

RWANDA / JUDGMENT

BAKHRESA GRAIN MILLING RWANDA LTD v. RUTIKANGA

RSOCA 0135/14/HC/KIG

COURT

High Court

DECIDED

12 May 2015

CASE / FILE NUMBER

RSOCA 0135/14/HC/KIG

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BAKHRESA GRAIN MILLING RWANDA LTD v. RUTIKANGA

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Text

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BAKHRESA GRAIN MILLING RWANDA LTD v. RUTIKANGA [Rwanda URUKIKO RUKURU – R SOC A 0135/14/HC/KIG (JURU Rugema, P.J.) 12 Gicurasi, 2015] Amategeko agenga imiburanishirije y’imanza z’ubutegetsi – Urukiko rw’ubujurire – Ibimenyetso bishya – Ababuranyi bashobora gutanga ibimenyetso bishya ku rwego rw’ubujurire bitaburanishijwe mu rwego rwa mbere – Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 168. Amategeko agenga umurimo – Gutanga ububasha – Umukozi wahawe ububasha n’umukoresha bwu kwirukana aba afite ubasha bwu kwirukana uwundi mukozi . Amategeko agenga umurimo – Impamvu ishingirwaho mu kwirukana umukozi - Impamvu yashingiweho mu kwirukana umukozi ireberwa mu baruwa imwirukana ku kazi. Incamake y’ikibazo: Nyuma ya Bakhresa Grain milling Rwanda LTD aho yirukaniye umukozi wayo yitwa Rutikanga imuziza kuba yarakoze amakosa akomeye yuguta imodoka , akayishira aho itemerewe guparika , Rutikanga yitabaje inkiko , arega umukoresha we mu Rukiko Rwiumbuye rwa Gasabo avuga ko ya mwirukanye mu buryo bunyuranyije

n'amategako. Urwo Rukiko rwemeje ko yirukanye mu buryo bunyuranye n'amategako kuko yirukanywe nta mpamvu ifatika kandi anirukanwa n'utabifitiye ububasha bityo umukoresha acibwa indishyi zitandukanye. Bakhresa Grain milling LTD yajuriye mu Rukiko Rukuru ivuga ko Rutikanga yirukanwe n'ushinzwe abakozi « humain ressource Manager » wari wabiherewe ububasha na « managing director » mu ibaruwa ya 1 Mutarama 2013 ndetse burimo kuba yasezerera ku kazi umukozi Rutikanga we akavuga ko uwamusezereye atariwe wamuhaye akazi, kandi n'ibaruwa iha ububasha « humain ressource Manager » nti yigezwe igaragazwa mu rukiko rwa mbere. Incamake y'icyemezo: Umukozi aba yirukanwe n'umukozi ubifitiye ububasha iyo yirukanwe n'umukozi wahawe ububasha n' umukoresha bwo kuba yakwirukana umukozi bityo Rutikanga akaba yarirukanwe n'umukozi ubifitiye ububasha. Impamvu yashingiweho mu kwirukana umukozi ireberwa mu baruwa imwirukana kandi kuba umukoresha aburana avuga ko umukozi yirukanwe kubera ko yataye imodoka kandi atariyo mpamvu yavuzwe mu baruwa yamusezereye ku kazi bituma iyo mpamvu nta shigiro ifite. Umukozi ntiyahabwa indishyi z'uko icyemezo cy'umurimo yahawe cyasinywe na « humain ressource » mu gihe yahawe ububasha bunyuranye burimo no kuba yasinya mu mwanya wa « Managing Director ». Umukoresha agomba guha umukozi a mafaranga y'ikurikiranarubanza n'igihembo cy'Avoka agenewe mu bushishozi bw'Urukiko.. . Ubujurire nta shingiro bufite ;

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Urubanza rwajuririwe rudahindutse kubyerekeye indishyi umukozi yatsindiye umukoresha muri urwo rubanza. Umukoresha agomba kwishura umukozi amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka.. Amategako yashigiweho: Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 168.. Iteka ryo kuwa 30/07/1888 ryerekeye ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo 258. Ibitecyerezo bya bahanga: Jean Pélissier, Alain Supiot, Antoine Jeammaud, Droit du travail, Dalloz, 22ème, 2004 p.529- 530: URUBANZA IMITERERE Y'URUBANZA [1] Uru rubanza rwaburanishijwe bwa mbere mu Rukiko Rwisumbuye rwa Gasabo ari RUTIKANGA John urega Bakhresa Grain Milling Rwanda LTD mu izina ry'umuyobozi wayo ko yamwirukanye mu buryo bunyuranye n'amategako naho Bakhresa Grain Milling Rwanda LTD ivuga ko yirukanwe kubera amakosa akomeye yakoze. [2] Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza ruvuga ko RUTIKANGA John yirukanwe nta mpamvu ifatika ngo anirukanwa n'utabifitiye ububasha, rukiza ko atsindira indishyi nk'uko zivugwa mu rubanza rwajuririwe. [3] Bakhresa Grain Milling Rwanda LTD ntiyabyishimiye yajuririra mu Rukiko Rukuru iburana ihagarariwe na Me Ndutiye ivuga ko RUTIKANGA John yirukaniwe ikosa rikomeye ngo akaba yarirukanwe n'umukozi wabiherewe ububasha naho, ko na « attestation de service rendu » yayihawe. [4] Me Nsabayezu uhagaraiye RUTIKANGA John yaburanye avuga ko ari nta mpamvu itangwa n'uwajuriye yatuma urubanza rwajuririwe ruhinduka. [5] Hasuzumwe niba RUTIKANGA John yarirukanwe n'ubifitiye ububasha, hasuzumwa kandi niba RUTIKANGA John yarirukaniwe impamvu yumvikana, hanasuzumwa n'ishingiro ry'indishyi zivugwa muri uru rubanza. II. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA Gusuzuma niba RUTIKANGA John yarirukanwe n'umuntu ubifitiye ububasha

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- [6] Bakhresa Grain Milling Rwanda LTD yaburanye mu Rukiko Rukuru ivuga ko RUTIKANGA John yirukanwe n'ushinzwe « humain ressource Manager » ko kandi yari yabihereye ububasha na « managing director », Me Ndutiye akaba yarashikirije urukiko rukuru ibaruwa yo kuwa 01/01/2013 igaragaza ko « humain ressource Manager » ahawe ububasha bunyuranye ndetse burimo no kuba yasezerera ku kazi umukozi na « Managing Director ».
- [7] Me Nsabayezu uhagaraiye RUTIKANGA John yireguye avuga ko uwirukanye RUTIKANGA John atariwe wamuhaye akazi ngo ibyo byitwa kwirukanwa mu buryo bunyuranye n'amategeko, ko n'ibaruwa igaragazwa muri uru rukiko iha ububasha « humain ressource Manager » batayemera ko kandi mu rukiko rwisumbuye ari ntabyo Bakhresa Grain Milling Rwanda LTD yigeze igaragaza. [8] Urukiko rwisumbuye rwaciye urubanza ruvuga ko RUTIKANGA John yirukanwe na « humain ressource » ngo kandi atariwe wamuhaye akazi. Urukiko rukuru rusanga hari ikimenyetso cy'uko « human ressource » yari yabihereye ububasha, icyo kimenyetso kikaba cyarashikirijwe urukiko rukuru kandi kitari cyigeze kigezwa mu rukiko rwisumbuye, urukiko rukuru rwasuzumye niba icyo kimenyetso cyashingirwaho mu guca uru rubanza, urukiko rukuru rusanga ingingo ya 168 igika cya 3 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yemera ko ku rwego rw'ubujurire ababuranyi bashobora gutanga ikimenyetso gishya. Hakurikijwe icyo kimenyetso gishya urukiko rukuru usanga « human ressource manager » yarahawe ububasha na « Managing Director » bwo kuba yakwirukana umukozi bityo RUTIKANGA John akaba yarirukanwe n'umukozi ubifitiye ububasha. B.Gusuzuma niba RUTIKANGA John yarirukaniwe impamvu yumvikana [9] Bakhresa Grain Milling Rwanda LTD yajuririra mu Rukiko Rukuru iburana ihagarariwe na Me Ndutiye ivuga ko RUTIKANGA John yataye imodoka igura amafaranga 100.000.000 iyishyira aho itemerewe guhagarara ko iryo kosa rigaragarira mu baruwa RUTIKANGA John yanditse abyemera ari tariki ya 09/03/2013 ko n'umushoferi wagiye kuyifata avuga ko yasanze hari ibintu bibura muri iyo modoka. [10] ME Nsabayezu uhagaraiye RUTIKANGA John yiruguye avuga ko imodoka atayitaye k'umuhanda ko ahubwo yayiparitse Muzizima ko kandi naho imodoka za Bakhresa Grain Milling Rwanda LTD zihaparika. Ko n'ibaruwa bwamitirira ari impimbano. [11] Urukiko rukuru rusanga impamvu iherwaho umukozi yirukanwa ireberwa mu baruwa imwirukana, ibyo bikaba bishimangirwa n'abahanga mu by'amategeko bavuga barimo Jean Pélissier, Alain Supiot, Antoine Jeammaud¹, mu baruwa yirukana ku kazi RUTIKANGA John ivuga ko impamvu ituma bamwirukana ngo n'uko basanze yapakiye ibicuruzwa bitari ibya Bakhresa Grain Milling Rwanda LTD ko babibwiwe na Bakhresa Grain Milling dar-es-salam, umucamanza wa banje akaba yaraciye urubanza avuga ko ari nta kimenyetso kibigaragaza. 1 Jean Pélissier, Alain Supiot, Antoine Jeammaud, Droit du travail, Dalloz, 22ème, 2004 p.529-530: «...Cette obligation d'annoncer le ou les motifs du licenciement dans la lettre de licenciement concerne tous les licenciements, que ceux-ci aient un motif économique ou personnel, disciplinaire ou non disciplinaire. (...).

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[12] Bakhresa Grain Milling Rwanda LTD ijurira mu rukiko rukuru rusanga ari nta kimenyetso yagaragarije urukiko rukuru cy'uko RUTIKANGA John yari apakiye koko ibicuruzwa bitari ibya Bakhresa Grain Milling Rwanda LTD, ibyo bikaba bigaragariza urukiko rukuru ko atigeze avuguruza impamvu yashingiweho n'umucamanza wa banje yemeza ko RUTIKANGA John yirukaniwe ubusa, ahubwo Bakhresa Grain Milling Rwanda LTD yaburanye mu rukiko rukuru ivuga ko RUTIKANGA John yagiye gupakira imodoka ya Bakhresa Grain Milling Rwanda LTD ahatabigenewe, iyo mpamvu urukiko rukuru rusanga ko atariyo yahereweho yirukanwe kuko itavugwa mu baruwa imwirukana. [13] Urukiko rukuru rusanga kandi indi mpamvu ivugwa mu baruwa yasezereye ku kazi RUTIKANGA John ngo n'uko « pneu ya reserve na radio » bitari mu modoka, urukiko rukuru rusanga iyo mpamvu n'ubwo ivugwa mu baruwa imwirukana atari impamvu yahereweho yirukanwa, hakurikijwe kandi ko n'iyoyesenguye iyo baruwa imwirukana usanga ko yirukaniwe kuba yarapakiye ibicuruzwa bitari ibya Bakhresa Grain Milling Rwanda LTD. [14] Urukiko rukuru rusanga Bakhresa Grain Milling Rwanda LTD iburana mu rukiko rukuru ivuga ko RUTIKANGA John yirukanwe kubera ko yataye imodoka igura amafaranga 100.000.000 iyishyira aho itemerewe guhagarara, urukiko rukuru rwasanze iyo mpamvu ari nta shingiro yahabwa hakurikijwe ko atariyo mpamvu yavuzwe mu baruwa yasezereye ku kazi RUTIKANGA John hakurikijwe kandi ko impamvu yahereweho umukozi yirukanwe ireberwa mu baruwa imusezerera mu kazi nk'uko byasobanuwe haruguru mu gika cya 11 cy'uru rubanza. [15] Urukiko rukuru rusanga ari nta mpamvu yatanze na Bakhresa Grain Milling Rwanda LTD yajuriye yatuma indishyi zatanze mu rubanza rwajuririwe z'uko RUTIKANGA John yirukaniwe impamvu itumvikana zivanwaho. C. Ubujurire bwuririye ku bundi [16] RUTIKANGA John yuririye kubujurire bwa Bakhresa Grain Milling Rwanda LTD aregera indishyi za 1.080.000 ngo z'uko icyemezo cy'umurimo yahawe cyanditse nabi ngo kuko cyasinywe na « humain ressource ». [17] Urukiko rukuru rusanga izo ndishyi atazihabwa kuko ibaruwa yo kuwa 01/01/2013 igaragaza ko « humain ressource Manager » ahawe ububasha bunyuranye ndetse burimo no kuba yasinye mu mwanya wa « Managing Director ». D. Amafaranga yikurikirana rubanza n'igihembo cy' « avocat » [18] RUTIKANGA John yasabye indishyi z'amafaranga 1.000.000 y'igihembo cy' «avocats » n'ikurikirana rubanza. [19] Urukiko Rukuru rubona ko Bakhresa Grain Milling Rwanda LTD itegetswe guha RUTIKANGA John amafaranga 500.000 y'ikurikiranarubanza n'igihembo cy' «avocats » ku rwego ry'ubujurire agenewe n'urukiko kuko amafaranga 1.000.000 RUTIKANGA John aregera ari ikirenga ariko akiyongere ku mafaranga 300.000 RUTIKANGA John yatsindiye Bakhresa Grain Milling Rwanda LTD mu rwego rwa mbere hakurikijwe ingingo ya 258 y'iteka ryo kuwa 30/07/1888 ryerekeye ibyerekeye imirimo nshinganwa cyangwa amasezerano.

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III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujurire bwa na Bakhresa Grain Milling Rwanda LTD ari nta shingiro bufite. [21] Rwemeje ko urubanza R SOC 0260/13/TGI/GSBO rwajuririwe rudahindutse kubyerekeye indishyi RUTIKANGA John yatsindiye Bakhresa Grain Milling Rwanda

LTD muri urwo rubanza. [22] Rwemeje ko Bakhresa Grain Milling Rwanda LTD itsindirwa amafaranga 500.000 yikurikirana rubanza n'igihembo cy'"avocat » na RUTIKANGA John yo ku rwego rw'ubujurire mu rukiko rukuru akiyongera ku mafaranga yamutsindiye mu rukiko rwisumbuye rwa Gasabo. [23] Rwemeje ko amafaranga 75.000 yatanzwe na Bakhresa Grain Milling Rwanda LTD ahwanye n'ibyakoze byose muri uru rubanza. [24] Ruvuze ko rutasomewe igihe kubera imirimo y'ica n'iburanisha ry'izindi manza.

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