

MULINDAHABI v. ENERGY, WATER AND SANITATION AUTHORITY (EWSA) Ltd

[Rwanda SUPREME COURT – RS/REV/AD0003/15/CS (Nyirinkwaya, P.J., Ngagi and Nyirandabaruta, J.) January 27, 2017]

Administrative procedure – Application for review – Admissibility of the application – Conclusive new evidence – An element of evidence which the applicant possessed or was aware of before the case was adjudicated at the first instance until it was disposed off on the appellate level cannot be considered as new conclusive evidence revealed after the rendering of the judgment for it to be a ground for the review – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article, 186.

Administrative procedure – Application for review – Admissibility of the application – Pronouncement of the judgment – Fraud – The absence of some of the judges during the pronouncement of the judgment but who deliberated it do not constitute fraud – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 148.

Fact: Mulindahabi entered into an employment contract which included a clause of six (6) month probation period with RECO RWASCO (which became EWSA), during which he was dismissed.

He sued EWSA in the High Court arguing that he was unfairly dismissed and he requested for various damages. The Court ruled that he was unfairly dismissed since he was not notified of the faults he committed in order for him to defend himself as provided for by the general statutes for public service. It also held that even though he concluded a probation contract, he is governed by the general statute rather than Labour Law because EWSA is a public institution as specified in the contract, thus it decided that he be awarded damages for the unfair dismissal.

Both parties appealed to the Supreme Court, EWSA adducing that the Court disregarded the agreement between the two parties when it held that Mulindahabi was governed by the General Statutes for public service whereas he was governed by the employment contract, which led to the perception that EWSA faulted. Mulindahabi argues that there was a contradiction in the rulings of the case and also the damages he was awarded were insufficient and moreover the previous Court did not provide any motivation for it.

The Court found the appeal of EWSA with merit in part and that of Mulindahabi without merit, nonetheless it awarded him damages for being dismissed without defending himself even though he was under probation.

Mulindahabi applied for the review on the grounds that since the rendering of the judgment there are new conclusive elements of evidence revealed which consist of: the letter N°708 /ed &cr/10 of 09/06/2010, the letter N°2064/19.23 dated 11/08/2011, the letter N°2520/19.23 dated 04/10/2011 and the letter N° 10/Min/TV/10/11 of 19/10/2011, demonstrating injustice contained in that judgment, there was also fraud and confusion of the facts because his case was not referred to the competent court and also the judges who had conflicts with him but did not withdraw from his case. He further argued that fraud is demonstrated by the fact that among the quorum who signed on the minute of judgment, one was absent during its pronouncement and

also a case which is of the same nature like his which he submitted as an element of evidence was disregarded by the Court . He goes on to argue that the fraud is further demonstrated by the fact that the Court held that he should have been notified of one of the misconducts he committed and regarding the other one it held that he was not supposed to be notified of it. In addition to that he finds not being awarded damages for libel as fraud.

In their defence, WASAC and REG argue that none of those letters demonstrate that he was a civil servant, instead they demonstrates that he wrote claiming that he was unfairly dismissed, and the response he got was that he was dismissed for just causes. Regarding the ground of fraud they argue that it has no basis because a party to the case pleads as s/he deems depending on the nature of the case and if there was a judge he was suspicious about, nothing barred him from recusing her/him. They continue to argue that the judgment was legally pronounced and those relating to have not been notified of the fault, he was awarded damages for it which is equivalent to his salary for three month.

Held: 1.An element of evidence which the applicant possessed or was aware of before the case was adjudicated at the first instance until it was disposed off on the appellate level cannot be considered as new conclusive evidence revealed after the rendering of the judgment for it to be a ground for the review. Therefore the letters contained in the case file at the High Court cannot be considered as conclusive element of evidence revealed after the rendering of the judgment to be a ground for the case review.

2. The inference of the applicant that the judgment was rendered by a court without jurisdiction cannot be considered as fraud while he should have resorted to remedies provided for by the law. Therefore no fraud committed against the applicant so that it can be a ground for review.

3. The judgment can be pronounced by one or two judges who were in the deliberation in case one or some of the judges are not available. Therefore there is no fraud committed by those judges as alleged by the applicant.

4. The judgment which the applicant submitted as an element of evidence was not disregarded by the Court because the issues relating to it were addressed in paragraph 29 of the judgment against which the review was requested.

5. The applicant was awarded damages resulting from not being notified of the misconduct he committed so that he defends himself and also not being awarded damages for libel is not a ground for review provided for by the law.

**The application for review is rejected;
Court fees borne by the applicant.**

Statutes and statutory instruments referred to:

Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, article 171.

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, articles 148 and 186.

No case referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] On 17/11/2009 Mulindahabi concluded an employment contract with RECO-RWASCO and on 13/04/2010 he was dismissed before the end of the probation period, on the grounds of poor performance which tarnishes the reputation of the institution and being characterised by feud with various departments. Mulindahabi seized the High Court requesting for employment reinstatement and related damages on the ground that he was unfairly dismissed because he was governed by General Statutes for Rwanda Public Service not by the employment contract and also that he had completed the probation period.

[2] In the judgment RAD0157/10/HC/Kig rendered on 25/01/2010, the High Court found the claim of Mulindahabi with merit, and ordered EWSA to pay him 6,000,000Frw for the lost wage due to dismissal, 2,000,000Frw in moral damages for libel and 2,000,000Frw for procedural costs.

[3] Both parties appealed to the Supreme Court, and in the judgment RADA0015/13/CS rendered on 18/11/2013, that Court found the appeal of EWSA with merit in parts and that of Mulindahabi Fidèle without merit, nonetheless, it ordered EWSA to pay him 1,350,000Frw in damages (for dismissal without defending himself even though he was under probation), in addition to the 200.000Frw for procedural costs awarded at first instance.

[4] Mulindahabi was not contented with the outcome of the appeal, therefore basing on article 186, *litera* 1°, 3° and 6° of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, he applied for the case review on the grounds that since the rendering of the judgment, new conclusive evidences which demonstrate the injustice contained in that judgment were revealed, there was commission of fraud and confusion of the facts during the case, additionally he requested for damages thereto.

[5] The case was heard in public on 20/09/2016, Mulindahabi Fidèle assisted by Counsel Nyamunanage Aticus, REG represented by Counsel Iyamuremye Maurice while WASAC was represented by Counsel Rusanganwa Jean Bosco. During the hearing the Court decided to postpone the hearing until November 22, 2016 to necessitate Mulindahabi Fidèle and his counsel to merge their submissions and to clearly demonstrate each ground for their application for review and to corroborate it with the provisions of article 186 of the aforementioned Law N°21/2012 of 14/06/2012, so that the legal issues to be analysed by the Court be clearly indicated. The hearing in public resumed on November 22, 2016, Mulindahabi Fidèle assisted by Advocate Cyiza Faustin, REG represented by Advocate Iyamuremye Maurice while WASAC represented by Advocate Rusanganwa Jean Bosco.

II. ANALYSIS OF THE LEGAL ISSUES

In this case the issues to be analysed is whether the grounds relied upon by Mulindahabi Fidèle for application for review of the judgment RADA0015/13/CS are among those provided for by the law, for the application to be admitted.

II.1. Whether there are new conclusive elements of evidence upon which to base the review of the Judgment RADA0015/13/CS.

[6] Mulindahabi Fidèle submits that the new conclusive elements of evidence to prove the injustice are the following:

1° The letter N°708 /ed &cr/10, dated June 9, 2010 which the Public Service Commission wrote to him (see page 13 & 73 in the case file at the High Court), indicating that the Commission handled and followed up his issue and he finds that it wouldn't have done so if he were not governed by the General Statutes for Public service;

2° The letter N°2064/19.23, dated August 08, 2011, which the Minister of public service and labour wrote to the Minister to the Office of the President in response to the letter N° 36/Min/TV/6/11 which Mulindahabi Fidèle wrote to the President, addressing to him his problem, whereby in that letter the Minister of public service and labour stated that he violated the general statutes for public service, and he wouldn't have stated so, if he were governed by employment contract;

3° The letter N°2520/19.23, dated October 04, 2011 which the Minister of public service and labour wrote to Mulindahabi Fidèle, in response to the one he had wrote to him dated March 01, 2011 (see page 38), annexed on his defence submission against the appeal of EWSA, the Minister stated that he violated the general statutes for the public service;

4° The letter N°10/Min/TV/10/11 dated 19/10/2011, which the Minister to the Office of the President wrote to Mulindahabi Fidèle, in response to the one he wrote to the President, whereby the Minister to the Office of the President based on the letter wrote by the Minister of public service and labour which stated that he violated the general statutes for the public service, he finds that the Minister wouldn't have mentioned that while he was governed by the employment contract.

[7] The counsel for Mulindahabi, Cyiza Faustin prays that the Court assesses whether the elements of evidence produced by his client constitutes a cause for the case review, because he demonstrates that he was a public servant.

[8] Rusanganwa and Iyamuremye Maurice, the counsel for WASAC and REG adduce that none of the letters produced by Mulindahabi Fidèle demonstrates that he was a civil servant, rather they only demonstrate that he wrote to claim that he was unfairly dismissed, of which he got the response that he wasn't.

THE OPINION OF THE COURT

[9] Article 186(3°) of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, provides for the application for review if, since the time of rendering the judgment, it was evident that there was injustice due to the judgment for which the review is sought, whether an element of evidence was in the file but was not noticed by the court or was revealed later.

[10] The documents in the case file indicate that on May 17, 2010, Mulindahabi Fidèle wrote to the Public Service Commission seeking for redress, for him to be reinstated in the

RECO/RWASCO and as a result, the commission replied in the letter N°708/CD/ER/10 dated 09/06/2010 that after analysing his issue, it has no ground to request for his reinstatement in RECO/RWASCO, because of his misconduct during the period of probation which includes among others, instigating conflicts between him and his workmates, delaying the files and writing to the Chief Executive Officer or other superiors without the knowledge of the head of the department to which he is assigned .

[11] The case file also contains the letter N°2520/19.23 dated 04/10/2011, which the Minister of public service and labour wrote to Mulindahabi Fidèle, notifying him that pursuant to the Law N°22/2002 of 09/07/2002 on General Statutes for Rwanda Public Service particularly article 19, the Ministerial order No005//08/10/Min of 01/01/ 2008 determining allowances and other fringe benefits to be allocated to civil servants in official missions outside the Country together with various letters which were cited in that letter, including those addressed to Mulindahabi Fidèle from various institutions and which those organs addressed each other in regard to his issue along with the letter of March 2010, which HASHI Energy wrote to the Chief Executive Officer of RECO/RWASCO inviting the Director of Administration for the training in Nairobi;the Minister finds that the Public Service Commission analysed the misconducts he is accused of and found him liable (of delaying files, disrespect of the administrative hierarchy and erasing the mission order signed by the Prime Minister allowing an employee to participate in training) and consequently held that he deserved the sanction taken against him. In that letter the Minister further stated that the decision taken in regard to his issue is valid because the commission took it after thoroughly scrutinizing the letter of Mulindahabi Fidèle and that of the Chief Executive Officer of EWSA dated April 04, 2010 as well as paying attention to the oral submissions of EWSA.

[12] The case file also contains a letter dated August 17,2011 which the Minister to the Office of the President wrote to Mulindahabi Fidèle in response to the one he wrote seeking redress, whereby the Minister informed him that after scrutinising his issue, finds that reasonable grounds for his dismissal were clearly demonstrated to him, she even attached a letter the Minister of public service and labour wrote to the Minister to the Office of the President informing her the reality of Mulindahabi Fidèle's issue.

[13] The Court finds that the letters N°708 /ed &cr/10 dated 09/06/2010, N°2064/19.23 dated 11/08/2011, N°2520/19.23 dated 04/10/2011 and N°10/Min/TV/10/11 dated 19/10/2011 all mentioned above, upon which Mulindahabi Fidèle relies his application for the review of the Judgment RADA 0015/13/CS, are those which various institutions wrote to Mulindahabi Fidèle in response to those he wrote demonstrating to them that he was unfairly dismissed and the one they addressed among themselves in regard to his issue. Those letters cannot be considered as conclusive new elements of evidence revealed after the rendering of the judgment which is provided for by article 186(3°) of the aforementioned Law, for them to be relied upon for the review of the judgment RADA0015/13/CS, because they were in his possession or he was aware of them since before the case was adjudicated in the High Court until it was disposed off in the Supreme Court.

2. Whether there was fraud and confusion of the facts in the rulings of the judgment RADA0015/13/CS, which subject it to review.

a. Whether not referring a case to another court indicates fraud.

[14] Mulindahabi claims that in the case RAD0124/07/HC/Kig of Kabera Pierre Claver vs RECO/RWASCO, tried by the High Court, the counsel for RECO/RWASCO raised an objection of lack of jurisdiction, whereby he indicated the labour court is the competent court to hear that case, per contra RECO&RWASCO did not raise that objection during the trial of the case he was a party to, that implies that it acknowledged that he was civil servant, thus to continue referring to him as a contractual staff constitutes a fraud. He further states that the Supreme Court also acted fraudulently against him because when it found that he was governed by the employment contract, it should have declared itself incompetent to hear that case and thus refer the case to the competent one, therefore its failure to do so demonstrates fraud.

[15] Advocate Rusanganwa argues that this ground lacks merit because a party pleads his or her case as s/he deems necessary according to the nature of his/her case; it is not the plaintiff who dictates how s/he should plead his/her case.

THE OPIONION OF THE COURT

[16] Article 186(1^o) of the Law N°21/2012 of 14/06/2012 mentioned above provides that an application for review can be made due to... if there was fraud that had effects on the judgment and it was unknown to the losing party during the course of the proceedings....

[17] Documents in the case file indicate that the case RAD0124/07/HC/Kig between Kabera Pierre Claver and RECO/RWASCO (see page 123) before the High Court whereby the former was requesting for the annulment of the dismissal decision of July 02,2007, of which Mulindahabi Fidèle relies on to prove fraud in the case he was a party to, Gaju Ines the advocate for RECO/RWASCO in that case, raised a preliminary objection of lack of jurisdiction on the ground that Kabera should have first seized the Labour chamber, of which the Court overruled. The documents in the case file also indicate that in the judgment RADA0015/13/CS between Mulindahabi and RECO/RWASCO rendered by the Supreme Court on 08/11/2003, RECO RWASCO was represented by Advocate Rusanganwa Jean Bosco and the objection of lack of jurisdiction was never raised.

[18] Furthermore the case file also contains the judgment RADA0015/13/CS, whereby in its paragraph fourteen [14], the Supreme Court held that Mulindahabi Fidèle was governed by the Law N°13/2009 of 27/05/2009 governing labour, by holding as such, the Court motivated that after Mulindahabi Fidèle passed the job examination, he concluded an employment contract with RECO/RWASCO on 27/11/2009, which included a probation period and apart from that contract he does not produce other appointment letter to EWSA, so that it can be relied upon to confirm that he was governed by the general statutes for the public service.

[19] The Court opines that even if the court had ruled on the case of which it lacks jurisdiction, it should not be considered as fraud; instead Mulindahabi Fidèle should have contested it through other remedies provided for by the law.

b. Determining the fact that some judges did not withdraw from the case in spite of the conflict they had with Mulindahabi constitutes fraud..

[20] Mulindahabi alleges that the quorum of the judges which heard the case included a judge called Mukandamage Marie Josée who was among the judges who made up a quorum which heard another case he had with ATRACO, which quorum he reported to the Senate and that issue is still pending, thus that judge had a hand in his loss of the case as a way of revenge against him.

[21] Advocate Rusanganwa Jean Bosco and Advocate Iyamuremye Maurice representing WASAC and REG respectively state that the statements of Mulindahabi lack merit, because if there was a judge he was suspicious of, he should have recused her, but he should not use it as a ground for injustice.

THE VIEW OF THE COURT

[22] Article 171 of the Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts as amended to date provides for the grounds of recusal of the judge, *litera* 3 provides that where one of the party demonstrates that there exists hatred between the judge and one of the parties to the proceedings, has the right to recuse him/her.

[23] The Court finds that Mulindahabi Fidèle alleges that there were judges he had conflicts with, and yet he did not invoke the right of recusing them from the case, which right he is entitled to by law, therefore he cannot claim that it was fraud, thus it cannot be a ground for the review of the Judgment RADA0015/13/CS.

c. Whether the fact that one of the judges who took part in the adjudication of the case do not sign on the pronouncement copy constitutes fraud.

[24] Mulindahabi Fidèle claims that among the judges who signed on the copy of the judgment of which he is applying for review, there is one called Rugabirwa Ruben who was absent during its pronouncement, he finds all those constituting fraud provided for by article 186(1°) of the Law N°21/2012 of 14/06/2012 mentioned above.

[25] The counsel for WASAC argues that this ground lacks merit, because the judgment was pronounced in accordance with the provisions of the laws: article 148 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, in particular.

THE OPINION OF THE COURT

[26] Article 148 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, provides that “Every judgment shall be pronounced in the presence of the judge or judges who rendered it and should be written thoroughly. However, if one or some of the judges who took part in the deliberations and signed on the draft judgment are absent on the date of pronouncement, it shall not hinder its pronouncement by one judge or those available who tried it...”.

[27] The case file of the Judgment RADA0015/13/CS for which review is being requested, contains a pronouncement copy of November 08, 2013 which indicates that it was pronounced by two judges assisted by the Court registrar, in the absence of one judge due to other court duties and it was pronounced in the presence of Mulindahabi Fidèle as he also signed on it,

whereas the draft judgement, indicates that it was deliberated by those three judges as they all signed on it.

[28] Regarding the issue of the judge who put his signature on the draft judgment but was absent during its pronouncement, the Court finds that it is permitted that the pronouncement is carried out by one or two judges who took part in the deliberations in case one or some of the judges are absent as provided for by the aforementioned article 148. Therefore there is no fraud committed by those judges as alleged by Mulindahabi Fidèle, because what was done is legally allowed. Therefore this does not constitute a ground for review which are provided for in the aforementioned article 186 (1°) of the Law N°21/2012 of 14/06/2012.

3. Whether the fact that Mulindahabi Fidèle was considered as a contractual staff instead of a public servant without considering the rulings of the judgment RAD 0214/HC/KIG of Kabera Pierre Claver vs RECO-RWASCO constitutes fraud and confusion of the facts.

[29] Mulindahabi Fidèle argues that paragraph 17 of the judgment he seeks to be reviewed contains a miscarriage of justice, because the Court held that there are contractual staff in EWSA which is not true, well as in paragraph 16 the Court based on the appointment letter, whereby it held that he did not have an appointment letter for the post he was holding, while EWSA had stated that all employees who were recruited had to sign an employment contract, which means that they were not given appointment letters. He further argues that the Court held that he was a contractual staff moreover the case file contains a job advertisement published by EWSA pursuant to the Presidential Order N°37/01 of 30/8/2004 on terms of recruitment into the public service, because both Laws; Law n° 44/2008 of 09/09/2008 instituting RECO-RWASCO (article 19) and Law n° 43/2010 of 07/12/2010 instituting EWSA, provide that all employees are governed by the statute for the public service. Therefore he finds that he would not be the only one to be governed by the employment contract while others were governed by the statutes for the public service, and if it at all was the case, it would be a violation of the Constitution which provides for the equality before the law.

[30] Mulindahabi Fidèle furthermore argues that pursuant to article 186, *litera* 1 and 6 of the Law N°21/2012 of 14/06/2012 mentioned above, there was fraud and confusion of the facts because the court disregarded the statements of EWSA of January 01, 2013 in which it explained that Ndayisaba Ernest was on the list of the employees governed by the statutes for public service, it also disregarded the Judgment RAD0214/HC/KIG in which Kabera Pierre Claver was awarded damages and reinstated in service. He additionally states that the Court was silent on the judgment which was submitted as an element of evidence demonstrating that Ndayisaba Ernest and even all the employees including the drivers, security guards and cleaners were governed by the statutes for public service even though they signed the contracts; it was also silent on his letter of October 29, 2012. It also disregarded the fact that as was his case, no employee got the appointment letter, in addition to that the statement of EWSA in the course of the hearing of October 29, 2012 (on page 2) whereby it stated that every new employee had to sign a contract depending on the structure in place, that means the appointment letter was not necessary, therefore he finds all those constituting fraud and confusion of the facts.

[31] Furthermore, Mulindahabi Fidèle argues that the Court held that he was a contractual staff which is not true because the procedures used during his recruitment which were advertised by EWSA on its website demonstrate that he was governed by the statutes for public service as

its indicated on the website <http://www.ewasa.rw/recruitmentpolicy.html>, he also raised it during the hearing, whereby he submitted that he bases on Presidential Order N°37/01 of 30/8/2004 on terms of recruitment into the public service. The fact that he raised it during the hearing of the case RADA0015/13/CS and the Court disregarded it constitutes fraud; therefore he finds that the court should base on article 186, *litera* 3 and admit his application for the review.

[32] Counsel Rusanganwa argues that among the grounds advanced by Mulindahabi Fidèle includes the one for disregarding the statements made during the hearing, disregarding the objection raised and also the one relating to the judgment of Kabera Pierre Claver, but he does not demonstrate the fraud committed during the hearing which he became aware of after the rendering of that judgment. The Counsel finds that there was no fraud committed and if he is arguing that there were some issues which were disregarded by the Court he should not alter to allege that he became aware of them after the rendering of the judgment.

THE OPINION OF THE COURT

[33] Article 186, *litera* 1° and 6° of the Law N°21/2012 of 14/06/2016 mentioned above, provides that an application for review can be made due (1°) there was fraud that had effects on the judgment and it was unknown to the losing party during the course of the proceedings or (6°) if, during the hearing, there were errors committed based on confusion about facts or basing on a inexistent law.

[34] The documents in the case file also demonstrate that in judgment RADA0015/13/CS (see page 3), the court examined whether it was a miscarriage of justice in holding that Mulindahabi Fidèle was governed by the statutes for the public service, and in paragraph 14 (on page 4) it motivated that Mulindahabi Fidèle became an employee of RECO- RWASCO (which became EWSA and recently divided into WASAC and REG), after passing the examination as stated also by Mulindahabi Fidèle himself.

[35] The documents in the case file also demonstrate that the court motivated that on November 17, 2009, Mulindahabi Fidèle concluded an employment contract with RECO RWASCO which included a six month probation period, and apart from that contract he presented no other instrument appointing him to EWSA, so that it can be relied upon to confirm that he was governed by the statutes for public service, in paragraph 15, the Court concluded that it implies that Mulindahabi Fidèle was governed by the Law N°13/2009 of 27/5/2009 regulating labour in Rwanda in accordance with the provisions of the second article of that Law which governs labour relations between workers and employers (...)as per contract.

[36] The Court finds that Mulindahabi Fidèle should not allege that it was fraud committed in the Judgment RADA0015/13/CS, when the Court motivated why he was governed by the employment contract instead of the general statutes for the public service, because not being contented with the Court's decision is not an indication of fraud committed or confusion of the fact which are provided for as grounds of application for review by article 186, *litera* 1° and 6° of the Law N°21/2012 of 14/06/2012.

[37] Regarding the case RAD0214/HC/KIG between Kabera Pierre Claver and EWSA which Mulindahabi Fidèle alleges that it was not considered by the Court despite being of the same

nature with his, the Court finds the issues relating to that case were addressed in paragraph [29] of the judgment for which the review was requested, whereby Mulindahabi Fidèle relied on it during the hearing in which he requested the Court to be reinstated, and in paragraph [31], the Court responded by holding that since it has already held that Mulindahabi Fidèle was dismissed during the probation period on the grounds including the one relating to his performance, it has no basis on which to rely the examination of the issue regarding the employment reinstatement. Therefore, that element of evidence was not disregarded as he alleges, thus it cannot be a basis for the review of the Judgment RADA0015/13/CS, on the ground that there was evidence in the case file which the Court did not notice.

4. Whether the statement of Mulindahabi that the Court ruled that he should have been notified of the fault he committed without awarding him damages for libel, constitutes confusion about facts and fraud.

[38] Mulindahabi alleges that the dismissal letter contains two committed misconducts, but the Court held that he should have been notified of one of the misconducts (see the minute of the judgment [paragraph 27]). He further states that although the Court did not hold it directly, there is another misconduct it held that he was not supposed to be notified of [paragraph 26], thus in his view, the different treatment of those misconducts, constitutes fraud. The fact that the Court did not annul the dismissal decision whereas it ruled that it violates article 18 paragraph 3 of the Constitution of Rwanda, demonstrates confusion about the facts, which also is the same case for not having been awarded damages for libel and even the fact that the court was silent on that issue despite the dismissal letter containing libellous statements which impeded him from getting employed.

[39] Advocate Rusanganwa argues that he was awarded damages equivalent to three months' salary for not being notified of the fault he committed, thus he finds that it does not constitute a new ground. He further submits that for the dismissal letter containing libellous statements which impedes him from getting employed elsewhere, it does not constitute fraud because it is upon the discretion of the court to decide whether awarding damages is necessary or not.

[40] Advocate Iyamuremye argues that article 186(6°) of the Law N°21/2012 of 14/06/2012 relates to confusion of the facts but Mulindahabi Fidèle does not prove that the Court confused the facts and his statements does not reveal a new ground, instead he explained how the parties but not the Court confused the fact, therefore he prays that his claim be rejected.

THE OPINION OF THE COURT

[41] Article 186(6°) of the Law N°21/2012 of 14/06/2016 mentioned above provides that an application for review can be made if during the hearing, there were errors committed based on confusion about facts or basing on inexistent law.

[42] The documents in the case file of the judgment for which the review is being sought [par.23-28], the Court found that the Law N°13/2009 of 27/05/2009 regulating labour in Rwanda is silent on the issues relating to the termination of the employment contract during the probation period, except the dismissal notice provided for in article 27, whereby it states that no dismissal notice in case the termination is done during the probation period, the Court relied on the legal

doctrine which states that the period of probation is intended for the employer to evaluate the ability and capacity of the employee and the enable the latter to find out if the employment is appropriate for him/her, therefore the court motivated that even EWSA acknowledges that the fault committed by Mulindahabi of instigating feud among the departments should have been notified to him, so that he defends himself even though the law regulating labour does not provide for it because article 18 of the Constitution of Rwanda provides that no decision can be made against someone without him/her defending her/him against the causes of the charges and basing on that the Court consequently awarded him damages.

[43] The Court finds that Mulindahabi Fidèle was awarded the aforementioned damages originating from not being notified of the fault he committed so that he defends himself against it, albeit he was still on probation. Regarding the issue of not being awarded damages for libel the Court finds that it is not a ground for review because it is not provided for by article 186 (6^o) of the Law N°21/2012 of 14/06/2016 mentioned above. Therefore all those motivations indicate that there was neither fraud nor confusion of the facts.

[44] As motivated above, the Court finds none of the grounds submitted by Mulindahabi Fidèle for the review of the Judgment RADA0015/13/CS corresponds with those provided for by article 186 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, therefore his application for review of that judgment is hereby rejected.

III.THE DECISION OF THE COURT

[45] Decides that the application for the review of the Judgment RADA0015/13/CS rendered on 08/10/ 2013 by the Supreme Court applied by Mulindahabi Fidèle is rejected.

[46] Orders Mulindahabi Fidèle to pay the court fees equivalent to 100,000Frw.