

RWANDA / JUDGMENT

GAHIRIMA vs. KIVU MARINA BAY Ltd

RSOCA 00005/2023/HC/RSZ

COURT

High Court

DECIDED

10 December 2023

CASE / FILE NUMBER

RSOCA 00005/2023/HC/RSZ

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GAHIRIMA vs. KIVU MARINA BAY Ltd

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Text

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GAHIRIMA vs. KIVU MARINA BAY Ltd [Rwanda URUKIKO RUKURU – RSOCA 00005/2023/HC/RSZ – (Habimana, J. P.) 12 Ukwakira 2023] Amategeko agenga imanza z’umurimo – Amasezerano y’umurimo – Umushahara – Ubuzime bw’umushahara – Umushahara umukozi ahembwa ni umushahara w’ibanze hiyongereyeho indamunite kubera akazi yakoze – Ibibazo byose byerekeranye n’umushahara bimaze igihe kirenze imyaka ibiri bitishyujwe biba bitacyishyujwe kuko biba byarazimye. Icyo gihe kibarwa uherye igihe umukozi yagombaga guhemberwa. Incamake y’ikibazo: Gahirima wari umukozi wa Kivu Marina Bay Ltd akaza gusezera ku kazi ku bushake bwe, yayireze mu Rukiko Rwisumbuye rwa Rusizi asaba guhabwa indamunite ya transport n’amafaranga y’itumanaho atigeze ahabwa kuva yatangira akazi mu mwaka wa 2015, nkuko byari bikubiye mu masezerano y’akazi, ndetse no kuba muri icyo gihe atarigeze ahabwa amakonji umukozi yemererwa n’itegeko cyangwa se ngo abe yahabwa insimburakiruhuko mu mafaranga. Yatanze iki kirego nyuma y’uko ubwumvikane bwanze imbere y’Umugenzuzi w’umurimo. Uregwa avuga ko buri kwezi Urega yagiye ahembwa umushahara wumvikanyweho mu masezerano, ko haramutse hari amafaranga atahawe ibyo byaba byaturutse ku burangare bwe kuko ariwe wari ushinze gutegura “payments” zose, dore ko atagaragaza ko yaba

yarateguye impapuro za ngombwa zishyura umushahara we wose ngo yange kwishyurwa. Ibi byatumye atanga inzitizi y'ubuzime bw'ikirego cy'ibirarane by'amafaranga y'ingendo n'itumanaho nubwo Urega yireguye avuga ko yamwandikiye kenshi ngo ntiyasubizwa. Urukiko Rwisumbuye rwemeje ko Urega agira amafaranga y'ibirarane ahabwa ariko hakaba n'andi y'imyaka ibibiri yabanje atagomba guhabwa kuko habayeho ubuzime bwabyo ndetse agahabwa n'amafaranga y'insimburakiruhuko ndetse n'izindi ndishyi. Ibi byatumye Urega ajuririra iki cyemezo mu Rukiko Rukuru, Urugereko rwa Rusizi, anenga Urukiko Rwisumbuye ko rwirengagije amategeko, rukitiranya indemunite z'ingendo n'itumanaho, rukavuga ko habayeho ubuzime kandi Itegeko ry'umurimo riteganya ubuzime ku mushahara gusa, mu gihe ho hagombaga gukoresha Itegeko rigenga amasezerano. Uregwa na we yatanze ubujurire bwuririye ku bundi avuga ko Urukiko Rwisumbuye rwaciye urubanza kukitararegwe aho rwageneye Urega kongera kwishyurwa ibirarane by'imyaka ibiri ya nyuma, nyamara ubwo yasezeraga yarabihawe byose., mu gihe ibyo yaregeye byari iby'imyaka itatu ya mbere bikaba byari byarahuye n'ubuzime. Urega na we yasabye ko byakosorwa maze agahabwa ibijyanye n'ibyo yaregeye by'iyi myaka itatu ya mbere. Incamake y'icyemezo: Umushahara umukozi ahembwa ni umushahara w'ibanze hiyongereyeho indamunite kubera akazi yakoze. Ibibazo byose byerekeranye n'umushahara bimaze igihe kirenze imyaka ibiri bitishyujwe biba bitacyishyujwe kuko biba byarazimye. icyo gihe kibarwa uherye igihe umukozi yagombaga guhemberwa. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro. Amategeko yashigiweho: Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 3 n'ya 76. Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 6, 10 n'ya 111. Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 62.

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Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Gahirima Yvon yakoreye Kivu Marina Bay LT ku mwanya w'Umunyamabanga nshungamutungo (secretaire comptable) w'iyi sosiyete kuwa kuwa 23/08/2015 umunsi w'isinywa ry'amasezerano y'akazi, kugera kuwa 31/12/2020 ubwo Gahirima Yvon yasezeraga ku kazi. Mu masezerano y'akazi impane zombi zumvikanye umushahara w'amafaranga 390.000Frw, indemunite ya transport ingana n'amafaranga 100.000Frw, n'amafaranga y'itumanaho angana n'ibihumbi mirongo itanu 50.000Frw, ariko bigeze kuwa 31/12/2020 Gahirima Yvon asezeraga ku kazi. [2] Gahirima Yvon avuga ko kuwa yatangiye akazi atigeze ahabwa indamunite ya transport n'amafaranga y'itumanaho nkuko byari bikubiye mu masezerano y'akazi, ndetse no kuba muri icyo gihe atarigeze ahabwa amakonji umukozi yemererwa n'itegeko cyangwa se ngo abe yahabwa insimburakiruhuko mu mafaranga, ibyo byose bikaba bifite agaciro kangana na 7.135.500Frw, agomba kubarirwa indishyi mboneza musaruro n'iz'akababaro. Nyuma y'uko ikibazo akigejeje ku Mugenzuzi w'umurimo impande zombi zikananirwa kumvikana, Gahirima Yvon yatanze ikirego mu rukiko kugira ngo rutegeke Kivu Marina Bay Ltd kumwishyura amafaranga ye. [3] Kivu Marina Bay Ltd ivuga ko buri kwezi Gahirima yagiye ahembwa umushahara wumvikanyweho mu masezerano, ko haramutse hari amafaranga atahawe ibyo byaba byaraturutse ku burangare bwe kuko ariwe wari ushinze

gutegura payments zose. Kuba atagaragaza ko yaba yarateguye impapuro za ngombwa zishyuzwa umushahara we wose ngo azishyikirize Kivu Marina Bay yange kwishyurwa kugeza ubwo bigeze mu gihe cy'ubuzime cya bimwe mu byo aregera, ibyo akaba atabiryoza uwahoze ari umukoresha we. Hagaragajwe inzitizi y'ubuzime bw'ikirego cy'ibirarane bya transport na communication, maze Kivu Marina Bay isaba ko ikirego cyabyo kitakwagirwa; Gahirima Yvon avuga ko yandikiye kenshi ubuyobozi bw'iyi sosiyete ariko ntiyasubizwa kuburyo ubuzime butari gushoboka arimo kwishyuzwa. [4] Mu rubanza RSOC 00004/2022/TGI/RSZ, Urukiko Rwisumbuye rwa Rusizi rushingiye ku ngingo ya 76 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda¹, rwasanze ubuzime bw'ibyo aregera bugomba kubarwa mu myaka ibiri uhereye ku itariki ya 10/05/2022 asezera mu kazi ku bushake bwe gusubira inyuma mu myaka yashize. Bivuze ko ibirarane aregera byose bya mbere y'umushahara w'ukwezi kwa 05/2020 byahuye n'ubuzime kuko imyaka ibiri iteganywa n'itegeko yarenze atabiregeye. Rwategetse Kivu Marina Bay kwishyura Gahirima ibirarane by'amezi umunane bya transport na communication bingana na 1.200.000Frw, bibazwe kuva ku mushahara w'ukwezi kwa 05/2020 kugeza kuwa 30/12/2020, amafaranga y'insimburakiruhuko angana 540.000Frw, amafaranga 500.000Frw y'igihembo cya avoka, n'amafaranga 20.000Frw yatanzeho ingwate y'amagarama arega. [5] Gahirima Yvon yajuririye uru Rukiko, ubujurire bwe bwandikwa kuri RSOCA 00005/2023/HC/RSZ, urubanza ruburanishwa mu ruhamo kuwa 14/09/2023, yunganiwe na Me Ngendakuriyo Celestin naho Kivu Marina Bay ihagarariwe na Me Habimana Alphonse. [6] Mu myanzuro y'ubujurire no mu miburanire ye, Gahirima Yvon n'umwunganira bavuga ko banenga Urukiko Rwisumbuye kuba rwarirangagije amategeko rukitiranya indemunite z'ingendo n'itumanaho rukavuga ko habayeho ubuzime kandi Itegeko ry'umurimo riteganywa ubuzime ku

1 Umushahara umaze imyaka ibiri (2), ibarwa uhereye igihe umukozi yagombaga kuwuhemberwa utarishyuzwa ntuba ukishyujwe. icyakora, igihe cyo kubara ubuzime kivugwa mu gika cya mbere cy'iyi ngingo gihagarikwa n'imwe mu mpamvu zikurikira: 1° umukoresha atangiye ibarura ry'amafaranga yose bemeranyijweho n'umukozi ko ari umwenda; 2° intumwa z'abakozi zashyikirijwe icyo kibazo mu kigo aho ziri; 3° ubugenzuzi bw'umurimo bwashabwemo gukemura impaka mu bwumvikane butaratanga umwanzuro; 4° ikirego cy'umukozi kikiri mu rukiko.

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mushahara gusa, mu gihe ho hagombaga gukoresha Itegeko rigenga amasezerano, ndetse n'iyi ubwo buzima bwabaho ngo bukaba bwaburagiye buhagarikwa n'amabaruwa yagiye yandika yishyuzwa. Anenga kandi ko mu guhabwa indishyi zisimbura ibiruhuko atahawe, Urukiko Rwisumbuye rwamuhaye iz'umwaka umwe aho kuba itanu yari yaregeye. Yanenze kandi no kuba atarigeze agenerwa indishyi z'akababaro n'indishyi mbonezamusaruri kandi yari yazisabye. [7] Uhagarariye Kivu Marina Bay we asobanura itegeko risobanura umushahara icyo aricyo kandi n'igihe ubuzime bwabyo bubaho, bikaba bidashoboka gukoresha amategeko abiri atandukanye ku mushahara umwe. Ibijyanye n'amabaruwa avuga yaba yarahagaritse ubuzime, ibyo ngo ntibyabayeho kuko umukoresha atanamushubije yashoboraga gutakambira inama y'ubutegetsi kandi byose ntabyakozwe. Ku ndishyi zisimbura ikiruhuko z'igihe kitahuye n'ubuzime,

uhagarariye Kivu Marina avuga ko Gahirima Yvon zose yazihawe mu gihe cyo gusesa amasezerano, akaba ari nayo nayo mpamvu atigeze aziregera, nyamara Urukiko rwabirenzeho ruca urubanza ku kitararegawe rumugenera insimburakiruhuko ataregeye ndetse zahuye n'ubuzime. Asoza avuga ko indishyi mbonezamusaruro zisabwa nta shingiro zifite kubera ko ntaho ziteganywa n'Itegeko rigenga umurimo. [8] Kivu Marina Bay nayo yasobanuye ko ifite ubujurire bwuririye ku bundi bujyanye no kuba haraciwe urubanza ku kitararegawe kuko Gahirima Yvon yaregeye ibirarane bijyanye n'ibiruhuko by'umwaka, iby'amafaranga y'itumanaho n'ibyamafaranga y'urugendo, avuga ko ari ibyo mu myaka itatu ya mbere, yemeza ko ibyo yahawe ari iby'imyaka ibiri ya nyuma, ariko Urukiko Rwisumbuye rwa Rusizi rwongera ubimubarira kandi rwamaze kubona ko ibyo yaregeye byahuye n'ubuzime. Kubimubarira bikaba ari ukwishyurwa kabiri. [9] Uwunganira Gahirima Yvon nawe yemera ko byakosorwa agahabwa ibyo yaregeye ntabihabwe, ariko ko igikwiye kumvikana ari uko aregera amezi tanu y'ikiruhuko ahwanye n'imyaka 5, akaregera indemunte z'imyaka 3 "transport" na "communication". Impande zombi kandi zasabye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [10] Urukiko, rushingiye kuri izo mpaka, rusanga hakwiye gusuzumwa ibibazo bikurikira: - Kumenya imbibi z'ikiburanwa kigomba kuburanishwa no gufatwaho icyemezo. - Kumenya niba amafaranga y'umushahara n'amafaranga ya indamunte y'urugendo n'itumanaho bitagengwa n'itegeko rimwe ku bijyanye n'ubuzime. - Kumenya niba Gahirima Yvon yahabwa indishyi mbonezamusaruro n'iz'akababaro. - Indishyi z'ikurikiranarubanza n'igihembo cya avoka. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya imbibi z'ikiburanwa kigomba kuburanishwa no gufatwaho icyemezo [11] Uhagarariye Kivu Marina Bay avuga ko mu kirego cye ku rwego rubanza, Gahirima Yvon yagaragaje ko aregera ibirarane bijyanye n'ibiruhuko by'umwaka, iby'amafaranga y'itumanaho n'ibyamafaranga y'urugendo, avuga ko ari ibyo mu myaka itatu ya mbere, yemeza ko ibyo yahawe ari iby'imyaka ibiri ya nyuma. Kivu Marina Bay Ltd ikaba yarashyize muri system ku rwego rw'ubujurire aho yishyuriye Gahirima Yvon Ibirarane by'imyaka 2 ya nyuma yari itarahura n'ubuzime. Kuba rero Urukiko Rwisumbuye rwa Rusizi rwarongeye kubimubarira bikaba ari ukwishyurwa kabiri kandi atari yabiregeye, akaba ari amakosa yakozwe agomba gusorwa mu bujurire. [12] Gahirima Yvon n'umwunganira bavuga ko mu gihe byagaragara ko Urukiko ku rwego rwa mbere rwaba rwaravuye mu mbibi z'ikiregerwa, nabo bemera ko byakosorwa agahabwa ibyo yaregeye ntabihabwe akongera akabijurira. Basaba ko Urukiko rwakosora amakosa yakozwe ku rwego rwa mbere, ariko ko igikwiye kumvikana ari uko aregera amezi tanu y'ikiruhuko ahwanye n'imyaka 5, akaregera indamunte za transport na communication z'imyaka 3 atishyuye.

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UKO URUKIKO RUBIBONA [13] Impaka kuri iyi ngingo zishingiye ku kumenya icyaregawe kuva ku rwego rwa mbere kugira ngo harebwe niba muby'ukuri Urukiko Rwisumbuye rutararenze imbibi z'ikiburanwa cyangwa se rugaca urubanza kukitararegawe. [14] Ingingo ya 6 al.1 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezambano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ivuga ko ikiburanwa kigenwa n'ibisabwa na buri

muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza ku manza iteganyijwemo. Naho ingingo ya 10 y'iryo Tegeko ikavuga ko Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine. Izi ngingo zombi ziruzuzanya, zikaba zigaragaza ko umuburanyi wareze agaragaza icyo aburana mu myanzuro ikubiyemo icyo asaba urukiko ndetse ikanuzuzwa n'imyanzuro yo kwiregura y'uwo arega. Iyo imyanzuro yombi imaze guhuzwa ababuranyi bashimangira burundu ikiburanwa cyabo mu gihe cy'inama ntegurarubanza mu manza iteganyijwemo, bamara kucyumvikanaho, akaba aricyo gishyikirizwa umucamanza uzakiburanisha mu mizi atagize icyo agihinduraho ababuranyi bose batabanze kubyemeranyaho. [15] Mu gusesengura ikirego cyatanzwe na Gahirima Yvon ku rwego rwa mbere kubyerekeranye n'indishyi z'ibitarane bya indamunite y'urugendo n'itumanaho ndetse n'ibiruhuko atahawe, dosiye igaragaza ko mu mwanzuro utanga ikirego ndetse n'inyandiko mvugo y'inama ntegurarubanza yabaye kuwa 15/12/2022 haregwe ibikurikira: - Amafaranga asimburira ikiruhuko atahawe ntanahabwe amafaranga agisimbura mu gihe cy'inyaka itanu abazwe: $540.000\text{Frw} \times 5 = 2.700.000\text{Frw}$. - Kubijyanye n'ibitarane by'amafaranga ya "transport", Gahirima Yvon avuga ko mu gihe cy'inyaka itanu yakoreye Kivu Marina, mu myaka itatu ya mbere nta mafaranga ya "transport" yigeze ahabwa, ahubwo yishyuwe gusa amafaranga y'inyaka ibiri ya nyuma, ni ukuvuga kuwa kuwa 23/09/2018 kugera kuwa 31/12/2020, ubu akaba asaba amafaranga atahawe angana n'amezi 36 ahwanye n'amafaranga $100.000\text{Frw} \times 36 = 3.600.000\text{Frw}$. - Ku bijyanye n'amafaranga y'itumanaho, Gahirima Yvon avuga ko yishyuwe gusa imyaka ibiri ya nyuma ni ukuvuga kuwa kuwa 23/09/2018 kugera kuwa 31/12/2020, ubu akaba asaba amafaranga atahawe y'itumanaho angana n'amezi 36 ahwanye n'amafaranga $50.000 \times 36 = 1.800.000\text{Frw}$. [16] Ibi bisobanuye ko ikirego cyari mu rukiko ari indishyi z'amafaranga ya indamunite y'urugendo n'itumanaho by'inyaka itatu ya mbere uhagaze igihe Gahirima Yvon yatangiye akazi kuwa 23/05/2015 kugeza kuwa 23/05/2018 kubera ko izo guhera kuwa 23/09/2018 kugera kuwa 31/12/2020 yemera ko zo yamaze kuzishyurwa; hakiyongeraho n'indishyi z'ibiruhuko by'inyaka itanu atahawe cyangwa se ngo yishyurwe amafaranga bisimbura. [17] Haramutse rero hari icyemezo cyafashwe ku ndishyi z'amafaranga ya indamunite y'urugendo n'itumanaho atandukanye n'ay'iriya imyaka itatu (23/05/2015 kugeza kuwa 23/05/2018), cyangwa se amafaranga y'ibiruhuko by'inyaka itanu atahawe, ibi byaba koko binyuranyije n'ingingo z'amategeko zasobanuwe haruguru bigomba gukosorwa. Urukiko rurasanga kuba izi ndishyi zaregwe nazo zigize impamvu z'ubujurire ikosa ryaba ryarakozwemo rigomba gusesengurirwa hamwe n'ishingiro ryazo mu ngingo y'ubujurire ikurikira.

2. Kumenya niba amafaranga y'umushahara n'amafaranga ya indamunite y'urugendo n'itumanaho bitagengwa n'itegeko rimwe ku bijyanye n'ubuzime [18] Gahirima Yvon n'umwunganira bavugaga ko amasezerano y'akazi agaragaza ko yari yemerewe amafaranga ibihumbi ijana (100.000 Frw) buri kwezi ya transport ndetse n'ibihumbi mirongo itanu (50.000 Frw) buri kwezi ajyanye n'itumanaho yose yiyongera ku mushahara bari barumvikanye na Kivu Marina Bay. Ariko mu gihe cy'inyaka itatu ibanza y'amasezerano, akaba yarababwirako umushahara gusa hirengagijwe amafaranga y'itumanaho n'amafaranga y'ingendo agomba gusubizwa

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buri kwezi nkuko byari mu masezerano. Basobanura ko mu rubanza rujuririrwa, yagaragarije Urukiko Rwisumbuye ko yasabye kenshi umukoresha we ko yamwishyura ibirarane byavuzwe haruguru amubereyemo bibazwe kuwa kuwa 23/05/2015 kugeza kuwa 23/05/2018 bingana na miliyoni eshanu n'ibihumbi magana ane (5.400.000Frw), Kivu Marina Bay Ltd irabyanga yitwaje ibihe by'ubuzime. [19] Basobanura ko mu cyemezo cy'urubanz RSOC 00004/2022/TGI/RSZ, Urukiko Rwisumbuye rwitiranyije indamunite n'umushahara, maze rushingiye kubiteganwa n'ingingo ya 76 y'Itegeko No 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda nayo igateganya ko umushahara umaze imyaka ibiri (2), ibarwa uhereye igihe umukozi yagombaga kuwuhemberwa utarishyuzwa ntuba ukishyujwe. Gahirima Yvon n'umwunganira bakaba basanga iyi ngingo ivuga ubuzime bw'umushahara wonyine ariko ntaho yahurizwa n'ubuzime bwa indamunite kubera ko nta kibazo cy'umushahara yigeza agirana n'umukoresha we. Ibyo akabivuga ahereye ku kuko no mu masezerano y'akazi impande zombi zashyizeho umukono batandukanyije umushahara na indamunite (Allowances), bityo bakaba basanga Urukiko rwarirengagije ibiteganywa n'amasezerano y'akazi hagakoreshwa itegeko ritariyoye. Basabye ko mu guca urubanza kuri iyi ngingo hazakoreshwa Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano ingingo yaryo ya 62 ivuga ko amasezerano hagati y'impande bireba ari itegeko kandi agomba kubahirizwa nta buriganya. [20] Gahirima Yvon n'umwunganira bavuga basabye kandi ko haramutse hakoreshejwe itegeko rigenga umurimo hasuzumwa ubuzime bwa indamunite aregera, Urukiko rwazemeza ko nabyo bidashoboka kubera ko atahwemye kwishyura umukoresha we mbere y'igihe cy'imyaka 2 y'ubuzime nkuko bigaragazwa n'inyandiko zishyura zo kuwa 10/06/2016, iyo ku wa 15/09/2017 n'iyi ku wa 20/11/2018 kandi buri kwezi umukoresha akaba yarabaraga igihembo cya Gahirima, akamwishyura bimwe ibindi ntabyishyure. Ibi birarane by'itumanaho n'ingendo yishyura akaba ari amafaranga yakoresheje akuye mu mufuka we mu nyungu z'umukoresha, akaba adakwiye gufatwa nk'umushahara. [21] Mu kwiregura uhagarariye Kivu Marina Bay avuga asanga nta mategeko yirengagijwe cyangwa ibimenyetso mu kwemeza ko habayeho ubuzime kuko hashingiwe ku ngingo ya 3 n'ya 76 zisobanura ibijyanye n'umushahara ndetse n'ubuzime n'ibishobora guhagarika ubuzime. Naho kuba Gahirima Yvon avuga ko ubuzime butariho kuko yagiye yandikira umukoresha we yishyura ibyo birarane, ngo nta shingiro byahabwa kuko ku rwego rwa mbere kugera ubu mu bujirire, Kivu Marina Bay Ltd igaragaza ko nta kirnemneytso Yvon Gahirima yatanze cyerekana ko ayo mabarurwa yageze ku muyobozi wa Sosiyete. Kuba na none avuga ko yageneye Board copy, nabyo ntibyashingirwaho kuko atigeze ayigaragariza ko ibyo yasabaga muri ayo mabarurwa bitabonye igisubizo maze ngo atakambire Inama Ubutegetsi ngo yange gusuzuma ikibazo cye. Kubwa Kivu Marina Bay, impaka ziri hagati y'umukozi n'umukoresha ntizishobora gukemurwa hashingiwe ku itegeko rigenga masezerano kandi hari itegeko ryihariye rigenga Ururimo ryagenewe gukemura izo mpaka, arinayo mpamvu Gahirima Yvon yahisemo kwiambaza urugereko ruburanisha imanza z'umurimo akaba arirwo ashidikiriza ikirego. UKO URUKIKO RUBIBONA [22] Impaka kuri iki kibazo zishingiye ku kumenya niba amafaranga y'ibirarane bya indamunite y'urugendo n'itumanaho by'imyaka itatu (23/05/2015 kugeza kuwa 23/05/2018) ari igice kigize umushahara kigengwa n'itegeko ry'umurimo cyangwa se ari amafaranga ari ku ruhande agomba kugengwa n'Itegeko rigenga amasezerano. Hakanarebwa

niba izi indamunite zarahuye n'ubuzime kuburyo zidashobora kuregerwa. [23] Ingingo ya 3 agace ka 29 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda ivuga ko umushahara umuntu ahembwa ari umushahara w'ibanze umukozi ahembwa hiyongereyeho indamunite kubera akazi yakoze; iyi ngingo iragaragaza nta gushidikanya ko mu kubara umushahara hatabaho gutandukanya amafaranga y'umushahara w'ibanze ahabwa umukozi ahembwa, kubera akazi yakoze, ahubwo abarirwa hamwe na indamunite umukozi yemererwa.

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[24] Ikibazo kijyanye no kumenya niba mu masezerano y'akazi hagomba gukoreshwa amategeko atandukanye iry'umurimo rikareba umushahara naho indamunite zikagengwa n'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano; Urukiko rurasanga nyuma yo kugaragaza ko umushahara na indamunite bitagombwa gutandukanywa byose bigomba kugengwa n'Itegeko rimwe N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda nk'uko biteganywa n'ingingo ya mbere y'iri tegeko2, bityo ibisabwa na Gahirima Yvon ko hazarebwa ibivugwa n'Itegeko rigenga amasezerano bikaba nta shingiro bifite. [25] Kubyerekeranye n'ubuzime indamunite y'urugendo n'itumanaho by'imyaka itatu (23/05/2015 kugeza kuwa 23/05/2018), ingingo ya 76 ikavuga ko Umushahara umaze imyaka ibiri (2), ibarwa uherye igihe umukozi yagombaga kuwuhemberwa utarishyuzwa ntuba ukishyujwe. icyakora, igihe cyo kubara ubuzime kivugwa mu gika cya mbere cy'iyi ngingo gihagarikwa n'imwe mu mpamvu zikurikira: 1°umukoresha atangiye ibarura ry'amafaranga yose bemeranyijweho n'umukozi ko ari umwenda; 2°intumwa z'abakozi zashyikirijwe icyo kibazo mu kigo aho ziri; 3° ubugenzuzi bw'umurimo bwashabwemo gukemura impaka mu bwumvikane butaratanga umwanzuro; 4°ikirego cy'umukozi kikiri mu rukiko. [26] Iyi ngingo isobanuye ko ibibazo byose byerekeranye n'umushahara bimaze igihe kirenze imyaka ibiri bitishyujwe biba bitacyishyujwe kuko biba byarazimye. icyo gihe kibarwa uherye igihe umukozi yagombaga guhemberwa. [27] Kubijyanye n'ikibazo cya Gahirima Yvon, avuga ko itariki ya nyuma yagombaga guhemberwa indamunite atahawe z'imyaka itatu ari kuwa 23/05/2018. Dosiye igaragaza ko yatangiye kwishyura umukoresha we amafaranga y'ibitarane mu ibaruwa yanditse kuwa 31/03/2021. Iyo ubaze igihe kiri hagati y'ayo matari usanga ari imyaka imyaka ibiri n'amezi icumi n'iminsi umunani. [28] Hakurikijwe imibare imaze kugaragazwa haruguru, biragaragara ko indamunite Gahirima Yvon yatangiye kuzishyura nyuma y'imyaka ibiri n'amezi icumi n'iminsi umunani, Urukiko rukaba rusanga zaramaze gusaza zidashobora kwishyurwa. [29] Kubyerekeranye n'ibisabwa na Gahirima Yvon ko urukiko rwabona ko habayeho ibikorwa bihagarika buriya buzime bigizwe no kuba hari amabaruwa atandukanye yagiye yandikira umukoresha amwishyura biriya birarane nk'ibaruwa yo kuwa 10/06/2016, iyo kuwa 15/09/2017 n'iyi kuwa 20/11/2018, Urukiko rurasanga nta shingiro bifite kubera ko nta kigaragaza ko izo baruwa yazigejeje koko ku mukoresha we Kivu Marina Bay. Ibyo bishimangirwa n'igisubizo Gahirima atanga ubwe imbere y'urukiko ubwo yabazwaga icyerekana ko izi baruwa zageze kuwo yishyuzaga kandi nawe nawe ushinze kwakira amabaruwa, maze agasubiza ko atigeze azakira nk'umukozi n'ubundi wari usanzwe yakira inyandiko zivuye hanze bitewe n'uko yabonaga nta mpamvu yabyo mu gihe umuyobozi

ubishinzwe babaga bari kumwe kandi azi ikibazo cye, ariko yabaga yazimugejejeho. [30] Kubera izo mpamvu zose zimaze gusobanurwa, Urukiko rurasanga indamunite y'urugendo n'itumanaho by'imyaka itatu (23/05/2015 kugeza kuwa 23/05/2018), ndetse n'ibirarane by'ibiruhuko atafashe by'icyo gihe Gahirima Yvon yaregeye byarahuye n'ubuzime, bityo ubujurire bwe bukaba nta shingiro bufite nta burenganzira bwo kuzishyura agifite. [31] Kubyerekeranye n'ubujurire bwuririye ku bundi bwatanzwe na Kivu Marina Bay inenga uburyo Urukiko Rwisumbuye rwageneye Gahirima Yvon indishyi za indamunite y'urugendo n'itumanaho bitangira kubarwa kuva ku mushahara w'ukwezi kwa 05/2020 kugeza ku wa 30/12/2020, maze rugatega ko yishyurwa ibirarane by'amezi umunani abazwe 150,000Frws x8 = 1.200.000Frw, kubera ko ngo bitahuye n'igihe cy'ubuzime bw'imyaka ibiri, aribyo Kivu Marina yise guca urubanza ku kitararegowe. [32] Urukiko Rukuru rurasanga harabayeho ikosa ryo kwivugurura ryakozwe ku rwego rwa mbere muri uru rubanza, kuko mu gihe hamaze kugaragazwa ko indamunite y'urugendo n'itumanaho

2 Iri tegeko rigenga umurimo mu Rwanda.

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by'imyaka itatu (23/05/2015 kugeza kuwa 23/05/2018) zari zaregowe zahuye n'ubuzime, nta n'indishyi zagombaga gutangwa. Ariko Urukiko Rwisumbuye rwabirenzeho rubara indamunite y'urugendo n'itumanaho by'imyaka ibiri ya nyuma (23/05/2018 kugeza kuwa 31/12/2020) kandi nk'uko byasobanuwe haruguru mu gika cya [17] izo zikaba nta kibazo zifite kubera ko ababuranyi bombi bemera ko zamaze kwishyurwa, ndetse no mu bujurire mu kwiregura Gahirima akaba yemera ko byakosorwa. [33] Kubera iyo mpamvu, Urukiko rurasanga indishyi z'ibirarane by'amafaranga y'itumanaho, aya "transport" n'amasaha y'ikiruhuko by'imyaka ibiri ya nyuma y'akazi kuwa 23/05/2019 kugeza 31/12/2020 Gahirima Yvon yarayahawe mu buryo bunyuranyije n'amategeko, bityo akaba avanyweho, kubera ko agumishijweho ya yishyurwe kabiri.

3. Kumenya niba Gahirima Yvon yahabwa indishyi mbonezamusaruro n'iz'akababaro [34] Gahirima Yvon n'umwunganira bavuga ko Urukiko kuwa kuwa 23/05/2015 yatangira gukorera Kivu Marina Bay Ltd yakoranaga umurava n'ubwitange mu kazi ashinzwe, ariko Kivu Marina Ltd ikagenda imushyiraho amananiza imwima ibyo yemerewe mu masezerano y'akazi, ikamwima ikiruhuko cye ndese n'insimburakiruhuko n'ibindi byose bari barumvikanye mu masezerano. Aho amariye gusezera ku kazi, yasabye umukoresha kubahiriza ibikubiye mu masezerano arabyanga, ibyo bikaba byaramuteye guhangayika bikomeye ndetse no kugira imibereho mibi iwe mu rugo kandi bitari bikwiye. Ku bw'iyi Gahirima Yvon akaba asaba ko urukiko rwatega umukoresha kumuha indishyi z'akababaro zingana na 5.000.000Frw. Kuba kandi mu nyungu z'umukoresha yaremeye gukoresha amafaranga akuye ku mufuka we bitewe n'uko atishyurwe ayo yari yarerewe mu masezerano y'akazi, Gahirima yasabye ko Kivu Marina yategakwira kumuha indishyi mbonezamusaruro z'ayo mafaranga zibazwe ku gipimo cya 18% ku mwaka mu gihe cy'imyaka ibiri ni ukuvuga: $5.400.000\text{Frw} \times 2 \times 18: 100 = 1.944.000\text{Frw}$. UKO URUKIKO RUBIBONA [35] Mu ngingo y'ubujurire yasuzumwe bwa mbere, Urukiko rwagaragaje ko ikirego cya Gahirima Yvon cyerekeye indamunite

y'urugendo n'itumanaho by'imyaka itatu (23/05/2015 kugeza kuwa 23/05/2018) kidashoboka kubera ko cyamaze kuzima nyuma y'imyaka ibiri irenga umunsi wa nyuma yagombaga kwishyurizaho. Ibyo rero bihita bigira ingaruka no kubindi birego by'imigereka bishingiye kuri izo ndishyi birimo n'izi ndishyi mbonezamusaruro n'iz'akababaro Gahirima Yvon arimo gusaba. [36] Kuba rero ikirego cy'iremezo nta shingiro gifite, Urukiko rurasanga n'ikirego cy'umugereka kigishingiyeho nta shingiro gishobora kugira, bityo indishyi mbonezamusaruro n'iz'akababaro zishingiye ku kirego cy'iremezo kijyanye na indamunite y'urugendo n'itumanaho by'imyaka itatu (23/05/2015 kugeza kuwa 23/05/2018) zisabwa na Gahirima Yvon nta shingiro zishobora kugira.

4. Indishyi z'ikurikiranarubanza n'igihembo cya avoka [37] Uhagarariye Kivu Marina Bay Ltd yasabye ko Gahirima Yvon yakwishyura indishyi zijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya avoka angana na 1.900.000Frw yakoreshejwe kuva ku rwego rwa mbere kugeza mu bujuriye; Hagendewe ku biteganywa n'ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza, Urukiko rurasanga indishyi zisabwa zifite ishingiro, ariko zikaba zigomba kugenwa mu bushishozi bwawo hakurikijwe imirimo yakozwe muri uru rubanza, aho bigaragara ko kuva ku rwego rwa mbere, ababuranyi bitabye urukiko inshuro zitarenze esheshatu, bityo Gahirima Yvon akaba ategetswe kwishyura amafaranga 500.000Frw. III. ICYEMEZO CY'URUKIKO

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- [38] Rwemeje ko ubujuriye bwa Gahirima Yvon nta shingiro bufite. [39] Rwemeje ko ubujuriye bwuririye ku bundi bwa Kivu Marina Bay Ltd bufite ishingiro. [40] Rwemeje ko imikirize y'urubanza RSOC 00004/2022/TGI/RSZ rwaciwe kuwa 23/03/2023 n'Urukiko Rwisumbuye rwa Rusizi ihindutse mu ngingo zayo zose. [41] Rwemeje ko indishyi z'ibirarane by'amafaranga y'itumanaho, aya transport n'amasaha y'ikiruhuko by'imyaka ibiri ya nyuma y'akazi kuwa 23/05/2019 kugeza 31/12/2020 Gahirima Yvon yayahawe mu buryo bunyuranyije n'amategeko, akaba avanyweho. [42] Rwemeje ko habayeho ubuzime bw'indishyi z'ibirarane by'amafaranga y'itumanaho aya transport n'amasaha y'ikiruhuko Gahirima Yvon atahawe mu myaka itatu ya mbere atangiye akazi guhera kuwa 23/05/2015 kugeza kuwa 23/05/2018. [43] Rutegetse Gahirima Yvon kwishyura Kivu Marina Bay Ltd amafaranga y'igihembo cya avoka angana na 500.000Frw, atayishyura mu gihe giteganywa n'amategeko akazavanwa mu mutungo we ku ngufu za Leta. [44] Rutegetse ko ingwate y'amagarama yatanze ajurira ihera mu isanduku ya Leta.

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