

MHAYIMANA v RWANDA BAR ASSOCIATION

Rwanda SUPREME COURT-RS/INJUST/RAD 00002/2022/SC - (Ntezilyayo, P.J.
Nyirinkwaya, Cyanzayire, Hitiyaremye and Kalimunda, J) 17 February 2023]

Procedure for the review of cases on the grounds of injustice – the Principle of Non Ultra petita – The new claims that have not been previously litigated in the case that seeks review are not admissible for injustice related case review.

Law governing the Bar Association – Discipline of Advocates – Disciplinary Committee – Time limit for lodging a case with the Disciplinary Committee – When the President of the Bar Association is informed of the faults of which an advocate is accused and finds that such faults are under the jurisdiction of the Disciplinary Committee, he/she refers the matter to the Disciplinary Committee within three months from the date he/she was informed of the faults.

Law governing the Bar Association – Discipline of Advocates – Disciplinary Committee – Taking the decision – When the Disciplinary Committee is convened for the purpose of administering a sanction, a required quorum for sitting and taking a decision shall be 2/3 of its members provided by law.

Summary of facts: Counsel Mhayimana sued Rwanda Bar Association and requested the Court for the revocation of the decision of the Disciplinary Committee that suspended him from exercising his profession for a period of three months for his behaviour when the Registrar of the Intermediate Court of Nyarugenge notified him of a court decision that fined him for delaying the case.

The case started from the High Court, Counsel Mhayimana lost it, he applied for injustice-related case review and his application was admitted. He requested for the revocation of the Disciplinary Committee decision that suspended him from exercising his profession, arguing that the decision was taken by unauthorised persons; he stated that the decision was taken by only two committee members while it was legally supposed to be taken by 2/3 of eleven members of the Bar Association Disciplinary Committee. He also submitted that the Committee has disregarded the circumstances about the prescription of the disciplinary action of which he is accused and he claimed that they did not consider laws and evidence proving that the decision taken against him violated the procedure pertaining to the disciplinary action provided by the law.

The Bar Association argues that the ruling by the High Court should remain valid since the decision of suspending the accused from exercising his profession for a period of three months has been lawfully made. It explains that in the normal circumstances the decision is taken within a period of two (2) months, but since the concerned decision was issued in the course of COVID-19 and the measures taken for fighting against such pandemic hindered the normal working conditions. Stating that the disciplinary action is null when the time limit elapsed is the misconstruction of the law.

The main issue that was hereby examined was about determining whether the decision taken by the Bar Association Disciplinary Committee should be revoked due to various grounds that were presented by the applicant. These grounds include the fact that the quorum of the Disciplinary Committee members was incomplete when it held the meeting and took the decision.

Held 1: The new claims that have not been previously litigated in the case that seeks review are not admissible for injustice-related case review.

2. When the President of the Bar Association is informed of the faults of which an advocate is accused and finds that such faults are under the jurisdiction of the Disciplinary Committee, he/she refers the matter to the Disciplinary Committee within three months from the date he/she was informed of the faults.

3. When the Disciplinary Committee is convened for the purpose of administering a sanction, a required quorum for sitting and taking a decision shall be 2/3 of its members provided by law. Therefore, the required quorum for making a decision against Counsel Mhayimana Isaïe was should be 7 members out of 11 provided by the law instead of 6/9 in consideration of vacant posts.

Application for review of the judgment due to injustice has merit.

Statutes referred to:

Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organisation and functioning, articles 25, 29, 31, 74, 75 and 78.

Cases referred to:

RS/INJUST/RAD 00003/2021/SC Tabaruka v. Gicumbi District, rendered by the Supreme Court on 20/05/2022

RS/INJUST/RC 00007/2018/SC Ndatiribambe Samuel v. Gatera Jason et Crts, rendered by the Supreme Court on 13/03/2020;

RCA 00280/2016/HC/KIG Counsel Nduwamungu Jean Vianney v. Rwanda Bar Association, rendered by the High Court on 12/01/2017;

Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (troisième chambre), FS vs Comité économique et social européen (CESE), 12 Mai 2016, para. 59.

Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (deuxième chambre), 8 Octobre 2015, para. 105 & 107-108

Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (Première Chambre), Simona Murariu vs Autorité européenne des assurances et des pensions professionnelles (AEAPP), 16 Juillet 2015, para. 152.

Judgment of the court (second chamber) of 9 July 1987. Ingfried Hochbaum and Edward Rawes vs Commission of the European Communities, Official - annulment of appointment, Joined cases 44/85, 77/85, 294/85 and 295/85, para. 22.

Judgment

I. BACKGROUND OF THE CASE

[1] On 20/05/2021, Rwanda Bar Association Disciplinary Committee (hereby referred to as the Disciplinary Committee) took the decision n° 008/CD/2021 and punished Counsel Mhayimana Isaïe by suspending him from exercising his profession for a period of three months due to his behaviour when the Registrar of Intermediate Court of Nyarugenge notified him of a court decision that fined him for having delayed the case.

[2] Counsel Mhayimana Isaïe lodged a claim with the High Court and requested for the revocation of the Committee 's decision and he based his claim on the following grounds:

- The fact that the decision was taken by unauthorised persons;
- The fact that those who took the decision against him could not prove that they were the rightful members of the Bar Association Disciplinary Committee, since their term of office had already ended;
- The fact that the decision was taken after the prescription of the disciplinary action;
- The fact that the procedure for the disciplinary action was not respected;
- The fact that the Bar Association Disciplinary Committee was seized by a person who had neither interest nor capacity to sue for this case.

[3] For the case RAD 00017/2021/HC/KIG of 28/10/2021, the High Court held that the claim filed by Counsel Mhayimana Isaïe has no justification, and the Court upheld that the decision n^o 008/CD/2021 issued by Rwanda Bar Association Disciplinary Committee remains valid since it has been legally taken and the Court ordered to Counsel Mhayimana Isaïe to pay to Rwanda Bar Association 1,000,000 Frw for both the counsel and procedural fees.

[4] Counsel Mhayimana Isaïe petitioned the President of the Court of Appeal and requested for the review of the judgment RAD 00017/2021/KIG for injustice-related grounds. The President of the Court of Appeal analysed the petition and requested the President of the Supreme Court to have the case reviewed. After the analysis of the submitted report, the President of the Supreme Court ordered for the review of the case by the Supreme Court, and the case was docketed as RS/INJUST/RAD 00002/2022/SC.

[5] The case hearing was scheduled on 21/11/2022, but on that date, the case was not heard because Counsel Mhayimana disqualified one of the judges on the bench, the hearing was suspended for examining the disqualification. The decision on the disqualification was taken on 30/11/2022, the Court held that the claim filed by Counsel Mhayimana Isaïe for disqualification of a judge is not admitted.

[6] The hearing was resumed on 16/01/2023, all the litigants appeared before the Court, Counsel Mhayimana Isaïe was assisted by Counsel Abijuru Emmanuel, Counsel Basomingera Albert and Counsel Rwigema Vincent while Rwanda Bar Association was represented by Counsel Nizeyimana Boniface, Counsel Uwanyirigira Delphine and Counsel Rushikama Niyo Justin.

[7] Counsel Mhayimana Isaïe together with his advocates explained that the injustice is based on the following grounds:

- The fact that the decision against him was taken by unauthorised persons as it was only taken by two members while it should be taken by 2/3 of the 11 members of the Bar Association Disciplinary Committee in Rwanda;
- The fact that the decision for which he seeks revocation was taken by people who claim to be members of the Bar Association Disciplinary Committee while they had no authority to do so (since their term of office had already ended);

- The fact that they ignored the circumstances about the prescription of the disciplinary action against him while it was one of the grounds for such decision invalidation;
- Disregarding the laws and elements of evidence which prove that the decision taken against him violated the procedure provided by the law for the disciplinary action.

[8] The Bar Association legal counsels argue that the High Court's ruling on the issue should not be revoked since the decision for suspending Counsel Mhayimana Isaïe from exercising his profession for a period of three months has been legally taken.

[9] Issues that have been examined in this case are the following:

- Whether the decision number 008/CD/2021 that was issued by the Bar Association Disciplinary Committee on 20/05/2021 should be revoked.
 - Whether there has been the prescription of the disciplinary action;
 - Whether the Bar Association Disciplinary Committee has been seized by a person who has neither interest nor capacity;
 - Whether the decision number 008/CD/2021 was taken by unauthorised persons;
 - Whether it was taken by the Chairperson of the Disciplinary Committee and its Secretary;
 - Whether the required quorum for holding the meeting of the Disciplinary Committee was not complete;
 - Whether the term of office of the members of the Disciplinary Committee had already expired;
 - Whether the procedure for the disciplinary action was respected;
 - Whether Counsel Mhayimana Isaïe was imposed an illegal sanction without reasonable ground.
- Issues related to damages.

[10] Furthermore, Counsel Mhayimana Isaïe requested to the Court to order to Rwanda Bar Association to publish its decision in case he wins the case. The Court informed the litigants that the issues cannot be examined as they were not litigated in the case under review on grounds of injustice; such issues were settled in various judgments rendered by the Supreme Court.¹

[11] Following the debate of the parties on the issues to be examined, the Court closed the hearing and informed the parties that the judgments should be pronounced on 17/02/2023.

II. ANALYSIS OF THE ISSUES OF THE CASE

¹ Case RS/INJUST/RAD 0003/2021 rendered by the Supreme Court on the 20/05/2022 with Tabaruka Dieudonné v Gicumbi District (paragraph 9) and case RS/INJUST/RC 00007/2018/SC rendered by the Supreme Court on 13/03/2020 between Ndatiribambe Samuel and Gatera Joson et Crts (paragraph 66)

1. Whether the decision number 008/CD/2021 taken by the Bar Association Disciplinary Committee on 20/05/2021 should be revoked.

Whether there has been the prescription of the disciplinary action

[12] Counsel Mhayimana Isaïe and his legal counsel argue that the prescription of the disciplinary action against him had already ended and they provided the following explanations:

- The President of the Bar Association based his claim on e-mail that he received from the Inspector General of Courts on 16/12/2020, he lodged his claim with the Bar Disciplinary Committee on 23/12/2020, and he requested the Committee to make a follow-up on the issue of Mhayimana Isaïe; the latter was repeatedly summoned on 12/03/2021, on 25/03/2021 and on 30/04/2021, and the decision was taken on 20/05/2021.
- With reference to the paragraph 2 of article 78 of the Law n^o 83/2013 of 11/09/2013 establishing Rwanda Bar Association and determining its organisation and functioning that provides for the time limit for taking a decision², Mhayimana finds that the two-month period that is provided by the law had already ended on 22/02/2021; by this date, he had not even been summoned since he was summoned for the first time on 12/03/2021; therefore, the time limit for disciplinary action had ended.
- The pretext of special circumstances due to COVID-19 pandemic is not founded as they are not legally provided for, more so that there was a possibility of extensions due to a situation of special circumstances. Besides, COVID-19 related lockdown ended on 07/02/2021; therefore, they had no reason of giving to him the invitation on 02/03/2021 requesting him to appear before the Disciplinary Committee on 12/03/2021.
- The time limit for information collection and investigation that are provided under article 74 of the above mentioned Law are of public order, and the above article specifies that the information collection and investigation shall be completed within one-month period. This article must be strictly applied since it gives an order; otherwise, the sanction procedure should be considered null as it is stipulated under article 172 of the Internal Rules and Regulations of the Bar Association³. And this is what applied for case RCA 00280/2016/HC/KIG rendered by the Supreme Court on 12/01/2017 with Counsel Nduwamungu Jean Vianney v. Rwanda Bar Association (see paragraph 28).

[13] Rwanda Bar Association legal counsels submit that the arguments presented by Counsel Mhayimana are baseless and they provided the following reasons:

- The fact that the decision should be taken within a two-month period in the normal circumstances and the measures taken for fighting against COVID-19 pandemic

² The Disciplinary Committee must take a decision within two (2) months from the date on which the complaint is referred to it. Its decision shall be taken by a two-third (2/3) majority of its members present. The Secretary of the Bar Association shall communicate to the defended Advocate any disciplinary sanction taken for him/her, within fifteen (15) days and through the means for decisions notification provided for by the Code of civil, commercial, labour and administrative procedure

³ The competent organ must communicate the file to the involved Advocate, and invite him/her to submit his/her defense in writing within a period of seven (7) to fourteen (14) calendar days. Failing this may lead to the nullity of the entire procedure

hindered the normal working conditions. This is illustrated by the fact that due to the spreading of COVID-19 contaminations across the Country, on 18/01/2021 the whole Kigali City was confined under lockdown;

- The law does not explicitly mention that the failure to respect the period of two months results in the invalidation of the undertaken activities, leading to the prescription;
- Stating that the disciplinary action becomes null when the time limit elapsed is misconstruction of the law, normally, when the Legislator has provided that the summary procedure is heard within a determined time limit, exceeding such time limit does not preclude taking the decision nor lead to invalidation of the taken decision, unless it is so provided by the law.

DETERMINATION OF THE COURT

[14] Prescription can be defined as a process that leads to loss of rights due to the fact that a person who had such rights or capacity did not use it within determined time limits⁴. The prescriptive period starts running from the time a person knew or ought to know the acts that allow him/her to exercise his/her rights.⁵

[15] Article 22, paragraphs 2 and 3 of Rwanda Bar Association Rules and Regulations of 16/09/2014 (hereby referred to as Rules and Regulations) provide that the President of the Bar has the power to send the Advocate before the Disciplinary Committee when he/she considers the allegations against the Advocate are likely to result in a disciplinary sanction greater than that of within his/her competence.

[16] Article 171 of the above mentioned Rules and Regulations concerning the disciplinary proceedings provides for different disciplinary organs that include the President of the Bar, that can initiate action for disciplinary faults. Sub-paragraph (3) of the above article provides that an action can be initiated upon complaint by any interested person. For such a scenario, the complaint shall be made within three (3) months from the date on which the person concerned became aware of the facts or from the end of related investigations. The very article reads that the same time limit applies in case of referral to the Disciplinary Committee by the President of the Bar Association or a member of the Committee.

[17] The provisions of articles 22 and 171 of the above mentioned Rules and Regulations of the Bar Association well reflect the provision of article 75 of the Law n^o 83/2013 of 11/09/2013

⁴ Moyen d'éteindre un droit par non-usage ; JuriBistro Edictionnaire, Dictionnaire de droit québécois et canadien, 2016, <https://dictionnaireid.caij.qc.ca/>, accessed on 15/02/2023.

Un mode d'extinction d'un droit résultant de l'inaction de son titulaire pendant un certain laps de temps, Ooreka Droit, 2023, p.2, <https://justice.ooreka.fr/>, accessed on 15/02/2023

⁵ L'article 2224 du Code civil dispose que, *les actions personnelles ou mobilières se prescrivent par 5 ans à compter du jour où le titulaire d'un droit a connu, ou aurait dû connaître, les faits lui permettant de l'exercer. Cette prescription est considérée comme celle de droit commun. Elle est donc la règle par principe*; Ooreka Droit, *ibidem* p. 2.

establishing Rwanda Bar Association and determining its organisation and functioning (see Bar Association Law)⁶.

[18] The provision of the above cited article indicates that when the President of the Bar is informed of the disciplinary faults charged against an Advocate, he/she refers the case to the Disciplinary Committee within a three-month period starting from the date he/she was informed of the concerned faults.

[19] In this instant case, the documents contained in the case file indicate that on 16/12/2020, the Inspector General of Courts sent an e-mail to Mugabe Victor (Secretary- General of Rwanda Bar Association) and informed him of the misconduct of Counsel Mhayimana Isaïe, and sent a carbon copy to the President of the Bar Association via e-mailjulien@ksolutions-law.com. It is also clear that on 23/12/2020, the President of the Bar Association sent the letter number Let.211/Bat/KJG/12/2020 to the Bar Association Disciplinary Committee requesting it to make a follow-up on the issue of Counsel Mhayimana Isaïe.

[20] On basis of the documents mentioned in the foregoing paragraph, it is evident that the President of the Bar Association Disciplinary Committee was informed about the conduct of Counsel Mhayimana Isaïe on 16/12/2020, and he referred the matter to the Disciplinary Committee on 23/12/2020, that is within a period of 7 days. The Court has therefore finds that the three- month time limit for the disciplinary proceedings has been observed by the President of the Bar Association.

[21] Considering the above provided explanations, the Court finds that the statements of Counsel Mhayimana Isaïe that there has been the prescription of the disciplinary action, are ungrounded.

- **Whether the Bar Association Disciplinary Committee has been seized by a person who had neither interest nor capacity**

[22] Counsel Mhayimana Isaïe and his legal counsel argue that the person who seized the Bar Association Disciplinary Committee had neither interest nor capacity to sue for this case.

- The claim was filed to the Disciplinary Committee by the Inspector General of Courts, who based the filed claim on a misconduct allegedly committed against the Court Registrar, while the misconduct was not committed against the Inspector General of Courts; neither does he represent the Organ the offended Registrar works for.
- The Inspector General of Courts forwarded the complaint to Mr. Victor via the latter's personal e-mail address, while he was supposed to send the claim to the e-mail of the Bar Association Executive Secretary who in turn, forwards it to the President of the Bar Association, before it is submitted to the Disciplinary Committee.

[23] For the above issue, the Bar Association legal counsels give the following explanations:

⁶ The Disciplinary Committee shall handle cases related to the discipline of Advocates. It shall receive complaints from the President of the Bar Association, a member of the Disciplinary Committee or any other interested person. In case one (1) of the persons referred to in Paragraph One of this Article considers that the offending Advocate might be answerable, he/she shall bring the case within three (3) months from the date on which he/she gets the information or the date on which the investigation is completed.

- The claim against Counsel Mhayimana was lodged by the President of the Rwanda Bar Association as it is evidenced by a related letter addressed to the Disciplinary Committee on 23/12/2020; stating that the claimant lacks capacity and interest is unfounded.
- Article 171 of the Bar Association Internal Rules and Regulations provides that the organs take actions upon their own initiative or upon the applicant's complaint or on the initiative of any other interested person. The fact that the claim was lodged by the Inspector General of Courts was enough to initiate the disciplinary action by the Disciplinary Committee. The Advocates' profession is a profession that is meant for the general public and it is for the service of all people including the Inspector General of Courts, especially the latter represents the Judicial Organ, so that anyone who happens to learn about Advocate's misconduct has a capacity to report the case to the competent organ.

It is not the respondent who decides whether the claimant has interest or not, because he cannot tolerate anyone who discloses the misconduct committed.

DETERMINATION OF THE COURT

[24] Article 22, paragraph 2, sub-paragraph 3 of the Bar Association Internal Rules and Regulations provides that the President of the Bar Association has the power to send an Advocate before the Disciplinary Committee when he/she deems that the allegations against the Advocate are likely to result in a disciplinary sanction greater than that of within his/her competence while the article 75 of the Bar Association Law provides that the Disciplinary Committee shall handle cases related to the discipline of Advocates. It shall receive complaints from the President of the Bar Association, a member of the Disciplinary Committee or any other interested person.

[25] Through the submissions provided to the Court, the claimant and his lawyers argue that the President of the Bar Association based his claim on the e-mail he received from the Inspector General of Courts on 16/12/2020 and the President lodged a related case to the Disciplinary Committee on 23/12/2020 requesting it to initiate a disciplinary action against Counsel Mhayimana Isaïe. But for proving that the claim was filed by a person who did not have the capacity to sue, they explained that the claim was thereby lodged by the Inspector General of Courts, thus contradicting their previous statements.

[26] The decision number 008/CD/2021 for which the claimant seeks a revocation indicates that the President of the Bar Association wrote a letter n0 Let.211/Bat/KJG/12/2020 on 23/12/2020 and he requested the Disciplinary Committee to analyse the behaviour of Counsel Mhayimana Isaïe. The Court finds that the claim submitted to the Disciplinary Committee was not filed by the Inspector General of Courts as the respondent alleges, as it was submitted by the President of the Bar Association and the law entitles him to do so.

[27] Concerning the fact that the President of the Bar Association based his claim on an e-mail that the Inspector General of Courts sent to the Executive Secretary through the personal account and copied to the President, the Court finds that there is no irregularity since what the Inspector General of Courts did is limited to the sharing of the concerned information.

[28] Considering all the above provided explanations, the Court finds that the Disciplinary Committee has been seized with a person who thereby had capacity and interest to sue for the case.

- **Whether the decision number 008/CD/2021 was taken by unauthorised persons.**
 - **Whether it was taken by the Chairperson of the Disciplinary Committee and its Secretary**

[29] Counsel Mhayimana Isaïe and his legal counsel argue that there is no legal provision that confers power to the Chairperson of the Disciplinary Committee and its Secretary for signing the act alone and the person who signed as the Committee's Secretary is not provided under the Rules and Regulations of Rwanda Bar Association.

[30] They also argue that the statements made by the Bar Association lawyers by which they submitted that the article 79 of the Bar Association Internal Rules and Regulations entitles to the Chairperson of the Disciplinary Committee and its Secretary to sign alone the act, are misconstruction of the article as a punitive act cannot be compared to the minutes of the meeting. They state that the delegation of power should be justified and in consideration of the decision taken against Counsel Mhayimana Isaïe there is no reason that justifies why it was signed by the Committee's Chairperson and the Secretary alone.

[31] The Bar Association lawyers pleaded as follows:

- The Disciplinary Committee's decision is always co-signed by the Committee's Chairperson together with its Secretary. It is not necessarily signed by all the sitting members more so that the taken decision is not a court judgement that has to be compulsorily signed by all the members of the bench.
 - Article 44 of the Bar Association Internal Rules and Regulations pertaining to the organisation of the Bar Association Disciplinary Committee provides that each report, record and minutes must be signed by the Chairperson of the meeting and the Rapporteur, the Committee's decisions are part of the mentioned documents; the fact that the decision was signed by the Chairperson and the rapporteur is not irregularity.
- **Whether the required quorum of the Disciplinary Committee members was not complete**

[32] Counsel Mhayimana and his lawyers gave the following explanations:

- When Counsel Mhayimana Isaïe appeared before the Disciplinary Committee for the last meeting, only 6 Committee members were present, they did not reach the required quorum, nothing indicates that the concerned decision was taken by these members since it did not carry their signatures as it was only signed by two persons who appropriated it to the Disciplinary committee.
- Article 29 of the Law n^o 83/2013 of 11/09/2013 that establishing the Bar Association in Rwanda and determining its organisation and functioning⁷ provides that members

⁷ The Disciplinary Committee shall have the following members:

1° the senior Advocate member of the Council of the Bar Association;
2° six (6) Advocates elected by the General Assembly.

of the Bar Association Disciplinary Committee shall be 11, while article 78 of the same law stipulates that the Disciplinary Committee shall meet and deliberate lawfully when at least two thirds (2/3) of its members are present and its decisions shall be taken by a two-third (2/3) majority of its members present⁸.

- The quorum provided under article 31 of the Law establishing Bar Association⁹ that the Bar Association lawyers are putting forth, is a quorum that is required for the Committee's decisions, but when the Committee sits for the punishment purposes, it is the quorum specified under article 78 of the aforementioned Law that must be observed.
- The document that was attached to the decision imposing sanction to Counsel Mhayimana Isaïe, as the case file indicates it, it is just a list of members who attended the meeting on the day he was punished, but these members are different from the persons who took the concerned punitive decision. Counsel Mhayimana Isaïe appeared before the Bar Association Disciplinary Committee on 20/05/2021 as he was summoned to present his defence on an urgent claim that had been lodged by Mitali Calvin, and it is the list of people who attended the meeting that got enclosed to the decision that punished him, yet the two issues were far different from each other.

[33] The Bar Association lawyers argue that the decision was taken by a complete quorum as per the provision of article 31 of the Law establishing the Bar Association in Rwanda¹⁰ and

3° a representative of the Faculties of Law from Universities that are authorized in Rwanda and who is registered on the roll and elected by his/her peers;

4° the Head of the General Directorate of the Institute of Legal Practice and Development or his/her representative;

5° a representative of the National Human Rights Commission;

6° the Advocate representing the Attorney General;

The Disciplinary Committee may invite, in its meeting, any resourceful person depending on the issue on the agenda. However, this invitee shall not be allowed to vote during the decision-making process. Any person designated for representing a given institution to the Disciplinary Committee shall perform his/he duties on a permanent basis unless his/her institution decides to replace him/her on sound reasons.

Members of the Disciplinary Committee referred to in items 3° and 6° of Paragraph One of this Article shall be elected for a three (3) year term of office renewable once (1).

⁸ The Disciplinary Committee shall meet and deliberate lawfully when at least two thirds (2/3) of its members are present. The Disciplinary Committee must take a decision within two (2) months from the date on which the complaint is referred to it. Its decision shall be taken by a two-third (2/3) majority of its members present. The Secretary of the Bar Association shall communicate to the defended Advocate any disciplinary sanction taken for him/her, within fifteen (15) days and through the means for decisions notification provided for by the Code of civil, commercial, labour and administrative procedure.

⁹ The first meeting of the Disciplinary Committee shall be convened by the President of the Bar Association within a month from the date of publication of this Law in the Official Gazette of the Republic of Rwanda for electing from among its members the Chairperson, the Vice-Chairperson and the Secretary. The meeting of the Disciplinary Committee shall be convened whenever necessary by its Chairperson or in case of his/her absence by the Vice-Chairperson or upon request by at least one third (1/3) of its members.

It shall be lawfully held when at least a half (1/2) of its members are present and its decisions shall be made by an absolute majority of members present. If the quorum is not attained, the meeting shall be re-convened within seven (7) days and deliberations made irrespective of the number of members present.

¹⁰ The first meeting of the Disciplinary Committee shall be convened by the President of the Bar Association within a month from the date of publication of this Law in the Official Gazette of the Republic of Rwanda for electing from among its members the Chairperson, the Vice-Chairperson and the Secretary. The meeting of the Disciplinary

Counsel Mhayimana Isaïe conceded to present his defence since he himself could see that the required quorum was complete.

[34] They submitted that the Committee is normally composed of 9 members; adding that only three posts were by then vacant, meaning that the Committee counted 6 members present and these are the members who took the decision against him, and it was co-signed by the Committee's Chairperson together with the Rapporteur as article 44 of the Bar Association Internal Rules and Regulations so provides¹¹.

- **Whether the term of office of the members of the Disciplinary Committee had already expired**

[35] For the above issue, Counsel Mhayimana Isaïe together with his lawyers provide the following explanations:

- Article 25 of the Law n^o 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organisation and functioning provides that the term of office for members on the Disciplinary Committee shall be three years. By the time the contested decision was taken, eight of the Committee's members had already ended their term of office on 01/03/2021, since they had been appointed by the Bar Association General Assembly on 02/03/2018.

The Bar Association admitted that the concerned Committee members had already ended their term of office, but due to Covid-19 pandemic, the appointed members remained in their positions till later elections.

- The Covid-19 pandemic could not justify the unlawfully extension of term of office for the members of the Disciplinary Committee. The Bar Association could have observed the law and could have arranged for the election of the new members or could have proceeded for legal extension of the term of office, as it has been the case for other organ members 'term of office such as Committees of Abunzi or decentralized entities.
- Covid-19 pandemic is just a pretext, since the Bar Association was able to convene the General Assembly on 12/11/2021, whereby a new President of the Bar Association was elected and the outgoing was thus replaced and whereby new members of the Bar Association Council were as well elected and the Bar Association did not bother for the replacement of the members on the Disciplinary Committee yet nothing could reasonably oppose their replacement, more so that all those organs were, by the usual practice, concomitantly elected within a single meeting of the General Assembly.

Committee shall be convened whenever necessary by its Chairperson or in case of his/her absence by the Vice-Chairperson or upon request by at least one third (1/3) of its members.

It shall be lawfully held when at least a half (1/2) of its members are present and its decisions shall be made by an absolute majority of members present. If the quorum is not attained, the meeting shall be re-convened within seven (7) days and deliberations made irrespective of the number of members present.

¹¹ Unless otherwise decided by the Council of the Bar, at their first meeting after the appointment of its members, each Committee shall elect within its members a Chairperson, a Vice-Chairman and a Rapporteur. The rapporteur is responsible for the preparation of any report, minutes or record of the meeting of the Committee. Each report, record and minutes must be signed by the Chairperson of the meeting and the Rapporteur.

- The Bar should hold virtual general assembly as it did for some other activities such as trainings, or as it has always been the case for some other institutions, the Bar cannot provide evidence to prove that such alternatives were equally impossible.

[36] The Bar Association legal counsel provided the following explanations:

- Covid-19 related restrictions made it impossible to convene a face-to-face meeting of 1,500 Advocates for the General Assembly, and thus hindering the election of the new Disciplinary Committee members as provided under articles 56 and 61 of the Bar Association Internal Rules and Regulations.
- The Cabinet meeting convened on 19/02/2021 resolved for the suspension of face-to-face conferences, and it is in the course of that restriction that Counsel Mhayimana was suspended from the exercise of his profession.
- Conducting online and virtual elections was equally not possible since conducting such elections would be the violation of the related provisions of the Bar Association.
- Article 33 of the Bar Association Internal Rules and Regulations provides for the replacement of the members of the Disciplinary Committee¹² and it is in this context that the President of the Bar Association requested the Bar Association Disciplinary Committee to examine the issue of Counsel Mhayimana Isaïe, as it is evidenced by a letter he addressed to the Committee, since it was in exceptional circumstances.
- The fact that the meeting of the General Assembly for the election of the President of the Bar Association and members of the Bar Association Council does not constitute a relevant ground for the pleading, since this occurred after the judgment pronouncement and cannot change anything. When Covid-19 became less threatening, the Council of Bar Association deemed necessary to elect the members of the Bar Association high organs, because they are high-ranking in comparison to the Commissions and they should organise the elections of the members of the Bar Association Disciplinary Committee.
- The terms of office for the decentralised entities and the Committees of Abunzi cannot hereby be compared to the Bar Association Organs since those organs cannot be similarly considered.

DETERMINATION OF THE COURT

- **Whether the decision that suspended Counsel Mhayimana Isaïe was taken by the Committee's Chairperson and the rapporteur alone.**

[37] Article 29, paragraph one of the Bar Association Internal Rules and Regulations (rules pertaining to the organisation of the Disciplinary Committee) provides that at its first meeting following the appointment of its members, the Committee shall elect among its members a

¹² In case of a vacancy within the composition of the Disciplinary Committee, the President of the Bar Association shall take steps to fill this vacancy, including through the organization of the elections of a member who shall be elected by the General Assembly of the Bar, or by inviting the Head of the Institution concerned to appoint the replacement.

Chairperson, a Vice-Chairman and a Rapporteur. While paragraph two of the same article stipulates that the rapporteur is responsible for the preparation of any report, minutes of the meeting and correspondence from the Committee. Each report, minutes, correspondence, must be signed by the Chairperson of the meeting and the Rapporteur.

[38] The two articles denote that the first meeting of the Disciplinary Committee serves for the election of the Chairperson of the Committee, the Vice-Chairperson and the Rapporteur of the Committee. These articles again indicate the duties of the Rapporteur and these include the preparation of reports, the minutes of the meetings and other records of the Committee; the two articles conclude by indicating the person who is entitled for the signing of the Committee's documents.

[39] The Court finds that the Committee's reports, the minutes of the meetings and any other documents of the Committee have nothing to do with the committee's first meeting. The article intended to specify about the documents that the elected rapporteur should have to prepare, and their signing modalities. The Court also finds that the decision imposing the sanction falls in the category of the Committee's other documents that the Bar Association Rules and Regulations did not enumerate.

[40] Considering the foregoing explanations, the Court finds that the Committee's Chairperson together with the Rapporteur of the Committee have the authority to co-sign the decision that was taken against Counsel Mhayimana Isaïe.

- **Whether the Committee's quorum was incomplete.**

[41] Both parties concur on the fact that the Bar Association Disciplinary Committee should be composed of 11 members as per the provision of article 29 of Law establishing the Bar Association in Rwanda, even if the Bar Association lawyers submit that by the time Counsel Mhayimana Isaïe was imposed the sanction, the Committee's members were 9 as there were vacant posts. The parties again agree that when Counsel Mhayimana appeared before the Disciplinary Committee for the last meeting, 6 Committee members were present.

[42] Article 31 of the Law establishing Bar Association in Rwanda pertaining to the meetings of the Disciplinary Committee provides that the first meeting of the Disciplinary Committee shall be convened by the President of the Bar Association within a month from the date of publication of this Law in the Official Gazette of the Republic of Rwanda for electing from among its members the Chairperson, the Vice-Chairperson and the Secretary

The meeting of the Disciplinary Committee shall be convened whenever necessary by its Chairperson or in case of his/her absence by the Vice-Chairperson or upon request by at least one third (1/3) of its members.

It shall be lawfully held when at least a half (1/2) of its members are present and its decisions shall be made by an absolute majority of members present. If the quorum is not attained, the meeting shall be re-convened within seven (7) days and deliberations made irrespective of the number of members present.

[43] Article 78, paragraph one of the Law establishing the Bar Association Law provides that The Disciplinary Committee shall meet and deliberate lawfully when at least two thirds (2/3) of its members are present. Whereas paragraph two stipulates that the Disciplinary Committee must take a decision within two (2) months from the date on which the complaint is referred to it. Its decision shall be taken by a two-third (2/3) majority of its members present.

[44] The Bar Association lawyers argue that the article 31 should be applied in determining whether the quorum was complete when the Disciplinary Committee took the decision for which Counsel Mhayimana Isaïe seeks revocation. Counsel Mhayimana and his advocates argue that article 31 can only apply for the modalities in which the Committee takes the decisions, but concerning the issues related to sanctioning the advocates for profession-related faults, when the Committees holds the meeting for sanctioning the advocate, it is the quorum specified under article 78 that must be observed.

[45] Article 31 is under the section related to the Permanent Committees while article 78 is under the section concerning the Discipline, especially pertaining to the procedure. Article 78 provides for taking decision, following the provisions related to the summoning of Advocates and their defence before the Disciplinary Committee.

[46] Considering the sections of the concerned articles under the Law establishing the Bar Association, it is clear that article 31 provides for taking decisions in ordinary meeting of the Disciplinary Committee, but in case of sanctioning, it is article 78 that must be applied.

[47] The Court finds that the required quorum for deciding on the punishment against Counsel Mhayimana Isaïe was 2/3 of all the Disciplinary Committee members as per the provision of article 29 of the Law establishing the Bar Association and the litigating parties agree that the Disciplinary Committee is composed of 11 members. This means that the required quorum was supposed to be 7 members while there were 6, according to the documents presented by the Bar Association advocates submitted to the Court and both parties' agreement.

[48] Concerning the statements of the Bar Association lawyers that the quorum should be 9 members as there were vacant posts, the Court finds that they should not be considered since such they are contrary to the legal provisions.

[49] Basing on the foregoing explanations, the Court finds that the disciplinary decision against Counsel Mhayimana Isaïe was taken without the legally required quorum of the Disciplinary Committee members; therefore, the decision number 008/CD/2021 that the Disciplinary Committee took on 20/05/2021 suspending him from exercising his profession for a period of three months must be revoked.

[50] The Court finds that there is no reason for examining other issues that Counsel Mhayimana Isaïe submitted to the Court seeking for revocation of the decision number 008/CD/2021 taken by the Bar Association Disciplinary Committee on 20/05/2021.

2. Regarding the claimed damages

[51] Counsel Mhayimana Isaïe and his advocates state that the High Court charged him with 1,000,000 Frw and the claim ended up at the profession-related fault leading to his suspension

from exercising his profession for a period of three months, the claim should not be admitted for its defects. He adds that even if the claim was admitted, he did nothing wrong in responding to untrue e-mail that was sent to the judges of all Courts of Rwanda.

[52] They submit that he was illegally punished and the punishment simply intended to prejudice and harm him as the imposed sanction ended by 26/08/2022, but the Bar Association refused to enroll him again. They submit that, even if the Bar Association should, on its initiative, enroll him again, he remained so disbarred till the date he applied for injustice-related case review, yet he had written to the Secretary and the President of the Bar Association reminding his issue. He had recourse to the Courts and he found no redress and it took almost a full year for him to be enrolled again.

[53] They argue that due to the unfair accusation against him he repeatedly appeared before the Disciplinary Committee for providing explanations, he unnecessarily spent the time which he used for other productive activities, he was suspended from his profession for the faults he did not commit, he was discredited towards his current and potential clients and he requested for 40,000,000 Frw for the related incurred loss and 10,000,000 Frw for moral damages; arguing that Counsel Mhayimana Isaïe has an approximated professional income of 5,000,000 Frw per month, meaning 40,000,000 Frw for the 8 months he spent without working.

[54] Counsel Mhayimana Isaïe and his lawyers submit that since he has been dragged into unnecessary lawsuits, he requested to the High Court to order the Bar Association to pay him 1,580,000 Frw for damages including 40,000 Frw for the deposited court fee, 40,000 Frw to pay Court bailiffs who notified the Bar Association of the claim and related summons, and 500,000 Frw for case follow-up costs, but the Bar Association has unfairly declined to pay him for the above damages.

[55] The Bar Association lawyers submitted that the damages that Counsel Mhayimana Isaïe was charged with should remain valid as they resulted from a case that he himself initiated.

[56] They argue that other claims of Counsel Mhayimana Isaïe have no justification since he committed profession-related faults and he must be held liable for them for the sake of upholding the values of the profession. They state that if he had been so professional in his career, he would have avoided uncivil behaviour and language in the letter that he addressed to the offended Court Registrar. He can therefore not claim that it is the taken decision that dishonoured him, and besides, he cannot therefore claim for damages for which he does not even produce supporting evidence.

[57] They also argue that the Disciplinary Committee serves for general interest and it is meant for the good and the honour of profession as it prevents the practising Advocates misconduct, the fact that Counsel Mhayimana Isaïe deviated from his duty of discretion, care and precaution, does not give him rights to claim for damages.

[58] They as well submitted that Counsel Mhayimana Isaïe has dragged the Bar Association into unnecessary lawsuits, and they requested to the Court to order him to pay 5,000,000 Frw for both the counsel and procedural fees.

[59] Counsel Mhayimana and his lawyers argue that the claimed damages have no justification since he seized the Court seeking redress and justice and besides, the claimants present neither the rationale nor justification for such damages.

DETERMINATION OF THE COURT

[60] The Court finds that the counsel and procedural fees amounting to 1,000,000 Frw ordered by the High Court should be revoked as requested by Counsel Mhayimana Isaïe because he wins the case.

[61] With regard to the 40,000,000 Frw that Counsel Mhayimana requested for the approximated incurred loss, the Court holds that they should not be awarded, because the incurred loss is not approximately calculated, rather it must be proved by elements of evidence and they were not produced.

[62] Concerning the moral damages that Counsel Mhayimana requested for, the Court reminds that it was not necessary to deeply analyse whether the decision taken against him was not grounded, it only limited to determine whether it was illegally taken. The procedures for determining the moral damages in case a decision was revoked because it was illegal taken were elucidated along a variety of judgments that have been rendered by the European Court of Labour, and the same procedures can apply in this case.

[63] In the case *DD v. Agence des droits fondamentaux de l'Union Européenne (FRA)*, the Court explained that the invalidation of the decision illegally taken is itself a fair compensation for the prejudice caused by such decision, unless the offended complainant proves the prejudice which can be differentiated from the faults that triggered the invalidation of the decision and cannot be compensated by the annulment of such decision¹³.

[64] It is the same position set in the case *Ingfried Hochbaum and Eduard Rawes vs Commission of the European Communities*¹⁴, or in the case of *Simora Murariu vs Autorité européenne des assurances et des pensions professionnelles (AEAPP)*¹⁵ and others. Some of these case-laws hold

¹³ « L'annulation d'un acte entaché d'illégalité constitue en elle-même la réparation adéquate et, en principe, suffisante de tout préjudice moral que cet acte peut avoir causé. Tel n'est toutefois pas le cas lorsque le requérant démontre avoir subi un préjudice moral qui, sans être détachable de l'acte lui-même, est détachable de l'illégalité fondant l'annulation et insusceptible d'être intégralement réparé par cette annulation.... Toutefois, le requérant se contente d'indiquer que la décision de résiliation lui a causé un traumatisme psychologique et a porté atteinte à sa réputation et à sa dignité, sans pour autant démontrer qu'un tel préjudice ne pourrait pas être intégralement réparé par le présent arrêt d'annulation de cette décision. Ainsi, les conclusions indemnitaires relatives au dommage moral causé par la décision de résiliation doivent être rejetées comme non fondées », Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (deuxième chambre), 8 octobre 2015, para 105 & 107-108.

¹⁴ *As regards the claim for damages in case 44/85, the cancellations in themselves adequately compensate for any non-material damage which Mr Hochbaum may have suffered in the circumstances. the claim for damages is therefore devoid of purpose and no decision need be given on it;* Judgment of the court (second chamber) of 9 July 1987. - *Ingfried Hochbaum and Edward Rawes v Commission of the European Communities*, Official - annulment of appointment, Joined cases 44/85, 77/85, 294/85 and 295/85, para 22

¹⁵ *Quant au préjudice moral allégué, il y a lieu de rappeler que, selon une jurisprudence constante, l'annulation d'un acte entaché d'illégalité, tel que la décision attaquée, constitue en elle-même la réparation adéquate et, en principe, suffisante de tout préjudice moral que cet acte peut avoir causé, sauf lorsque le requérant démontre avoir subi un préjudice moral*

that the fact that a person believes that he was harmed and the prejudice results from the fact that he must file a claim in the pursuit of his/her right, might be considered as the prejudice resulting from the faults committed by an administrative organ.¹⁶

[65] For the purpose of this case, some of the arguments provided by Counsel Mhayimana include the fact that he has for several times appeared before the Disciplinary Committee and this has encroached on his precious time that he would otherwise spend for productive activities, this is in line with compensation for loss or for pecuniary loss evoked in the paragraph 62 of this case. Another reason he puts forth concerns the unfair suspension from his work, and the dishonor he endured towards his current and potential clients. As it has been put under paragraph 63 of this case, the issues related to whether he committed or not the faults for which he has sanctioned, were not examined, as the Court limited its analysis to the determination of whether the disciplinary decision taken against him was or was not legally issued, cannot be relevant in determining the moral damages.

[66] As it has been explained through the above provided case-laws, the prejudice caused by an illegal decision is compensated by decision annulment and Counsel Mhayimana Isaïe did not provide the explanations about the prejudice based on different issues, like the stress he endured in the pursuit of his rights and others.

[67] Considering all the above provided explanations, the Court finds that the moral damages that Counsel Mhayimana Isaïe has requested for, have no justification.

[68] With regard to 1,580,000 Frw that includes a refund of 40,000 Frw for the deposited court fee, and 40,000R Frw paid to Court bailiffs who notified the Bar Association of the case and related summons, along with the counsel and procedural fees, the Court finds that Counsel Mhayimana Isaïe deserves 40,000 Frw for the court fee he deposited before the High Court. The Court has as well and in its own discretion awarded him 500,000 Frw for the counsel fee and 300,000 Frw for the procedural fee. Regarding the 40,000 Frw paid to the bailiffs, the Court finds that they shall be included in 300,000 Frw as procedural fee.

III. DECISION OF THE COURT

[69] Holds that the application filed by Counsel Mhayimana Isaïe for the injustice-related review of the judgment RAD 00017/2021/HC/KIG rendered by the High Court on 28/10/2021 has justification.

détachable de l'illégalité fondant l'annulation et n'étant pas susceptible d'être intégralement réparé par cette annulation ; Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (Première Chambre), 16 juillet 2015, para 150.

¹⁶ « En particulier, le sentiment d'injustice et les tourments qu'occasionne le fait, pour une personne, de devoir mener une procédure précontentieuse, puis contentieuse, afin de voir ses droits reconnus peut, dans certaines circonstances, constituer un préjudice pouvant découler du seul fait que l'administration a commis une illégalité », Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (troisième chambre), FS vs Comité économique et social européen (CESE), 12 mai 2016, para 59. Arrêt du Tribunal de la Fonction Publique de l'Union Européenne (Première Chambre), Simona Murariu vs Autorité européenne des assurances et des pensions professionnelles (AEAPP), 16 juillet 2015, para 152.

[70] Holds that the decision number 008/CD/2021 taken by the Bar Association Disciplinary Committee on 20/05/2021 that suspended Counsel Mhayimana Isaïe from exercising his profession for a period of 3 months, is revoked.

[71] Holds that the sum of 1,000,000 Frw that Counsel Mhayimana Isaïe was charged with by the High Court for both the counsel and procedural fees, is hereby removed.

[72] Orders to Rwanda Bar Association to refund to Counsel Mhayimana Isaïe with 40,000 Frw for the court fee he deposited to file a claim before the High Court, 500,000 Frw for the counsel fee and 300,000 Frw for the procedural fee, the total is 840,000 Frw.