

## MUHUTUKAZI v. MAGERWA S.A

[Rwanda SUPREME COURT – 2013SC – RSOCAA 0019/12/CS (Kanyange, P.J., Rugabirwa and Mukandamage, J.) October 18, 2013]

*Labour law – Termination of employment contract – Legitimate motive – Defence of the employee before disciplinary sanctions are pronounced against him/her – The act of taking the parcel which contains a tire cover without being authorized is a legitimate motive for the termination of employment contract – The act of writing to the worker asking for explanations upon which she presents her defence on that fault is considered as defence provided for by the Law regulating labour – Law n° 51/2001 of 30/12/2001 regulating labour in Rwanda, articles 21 and 29.*

*Labour law – Various indemnities relating to termination of employment contract – compensation of extra hours – Annual gratification – Compensation for interim – Compensation for extra hours is not paid if performed without authorization by the superior – Annual gratification is not awarded to a worker dismissed before spending the year enabling him/her to be evaluated and entitling him/her the right to annual gratification – The head of service who acts in lieu of his superior (DAF) deserves to be paid for it, the additional amount which is equal to the difference between his/her salary and that of the replaced superior multiplied by the period acted for – Internal regulations of MAGERWA employees, articles 35, 53 and 31.*

*Labour procedure – Admissibility of a claim on the issue settled before the labour inspection in case there is no evidence that the compromise has been implemented – The compromise reached between the worker and employer before the Labour Inspector which has not been implemented may be submitted to and admitted by the Court – Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, article 168.*

*Law governing contracts or contractual obligations – Damages and interests on sums to be won in the case – Procedural expenses and counsel fees – Both parties are not awarded procedural expenses and costs and counsel fees while either party has respectively lost some claims – No compensation for defamation by the employer may be granted to the worker if s/he has not been unlawfully dismissed – The party to the case cannot be awarded interests on sums of money won in this case as long as they are still in litigation and the respondent won some of the claims at this level.*

**Facts:** Muhutukazi filed a claim to the Intermediate Court of Nyarugenge requesting MAGERWA to pay her various indemnities due to unlawful termination of the employment contract they had entered into between them. Among those indemnities include, compensation of extra hours, annual gratification, compensation for interim and vested rights.

This Court decided that his case was without merit, and declared that it cannot admit her petition relating to deducted amount of money for social security contribution since she did not submit a related claim before Labour Inspection, that she could not be awarded annual gratification of the year 2006 since she was dismissed before the end of it, and that she could not be awarded other amount of money claimed for because MAGERWA paid them to her, and again that she could not be allocated damages because she did not clarify the damage she suffered. This drove her to lodge an appeal in the High Court and it ordered MAGERWA to pay her an amount of money

deducted from payment for notice remitted to Social Security Fund of Rwanda, amount of money for vested rights, compensation for temporary acting “compensation for the post of Acting as Director of Administration and Finance” and counsel fees.

Both parties to the case appealed to the Supreme Court, Muhutukazi requesting to be paid by MAGERWA indemnity for unfair dismissal while MAGERWA requested that Muhutukazi should be awarded nothing of her claims.

**Held:** 1. The fault of taking the parcel which contains a tire cover without being authorized is a legitimate motive for the termination of employment contract and the act of writing to the worker asking for explanations upon which she presents her defence on that fault is considered as defence provided for by article 21 of the Law n° 51/2001 of 30/12/2001 regulating labour in Rwanda at the time the contract was concluded.

2. No compensation for termination of employment contract is to be awarded to the applicant since in accordance with what were provided for by article 26 of the Law mentioned above, the beneficiary of it is whoever has been unfairly dismissed, something which is different in this case.

3. The compensation for extra hours are not awarded to the applicant if the document upon which s/he relies on his/her petition does not prove that s/he worked overtime on his/her supervisor’s request in accordance with the provision of article 27 of Internal regulations of MAGERWA employees of the year 1997.

4. Notwithstanding the provision of article 35 and 53 of Internal regulations of MAGERWA employees of the year 1997, annual gratification may be awarded to the worker who was given good scores and who worked at least six months till the end of the year, therefore it is not awarded to a worker dismissed before s/he spends the year enabling him/her to be awarded marks that are likely to confer him/her the right to annual gratification for the respective year awarded during the last dates of it.

5. Article 31 of Internal regulations of MAGERWA employees of the year 1997 is understood as the head of the service may act in lieu of the DAF (acting) and be paid for it, but considering the importance of performed duties done in conjunction with her normal work; under the appreciation of the Court, she deserve to be paid the additional amount of the difference between her salary and that of the replaced DAF multiplied by the period she acted for.

6. The Appealed Court was not mistaken when it admitted a claim relating to the compromise agreed upon before the Labour Inspector in case one of the parties does not provide evidence that s/he complied with it by depositing for her in the social security fund the amount of money s/he deducted, therefore, has to pay it to her.

7. If the salary is not reduced but on the contrary is increased, the employee cannot rely on the new contract and requests for the money for vested rights, gratification for experience and salary regularization on her/his former net salary in the former terminated contract.

8. Both parties are not awarded procedural expenses and costs and counsel fees while either party has respectively lost some claims at this level. No compensation for defamation by the employer may be granted to the worker if s/he has not been unlawfully dismissed. S/he cannot also be awarded interests on sums of money won in this case since they are still in litigation as

MAGERWA has the right to appeal against the decision of the judgment it was not satisfied with for justice to be done and it is obvious that it won some of the claims at this level.

**Appeal for the Muhutukazi dismissed.  
Appeal for the MAGERWA granted in part.  
Court fee to both parties.**

**Statutes and statutory instruments referred to:**

Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, article 168.

Law n° 51/2001 of 30/12/2001 regulating labour in Rwanda, articles 21 and 29.

Internal regulations of MAGERWA employees, articles 35, 53 and 31.

**No cases law is referred to.**

## **Judgment**

### **I. BACKGROUND OF THE CASE**

[1] On 22/05/1995, Muhutukazi Espérance concluded an open ended contract with MAGERWA S.A for performing accountancy duties. On 27/07/2006 MAGERWA terminated the concluded contract due to the fact that she took out the parcel containing tire cover, taxes and custom duties unpaid, and was caught with it by the security agents of INTERSEC while she was about to take it out of MAGERWA.

[2] After disagreement with her employer before the labour inspector, Muhutukazi sued MAGERWA before the Intermediate Court of Nyarugenge requesting that it pays her damages amounting to 28,189,108Frw. The Court decided that her case is without merit, and held that it could not admit her complaint regarding the 38,381Frw deducted for the purpose of Social Security Fund of Rwanda contribution since she did not complain for it before the labour inspection; that she cannot be awarded annual gratification of the 2006 because she was dismissed before it ends; and that she cannot be awarded other requested amount of money because MAGERWA paid them to her, and after all that she cannot be awarded moral damages she requested for since she did not explain the moral prejudice incurred.

[3] Muhutukazi appealed to the High Court, which ordered to MAGERWA to pay her 38,381 Frw, deducted from notice compensation and remitted to Social Security Fund of Rwanda, 600,082Frw of vested rights, 1,210,120Frw of compensation for the post of Acting as Director of Administration and Finance and 500,000Frw for counsel fees.

[4] Both parties appealed to the Supreme Court, Muhutukazi Espérance requesting to be paid by MAGERWA various damages including those relating to unfair dismissal, while the counsel for MAGERWA rebutting that Muhutukazi not be paid 38,381Frw deducted for the purpose of contribution to SSFR, vested rights, compensation for the post of Acting as DAF, and that she has to pay the procedural expenses and counsel fees.

[5] The case was heard in public on 10/09/2013, Muhutukazi Esperance represented by Mugabonabandi Jean Maurice, the counsel, while MAGERWA was represented by Batware Jean Claude, the counsel.

## II. ANALYSIS OF THE LEGAL ISSUES

### 1. To examine whether or not Muhutukazi was unlawfully dismissed

[6] The counsel for Muhutukazi states that the High Court should have relied on article 26<sup>1</sup> of the Law n° 51/2001 of 30/12/2001 regulating labour in Rwanda which was into force at the time she was dismissed, and orders that MAGERWA pays damages to her equivalent to her 12 months of her salary amounting to 7,310,748Frw for unfair dismissal since it dismissed her before she prior provides oral explanations and in writing before the disciplinary commission, while it was provided for by the article 56 of the internal rules of the year 2006; as none of the worker would be dismissed before defending him/herself in front of that commission.

[7] He states in addition that another worker called Ndikumana Vincent told the High Court that for him, before getting fired, he prior defended himself before the disciplinary Commission, but that his testimony was not valued, that even if Muhutukazi defended herself before the organ called Quality Assurance of MAGERWA, that would not be considered as if she defended herself because it is different from the disciplinary Commission of MAGERWA.

[8] He further states that MAGERWA dismissed her without relying on legitimate motive since it fired her while she has not been prosecuted for offences it pretended she committed, constituted by the crime of attempt to tax evasion, that of using the position of administration she held and mislead Mukashema Devota whom she should lead and that of not telling the truth.

[9] He explains that she did not cooperate with Ngabo Martin in conspiracy to tax evasion since she was remunerated much money amounting to 600,000Frw a month, while Ngabo Martin was paid 1,500,000Frw a month, whereas the parcel containing the tire cover that was the cause for her dismissal had a less value of 20 US dollar, and should pay few taxes equivalent to 1,243Frw.

[10] He added that MAGERWA should not dismiss her because during entire 11 years of service of senior accountant, did not embezzle its funds, while she kept commercial bills booklets amounting to more than two billions. Another issue is that she was fired due to the fact that she misled Mukashema Devota (marker) while she did not supervise her, and that it is not clear how she has been dismissed while this person who gave that parcel to Ngabo Martin was punished with a light punishment of suspension of duties for a period of 8 days.

[11] The Counsel for MAGERWA states that it should not give Muhutukazi the damages she has requested for since she was dismissed for legitimate motive for the reason that the security personnel of INTERSEC caught her getting out of MAGERWA with a package containing tire cover whose tax and custom duties were not paid before being taken out, since it was not fulfilled the required documents for its release, and which induced MAGERWA to terminate the

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<sup>1</sup> This article states “If the worker had an experience of more than 10 years at the same employer, damages may double.

contract they entered into as it realized that it could not tolerate such bad behaviour intending to induce it in loss in particular and the State in general.

[12] Concerning the means of defence, he states that MAGERWA wrote to her a letter on 18/07/2006 requesting her to explain herself upon committed faults mentioned above, she rebutted in writing in her letter of 20/07/2006, and that she defended herself before the organ of Quality Assurance which made a report for her, submitted it to the Directorate of MAGERWA which terminated her employment contract under proposal of Disciplinary Committee because it found that the explanations provided in writing by Muhutukazi were not reliable.

[13] He states again that Muhutukazi should not have explained herself before Disciplinary Committee of MAGERWA because at the time her employment contract was terminated on 27/07/2006, there was no law which provided for it since the internal regulations of MAGERWA employees of the year 2007, article 56 which provides for it, was not into force at that time because it was only signed by some of the members of the Board of Directors of MAGERWA and the Labour Inspector on 12/01/2007.

## **OPINION OF THE COURT**

[14] Article 21 of the Law n° 51/2001 of 30/12/2001 regulating labour in Rwanda which was into force at the time the contract was terminated, stipulate that “If the dismissal of an employee under open ended contract derives from a fault, it must rely on legitimate motive and after s/he is given the opportunity to defend herself upon what s/he is accused of”.

[15] Concerning the motive that caused the dismissal of Muhutukazi; the documents which are in the file demonstrates that on 03/07/2006, Muhutukazi Espérance entered in MAGERWA wearing work badge while she was in annual leave, demanded to Mukashema Devota to give her the parcel containing the cover of the tire, and this one told her that she had not yet prepared documents that would enable it to be charged taxes and custom duties before it is released, but that she could request from the Manager to let her pay the related money at the cash desk 126 *bis*, but instead of going there, Muhutukazi got out with that parcel till she was caught at the gate with it by the security personnel of INTERSEC together with Ngabo Martin; while as a head of a unit of asset management of MAGERWA was not mistaken that the money had not been paid for it.

[16] The Court therefore finds that the fact that MAGERWA dismissed Muhutukazi Espérance relying on that fault; it is evident that it dismissed her under legitimate motive as the aforesaid article 21 provided for, since she did not respect what the internal rules of MAGERWA stipulated.

[17] The Court finds that the motives for defence of Muhutukazi, that she should not be dismissed due to the fact that that parcel had a lesser value and that it should be charged less taxes, is groundless since it cannot exclude the fault she did and was sanctioned for by her employer in the context of employment. Moreover, the fact that she should not be dismissed because she had not been prosecuted for the crimes that MAGERWA alleged she had committed is without merit too, since the employment contract is not only terminated subsequent to crime

prosecution, instead, in accordance with article 21 mentioned, there should only be a legitimate motive as explained above, and the worker having been given time to defend herself.

[18] Concerning defence, it is clear that Muhutukazi Espérance defended herself as the article 21 of the Law n° 51/2001 mentioned above provided for, since MAGERWA wrote to her a letter of 18/07/2006 requesting her to explain herself on aforesaid fault, and she defended herself on it in her letter of 20/07/2006, then MAGERWA proceeded to terminate the contract on 27/07/2006.

[19] The Court finds that the defence which Muhutukazi relies on, that she was dismissed without first defending herself before the Disciplinary Committee of Magerwa is groundless, because when she was dismissed, no Law provided for it for the article 56 of Internal Rules of MAGERWA employees which stipulates for it, on which she relies on was not into force at that time, since that Regulations started to be applicable in the year 2007 due to the fact that one of the members of the board of directors had signed it on 12/01/2007, while the Labour Inspector approved it on 14/02/2007.

[20] In accordance with aforesaid holdings, the Court finds that Muhutukazi should not be awarded damages for unfair dismissal since pursuant to the provisions of article 26 of the law cited above, the one who they are awarded to is whosoever has been unfairly dismissed; whereas it is not the case in this lawsuit.

## **2. To examine whether Muhutukazi would be awarded vested rights compensation.**

[21] The Counsel for Muhutukazi states that from February 1995 till July 2005, she used to get good marks that allowed her to get 160,507Frw a month for work experience gratification, while the annals provided her with 28,397Frw a month, the total being 188,904Frw a month, but that after that time, MAGERWA did not pay them to her again, whereas they were her vested rights that it could not abstain to grant them to her in accordance with the ruling of the Supreme Court in the judgment RCOMA 0026/08/CS delivered on 09/10/2009, whereby it explained that vested right is a right that the employee may not deprived him/herself of or be deprived from by the employer.

[22] He requests that MAGERWA pays to her 6,054,373Frw of work experience compensation as demonstrated in her submission.

[23] He states in addition that The High Court awarded her 600,083Frw (= 42,863Frw<sup>2</sup> x 14 months) of vested rights on regularization of her net salary during 14 months, while it should order MAGERWA to award her 1,373,759Frw equivalent to 14,5 months as explained in her submissions.

[24] The Counsel for MAGERWA states that it also appealed due to the fact that the High Court awarded to Muhutukazi 600,082Frw of acquired rights while it increased her salary, because, before the administrative reform and the establishment of salary policy of its staff, it used to pay her the gross salary equivalent to 452,055Frw a month while the net salary she received was equivalent to 325,202Frw; whereas after the reform, they entered into a new contract on 17/05/2005, and agreed that it is going to pay her a gross salary equivalent to

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<sup>2</sup>42.863Frw is the difference between the net salary she gained which was equivalent to 289,555 Rfw and the net salary that MAGERWA did pay her since 17/05/2005 up to 27/07/2006, which is equivalent to 243,692 Rfw.

609,229Frw a month and the net monthly salary of 437,935Frw, therefore it is clear that it increased 112,733Frw a month instead of being 42,863Frw awarded by that Court. He therefore states that she should not be awarded vested rights, and that there are some acquired rights she requested for in this Court for the first time.

## OPINION OF THE COURT

[25] Concerning vested rights, the Court finds that the subject of litigation from the first instance level and appealed for in the High Court, is the difference between the salary that Muhutukazi earned before and that which she was paid in compliance with the new contract, and this one being what has to be analysed in this case since other petitions she filed are new, therefore are not to be admitted in appeal pursuant to article 168 of the Law n° 21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, which prevents the submission of new claims on appeal level, except what it provides for.

[26] The fact that MAGERWA adjusted its functioning and re-established salaries of its personnel, and the reason why it concluded a new contract with Muhutukazi Espérance on 17/05/2005, whereby they agreed that it will be remunerating her a gross salary 609,229Frw instead of being the gross salary which was equal to 466,555Frw that it has been paying her in accordance with the contract of 22/05/1995, and that in that new contract they convened all concluded labour contracts were terminated (article 5 and 10); the Court finds that Muhutukazi Espérance cannot rely on the new contract and requests to be awarded acquired rights of work experience and of regularization of the net salary she earned from the terminated former contract, especially as MAGERWA did not reduce her salary, but instead it increased it.

### **3. To examine whether Muhutukazi is entitled to compensation for extra hours.**

[27] The counsel for Muhutukazi states that in the year 2005 and 2006, she worked for extra hours equating to 4,792,791Frw as shown in a table which is in the dossier, but that the High Court relied on the article 29 of the internal regulation of MAGERWA staff of the year 1997, which provides that its directors receives a bonus in lieu of extra hours, and has disregarded that that article is inconsistent with the article 55 of the law n° 51/2001 of 30/12/2001 which regulated labour in Rwanda, because it deprive her of the right to be paid for extra hours recognized to her by the mentioned article 55.

[28] The Counsel for MAGERWA states that Muhutukazi should not be awarded overtime compensation she is requesting for, because she was being paid a bonus as provided for by the article 29 of internal rules of the staff above mentioned, since she worked in administration of MAGERWA, and that she did not demonstrate the quantity of those extra hours and he who requested her to work overtime.

## OPINION OF THE COURT

[29] Article 27 of the internal rules of the staff of MAGERWA of the year 1997, states that extra hours are those performed beyond normal working hours under unusual circumstances that are requested by a supervisor for the interests of the service<sup>3</sup>.

[30] The Court finds that the extra hours compensation requested by Muhutukazi cannot be awarded it because the document on which she relies her request does not prove that she performed them under request of her work supervisor as the aforementioned provision stipulates, especially as she did not highlight that she requested for it when she was still in service for its merit to be examined.

#### **4. To examine whether Muhutukazi is likely to be granted annual gratification of the year 2006.**

[31] The Counsel for Muhutukazi declares that the High Court should had ordered that MAGERWA grants her 609,229Frw of annual bonus of the year 2006 for it granted it to all its staff irrespective of the marks they received since it did not mark them; that the fact of not being given marks in that year cannot deprive her from being awarded that gratification while she worked for six (6) months during that year because the article 55 of the internal rules of the staff of MAGERWA of the year 1997, provided that an employee can be given marks during the period less than a year. He added that she would be awarded good marks, for she worked well for it, the reason why it granted her a balance sheet bonus of the year 2006.

[32] The Counsel for MAGERWA declares that Muhutukazi should not be given the annual bonus of the year 2006 since she was not given marks in the course of that year because she has been dismissed during the semester of the year due to the aforesaid faults she did.

### **OPINION OF THE COURT**

[33] The article 35 of internal rules of the staff of MAGERWA of the year 1997, provides that in the last days of every year, the Directorate General of MAGERWA approves if it should grant to its employees who have completed at least six months of service, the bonus termed gratification, and that its value is determined depending on the net salary the worker earns and annual awarded marks. Besides, the article 53 of that regulation stipulating that marks are awarded during the month of December of every year for the employee who covered at least six months of service in the course of that year<sup>4</sup>.

[34] Notwithstanding the provisions of those articles of internal regulations of the personnel of MAGERWA mentioned above, the Court finds that the annual gratification is likely to be awarded to a worker who has been given good marks, and who worked for at least six months up to the end of the year.

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<sup>3</sup> That article provides that “extra hours are those performed beyond normal working hours under unusual circumstances that are requested by a supervisor for the interests of the service”.

<sup>4</sup> That article reads: “A la fin de chaque exercice, la Direction Générale décide de l’opportunité d’attribuer au personnel ayant au moins 6 mois de service effectif, une prime de fin d’exercice couramment appelé gratification. Le montant de cette prime est fonction du salaire mensuel de base et de la cotation annuelle selon les taux fixés à l’article 67”.



[35] The fact that Muhutukazi Espérance has been dismissed before spending the year 2006 in MAGERWA; the Court finds that she could not be given marks that would entitle her the right to the money of gratification of that year for those marks are awarded at the end of the year; which implies that she should not be awarded the requested annual gratification of the year 2006.

[36] The Court finds that the arguments of Muhutukazi, that she is entitled to be awarded that gratification since all the staff of MAGERWA has been given it during that year without taking into account their results, are groundless, for, apart from declaring it, she does not even present the motivation that led to the award of that bonus contrary to what should be the basis for its allocation in order for her to be given it. And even if that were the case, it is clear that it had been given those who were in service in last days of the year 2006, and who performed well.

#### **5. To examine whether Muhutukazi should be paid compensation for Acting as DAF.**

[37] The Counsel for Muhutukazi states that the High Court awarded her 1,210,120Frw for the fact that she acted as the Director of Administration and Finance for five months, while it should have awarded her 1,331,132Frw for five months and half.

[38] The Counsel for MAGERWA states that it also appealed because the High Court should not have awarded Muhutukazi 1,210,120Frw of compensation for acting, while it paid her 165,000Frw which it deposited on her account n° 040-0022532-61 in BK, for there was no any law providing for the sum of money that should have been paid to the acting DAF, and that the Court would not have relied on article 111 of the Law n° 22/2002 of 09/07/2002 establishing the General statute for public service, since its staff is subject to employment contract.

[39] He however states that, if the Court finds that there is money she deserves to be awarded, it would award her the difference between the net salary of the DAF and the net salary of Muhutukazi which is equal to 437,935Frw.

### **OPINION OF THE COURT**

[40] The article 31 of internal regulation of the staff of MAGERWA of the year 1997 implies that MAGERWA itself acknowledges that the head of the service can temporary replace the DAF (Acting), save that it does not provide for the sum of money to be paid to that employee who replaced him at that time<sup>5</sup>.

[41] The documents which are in the dossier reveal that MAGERWA awarded to Muhutukazi Espérance 165,000Frw of acting compensation for she replaced the DAF for a period of five months and a half, that means from 11/05/2005 up to 24/10/2005 as it has been even upheld by its counsel before this Court.

[42] The Court finds that 165,000Frw that MAGERWA allocated to Muhutukazi Espérance is little money, considering the importance of the attributions of DAF that she simultaneously

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<sup>5</sup> This article provides «L'intérim est assuré quand il ya vacance d'un poste. Il est notifié à l'intéressé par écrit par la Direction Générale. L'indemnité mensuelle d'intérim est égale à 5.000Frws pour un agent qui remplace un chef de sous-section, 10.000 Frws pour un chef de sous-section qui remplace un chef de section et à 15.000 Frws pour un chef de section remplace un chef de service».

performed with her attributions at that time, therefore, she deserves to be awarded the sum of money computed as follows: the difference between the net salary of the DAF amounting to 607,160FRW and that net salary she earned which is equal to 437,935 Frw, deducting 165,000 Frw it paid her, meaning  $(607,160\text{Frw} - 437,935\text{Frw}) \times 5,5 \text{ months} - 165,000\text{Frw} = 765,737\text{Frw}$ .

**6. To examine whether the petition of Muhutukazi relating to 38,381Frw should not have been admitted at the first instance level.**

[43] The Counsel for MAGERWA declares that it appealed too, due to the fact that the High Court should not have admitted the petition of Muhutukazi which relates to 38,381 Frw deducted from notice compensation and deposited in Social Security Fund of Rwanda, and again, awarding her that money whereas the partial conciliation statement (minutes) which is in the dossier shows that the issue was settled in the Labour Inspection.

[44] The Counsel for Muhutukazi states that MAGERWA must pay her that money because it did not pay it to her even if it admitted it before the Labour Inspector. Another concern is that, notice compensation is not subject to withholding of contributions of Social Security Fund of Rwanda.

## **OPINION OF THE COURT**

[45] The statement which was written in the Labour Inspection on 02/05/2007 indicates that MAGERWA has admitted that it will pay that money to Muhutukazi Espérance if it finds that the notice compensation is not normally subject to withholding of contributions of Social Security Fund of Rwanda.

[46] The Court finds that in the course of the hearing of this case, there is no evidence submitted by MAGERWA indicating that it paid it to her or deposited it for her in the Social Security Fund, consequently, it has to pay her 38,381 Frw, and this implies therefore that the High Court did not error, when it admitted her petition relating to that money.

**7. To examine whether both opposing parties can be awarded damages they request for.**

[47] The Counsel for Muhutukazi declares that he relies on article 258 of CCB.III, requesting that MAGERWA to award her 1,500,000Frw of counsel fee on this level in addition to 500,000Frw awarded to her before, which equals to 2,000,000 w, and 500,000Frw of procedural expenses corresponding to all incurred expenses before all Courts in which she appeared, 12,000,000Frw of moral damages due to the fact that MAGERWA has concocted a crime of theft against her which produced negative effects, 7,7 % of interests on sums to be won in this case, and the refund of 18,000Frw of deposited court fee.

[48] He in addition states that, she could not pay the procedural costs and the requested counsel fee to MAGERWA, since it is the one which led her in reckless lawsuits.

[49] The Counsel for MAGERWA argues that it cannot pay Muhutukazi the damages she requests for, since she has induced it in lawsuits without valid grounds, but that at turn in its appeal, requests that she pays it 300,000Frw of first instance procedural costs, 500,000Frw for this level and 500,000Frw of procedural costs and counsel fee for this level, the total being 1,300,000Frw.

## **OPINION OF THE COURT**

[50] The Court finds that both opposing parties cannot be awarded procedural costs, those of counsel fees and procedural expenses, because either party has respectively lost some claims at this level.

[51] The Court finds in addition that Muhutukazi cannot be awarded moral damages in relation to the fact that she has eventually been defamed by MAGERWA, since it did not unfairly dismiss her as explained above.

[52] The Court finds furthermore that she cannot be awarded the interests on the sums of money won in this case since they were still in litigation as MAGERWA had the right recognized to it by the law to appeal against the ruling of the judgment of which it was not satisfied with for justice to be done, and it is obvious that it won some of the claims at this level.

[53] The Court considers therefore that the sum of money that MAGERWA should pay to Muhutukazi Espérance is: 765,737 Frw + 38,381 Frw plus 500,000 Frw of counsel fee she won in the High Court, therefore the total being of 1,304,118Frw.

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

[54] Court decides that the appeal of Muhutukazi is without merit;

[55] Court decides that the appeal of MAGERWA is granted in part;

[56] Court orders MAGERWA to award 1,304,118Frw to Muhutukazi Espérance;

[57] Court orders Muhutukazi Espérance to share with MAGERWA to pay the Court fees amounting to 29,600Frw, everyone bearing the half (1/2) of it, which is 14,800Frw, and failure to pay in a period of eight days, that amount of money is to be deducted from his assets through government coercion.