

ADVENTIST UNIVERSITY OF CENTRAL AFRICA (UAAC)
v. NYIRASAFARI

[Rwanda HIGH COURT – RSOCA 0226/13/HC/KIG (Hitimana, P.J.) August 27, 2014]

Labour Law – Forms of an employment contract – An employment contract is a written or oral contract that a person undergoes with another person undertaking to work for him with the aim of getting the salary and that contract could be a fixed term contract or an open-ended contract – Law N° 13/2009 of 27/05/2009 governing labour in Rwanda, articles 1 and 15.

Law regulating labour – Work certificate – Damages – When the employer failed to deliver to the employee the work certificate and his or her final dues, it is considered as he/she refuses to deliver it even if the employee did not request it and he refused to give it to him/her – The refusal to deliver the work certificate, omit one of the requirement or delaying to deliver that certificate should be paid the damages – Law N° 13/2009 of 27/05/2009 governing labour in Rwanda, article 38.

Damages – Procedural fees, daily income compensation, and late fine – If the requester fails to produce its evidences, they are awarded at Court’s discretion.

Civil procedure – Reimburse of the Court fees – The litigant who lost the case has to pay the court fees, therefore the litigant who win the case will be reimbursed at the time of execution – Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 360.

Facts: After UAAC wanting to modify the contract they concluded with Nyirasafari into written contract for the period six months, but she refused to sign that new contract but she requested UAAC to first terminate the existing employment contract, before she signs the new one. Then UAAC after realising that she does not sign that contract it dismissed her, it led Nyirasafari to sue it at Intermediate Court of Gasabo in accusing it that it unfairly dismissed her, it did not deposit for her social security contributions, the amount deducted and she requested the damages of non-delivery of the work certificate.

The Counsel for UAAC defends in arguing that Nyirasafari worked without a written contract concluded with her employer those are allowed according to the law N° 51/2001 of 30 December 2001, however after the publication of the law n° 13/2009 of 27/05/2009 governing labor in Rwanda, it requested her to conclude the new contract as provided for by the new law, but Nyirasafari refused it. He adduces on what is concerning about all damages that plaintiff requests, UAAC awarded accompanying allowance, she was paid her last salary and the leave compensation; hence, there should have been no damages awarded to her due to unfair dismissal. That Court held that Nyirasafari was unlawfully dismissed, thus it ordered that she must be deposited social security contributions, to be given the deducted amount and it awarded her the damages for not be given the work certificate and the procedure fees.

UAAC appealed to the High Court stating that the Court awarded Nyirasafari damages for unfair dismissal while she is the one who refused to sign the written contract and awarded her also damages for non-delivery of her work certificate yet she did not apply for it and be denied of it. UAAC also states that Nyirasafari was awarded damages relating to procedural fees, yet it she is the one who engaged in court proceedings unnecessarily. Nyirasafari defends herself arguing that the judge motivated that the termination of the employment

contract was unilateral from the employer without the agreement of both parties whereas about concerning the work certificate she states that it is understandable that the certificate was available but it was not given to her at the time she was paid the final liquidation, which demonstrating the willingness to deliver it. Thus she asserts that she is not the one who dragged the UAAC into lawsuit but rather the UAAC that dragged her into lawsuit, that is why it should pay to her the procedure fees and she filed cross appeal for praying the augmentation of the damage which she was awarded by the previous Court.

Held: 1. An employment contract is a written or oral contract that a person undergoes with another person undertaking to work for him, with the aim of getting the salary and that contract could be a fixed term contract or an open-ended contract, therefore the fact that the appellant terminated the employment contract with the pretext that the respondent refused that the open ended oral contract be changed into the written fixed term contract; it must be considered as it unfairly dismissed her.

2. When the employer failed to deliver to the employee the work certificate and his or her final dues, it is considered as he/she refuses to deliver it even if the employee did not request it and he refused to give it to him/her.

3. The employer who refused to give the work certificate or the non-inclusion of one of the requirements or delivers it lately, he/she must pay the damages for it.

4. The fact that Nyirasafari was unfairly dismissed, it means that, it is UAAC that is responsible of having engaged her in court proceedings, therefore, it should be paid all her expenses in these court proceedings which are awarded in Court discretion since the requester does not produce the evidences of its amount.

5. The fact that UAAC lost the case, it is the one which must pay the court fees, hence Nyirasafari should be reimbursed at the time of execution.

**Appeal has no merit.
Cross appeal has merit in part.
With court fees to the appellant.**

Statutes and statutory instruments referred to:

Law N° 13/2009 of 27/05/2009 governing labour in Rwanda, articles 1, 38 and 15.

No case referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] Nyirasafari Edissa was an employee of UAAC governed by unwritten employment contract which had undetermined period. UAAC wanted to modify the mentioned contract into a written contract with a determined period of 6 months and Nyirasafari Edissa refused to sign -that new contract and requested UAAC to first terminate the existing employment contract, before she signs the new one. After refusing to sign that contract UAAC dismissed her.

[2] Nyirasafari filed a claim before the Intermediate Court of Gasabo, claiming that she was unfairly dismissed, social security contributions and the amount deducted and the work certificate was not given to her.

[3] The counsel of UAAC explained that they requested Nyirasafari Edissa to terminate the first contract so that they can sign another contract of six months and she refused requesting them to first terminate the existing contract of undetermined period, they terminated it and gave her the accompanying allowance, leave compensation and the supplementary hours she claimed for were not proven by that time.

[4] The Intermediate Court held that the termination of the employment contract of Nyirasafari Edissa was unilateral from the employer without the agreement of both parties because she was not legally notified about the ground on which the signing of another contract was based on, yet the first one was still running, and this was a way to indirectly terminate the first contract promising her to sign the one with a determined period of 6 months because the first was terminated and she was not given another contract that she refused, this being evidence that there was no just cause for the termination of the first employment contract and even the procedure through which it was terminated was not in accordance with the law. Basing on article 33 of the Rwandan labour code, the court awarded Nyirasafari damages equal to her salary of 4 months, (30.000 x 4) meaning 120,000Frw.

[5] The Intermediate Court held that Nyirasafari Edissa has to be paid for social security contributions because since she started her work in June 2005, UAAC has no prove of paying her contributions. The court also ordered that she should be paid 1,100Frw which was for Christmas and the New Year. It awarded her damages of non-delivery of the work certificate equal to 50,000Frw and 50,000Frw as procedural fees.

[6] UAAC was not satisfied with the ruling and appealed before this court asserting that:

The Court awarded Nyirasafari damages due to unfair dismissal yet she herself refused to sign the written contract;

The Court awarded her damages of non-delivery of her work certificate yet she did not apply for it and be denied of it;

The Court awarded her damages relating to procedural fees, yet it was herself who engaged in court proceedings unnecessarily.

[7] Nyirasafari asserts that the appeal of UAAC has no merit and claims that damages awarded to her be increased.

[8] These grounds of appeal are going to be examined.

II. ANALYSIS OF THE LEGAL ISSUES

1. To determine whether Nyirasafari had to be awarded damages due to unfair dismissal.

[9] The counsel of UAAC asserts that Nyirasafari worked without a written contract concluded with her employer because the law at that time governing labor in Rwanda allowed that in case it was a contract with undetermined period (the Law N° 51/2001 of 30 December 2001. He asserts that after the publication of the law n° 13/2009 of 27/05/2009 governing labor in Rwanda, UAAC requested Nyirasafari Edissa to conclude a written contract as

provided for by the new law, especially under its article 17. He argues that Nyirasafari Edissa refused and said that she is not willing to change her employment regime of working under unwritten contract yet she was given explanations that this regime is not allowed under the new law. The counsel on behalf of UAAC asserts that due to the fact that Nyirasafari was no longer willing to work for UAAC, she was given the notice period for the termination of the unwritten employment contract she had, and she was given the accompanying allowance as provided for by the law and was paid her last salary and the leave compensation. Hence, there should have been no damages awarded to her due to unfair dismissal.

[10] Nyirasafari Edissa asserts that this ground of appeal is not founded since the Judge at the first instance rendered the judgment in his discretion as indicated in the copy of the judgment appealed against where he explained that the termination of the contract done unilaterally emanated from the employer not from her.

[11] The court finds that the argument of UAAC's Counsel is not founded, where he states that the termination of the employment contract of Nyirasafari with UAAC emanated from Nyirasafari who refused to sign the written contract because he does not demonstrate the justified cause which made the UAAC change the contract of undetermined period into a contract with determined period of 6 months. His assertion that after the publication of the law^o 13/2009 of 27/05/2009 governing labor in Rwanda, UAAC requested Nyirasafari Edissa to sign a written contract as provided for by the new law is not founded since he does not provide the article or stipulations of that law which states that employees with contracts with employment contracts of undetermined period have changed to the employment contract with determined period, and nowhere that law commands that all employment contracts has to be written. Article 1 of the law stated above provides that an employment contract is a written or oral contract that a person undergoes with another person undertaking to work for him with the aim of getting the salary. This is emphasized even in article 15 of that law, which provides how the employment contract is concluded. It provides that the contract can be either written or oral; it can also be of undetermined period or of determined period, or relating to a certain task. It is obvious that the fact that Nyirasafari Edissa had an oral employment contract with undetermined period, it is not contrary to the law stated above to the extent that UAAC could use that as a pretext to modify it. There is no even other cause that is put forward by UAAC that led it to modifying the contract; therefore the fact that Nyirasafari did not accept that modification is founded, since there is no just cause given to her. The fact that UAAC terminated the contract under the pretext that Nyirasafari refused its modification must be considered as if it was terminated without a just cause because, since there was no ground that could allow forcing Nyirasafari to sign the employment contract of a determined period of six months, yet she already had a licit employment contract with a undetermined period. Therefore, there was no reason that would lead to the termination of that contract. Hence, the ruling of the Intermediate Court that UAAC unfairly terminated the contract is founded.

2. To determine whether Nyirasafari had to be awarded damages due to the non-delivery of her work certificate.

[12] The Counsel of UAAC asserts that 50,000Frw of the work certificate awarded to Nyirasafari is not founded because her employer did not refuse to give it to her.

[13] Nyirasafari asserts that the above ground of appeal is not founded because, as the Judge explained, there was no will to deliver this certificate UAAC expressed, and it is not

understood how that certificate would be available and it was not given to her by the time she was given her last salary, this justifies the little willingness to deliver it.

[14] The court finds that the argument of UAAC expressed by their Counsel stating that Nyirasafari cannot be awarded the damages due to non-delivery of her work certificate reasoning that her employer did not refuse to give it to her, is not founded based on what article 38 of the Rwandan labor code provides for; that damages are awarded based on the fact that the employer refused to deliver the work certificate and non-inclusion of one of the requirements or delivering it late. The refusal to deliver the work certificate does not mean that the employee requested for it from the employer and refused to give it to her, instead it means that he did not deliver it to the employee within the period provided for by the law. The article stated above, in its paragraph 1 state that upon the lapse of the contract period, in French words (à l'expiration du contrat de travail), the employer must give the employee the last salary and the work certificate. This article shows that the employer does not have to request for his or her work certificate as they did not have to request for their last salary, instead the employer gives it to them upon the lapse of the contract period. The fact that UAAC did not act accordingly until the Intermediate Court ordered it to pay damages to Nyirasafari, it by no means violated the law because this implies that it refused to award her the work certificate, hence, the ground of appeal not being founded.

3. To determine whether Nyirasafari had to be awarded the procedural fees.

[15] The Counsel on behalf of UAAC asserts that the proceedings' fees that Nyirasafari was awarded was not necessary because she herself engaged in court proceedings.

[16] Nyirasafari argues that this ground of appeal is not founded since in its discretion, the Court awarded her 50,000Frw of procedural fees, yet she had claimed for 200,000Frw. She argues that, it is not herself who engaged in court proceedings; instead it is UAAC that caused her to engage in court proceedings, by dismissing her unfairly and refusing to settle her problem. Therefore it should bear the consequences.

[17] The court finds that the assertion of the counsel on behalf of UAAC that the procedural fee awarded to Nyirasafari was not necessary since it was herself who engaged her in court proceedings, is not founded because the Intermediate Court to decide that Nyirasafari was unfairly dismissed means that it enough evidence that it was instead UAAC that engaged her in court proceedings after unfairly dismissing her, without giving her all she claimed for resulting from that fault, therefore, it had to pay back all her expenses in the Court proceedings.

4. Cross appeal

[18] Nyirasafari claims to court for the increase of the procedural fees awarded to her, be increased to 200,000Frw because 50,000Frw awarded to her is little. She also request to be awarded damages of her expenses on transport, communication, photocopying papers, drafting court submissions and meals, altogether equal to 250,000Frw, in addition to moral damages equal to 250,000Frw, altogether equivalent to 500,000Frw. She also requests for work compensation because, every day she went to court missing her work on which she earns 20,000Frw a day. Therefore requests for to be awarded that amount for each day she appeared before the court up to the day on which the judgment was pronounced. Nyirasafari also requests to be resituated the court fees she paid which is equal to 7,200Frw in the Intermediate Court, altogether equivalent to 825,200Frw.

[19] The court finds that 50,000Frw of procedural fees awarded to Nyirasafari by the Intermediate Court she claims that is little and requests for it to be increased to 200,000Frw, is not founded since that amount was awarded in the discretion of the court, after she failed to prove for the certain amount spent so that she can be restituted of it. Even before this court, she does not produce any evidence of the exact amount she spent; therefore she has to remain with 50,000Frw awarded in the judgment appealed against.

[20] The court finds that the amount Nyirasafari claims for arguing that it is for damages due to her expenditures in photocopying papers, transport, communication, drafting court submissions, meals altogether equivalent to 250,000Frw, she cannot not be awarded it all, since she does not produce evidence to justify that she really spent all that amount. Instead, the Court in its discretion awards 50,000Frw to her as procedural fee at the appellate level. The additional claim of moral damages equal to 250,000Frw is not founded because she does not explain for that delay.

[21] The court finds that 20,000Frw of her daily income compensation that Nyirasafari requests for explaining that whenever she appears before the court misses the work that earns her 20,000Frw, cannot as well be awarded to her because she does not produce evidence to prove that she real lost that amount, therefore 50,000Frw of procedural fees is enough.

[22] The court finds also that the court fees requested for by Nyirasafari to be restituted, should be awarded to her and be restituted of it at the time of enforcement of the judgment, since the litigant who lost the case has to bear the court fees, as stipulated in article 362 of the law relating to civil, commercial, labor and administrative procedure.

III. DECISION OF THE COURT

[23] Court decides that the appeal for UAAC is not founded.

[24] Court decides that the Cross appeal of Nyirasafari Edissa has partial merit.

[25] Court decides that the ruling in the judgment RSOC0031/13/TGI/GSBO, rendered by the Intermediate Court of Gasabo on 05/09/2013 is not changed except on the procedural fees.

[26] Court orders the Adventist University of Central Africa (UAAC) to pay to Nyirasafari Edissa 50,000Frw of the procedural fees, in addition to the amount awarded in the judgment appealed against.

[27] Court orders the Adventist University of Central Africa (UAAC) to also pay court fees in this case equal to 75,000Frw which includes the amount pledged for the court fees.