

TABARUKA v GICUMBI DISTRICT

[Rwanda SUPREME COURT – RS/INJUST/RAD 00003/2021/SC – (Ntezilyayo, P.J., Cyanzayire, Nyirinkwaya and Hitiyaremye, J.) May 20, 2022]

Labour procedure – Provisional suspension at work – provisional detention – removal from office– In labour cases, the provisional detention of a public servant for a period of more than six months makes him automatic removed from office, starting from the date of his arrest and provisional detention.

Labour Law – Public servant leave – Annual leave – In case a public servant is unable to take annual leave due to working conditions, s/he shall take it in the first month of the following year, but s/he must prove that he had requested it in writing. - An employee who has requested a leave in writing and was not granted it due to work reasons, should not be given money to compensate it, but replaces it with another one that s/he must take in the first month of the following year.

Facts: Tabaruka, who was the Director of Finance Unit in Gicumbi District, was suspected of embezzling public funds which made him be arrested and imprisoned. Gicumbi District wrote to him informing him that he was provisional suspended due to the crimes he was prosecuted for and later he was automatic removed from the Public servants. After he was found acquitted of those crimes, he wrote to the District asking to be reinstated, saying that he was dismissed illegally, but they replied that the decision to suspend him was made in accordance with the law.

After exhausting all for remedies from responsible authorities, Tabaruka filed a case before the Intermediate Court of Gicumbi, asking for the invalidation of the decision suspending him from work, damages related to his unfair dismissal, procedural and court's fees, but this instant Court declared his dismissal lawful.

Tabaruka appealed the judgment to the High Court which sustained the appealed decision. This made him write to the Court of Appeal asking for a review on grounds of injustice. After the approval of his request, this instant Court first made a decision on the request to be reviewed on the grounds of injustice which have not been tried in the previous courts and ruled that the damages requested by Tabaruka should not analysed at this instant, because they were not among the complaints that should be tried in the first instant.

The case continued in merits by first examined of the issue of whether the decision to provisionally suspend Tabaruka and the decision to automatic remove him from public servants were unlawful. Tabaruka says that the Mayor of Gicumbi District has written a letter informing him that he has been provisionally suspended from work on the grounds that since 07/03/2017 he was arrested by the Prosecution and imprisoned for the crimes he was being prosecuted for. He further adds that the letter reached him on 04/04/2017 where he was detained in Kimironko Prison, and it indicated that the decision takes effect from 03/07/2017. He concludes by saying that he finds that there are three different dates, that is, the time the decision was taken, the time for its execution and the time it was received, and wonder the time for the decision to take effect among these three dates. He finds that the decision suspending him provisionally and that of automatic removing him from office were unfairly taken, because in calculation of 6 months, they based on the date of 07/03/2017 instead of 04/04/2017 of which he was notified of the decision suspending him provisionally.

Gicumbi District defends that the Plaintiff proves that he was dismissed illegally and that he was not dismissed but rather was automatic removal from office. This does not have the same effect as being dismissed, which is why he should not say that he was dismissed. Another thing is that it is not a decision of the district but a law that provides for it.

Regarding to the calculation of the provisional detention period, the District says that it was done accordingly because from the date of 07/03/2017 when Tabaruka was arrested and detained by the Prosecution until 08/09/2017 when a letter automatically removed him from office was to him, and it reached him on 15/09/2017, six months had passed. The fact that the Plaintiff has been claiming that the six (6) months of provisional detention were wrongly calculated in the previous courts, because they would start from the time the decision of provisional detention became final, and now he says that the six (6) months would be counted from the time he received the letter suspending him provisionally on 04/04/2017, the District finds that it is an attempt to confuse and mislead justice.

On the issue related to the damages resulting from unfair automatic removal from office, Tabaruka says that the fact that he was not notified in due time the decision provisionally suspending him from work is a mistake made by Gicumbi District of not complying with the provisions of the law, and should be entitled to damages resulting from unfair dismissal from public servants.

Gicumbi District says that the damages requested by Tabaruka should not be awarded because he was not dismissed from work illegally, but rather was automatically removed from office because he was provisionally detained for a period of more than six (6) months.

Held: 1. In labour cases, the provisional detention of a public servant for a period of more than six months makes him automatic removed from office, starting from the date of his arrest and provisional detention. Thus, Tabaruka Dieudonné was automatically removed from office on 08/09/2017 based on letter number 3201/07.04.05/01 written by Gicumbi District Mayor, 6 months ago being provisionally detained from 07/ 03/2017 when he was arrested by the Prosecution and imprisoned.

2. When a public servant is unable to take annual leave due to working conditions, s/he shall take it in the first month of the following year, but he must prove that he had requested it in writing. An employee who has requested a leave in writing and was not granted it due to work reasons, should not be given money to compensate it, but replaces it with another one that s/he must take in the first month of the following year.

**An application for review on grounds of injustice is justified.
The ruling of the High Court is changed in parts.**

Statutes and Statutory referred to:

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

Law n° 86/2013 of 11/09/2013 establishing the general statutes for public service, article 40, 44 and 93

Law n° 30/2013 of 24/05/2013 relating to the code of criminal procedure, article 99.

Law n°22/2012 of 15/06/2012 determining the publication, notification and commencement of official acts, article 5.

Organic Law n° 20/2003 of 03/08/2003 organizing Education, article 34.

Case laws referred to:

Nkongoli John v Government of Rwanda, RADA 0012/07/decided by Supreme Court on 7/03/2009.

Doctrines referred to:

J. Auby et R. Drago, *Traité de contentieux administratif*, Tome 1, 3^{ème} édition, 1984, p.915.

Judgment

I. BACKGROUND OF THE CASE

[1] Tabaruka Dieudonné was the Director of Finance Unit in Gicumbi District, later he was suspected of embezzling public funds, which led to his arrest and imprisonment on 03/07/2017. In letter number 1203/07.04.05/01 dated 28/03/2017, Gicumbi District wrote to him informing that he has been provisionally suspended due to the crimes he is being prosecuted for; on 09/08/2017 he was automatically removed from office from the public service. The final decision provisionally detaining him and his co-accused was taken on 18/04/2017, the case was lodged in the Intermediate Court of Gicumbi for the crime of providing unjustified benefits and the crime of embezzlement of public funds. The Court found him guilty of attempt of embezzlement, but on appeal it was overturned.

[2] After Tabaruka Dieudonné found acquitted, he wrote to Gicumbi District asking to be reinstated saying that he was dismissed illegally, on the grounds that the decision to provisionally detain him was made on 18/04/2017, and he was dismissed on 08/09 /2017, the six months provided for by paragraph one, article 40 of the Law establishing the general statutes for public service has not yet expired. Gicumbi District replied that the decision was made in accordance with the law.

[3] After exhausting all for remedies from responsible authorities, he filed a complaint in the Intermediate Court of Gicumbi, requesting the invalidation of the decision number 1203/07.04.05/01 of 28/03/2017, unfair dismissal related damages, the Procedural and Counsel's fees. The case was registered on RAD 00002/2018/TGI/GIC, decided on 30/07/2018, the Court upheld that he was dismissed in accordance with the law.

[4] Regarding to the damages requested by Tabaruka Dieudonné relating to the criminal cases against him which he was found acquitted, others resulting from the penalties imposed by the Bank in which he had a debt he did not pay because he was dismissed from work, the Court found that it would not be entitled to them because his dismissal was lawful. Regarding the terminal benefits, notice allowance and damages of not being given work certificate, the Court found that as he admitted, he was given what he was entitled to by the law.

[5] Tabaruka Dieudonné appealed the case to the High Court, registered under number RADA 00140/2018/HC/KIG, decided on 30/07/2019, the Court declared that there is no change in the appealed case. In making the decision, the Court explained that:

- Article 40 of Law No. 86/2013 of 11/09/2013 establishing a general statute governing public servants provides that one of the reasons for a public servant to be provisionally suspended from work is when he is provisionally detained for less than six months.
- The purpose of this article is to explain what happens to an employee who cannot come to work for various reasons beyond his control, including when he is arrested and detained. It says that this article shows that he does not immediately stop being a public servant, but it is clear that the government does not wait for him forever, that's why he lost his position after six months.
- The provisional detention referred to in article 40 of the General Statute governing public servants is not a detention based on a decision of a provisional detention taken by a judge and that has been final, but it is any detention named provisional because a person has not yet been sentenced to mean that he is imprisoned serving his sentence. This type of provisional detention can start from when a person is arrested and detained on arrest warrant (*procès-verbal d'arrestation*), and continues while he is still detained based on a provisional arrest warrant (*mandat d'arrêt provisoire*), which continues until a judge's provisional detention taken until becomes final.

[6] Regarding to the damages related to the unfair dismissal requested by Tabaruka Dieudonné, the High Court explained that it could not be granted because he was dismissed according to the law, while other damages he requests should not be considered because they were not sued in the complaint filed in the Intermediate Court of Gicumbi.

[7] After the ruling of the case, Tabaruka Dieudonné wrote to the President of the Court of Appeal requesting that the case RADA 00140/2018/HC/KIG decided by the High Court on 30/07/2019 be reviewed on grounds of injustice. The President of the Court of Appeal after examining the request, made a report to the President of the Supreme Court, who after reviewing it decided that the case will be reheard by the Supreme Court, registered under number RS/INJUST/RAD 00003/2021/SC.

[8] The hearing of the case was scheduled on 11/04/2022, held in public Tabaruka Dieudonné assisted by Counsel Karemera Pierre Claver, and Gicumbi District represented by Counsel Ndengeyingoma Louise. Before the case went into the merits, the Court first made a decision on what was requested to be analysed at the level of injustice that which have not been tried in the previous courts.

[9] After hearing each party's concern, the Court decided that the following damages requested by Tabaruka Dieudonné should not be examined at this instance, because they are not among the complaints that should be tried at the first instance:

- 21,720,371 Frw related to children's education insurance and health insurance;
- 2,000,000 Frw related to the failure to conduct the 2016/2017 performance evaluation and the delay in promotion;

- 500,000 Frw of expenses when he frequently went to the Public Service Commission and other organs to appeal against the decisions made by Gicumbi District.

[10] The case continued in merits, each part commented about its submissions the presented, the Court notified the parties that the case will be pronounced on 20/05/2022. The main legal issues which were analysed are the following:

- To determine whether the decision number 1203/07.04.05/01 of 28/03/2017 and the decision number 3201/07.04.05/01 of 08/09/2017 did not comply with the law;
- Various requested damages.

II. ANALYSIS OF LEGAL ISSUES

1. To determine whether the decision number 1203/07.04.05/01 of 28/03/2017 and the decision number 3201/07.04.05/01 of 08/09/2017 did not comply with the law

[11] Tabaruka Dieudonné and his counsel say that on 28/03/2017, the Mayor of Gicumbi District wrote a letter with the number 1203/07.04.05/01 informing him that he is provisionally suspended from work on the grounds that from On 07/03/2017, he was arrested by the Prosecution and detained for the crimes he was being prosecuted for. They say that the letter reached him on 04/04/2017 where he was detained at Kimironko Prison, and it was stated that the validity of the decision takes effect from 03/07/2017.

[12] They say that there are three different dates, that is, the time by which the decision was made (28/03/2017), the starting time of its implementation (07/03/2017) and the date it was received (04/04/2017), and wondering about the starting time of the validity of the implementation of this decision of these three dates. They say that they find that the date it was received is the one that should be taken into account for the validity of the decision as per paragraph two of article 5 of Law n°22/2012 of 15/06/2012 determining the publication, notification and commencement of official acts.¹

[13] They explain that legal experts say that for a person who is incapable (incapable) the notification is made by a legal representative, in case s/he is detained, it is taken to the prison where he is detained from², which is also what is included in the case RADA 0012/07/CS which was decided by the Supreme Court on 27/03/2009 against Nkongoli John v. the State of Rwanda. They conclude that they find that the decision provisionally suspending him and that of automatically removing him from office were taken unlawfully, because in calculation of 6 months, they based on the date of 07/03/2017 instead of 04/04/2017 of which he was notified of the decision provisionally suspending him.

[14] Counsel Ndengeyingoma Louise, Counsel for Gicumbi District, says that Tabaruka Dieudonné shows that he was unfairly dismissed and that the District never dismissed him, instead he was automatically removed from office. She explains that automatic removal from office does

¹ acts of individual interest shall have effect from the date of their notification to the concerned parties.

² *Si l'intéressé est incapable, la notification doit être faite à son représentant légal. S'il est seulement interné, elle doit être adressée à l'établissement où il réside*; J. Auby et R. Drago, *Traité de contentieux administratif*, Tome 1, 3^{ème} édition, 1984, p.915).

not have the same effects as dismissal, which is why he should not say that he was dismissed. She also says that it is not a decision made by the District, instead it is a law that provides for it. He says that in automatically removing him from office was in accordance with the provisions of article 93 of Law n° 86/2013 of 11/09/2013 establishing the general statutes for public service which was into force at that time.³

[15] Regarding to the calculation of the period of provisional detention, the Counsel for the District says that it was done accordingly because from 07/03/2017 when Tabaruka Dieudonné was arrested and detained by the Prosecution until 08/09/2017 when he was sent a letter dismissed him without argument, reaching him on 15/09/2017, six months had passed, and based on the provisions of article 99 of Law no 30/2013 of 24/5/2013 relating to the code of criminal procedure which was in force at that time⁴, the Prosecution may provisionally detain the suspect.

[16] She explains that according to article 40 of Law n° 86/2013 of 11/09/2013 establishing the general statutes for public service above-mentioned provided for, the State would not wait for the employee forever, the law provided that if the employee is provisionally detained for a period of more than six (6) months, s/he is subjected to be automatically removed from office. The fact that Tabaruka Dieudonné has been claiming that the six (6) months of provisional detention were wrongly calculated in the previous courts, saying that they would start from the time the provisional detention becomes final, now he says that six (6) months should be counted from the time he received the letter provisionally suspending him on 04/04/2017, which the District finds to be trying to confuse and mislead justice.

DETERMINATION OF THE COURT

[17] Point one of article 40 of Law n° 86/2013 of 11/09/2013 establishing the general statutes for public service which was into force when Tabaruka Dieudonné was imposed the above decisions, provides that a public servant shall be suspended from duties if he/she is provisionally detained for a period not exceeding six (6) months; and point four of article 44, of that Law provides that the suspension from duties of a public servant shall come to an end if he/she is dismissed or automatically removed from office.

[18] Point two of article 93 of the above-mentioned Law stipulates that a public servant shall be subject to automatic removal from office if he/she is placed in provisional detention for a period exceeding six (6) months.

[19] What is clear from these articles, when read together, is that when a public servant is provisionally detained but the detention does not exceed 6 months, the employer has the right to suspend him from work for the benefits of work because he is not working. When the detention exceeds 6 months, the law allows the employer to automatically remove him office because s/he does not keep on waiting for him/her, the provisional suspension and the related benefits thereof of the employee immediately end.

³ a public servant shall be subject to automatic removal from office if he/she is placed in provisional detention for a period exceeding six (6) months.

⁴ If all the conditions of provisional detention are met, a Prosecutor may, after interrogating the suspect with or without his/her legal counsel, hold the suspect in provisional detention.

[20] In the hearing of Tabaruka Dieudonné from the beginning of the case at the Intermediate Court of Gicumbi to the High Court, he showed that what he is basing on is that he was automatically removed from office⁵ unfairly, that he was automatically removed from office on 08/09/2017 and the decision provisionally detained him became final on 18/04/2017, and he said that he was automatically removed from office before 6 months end because it was supposed to be counted from 18/04/2017. In this instant Court, he argued that in the determination of 6 months, they based on the date of 07/03/2017 he was arrested by the Prosecution and detained, instead of being the date of 04/04/2017 of which he was notified of the decision provisionally suspending him from work. The court therefore finds that the root cause of the issue in this instant case is to determine the period from when the six months mentioned in the articles of Law n° 86/2013 of 11/09/2013 mentioned above start to be counted.

[21] As stated above, a public servant is automatically removed from office if he is provisionally detained for more than 6 months, that is, six months are counted from the date of the employee's provisionally detention. Article 99 of Law n° 30/2013 of 24/05/2013 relating to the code of criminal procedure which was into force when Tabaruka Dieudonné was arrested and detained, provided that if all the conditions of provisional detention are met, a Prosecutor may, after interrogating the suspect with or without his/her legal counsel, hold the suspect in provisional detention and take him/her to the court that is nearest to the place where he/she was arrested with the exception of the High Court, the Military High Court and the Supreme Court. What is mentioned in this article no doubt means that a person is under provisional detention from the time the Prosecution arrests him and detains him.

[22] In the court's submissions presented to this instant Court, Tabaruka Dieudonné says that he was arrested and detained by National Public Prosecution Authority on 07/03/2017, which is the date that must be taken into account for the 6 months the employee must have been detained in order to be subject to automatic removal from office, as stipulated in point two of article 93 of Law n° 86/2013 of 11/09/2013 mentioned above. It must also be the basis counted from for the period not exceeding 6 months stipulated in point one of article 40 of that Law.

[23] Tabaruka Dieudonné was automatically removed from office on 08/09/2017 based on letter N° 3201/07.04.05/01 written by Gicumbi District Mayor, 6 months ago he was provisionally detained. Prior to his automatic removal from office, he was provisionally suspended from work on 28/03/2017, based on letter N° 1203/07.04.05/01 of Gicumbi District Mayor, he had not yet spent 6 months in provisional detention.

[24] Based on the aforementioned, the Court finds that decision number 1203/07.04.05/01 of 28/03/2017 and decision number 3201/07.04.05/01 of 08/09/2017 complied with the law, which means that Tabaruka Dieudonné was not unfairly automatically removed from office.

2. Determination of various requested damages

▪ Damages relating to unlawful automatic removal from office

[25] Tabaruka Dieudonné says that decision number 1203/07.04.05/01 of 28/03/2017 provisionally suspends him and decision number 3201/07.04.05/01 of 08/09/2017 automatically

⁵ There is somewhere he uses the word dismissal, but what is clear in a letter n° 3201/07.04.05/01 of 08/09/2017 is that he was automatically removed from office which is not dismissal.

removes him from office are unlawful, nothing can prevent him from claiming damages of unfair dismissal. He adds that the fact that he was not notified on time the decision to provisionally suspend him from work is a mistake made by Gicumbi District that did not comply with the provisions of the law, and he should be entitled to the unfair dismissal from public servants related. These damages are calculated as follows according to their type :

- Moral damages (*dommages moraux*): 10.000.000Frw;
- Material damages (*dommages matériels*):
 - Salary losses from 09/09/2017 to the last day of the month following the date of the pronouncement of the judgment calculated based on the salary rate equal to 811,660 Frw, times the number of months in included in that time mentioned above ;
 - Losses of travel transport allowance from 09/09/2017 to the last day of the month following the date of the pronouncement of the judgment, calculated based on the amount received equal to 69,577 Frw per month, times 'the number of months in included in that time mentioned above.

[26] He claims that the damages he is seeking is 34,901,380 Frw, plus 2,991,811 Frw for transport allowances, totalling to 37,893,191 Frw. He also says that the RAMA contribution should not be deducted from this amount because he and his family were not treated at that time, but what should be deducted can be the RSSB contribution and the Income Tax (TPR).

[27] The Counsel for Gicumbi District defends that the damages Tabaruka Dieudonné is requesting should not give granted because he was not dismissed from his job illegally, but he was automatically removed from office because he was provisionally detained for more than six (6) months. He also says that the claimant for moral damages must provide evidence of such grief and prove his/her loss.

DETERMINATION OF THE COURT

[28] The moral damages as well as the material damages that Tabaruka Dieudonné is requesting, saying that he was automatically removed from office illegally, the Court finds that they cannot be granted because it has shown that he was not automatically removed from office illegally. This also applies to other damages he requested for unjustified detention and defamation for allegedly embezzling public funds, as well as late penalties for BK loans that were not paid on time due to loss of job.

▪ Other damages

[29] Tabaruka Dieudonné and his lawyer argue that he deserves the following additional damages :

- Social security contributions for 33 months collected by Gicumbi District but not reported as paid in RSSB, as follows :
 - Year of 2005: month of 10, 11, 12;
 - Year of 2009: month of 5,6,7,8,9,10,11,12;

- Year of 2010: month of 1,2,3,4,5,6,7,8;
 - Year of 2011: month of 5,7,8,9,10,11,12;
 - Year of 2017: month of 3,4,5,6,7,8,9.
- Damages equal to 2,000,000 Frw for receiving an incomplete work certificate (*attestation de services rendus*) because it does not indicate all works done in the District, namely finance and administration officer in Byumba Sector, accountant of Koleji Rushaki, and the acting Director of Finance in the District. They say that in accordance with the provisions of the Prime Minister's instructions n^o 002/03 of 06/12/2012 on granting certificate of services, the certificates in the file were issued by incompetent authorities and he did not find them on time.
 - Unpaid annual leaves (*Congés annuels non payés*) equal to $15j/2012+15j/2013+20j/2015=50 \times 811,160/30=1,351,933$ Frw. They say that the evidence they base on is a letter dated 08/05/2014 received by Gicumbi District on 08/05/2014, which requested a 15-day leave for the year 2012, and a 15-day leave for the year of 2013. They also show the letter dated 22/09/2015 written by the Executive Secretary of the District, allowing him only 10 days out of the 15 days that had been signed, saying that there are 5 days left for the year 2015 and another 15 that have not been received.
 - Material damages of 793,161 Frw of the decreased salary when he was demoted from 30/11/2016 until it was paid on 05/03/2018, because he would have benefited if he had been paid on time invested it in his personal activities.

[30] Counsel Ndengeyingoma Louise, Counsel for Gicumbi District, says that Tabaruka Dieudonné claims that all the money was paid, and that it was done with the consent of both parties, and signed it. She says that the District has finished paying him, that instead they find that what he is saying is his wishes that are not based on the law.

[31] She further adds that with regard to the work certificate Tabaruka Dieudonné claims it to be incomplete, he has not presented to the Gicumbi District Administration what is missing so that it can be added, therefore he believed that it had no defects. Regarding to the fact that the person who granted him the work certificate is not competent, she finds it not because the person who gave him the certificate did not sign on his behalf but instead signed on behalf of the Executive Secretary who delegated him (*délégation de pouvoir*).

DETERMINATION OF THE COURT

- **Social security contributions for 33 months collected by Gicumbi District but not reported as paid in RSSB**

[32] Among the documents submitted to Court, there is a paper showing how Tabaruka Dieudonné contributed social security contributions issued by the National Organ having it in its attributions (RSSB), which really indicates that the contributions he mentions are from the years

2005, 2009, 2010 and 2017 were not paid, but that of 2011 it was paid except for the half part of the month because it appears that he started working on 16/05/2011⁶.

[33] Regarding to the contributions of the year 2005, in the case file there is a work certificate issued by the District Administrator of Rebero, which shows that Tabaruka Dieudonné worked for that District from 01/06/2005 to of 30/12/2005, and the parties agree that the Rebero District was among those that became Gicumbi District during the reforms of the local authorities. Which means that the unpaid social security contributions of Tabaruka Dieudonné by Rebero District, should be paid by Gicumbi District.

[34] Regarding to the contributions of the year 2009 and 2010, in the case file there is a letter written by the Mayor of Gicumbi District on 22/04/2009 informing Tabaruka Dieudonné that he was appointed to accountant of Rushaki High School College, and a work certificate issued on 14/02/2018 by the Director of the school, Abbé Joseph Bukenya Wetaase, showing that he worked there from 08/05/2009 to 08/06/2010. Also based on article 34⁷ of Organic Law n° 20/2003 of 03/08/2003 organizing Education, the State can enter into agreements with private educational institutions, helping them to appoint the necessary staff and allocates to them salaries. It appears that it is in this context that Tabaruka Dieudonné was appointed by Gicumbi District to be the accountant of Secondary School of Rushaki College, which means that he was supposed to be paid by the District, which also paid him social security contributions. The fact that the above-mentioned contributions for the year 2009 and 2010 have not been paid, should be held accountable by the District.

[35] Regarding to the contributions for the year 2017, it appears that they have not been submitted to the RSSB for the time when Tabaruka Dieudonné was detained, because he was detained from 07/03/2017. At that time, he was an employee of Gicumbi District as proved by the appointment letters, the letter informing him that he is automatically removed from office of 08/09/2017, and the work certificate. The court therefore finds that the District must pay contributions that have not been submitted to RSSB.

▪ **Damages for being given incomplete certificate and given late**

[36] In the case file submitted to Court, there is a work certificate issued on 07/02/2018 by Higiroy Damas as the Director of Human Resource and Administration (*Directeur des Ressources Humaines et Administration*) who was delegated (*par délégation des pouvoirs*), It shows that Tabaruka Dieudonné worked in Gicumbi District in the following positions:

- Accountant from 16/05/2011 to 02/09/2015;
- Director of Finance from 03/09/2015 to 08/09/2017.

[37] The case file also contains a letter from the District Mayor dated 16/05/2011 appointing Tabaruka Dieudonné to the position of accountant, as well as a letter dated 03/09/2015 appointing

⁶ Based on the letter of the Mayor of the District dated 25/04/2012, he was provisionally appointed to the position of accountant on 16/05/2011.

⁷ For schools the State enters into agreements with private educational institutions, the establishing organisations are the ones who have the basic obligation of constructing them, renovation, buying and looking for them the materials. Within those schools, the State helping them to enrol students. teachers and other staff regulated by labour law and allocates to them salaries.

him to the acting Director of Finance (approved permanently in that position on 17/08/2016). Based on these letters, the Court finds that the positions occupied by Tabaruka Dieudonné from 16/05/2011 to 08/09/2017 was stated in the work certificate. Regarding to the position of finance and administration officer of Byumba Sector, he says that it was not stated, the Court finds that he was appointed but removed after appealing to the Public Service Commission, and immediately appointed to the position of District Director of Finance⁸, and was given the difference of the unpaid salaries related to the 11th, 12th months of 2016 and 1st month of 2017⁹. The Court Therefore, finds that there was no reason to write that position on the work certificate.

[38] The court finds that Tabaruka Dieudonné's statement that he was given a certificate by an unauthorized administrative authority is unfounded, because the Director of Human Resources and Administration who signed it was authorized by the Executive Secretary of the District in a letter dated 02/03/2016.

[39] Regarding to the work performed by Tabaruka Dieudonné at Rushaki College as an accountant, the Court finds that a decision was made on 14/02/2018 by the Director of the school (as the Director of the private school that contracted with the State), showing that he worked there from 08/05/2009 to 16/08/2010.

[40] Regarding to the fact that the certificates were issued late, article 4 of the Prime Minister's Directive No. 002/03 of 06/12/2012 regarding to the issuance of certificates of work done, provides that the employer must give the employee the work certificate when the worker stops his/her work due to any reasons, but such directives did not provide for a deadline for it to prove it be ignored. The fact that he did not prove that he would have requested the certificate and they denied him, and affected him, the Court finds that he should not be compensated.

▪ **Annual leave compensation indemnity (*Congés annuels non payés*)**

[41] Article 20 of Law n° 86/2013 of 11/09/2013 Law establishing the general statutes for public service was in force when Tabaruka Dieudonné was automatically removed from office, providing that when a public servant does not take his/her annual leave within a period of one year for work related reasons though he/she had applied for it in writing, he/she must take his/her annual leave in the first month of the subsequent year.

[42] This article implies that in case a public servant is unable to take annual leave due to work reasons, he/she shall take it in the first month of the following year, but he/she must prove that he/she had applied for it in writing. Another thing that is clear in this article is that the employee who requested the leave in writing is not given it for work reasons, he/she is not given money as its compensation, but instead he/she has to take it in the first month of the following year as already mentioned.

[43] The case file contains a letter dated 08/05/2014 that Tabaruka Dieudonné wrote to the Mayor of the District asking for 15 days of leave in 2012 and 15 days in 2013, which were not granted though he asked for them. Based on the aforementioned previous paragraphs, the Court

⁸ See letter of 06/02/2017 of the Mayor of the District reinstating him on the position of the Director of Finance which he was demoted on 02/11/2016.

⁹ Document which was put in the case file showing adjustment (*régularisation*) applied to him.

finds that Tabaruka Dieudonné should have applied for the 2012 leave he had not been granted no later than the first month of 2013, and for 2013 he should have applied for it no later than the first month of 2014. The fact that he applied for both in May 2014, it appears that he applied for it too late so that he should not ask for compensation.

[44] Regarding to the annual leave of 2015, the case file includes a letter dated 22/09/2015 from the Executive Secretary of the District wrote to Tabaruka Dieudonné, stating that he granted him a leave of 10 days out of the 15 days he had signed. However, there is no evidence that Tabaruka Dieudonné asked to take the 5 days he was allowed not later than the first month of 2016 that they denied him. And there is no evidence to prove that he ever asked for another 15 days of the year 2015 and denied him. The court therefore finds no compensation for Tabaruka Dieudonné to claim for not having granted the annual leave of 2015.

- **Material damages equal to 793.161Frw of the decreased salary when he was demoted from 30/11/2016 until 05/03/2018 when he was paid.**

[45] Tabaruka Dieudonné's complaint filed in the first instance regarding to this case is requested to be reviewed on the grounds of injustice, regarding to the cancellation of the decision provisionally suspending him and automatically removing him from office due to the time he was provisionally detained, and damages related to unfair dismissal.

[46] The court finds that his request related to his bankruptcy when he was demoted, and reinstated after appealing to the Public Service Commission, are other things that are not related to the subject matter of this case, and therefore should not be considered.

- **Procedural and counsel's fees**

[47] Tabaruka Dieudonné claims for payment of:

- 3.000.000Frw containing 1.500.000 Frw of counsel's fee in previous cases and 1.500.000Frw for the Supreme Court instance ;
- Frw of procedural fee in all courts;
- 125.000 Frw of court fees deposit in the previous courts.

[48] He also requests that the 700,000 Frw was charged in the High Court should be removed because the District was responsible. Regarding to the money requested by the Counsel for Gicumbi District, Tabaruka Dieudonné and his Counsel say that it is his right to sue to Court, and therefore he cannot be held responsible of damages thereof.

[49] The Counsel for Gicumbi District says that he is asking the Court to order Tabaruka Dieudonné to pay an amount of 3,000,000 Frw including the counsel's and procedural fees, because when he comes to the hearing, he brings the District Employees.

DETERMINATION OF THE COURT

[50] 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 proceedings. []

[51] The court finds that each party has something won in the case, so that no one is required to pay damages to the other. The same relating to the procedural and counsel's fees.

III. DECISION OF THE COURT

[52] Declares the claim filed by Tabaruka Dieudonné to review the case RADA 00140/2018/HC/KIG, which was decided by the High Court on 30/07/2019 on grounds on injustice founded in parts.

[53] Declares the ruling of the case RADA 00140/2018/HC/KIG, decided by the High Court on 30/07/2019, changed in parts.

[54] Declares decision number 1203/07.04.05/01 of 28/03/2017 and decision number 3201/07.04.05/01 of 08/09/2017 complied with the law, that Tabaruka Dieudonné was not automatically removed from office illegally.

[55] Decides that the Gicumbi District must pay Tabaruka Dieudonné, in the RSSB, social security contributions they did not pay as follows:

- 3 months of the year 2005: from the October to December.
- 8 months of the year 2009: from May to December.
- 8 months of the year 2010: from January to August.
- A half of May of the year 2011, from 16/05/2011.
- 7 months of the year 2017: from March to September.