offence or that he/she has been pardoned or rehabilitated following such conditions; - One recent passport size photograph in colour on white background. [47] The Court finds that the case file indicates that, all the required documents, be it those provided under article 6 of the aforementioned Law n° 83/2013 of 11/09/2013 or those added by the document entitled “Requirements for application to the Rwanda Bar Association”, Rukundo Innocent submitted all of them except the proof of not having been dismissed for gross misconducts. It is evident to the Court that the curriculum vitae indicates that he is not performing any activities declared by law incompatible with the practice of the profession of Advocate, a written statement by which the person concerned certifies that he/

she has never, in Republic of Rwanda or abroad been convicted of any disciplinary or administrative sanction due to gross misconduct or criminal offence or that he/she has been pardoned or rehabilitated following such conditions provided under article 79, subparagraph 6, of the Internal Rules and Regulations of the Bar Association of 16/09/2014 reiterated above. The Court further finds that nothing prevents the use of these Internal rules and regulations for they have not been published in the Official Gazette, on ground that article 213 of the said Internal rules provides that this Regulation shall take effect from the date of its adoption by the Council of the Bar. It shall be published in the Official of the Republic of Rwanda. The fact that they have not been published yet, it cannot make them invalid, while the Council of the Bar approved its commencement on the date they were adopted.

Page 16

[48] With regard to submissions of Rukundo Innocent that Kamagaju Béatrice, Kagabo Théoneste and Sebintu Nkinzingabo Jotham³⁰ have also been dismissed from public service and they were later on authorized to be admitted to the Bar Association, with the intention to mean that refusing his request should be construed as treating him unequally with others, his argument can be accepted only if he could prove that people he mentioned were eligible to be admitted to the Bar Association, and that he was refused such a right, especially since he himself admit that they were fired for gross misconducts and that the decisions dismissing them are still valid. Their inappropriate admission to the Bar cannot be a reason for authorizing him to take his oath as an Advocate. [49] The Court also finds that the document entitled “Requirements for application to the Rwanda Bar Association” of 19/08/2022 was for all candidates who submitted their applications on the same date with Rukundo Innocent. In that category, Rukundo Innocent failed to prove that there are some of his co-applicants who had also been dismissed for gross misconducts and who have not been pardoned or rehabilitated, who have been admitted to the Bar Association, therefore, his statements that he was not treated equally with others as per article 15 of the Constitution of the Republic of Rwanda of 04 June 2003 revised in 2015,³¹ are baseless. [50] The Court finds that by the time Rukundo Innocent applied to be admitted to the Bar Association, this Bar had already adopted a position of not admitting candidates who are still under sanctions of being dismissed for gross misconducts, meaning people who are not pardoned or rehabilitated yet. The statements by Rukundo Innocent that the Bar Association should have not based on criteria other than the requirements provided under the Law, are unfounded, since article 6 of the aforementioned Law n° 83/2013 of 11/09/2013 provided guidelines on matters relating to basic requirements that should appear in the application file. The Law did not provide details on the nature of some of those requirements. An example here is its silence on the type of a document proving whether the candidate is a Rwandese or a foreigner, because that certificate may be a birth certificate, identification card, passport among others. The Law also remains silent for candidates with foreigner degrees. [51] It also in the finding of the Court that article 6 of the aforementioned

Law n° 83/2013 of 11/09/2013 does neither provide that the candidate has to certify that he/she is not performing any activity judged incompatible with the profession of advocate nor does it highlight qualities/values required for a candidate wishing to be admitted to the Bar. However, articles 38 and 51 provides incompatibilities with the profession of advocates and required qualities/values for an Advocate. One cannot be performing an activity that is incompatible with the profession of Advocate and then be authorized to take his oath as an advocate for the resignation to come later. One cannot also be required to portray the values of an Advocate after he/she has been enrolled to the roll of advocates. One should portray such values before being admitted to the Bar, and then after admission, the Bar Association and other concerned institutions have the duty to examine whether the said values required before swearing in are portrayed in every activity as an Advocate. This means that in applying the provisions of article 6, the Bar Association should not only consider its literal interpretation or isolate it, rather the Bar should link it to the provisions of other articles of the same Law as well as those of other Laws, for it to be able to publish a complete list that is clearly explain the type of requirements for one to be enrolled to the roll of advocates, and on the side of the Bar, this cannot be construed as violation of the Law as submitted by Rukundo Innocent.

30 An Order of the Prime Minister dismissing Kamagaju Béatrice and Kagabo Théoneste was provided, where as for Sebintu Nkinzingabo Jotham, a letter from the President of the Supreme Court requesting the Bar Association to respect the Law, was presented. 31 This article provides that All persons are equal before the law. They are entitled to equal protection of the law.

Page 17

[52] The Court finds that good morals for every person admitted to the Bar Association is not only beneficial to an Advocate only. An Advocate with bad morals loses trust of his/her clients, the Court, his/her confrères, and this can be a reason to infringe public interests instead of protecting them. Such bad morals damage the reputation of the Bar Association as well as tarnishing the image of other Advocates who portray professional values, hence leading to make the public think that all Advocates have the same bad morals. Even though the Resolutions of the High Council of the Prosecution do no specify the type of misconduct that led to the dismissal of Rukundo Innocent from the Prosecution, an Order by the Prime Minister n° 011/03 of 07/06/2021 dismissing prosecutors from duty, only stating that it based on the decision of the Cabinet meeting of 05/05/2021 by mentioning that Rukundo Innocent is dismissed for gross misconducts, it is evident that both decisions were made before 19/08/2022, the date on which the Bar Association published a notice calling for application to be enrolled to the roll of Advocates. [53] It is in the finding of the Court that Rukundo Innocent wrote to the Bar Association on 21/04/2021 applying for being enrolled to the roll of Advocates, be it in that letter or in the Clearance Certification attached to that letter, there is nowhere he dared to reveal about decisions of the High Council of the Prosecution, while this was communicated to him via the communiqué of 09/01/2021. This is a clear evidence that Rukundo Innocent intentionally lied that he was not dismissed for gross misconduct,

and in addition, he did not include in his application file a document containing that information while this was required as per subsection 8 of the document entitled “Requirements for application to the Rwanda Bar Association” of 19/08/2022. In addition, the statements of Rukundo Innocent that the criminal record proving that he had never been subject to a penalty of imprisonment he submitted is sufficient to prove his integrity, should not be considered on grounds that criminal prosecution is different from matters relating to disciplinary faults. The fact that at the level of the Bar Association, the application file of Rukundo Innocent was not duly examined for its timely rejection, this does not remove from Rukundo Innocent the liability of having issued wrong information, and does neither make his application file complete. [54] The Court finds that, apart from failing to fulfil the requirements mentioned in the subsection 8 of the document entitled “Requirements for application to the Rwanda Bar Association” of 19/08/2022, he also dared to conceal the truth he was aware of, and he did it intentionally with the purpose to safeguard his objective of being admitted to the Bar, and such an attitude is far different from the value of truthfulness that an Advocate or the person wishing to be an Advocate is required to portray. This duty/value is the main pillar on which an Advocate builds his/her relation with his/her clients, other institutions as well as the Bar Association. In his work entitled “Le devoir de sincérité de l’avocat”, Romain Jordan reiterates a relationship of trust with a lawyer cannot exist if there is any doubt about the lawyer's honesty, probity, rectitude or sincerity. These traditional virtues are also professional obligations, as most of the oaths taken by lawyers at the start of their careers remind us. They are also the necessary guarantors of judicial honesty.³² [55] In light of the foregoing elucidations, it is in the finding of the Court that Rukundo Innocent failed to fulfil the requirements for him to take his oath as an Advocate as per the law, therefore, his claim lacks merit. III. DECISION OF THE COURT

32 “Les relations de confiance avec un avocat ne peuvent exister s’il y a doute sur l’honnêteté, la probité, la rectitude ou la sincérité de ce dernier: vir probus dicendi peritus. Ces vertus traditionnelles sont aussi des obligations professionnelles, ce que rappellent au demeurant la plupart des serments prononcés par l’avocat au début de sa carrière. Elles sont également les garants nécessaires de la sincérité judiciaire.” See Romain Jordan, *Le devoir de sincérité de l’Avocat*, *Anwalts Revue De L’avocat*, Avril 2018, p.175.

Page 18

[56] Holds that, the fact that Rukundo Innocent informal appealed against the decision removing him from the list of candidates who had to take their oath for being admitted to the Rwanda Bar Association, and did not get a response thereof, does not mean that his request was accepted. [57] Decides that Rukundo Innocent is not authorized to take his oath by the Rwanda Bar Association.

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