

RWANDA / JUDGMENT

THE GOVERNMENT OF RWANDA v. Dr KAREMANGINGO

RADA 0003/14/CS

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THE GOVERNMENT OF RWANDA v. Dr KAREMANGINGO [Rwanda SUPREME COURT – N° RADA 0003/14/CS (Mutashya, P.J., Karimunda and Gakwaya, J.) February 17, 2016] Administrative law – Unlawful dismissal – The applicable law in case the dismissed employee is from high ranking position and he was appointed by an employment contract – The high ranking employees of the public institution who are engaged according to an employment contract, are considered as the civil servants who are governed by the General Statute Administrative law – Employment dismissal – Serious faults – The employer has the burden of proving the serious faults if failed to do so, his claim lose the merit – Law N 15/2004 of ° 12/6/2004 relating to evidence and it's production, article 3. Administrative law – Unlawful dismissal – Dismissal compensation – In case it is obvious that an employee was unlawful dismissed, he/she should be award the money which are amounting to hi/her salary and the other advantages that he/she would be given if he/she would not be dismissed on service, apart from the exception bonus relate with performing his/her duties Administrative law – Unlawful dismissal – Notice – The damages for not be give the

employment certificate – The civil servant who is governed by the general statutes of public service should not be given the notice or the damages for not be given the employment certificate in case he/she is dismissed because it does not provide by the law Administrative law – Annual leave – Leave compensation – There is no awarding of compensation leave or the right to benefit leave in case the employee did not get it because of the grounds of work or sickness Fact: Karemangingo concluded with MINEDUC the employment contract which was renewable for one year. When four months remained so that the contract terminated the Minister of Education wrote to Dr Karemangingo the temporary suspensional letter on service due to mismanagement and insubordination to the ISAE Board of Directors; another thing also is that he was temporary suspended from that day he was informed it, in case he was still waiting for final decision from the competent organs. Dr Karemangingo filed a claim against Ministry of education (MINEDUC) at the labor inspectorate of Gasabo district, and they gave to him the permit to seek the justice to the Court; he filed immediately a claim to the High Court in arguing that he was not informed about the claims mentioned in the suspensional letter in order to provide the defense before being given the penalties. High Court ruled that he should be given the various damages including those of the unfair dismissal, the money of days he was not remunerated, the notice, the dismissal compensation, the moral damages for not be handed the work certificate and the procedure fees and Counsel fees, all together are amounting to 23,810,239Frw The Government of Rwanda did not satisfy with the rulings and appealed at the Supreme Court in stating that the High Court disregarded the evidences that are demonstrating that Dr. Karemangingo Charles committed the serious faults; it held that he has authority to promote the

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employees according to article 34,35 and 37 of the general statutes for public service, however they do not grant it to him, also it erred in awarding the damages because it relied on the salary that exhibits in the former contract. Dr Karemangingo filed cross appeal requesting this Court to award him all damages he requested at the High Court because what it was awarded to him are insufficient, then he also prays for the damages of leave compensation of the year 2011 and 2012, the loss damages equals to 18% of the money he was awarded by the High Court, the counsel fees of 1,500,000Frw and the penalty of forcing execution to the Government of Rwanda after being final. Held: 1. The high ranking employees of the public institution who are engaged according to an employment contract, are considered as the civil servants who are governed by the General Statute.

2. The appeal has no merit because the Government of Rwanda does not prove the serious fault committed by Dr Karemangingo.
3. Each party has the burden of proving the facts it alleges, therefore the Government of Rwanda failed to prove the salary which Dr Karemangingo submitted at the first instance was not correct, can not request for it at appeal level because it was the one who has the burden of proving that the salary he submitted is not correct; this leads the salary that the high Court confirms be given the merit.

4. In case it is obvious that an employee was unlawful dismissed, he/she should be award the money which are amounting to hi/her salary and the other advantages that he/she would be given if he/she would not be dismissed on service, apart from the exception bonus relate with performing his/her duties.
5. The civil servant who is governed by the general statutes of public service should not be given the notice in case he/she is dismissed because it does not provide by the law therefore the amount awarded by the High Court he should not be given it.
6. The civil servant who is governed by the general statutes of public service should not be given the damages for not be given the employment certificate in case he/she is dismissed because it does not provide by the law, therefore the amount awarded by the High Court he should not be given it
7. There is no awarding of compensation leave or the right to benefit leave in case the employee did not get it because of the grounds of work or sickness.
8. the damages awarded to the part by the Court should not be considered as the debt due and payable, when the other part has the right to appeal against that decsion, especially that the decision is not final
9. Counsel fees are awarded in Court's discretion
10. Sentence to pay a fine for delay payment should not be awarded when the requester does not demonstrate the reasons of ordering it. Appeal has merit in part. Cross appeal has merit in part. With the Court fees to the public treasury.

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Statutes and statutory instruments referred to: Law N° 22/2002 of 09/07/2002 on general statutes for Rwanda public service, article 34, 35, 36, 37, 42,43,71,72, 90,91,92,93 na 94 Presidential Order N 46/01 of 29/7/2011 governing modalities for the recruitment, ° appointment and nomination of public servants, article 31. Law N 15/2004 of 12/6/2004 relating to evidence and it's production, article 3. ° No cases referred to. Authors cited: Yves Gaudemet, Droit administratif, 18e édition, LGDJ, Paris, 2005, P. 367

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On 16 November 2007, Dr KAREMANGINGO Charles entered into an employment contract of four years which can be renewable with ministry of education, he was appointed as Rector of Higher Institute of Agriculture and Animal Husbandry (ISAE). On 07 November 2011, they concluded the other contract of one year as it is demonstrated by the document named modification of the service contract signed between the Ministry of Education and Dr. Charles KAREMANGINGO on November 16, 2007, that are supposed to terminate on 06 November 2012. [2] On 06 July 2012, minister of education wrote a letter to Dr. KAREMANGINGO Charles for temporary suspension from your responsibilities as the Rector of

ISAE, and he was informed that he was temporary suspended due to mismanagement and insubordination to the ISAE Board of Directors. He was further informed that in case they still waiting for final decision from the competent organs, he was temporary suspended from that day. As it is provided for by article one of Presidential decree N 53/01 of 03/10/2013, Dr. KAREMANGINGO Charles was dismissed ° to the responsibility for Rector of ISAE; that decree demonstrate that those are examined and confirmed by the cabinet meeting convened on 24 April 2013. [3] Dr. KAREMANGINGO filed a claim against Ministry of education (MINEDUC) at the labor inspectorate of Gasabo district, and they gave to him the permit to seek the justice to the Court; he filed a claim to the High Court for demonstrating that he was not informed about the claims mentioned in the letter of 06 July 2012 that are wrote by Minister of education in order to be requested the explanation before being given the serious penalties, and the fact that there are no any reasonable grounds which is provided for by the Law that led him to be temporary suspended on service. [4] On 13 January 2014, that Court rendered the judgment RAD 0019/13/HC/KIG and held that the government of Rwanda to pay to Dr. KAREMANGINGO 14,714,993Frw of the dismissal damages, 735,750Frw of the six days he was not remunerated, 3,678,748Frw of the

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notice, 3,678,748Frw of the dismissal compensation, 500,000Frw of the moral damages for not be handed the work certificate and 500,000Frw of the procedure fees and Counsel fees, all together are amounting to 23,810,239Frw. [5] The Government of Rwanda did not satisfy with the rulings of this judgment, and appealed at the Supreme Court in stating that the High Court disregarded the evidences that are demonstrating that Dr. KAREMANGINGO Charles committed the grave faults that led to his dismissal, that the High Court held that Dr. KAREMANGINGO Charles has competency to promote an employee he wishes according to article 34,35 and 37 of the Law 22/2002 establishing the general statutes for public service, however they do not grant to him that authority, also the High Court erred in awarding the damages to Dr. KAREMANGINGO because it relied on the salary that exhibits in the former contract. [6] Dr. KAREMANGINGO Charles filed cross appeal on that of Government of Rwanda requesting this Court to award him all damages he requested at the High Court because what it was awarded to him are insufficient, he also prays for the damages of leave compensation of the year 2011 and 2012, the lass damages equals to 18% of the money he was awarded by the High Court, the counsel fees of 1,500,000Frw and to order the government of Rwanda to pay 10,000Frw per day from the delivery of the judgment of the fine as the penalty force execution. [7] On 15 December 2015, the hearing was conducted in public , the Government of Rwanda represented by the State attorney NTAGANDA Félix whereas Dr. KAREMANGINGO Charles assisted by Counsel NKURUNZIZA Jean-Pierre. During the hearing, the Court raised the issue concerns with determining the applicable law in examining this case. II. ANALYSIS OF THE LEGAL ISSUES Determining whether Dr. KAREMANGINGO is bound by the labor law in Rwanda or the law establishing the general statutes for public service basing on the responsibility he has at ISAE [8] Counsel NKURUNZIZA Jean-Pierre states that in this judgment the labor law should be applied, Dr. KAREMANGINGO Charles says that ministerof education suspended him on service by basing on the contract he concluded with the government, he

disregarded that it should pass through the Government in order to suspend him on work, this means that his suspension should be based on the law establishing the general statutes for public service. [9] The Government of Rwanda argues that the general statutes for public service must be applied. VIEW OF THE COURT [10] The Supreme Court finds that on 16 November 2007 Dr. KAREMANGINGO Charles concluded an employment contract with ministry of Education, he was appointed on the post of Rector of the Higher Institute of Agriculture and Animal Husbandry (ISAE).

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[11] The Supreme Court finds that even if Dr. KAREMANGINGO Charles concluded an employment contract with ministry of education, the fact that he was the administrator of public institution, implemented its plans, also worked for coordination, planification, evaluation and also pursuing its assets, he should without hesitating be part of employees that are regulated by the general statutes for public service instead of being regulated by the labor contract he entered into with ministry of education, basing on the principal which provides for that the high ranking employees of the public institution who are engaged according to an employment contract, are considered as the civil servants who are governed by the Statute.¹ [12] The Supreme court finds that to consider Dr. KAREMANGINGO Charles as the civil servant who is regulated the general statutes for public service that are demonstrated by the presidential decree 53/01 of 3/10/2013 that dismiss the rector of the high institute whereby the President of the Republic based on especially on article 17 of the Law 22/2002 of 09/07/2002 establishing the general statutes for public service, he ordered to dismiss Dr. KAREMANGINGO Charles on the service of being Rector of Higher Institute of Agriculture and Animal Husbandry, ISAE. [13] Basing on provided motivation above, the Supreme Court finds that in analysing this case, there should be the provisions of the general statutes for public service since Dr. KAREMANGINGO Charles is bound by that statute instead of being the labor law in Rwanda. Determining whether Dr. KAREMANGINGO committed the serious faults in order he should not be awarded by the Court the salary of the months and days he did not due the temporary suspension on service [14] The Government of Rwanda states that the High Court disregarded the evidence which demonstrating that Dr. KAREMANGINGO Charles committed the serious faults that led to his dismissal however he agreed himself that he concluded an employment contract with foreign employees while the first contract did not experied, and also the second contract does not provid that it abrogates the first one. It futher adduces that the second contract caused the government of Rwanda to pay those two employees an excessive amount, thus it realises that what Dr. KAREMANGINGO Charles committed is a serious faults, he should not be renumerated the salary of the months he did not work for that the High Court awarded to him. [15] The government of Rwanda states inadditional that the serious faults Dr. KAREMANGINGO Charles committed is indicated by insubordination to the high government organs to him. It explains that on 06 June 2012 after four months the Board of Directors confirmed that there must be an exam on the posts of directors, Dr.

KAREMANGINGO Charles wrote to the Board of Directors that what the public services done are not correct and also he did not accept to implement the decisions of the Board of Directors 1 'Certains agents non-fonctionnaires ont une situation définie par des lois et règlements. D'autres sont au contraire liés par contrat à l'administration; mais il peut s'agir soit des contrats administratifs qui font de l'agent <<un agent public>> relevant du droit public, soit de contrats de droit privé qui placent l'agent dans une situation juridique de pur droit privé. La jurisprudence a longtemps considéré qu'il y avait contrat administratif et <<agent public>> lorsque le contrat fait participer directement l'agent intéressé au fonctionnement même du service public (CE, 20 mars 1959, Lauthier, D., 1960, p. 280, note de Laubadère) et contrat de droit privé dans le cas contraire (....)", in Yves Gaudemet, Droit administratif, 18e édition, LGDJ, Paris, 2005, P. 367

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for performing the competition again on the post of Director of finance, Director of assets, and Director of student services. [16] The Government of Rwanda states also that Dr.

KAREMANGINGO Charles committed the serious faults of promoting the employees without the quality to do so. It continues in arguing that even if he would have that quality he could not engage the person who does not have the post requirement. He further explains that Dr.

KAREMANGINGO Charles promoted the employees according to the steps, by disregarding the provisions of article 72 of Law 22/2002 of 09/07/2002 mentioned above and also without promoting them through the competition as it is provided for by Presidential Order governing modalities for the recruitment, appointment and nomination of public servants, therefore it realizes that the High Court committed the mistake to confirm that Dr. KAREMANGINGO Charles had that authority basing on article 34,35 and 37 of Law 22/2002 of 09/07/2002 mentioned above and to decide that the promoted employees are not bound by Presidential Order mentioned above.

[17] Concerning the second employment contract that are stated by the Government of Rwanda, Dr KAREMANGINGO Charles argues that in paragraph 13 of the appealed judgment, the High Court demonstrates the letter he wrote on 26 June 2009 it is one which terminated the first contract, consequently he realizes that there is no new irrevocable evidence in appeal which shows what the Government of Rwanda criticises the decision of the previous judge. [18]

Concerning the letter of 06 June 2012 which Dr. KAREMANGINGO Charles wrote to the director board of ISAE, the latter states that in writing that letter, there are serious faults he committed that could lead him to be dismissed, without being informed about the faults he committed so that he could defend on it, especially four months only left so that the employment contract he entered into with MINEDUC terminates, hence he takes into account that Government of Rwanda does not clearly demonstrate its criticism on the decision of the high Court. [19] Regarding the employees that he promoted without the quality, Dr. KAREMANGINGO Charles says that he had the quality to promote the competent employee in case there is a vacant post and the budget for it, basing on article 34,35 and 37 of the Law 22/2002 of 09/07/2002 mentioned above. He further adduces that article 72 of that law does not provide for the promotion of employee on the step and also it will not be applied in that circumstance since its paragraph three was placed by Prime Minister's

Order N 121/03 of 8/9/2010 establishing the ° procedure of performance appraisal and promotion of public servants. He adds that if what was happen the serious faults, Minister would not spend six months before taking the decision to dismiss him on the responsibility of the public service. VIEW OF THE COURT [20] Article 90 of the Law N° 22/2002 of 09/07/2002 on general statutes for Rwanda public service which was in force when Dr. KAREMANGINGO Charles was temporally dismissed on service provides for that “no disciplinary sanction can be pronounced without the concerned person having had the possibility to present in writing his/her means of defence. No sanction can be effective for the period prior to its pronouncement”.

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[21] Article 91, paragraph two of the Law N° 22/2002 of 09/07/2002 mentioned above provides for that “first degree sanctions deal with less serious faults while those of the second degree relate to the most serious faults” [22] Article 92, paragraph two of the Law N° 22/2002 of 09/07/2002 mentioned above provides for that “second degree sanctions are suspension for a period of three months maximum, delay in promotion and expulsion” [23] Article 93, paragraph two of the Law N° 22/2002 of 09/07/2002 mentioned above provides for that “second degree sanctions are imposed by the competent authority after taking into account views from the Commission”. [24] Article 94, paragraph one of the Law N° 22/2002 of 09/07/2002 mentioned above provides for that “a second degree disciplinary sanction must be notified in draft first to the concerned person who will provide additional explanations”. [25] The Supreme Court finds that as it is clear in the letter of 06 July 2012, Dr. KAREMANGINGO Charles was temporally dismissed due to mismanagement and insubordination to the ISAE Board of Directors, but that letter does not demonstrate the mismanagement or insubordination to the ISAE Board of Directors. [26] The Court finds that the fact Dr. KAREMANGINGO Charles was not give the time to present in writing his/her means of defence, before being dismissed, his dismissal on service was conducted with the contradiction of article 90 and 94 of the Law N° 22/2002 of 09/07/2002 mentioned above. [27] The Court finds also that the fact the saction of suspending temporally Dr. KAREMANGINGO Charles was implement without taking into account the view of the commission, also his dismissal was conducted with the contradiction of article 93 paragraph two of the Law N° 22/2002 of 09/07/2002 mentioned above. [28] Apart from that, the Supreme Court find that the statements of the Government of Rwanda that Dr. KAREMANGINGO Charles committees the serious faults which led him to be dismissed because also he accepts that he concluded an employment contracts to two foreigners when the first contract did not yet terminate, indeed the second contracts do not stipulate that it abrogate the former one, it should not be given the merit because as the High Court demonstrated in paragraph 13 of the appealed judgment, the letter of 26 June 2009 which was written by Dr. KAREMANGINGO Charles informed one of the foreign employee that basing on the decision of ISAE Executive Council of 12 June 2009, they concluded the second contract on 1 July 2009 which could be addendum on the first contract or the new contract, according to their wishes since that Council took the decision to award to them the various advantages and bonus. [29] The

Supreme Court finds that basing on the Contracts which ISAE concluded with two employees on 1 July 2009, the first contract was abrogated by the new contract, which means that the second only would be performed from 1 July 2009 to 30 June 2012. [30] Concerning the argument that the serious faults of insubordination to the ISAE Board of Directors as it is obvious in the letter of 6 June 2012 Dr. KAREMANGINGO Charles was arlead

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written to Prof. KIMONYO Anastase, Chairman, Board of Directors for ISAE, Supreme Court finds that the analysis of that document does not demonstrate that he refused to implement the decision of the board of directors on what concerns for performing the competition again on the post of Director of finance, Director of assets, and Director of student services, rather it demonstrates that after requesting the organs of ISAE which has the responsibility to implement the decisions regarding to make the publicity and competition of the directors posts, taken by Public Service Commission, they was confirmed by the Council board of 08 February 2012, he continue to request the board of ISAE to meet again so that it could examine in detail the decision concerns with the posts of Directors of Students, Director of Finance and Director of Estate because basing on article 34,35 and 37 of Law N° 22/2002 of 09/07/2002 mentioned above, in 2009 he had the quality to promote the compentent employees in case there is a vacant posts and also there is a budget. [31] Supreme Court finds that article 72 of Law N° 22/2002 of 09/07/2002 mentioned above which the Government of Rwanda uses in pleading does not demonstrate that Dr. KAREMANGINGO Charles committed the serious faults for promoting those employees, since that article provides for the performance evaluation of every public servant per year it also indicates he or she is value, competence and methods of work, it futher explains that the evaluation forms the essential basis for assessing his/her right to promotion from one step to another every two years and to annual salary increase, therefore it finds that the fact Government of Rwanda only states that the faults Dr. KAREMANGINGO Charles committed was to promote in steps while article 72 mentioned above concerns with promotion in levels; it shows its contradiction and not demonstrating the legal basis which emphasises its statements. [32] Moreover Presidential Order governing modalities for the recruitment, appointment and nomination of public servants, the Government of Rwanda argues that the High Court did not follow it while it demonstrate the serious faults which Dr. KAREMANGINGO Charles committed, the Supreme Court finds that it should not be applied in this judgement because it is not concerning with the manner of promoting the public seervant rather it only governs modalities for the recruitment, appointment and nomination of public servants. [33] Apart from that, the report requirements of the Public Service Commission of 04 January 2012 for again launches a call for tenders the post which were not competed in pursuing Presidential Order n 46/01 of 29/7/2011 mentioned above, basing on it's article 31 provides for ° that "this order shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda", Supreme Court is finding that the fact the presidential order was published in the Official Gazette of the Republic of Rwanda on 31 July 2011 shoud not be based on by declaring that Dr. KAREMANGINGO Charles committed the serious faults for promoting those employees, it is not

true in case it is obvious that promoting those employees was in 2009. [34] In addition to that Prime Minister's Order N 121/03 of 8/9/2010 establishing the ° procedure of performance appraisal and promotion of public servants mentioned by Dr. KAREMANGINGO Charles, was came to implement the provisions of article 71 and 72 of Law N° 22/2002 of 09/07/2002, in its article 2 paragraph one provides for that " this order shall apply to all public Servants who are still in service (...)", but if it will be based on it's article 36, it should not be applied because it was promulgated in official gazette on 11 October 2010 while promoting those employees was in 2009 as it is stated above.

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[35] Basing on all mentioned in the previous paragraphs of this, the Supreme Court finds that there is no serious fault that Government of Rwanda demonstrates which would lead Dr. KAREMANGINGO Charles to be dismissed on service, consequently this ground of appeal of the Government of Rwanda does not have the merit. Determining whether Dr. KAREMANGINGO should not been awarded by the High Court the money for Lumpsum, communication, notice and the damages for not be given the work certificate that are calculated on the salary of the former contract [36] The Government of Rwanda argues that even if it does not accept that Dr. KAREMANGINGO Charles should be given any king of the damages, it realised that the high Court was erred on calculation because it based on the salary of the former contract, therefore it prays this Court that Dr. KAREMANGINGO Charles would submit to it the document which demonstrate his last saraly in order to know the real saraly. [37] The Government of Rwanda states that in awarding the damages, the High Court awarded the money of Lumpsum and communication to Dr KAREMANGINGO Charles, those advantages was given to the employees in order to facilitate him in public service, therefore it realises that to award them to him now it is an unjust enrichment, espeacilly he is not going to be reinstared so that he utilises that Lumpsum and communication. It also states the High Court awarded to him the notice while he does not deserve it basing on article 28 of the law N 13/2009 ° of 27/5/2009 regulating labor in Rwanda since he was dismissed for good on work due the serious faults. It concludes in arguing the High Court awarded to him the damages for not be awarded the damages of not be given the work certificate while it held that the content of the recommendation letter that he was given by Prof. KIMONYO Chairman of board for ISAE, are those include in article 38 of law N 13/2009 of 27/5/2009 mentioned above, therefore it realises ° that the High Court was contradicted itself. [38] Concerning with the arguments of Government of Rwanda that the High Court was erred on the salary that must be relyied on in calculating the damages he was awarded because it based on the salary of the former contract, Dr. KAREMANGINGO Charles states that at the first instance, Government of Rwanda was given the time to plead on this ground but it did not do even in its submission nor during the hearing of this judgement, therefore he ralises that it clear that he accepts that awarded money. [39] Concerning the statements of Government of Rwanda that he should not be given the money of lumpsum and communication, Dr. KAREMANGINGO Charles states that the government of Rwanda did

not plead on this ground before the High Court so that it disregarded it, there is no reason to appeal for them before this Court because the fact that it did not do at the first instance it must be comprehended what he requested was lawful. [40] Concerning the notice the Government of Rwanda states that the High Court should not be awarded it to him, Dr. KAREMANGINGO Charles states that he did not commit any kind of breach that can lead him to be awarded that money, indeed the provisions of the contract they entered into provided for that in case of serious faults the notice is necessary. [41] Concerning the work certificate, Dr. KAREMANGINGO Charles states that the High Court decided that the document he was given by Chairman of Board for ISAE should not be

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considered like that of his employer Ministry of Education which he concluded with it the contract. He further states that the document he was given is ordinary because it is a recommendation letter it is not the work certificate which should have the stamp of Ministry of Education, thus he finds out that he deserves the damages for not being given the work certificate. VIEW OF THE COURT [42] Article 3, paragraph one of Law N 15/2004 of 12/6/2004 relating to evidence and its production provides for that “each party has the burden of proving the facts it alleges”. [43] Concerning monthly salary which Dr. KAREMANGINGO Charles requested, the Supreme Court finds at the first instance, Dr. KAREMANGINGO Charles demonstrated to the High Court that he requested 2,067,811Frw of the brut salary, 840,594Frw of lumpsum, 150,000Frw of communication and 620,343Frw of bonus, the total amount of the monthly salary are 3,678,748Frw. [44] Supreme Court finds that at the first instance, apart from confirming that Dr. KAREMANGINGO Charles should be given the dismissal compensation of one month salary, there is no where the Government of Rwanda criticised the amount of the salary that Dr. KAREMANGINGO Charles requested for. It is finding that the fact it criticises it at appeal level while it was the one who remunerated him, it is its burden to prove that the amount submitted by Dr. KAREMANGINGO Charles is not true, then it finds that in case it failed to prove it, the amount of the salary which the High Court held for must be given the merit. [45] Concerning the statement of the Government of Rwanda that Dr. KAREMANGINGO Charles should not be awarded the money for lumpsum and communication, Supreme Court finds that in case it is obvious that the public servant was unlawfully dismissed, he/she should be awarded the money which are amounting to his/her salary and the other advantages that he/she would be given if he/she was not unlawfully dismissed on service, except the exception bonus relate with performing his/her duties. [46] Basing on what mentioned in the previous paragraph of this, Supreme Court finds that the money of Lumpsum and communication which Dr. KAREMANGINGO Charles received which is related to the bonus of post he occupied, they are not the bonus which were given in term the service he carried out, then it finds that they should be included in computing the damages he deserves. 2 Considering that, by virtue of the general principles governing the responsibility of public authorities, an unlawfully dismissed public official is entitled to full reparation for the damage he has actually suffered as a result of the unlawful action taken against him; That any loss or damage of any kind with which the unlawful

act committed constitutes a direct causal link, taking account of the respective importance of that illegality and the errors committed against the person concerned, shall be compensable; Whereas, in assessing the amount of the compensation due, account must be taken of the loss of salary and of the premiums and allowances which the person concerned had for the period in question a serious chance of benefiting, With the exception of those which, having regard to their nature, purpose and the conditions under which they are paid, are intended only to offset costs, charges or constraints connected with the actual performance of the duties

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[47] Concerning the statement of Government of Rwanda that Dr. KAREMANGINGO Charles should not be awarded the notice fees because he dismissed for good due the serious faults he committed, rather the Supreme Court finds that the fact Dr. KAREMANGINGO Charles was a public service worker is under the general statute of the public service do not deserve it because it does not provide for by Law 22/2002 of 09/07/2002 establishing the general statutes for public service, therefore it finds that he should not be awarded 3,678,748 Frw of the notice that he was awarded by the High Court. [48] Concerning the damages for not being given the employment certificate, Supreme Court is finding that the Law 22/2002 of 09/07/2002 establishing the general statutes for public service which is also governing Dr. KAREMANGINGO Charles does not provide that the Government of Rwanda must give to its employee who is governed by the statute the employment certificate or to be charged the moral damages in case it did not hand it; when service terminates, therefore Dr. KAREMANGINGO Charles should not be given 500,000 Frw that he was awarded by the High Court due to not being given the employment certificate. [49] Basing on all mentioned above, Supreme Court finds this ground of appeal of Government of Rwanda has merit in part. Determining whether Dr. KAREMANGINGO Charles should be given the damages he requests [50] Dr. KAREMANGINGO Charles states that he prays the High Court to award to him all damages he requested at the first instance because what he got are not enough and also the High Court did not clearly motivate the reason why he was not given all requested damages. He explains that those which were not awarded are concerning with leave compensation of 2011 and 2012 worth to 6,224,326 Frw this means 3,782,673 Frw of leave allocation that equals to his average salary which is calculated in past 12 months and the other things he entitled to and 2,000,000 Frw of the Counsel fees at first instance. [51] Dr. KAREMANGINGO Charles further argues that he requests at appeal level to be awarded the loss damages which is calculated from 12 February 2014 equals to 18% of 23,810,239 Frw he was awarded by the High Court because the Government of Rwanda continues to drag him into vexatious litigations in order for delaying to pay him, the Counsel fees of 1,500,000 Frw, he also prays that it should be ordered the sentence to pay a fine for delay payment of 10,000 Frw per day from the day the judgment will be binding. [52] Concerning the leave allocation, the Government of Rwanda states that it is not recognised under the law governs the public servants, apart from, if Dr KAREMANGINGO Charles produces that it is provided under the contract they concluded. It explains that the employee is the one who request for

the leave then the employer can grant it to him/her or refuses it; consequently it realises Dr KAREMANGINGO Charles has the burden to prove that he requested it but he was not granted it. Further he explains that the salary which Dr KAREMANGINGO Charles uses for requesting the damages is unjustifiable because the amounts he uses and the salary concerns with the terminated contract. [53] Concerning the loss damages Dr KAREMANGINGO Charles that he requests of 18% of 23,810,239Frw he was awarded by the High Court, the Government of Rwanda states that he

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should not be given that amount because he would request for it when he irrevocably won for it *res judicata*. Whereas on what concerns with the Counsel fees, it requests the Court to examine it in its discretion. VIEW OF THE COURT [54] Article 42, paragraph 1 of the Law 22/2002 of 09/07/2002 establishing the general statutes for public service provides for that “at the end of twelve (12) months of service, the Government employee must compulsorily benefit from an annual statutory leave of thirty (30) calendar days”. [55] Article 43, paragraph 1 of the Law 22/2002 of 09/07/2002 mentioned above provides for that “where a Government employee has not been able to benefit from his/her annual leave during the previous year for service reasons though he/she applied for it, he/she gets a leave resulting from the accumulation of two consecutive years of service”. [56] The Supreme Court finds that as provides for by the general principle of the law, the analysis of the provisions of the laws mentioned above imply that the Government employee should get annual leave each year after twelve months of service, in case he/she has not been able to benefit from it on the grounds which are not work or sickness he/she loses the rights to get it also he does not have the right to pray to the Court for leave compensation. [57] Supreme Court finds that Dr. KAREMANGINGO Charles was not benefited the annual leave of 2011 and 2012 but he did not prove that his boss received the leave application letter or he did not allow it to him due to the reasons of work or sickness. [58] Basing on all stated in the previous paragraph of this, the Supreme Court finds that Dr. KAREMANGINGO Charles should not be awarded the leave allocation. [59] Concerning the damages of 18% which Dr. KAREMANGINGO Charles requests on 23,810,239Frw he was awarded by the High Court, the Supreme Court is finding that he does not deserve it because that amount is not debt due and payable, moreover the Government of Rwanda has the right to appeal against those damages in case it does not satisfy with the ruling, notable that the decision is not final. [60] Concerning with 2,000,000Frw of the Counsel fees at the first instance that Dr. KAREMANGINGO Charles requests, Supreme Court finds that the requested amount is excessive, then he deserved what he was awarded by the high Court in its discretion, this means 500,000Frw. [61] Concerning with 1,500,000Frw of the Counsel fees at the second instance that Dr. KAREMANGINGO Charles requests, Supreme Court finds that he should be given it but because what he request is excessive, in its discretion it awards to him 800,000Frw. [62] Regarding with ordering the Government of Rwanda to pay a fine for delay payment of 10,000Frw per day from the day the judgment will be binding, Supreme Court finds that there

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any grounds which Dr. KAREMANGINGO Charles proves that the Government of Rwanda be ordered that sentence to pay a fine for delay payment. [63] Basing on all stated above, the Supreme Court finds that Dr. KAREMANGINGO Charles should be given the damages of the salary of four months which remained so that the employment contract terminated, this implies 14,714,993Frw, 735,750Frw he was awarded by the High Court equals to six day he was not remunerated because he was temporally dismissed on 06 July 2012 after spending six days in that month, 500,000Frw he was awarded by the High Court of the procedure fees and counsel fees and 800,000Frw of the Counsel fees on appeal level, all together are amounting to 16,750,743Frw. III. DECISION OF THE COURT [64] It holds that the appeal of the Government of Rwanda has the merit in partial; [65] It holds that the cross appeal of Dr. KAREMANGINGO Charles has merit in partial; [66] It rules that the judgment RAD 0019/13/HC/KIG rendered by the High Court on 13 January 2014 overturns on what concerns the damages that Dr. KAREMANGINGO was awarded at the first instance; [67] It orders the Government of Rwanda to pay to Dr. KAREMANGINGO 14,714,993Frw of the salary of the four months remains so that the contract terminates, 735,750Frw of the six days he did not be remunerated, 500,000Frw of the procedure fees and counsel fees at the first instance and 800,000Frw of the Counsel fees at appeal level, all together are amounting to 16,750,743Frw; [68] It orders that the Court fees of this judgment are on the side of public treasury.

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