

## GAKWAYA v. UNIVERSITY OF RWANDA

[Rwanda SUPREME COURT – RADA 0029/11/CS (Mukanyundo, P.J., Rugabirwa and Hatangimbabazi, J.) May 16, 2014]

*Administrative procedure – Administrative appeal – The provided time limit for filing a claim after lodging an administrative appeal – In case an administrative appeal has been lodged several times, only the first one shall be considered for computation of time limit for filing a claim in the court and it is not a requirement for the plaintiff to receive an express response from the administrator in order to file the claim, because if he/she does not get a response within the time limit provided for by the law, it is considered as request not granted – Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, articles 94 and 339*

**Facts:** Gakwaya sued the University of Rwanda before the High Court, chamber of Nyanza requesting to be reinstated to his former job as lecturer and be bestowed all he is entitled to which were deprived from him when he was unlawfully dismissed in addition to various damages.

The University of Rwanda raised the objection of inadmissibility on the ground that he delayed to file the claim after the lodging of the administrative appeal because the time limit provided for by the Law had expired. Therefore, the High Court held that his claim is inadmissible.

Gakwaya appealed to the Supreme Court arguing that the High Court should have admitted his claim because there was no delay in filing the claim after lodging an administrative appeal to the University of Rwanda, in order to be reinstated and given his entitlements including the salaries which were not paid to him at his dismissal in addition to various damages.

**Held:** In case an administrative appeal has been lodged several times, only the first one shall be considered for computation of time limits for filing a claim in the court and it is not a requirement for the plaintiff to receive an express response from the administrator in order to file the claim. If he/she does not get a response within the time limit provided for by the law, it is considered as request not granted.

**Appeal without merit.  
Appealed judgment sustained.  
Court fees to the appellant.**

### **Statutes and statutory instruments referred to:**

Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, articles 94 and 339.

### **Cases referred to:**

KIST v. Hashakimana, RADA 0001/11/CS rendered by Supreme Court on 27 April 2012.

# Judgment

## I. BRIEF BACKGROUND OF THE CASE

[1] Gakwaya Emmanuel sued the National University of Rwanda to the High Court, Chamber of Nyanza, requesting it to reinstate him as a lecturer at that University and bestows him with the entitlement he was deprived of when it dismissed him unlawfully in addition to various damages.

[2] At the beginning of the hearing, the Counsel for University of Rwanda raised an objection of inadmissibility of the claim of Gakwaya Emmanuel on the ground that after the administrative appeal, he lodged a case to the High Court after the expiration of the period of 6 months provided for by article 339 of the Law n<sup>o</sup> 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure. The Court rejected the claim of Gakwaya Emmanuel.

[3] The Court explained that Gakwaya Emmanuel made an administrative appeal to the University of Rwanda on 25 September 2008 and it did not reply him and he instituted a claim on 22 September 2010 after almost two years while he should have instituted it not later than 24 May 2009, therefore his claim must not be admitted. The Court motivated further that the letter of Gakwaya Emmanuel dated 7 June 2010 could be considered as an administrative appeal because it states that the University of Rwanda must pay him salaries and damages he requested from it, failure to do so, he will seek justice.

[4] In order for the University of Rwanda to reinstate him and give him all entitlements including the salaries which were not paid to him at his dismissal in addition to various damages, Gakwaya Emmanuel appealed to the Supreme Court arguing that the High Court should have admitted his claim because he did not delay to file it after the administrative appeal .

[5] The hearing was conducted in public on 15 April 2014, Gakwaya Emmanuel assisted by Counsel Mbonyimpaye Elias, whereas the University of Rwanda was represented by Counsel Ntaganda Félix.

## II. ANALYSIS OF THE LEGAL ISSUES

**Whether the High Court erred in deciding that after the administrative appeal Gakwaya Emmanuel delayed to sue to the Court.**

[6] Gakwaya Emmanuel and his counsel argue that the High Court should not have decided that he lodged the administrative appeal on 25 September 2008 because by then he had not yet got the prosecution's decision which provisionally closed his file, because he was still being prosecuted for fraudulently acquiring a the academic degree and also he did not have to lodge the administrative appeal because the Criminal proceeding stays civil proceeding. Rather, he got that decision on 27 May 2010 and lodged the administrative appeal to the University of Rwanda on 7 June 2010 because that decision demonstrated that he did not commit the crime for which he was being prosecuted.

[7] His counsel argues also that the Court should not have relied on article 339 of the Law n<sup>o</sup> 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure and hold that Gakwaya Emmanuel delayed to sue, because he had to first appeal to the Public Service Commission as provided for by article 19 of the Law n<sup>o</sup> 22/2002 of 09/07/2002 instituting General Statutes for Public Service because the University of Rwanda usurped the power and dismissed him while it is the sanction of second category which was taken without prior notification to that commission.

[8] The counsel for the University of Rwanda states that after the administrative appeal, Gakwaya Emmanuel sued in the High Court after the expiration of the six months period provided by article 339 of Law n<sup>o</sup> 18/2004 mentioned above, because it dismissed him on 09 May 2007 and lodged the administrative appeal on 25 September 2008 and he did not get a response, but he delayed to file a claim because he filed it on 22 September 2010.

[9] He also adduces that the arguments of Gakwaya Emmanuel that, after lodging the administrative appeal to the University of Rwanda he could not immediately sue before getting a prosecution decision closing the file has no merit because the criminal proceeding on the use of a counterfeit for which he was prosecuted for is different from the disciplinary action for the faults he might have committed (The criminal action is independent from the disciplinary action).

## **THE VIEW OF THE COURT**

[10] Article 339 of the Law no 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force at the time Gakwaya Emmanuel was dismissed stipulates that the action for annulment is admissible only against an explicit or implicit decision of an administrative authority. Before bringing an action for annulment, he who attacks the administrative decision must previously have made an administrative appeal to the authority which took the decision. The authority shall be required to respond within two (2) months of its receipt. If it's not replied the request is regarded to be rejected. In case the applicant is not satisfied with the decision, he/she has a period of six (6) months to file a claim which runs from the date when he/she received the response, and if there is no response, such a period shall start running after one (2) month mentioned in the preceding paragraph.

[11] And for article 94 of law mentioned above, stipulates that “the reason for the inadmissibility of a claim is any argument requesting for inadmissibility of a claim without being considered on merit such as expiry of the prescribed period to file a claim”.

[12] Regarding this case, the case file demonstrates that on 09 May2007 the administration of University of Rwanda wrote a letter to Gakwaya Emmanuel notifying him that he has been dismissed because the board meeting which took place on 30 April 2007 realized that the degrees of Master's and that one of PHD he submitted while requesting for a promotion were forged.

[13] On 25 September 2008, Gakwaya Emmanuel wrote to the administration requesting to be bestowed with all his entitlements including salary he was deprived of at his dismissal, because the Judgment RPA 0160/07/DP/NYA rendered by the High Court on 02/07/2007 declared that he did not commit the crime of forgery which led to his dismissal, and he requested the

administration to omit or review the meeting minutes of its board of directors held on 30 April 2007 mentioned about him because it convicts him of the crime he did not commit.

[14] On 7 June 2010, Gakwaya Emmanuel informed that administration in writing the prosecution decision of 27 May 2010 demonstrating that his file was provisional closed, therefore requested that administration to pay him his salary of 38 months which it did not remunerate him in addition to damages, and failure to do so within five days, he will resort to court of justice.

[15] On 22 September 2010, Gakwaya Emmanuel sued the administration of University of Rwanda to the High Court, Chamber of Nyanza as demonstrated by his document instituting the proceedings contained in the file and requested it to reinstate him on the post and pay him various damages.

[16] The Court finds that the letter dated 25 September 2008, which Gakwaya Emmanuel wrote to the University of Rwanda is the one which should be considered as the one through which an administrative appeal was made, because it is at that very date he wrote to it requesting to omit or review its decision of his dismissal, so that it reinstates and pay him all other benefits he is entitled to which he was deprived of.

[17] The Court finds that the letter dated 7 June 2010 which Gakwaya Emmanuel wrote to the administration of the University of Rwanda cannot be considered as an administrative appeal, rather it should be regarded as information of the prosecution's decision of 27 May 2010 which closed his file provisionally to the University of Rwanda, and should also be considered as a notice that if it does not pay him his salary of 38 months and other benefits, he will resort to court of justice within five days

[18] This position is in conformity with the ruling of the Supreme Court in the judgment RADA 0001/11/CS rendered on 27April 2012<sup>1</sup>, whereby it motivated that several administrative appeals to the same administrator do not exist, rather the computation of the time limit for filing a claim runs from the time the first administrative appeal was lodged, and it is not a requirement for the plaintiff to wait an express response from the administrator in order to file the claim, because if s/he does not get a response within two (2) months, the request is considered not granted and he has six months to file a case to the Court.

[19] The Court finds that the fact for the administration of University of Rwanda to have informed Gakwaya Emmanuel in writing, that he was dismissed on 9 May 2007 and lodged an administrative appeal on 25 May 2008 which was received on 26 September 2008 without the response while Gakwaya Emmanuel sued it to High Court on 22 September 2010; it is noticeable that he sued it in this Court after six months period provided for by article 339 of the Law no18/2004 of 20/06/2004 mentioned above had expired because the last day he had to sue should be 25 May 2009. Therefore, his claim must not be admitted pursuant to the provision of article 94 of the Law mentioned above as it was decided by the High Court.

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<sup>1</sup> KIST v. Hashakimana, RADA 0001/11/CS rendered by the Supreme Court on 27April 2012.

### **III.THE DECISION OF THE COURT**

[20] Decides that the appeal of Gakwaya Emmanuel is rejected;

[21] Decides that the rulings of the Judgment RAD 0016/10/HC/NYA rendered by the High Court, Chamber of Nyanza, on 15 July 2011 is sustained;

[22] Orders Gakwaya Emmanuel to pay the Court fees amounting to 50,500Rwf including fees charged in Commercial High Court, failure to do so within the period of eight days, that amount will be deducted from his assets through government coercion.