

RWANDA / JUDGMENT

EWSA (ex-RECO-RWASCO) v. NDAHAYO

RADA004/1/11/SC

COURT

Supreme Court

DECIDED

13 September 2013

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EWSA (ex-RECO-RWASCO) v. NDAHAYO

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EWSA (ex-RECO-RWASCO) v. NDAHAYO [Rwanda URUKIKO RW'IKIRENGA – SC2013 – RADA004/1/11/SC (Kanyange, P.J., Mukandamage,Rugabirwa, J.) Nzeri13,2013] Imiburanyishirize zimanza z'ubutegetsi – Iyakirwa ry'ikirego gisaba gukuraho icyemezo cy'umutegetsi – Agaciro ko gutakamba ku umukozi uregera indishyi zinyuranye zikomoka ku gushesa amasezerano y'umurimo yagiranye n'ikigo. Amategeko y'ubutegetsi – Amasezerano y'umurimo –Uburyo bwo kubara indishyi zinyuranye, zikomoka kugusesa amasezerano y'umurimo binyuranyije n'amategeko n'u mushahara ushingirwaho mukuzibara.. Incamake y'ikibazo: Kw'itariki ya 15 Kamena 2004,uregwa ya koranye amasezerano yakazi n'uwajuriye yugukora amashanyarazi, amushira ku sitasiyo ya Bicumbi.Kw'itariki 12 Gicurasi 2008 yafunzwe byagateganyo akekwa ho kugira uruhare mubujura bw'intsiga zamashanyaraze kumazu y'abaturage , ahitwa Mukeri, bituma uwajuriye amuhagarika ku kazi by'agateganyo kuwa 12/05/2008 ariko ayita arekurwa uwo munsu.Uregwa yatakambiye ubuyobozi kw'itariki ya 01 Ukuboza 2008, uwajuriye yaseshe amasezerano yakazi . Nyuma yukwiyambaza Umugenzuzi w'umurimo uregwa yareze mu Rukiko Rukuru asaba ko yahabwa indishyi zinyuranye. Urukiko Rukuru rwemeze ko uregwa yirukanywe

muburyo budakurikije amategeko rutegeka uwajuriye ku muha indishyi zingana n'amafaranga 3.488.739 nukumutangira imisanzu muri CSR ingana nameze 6 n'iminsi 18. Umukoresha yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rutagombaga kwakira ikirego kuko igihe kyukururegera kyari kyararenze kandi rwamuhaye n'indishyi zikirenga. Incamake y'icyemezo: Gutakamba gukorwa mugihe urega asaba ko icyemezo yafatiwe n'ubutegetsi cyavanwaho kugira ngo asubirane uburengazira ya vukijwe n'icyo cyemezo, Uregwa yaregeye indishyi zinyuranye kubera isheshwa ry'amasezerano y'umurimo m'uburyo bunyuranije n'amategeko akaba atagombaga gutakamba. Rukiko Rukuru rwagombaga kwakira ikirego. Indishyi zibarwa hashingiye ku mushahara- fatizo, m'uburyo bukurikira: Indishyi z'akababaro umushahara-fatizo x amezi 6 Indishyi z'ubutahabwa icyemezo cya kazi umushahara-fatizo x amezi 2 Indishyi z'integuza n'imperekeza umushahara-fatizo x amezi 2. Uregwa afite kubarirwa indishyi bahereye k'umushahara-fatizo. Ubujurire bufite ishingiro kuri bimwe, Urubanza RADA0126/09/HC/KIG ruhutse kuri bimwe, Uwajuriye ategutshwe guha indishyi uwarezwe, Uwajuriye ategutshwe gutanga amagarama y'urubanza.

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Amategeko yifashishijwe:

Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingiro ya 339 Imanza zifashishijwe Urubanza

I. IMITERERE Y'URUBANZA [1] Kuwa 15/06/2004, Ndahayo Jérémie yagiranye na EWSA (RECO-RWASCO) amasezerano yo kuyikorera akazi k'amashanyarazi imushyira kuri Sitasiyo ya Bicumbi. Kuwa 01/05/2008, hibwe itsinga z'amashanyarazi zari ku mazu y'abaturage bo mu Mujyi wa Byumba, ahitwa Mukeri, bituma Polisi imufunga by'agateganyo ikeka ko yagize uruhare muri ubwo bujura bituma EWSA imuhagarika ku kazi by'agateganyo kuwa 12/05/2008, ariko afungurwa uwo munsu n'Ubushinjacyaha. [2] Nyuma yaho, Ndahayo Jérémie yatakambiye EWSA ntiyamuha igisubizo kimushimishije, bigeze kuwa 01/12/2008, isesa amasezerano bagiranye ivuga ko itamusubiza ku kazi kuko itakimufitiye icyizere. [3] Ndahayo yiyambaje Umugenzuzi w'Umurimo ariko ntiyamwumvikanisha na EWSA bituma ayirega mu Rukiko Rukuru i Kigali asaba ko yamuha indishyi zinyuranye zigaragarira mu kirego cyavuzwe haruguru. [4] Urukiko rwemeje ko ikirego cya Ndahayo cyakiriwe, rwemeza kandi ko EWSA yamwirukanye mu buryo budakurikije amategeko, ruyitegeka kumuha 3.488.739 Frw y'indishyi no kumutangira imisanzu itamutangiye muri CSR ingana n'amezi 6 n'iminsi 18. [5] EWSA yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko Rukuru rutagombaga kwakira ikirego cya Ndahayo kuko yaruregeye igihe cy'amezi atandatu cyararenze uhareye igihe yabonye igisubizo ku itakamba rye, ko rwamubariye indishyi zinyuranye uhareye ku mushahara-fatizo utariwo ungana na 152.366 Frw, nyamara rwagombaga kuzimubarira rushingiye ku mushahara-fatizo ungana na 124.000 Frw, kandi ko itagombaga gucibwa indishyi z'uko itamuhaye icyemezo cy'akazi kuko atakiyisabye ngo ikimwime, ariko igihe cy'iburanisha, [6] Urubanza rwaburanishijwe mu ruhamu kuwa 23/07/2013, EWSA ihagarariwe na Me Rusanganwa Jean Bosco, naho Ndahayo Jérémie

ahagarariwe na Me Rukundo Emile.

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II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

1. Kumenya niba ikirego cya Ndahayo kitaragombaga kwakirwa [7] Uburanira EWSA avuga ko ikirego cya Ndahayo kitagombaga kwakirwa n'Urukiko Rukuru hashingiwe ku ngingo ya 339 CPCCSA kubera ko yamuhaye igisubizo ku itakamba rye kuwa 23/01/2009, ariko ko yaregeye urwo Rukiko kuwa 18/11/2009, igihe cy'amezi 6 cyateganywaga n'iyo ngingo cyararenze. Avuga kandi ko Ndahayo yagombaga gutakamba kuko urubanza baburana atari urw'umurimo nk'uko abivuga, ko ahubwo ari urw'ubutegetsi. [8] Uburanira Ndahayo avuga ko ikirego cye cyagombaga kwakirwa kubera ko atari ategetswe gutakambira EWSA n'ubwo yabikoze kuko yari umukozi wagengwaga n'amasezerano y'umurimo, ko rero icyangombwa ari uko yanyuze ku Mugenzuzi w'umurimo, ko rero asanga ari urubanza rw'umurimo, aho kuba urw'ubutegetsi. UKO URUKIKO RUBIBONA [9] Ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe Ndahayo yatangaga ikirego mu Rukiko Rukuru, EWSA ishingiraho ubujurire bwayo, ivuga ko: "Ikirego gisaba gukuraho icyemezo cy'umutegetsi cyakirwa gusa iyo icyemezo cy'umutegetsi cyeruye cyangwa kiteruye. Mbere yo gutanga ikirego, unenga icyemezo cy'umutegetsi agomba kubanza gutakambira umutegetsi wagifashe. Mu gihe uwatakambye atishimiye igisubizo yahawe, afite igihe cy'amezi atandatu (6) cyo kuregera urukiko gitangira kubarwa kuva ku munsu yaboneyeho igisubizo...." [10] Hasesenguwe ibyateganywaga n'iyo ngingo, Urukiko rurasanga gutakamba gukorwa mu gihe urega asaba ko icyemezo yafatiwe n'ubutegetsi cyavanwaho kugira ngo asubirane uburenganzira yavukijwe n'icyo cyemezo. [11] Ku birebana n'uru rubanza, dosiye igaragaza ko Ndahayo Jérémie yaregeye Urukiko Rukuru kuwa 18/11/2009, asaba ko EWSA yamuha indishyi zinyuranye zigaragarira mu kirego cyavuzwe haruguru, kubera ko yasheshe amasezerano y'akazi bagiranye kuwa 15/06/2004 mu buryo bunyuranije n'amategeko, bityo akaba atari ategetswe gutakamba hakurikijwe ibyateganywaga n'ingingo ya 339 y'Itegeko ryavuzwe haruguru, bivuze rero ko n'ibihe byo gutanga ikirego cye bitagombaga kubarwa haherewe kuri iryo takamba, bityo ikirego cye kikaba cyaragombaga kwakirwa nk'uko n'Urukiko Rukuru rwabyemeje.
2. Kumenya umushahara ukwiye gushingirwaho mu kubarira Ndahayo indishyi [12] Uburanira EWSA avuga ko Urukiko Rukuru rwabariye Ndahayo indishyi zinyuranye ruhereye ku mushahara-fatizo utariwo ungana na 152.366 Frw buri kwezi, nyamara rwaragombaga kuzimubarira ruhereye ku mushahara-fatizo ungana na 124.000 Frw yahembwaga buri kwezi kubera ko ariwo yatangiragaho imisanzu muri CSR. [13] Uburanira Ndahayo avuga ko nta ndishyi z'ikirenga urwo Rukiko rwamugeneye kuko rwamubariye indishyi ruhereye ku mushahara- mbumbe ungana na 152.366 Frw.

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UKO URUKIKO RUBIBONA [14] Inyandiko ya CSR (état des relevés nominatifs des rémunérations par assuré) yo kuwa 16/07/2009 iri muri dosiye, igaragaza ko Ndahayo Jérémie yahembwaga umushahara- fatizo ungana na 124.000 Frw buri kwezi, bityo Urukiko rukaba rusanga ariwo mushahara-fatizo ukwiye gushingirwaho mu kumubarira indishyi yatsindiye muri uru rubanza kuko nta kigaragaza ko amafaranga 28.366 Urukiko Rukuru rwemeje ko yari mu mushahara we yayahembwaga buri kwezi, bivuze rero ko izo ndishyi zikwiye kubarwa mu buryo bukurikira: Indishyi z'akababaro: 124.000 Frw x amezi 6 = 744.000 Frw. Indishyi z'uko atahawe icyemezo cy'akazi: 124.000 Frw x amezi 6 = 744.000 Frw. Indishyi z'integuza n'iz'imperekeza: 124.000 Frw x amezi 2 = 248.000 Frw. Imishahara atahembwe igihe yari yarahagaritswe ku kazi: 124.000 Frw x amezi 6 + (124.000 Frw x iminsi 18) : iminsi 30 = 818.400 Frw. Ayo mafaranga akaba agomba kwiyoungeraho 200.000 Frw y'ikurikiranarubanza na 150.000 Frw y'igihembo cya Avoka yagenewe mu Rukiko rubanza, bityo EWSA ikaba igomba guha Ndahayo Jérémie indishyi zose hamwe zingana na 2.904.400 Frw.

3. Kumenya niba Ndahayo yahambwa indishyi asaba zo gushorwa mu manza [15] Uburanira Ndahayo asaba ko EWSA yamuha 1.000.000 Frw y'indishyi z'uko yamukuruye mu manza bitari ngombwa. [16] Uburanira EWSA avuga ko itaha Ndahayo izo ndishyi kubera ko itamushoye mu manza ku maherere. [17] Urukiko rurasanga Ndahayo atahabwa indishyi zijyanye n'uko yashowe mu manza ku maherere, kuko ari uburenganzira bwa EWSA bwo kujuririra imikirize y'urubanza itishimiye kugira ngo irenganurwe, cyane cyane ko hari ibyo yatsindiye muri uru Rukiko. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa EWSA bufite ishingiro kuri bimwe; [19] Rwemeje ko urubanza RADA 0126/09/HC/KIG rwaciye n'Urukiko Rukuru kuwa 26/08/2011 ruhindutse kuri bimwe; [20] Rutegetse EWSA guha Ndahayo Jérémie 2.904.400 Frw y'indishyi; [21] Ruyitegetse gutanga amagarama y'uru rubanza angana na 26.450 Frw, itayatanga mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu byayo ku ngufu za Leta.

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