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NORWEGIAN PEOPLE'AID v MUNINI

RSOCA 00187/2022/HC/KIG

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NORWEGIAN PEOPLE'AID v MUNINI

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Text

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NORWEGIAN PEOPLE'AID v MUNINI [Rwanda URUKIKO RUKURU – RSOCA 00187/2022/HC/KIG – (Ngabire, J. P.) 02 Kamena 2023] Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Kwirukana umukozi mu buryo bunyuranyije n'amategeko – Bifatwa nko kwirukana umukozi nta mpamvu no mu buryo bunyuranyije n'amategeko, iyo umukozi cyangwa abakozi basezerewe kubera impamvu z'ubukungu, umukoresha ntabanze gukora ijongora ry'abagomba gusezererwa cyangwa kugabanywa mu bakozi hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n'umubare w'abo batunze. Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Iseswa ry'amasezerano y'umurimo – Iseswa ry'amasezerano y'umurimo rinyuranyije n'amategeko rituma hatangwa indishyi z'akababaro. Incamake y'ikibazo: Munini wari umukozi muri Norwegian People'Aid ushinze gukurikirana abafatanyabikorwa mu Karere ka Gakenke nyuma akaza kongererwa inshingano no mu tundi turere tubiri, yaje guhindurirwa inyito y'akazi yitwa “Program Officer” ndetse aza guhabwa integuza ko amasezerano y'akazi bari bafitanye azarangira kubera impamvu y'ibura ry'inkunga. Ibi byatumye atanga ikibazo cye ku mugenzuzi w'umurimo avuga ko yirukanwe mu buryo bunyuranyije amategeko ariko ubwumvikane ntibwabashije kugerwaho bituma atanga ikirego mu rukiko. Munini yareze

umukoresha we Norwegian People'Aid mu Rukiko Rwisumbuye rwa Gasabo avuga ko yamusezereye mu kazi nta mpamvu yumvikana ishingiweho kandi mu buryo bunyuranyije n'amategeko yitwaje ko ibyo yakoraga bitari bigikenewe ku rutonde rw'imirimo yari isigaye mu kigo, nyamara abo baribahuje inshingano barakomeje gukora. Bityo, akaba asaba kurenganurwa akagenerwa indishyi zitandukanye. Urukiko Rwisumbuye rwaciye urubanza rwemeza ko ikirego cya Munini gifite ishingiro ko yirukanwe mu buryo bunyuranyije n'amategeko, ko agomba guhabwa indishyi zijyanye na byo. Ibi byatumye Norwegian People'Aid ijuririra Urukiko Rukuru inenga icyo cyemezo, ivuga ko yagize ikibazo cy'ubukungu bituma igabanya abakozi, aho ku mwanya Munini yakoragaho hasigayemo abakozi babiri aho kuba batatu ndetse hahagarikwa n'abandi bakozi bo mu zindi serivise. Ikomeza ivuga ko Urukiko rwabanje rwavugishije itegeko ibyo ritavuga kuko ntaho ingingo ya 21 y'Itegeko rigenga umurimo mu Rwanda iteganya ko abahagarariye abakozi babanza gutanga inama, ko nta n'aho iyo ngingo iteganya ko Umugenzuzi w'umurimo agomba kubanza gusuzuma niba koko umukoresha afite ikibazo cy'ubukungu, ko ahubwo itegeko riteganya gusa ko abimenyeshwa. Bityo ikaba isaba uru Rukiko guhindura icyo cyemezo kuko Munini atigeze yirukanwa mu buryo bunyuranyije n'amategeko. Isaba kandi ko Uregwa adakwiye guhabwa indishyi zihwanye n'umushahara ukubye inshuro eshanu kuko atigeze yirukanwa nta mpamvu ariko mu gihe urukiko rwaba rubibonye ukundi. harebwa "minimum" iteganywa n'itegeko akaba ariyo igenwa. Munini watanze ubujurire bwuririye ku bundi muri uru rubanza, asobanura ko mu ibaruwa isesa amasezerano y'umurimo umukoresha yavuze ko impamvu asheshe amasezerano ari impamvu z'ubukungu, ariko ko imbere y'umugenzuzi w'umurimo yavuze ko impamvu yatumye isesa

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amasezerano ari uko ibyo yakoraga bitari bigikenewe ku rutonde rw'imirimo yari isigaye mu kigo; ko uko kwivuguruza mu magambo ari ikimenyetso simusiga kigaragaza ko nta mpamvu ifatika yashingiweho, ko ahubwo umukoresha we yashakaga kumwirukana gusa. Ku kibazo kirebana n'indishyi yagenewe mu rubanza rwabanje, Munini avuga ko uwo baburana atigeze agaragaza inenge iri mu cyemezo cy'urukiko cyo kumugenera indishyi zikubye inshuro eshanu umushahara we, dore ko hubahirijwe icyo itegeko riteganya, bityo ko ibyo avuga nta shingiro bikwiye guhabwa. Avuga kandi ko Urukiko rwakagombye kuba rwaramugeneye indishyi zingana n'umushahara we inshuro esheshatu kubera ko itegeko riyamwemerera ndetse rukaba rutarigeze rugaragaza impamvu atazikwiye. Incamake y'icyemezo: 1. Bifatwa nko kwirukana umukozi nta mpamvu no mu buryo bunyuranyije n'amategeko, iyo umukozi cyangwa abakozi basezerewe kubera impamvu z'ubukungu, umukoresha ntabanze gukora ijongora ry'abagomba gusezererwa cyangwa kugabanywa mu bakozi hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n'umubare w'abo batunze.

2. Iseswa ry'amasezerano y'umurimo rinyuranyije n'amategeko rituma hatangwa indishyi z'akababaro. Bityo, Munini Patrick agomba guhabwa indishyi na Norwegian People'Aid kuko yamwirukanye mu kazi nta mpamvu no mu buryo bunyuranyije n'amategeko, aho atabashije kugaragaza ko ari we wagombaga gusezererwa mu bakozi bayo. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe. Amagarama aherera ku

isanduku ya Leta. Amategeko yashingiweho: Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 3, 21, 30 n'ya 34. Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111 n'ya 180. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65. Imanza zifashishijwe: KK Security na Harerimana Enos na bagenzi be, RSOC AA006/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11 Mutarama 2008. National Union of Metalworkers of S.A v. Atlantis Diesel Engines (Pty) Ltd (1994) 15 ILJ 12 47 (A). Inyandiko z'abahanga zifashishijwe: Du Toit, D. Woolfrey, J. Murphy, S. Godfrey, D. Bosch and S. Christie, Labour Relations Law: A Comprehensive Guide, Butterworths, 3rd Edition, p.382.

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Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki 03/06/2013 Munini Patrick yagiranye amasezerano y'umurimo na NPA-Rwanda ku mwanya wa "District Field Coordinator", akaba yari afite inshingano zo gukurikirana abafatanyabikorwa mu Karere ka Gakenke; yagiye yongererwa inshingano akorera no mu Karere ka Burera ndetse n'aka Nyabihu, kugeza ubwo ku itariki ya 01/02/2018, we na bagenzi be bakoranaga mu mushinga umwe, bahinduriwe inyito y'akazi yitwa "Program Officer". [2] Ku wa 16/12/2019 NPA Rwanda yandikiye Munini Patrick integuza imumenyesha ko amasezerano y'umurimo bari bafitanye azarangira ku wa 16/01/2020 kubera impamvu y'ibura ry'inkunga (Lack of funding). [3] Nyuma yo gusezererwa mu kazi, Munini Patrick yatanze ikirego ku Mugenzuzi w'umurimo mu Karere ka Gasabo, ariko ubwumvikane ntibwashoboka¹, maze ku wa 26/08/2020 arega NPA-Rwanda mu Rukiko Rwisumbuye rwa Gasabo ko ku wa 16/12/2019 yamusezerereye mu kazi nta mpamvu yumvikana ishingiyeho kandi mu buryo bunyuranyije n'amategeko yitwaje ko ibyo yakoraga bitari bigikenewe ku rutonde rw'imirimo yari isigaye mu kigo, nyamara ngo atari afite inshingano ze bwite yihariye kuko ngo ibyo yakoraga yari abihuriyeho n'abandi na nubu bakiri mu kazi; yasabye kurenganurwa no guhabwa indishyi zijyanye no gusezererwa mu kazi mu buryo bunyuranyije n'amategeko, indishyi zo kudahabwa icyemezo cy'akazi (certified of rendered services), ibirarane by'inyongera ya 4% y'umushahara atahawe kuva mu mwaka wa 2014 kugeza mu wa 2017, igihembo cya Avoka, amafaranga y'ikurikiranarubanza, no gusubizwa ingwate y'amagarama yishyuye arega. [4] Ku rwego rwa mbere, Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza rwemeza ko ikirego cya Munini Patrick gifite ishingiro kuri bimwe, rutegeka NPA-Rwanda mu izina ry'umuyobozi wayo kumwishyura amafaranga y'u Rwanda miliyoni zirindwi n'ibihumbi magana arindwi na mirongo ine na bitatu n'amafaranga ijana na mirongo irindwi n'abiri (7.743.172 Frw), no kumusubiza amafaranga y'u Rwanda ibihumbi makumyabiri (20.000 Frw) yatanzeho ingwate y'amagarama arega². [5] NPA-Rwanda yajuriye ku wa 09/4/2021 inenga ko Urukiko rubanza rwemeje ko Munini Patrick yirukanywe mu kazi mu buryo bunyuranyije n'amategeko, no kuba rwaramugeneye indishyi zitandukanye, isaba guhabwa igihembo cya Avoka n'amafaranga y'ikurikiranarubanza, nk'uko uwayiburanaye yabisobanuye mu buryo burambuye mu mwanzuro w'ubujurire, mu nama ntegururubanza no mu iburanisha. [6] Munini Patrick yatanze ubujurire bwuririye ku bundi anenga ko Urukiko rubanza rutategetse ko ahabwa 4% ku mushahara atahawe kuva 2014 kugeza

2017, kuba rutaramugeneye indishyi z'amezi atandatu, asaba igihembo cya Avoka n'amafaranga y'ikurikiranarubanza, nk'uko

1 Reba inyandikomvugo yo kumvikana kuri bimwe ifite nimeron 480/2019-2020 yakozwe n'Umugenzuzi w'umurimo mu Karere ka Gasabo ku wa 03/7/2020. 2 Reba urubanza RSOC 00211/2020/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 10/3/2021.

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we n'umwunganizi we babisobanuye mu buryo burambuye mu mwanzuro wo kwiregura, mu nama ntegururubanza no mu iburanisha. [7] Muri uru rubanza hasuzumwe ibibazo bikurikira: ikibazo cyo kumenya niba Munini Patrick yarirukanywe mu kazi mu buryo bunyuranyije n'amategeko, no kumenya indishyi zijyanye n'iryo yirukanywa yaba akwiye mu gihe byagaragara ko yirukanywe mu kazi nta mpamvu (1), ikibazo cyo kumenya niba akwiye guhabwa 4% ku mushahara atahawe kuva mu 2014 kugeza 2017 (2), n'ikibazo cyo kumenya niba NPA-Rwanda ikwiye igihembo cya Avoka n'amafaranga y'ikurikiranarubanza (3). II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA II.1. Ku byerekeye ikibazo cyo kumenya niba Munini Patrick yarirukanywe mu kazi mu buryo bunyuranyije n'amategeko, no kumenya indishyi zijyanye n'iryo yirukanywa yaba akwiye mu gihe byagaragara ko yirukanywe mu kazi nta mpamvu Imiburanire [8] Mu mwanzuro w'ubujurire bwayo, mu nama ntegururubanza, no mu iburanisha ry'uru rubanza, NPA-Rwanda yavuze ko ibyemejwe n'Urukiko rubanza by'uko Munini Patrick yirukanywe mu kazi mu buryo bunyuranyije n'amategeko, rushingiye ko NPA-Rwanda itubahirije ibiteganywa n'ingingo ya 21 y'Itegeko rigenga umurimo, no kuba itaramenyeshwe abahagarariye abakozi kugira ngo babitangeho inama, ndetse no kuba taramenyeshwe umugenzuzi w'umurimo kugira ngo nawe abanze asuzume niba inkunga zaragabanutse koko, ko ibi rwashingiyeho nta shingiro bifite ngo kuko Munini Patrick atigeze ahakana ko inkunga NPA-Rwanda yabonaga zahagaze, ko aribyo byatumye biba ngombwa kugabanya abakozi. [9] Uwaburaniye NPA-Rwanda yakomeje asobanura ko kuba Urukiko rubanza rwaremeje ko itamenyeshwe abahagarariye abakozi niba yarabagiraga bigaragaza ko Urukiko rwemeje ibintu narwo rutizeye ko bihari, ko rutigeze rugaragarizwa ibimenyetso ko abahagarariye abakozi bari bahari koko, kandi ko rwavugishije itegeko ibyo ritavugaga ngo kuko ntaho ingingo y'itegeko Urukiko rwashingiyeho iteganya ko abahagarariye abakozi babanza gutanga inama, ko nta n'aho iyo ngingo iteganya ko Umugenzuzi w'umurimo agomba kubanza gusuzuma niba koko umukoresha afite ikibazo cy'ubukungu, ko ahubwo itegeko riteganya gusa ko abimenyeshwa. [10] Uwaburaniye NPA-Rwanda yanavuze ko kuvuga ko NPA-Rwanda itubahirije ibiteganywa n'ingingo ya 21 y'itegeko rigenga umurimo mu Rwanda nta shingiro bifite, ko bagaragarije Urukiko ko ku mwanya Munini Patrick yakoragaho wa "Program officer", bari abakozi batatu bawukoragaho muri "projets" eshatu (3), ko kubera ikibazo cy'ubukungu byabaye ngombwa ko mu myanya itatu hasigara ibiri, ko mu kureba umukozi ukwiye guhagarikwa harebwe uburambe kuko ibindi byose babinganyaga. Yanavuze ko Urukiko rubanza rutahaye agaciro kuba abakozi bose bo muri administration barahagaritswe; akaba yarashoje asaba Urukiko Rukuru guhindura icyemezo cy'uko Munini Patrick yirukanywe mu kazi mu buryo bunyuranyije n'amategeko. [11] Munini Patrick n'umwunganizi we bavuze ko yari umukozi w'indakemwa mu mico no mummyitwarire, hakiyongeraho ko imirimo ye yayikoranaga

umurava, ko ku wa 16/12/2019

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yatunguwe no kubona umukoresha we (Country Director) amuhamagara mu biro bye maze amuha ibaruwa isesa amasezerano y'akazi avuga ko ari ukubera impamvu z'ubukungu, ariko ko iyi mpamvu yashingiweho nta shingiro ifite ngo kuko byakozwe mu ibanga, ko ahubwo umukoresha we yashatse gusa kwikiza abakozi atashakaga, ko iyo impamvu y'ubukungu ijya kuba ifite ishingiro bitari gukorwa mu ibanga, ko ahubwo umukoresha yari kubahiriza ibiteganywa n'ingingo ya 21 al. 3 & 4 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, cyane cyane ko yari afite ububasha bwo kubikora ntawe umuvugurujye. [12] Bavuze nanone ko Munini Patrick yari afite inshingano zimwe n'iz'abandi bakozi bagenzi be ba "program officers", ariko ko ariwe wenyine wasezerewe mu kazi nta mpamvu izwi yashingiweho kugira ngo bigaragare ko ariwe wagombaga gusezererwa. Bakomeje bavuga ko hari abakozi bamwe bo mu yindi "department" basezerewe hashingiwe ku mpamvu imwe bese, ariko ko bahise basubizwa mu kazi igihe cy'integuza kikimara kurangira, ko ibi bigaragaza neza ko umukoresha ari we yashakaga kwirukana nta mpamvu. Ikindi bavuze ni uko mu ibaruwa isesa amasezerano y'umurimo umukoresha yavuze ko impamvu asheshe amasezerano ari impamvu z'ubukungu, ariko ko imbere y'umugenzuzi w'umurimo NPA-Rwanda yavuze ko impamvu yatumye isesa amasezerano y'umurimo ya Munini Patrick ari uko ibyo yakoraga bitari bigikenewe ku rutonde rw'imirimo yari isigaye mu kigo; ko uko kwivugurura mu magambo ari ikimenyetso simusiga kigaragaza ko nta mpamvu ifatika yashingiweho kumwirukana mu kazi, ko ahubwo umukoresha we yashakaga kumwirukana gusa. UKO URUKIKO RUBIBONA [13] Ingingo ya 3, agace ka 17°, y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda iteganya ko kwirukanwa nta mpamvu ni ugusesa amasezerano y'umurimo bikozwe n'umukoresha nta mpamvu ifite ishingiro cyangwa bidakurikije uburyo buteganywa n'amategeko. [14] Ingingo ya 21 y'Itegeko rivuzwe haruguru, mu gika cyayo cya 3, iteganya ko umukoresha, nyuma yo kubigaragariza abahagarariye abakozi mu kigo, ashobora gusezerera umukozi umwe cyangwa benshi bitewe no guhuza imirimo isa, kvanaho cyangwa kuvugurura imikorere y'ikigo kubera impamvu z'ubukungu cyangwa guhindura ikoranabuhanga ryakoreshwaga hagamijwe kugira ngo ikigo kirusheho guhigana, kandi akabimenyesha mu nyandiko umugenzuzi w'umurimo ubifitiye ububasha; iyi ingingo ya 21, mu gika cyayo cya 4, igateganya ko iyo umukoresha asezereye umukozi umwe cyangwa benshi kubera impamvu zivugwa mu gika cya 3 cyayo, ashya ku rutonde abakozi bateganywa gusezererwa hakurikijwe ubushobozi ku murimo, amashuri, uburambe mur'icyo kigo, n'umubare w'abantu bemewe n'amategeko buri mukozi atunze. [15] Isesengura ry'ingingo z'itegeko zivuzwe haruguru, rihujwe n'ibivugwa muri uru rubanza, ryumvikanisha ko umukoresha ashobora gusezerera umukozi umwe cyangwa benshi bitewe n'impamvu y'ubukungu, ariko hakitabwa kuri ibi bikurikira: Kubanza kubigaragariza abahagarariye abakozi mu kigo, kubimenyesha mu nyandiko umugenzuzi w'umurimo ubifitiye ububasha, gushyira ku rutonde abakozi bateganywa gusezererwa hakurikijwe ubushobozi ku murimo, amashuri, uburambe mur'icyo kigo, n'umubare w'abantu bemewe n'amategeko buri mukozi atunze; iyo ubu buryo butubahirijwe, bifatwa ko umukozi yirukanywe nta mpamvu

cyangwa mu buryo budakurikije amategeko, kuko ingingo ya 21 yavuzwe haruguru yashyiriweho kurengera abakozi, kugira ngo mu gihe ikigo gifite impamvu yumvikana yo kugabanya abakozi,

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nk'iyubukungu, bye gukorwa mu marangamutima n'akarengane, ahubwo hubahirizwe ibiteganyijwe n'amategeko. Ibi bituma abasezererwa babona ko ibyakozwe byabaye mu mucyo (transparent), mu buryo buboneye (fairly) kandi ko nta kundi byari kugenda (unavoidable). Ibyo bigomba kugenderwaho (criteria/critères) akaba aribyo biteganyijwe mu ngingo ya 21 byagaragajwe haruguru. Muri uru rubanza, nta cyerekana ko NPA- Rwanda yabyubahirije. [16] Nubwo NPA-Rwanda ivuga ko Munini Patrick atigeze ahakana ko inkunga NPA-Rwanda yabonaga zahagaze, ko aribyo byatumye biba ngombwa kugabanya abakozi, Urukiko rurasanga, nubwo Munini Patrick yaba abyemera atyo, usibye ko atabyemera kuko we avuga ko impamvu yashingiweho kumusezerera mu kazi nta shingiro ifite nk'uko bigaragara mu miburanire ye haruguru, ntibivanaho ko mbere yo kumusezerera mu kazi umukoresha yagombaga kubahiriza uburyo buteganyijwe mu ngingo ya 21 y'Itegeko rigenga umurimo mu Rwanda, nk'uko bwagaragajwe haruguru mu gika kibanziriza iki. [17] Na none, nubwo NPA-Rwanda ivuga ko Urukiko rubanza rutigeze rugaragarizwa ibimenyetso ko abahagarariye abakozi bari bahari koko, kandi ko rwavugishije itegeko ibyo ritavuga ngo kuko ntaho ingingo ya 21 y'Itegeko rigenga umurimo mu Rwanda iteganya ko abahagarariye abakozi babanza gutanga inama, ko nta n'aho iyi ngingo iteganya ko Umugenzuzi w'umurimo agomba kubanza gusuzuma niba koko umukoresha afite ikibazo cy'ubukungu, ko ahubwo itegeko riteganya gusa ko abimenyeshwa, ntabwo yashoboye kugaragaza ko idafite abahagarariye abakozi cyangwa se impamvu itabafite, nta nubwo yagaragaje ko mbere yo gusezerera Munini Patrick mu kazi yabanje kubigaragariza abahagarariye abakozi mu kigo no kubimenyeshya mu nyandiko umugenzuzi w'umurimo ubifitiye ububasha, nubwo abahagarariye abakozi mu kigo n'umugenzuzi w'umurimo ntacyo bari kubikoraho, kuko itegeko riteganya ko yagombaga kubibamenyeshya. [18] Inama ihuza umukoresha n'abakozi cyangwa ababahagarariye ntabwo ari umugenzo gusa, ahubwo bifasha abakozi, nk'abantu bafite inyungu mu kigo, kumva neza impamvu zituma hagomba kubaho igabanya ry'abakozi. Nk'uko abahanga mu by'amategeko babivuga, ibyemezo bikomeye nko kugabanya abakozi mu kazi, byagombye kubanzirizwa no kugisha inama abakozi cyangwa ababahagarariye, bitari iby'umugenzo gusa, ahubwo ari ukugira ngo bifashe mu kumenya niba koko ari ngombwa gusezerera abakozi, basanga ari ngombwa bagashaka uko ingaruka z'icyo cyemezo zitaba nyinshi, aho babivuze mu rurimi rw'icyongereza bati "Important decisions, such as that to retrench, should be subject to the greatest possible degree of consultation with employees or their representatives, not merely for reasons of procedural fairness but as part of establishing whether substantive grounds for dismissal are present and, if so, the most appropriate manner of mitigating the consequences."³ Abo bahanga bakomeza bavuga bati "The statutory requirement to seek alternatives to dismissal indicates that dismissal should be avoided if reasonably possible and that alternatives put forward by consulting parties should be considered seriously, even though the employer retains a broad discretion in taking final decision". Ni ukuvuga ngo mu bisabwa n'amategeko kugira ngo hafatwe icyemezo cyo gusezerera

abakozi, harimo ko icyo cyemezo kigomba kwirindwa mu buryo bwose bushoboka, kandi ko imishyikirano ihuza impande zirebwa n'ikibazo igomba guhabwa agaciro gakomeye, n'ubwo bwose umukoresha ari we ufite ububasha bwo gufata icyemezo cya nyuma.

3 Du Toit, D. Woolfrey, J. Murphy, S. Godfrey, D. Bosch and S. Christie, Labour Relations Law: A Comprehensive Guide, Butterworths, 3rd Edition, p.382.

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[19] Iki kibazo cyerekeye inama hagati y'umukoresha n'abakozi cyangwa ababahagarariye cyasuzumwe kenshi n'Inkiko z'ibindi Bihugu. Urukiko rw'Ubujurire rwa Afurika y'Epfo, mu rubanza Atlantis Diesel⁴, rwasuzumye ingingo y'itegeko ry'icyo Gihugu igiye gusa n'iy'itegeko ry'u Rwanda, rugira ruti "The purpose of the duty to consult is to give the employer an opportunity to explain the reasons for the proposed retrenchments, to hear representations on possible ways of avoiding or minimising the effects of retrenchments and to discuss and consider possible alternatives". Ibi bisobanuye ko ikiba kigamijwe mu gutegeka ko hakorwa imishyikirano, ni ukugira ngo umukoresha abone akanya ko gusobanura impamvu hateganywa igabanya ry'abakozi, kumva ibitekerezo ku cyakorwa kugira ngo iryo gabanya ritabaho cyangwa uko ingaruka zaryo zitaba nyinshi, ndetse no gushakisha izindi nzira zishoboka. Birumvikana rero ko iyi nzira igamije kurengera abakozi, kandi kutayubahiriza bigafatwa nko kwirukana mu buryo bw'akarengane (unfair dismissal). Urukiko akaba arirwo rufite inshingano yo kureba ko amategeko yubahirijwe, no kurenganura abarengana. [20] Usibye n'ibyo kandi, Urukiko rurasanga ibivugwa na NPA-RWANDA ko mu kureba umukozi ukwiye guhagarikwa harebwe uburambe mu kazi kuko ibindi byose babinganyaga, nta shingiro bifite kuko ntabwo yagaragaje urutonde rw'abakozi bayo n'abo yateganyaga gusezerera kugira ngo harebwe ubushobozi bwabo ku murimo, amashuri, uburambe mur'icyo kigo, n'umubare w'abantu bemewe n'amategeko buri mukozi atunze. [21] Kuba rero NPA-Rwanda itarubahirije uburyo buteganyijwe mu ngingo ya 21 y'itegeko rigenga umurimo mu Rwanda mu gusezerera Munini Patrick mu kazi, nk'uko byagaragajwe haruguru, Urukiko rurasanga yaramwirukanye mu kazi nta mpamvu no mu buryo bunyuranyije n'amategeko kuko nta kigaragaza ko ari we wagombaga gusezererwa mu bakozi ba NPA-Rwanda mu gihe ibyo itegeko riteganyaga kugira ngo hakorwe ijongora ry'abagomba gusezererwa cyangwa kugabanywa mu bakozi bitubahirijwe. [22] Ibivuzwe haruguru ni nako byemejwe n'Urukiko rw'Ikirenga mu rubanza RSOC AA006/07/CS rwo ku wa 11 Mutarama 2008 haburana KK Security na Harerimana Enos na bagenzi be⁵, aho rwagize ruti: nta kigaragaza ko umukozi usezerewe aba ari we ugomba gusezererwa mu bakozi b'ikigo igihe hatubahirijwe ibyo amategeko ateganyaga kugira ngo hakorwe ijongora ry'abagomba gusezererwa cyangwa kugabanywa mu bakozi, hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n'umubare w'abo batunze, bikaba bifatwa nko kwirukana umukozi nta mpamvu. [23] Bityo rero, impamvu y'ubujurire bwa NPA-Rwanda inenga ko Urukiko rubanza rwemeje ko Munini Patrick yirukanywe mu kazi mu buryo bunyuranyije n'amategeko nta shingiro ifite. Ku byerekeye indishyi zemejwe ku rwego rwa mbere [24] Mu bujurire bwayo nanone, NPA-Rwanda yanenze ko Urukiko rubanza rwageneye Munini

Patrick indishyi z'akababaro kubera kwirukanwa binyuranyije n'amategako zihwanye n'umushahara ukubye inshuro eshanu, ivuga ko izi ndishyi zidakwiye gutangwa ngo kuko nta kwirukanwa binyuranyije n'amategako kwabayeho. Ariko kandi, NPA-Rwanda yavuze ko nubwo Urukiko rwabibona ukundi rugasanga hari procedure itarubahirijwe, bidakwiye ko hatangwa

4 National Union of Metalworkers of S.A v. Atlantis Diesel Engines (Pty) Ltd (1994) 15 ILJ 12 47 (A).
5 Icyegeranyo cy'Ibyemezo by'Inkiko, V.3-2016, Nyakanga 2016, pp.43-44.

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indishyi zihwanye n'umushahara ukubye inshuro eshanu ngo kuko itegeko riteganyaga hagati y'amezi atatu n'atandatu, kandi ko Munini Patrick yagenewe ibyo amategako amugenera byose, ko idakwiye guhanwa byihanukiriye, ko ahubwo harebwa minimum iteganywa n'itegeko akaba ariyo igenwa mu gihe Urukiko rwaba rubibonye ukundi. [25] NPA-Rwanda yamenze kandi kuba Urukiko rubanza rwageneye Munini Patrick indishyi zo kudahabwa icyemezo cy'umurimo, ivuga ko izi ndishyi nazo zidakwiye gutangwa ngo kuko ingingo ya 34 y'Itegeko rigenga umurimo mu Rwanda iteganyaga izi ndishyi mu gihe gusa umukoresha yanze gutanga icyemezo cy'imirimo yakozwe umukozi yagisabye. Uwaburaniye NPA-Rwanda yakomeje avuga ko bagaragaraye Urukiko ko Munini Patrick yasabye icyo cyemezo kuri "email" taliki ya 07/04/2020 mu gihe Igihugu cyose cyari muri guma mu rugo ku buryo NPA-Rwanda itari kubona uko imushyikiriza icyo cyemezo, ariko kandi kandi ko yamushubije kuri "email" imubwira ko icyo cyemezo gihari, ko igihe yahuguka yazaza kugifata; ko nyuma ya guma mu rugo NPA-Rwanda yabonye Munini Patrick ataje gufata icyo cyemezo maze ikimwoherereza kuri email ye Munini Patrick atongeye kuyibutsa; ko rero NPA-Rwanda itanze gutanga icyo cyemezo ku buryo yagitangira indishyi. [26] NPA-Rwanda yamenze nanone ko Urukiko rubanza rwageneye Munini Patrick amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, ivuga ko nayo adakwiye gutangwa kubera ko itigeze yirukana Munini Patrick mu buryo bunyuranyije n'amategako, ko ahubwo yari akwiye kwirengera ingaruka z'amafaranga yaba yaratanze mu rubanza yishoyemo rudafite ishingiro. [27] Munini Patrick n'umwunganizi we bo bavuze ko nyuma yo kwirukanwa mu kazi yakoze iherekanyabubasha (Handover) n'umukoresha we ariko ntiyahabwa icyemezo cy'imirimo yakozwe (Certificate of rendered services) nk'uko biteganywa n'ingingo ya 34 y'Itegeko rigenga umurimo mu Rwanda, ko ku wa 07/04/2020 yandikiye umukoresha amusaba icyemezo cy'imirimo yakozwe ntiyagihabwa, maze ku wa 01/06/2020 yandikira uhagarariye abakozi ba NPA-Rwanda asaba ko yamuhuza n'ubuyobozi bwa NPA-Rwanda kugira ngo ahabwe ibyo yasabaga. Bakomeje bavuga ko NPA-Rwanda ikimara kubona icyo baruwa aribwo yamwohereje "To whom it may concern" kuri email ye; bakavuga ko kuba NPA-Rwanda yaranze kumuha icyemezo cy'uko yayikoreye nyamara yaragisabye, bigaragaza ko nta bushake yigeze igira namba bwo kumuha iki cyemezo, kandi ko kubera ubushake buke yagize bwo kudatanga iki cyemezo yasabwe kandi ari uburenganzira bwe kugihabwa, ko byatumye itanga icyemezo gifite inenge. [28] Ku byerekeye ibivugwa na NPA-Rwanda ko impamvu itahaye Munini Patrick icyemezo cy'imirimo yakozwe kubera ko hari mu gihe cya guma mu rugo, Munini Patrick n'umwunganizi we bavuze ko ibyo ari ukujijisha Urukiko kugira ngo NPA-Rwanda irengere amakosa yayo ngo kuko yayisabye icyemezo

kuri “E-mail” ku wa 07/04/2020, ko nayo yagombaga kukimuha kuri email kubera ibihe bya Covid-19 bari barimo, ko nta kibazo cyari kubaho, ko ahubwo aho kukimuha, NPA-Rwanda yamushubije imubwira ko azaza kugifata nyamara izi neza ko atari gushobora kubona inzira yo kumugeza aho ikorera. Bakomeje bavuga ko bitari kunanira NPA- Rwanda kunyuzwa iki cyemezo kuri email ngo cyane cyane ko abayobozi bayo batigeze bahagarika gukora kuko bari muri task force yakurikiranaga ibya Covid-19, kandi ko batananiwe kugishyira kuri “E-mail”, ko ahubwo banze kugitanga kubera ubushake buke. Banavuze ko gahunda ya guma mu rugo irangiye abakozi basubiye mu kazi ku wa 04/05/2020 akazi karakomeza, ariko nanone NPA-Rwanda ntiyibwiriza kumuha icyemezo yayisabye kugeza ku wa 01/06/2020; ko iyo haza kubamo ubushake NPA-Rwanda yari kuba yaramwoherereje icyo cyemezo ku wa 07/04/2020

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umunsi yayandikiye agisaba ikakinyuza kuri email nk’uko yabikoze, bivuze ko ikibazo atari Covid-19 ahubwo ni ubushake buke gusa. [29] Ku byerekeye indishyi z’akababaro zo kwirukanwa binyuranyije n’amategeko zihwanye n’umushahara ukubye inshuro eshanu NPA-Rwanda inenga ko Urukiko rubanza rwamugeneye, Munini Patrick n’umwunganizi we bavuze ko itegeko riteganywa indishyi ziri hagati y’amezi atatu n’atandatu, ko Urukiko ntaho rwishe itegeko, kandi ko na NPA-Rwanda ntaho igaragaza inenge ijyanye no kuba Urukiko rwarishe itegeko kur’izi ndishyi. Munini Patrick n’umwunganizi we bavuze ko bibaza impamvu Urukiko rubanza rutamugeneye indishyi zingana n’amezi atandatu kandi itegeko riyamwemerera, kandi ko Urukiko rutagaragaje impamvu rutamugeneye indishyi zikubye umushahara we amezi atandatu. [30] Ku byerekeye amafaranga y’ikurikiranarubanza n’igihembo cya Avoka yagenewe ku rwego rwa mbere, Munini Patrick n’umwunganizi we bavuze ko kuba yaratsinze urubanza maze Urukiko rumugenera aya mafaranga nta kosa na rimwe rwakoze nk’uko biteganywa n’ingingo ya 111 n’iya 180 z’Itegeko ryerekeye imiburanishirize y’imanza z’imbenezamubano (CPCSA). UKO URUKIKO RUBIBONA [31] Kuba NPA-Rwanda yarirukanye Munini Patrick mu kazi nta mpamvu, nk’uko byemejwe ku rwego rwa mbere kandi byagaragajwe haruguru mu bika bya 10-20, Urukiko rurasanga ibyo inenga ku ndishyi yaciwe ku rwego rwa mbere nta shingiro bifite kuko iseswa ry’amasezerano y’umurimo rinyuranyije n’amategeko rituma hatangwa indishyi nk’uko ingingo ya 30 y’Itegeko ryavuzwe haruguru ibiteganywa mu gika cyayo cya mbere (1). [32] Hashingiwe ko mu bujuriye bwe bwuririye ku bwa NPA-Rwanda Munini Patrick yasabye guhabwa indishyi z’akababaro zihwanye n’inshuro esheshatu z’umushahara yahembwaga ku kwezi, anasaba igihembo cya Avoka n’amafaranga y’ikurikiranarubanza mu bujuriye, Urukiko rurasanga indishyi NPA-Rwanda igomba kwishyura Munini Patrick ari izi zikurikira: - Indishyi z’akababaro zihwanye n’umushahara yahembwaga ku kwezi inshuro esheshatu $(1.173.862 \text{ Frw} \times 6) = 7.043.172 \text{ Frw}$, hashingiwe ku ngingo ya 30 y’itegeko rigenga umurimo mu Rwanda⁶; - Indishyi zihwanye n’umushahara yahembwaga ukwezi kumwe (1) $(1.173.862 \text{ Frw})$, hashingiwe ku ngingo ya 34 y’itegeko rigenga umurimo mu Rwanda⁷; - Igihembo cya Avoka kingana na 500.000 Frw n’amafaranga y’ikurikiranarubanza angana na 200.000 Frw yemejwe ku rwego rwa mbere, (700.000 Frw);

6 Ingingo ya 30, al.2, y’itegeko rigenga umurimo mu Rwanda igira iti: indishyi zihabwa umukozi wirukanywe binyuranyije n’amategeko ntizishobora kujya muni y’umushahara w’amezi atatu (3), ariko kandi ntizishobora kurenza umushahara ahabwa w’amezi atandatu (6). Twibutse ko mu bujurire bwe bwuririye ku bundi, Munini Patrick yasabye guhabwa indishyi z’akababaro zihwanye n’inshuro esheshatu z’umushahara yahembwaga, Urukiko rusanga bifite ishingiro kuko iyi ngingo y’itegeko ibyemera. 7 Ingingo ya 34, al.2, y’itegeko rigenga umurimo mu Rwanda igira iti: umukoresha wanze gutanga mu minsi cumi n’itanu (15) icyemezo cy’imirimo yakozwe kandi umukozi yagisabye mu nyandiko, cyangwa ntashyiremo kimwe mu bisabwa nk’uko bigaragazwa mu gika cya mbere cy’iyi ngingo, agomba kwishyura indishyi zingana n’ukwezi kumwe

- (1) k’umushahara uwo mukozi yahembwaga, kubera ko NPA-Rwanda itubahirije ibihe by’iminsi 15 guha Munini Patrick icyemezo cy’imirimo yakozwe.

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- Kumusubiza amafaranga y’u Rwanda ibihumbi makumyabiri (20.000 Frw) yatanzeho ingwate y’amagarama arega; - Igihembo cya Avoka gihwanye n’amafaranga y’u Rwanda ibihumbi magana abiri na mirongo itanu (250.000 Frw) yiyongera ku gihembo yategetswe kumwishyura ku rwego rwa mbere, hashingiwe ku ngingo ya 26 n’iya 33 z’Amabwiriza No 01/2014 akena ibihembo mbonera by’aba Avoka⁸, kubera ko ubujurire bwayo budafite ishingiro bwatumye Munini Patrick yongera gufata Avoka wamwunganirye muri uru rubanza. II.2. Ku byerekeye ikibazo cyo kumenya niba Munini Patrick akwiye guhabwa 4% ku mushahara atahawe kuva mu 2014 kugeza mu 2017 Imiburanire [33] Mu bujurire bwe bwuririye ku bundi, Munini Patrick n’umwunganizi we bavuze ko muri 2013 ubwo yatangiye gukorera NPA-Rwanda, ingingo ya 6.1. “paragraph” 3 y’itegeko rigenga abakozi bayo (Personnel management regulations) ryo mu kwezi kwa 5/2012 yateganyaga ko buri mwaka umukozi yongererwa 4% y’umushahara we, kandi ko byubahirizwaga buri mwaka, ko rero yagombaga kongererwa 4% ku mushahara we kuva mu kwezi kwa mbere 2014, ariko ko kuva yagera muri NPA-Rwanda atigeze yongererwa umushahara muri ubu buryo, ko iki kibazo cyakomeje kubazwa mu nama zitandukanye zahuje abakozi n’umukoresha ariko nticyakemuka, ko ndetse uwari uhagarariye abakozi icyo gihe yagerageje gukora ubuvugizi ariko nticyakemuka. [34] Munini Patrick n’umwunganizi we bavuze kandi ko mu 2014 hari abakozi bamwe bahawe inyongera ya 4% abandi ntibayihabwaga, mu bo yashobora kwibuka bayihawe harimo Bushayija Paul wari uhagarariye abandi bakozi, Gatabazi Ntizo Olivier bakoraga ku mwanya umwe, Kabasha Alphonse wari ushinze finance, Rafiki Marcellin wari ushinze gukurikirana uko amafaranga akoreshwa mu bafatanyabikorwa, na Matabishi Adrien wari ushinze “HR & administration”, banavuye ko hari n’abandi batahawe iyo nyongera nawe arimo. Basabye Urukiko ko nirubona ko ari ngombwa rwazatumiza bamwe mu bakozi rubabaze cyangwa ruje kuri terrain kugira ngo rumenye ukuri kuri iki kibazo. [35] Uwaburaniye NPA-Rwanda yireguye avuye ko ibivugwa na Munini Patrick n’umwunganizi we ku nyongera ya 4% y’umushahara kuva mu 2014-2017 nta shingiro bifite ngo kuko kuva ku wa 24 Kamena 2014 ibijyanye n’inyongera ya 4% byari byarahagaritswe, kandi ko itemera abatangabuhamba batangwa na Munini Patrick ngo kuko bagiranye

ibibazo. UKO URUKIKO RUBIBONA [36] Rushingiye ku nyandiko yo ku wa 24 Kamena 2014 igaragaza ko inyongera ya 4% yarahagaritswe muri NPA-Rwanda, Munini Patrick akaba atarashoboye kuyivuguruzwa mu buryo budasubirwaho, Urukiko rurasanga ibyo we n'umwunganizi we bavugaga ku nyongera ya 4%

8 Ingingo ya 26 al.2 y'Amabwiriza No 01/2014 agena ibihembo mbonera by'aba Avoka igira iti: Avoka w'uregwa agena ibihembo bye akurikije agaciro k'ikiburanwa, ingorane ziri mu rubanza, hamwe n'ibyo agomba kubanza gukora byose, ndetse n'ingaruka z'icyemezo cyafashwe; ariko igihembo ntikijye munsu y'amafaranga 500.000 kandi ntikirenge amafaranga 3.000.000, naho ingingo ya 33 ikagira iti: mu bujirire, avoka w'uregwa n'uw'uregwa bafite uburenganzira kuri kimwe cya kabiri cy'igihembo cyumvikanyweho ku rwego rwa mbere.

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y'umushahara kuva mu 2014 kugeza mu 2017 nta shingiro bifite, dore ko no mu nyandiko z'abatangabuhamya yitangiye nabo bavugaga ko inyongera ya 4% yavanyweho, nubwo hari aho bavugaga ko abakozi bamwe bayibonye; ubuhamya bwabo bukaba budakwiye kwemerwa hashingiwe ku ngingo ya 65 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.9 II.3. Ku byerekeye ikibazo cyo kumenya niba NPA-Rwanda ikwiye igihembo cya Avoka n'amafaranga y'ikurikiranarubanza Imiburanire [37] Uwaburaniye NPA-Rwanda yasabye Urukiko gutegeka Munini Patrick kuyishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ahwanye na 2.000.000 Frw yo ku rwego rwa mbere na 2.000.000 Frw yo ku rwego rw'ubujirire kubera kuyishyura mu manza zidafite ishingiro. Munini Patrick yireguye kuri ubu busabe avugaga ko nta shingiro bufite ngo kuko NPA- Rwanda ariyo yamushoye mu manza. UKO URUKIKO RUBIBONA [38] Urukiko rurasanga ubusabe bwa NPA-Rwanda buvuzwe haruguru nta shingiro bufite kuko niyo yashoye Munini Patrick muri uru rubanza nk'uko byagaragajwe haruguru, ari nayo mpamvu igomba kumwishyura indishyi zagaragajwe haruguru. III. ICYEMEZO CY'URUKIKO [39] Rwemeje ko ubujirire bwa Norwegian People's Aid (NPA-Rwanda) nta shingiro bufite, kubera impamvu zagaragajwe haruguru. [40] Rwemeje ko ubujirire bwuririye ku bundi bwa Munini Patrick bufite ishingiro kuri bimwe, kubera impamvu zagaragajwe haruguru. [41] Rutegetse ko urubanza RSOC 00211/2020/TGI/GSBO rwaciye n'Urukiko Rwisumbuye rwa Gasabo ku wa 10/3/2021 ruhindutse mu buryo bukurikira: indishyi zose hamwe NPA-Rwanda igomba kwishyura Munini Patrick kubera kumwirukana mu kazi nta mpamvu ni amafaranga y'u Rwanda miliyoni icyenda n'ibihumbi ijana na mirongo inani na birindwi na mirongo itatu n'ane (9.187.034 Frw) nk'uko yasobanuwe haruguru, aho kuba miliyoni zirindwi n'ibihumbi magana arindwi na mirongo itandat na bitatu n'amafaranga ijana na mirongo irindwi n'abiri (7.763.172 Frw) yategetswe kumwishyura ku rwego rwa mbere, itayamwishyura ku bushake mu gihe cy'ukwezi kumwe akavanwa mu mutungo wayo ku ngufu za Leta. [42] Rutegetse ko 40.000 Frw NPA-Rwanda yatanzeho ingwate y'amagarama ijurira ahwanye n'amagarama y'Urukiko muri uru rubanza.

9 Ingingo ya 65 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko Urukiko arirwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikwiye kwemerwa cyangwa guhakanywa, kandi ko mu gupima imikirize y'abatangabuhamya Urukiko rwita cyane cyane ku bumenyi bwabo bw'ibyabaye no ku buryo babivuga uko byagenze ntacyo bihimbira.

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