

KABAYIJUKA v. GOVERNMENT OF RWANDA (MINISANTÉ)

[Rwanda SUPREME COURT – RADA 0054/12/CS (Mukanyundo, P.J., Rugabirwa and Gakwaya, J.) December 19, 2014]

Civil liability – Employer’s vicarious liability – Employers’ liability for wrongdoing of the employee – The employer is liable for the negligent acts or omissions by his employee committed in the course of his employment.

Damages – Damages awarded ex aequo et bono – Computation of pecuniary compensation – Where the aggrieved person does not produce evidence proving the amount of money he spent because of an action that has caused him prejudice but it is evident that such action lead to some expenses, he is awarded damages ex aequo et bono – Pecuniary compensation are computed basing on the salary of twelve months and considering also the degree of disability and the remaining lucrative years to reach 65 years – Decree of 30/07/1888 relating to contracts or contractual obligations, articles 258 and 260.

Daily minimum wage – Two thousand five hundred Rwanda francs (2,500) is the daily minimum wage for an ordinary worker taken into account the market prices and the general level of wages in the Country.

Facts: Kabayijuka went for the medical treatment at the Health Centre of Nyarubuye and he was injected on the thigh by a person who seemed to be a doctor called Hakizimana and later on he felt excessive pain. The Health Centre transferred him to Kibungo Hospital but in vain and he instead got seriously disabled. On that ground he sued the Ministry of Health before the High Court, Chamber of Rwamagana claiming for the damages for the disability caused by that injection which was administered by their employee. The Court ruled that his claim has no merit.

Kabayijuka appealed to the Supreme Court on the ground that the Court disregarded the evidence and held that the Ministry is not vicariously reliable because there is no evidence showing that it is that injection he was given which caused his disability moreover Hakizimana was an employee who pretended to be a nurse supported by his superiors; and more over the administration at the Health Centre allowing a person without the capacity and competence to carry out the duties of a nurse, his employer should be vicariously reliable for his gross negligence.

The Ministry of Health submits that it should not be held liable because there is no evidence demonstrates that his disability was caused by its employee; and on top of that he himself affirmed before the court that he was injected by a person who is not a doctor but who had put on the doctor’s attire. This means that he was not an employee of Ministry of Health who may have done so in the course of the duties assigned to him by the latter.

Held: 1. An employer is liable for the faults of the employee in case they were committed within his or her responsibility, during working hours, the Ministry of Health should be liable because it is the faults of its employee that caused the disability of Kabayijuka who was admitted in that hospital.

2. In case the aggrieved person does not produce evidence to prove the amount of money spent because of the prejudicing act yet it is clear that act lead him or her to use some money

to remedy that damage he or she must be awarded the adequate amount of money in the discretion of the court (ex aequo et bono).

3. 2,500Frw constitute the adequate daily wage for at least an ordinary employee basing on the prices on the market and the general level of current wages in the country. Thus, 60,000Frw is the adequate minimum inter-professional guaranteed wage (SMIG).

4. Compensatory damages are calculated basing on the 12 months' salary and the degree of his/her incapacity as well as his/ her remaining lucrative period for him or her to reach 65 years.

5. The Court awards him moral damages, financial damages as well as damages for medical and transport expenses.

The appeal has merit;
The Ministry of Health is liable for the faults committed by Hakizimana Sylvestre, its employee;
It orders the Ministry of Health to pay Kabayijuka moral damages, pecuniary compensation, damages for medical and transport expenses.

Statutes and statutory instruments referred to:

Decree of 30/07/1888 regulating contracts or contractual obligations, articles 258 and 260.

Cases referred to:

Nyetera v. CORAR, RCAA 0202/07/CS, rendered by the Supreme Court on 09/4/2009.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Kabayijuka Gaspard sued the Ministry of Health (Minisanté) before the High Court, Chamber of Rwamagana asserting that he went to seek medical care at the Health Center of Nyarubuye on 12/12/2000; while he was waiting for the nurse, a person resembling a nurse called Hakizimana Sylvestre came and injected him on the thigh and from then he felt extreme pain. The Health Center transferred him to Kibungo Hospital and no improvement was made but instead he became seriously incapacitated. Due to that reason he requested the High Court to order the Ministry of Health to pay him damages on the ground that his incapacity was caused by that injection and the person who injected him was its employee. On 28/09/2012, that Court rendered the judgment RAD 0003/12/HC/Rwg holding that his claim has no merit and the Government of Rwanda (Ministry of Health) is not liable for any damages.

[2] Kabayijuka Gaspard was not contented with the ruling and appealed before the Supreme Court on 25/10/2012 asserting that the High Court did not consider the testimonies of the witnesses who all affirmed that he was injected by Hakizimana Sylvestre, the employee of the Health Center of Nyarubuye and that his incapacity was a result of that injection. He explains that the High Court did not consider the admission of the State Attorney that he has to be awarded damages.

[3] The public hearing was held on 23/9/2014 and on 12/11/2014; Kabayijuka Gaspard was represented by Counsel Karangwa Vincent and the Ministry of Health represented by Counsel Umwali Claire, the State Attorney.

II. THE ANALYSIS OF LEGAL ISSUES

a. Whether the Ministry of Health should be held liable for the faults committed by Hakizimana Sylvestre.

[4] Counsel Karangwa Vincent representing Kabayijuka Gaspard asserts that as indicated on page six of the appealed judgment, the High Court ruled that the Ministry of Health should not be held liable since there is no evidence proving that the syringe Kabayijuka Gaspard was injected is the cause of his incapacity; therefore he finds that it did not take into consideration the statements of witnesses who confirmed that Hakizimana Sylvestre who injected Kabayijuka Gaspard was the employee of the Health Center of Nyarubuye.

[5] He explains that Hakizimana Sylvestre was an employee who impersonated himself as a nurse and this was endorsed by his superiors and he therefore finds that as long as the administrators of the health centre accepted that the person without capacity and competence to carry out nursing duties, his employer has to be held liable for his faults since they constitute gross negligence.

[6] Furthermore, he explains that though the medical doctor Ngabonziza Adélard affirmed in his report of 4/9/2003 that it is not easy to know the exact cause of Kabayijuka Gaspard's incapacity, but in his written statement of 20/1/2003 when he was transferring him to CHUK hospital, he indicated the cause of his incapacity as the injection he was given on the thigh two years ago. He further asserts that the medical doctor Marc, a specialist in physiotherapy, also stated that the incapacity of Kabayijuka Gaspard was due to the injection he was given and there is a medical doctor who diagnosed him on 12/12/2000 who affirmed in French language that there has been "paralysie suspecte suite à une injection intramusculaire injectée par Sylvestre dans le nerf sciatique" suspected paralysis resulting from intramuscular injection given in the sciatic nerve by Sylvestre.

[7] He concludes by asserting that in her submissions at the first instance, the State Attorney also acknowledged that the State has to pay damages to Kabayijuka Gaspard but that they should be reduced as those he claimed were excessive and he therefore finds that the High Court should not have hesitated to rule that the Health Center's employee committed the faults.

[8] Kabayijuka Gaspard explains that he went to the health center suffering from malaria, feeling stomach-ache but able to walk by himself, and on arrival he was admitted and they brought serum mixed with drugs and injected him in muscles. He asserts that the person who injected him that serum instructed the nurses who were present not to remove it from him as he would remove it from him the next morning, and when it reached 1:00 AM he removed it from him and gave him an injection at 9:00 AM, in the morning Hakizimana Sylvestre who was their nurse gave him another injection and he fell down. He also asserts that the chief nurse knew that Hakizimana Sylvestre had to give that injection since he was the one who injected even other patients and it was not the first time he injected him and it is also indicated in his former medical booklet.

[9] With respect to the pay roll indicating the employees of Nyarubuye Health Center produced by Counsel Umwali Claire, Counsel Karangwa Vincent asserts that there is no doubt that Hakizimana Sylvestre was the employee of the Ministry of Health, since he was an auxiliary health worker which means that he was an employee of the health center with capacity to give injection. The fact that they gave Counsel Umwali Claire the pay roll of November 2001, which should be considered as a sample because if she had enquired about the time Hakizimana Sylvestre started his duties they would have told him.

[10] Counsel Umwali Claire representing the Ministry of Health asserts that there should be no liability of the Ministry of Health since there is no evidence proving that the incapacity Kabayijuka Gaspard purports to have, was caused by its employee; and Kabayijuka Gaspard himself stated before the Court that the injection was given by the person who was not a nurse who had put on nurses' attires. This means that even if that person has ever existed as he asserts, he was not the employee of the Ministry of Health who may have done that within the duties it has assigned to him.

[11] He explains that with regard to Hakizimana Sylvestre who is mentioned several times in this case, Kabayijuka Gaspard stated before the High Court that he was a cleaner at the Nyarubuye Health Center and it was the reason why he requested the Court to summon him to provide information since the employer is liable for the actions of the employee when he has mandated him.

[12] He also explains that the report of the medical doctor of 4/9/2003 which indicates the cause of the incapacity of Kabayijuka Gaspard is not clear where it states in its conclusion as follows "steppage of the right foot is the cause of which is difficult to determine at this time of diagnosis".

[13] In regards to the payroll of employees requested by the Court, Counsel Umwali Claire explains that it indicates that Hakizimana Sylvestre was an auxiliary health worker. She further explains that since Kabayijuka Gaspard was given an injection in 2000 and yet that list was drawn in 2001 therefore there is no evidence proving that it is Hakizimana Sylvestre who injected him and there is no evidence to prove that it is that injection that caused his limp so that it could be imputed to the Ministry of Health.

THE VIEW OF THE COURT

[14] Article 258 of Civil Code Book III provides that any act of the person that causes prejudice to another obliges the one whose fault caused prejudice to repair the damage.

[15] Article 260 paragraph 3 of the Civil Code Book III provides that "the masters and employers are liable for the damage caused by their employees while discharging their duties [.....]".

[16] The Supreme Court finds that as its apparent in his medical booklet Kabayijuka Gaspard went to the Health Center of Nyarubuye on August 8, 2000 to seek medical treatment of malaria, nausea, diarrhoea and gastritis but on December 12, 2000 he was paralysed as affirmed by the written statements of Medical Doctor Gafurama Claude in that booklet where he states "suspected paralysis resulting from intramuscular injection given in the sciatic nerve by Sylvestre".

[17] The Supreme Court finds that since then Kabayijuka Gaspard continued to seek medical treatment for that paralysis from different hospitals including the Kibungo Hospital, Rwamagana Hospital and “Centre Hospitalier de Kigali” (CHUK).

[18] The Supreme Court finds that even though in some instances Kabayijuka Gaspard asserted that Hakizimana Sylvestre was a cleaner at the Health Center of Nyarubuye and again assert that he was a nurse; as shown on the payroll produced by Counsel Umwali Claire, Hakizimana Sylvestre was the auxiliary health worker at the Health Center of Nyarubuye by the time Kabayijuka Gaspard was paralysed he is the one who gave him the injection that caused that problem as affirmed by the medical doctor Gafurama Claude.

[19] Basing on the explanations above, the Supreme Court finds that Hakizimana Sylvestre was one of the employees of the Health Center in charge of treating patients (medical corps) which is also the reason why he injected Kabayijuka Gaspard for the purpose of treating him using the instruments of the Health Center of Nyarubuye.

[20] With respect to the arguments of the Ministry of Health that according to the medical report (medico-legal expertise report) of Ngabonziza Adélard of 4/9/2003, there is no proof that the paralysis of Kabayijuka Gaspard was caused by the injection as he purports, because that report states in its conclusion: “steppage of the right foot the cause of which is difficult to determine at this time of diagnosis” the Supreme Court finds that it cannot rely on that report established three years after the being paralysed, yet the medical doctor Gafurama Claude after diagnosing Kabayijuka Gaspard on December 12, 2000, on that fateful day he affirmed that the injection he was given by Hakizimana Sylvestre is the root cause of the paralysis as explained under paragraph 16 of this judgment.

[21] In regards to the vicarious liability of the Ministry of Health due to the faults of Hakizimana Sylvestre who was its employee by that time, the Supreme Court finds that according to the provisions of article 260, paragraph 3 of the Civil Code Book III referred to above, the employer is liable for the faults of his employee in case they were committed within his or her duties and during working hours; therefore, since the acts of Hakizimana Sylvestre while discharging his duties, during working hours and using the instruments of the Health Center of Nyarubuye and also its interests prejudiced Kabayijuka Gaspard. The Ministry of Health must be liable for those acts, since the faults of its employee are the cause of the paralysis of Kabayijuka Gaspard who was admitted therein¹.

[22] The Supreme Court finds that the explanations in the previous paragraph are emphasised by the legal scholars where they explain that the employer is liable for the damage caused by his employee when among the acts he or she committed, at least one of those acts is related to his or her duties².

¹“La jurisprudence décide que la responsabilité du commettant existe dès que l’acte dommageable a été accompli pendant la durée du service, et en relation avec ce service” in Henri De Page Traité élémentaire de droit civil Belge, tome deuxième, Les incapables-Les obligations Bruylant, Bruxelles, 1964, p.1019.

² “On peut se contenter d’un simple lien de connexité entre l’acte dommageable du préposé et ses fonctions, pour pouvoir engager la responsabilité du commettant”. L’auteur continue en disant que lorsque l’acte du préposé consiste en un exercice défectueux de ses fonctions, le rattachement est manifeste: tel est le cas d’un chauffeur livreur qui commet un accident de la circulation du fait d’une vitesse excessive... CH. Larroumet, note sous cass. Com.12 oct. 1993, Dalloz.1994.124, séc.p. cité par Françoise BENAC-SCHMIDT. This is also the position held in RPA 0210/10/CS rendered by this Court on 18/7/2014, the Prosecutor v. Munyankumburwa Valens, Manirarora Rosette, its four children and Burera District.

[23] In light of the legal provisions and explanations given above, the Supreme Court finds that the ground of Kabayijuka Gaspard's appeal has merit.

b. Whether Kabayijuka should be awarded damages he claims.

[24] Counsel Karangwa Vincent asserts that Kabayijuka Gaspard requests the Court to award him moral damages equal to 5,000,000Frw, pecuniary compensation of 60,000Frw per month equivalent to the salary he allocate himself in his daily business that have to be computed from December 12, 2000 until June 2012, and also 200,000Frw for medical expenses and transportation attending the court proceedings, which is in total 13,480,000Frw.

[25] Counsel Umwali Claire asserts that Kabayijuka Gaspard should not be awarded all the damages he claims since it is not the Ministry of Health that has to be held liable for what happened to him.

VIEW OF THE COURT

[26] Article 258 of the Civil Code Book III provides that "any act of a person that causes prejudice to another person obliges the author of the fault to repair."

[27] According to the provisions of article 258 of the Civil Code Book III stated above, the compensation of the loss (damage) has to be integral or complete, but for that to be possible that loss has to be proven.

[28] The Supreme Court finds that in case the aggrieved party does not produce evidence proving the amount of money spent due to the prejudicing act yet it is clear that the act lead him or her to incur some expenses for redressing that prejudice and, as indicated in this case, it is obvious that Kabayijuka Gaspard had to spend his money for medical treatment, payment of medicines, transport as well as meals and thus he has to be awarded he amount of money he actually deserves at the discretion of the Court(ex aequo et bono)³.

[29] Though Kabayijuka produced no evidence to prove the salary of 60,000Frw that he claims that he allocates himself per month and the law establishing the minimum inter-professional guaranteed wage (SMIG)is not yet in place, the Supreme Court finds that 60,000Frw is adequate, as held by this Court in the judgment RCAA 0202/07/CS rendered on 9/4/2009 that 2,500Frw is the adequate salary for an ordinary worker per day basing on the market price structure and the general level of wages in the Country; therefore 60,000Frw should be the basis in calculating pecuniary damages to be awarded to Kabayijuka Gaspard, taking into consideration the degree of his incapacity and the remaining lucrative time for him to reach 65 years.

[30] With regard to moral damages of 5,000,000Frw requested by Kabayijuka Gaspard, the Supreme Court finds that he should be awarded it due to the pain he suffered after the injury of thigh nerve caused by the injection as explained above and the entire period he was ill, but the amount he claims is excessive and it awards him 1, 500,000Frw in its discretion.

³ "L'évaluation du dommage ex aequo et bono ne peut être adoptée ;par le juge comme mode d'évaluation que si, d'une part, il donne la raison pour laquelle une autre base d'évaluation, proposée par une des parties, ne peut être admise en l'espèce, et si, d'autre part, l'évaluation ne peut, à défaut d'éléments plus sûrs, se faire qu'ex aequo et bono", in Henri De Page, Traité élémentaire de droit civil Belge, tome deuxième, Les incapables-Les obligations Bruylant, Bruxelles, 1964, p.1070.

[31] With regard to pecuniary compensation awarded to Kabayijuka Gaspard, the Supreme Court finds that they should be calculated as follow:

60,000Frw x 12 (months) x 15 (degree of disability) x 5 (lucrative years)

-----= 540,000Frw.

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[32] With regard to 200,000Frw for medical expenses and transportation attending court proceedings, the Court finds that he should be awarded this amount since it is reasonable.

[33] The Court awards Kabayijuka Gaspard 1,500,000Frw for moral damages, 540,000Frw pecuniary compensation and 200,000Frw of medical and transport expenses, which amount to 2,240,000Frw.

III. COURT DECISION

[34] It holds that the appeal of Kabayijuka Gaspard has merit.

[35] It holds that the Ministry of Health is vicariously liable for the faults committed by Hakizimana Sylvestre, its employee who caused prejudice to Kabayijuka Gaspard.

[36] It orders the Ministry of Health to pay Kabayijuka Gaspard 1,500,000Frw for moral damages, 540,000Frw in pecuniary compensation 200,000Frw of medical and transport costs all amounting to 2,240,000Frw.