

SALIMINI v GOVERNMENT OF RWANDA (MINISANTE)

[Rwanda SUPREME COURT – RADA 0002/16/CS –
(Nyirinkwaya, P.J., Mukandamage and Rugabirwa, J.) February
23, 2018]

Administrative law – Sanctions against a public servant – Disciplinary faults – When a public servant commits a fault which is not sanctioned by the disciplinary sanctions provided for by the statute governing public servants the head of his/her institution, upon recommendation of internal disciplinary committee, shall determine the sanction in relation to the gravity of the fault committed – The Presidential Order N° 65/01 of 04/03/2014 determines modalities of imposing disciplinary sanctions to public servants, article 15.

Administrative law – Disciplinary sanctions – Closing a criminal case – A decision on the criminal charges against a public servant doesn't prevent him/her from being sanctioned on the disciplinary level because those sanctions can be levied against him/her even when he/her was not found guilty.

Fact: Salimini who was a technician incharge of maintenance at Byumba Hospital sued the government of Rwanda (Ministry of Health) to alleging that it unlawfully dismissed him. He requested to be reinstated in his post, to be paid the salary arrears which he was not remunerated before his dismissal and to pay him various damages including that related to the fact that he was not issued a work certificate.

In its defence, the Government of Rwanda stated that it lawfully dismissed Salimini due to the gross misconduct he committed in that hospital, which includes the changing of a brand new engine and the shock absorbers of the motorcycle he used in his work and the fact that he acted with negligence which led the generator that provided the electricity to that hospital to switch off while it could badly affect the service delivery and the patients who are hospitalised in that hospital including infants who were in incubators.

The High Court, after ruling that Salimini had to be dismissed from work, also held that the claim of Salimini Saidi has merit in part since he was not issued the work certificate, and it ordered the Government of Rwanda to pay him judicial damages and counsel fees.

Salimini appealed before the Supreme Court stating that the High Court declared that he must be dismissed from work, disregarding that his dismissal was unlawful since he did not commit the faults he was accused of and did not exercise the right to defence, and that he was given an unlawful sanction while his case had been closed by the judicial police.

The Government of Rwanda rebutted that the fact for the High Court to have held that the plaintiff should not be reinstated was due to the fact that it found he committed the faults he was sued for which could harmfully affect service delivery of the hospital as well as the patients who were hospitalised.

Concerning the issue of the right to defence, the Government of Rwanda replied that the appellant was not unlawfully dismissed because he was given the right to defend himself on the aforementioned serious faults.

With regards to the ground relating to unlawful dismissal and disciplinary sanctions, the Government of Rwanda retorted that the High Court found that the appellant deserved to be dismissed due to the gravity of the faults he committed which relate to the mismanagement of the government equipment he has to take care of, and those faults could cause the bad impact to the extent that they should not only be assessed on the value of the damaged equipment.

The Government of Rwanda filed a cross-appeal praying for judicial damages of 5,000,000 Frw. Salimini defended himself arguing that he cannot award those damages because the Government did not appeal for what it lost in the case at the previous instance.

Held: 1. The public servant who breaches his/her work obligation by committing acts that are not listed among statutory disciplinary faults, the sanction imposed to him/her should correspond to the gravity of the fault determined by the head of his/her institution, upon recommendation of an internal disciplinary committee. Therefore, Salimini committed gross faults he was sued for which related to mismanagement of government equipment under his responsibility.

2. The fact for the prosecution to have closed the criminal case against an employee does not preclude him from facing disciplinary procedure sanctions. Thus, Salimini was lawfully dismissed due to the serious faults he committed, even if he was not found guilty in prosecution.

Appeal lacks merit.
Cross appeal has merit.

court fees deposit covers expenses incurred in this case.

Statutes and statutory instruments referred to:

Law N° 86/2013 of 11/09/2013 establishing the general statute governing public servants, articles 76, 77 and 79.

Law of 30/07/1888 relating to contract or obligations, article 258.

Presidential Order N° 65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants, articles 5 and 15.

Authors cited:

Jean Rivero, Droit Administratif, Dalloz, 2011, p. 374.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started before the High Court, Salimini Saidi who was a technician of maintenance at Byumba Hospital suing the Government of Rwanda (Ministry of Health). He requested to be reinstated on his post because it unlawfully dismissed him, to be paid the salary arrears which he was not remunerated before his dismissal and to be awarded various damages.

[2] In his defence, the counsel for Government of Rwanda (Ministry of Health) state that it did not dismiss Salimini Saidi unlawfully, rather it dismissed him due to the serious fault he committed in that hospital, including the fact that the new engine of Motorcycle Yamaha AG 100 (GPM) 319 B which he used to ride in his work was exchanged with an old one and its shock absorbers were changed. In addition, he acted negligently which

led the generator that provided the electricity to that hospital to switch off while it could affect negatively the patients who were hospitalised in that hospital including infants who were in incubators.

[3] On 30/11/2015, that court rendered the judgment RAD0003/15/HC/KIG and held that the claim of Salimini Saidi has merit in part on matters related to the fact he was not given the work certificate, the judicial damages, and counsel fees. It ordered the Government of Rwanda (Ministry of Health) to give him 460,000Frw (but it motivated that he must be given 462,000Frw) in damages for not to have been given the work certificate and 500,000Frw for judicial damages and counsel fees.

[4] Salimini Saidi appealed against that judgment to the Supreme Court stating that the High Court confirmed his dismissal from work while disregarding that it was imposed unlawfully because he did not commit the faults he was sued for and did not exercise his right to defense, and indeed that even when this court would deem that he committed them, the imposed sanction remains unlawful.

[5] The hearing was conducted in public on 16/01/2018, where Salimini Saidi was assisted by counsel Nsengiyumva Enos, while the Government of Rwanda (Ministry of Health) was represented by counsel Rubango Epimaque.

II. ANALYSIS OF THE LEGAL ISSUES

- **A. Determining whether Salimini Saidi was unlawfully dismissed from work**

- **1. Whether Salimini Saidi was unlawfully dismissed from work because he did not commit the faults related to work**

[6] Salimini Saidi and his counsel state that he was unlawfully dismissed from work because he did not commit the fault he was sued for, consisting of damaging the motorcycle Yamaha AG 100 (GPM 319 B) he used in his work because it was damaged by Biraguma when he gave it to him for making its maintenance. They further state that he did not damage the generator of Byumba Hospital, rather, it is possible that an employee of “Garage Tropical” may have introduced a code in one of the generators of that hospital in order to be given the repair fees since the evidence proving that he did not commit those faults, is that he was found not guilty by the judicial police station of Byumba because it closed his file.

[7] They further state that the High Court held that Salimini Saidi must be dismissed because the gross faults he committed affected the hospitalised patients in Byumba hospital and the infants who were in incubators while disregarding that nothing proves that those effects really happened. They request the Government of Rwanda (Ministry of Health) to be instructed to reinstate him on work, and if impossible due to unavailability of his position, it should give him 12,000,000Frw in damages for unlawful dismissal.

[8] The State attorney (Ministry of Health) argues that Salimini Saidi was not unlawfully dismissed because the High Court found that he committed the serious fault consisting of changing engine and shock absorbers of the motorcycle which he had to take care of, and the fact that he acted with negligence to the extent that the generator providing electricity to the hospital

of Byumba switched off, which was likely to affect patients who were in that hospital including those who were undergoing surgery operations and those who were on ventilators as well as the infants who were in incubators; therefore, he should not be reinstated on his post or be given the damages he requests for.

DETERMINATION OF THE COURT

[9] Article 77 of the Law n°86/2013 of 11/09/2013 establishing the general statutes for public service provides that “If a public servant breaches or fails to comply with the obligations assigned to him/her, this shall constitute a disciplinary fault punishable by one of sanctions provided for in article 76 of this Law in consideration of its seriousness”. In addition, article 15 of the Presidential order n°65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants provides that “when a public servant commits an act or behaves in way that breaches his/her work obligation while such act or conduct is not among disciplinary faults provided for by this Order, the head of his/her institution, upon recommendation of internal disciplinary committee, shall determine the gravity of acts or behaviour taken as disciplinary fault and its corresponding sanction, among sanctions provided for by this Order”.

[10] The case file demonstrates that the Director General of Byumba hospital wrote to Salimini Saidi, a technician of maintenance of that hospital, the letter n°20/02.1/OPH BY/2009 of 27/12/2013 requesting him to provide the explanation about the faults he committed concerning the fact that the new engine and shock absorbers of the motorcycle GPM 319 B he used to fulfil his duties were exchanged with old ones. On 08/01/2014,

Salimini Saidi responded in writing that he is not the person who changed that engine and shock absorbers of that motorcycle as it was done by Biraguma when he gave it to him for its maintenance because Kevin who used to do its maintenance was not there. Concerning the generator, he states that he is not the person who introduced the code that prevented it from switching on, rather, he thinks it may have been introduced on by an employee of *Garaje Tropical* who did its maintenance in order to get paid for repair fees.

[11] As it was indicated by the report of *Garaje Tropical* on 17/02/2014, the automatic charger of the first generator of Byumba hospital known as SDM was stolen and its Solenoid valves and starter were damaged, while the second named PRAMAC 65 KVA was coded to prevent it from switching on and providing electricity, and in addition to this, its automatic charger died while Salimini Saidi is the person who held the key of the room where they were stored.

[12] The case file also indicates that the Director General of Byumba Hospital, based on the report of 17/02/2014 mentioned above and on the various letters which were written to Salimini Saidi informing him his different faults he committed, but refused to change, he temporarily suspended him on work from 17/02/2014 due to the faults he committed that led to the theft of the engine and other spare parts of the motorcycle and two generators of that hospital. This act affected the service delivery of that hospital to the client as stated in the letter n°20/87/OPH BY/2014 of 17/02/2014.

[13] The report of 02/05/2014 prepared by the team of staff members of the Ministry of Health and Ministry of Public Service and Labour indicates that Salimini Saidi should be held liable for

the serious fault he committed of damaging the equipment of Byumba hospital which he had to take care of, because the engine of motorcycle Yamaha AG 100 (GPM 319 B) was changed as it is demonstrated by the chassis number, while he was the person in charge of that motorcycle. In addition, the generator of the hospital failed to provide the electricity automatically and its solenoid valves were changed, while Salimini Saidi was in charge of keeping its keys, therefore, that team requested disciplinary sanctions of suspension for a period not exceeding three (3) months without pay against him as a consequence of breach to fulfill his duties and to misuse government equipment.

[14] In the case file there is a report of 17/06/2014 that was submitted by the members of disciplinary committee of Byumba Hospital which emphasised also that Salimini Saidi should be dismissed from work because of the serious faults he committed relating to the intentional damage on the motorcycle Yamaha AG 100 (GPM 319 B) and the generators providing electricity in Byumba Hospital as it is indicated by the report of *Garage Tropical* technicians mentioned above. Those faults were likely to threaten the life of patients like those who were on set for surgery operation, those who were in incubators, those who were on oxygene, and all these would compromise the reputation of Byumba Hospital. In addition, Salimini Saidi received various letters showing him his faults consisting of misbehaviour in his work, but showed no sign of change.

[15] Basing on different letters and reports mentioned above, on 03/07/2014, the Minister of Health notified Salimini Saidi that he was dismissed from work due to the above-stated serious faults he committed.

[16] The Court finds that the letters and reports which are mentioned above indicate that Salimini Saidi has committed the serious faults he was accused of relating to the mismanagement of the government equipments in his attributions because the engine and shock absorbers of the motorcycle Yamaha AG 100 (GPM 319 B) of Byumba Hospital were stolen ; and that the automatic battery charger the first generator of that hospital was also stolen and its Solenoid valves and starters were damaged while the second was coded to the extent that it could not switch on and provide electricity to that hospital despite the fact that he was the person in charge of those equipments for he used that motorcycle in his daily work and kept the key of the place of installaton of those generators as evidenced by the report of 17/02/2014 submitted by the technicians of *Garage Tropical*.

[17] Concerning the statements of Salimini Saidi that he cannot be held liable for the disciplinary faults while he was found not guilty for the offence of damaging the motorcycle and generator because the case file was closed by the judicial police of police station of Byumba; article 78 of the Law N° 86/2013 of 11/09/2013 establishing the general statutes for public service provides that the disciplinary sanction of a public servant shall be independent from criminal liability and punishment as provided by the criminal code to the extent that the same fault may trigger both disciplinary and criminal procedures..

[18] Indeed, the law scholar, Jean Rivero, in his book titled “Droit Administratif” explains that the same fact may trigger both disciplinary and criminal procedures and that the decision on the criminal action does not affect the disciplinary decision, the exception made of the facts of which the penal judge decided to have occurred or not in a final decision, otherwise the employee

may be held liable for disciplinary faults for which he was declared innocent by a criminal verdict.¹.

[19] Basing on the provisions of article 78 of the aforementioned law and on the explanations of the above-stated law scholar, the court finds that nothing was likely to prevent Salimini Saidi from facing disciplinary procedure and be sanctioned despite the absence of criminal action against him as he alleges. Accordingly, the grounds of Salimini Saidi that he was unlawfully dismissed because he did not commit the faults lack merit.

- Whether Salimini Saidi was unlawfully dismissed on work because he did not exercise his right to defense

[20] Salimini Saidi and his counsel state that the High Court held that he should be dismissed, disregarding that he was unlawfully dismissed because he did not defend himself on faults he was accused of beforehand concerning damaging motorcycle and generators of Byumba hospital.

[21] The state attorney states that Salimini Saidi was not unlawfully dismissed because he defended himself on gross

¹ "(...) lorsqu'un même fait constitue, à la fois, une faute disciplinaire et une faute pénale, les deux formes de répression peuvent s'exercer parallèlement; si la décision pénale intervient la première, elle est sans conséquence sur la décision disciplinaire, sous une seule réserve: les constatations de fait du pénal juge, en vertu de l'autorité de la chose jugée, lient l'autorité disciplinaire; mais elle peut déclarer disciplinairement punissables les faits qui, au pénal, ont entraîné l'acquittement, et inversement. C'est ce que l'on exprime en parlant de l'autonomie de la répression disciplinaire", par Jean Rivero, "Droit Administratif", Dalloz, 2011, p.374.

faults mentioned above he committed. Uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko Salimini Saidi atirukanwe ku kazi mu buryo bunyuranyije n'amategeko kubera ko yisobanuye ku makosa akomeye yakoze yavuzwe haruguru.

DETERMINATION OF THE COURT

[22] Article 79 of the law establishing the general statutes for public service provides that no public servant shall be sanctioned unless he/she has been given an opportunity to submit in writing his/her defence.

[23] As it was explained above, after the letter n° 20/116/HOPBYABA 2014 of 27/12/2013 that the Director General of Byumba Hospital wrote to Salimini Saidi requesting him to explain on the above-stated serious faults he committed relating to the fact that the engine and shock absorbers of the motorcycle AG 100 (GPM 319 B) of that hospital was changed while he was the person in charge of it, Salimini Saidi replied to that letter on 08/01/2014 informing him that he did not commit those faults; rather, it was committed by Biraguma when he gave him that motorcycle in order to do maintenance, since Kevin who used to do it was not around.

[24] After receiving that letter, the Director General of Byumba Hospital wrote a letter to Salimini Saidi on 17/02/2014, informing him that he temporarily suspends him due to the faults he committed as mentioned above. This led Salimini Saidi to write to the Chairperson of the Board Of Directors of Byumba Hospital a letter of 24/02/2014, requesting him to do justice and he explained to him that his superior could have not suspended him temporarily on work, while he did not damage the engine and

shock absorbers of motorcycle Yamaha AG 100 (GPM 319 B) because they were changed by Biraguma, and he did not damage generators of that hospital because on 12/02/2014, he did not hold the key of the room where they were and it is his colleague Serge who had it instead.

[25] The case file demonstrates that afterwards, the team of staff members of the Ministry of Health and Ministry of Public Service and Labour submitted the report of 17/06/2014, whereby they explained that they were not satisfied by the explanations of Salimini Saidi because he exculpates himself from the faults he was accused of related to generators and motorcycle of which their spare parts were changed while he was responsible of taking care of them as he rather inculpates his colleagues including the in charge of transport services and Serge. For these reasons, on 03/07/2014, the Minister of Health based on the different reports that are mentioned above notified Salimini Saidi that he was dismissed from 17/02/2014, the time he was temporarily suspended due to serious faults he committed of damaging that government equipment which he should take care of, as well as other faults of misbehaviour he was informed but failed to change.

[26] The court finds that the letters and reports above stated indicate that before the dismissal of Salimini Saidi by the Minister of Health on 03/07/2014, he had exercised his right to defense beforehand on faults he was accused of before his superior and Chairperson of the Board of Directors of Byumba Hospital as well as the team of staff members of Ministry of Health and Ministry of Public Service and Labour as indicated and explained above. Therefore, his argument that he was

unlawfully dismissed because he did not defend himself on the faults he was accused of lack merit.

- **Whether Salimini Saidi was unlawfully dismissed on work because he was imposed unlawful disciplinary sanctions**

[27] Salimini Saidi and his counsel state that he was unlawfully dismissed because he was imposed the disciplinary sanction which does not correspond to the gravity of the faults he was accused of, because if the High Court was furnished with the elements of evidence supporting that he damaged the motorcycle whose value is superior to 1,000,000Frw but not exceeding 1,500,000Frw, he should have been sanctioned with delay in promotion provided by article 12 of presidential order no 65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants or he would have been suspended for a period not exceeding three (3) months without pay as provided by article 13 of that presidential order, instead of being imposed the sanction of dismissal because it is not proportional to the gravity of the faults alleged to have committed as mentioned above.

[28] The State attorney (Ministry of Health) states that Salimini Saidi was not unlawfully dismissed because the High Court relied on article 5 of the presidential order mentioned above, which provides for the determination the gravity of a fault, and found that he should be dismissed of work because of the gravity of the faults he committed that are related to mismanagement of the government equipment which he must take care of, and those faults could result in negative effects which cannot be determined in consideration of only the value of

the damaged equipment as the High Court held it in paragraph 8 of the judgment against which the appeal was lodged to this court.

DETERMINATION OF THE COURT

[29] Article 5 presidential order n° 65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants, provides that the gravity of a disciplinary fault shall be determined by taking into account the circumstances in which it was committed and the related consequences. In addition, article 15 of that presidential order provides that when a public servant commits an act or behaves in way that breaches his/her work obligation while such act or conduct is not among disciplinary faults provided for by this Order, the head of his/her institution, upon recommendation of internal disciplinary committee, shall determine the gravity of acts or behaviour taken as disciplinary fault and its corresponding sanction, among sanctions provided for by this Order.

[30] Concerning the disciplinary sanction that Salimini Saidi should be imposed, basing on article 5 and 15 of the aforementioned presidential order, the court finds that the fact for Salimini Saidi to have committed the fault of mismanagement of the government equipments as it was explained above, which fault resulted in deterioration of two generators because their parts were stolen and were coded which disabled them from switching on and producing electricity to that hospital, to the extent that this could cause severe effect including deaths of patients who were undergoing surgery operations and those who were on ventilators as well as infants who were in incubators. It finds in addition that those faults have affected the reputatin of that hospital because it was unable to provide the good service to

its clients as it is indicated in the previously stated report of disciplinary committee of 04/06/2014, it is obvious that his statement of being unlawfully dismissed because he was imposed an illegal sanction of dismissal has no merit. Therefore, he should not be reinstated in work and be given the moral damages he requested for, and it is not necessary to examine about the arrears of salary he was not remunerated for the period he was temporarily suspended, as well as 16 months of his dismissal and the terminal benefits.

- **Whether Salimini Saidi should be awarded damages equivalent to his 6 months' salary because he was not given the work certificate**

[31] Salimini Saidi and his counsel state that the Government of Rwanda (Ministry of Health) should pay him damages for not be given the work certificate which are equal to his 6 months' salary, amounting to $154,000 \times 6\text{months} = 924,000\text{Frw}$; instead of being three months of his salary of 462,000Frw that he has been awarded by the High Court.

[32] The State attorney states that Salimini Saidi should not be given 924,000Frw which is equivalent to his six months' salary because he does not raise any deprecation against the judgment rendered by the High Court that awarded him the damages of 462,000Frw equivalent to his 3 months of salary for not be given the work certificate.

DETERMINATION OF THE COURT

[33] The Copy of the judgment RAD0003/15/HC/KIG that was subject to appeal before this court indicates that the High

Court awarded Salimini Saidi a discretionary amount of 460,000Frw in damages (but it explained that he must be given 462,000Frw =154,000frw x3) equivalent to his 3 months of salary because the Government of Rwanda (Ministry of Health) did not issue him the work certificate at the time of his dismissal.

[34] The court finds that those damages awarded to Salimini Saidi by the High Court for not being given the work certificate are in proper range, therefore he should not be given the damages that are equal to six months' salary because he does not substantiate the with legal basis.

**- Whether Salimini Saidi should be awarded the
counsel and judicial damages**

[35] Salimini Saidi and his counsel state that the Government of Rwanda (Ministry of Health) should pay him 800,000Frw of judicial damages from the first instance up to this court and 1,500,000Frw of the counsel fees he incurred in all instances he pleaded in, totalling 2,300,000Frw.

[36] The State attorney states that the Government should not pay Salimini Saidi that money because he committed serious faults as stated above and then dragged himself into unnecessary lawsuits.

DETERMINATION OF THE COURT

[37] The court finds that Salimini Saidi should not be awarded the counsel and judicial damages because his appeal has no merit.

- **Whether the cross appeal of the Government of Rwanda (Ministry of Health) has merit**

[38] The State attorney states that he raises a cross-appeal requesting Salimini Saidi to pay to it 5,000,000 Frw for judicial damages.

[39] Salimini Saidi and his counsel state that he should not pay the Government of Rwanda those damages because it did not appeal against the ruling on the claims it lost in the first instance.

DETERMINATION OF THE COURT

[40] Article 258 of Civil Code Book Three, provides that any act of a person, which causes damage to another obliges the person by whose fault it happened to be held liable.

[41] Basing on that article, the court finds that Salimini Saidi should pay the Government of Rwanda (Ministry of Health) 800,000Frw for judicial damages awarded in the discretion of the court ; because it incurred unnecessary expenses in following up this appeal while it was clear that his appeal was groundless.

[42] With regards to the compensation, according to the motivation provided above, the court finds that the Government of Rwanda (Ministry of Health) should pay Salimini Saidi 462,000Frw of the damages for not handing to him the work certificate and 500,000Frw of the counsel fees and judicial damages which he was awarded on the first instance, totaling 962,000 while Salimini Saidi. Should pay the Government 800,000 Frw for judicial damages. Through the compensation of both debts, the court finds that the Government of Rwanda

(Ministry of Health) should pay Salimini Saidi the balance of 962,000 – 800,000 = 162,000Frw.

III. DECISION OF THE COURT

[43] Declares without merit the appeal of Salimini Saidi ;

[44] Declares with merit the cross-appeal of Government of Rwanda (Ministry of Health)

[45] Orders the Government of Rwanda (Ministry of Health) to pay Salimini Saidi 162,000Frw as a result of compensation of debts as it was explained above.

[46] Rules that 100,000 Frw of the court fees deposit by Salimini Saidi for his appeal covers the expenses incurred in this case.