

RUHIMBAZA v. BANK OF KIGALI LTD

[Rwanda SUPREME COURT –
RS/INJUST/RSOC00001/2017/SC (Kayitesi Z., P.J., Mugenzi,
Kanyange, Nyirandabaruta and Ngagi, J.) 24 November 2017]

Labour law – Termination of employment contract – Legal entitlements for a dismissed employee – Damages resulting from unfair dismissal – Damages for dismissal due to unfair ground are distinct from the money paid to a dismissed employee as his legal entitlements – Law N°13/2009 of 27/05/2009 regulating labour in Rwanda, article 32,33 and 57.

Labour law – Salary – Bonus and performance allowance – Even though the employer is under no legal obligation to give bonus and performance allowance to workers, but if he decides to give them out, it is binding to him because it becomes one of components of the worker's salary.

Facts: Ruhimbaza was dismissed by his employer, the Bank of Kigali on allegation that he did not have the requirements for the post he had as required by the new structure approved by the board of Directors of Bank. He sued in the Intermediate Court of Nyarugenge claiming for various damages resulting from unfair dismissal. That court held that he was unfairly dismissed and awarded him various damages which include damages for unfair dismissal, notice allowance, leave allowance, dismissal compensation, damages resulting from not being given a complete employment certificate, performance allowance, bonus, procedural and counsel fees.

The employer appealed at the High Court, which also reversed the appealed judgment only on the issue regarding the amount of damages awarded to the plaintiff. Again the employer appealed to the Supreme Court on the same grounds as those he submitted to the High Court, it also held that the respondent was unfairly dismissed and thus it awarded him damages equivalent to his nine months salary, but then again it ordered that the money given to him by his employer on his dismissal, inclusive of notice allowance, dismissal compensation and leave allowance to be deducted from those damages awarded for unfair dismissal. It also ordered the employer to give him damages resulting from not being given a complete employment certificate, procedural and counsel fees.

The respondent was not contented with the rulings of the Supreme Court, thus he resorted to the Office of the Ombudsman requesting for review of that judgment due to injustice because it ordered that the money he was given at his dismissal which include the notice allowance, dismissal compensation and leave allowance be deducted from the damages he was awarded for unfair dismissal while they are not related and moreover he was not given bonus and performance allowance.

That office requested for the review of that judgment and after scrutinising it, the Chief Justice ordered it to be reviewed. The Court first examined the preliminary objection of inadmissibility, whereby the employer argues that there was a procedural flaw because what happened in the rendering of the judgment was not injustice rather it was a confusion of the damages awarded for unfair dismissal with the money he was given as terminal benefits, basing on that confusion, he had the right to apply for review of the case, thus it should not have

been subjected to review on the grounds of injustice provided by article 81 of the Organic Law N°03/2012/OL of 13/06/2012 determining organisation, functioning and jurisdiction of the Supreme Court.

Regarding the objection raised, the applicant argues that article 186 of the Law N°21/2012 of 14/06/2012 relating to review the case it applies when, during the adjudication of the case, there were errors committed based on confusion about the situation of facts or basing on a non existing law, he argues that this is not the issue in this case because the Court did not confuse the facts, instead after analysing and explaining the facts, it found that he was unfairly dismissed and awarded him damages, the issue came up when it ordered that the money he was given as terminal benefits be deducted from those damages, and that is the injustice he suffered.

During the hearing of the case in merit, the applicant argued that the judgment rendered by the Supreme Court contains injustice because it ordered that the money he was given as his legal entitlement be deducted from the damages awarded to him for unfair dismissal. He further submitted that the Court held that he is not entitled to the performance allowance on the excuse that he was not appraised and also not given the bonus allowance on the pretext that he was dismissed before his employer's annual benefits was determined, he finds that if he was not dismissed he would have been appraised and also he contributed to the employer's profits for ten months he worked to. He concludes by requesting to be awarded procedural and counsel fees.

In its defence, the respondent argues that the judgment was not vitiated with injustice because the court by ordering that the payments he got when he was dismissed be deducted from the damages resulting from unfair dismissal that is how the Court

perceived it and not being contented with the rulings of the case does not mean injustice. On the issue of performance allowance and bonus allowance, he states that pursuant to the Bank of Kigali's regulations, performance allowance are paid after the end of the year and the employer is under no obligation to give those allowances and that the bonus allowance is paid in March basing on the annual benefits of the Bank after approval from the Board of Directors which fixes the amount and it is under no obligation to give that allowance. Regarding the counsel and procedural fees, the bank argues that its the one to be awarded damages because the applicant was awarded damages in the previous judgments but he has unrelentingly kept dragging the Bank in frivolous lawsuits.

Held: 1. The Court's decision of deducting the payments received by an employee on his dismissal from the damages he was awarded due to unfair dismissal should not be interpreted as confusing the facts, because the facts were construed by the Court and it based on those facts to decide that he was unfairly dismissed.

2. The damages resulting from unfair dismissal an employee are based on the moral prejudice caused by that dismissal and they are distinct from other payments a worker is given as his legal entitlements when the employment contract is terminated. Therefore, notice allowance, dismissal compensation and leave allowance should not be deducted from the damages awarded for unfair dismissal.

3. The employer cannot refuse to give bonus and performance allowance to an employee on the pretext that, the employee was not appraised or the annual benefits of the company had not yet been determined when the employee was dismissed on unfair

ground before being appraised or the annual benefits is determined. Therefore, the grounds resulting from the effects of dismissal for unfair ground should not be based on to not give him the bonus and performance allowance if he had stayed on the job.

4. Even though the employer is under no legal obligation to give bonus and performance allowance to workers, but if he decides to give them out, it is binding to him because it becomes one of components of the worker's salary.

5. Any act of person, which causes damage to another obliges the person by whose fault it happened to be held liable. Therefore, the applicant is awarded counsel and procedural fees, decided in the court's discretion because what he claims for is excessive.

The preliminary objection of inadmissibility of the application for review of the judgment due to injustice is overruled;

The application for review of the judgment due to injustice has merit;

Court fees born by the respondent.

Statutes and statutory instruments referred to:

Organic Law N°03/2012/OL of 13/6/2012 determining the organisation, functioning and jurisdiction of the Supreme Court, article 78 and 81(2).

Law N°13/2009 of 27/05/2009 regulating labour in Rwanda, article 29, 32, 33, 35 and 57.

Decree - Law of 30/07/1888 relating to contracts or conventional obligations, article 258.

Law N°21/2012 of 14/06/2012 relating to civil, commercial, social and administrative procedure, article 186 (6).

No case law referred to.

Authors cited:

A. Cœuret, B. Gauriau et M. Miné, *Droit du travail*, Edition Dalloz, 2006, pp. 386-389.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Ruhimbaza Modeste was an employee of Bank of Kigali from 20/03/1995 to 23/10/2009 when he was dismissed on the ground that he did not fulfill the requirements of the new structure as approved by the board of Directors subsequent to the organizational restructuring of Bank of Kigali.

[2] After receiving the dismissal letter, he sued the Bank at the Intermediate Court of Nyarugenge, and consequently in the Judgment RSOC0243/10/TGI/NYE rendered on 21/10/2011, the Court held that Ruhimbaza was unfairly dismissed and therefore ordered Bank of Kigali to pay him 8,252,102Frw comprising of damages for unfair dismissal, notice allowance, leave compensative indemnity, dismissal compensation, damages for being given incomplete employment certificate, appraisal allowance, performance bonus, procedural and counsel fees.

[3] The Bank of Kigali appealed in the High Court, and in the Judgment RSOCA0112/11/HC/KIG rendered on 18/04/2012, that Court held that the appeal of Bank of Kigali lacks merit, and the appealed judgment was reversed only on the grounds relating to the damages to be paid to Ruhimbaza Modeste.

[4] The Bank of Kigali appealed to the Supreme Court and in the Judgment RSOCAA0011/11/CS rendered on 22/02/2013, it held that Ruhimbaza Modeste was unfairly dismissed, and basing on article 33 par. 3 of the Law N°13/2009 of 27/05/2009 regulating labour in Rwanda, it awarded him damages totaling to 3,934,134Frw equivalent to his nine months salaries, but it ordered to deduct 3.139,359Frw given by Bank of Kigali during his dismissal, comprising of notice allowance, dismissal compensation and leave allowance from those damages and it also ordered to pay Ruhimbaza Modeste 1,311,378Frw and 1,400,000Frw for being given an incomplete employment certificate and for procedural and counsel fees respectively.

[5] Ruhimbaza Modeste was not satisfied with the rulings and submitted the judgment RSOCAA0011/11/CS rendered by the Supreme Court, to the Office of Ombudsman requesting for the review due to injustice, claiming that he was prejudiced by the court's decision that the payments for notice, dismissal compensation and leave allowance paid to him when he was dismissed be deducted from the damages awarded to him by the court whilst they are not linked also that he was not awarded appraisal allowance, performance bonus which the Bank of Kigali refused to pay him and moreover he used to get those allowances.

[6] After analyzing his contention, the Office of Ombudsman wrote to the Chief Justice requesting for review of judgment RSOCAA0011/11/CS, after scrutinizing the request, in his order N°010/2017 of 23/01/2017 the Chief Justice decided that it should be reviewed.

[7] The case was heard on 17/10/2017, Ruhimbaza Modeste assisted by Counsel Munyeshema Napoléon, while the Bank of Kigali Ltd was represented by Counsel Rutembesa Phocas.

II. ANALYSIS OF THE LEGAL ISSUES

[8] Before examining the ground for Ruhimbaza Modeste's application for review of Judgment RSOCAA0011/11/CS rendered by the Supreme Court on 22/02/2013 due to injustice, The Court will first examine the preliminary objection raised by Bank of Kigali of inadmissibility of Ruhimbaza Modeste's claim due to procedural impropriety.

1. Wether the claim of Ruhimbaza Modeste is inadmissible.

[9] The Counsel for Bank of Kigali Ltd, Rutembesa Phocas states that the claim for the review of judgment RSOCAA0011/11/CS due to injustice lodged by Ruhimbaza Modeste should not be admitted because of the procedural impropriety. He argues that what occurred in ruling of judgment RSOCAA0011/11/CS was not injustice rather it was confusion of the damages awarded for unfair dismissal and the money given to Ruhimbaza Modeste as terminal benefits because of this issue he was entitled to apply for review of the judgment basing on article 186 (6) of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative

procedure, which provides that if, during the hearing, there were errors committed based on confusion about the situation of facts or basing on a non existing law, thus his claim should not be based on the procedure of application for the review of the judgment due to injustice provided by article 78 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court.

[10] He further argues that this remedy used by Ruhimbaza Modeste contravenes article 81 par 2 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, which provides that, the party entitled to other ordinary and extraordinary procedures to appeal who did not exercise this right within the time limit prescribed by law shall not be entitled to apply for review of a decision of the case he/she lost, therefore his claim should not be admitted.

[11] The Counsel for Ruhimbaza Modeste, Munyeshema Napoléon argues that article 186 (6) of the Law N°21/2012 of 14/06/2012 mentioned above, is clear and is applies when during the hearing, there were errors of confusing situation of facts which causes the court to make a wrong decision, which is not the case in the Judgment RSOCAA0011/11/CS because the Court did not confuse the facts instead after analysing and explaining the facts for Ruhimbaza Modeste dismissal, the Court found that he was unfairly dismissed and it awarded him damages, the issue cropped up, when it ordered to deduct from those damages the terminal benefits he was given, and that is the prejudice he suffered. He adds on that the arguments of Advocate Rutembesa would be valid if the confusion was contained in the facts but in the Judgment RSOCAA0011/11/CS

it is contained in the decision of the Court, therefore the claim of Ruhimbaza Modeste should be admitted.

OPINION OF THE COURT

[12] Article 81(2) of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court provides that the review of a final decision due to injustice shall only be applied for on any of the following grounds:...[when there are provisions and irrefutable evidence that the judge ignored in rendering the judgment...]

[13] The Court finds that in Judgment RSOCAA0011/11/CS specifically in paragraphs. 15, 16 and 17, the Court deeply analyzed how Ruhimbaza Modeste was dismissed by his employer, the Bank of Kigali Ltd, basing on article 29 of the Law N°13/2009 of 27/05/2009 regulating labour in Rwanda¹, it held that he was unfairly dismissed, because he was dismissed for unfair reason and that is why it awarded him the corresponding damages amounting to 3,934,134Frw.

[14] This Court finds the fact that the previous court ordered to deduct the payments for notice, dismissal compensation and leave allowance from the damages awarded to Ruhimbaza Modeste for unfair dismissal, should not be considered as confusing the facts as provided by article 186(6) of the aforementioned Law N°21/2012 of 14/06/2012, because the

¹ Article 29 of the Law N°13/2009 of 27/05/2009 regulating labour in Rwanda” An open-ended contract may always be terminated by the will of either of the parties but for legitimate motives. This termination is subject to a prior notice given by the party that takes initiative of termination.”

facts were construed by the Court and on which it based its ruling that he was unfairly dismissed, instead what happened was the deduction from the damages awarded for unfair dismissal, the payments for notice allowance, dismissal compensation and leave allowance which are Ruhimbaza Modeste's legal entitlement bestowed among others by the Labour Law, especially articles 32 paragraph two², 35 paragraph one³ and 57 paragraph one⁴.

[15] The Court therefore finds that in the case RSOC AA0011/11/CS there was no confusion of facts which is provided by article 186(6) of the Law N°21/2012 of 14/06/2012 mentioned above as alleged by the Counsel for Bank of Kigali Ltd, instead as explained in the previous paragraph, there was non-compliance of some provisions of the Labour Law, for those reasons, Ruhimbaza Modeste had the right to base on article 78 of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court and request his case to be reviewed due to injustice.

² Article 32 paragraph 2 provides that a termination of contract may take place without notice in the case of gross negligence by one of the parties. In that case, gross negligence is notified to the other party within forty-eight (48) hours

³ Article 35 paragraph 1 provides that "the dismissal or an employment contract termination for a worker who has completed a period of at least twelve (12) consecutive months of work entails the payment to the latter by the employer of dismissal benefits"

⁴ Article 57 paragraph 1 provides that The leave is granted to the worker for the purpose of allowing him/her to rest; the grant of a compensatory allowance in replacement of a leave is formally prohibited in all other cases.

[16] Basing on the motivations above and on article 81(2) of the Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, the Court finds that the claim of Ruhimbaza Modeste should be admitted.

2. Determining the amount of damages related to unfair dismissal to be awarded to Ruhimbaza Modeste

a. Damages resulting from unfair dismissal.

[17] Counsel Munyeshema Napoléon assisting Ruhimbaza Modeste, argues that there was injustice towards his client in the Judgment RSOCAA0011/11/CS when the Supreme Court held that the payments for notice allowance, dismissal compensation and leave allowance all amounting to 3.139.359Frw, which was paid to Ruhimbaza Modeste when dismissed as his entitlement to be deducted from the damages amounting to 3,934,134Frw it awarded him for unfair dismissal, hence the Court disregarded article 33 of the Law regulating labour in Rwanda and the evidence of terminal benefits which he produced before the court, he goes on to state that those payments should not have been confused with the damages for unfair dismissal because when the Bank of Kigali dismissed him and even during the hearings it never acknowledged that it dismissed him unfairly, that justifies the fact that the motivations of the Supreme Court in the Judgment RSOCAA0011/11/CS which is subject to review due to injustice were misguided.

[18] He concludes by requesting that the errors committed by the Supreme Court in rendering the judgment RSOCAA0011/11/CS be rectified so that his client can get all amount of damages he was awarded for unfair dismissal, and

even that is how it was held in other judgments of his former workmates who were dismissed together with him, which include judgment RSOCAA0013/12/CS Mukamusonera Venantie v Bank of Kigali rendered on 31/12/2013, judgment RSOCAA0017/12/CS Cyuma Yvonne v Bank of Kigali rendered on 14/06/2013, judgment RSOCAA0021/12/CS Nyirinkindi Jean Marie Vianney v Bank of Kigali rendered on 06/12/2013.

[19] Counsel Rutembesa Phocas representing Bank of Kigali Ltd argues that there is no injustice in the judgment RSOCAA0011/11/CS, because the court by ordering that Ruhimbaza be awarded damages for unfair dismissal and deduct the payments he was given when he was dismissed, that is how the court perceived it and not being contented with the rulings of the case does not mean injustice.

THE OPINION OF THE COURT

[20] Article 33 of the Law N°13/2009 of 27/05/2009 regulating labour in Rwanda provides that any unlawful termination of contract may result in damages. Damages paid to the unlawfully dismissed worker cannot go below his/her three months salary but they cannot exceed six (6) month salary. This does preclude the payment of indemnities and other benefits to which the worker is entitled. Where the worker has worked for the employer for a period which is longer than ten (10) years, damages shall not go beyond the salary of nine (9) months.

[21] The Court finds that in the judgment RSOCAA0011/11/CS which is applied for review, in its paragraph 15,16 and 17 it demonstrates that after analyzing the

conditions in which Ruhimbaza Modeste was dismissed, the Supreme Court found that he was dismissed due to unfair reasons and basing on article 33 paragraph (3) of the Law N°13/2009 of 27/05/2009 mentioned above, it awarded him damages equivalent to his gross salary of 9 months because his working experience was more than ten years (10), those damages were 3,934,134Frw in total as it was held by the Intermediate Court of Nyarugenge and also upheld by the High Court.

[22] The Court also finds that in paragraph 33 and 37 of the Judgment RSOCAA0011/11/CS together with the document titled *indémnité de depart* which was received by Ruhimbaza Modeste on 25/11/2009 which is in the case file, indicates that he was given payments for notice allowance equivalent to 337,126Frw as provided by article 32, paragraph 1 of the aforementioned law, leave allowance equivalent to 79,477Frw provided by article 57, paragraph 2 of that law and dismissal compensation of his six month salary also provided by article 35 par. 1 equivalent to 2,622,755Frw, all totaling to 3,139,359Frw.

[23] The Court finds that damages awarded in case of dismissing an employee for unfair reasons are based on article 33 of the Law N°13/2009 of 27/05/2009 mentioned above, those damages are awarded as a relief to the moral prejudice caused by that dismissal, thus they must be distinguished from other payments the employee gets as his legal entitlement when his employment is terminated. The difference between the payments given to an employee when his employment contract is ended and the damages in case there is a fault committed by the employer for dismissing him for unfair reasons, it is also emphasized by the legal scholars, whereby they opine that

“When the notice period is over, each one remains with his/her rights and is obliged to perform his obligations even though the employee can be exempted by the employer. In that case, an employee is entitled to compensatory indemnities that are not identical with the dismissal damages nor with the moral damages.⁵ And that when an employee is dismissed before getting his annual leave of which he is entitled to he has to get monetary compensation for it, which is different from dismissal damages because it is regarded as salary.⁶

[24] The Court finds that Ruhimbaza Modeste was entitled to 3,139,359Frw given by Bank of Kigali to him as terminal benefits when dismissing him, this is in accordance with article 32 par. 2; 35 par. 1 and 57 par. 2, of the Law N°13/2009 of 27/05/2009 mentioned above and even article 33 par.2 of that law provides that “This does preclude the payment of indemnities and other benefits to which the worker is entitled, for those reasons those payments were not supposed to be deducted from the damages originating from the fault of being dismissed unfairly”.

⁵ Alain Cœuret, Bernard Gauriau, Michel Miné, Droit du travail, Edition Dalloz, 2006, p. 386-387:

[... Lorsque le préavis est exécuté, chacun conserve la maîtrise de ses droits ou pouvoir, chacun demeure tenu d'exécuter ses obligations.....Mais le salarié peut aussi en être dispensé par l'employeur. Dans cette hypothèse, il a droit à une indemnité compensatrice ne se confondant pas ni avec l'indemnité de licenciement..... ni avec la réparation....]

⁶ Idem, p. 388-389 :Lorsque le contrat de travail est résilié avant que le salarié ait pu bénéficier de la totalité du congé auquel il avait droit, il doit recevoir pour la fraction de congé dont il n'a pas bénéficié, une indemnité compensatrice.....à la différence de l'indemnité de licenciement, cette indemnité a une nature salariale....]

[25] In accordance with the motivations and the legal provisions given above, the Court therefore finds that the 3,139,359Frw given to Ruhimbaza Modeste when he was dismissed should not have been deducted from the 3,934,134Frw of damages awarded in judgment RSOCAA0011/11/CS resulting from the fault of dismissing him for unfair reasons, because that amount deducted was given to him as his benefits which he is legally entitled to. Thus, he should have been given 3,934,134Frw in their entirety.

b. The issue relating to appraisal allowance and performance allowance.

[26] Counsel Munyeshema Napoléon states that in the judgment RSOCAA0011/11/CS, the Supreme Court held that Ruhimbaza Modeste is not entitled to performance allowance basing on the ground that he was not appraised, nor the appraisal allowance on the ground that he was dismissed before the establishment of balance sheet which determines the annual profit of Bank of Kigali Ltd, he finds that if he was not dismissed he would have been appraised and within that period of ten months he worked in that year for that bank he contributed to its profit, therefore he finds no reason to deprive him from those allowances he is entitled to for that period.

[27] He concludes his case by praying to the Court that his client be given appraisal allowance of $437.126\text{Frw} \times 10/12 = 364.272\text{Frw}$ and performance allowance of $437,126\text{Frw} \times 10/12 = 364.272\text{Frw}$, he argues that after his case, there are judgments of his former workmates rendered by the Supreme Court who had similar issue in which the court held that they should be given that appraisal allowance and performance allowance computed on the period they had worked, those judgments

include RSOCAA0013/12/CS Mukamusonera Venantie v Bank of Kigali rendered on 31/12/2013 and RSOCAA0017/12/CS Cyuma Yvonne v Bank of Kigali rendered on 14/06/2013, the fact that for him, he was not given those allowances is injustice which contained in judgment RSOCAA0011/11/CS and that is why he requests for the review to get relief.

[28] Counsel Rutembesa Phocas, representing Bank of Kigali Ltd, states that the judgment RSOCAA0011/11/CS which is requested to be reviewed due to injustice in its paragraph 45, 46 and 47 the Court demonstrated the ground why Ruhimbaza Modeste was not awarded those allowances, which are based on article 76 of the Bank of Kigali's regulations which provides that a performance allowance may be given to the worker at the end of the year. Nevertheless, the employer is under no obligation to give bonus⁷, and also article 77 of those regulations which stipulate that appraisal allowance is given out in march basing on the annual benefits of the Bank after approval from the Board of Directors which fixes the amount and the date of payment⁸

[29] Regarding the judgments rendered by the Supreme Court which granted bonus and performance allowances, he argues that they should not be referred to, they were rendered after the judgment of Ruhimbaza Modeste's case, and each quorum of

⁷ A bonus may be given to the Worker at the end of the Year. Nevertheless, the Employer is under no obligation to give bonus. The bonus is calculated on the net salary at 31st December and evaluation points obtained by the Worker.

⁸ The giving of this allowance comes from the decision of the Board of Directors on the proposition of the Management Committee which fixes the amount and the date of payment. The Employer is under non legal obligation to give this appraisal allowance »

judges adjudicate basing on its perception, and that is why there are other related judgments rendered by the Supreme Court such as judgment RSOCAA0010/12/CS, Mitimituje Gaëtan v Bank of Kigali, rendered on 13/06/2014, and RSOCAA0003/13/CS, Kanyandekwe Segatabazi Cisco v Bank of Kigali rendered on 30/10/2015 which did not grant bonus and performance allowances, therefore the statements of Counsel Munyeshema Napoléon that the Court can refer on the other decided cases they should not be considered, because they did not take the same position in all of them.

THE OPINION OF THE COURT

[30] The Court finds that paragraphs 45-47 of the judgment RSOCAA0003/13/CS which is requested to be reviewed, Ruhimbaza Modeste was not given performance allowance because he was not appraised as stipulated by article 76 of the regulations of Bank of Kigali Ltd, which provides that performance allowance /bonus is given to a worker basing on the evaluation points obtained by the worker which also determines the performance allowance he has to get. It also indicates that he was not given bonus pursuant to article 77 of those regulations which provides that it is given basing on the annual benefits and Ruhimbaza Modeste couldn't get it before the computation of those benefits because he was dismissed before the end of the year.

[31] The Court finds that the appraisal of the worker is based on his performance and his discipline manifested within the year in his duties and in the RSOCAA0003/13/CS, the Court indicated that Ruhimbaza Modeste was dismissed due to unfair reason before the end of that year, it is obvious that he was not

able to complete that year at work because of his employer's fault of dismissing him for unfair reason, because if he was not dismissed he would have continued working and also be appraised at the end of the year like other workers who retained their posts.

[32] The Court finds that because he was dismissed before the end of the year it doesn't invalidate his work for those ten months he had worked especially when the Bank did not prove to the Court that he wouldn't have got the required result to performance allowance apart from alleging that he did not fulfill the requirements for that post.

[33] On the issue regarding the bonus, the Court finds that indeed it is given out after the end of the year basing on the annual benefits, however the Bank of Kigali does not demonstrate that it did not make profit after the dismissal of Ruhimbaza Modeste before the end of the year, this implies that he contributed to it for those ten months he worked.

[34] The Court also finds the allegations that pursuant to clause 76 and 77 of the Bank of Kigali Ltd's regulations that the employer is under no legal obligation to give those allowances do not stand, because it would have been right if for whatsoever reason the bank could demonstrate that even the other workers who were remained did not also get it, therefore if they decided to give it out, they had to do it regarding all workers who contributed to its benefits. This was also the position of the court of cassation of France in the case relating to the bonus for productivity whereby it held that even though the employer is under no legal obligation to give it to workers, but if he decides

to give it out it is binding to him because it becomes part of workers salary.⁹

[35] The Court finds therefore that, since the Court held that Ruhimbaza was unfairly dismissed and this fault prevent him to continue the work up to the end of the year so that he can be appraised and the annual result of the Bank be established all these are result of dismissal due to unfair reasons, and should not be based on to deny him the bonus and performance allowance he was supposed to get if he stayed on work, therefore he has to get them as stipulated by article 76 and 77 of the Bank of Kigali's regulations. Basing on the ration of the period of ten month he had worked and on the monthly average salary of 437,126Frw which was established in the judgment RSOCAA0011/11/CS requested for review, he must be paid bonus of $437,126\text{Frw} \times 10/12 = 364,272\text{Frw}$ and performance allowance of $437,126\text{Frw} \times 10/12 = 364,272\text{Frw}$, all amounting to 728,544Frw.

c Whether damages should be awarded in this case

[36] Counsel Munyeshema Napoléon, basing on article 258 of the Decree - Law of 30/07/1888 relating to the contracts or convention obligations, requests the Court to award Ruhimbaza Modeste counsel fees of 1,000,000Frw and 500,000Frw for the procedural fees because he hired the services of an advocate.

⁹ Cour de Cassation, Chambre Sociale, 5 Juin 1996: [...prime de productivité...lorsqu'elle est payée en exécution d'un engagement unilatéral de l'Employeur, une prime constitue un élément du salaire et est obligatoire pour l'employeur, dans les conditions fixées par cet engagement, peu importe son caractère variable].

[37] Counsel Rutembesa Phocas, representing Bank of Kigali argues that the damages requested by Ruhimbaza Modeste should not be awarded because he is the one starting those unnecessary lawsuits. He argues that he was awarded damages in the previous judgments but he has continued to drag Bank of Kigali Ltd in lawsuits which required it to hire lawyers, hence its Bank of Kigali which should be awarded those damages. For that purpose he requests 1,000,000Frw of the procedural fees and 1,000,000Frw of the counsel fees.

OPINION OF THE COURT

[38] Decree - Law of 30/07/1888 relating to the contracts or convention obligations, article 258, provides that any act of person, which causes damage to another obliges the person by whose fault it happened to repair it.

[39] The Court finds that after Ruhimbaza Modeste was dismissed for unfair reasons, resorted to the courts of laws and was assisted by the advocate, thus he incurred expenses, therefore he deserves those damages, but since the amount he requests are excessive, in the discretion of the court it awards 500,000Frw of the counsel fees and 300,000Frw of the procedural fees, all amounting to 800,000Frw.

[40] Regarding the damages requested by the Bank of Kigali Ltd, the court finds that they should not be awarded because it has lost the case.

III. THE DECISION OF THE COURT

[41] Decides that the preliminary objection of inadmissibility of Ruhimbaza Modeste's application for the review of the judgment RSOCAA0011/11/CS raised by the Bank of Kigali Ltd lacks merit;

[42] Decides that 3,139,359Frw he was given when he was dismissed should not be deducted from the 3,934,134Frw of the damages resulting from unfair dismissal;

[43] Orders Bank of Kigali Ltd to give Ruhimbaza Modeste 3,934,134Frw in damages resulting from unfair dismissal;

[44] Orders Bank of Kigali Ltd to give Ruhimbaza Modeste performance and bonus allowances of 728,544Frw;

[45] Orders Bank of Kigali Ltd to give Ruhimbaza Modeste 800,000Frw for procedural and counsel fees;

[46] Declares that the judgment RSOCAA0011/11/CS rendered by the Supreme Court on 22/02/2013, is reversed on the issue regarding the amount of damages resulting from unfair dismissal and the performance and bonus allowances;

[47] Orders that court fees amounting to 100,000Frw to be borne by Bank of Kigali Ltd.