

KATABARWA v NYARUGURU DISTRICT

[Rwanda SUPREME COURT – RS/INJUST/RAD 00001/2021/SC – (Nyirinkwaya, P.J., Muhumuza and Hitiyaremye, J.) March 18, 2022]

Labour procedure – Unfair dismissal – The amount of damages awarded to the employee upon dismissal – When it is determined that an employee has been unfairly dismissed, he/she is entitled to receive damages that are calculated based on the last salary. These damages are calculated from the time of suspension until the pronouncement of the judgment on basis of the net salary and any other allowances that were provided to him/her to facilitate the performance of his/her duties.

Procedure for the review of cases on the grounds of injustice – Application for review with regard to an issue that has not been adjudicated by the judge in the case under review – The fact that the party has been granted an extraordinary remedy for review of a final judgment when he/she thinks that he/she has been wronged on a specific issue does not grant to him/her the right to introduce new claims that are outside the scope of the subject matter mentioned in the application.

Facts: Katarbarwa who was employee of Nyaruguru District filed a claim in the Intermediate Court of Nyamagabe suing the District for unfairly dismissing him and he requested for the invalidation of such decision as well as the damages. The respondent argued that the claimant was dismissed from the District staff due to serious misconduct committed in the course of his work and the dismissal was carried out in accordance with the law, and therefore, the claimant should not be entitled to damages, instead, he should be charged the judicial fees incurred by the District.

The Court ruled that the applicant's claim was unfounded, it sustained the decision of the Mayor of Nyaruguru District of definitively dismissing him. Subsequently, the claimant appealed to the High Court, Chamber of Nyanza, contending that there was no justifiable reason for his dismissal. He argued that the respondent had failed to adhere to the proper disciplinary procedure for public servants, he did not embezzle the public property and the tree harvesting tender for which he was accused had been awarded in compliance with the law. Additionally, he stated that he had been acquitted of any criminal charges, and therefore, he seeks all damages as previously claimed.

The High Court ruled that the claimant's appeal is justified. It has determined that there is no evidence of gross misconduct that would warrant his dismissal by the respondent, therefore, the decision concerning his dismissal is invalidated; it held that the decision of the Intermediate Court is overturned.

The claimant requested that the case decided by the High Court should be readjudicated, arguing that it was tainted with injustice. This request was admitted, and the Court first examined the objection raised by the respondent for which he finds that it is necessary to reexamine whether there are disciplinary faults that would warrant the claimant's dismissal and whether the basic procedures were followed in conducting the disciplinary proceedings and the remaining issues are the consequences of the claimant's requests. The claimant argues that such objection is unfounded because, in cases of the judgment review on grounds of injustice, the interested party presents the reasons for alleging injustice.

The Supreme Court made a decision on the bench, ruling that the objection was not valid and that the case should be heard on its merits, by examining the grounds on which the claimant relied for requesting the review of the judgment decided by the High Court, Chamber of Nyanza, on the grounds of being vitiated by injustice, the parties debated on the issues for determining whether the damages for the claimant were inaccurately calculated, whether he can be reinstated, and other damages claimed by both parties.

Regarding the issue of whether the damages were inaccurately calculated in the case decided by the High Court, the claimant asserts that it is the reason for requesting for the review of the judgment based on the grounds of injustice because he had requested for damages from the time of his dismissal until the court decision at the last instance as it has been upheld in other rendered cases. The claimant argues that the Court determined that he should not be paid the salaries as he is no longer considered as employee of the District, because the salary refers to all the remuneration received or due to an employee for the work performed and these explanations are untrue. He concludes by stating that he was unfairly dismissed and deprived of his 48- month salaries.

The respondent argues that he believes that the claimant was dismissed for a valid reason but the Court determines that the claimant was unlawfully dismissed so that he deserves the damages which should not be based on the claimant's monthly gross salary because, even if the claimant was still in service, he would not have received his gross salary.

The claimant further asserts that he should be reinstated because the Court ruled that he was unfairly dismissed and the decision to dismiss him has been invalidated. He requests that in case his reinstatement is not possible, he should be granted damages, calculated from the time of the suspension until the pronouncement of the last judgment and provided with the work certificate.

The respondent argues that the issue of reinstatement should not be analysed as it was not litigated in the previous courts, stating that the reinstatement is a direct consequence of the dismissal is untrue as it should have been filed before the courts for analysis.

Held: 1. When it is determined that an employee has been unfairly dismissed, he/she is entitled to receive damages that are calculated based on the last salary. These damages are calculated from the time of suspension until the pronouncement of the judgment on basis of the net salary and any other allowances that were provided to him/her to facilitate the performance of the duties.

2. The fact that the party has been granted an extraordinary remedy for review of a final judgment when he/she thinks that he/she has been wronged on a specific issue does not grant to him/her the right to introduce new claims that are outside the scope of the subject matter mentioned in the application. Therefore, the issue of reinstatement of Katarwa Richard and the issuance of a work certificate cannot be examined in this particular case because it was not analysed during the judgment under review.

**An application for review on grounds of injustice is justified.
The case decided by the High Court, Chamber of Nyanza, is reversed on some issues.**

Statutory and statutes referred to:

Law n°017/2020 of 07/10/2020 establishing the general statute governing public servants.

Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, article 63.

Law n°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 9, 75 and 111.

Prime Minister's Order n° 003/03 of 16/01/2015 determining modalities for training for public servants, article 20.

Prime Minister's Order n° 136/03 of 25/10/2010.

Case laws referred to:

Road Solutions Pavement Products v. MAILCO Ltd, RS/INJUST/RCOM 00002/2020/SC decided by the Supreme Court on 29/09/2020.

Magara Gahakwa et al., RS/INJUST/RP 00001/2020/SC decided by the Supreme Court on 21/02/2021, paragraph 21.

Ngirinshuti v. Muhima Giovani, RS/INJUST/RC 00024/2018/SC decided by the Supreme Court on 21/02/2020, paragraphs 19-22.
Government of Rwanda v. Ndahindurwa Kimenyi Jérémie, RADA 0006/12/CS decided by the Supreme Court on 04/01/2013.

Authors cited :

M. Long, P. Weil, G. Braibant, Les grands arrêts de la jurisprudence administrative, 20 éditions, Collection Dalloz 2015, p.260.

Judgment

I. BACKGROUND OF THE CASE

[1] Katarbarwa Richard served as the Executive Secretary of Munini Sector in Nyaruguru District. He was dismissed from his position on 29/06/2015 due to the following faults:

- Failure to monitor the harvesting of trees in Munini Sector, where the Sector was authorized to cut down 13 trees but ended up by cutting down 22 trees; disrespecting his superiors and refusing to comply with the instructions given to him;
- Embezzlement of public property through the unauthorized burning of charcoal and sawing of lumber without disclosing the income.

[2] After being dismissed, Katarbarwa Richard filed a lawsuit in the Intermediate Court of Nyamagabe against Nyaruguru District, alleging unfair dismissal and seeking the annulment of the decision, as well as damages. His claim was registered under the docket number RAD 00001/2017/TGI/NYBE.

[3] Counsel Mbonigaba Eulade, representing Nyaruguru District, argued that Katarbarwa Richard was definitively dismissed from the District's staff due to gross misconduct committed at work. He maintained that the dismissal was carried out in accordance with the law, and therefore, Katarbarwa should not be entitled to damages. Instead, he contended that he should be held responsible for the judicial expenses incurred by Nyaruguru District.

[4] On 09/11/2017, the Intermediate Court of Nyamagabe rendered the judgment RAD 00001/2017/TGI/NYBE, and ruled that the claim filed by Katarbarwa Richard was unfounded. The Court sustained the validity of the decision made by the Mayor of Nyaruguru District on 29/06/2015 to definitively dismiss him from his job. Furthermore, the Court ordered to Katarbarwa to pay 500,000 Frw to Nyaruguru District as damages for the incurred judicial expenses.

[5] In reaching this decision, the Court took into account the unanimous agreement of all parties regarding the cutting down of 22 trees instead of the authorized 13. The Court also considered the testimonies presented and the results of the investigation it conducted. Based on these findings, it concluded that Katarbarwa's dismissal was a consequence of his own faults and determined that no legal provision was violated in the dismissal process.

[6] Katarbarwa Richard lodged an appeal against the decision to the High Court, Chamber of Nyanza. In his appeal, he argued that there was no justifiable reason for his dismissal, pointing out that the number of trees cut down was authorized by the District. He further contended that the District failed to comply with the disciplinary regime as it did not respond to his letter requesting explanations within the specified time limit. Additionally, Katarbarwa asserted that he did not embezzle any public property and that the tender process for harvesting the trees was conducted in accordance with the law.

He emphasized that he had been acquitted in criminal proceedings and he requests to be awarded all the damages he had claimed.

[7] The High Court, Chamber of Nyanza, in the judgment RADA 00014/2017/HC/NYZ delivered on 28/02/2019, ruled that Katarbarwa Richard's appeal is justified and found no evidence of gross misconduct that would warrant the dismissal of Katarbarwa by Nyaruguru District. Consequently, the decision to dismiss him was overturned. Furthermore, the High Court ruled that the decision rendered by the Intermediate Court of Nyamagabe in case RAD 00001/2017/TGI/NYBE, which was pronounced on 09/11/2017, is modified. This decision was based on the following grounds :

- There is no evidence to substantiate that Munini Sector was only authorized to cut down 13 trees and that Katarbarwa Richard exceeded this number ;
- 21 trees were marked for being cut down ;
- There is no evidence indicating that Katarbarwa Richard used forged documents while he did not commit any fault in cutting the trees.

[8] The Court concluded that the damages claimed by Katarbarwa Richard, which were anticipated to be calculated based on the precedent set in the case RADA 0006/12/CS involving Ndahindurwa Kimenyi Jeremie and the Government of Rwanda, would not be awarded in the same manner. This is because the circumstances of the present case differ from that case, where the claimant sought reinstatement to work. Instead, the Court determined that Katarbarwa should be granted damages for unpaid salaries during the period of his employment until he filed the case, amounting to ten million seven hundred forty-six thousand and sixty Rwandan francs (10,746,060 Frw).

[9] On 05/04/2019, Katarbarwa Richard wrote a letter to the President of the Court of Appeal, requesting the review of the judgment for the injustice he had experienced in the case, with the aim of its reexamination. Subsequently, the President of the Court of Appeal sent a letter to the President of the Supreme Court requesting the review of the case RADA 00014/2017/HC/NYZ on the grounds of injustice. After carefully considering the request, the President of the Supreme Court took the decision N^o 177/CJ/2021 according to which the judgment RADA 00014/2017/HC/NYZ decided by the High Court, Chamber of Nyanza on 28/02/2019, should be re-adjudicated. The judgment was then registered under the docket number RS/INJUST/RAD 00001/2021/SC.

[10] The hearing of the case was scheduled on 12/01/2022 and conducted in public. Katarbarwa Richard was assisted by Counsel Ndatsikira Jean Marie Vianney, while Nyaruguru District was represented by Counsel Mbonigaba Eulade. Prior to addressing the merits of the case, the Court first examined the objection raised by Counsel Mbonigaba Eulade. Referring to Article 63 of Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, he argued that it was necessary to reexamine whether any misconduct had occurred that could justify Katarbarwa Richard's definitive dismissal from the public service and whether the proper disciplinary procedures for public servants had been followed for initiating the disciplinary proceedings and the remaining issues are the consequences of the claimant's requests.

[11] On this objection, Counsel Ndatsikira Jean Marie Vianney argues that it has no basis because in case of the judgment review on grounds of injustice, the concerned party must provide the elements of evidence to support his/her claim of injustice, when those elements of evidence are under analysis, the other party is not present. If it is established that the judgment is tainted with injustice, such judgment should be reviewed, but within the scope of the identified injustice.

[12] Regarding this issue, the Court ruled in the bench that this was not an objection, but rather it is the interpretation of Nyaruguru District of such provision. According to the position that the Court had

taken in various cases¹, Article 63 of the law determining the jurisdiction of courts should be understood as follows: a review of the case does not mean disregarding other cases that have already been decided. Rather, the case is reexamined within the scope of the subject matter based on the claim of injustice. This implies that the party alleging injustice must specify the holdings that cause to him/her injustice and that those are what the Court would analyze and decide upon.

[13] After that decision, the hearing was resumed on the merits by examining the grounds on which Katarwa Richard relied for requesting the review of the judgment rendered by the High Court, Chamber of Nyanza, on grounds of being vitiated by injustice. The parties debated about the issues of whether Katarwa Richard had been compensated inappropriately, whether he should be reinstated, together with other damages claimed by the parties. The hearing was closed and the parties were notified that the judgment would be delivered on 25/02/2022.

[14] While the Court was deliberating, it found that it still needed some clarifications from the parties, therefore, based on the provisions of paragraph 4 of article 75 of the Law n°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure stating that before taking the decision and upon its own motion, the Court may reopen the hearing if it finds that it needs further clarifications on some facts that remained unclarified in the previous hearing for the establishment of the truth, the Court decided, through the interlocutory judgment, to reopen the hearing to get more clarifications from the parties.

[15] The hearing was reopened on 23/05/2022, Katarwa Richard was represented by Counsel Ndatsikira Jean Marie Vianney, and Nyaruguru District by Counsel Mbonigaba Eulade. During the hearing, both parties were given opportunity to explain to the Court the mode for calculating the damages claimed by Katarwa Richard (including the base salary and what should be included and excluded in the damage calculation). Subsequently, the hearing of the case was concluded, and the parties were notified that the Court's decision would be delivered on 22/07/2022.

II. ANALYSIS OF LEGAL ISSUES

1. Whether in the case RADA 00014/2017/HC/NYZ, the High Court, Chamber of Nyanza miscalculated the damages awarded to Katarwa Richard

[16] On this issue, Katarwa Richard argues that the basis for his application for the judgment review on the grounds of injustice is that he claimed to be awarded the damages calculated according to the method adopted by the Supreme Court in the case RADA 0006/12/CS abovementioned in which Ndahindurwa Kimenyi Jérémie was awarded damages calculated from the time when the decision to suspend him from work was made until the judgment on the last instance. He produced as evidence the judgment RADA 00008/2017/NYZ rendered by the High Court, Chamber of Nyanza, about the claim filed by Bugingo who was dismissed like him at the same time and for the same reasons, whereby the High Court sustained the appealed judgment decided by the Intermediate Court of Nyamagabe, which upheld that Bugingo should receive damages calculated according to the position set by the Supreme

¹ RS/INJUST/RCOM 00002/2020/SC Road Solutions Pavement Products Vs Mail Co Ltd decided on 29/09/2020.
RS/INJUST/RC 00024/2018/SC Ngirinshuti vs Muhima Giovani decided on 21/02/2020 paragraph 19 -22.
RS/INJUST/RP 00001/2020/SC Magara Gahakwa and Crts decided 21/02/2021 in its paragraph 21.

Court in the aforementioned case RADA 0006/12/CS which should serve as basis as he requested it, but the request was not taken into consideration.

[17] Katarbarwa Richard and his legal counsel, Ndatsikira Jean Marie Vianney, allege that the High Court, in paragraph 40 of the case RADA 00014/2017/HC/NYZ, ruled that the method of calculating damages for Ndahindurwa Kimenyi Jeremie in the case RADA 0006/12/CS should not be applied to Katarbarwa Richard's case, since the two cases are different, especially considering that the plaintiff's claim in Ndahindurwa Kimenyi Jérémie's case was reinstatement, whereas Katarbarwa Richard's claim was the awarding of moral damages. They contend that the Court's holdings in the present paragraph are untrue for the following reasons:

- The main claim of Katarbarwa Richard in the case RADA 00014/2017/HC/NYZ was the annulment of the decision to definitively dismiss him from his work, which was made by the Administration. The other connected claims were considered as ancillary to the main claim. These claims are similar to those of Ndahindurwa Kimenyi Jeremie in the case RADA 0006/12/CS, as he also sought the annulment of the dismissal decision made by the Administration in the Prime Minister's Order n° 136/03 of 25/10/2010.
- Both Ndahindurwa Kimenyi Jeremie and Katarbarwa Richard were found to have been unlawfully dismissed in their respective cases. This implies that since they both sued for the annulment of the dismissal decision, the Court invalidated the decision for both and they should have been reinstated and awarded damages for their unpaid salaries. The fact that Ndahindurwa Kimenyi Jeremie had the opportunity to be reinstated should not have deprived Katarbarwa Richard of his right to receive salaries until the judgment at the last instance, just as it was the case for Ndahindurwa Kimenyi Jeremie.
- They note that in order to secure another job, it is necessary for the judgment to be tried at the last instance, which serves as the basis for requesting removal from the Black List, therefore, the computation of the salaries of the public servant unfairly dismissed should run until the judgment pronouncement at the last instance.

[18] They argue that in paragraph 39 of the case RADA 00014/2017/HC/NYZ, the Court ruled that Katarbarwa Richard should not receive his salaries because he is no longer considered as the employee of the District, as the law specifies that a salary is any remuneration paid to an employee for work performed. They further assert that these explanations are false because in paragraph 41, the judge contradicted himself by awarding compensation equivalent to the salaries for the period when Katarbarwa Richard was no longer employed by the District. Additionally, the explanations provided in paragraph 39 indicate that Katarbarwa Richard would be paid his salaries until the time he filed a claim, as he was uncertain about whether he would or not seek alternative employment.

[19] They further argue that the grounds for the High Court's decision in the aforementioned paragraph are invalid. They point out that in the case RADA 00008/2017/HC/NYZ involving Bugingo, which bears a striking resemblance with Katarbarwa Richard's case, the Court declared that Bugingo should be awarded all his salaries from the day he was dismissed until the day he filed a claim. Furthermore, Bugingo was granted damages equivalent to six-month salaries for unfair dismissal. However, these same considerations were not applied to Katarbarwa Richard.

[20] Katarbarwa Richard and Counsel Ndatsikira Jean Marie Vianney further emphasize that when a public servant is unjustly dismissed from the job, he/she is immediately deprived of the salary and other related benefits which are meant to support his/her well-being and work performance. Therefore, it is not understandable why in case it is evident that he/she has been unjustly deprived of them, he cannot regain them as it is the way of restoring his/her rights. They argue that the damages which can be awarded to Katarbarwa Richard should be based on his monthly gross salary at the time of dismissal,

deducting the allowances granted for work performance facilitation since he was no longer performing his duties.

[21] They also highlight that the dismissal of a public servant places him/her on the black list, this denotes that he/she has no longer the ability to repay any debts. This is precisely what happened to Katarwa Richard as out of 10,746,060 Frw he was granted he paid more than 8,000,000 Frw as his dismissal prevented him from receiving his lump sum used for repaying the bank loan, he was deprived of the salary which he could use for loan repayment and he was also deprived of the opportunity to get another job which should allow him to reimburse the debt. Therefore, they request that the calculation of Katarwa Richard's unpaid damages should be based on his gross salary, deducting the communication allowances which he spent only for the job purpose.

[22] Katarwa Richard further explains that according to the Prime Minister's Order n° 003/03 of 16/01/2015 determining modalities for training for public servants, particularly in Article 20, it states that public servants undergoing training for a duration not exceeding 3 months are entitled to receive a lump sum as usual, he also deserves it, even if he was not in service, he deserves such lump sum, because what is taken into consideration is the fact that the car was purchased on credit and he should continue receiving such money and the loan contract is still valid.

[23] They conclude that Katarwa Richard was unfairly dismissed so that he was deprived of his salary for 48 months from March 2015 to February 2019. His monthly salary during that period was 971,405 Frw. If he had not been dismissed, he would have received a total of 46,627,440 Frw. However, he was only given 10,746,060 Frw. He alleges that in order to redress him in his rights, the Court should order the payment of the balance amounting to 35,881,360 Frw.

[24] Counsel Mbonigaba Eulade representing Nyaruguru District argues that they agree that Katarwa Richard was dismissed for a reasonable reason. However, if the Court, after examination, determines that the claimant was unfairly dismissed so that he deserves damages, they should not be based on his monthly gross salary, because, even if he was still in service, he would not have been paid the gross salary.

[25] He states that the lump sum is money provided to an employee for work performance facilitation, whereas the lump sum claimed by Katarwa Richard covers the period when he was not employed; therefore, he does not deserve it.

[26] He concludes by submitting that the example given by Katarwa Richard concerning a public servant in training who continues to receive the lump sum is incorrect because a public servant in training is still in service, the reason why he/she continues to receive it; this is different from the case of a dismissed one because he has no longer official duty, the lump sum is not part of salary, rather it is facilitation granted to the public servant for fulfilling his/her duties; in case he/she is no longer in service, allocating it to him/her amounts to the misuse of public property.

DETERMINATION OF THE COURT

[27] Article 9 of the Law n°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that "A judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine. A judge cannot refuse to decide a case on any pretext of silence, obscurity or insufficiency of the law".

[28] Regarding the calculation of damages for a public servant who was illegally dismissed, resulting in the loss of his salary unfairly, the Court finds that neither the general statute governing public servants into force at the time when Katarwa Richard was dismissed nor the current Law N° 017/2020 of 07/10/2020 establishing the general statute governing public servants, provide for the modalities of such damages calculation. On basis of the article mentioned in the preceding paragraph, for settling that issue, it is necessary to rely on the legal doctrines or precedents tried on the issues similar to the subject-matter of this case. Legal scholars in administrative matters, namely M. Long, P. Weil, and G. Braibant² suggest that three factors should be taken into account when determining the damages for a public servant dismissed without a reasonable reason:

- the real prejudice suffered by the public servant;
- administrative irregularities: These scholars opine that compensation is higher when there is a substantive irregularity, but lower when it is a procedural irregularity;
- a fault committed by the public servant: These scholars state that such a fault can result into the fact that the agent is granted low or no damages.

[29] Regarding the calculation of compensation for a public servant who has been unlawfully dismissed and unfairly deprived of the salary, the Supreme Court, in paragraph 30 of the case RADA 0006/12/CS rendered on 04/01/2013 between the Government of Rwanda and Ndahindurwa Kimenyi Jeremie (Invalidation of the decision for unfair dismissal), ruled that the damages should be calculated based on the employee's last net salary from the time of dismissal until the pronouncement of the judgment.

[30] Based on the foregoing, Katarwa Richard should receive damages equal to the salary he would have been paid from the time of his provisional suspension (on 16/03/2015, as his salary was immediately suspended) until 28/02/2019 (the date on which was rendered the judgment for which he claimed for the review on the grounds of injustice), meaning 47 months and 12 days, calculated at 467,220 Frw³. Therefore, the total compensation he should be awarded is: $467,220 \text{ Frw} \times 47 = 21,959,340 \text{ Frw} + 186,888 \text{ Frw}$ for 12 days, amounting to 22,146,228 Frw, deducting the fee granted to him by the time of the execution of the judgment for which he claimed for review on grounds of injustice. Hence, he should receive $22,146,228 \text{ Frw} - 10,746,060 \text{ Frw} = 11,400,168 \text{ Frw}$.

[31] Regarding the statements of Katarwa Richard that the High Court denied him the lump sum while he was entitled to it, the Court finds that there is the contract concluded on 14/09/2011 between the Government of Rwanda, represented by the Ministry of Infrastructure, and Katarwa Richard under the fleet policy. Article 2 of the contract states that the Government will cover the customs duties, value-added tax, and other taxes related to the importation of new cars for employees in the program. Additionally, the Government will provide the employee with a monthly payment of 208,731 Frw, which was later increased to 300,000 Frw, as indicated by Katarwa Richard's pay slip. He states that he used such money for the repayment of the loan granted by Banque Populaire du Rwanda to purchase the car specified in the aforementioned contract.

[32] In the case RADA 0003/14/CS between Dr. Karemangingo Charles and the Government of Rwanda, decided by the Supreme Court on 17/02/2017, the Court ruled that the lump sum should be included in the compensations awarded to a public servant who has been unlawfully dismissed from job.⁴

² M. Long, P. Weil, G. Braibant, Les grands arrêts de la jurisprudence administrative, 20 Edition, Collection Dalloz 2015. p.260.

³ The base salary for the calculation by the High Court, Chamber of Nyanza, nobody complained about it neither Katarwa nor Nyaruguru District.

⁴ See paragraphs 45 and 46 of that judgment.

[33] The Court concludes that the fact that the High Court, Chamber of Nyanza, ruled that Katarwa Richard was unjustly dismissed indicates that he was deprived of the allowances granted to him as employee and which facilitated him to fulfil his duties, including the inability to continue repaying the loan allegedly reimbursed by means of the lump sum; consequently, Nyaruguru District dismissed him without justifiable grounds, it is liable for granting to him the damages equivalent to the loss incurred for not receiving the lump sum awarded to him before his dismissal.

[34] Regarding the amount of the lump sum that Katarwa Richard is entitled to, the Court finds that the contract between him and the Government for the car purchase, which also served as the basis for the lump sum payment, was intended to last for four years from the date of its signing on 14/09/2011. This implies that the contract was due to expire on 14/09/2015. It is evident from the case file that Katarwa Richard was dismissed in March 2015, six months prior to the contract expiration. Consequently, the Court determines that the damages should be calculated as follows: 300,000 Frw \times 6 amounting to 1,800,000 Frw. This amount should be added to the 11,400,168 Frw mentioned in paragraph 30 of the present case, totalling to 13,200,168 Frw.

2. Whether Katarwa Richard should be reinstated

[35] Katarwa Richard and Counsel Ndatsikira Jean Marie Vianney argue that, since the Court has ruled that Katarwa Richard was unlawfully dismissed and the decision has been overturned, he should be reinstated. However, if the reinstatement is not possible, they contend that he should be awarded damages based on his salary from the time of his dismissal until the case trial at the last instance. Additionally, they assert that he should be issued a work certificate because the denial of such certificate constitutes an act of injustice. They conclude that even though these issues were not raised during the pre-trial conference, such fact cannot preclude their determination since they constitute direct consequence of the decision to dismiss him and he pleaded on them before the High Court, Chamber of Nyanza.

[36] Counsel Mbonigaba Eulade, representing Nyaruguru District, argues that the issue of reinstatement should not be considered since it was not raised in previous court proceedings, stating that they constitute direct consequence of his dismissal is incorrect, as they should have been submitted before the courts for determination, because a public servant does not lose the job only when he is dismissed, he/she can resign.

DETERMINATION OF THE COURT

[37] Article 63 of the Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts provides that “When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgement on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties”.

[38] As it has been upheld in various cases⁵, the fact that a party has been granted an extraordinary remedy to review a final judgment based on a claim of injustice does not imply the disregard of prior decided cases. Instead, the case is re-examined within the specific scope of the claimed injustice. This means that such a remedy does not grant to the party the right to introduce new claims that are unrelated to the subject matter mentioned in the first application before the trial court, it does not grant to the party the right to request for the examination of additional claims beyond those which were recorded in

⁵ RCA/INJUST/RC 00007/2018/SC decided by the Supreme Court on 13/03/2020 Nditiribambe Samuel v. Gatera, Paragraph 66.

RCAA 00008/2018/CS decided by the Supreme Court on 12/11/2021 Gahire Athanase v. Mukarushakiro Gloriose and Crts, paragraph 30.

the application for review on grounds of injustice, as the party would act out of the scope of the application for review on grounds of injustice.

[39] In the judgment against which Katarbarwa Richard applied for review on the grounds of injustice, it appears that the issue of reinstatement or damages in lieu thereof was not examined. The document dated 05/04/2019, which Counsel Ndatsikira Jean Marie Vianney submitted to the President of the Court of Appeal on behalf of Katarbarwa Richard, also indicates that the only injustice he faced as a result of the judgment RADA 00014/2017/HC/NYZ decided by the High Court, Chamber of Nyanza, relates to the calculation of damages for a public servant unfairly dismissed, on basis of the judgment RADA 0006/12/CS rendered by the Supreme Court between Ndahindurwa Kimenyi Jeremie and the Government of Rwanda, as well as the judgment RADA 0008/2017/HC/NYZ between Bugingo Jean Chrysostome and Nyaruguru District, delivered by the High Court, Chamber of Nyanza. On basis of these judgments, he requests to be redressed in his rights and the damages should be calculated in the same manner as established in those cases.

[40] Based on the explanations above provided and the rulings on the rights of the parties in cases related to the review of judgments on the grounds of injustice, the Court finds that the issue of Katarbarwa Richard reinstatement cannot be examined in this instance as it was not addressed in the judgment under review. Similarly, the issue of damages for not being provided with the work certificate should not be considered as Katarbarwa Richard did not raise it as an issue of injustice in the case RADA 00014/2017/HC/NYZ for analysis by the relevant organs responsible for examining the injustice alleged in the final judgments, especially it was not examined in the judgment for which he applied for the review.

3. With regard to other damages claimed in this instant case

[41] Katarbarwa Richard and Counsel Ndatsikira Jean Marie Vianney, adduce that based on article 258 of the Civil Code, Book Three (CCLIII), and the fact that before the Supreme Court, a party must be assisted by a legal counsel and where counsel fees should not go below 1,000,000 Frw, they request the Court to order to the District of Nyaruguru to reimburse to Katarbarwa Richard 1,000,000 Frw as well as the amount of 300,000 Frw determined in the discretion of the Court for judicial expenses he incurred for travel, accomodation, meals, communication and allowances for his case follow-up.

[42] Counsel Mbonigaba Eulade, representing Nyaruguru District, argues that the judicial expenses should be supported by elements of evidence, otherwise, they should be determined in the discretion of the Court. Regarding the counsel fees, it is necessary to provide concrete elements of evidence demonstrating that the claimed amount is indeed what was paid. Furthermore, as long as Katarbarwa Richard is claiming an amount exceeding 500,000 Frw for counsel fees, he must provide additional relevant explanations.

DETERMINATION OF THE COURT

[43] Article 111 of Law n°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedingsThe claim for legal costs is adjudicated at the same time with the principal claim. It can be admitted even if the principal claim has not been admitted”.

[44] Regarding the judicial and counsel fees claimed by Katarbarwa Richard, amounting to 1,300,000 Frw, the Court finds that the incurred expenses shall be reimbursed by Nyaruguru District, because, for

being redressed in his rights which he was deprived of and for unfair dismissal, it was necessary for him to seize the Court and hire the advocate for his defense. However, the Court finds that the claimed amount of 1,000,000 Frw for counsel fees is excessive and he did not prove that he paid such amount to him, therefore, in its discretion, he awards to him 500,000 Frw for counsel fees, the total is 800,000 Frw, which includes 300,000 Frw for judicial expenses, as this amount is in a reasonable range.

III. DECISION OF THE COURT

[45] Holds that the claim filed by Katarbarwa Richard for review on the grounds of injustice of the judgment RADA 00014/2017/HC/NYZ, rendered by the High Court, Chamber of Nyanza on 28/02/2019, has merit.

[46] Holds that the judgment RADA 00014/2017/HC/NYZ tried by the High Court, Chamber of Nyanza on 28/02/2019, is reversed on some issues.

[47] Orders to Nyaruguru District to pay to Katarbarwa Richard the damages amounting to 13,200,168 Frw for unfair dismissal, as described in paragraph 34 of this judgment, in addition to 10,746,060 Frw previously awarded during the execution of the judgment against which he applied for review on grounds of injustice.

[48] Orders to Nyaruguru District to pay to Katarbarwa Richard eight hundred thousand Rwandan francs (800,000 Frw), including the counsel and procedural fees, the total amount is fourteen million one hundred and sixty-eight Rwandan francs (14,000,168 Frw).