

RWANDA / JUDGMENT

IRST vs UWITUZE ET AL.

RADA0028/13/HC/NYA

COURT

High Court

DECIDED

22 May 2014

CASE / FILE NUMBER

RADA0028/13/HC/NYA

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- Date: 2014-05-22
- Case/document no.: RADA0028/13/HC/NYA
- Collection: High Court

Text

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IRST vs Uwituze et al. [Rwanda URUKIKO RUKURU, URUGEREKO RWA NYANZA – RADA0028/13/HC/NYA (Manirakiza, J.) 22 Gicurasi, 2014] Amategeko agenga Umurimo – Amasezerano y’akazi – Iseswa ry’amasezerano y’akazi – Iseswa ryose ry’amasezerano y’akazi rinyuranyije n’amategeko rishobora gutuma hatangwa indishyi z’akababaro zihabwa umukozi wirukanwe binyuranyije n’amategeko zidashobora kujya mu nsi y’umushahara w’amezi atatu, ariko kandi ntizirenze amezi atandatu – icyemezo cy’imirimo yakozwe n’uburenganzira bw’umukozi kucyihabwa – Itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga Umurimo, ngingo za 2,5,8,10,27,33,38 and 83. Amategeko agenga Umurimo – Itegeko ry’umurimo – Itegeko ry’umurimo niryo rigenga amasezerano akozwe hagati y’abakozi n’abakoresha, umukoresha ntaho yakora amasezerano anyuranye n’iryo tegeko kucyihabwa – Itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga Umurimo, ngingo ya 2. Itegeko rigenga amasezerano cyangwa imirimo nshinganwa – Indishyi – Itangwa ry’amafaranga yikurikiranarubanza n’igihembo cy’Avocat – Izo ndishyi zitangwa n’umuburanyi wakoze igikorwa cyangirije undi gitegeka nyir’ugukora ikosa kuriha ibyangiritse – Itegeko rigenga amasezerano cyangwa imirimo nshinganwa ngingo ya 258. Incamake y’ikibazo: Uwitije, Dusabe n’abandi bareze IREST mu Rukiko Rwisumbuye rwa Huye kubera ko yaseshe amasezerano bari baragiranye

y'akazi y'umwaka umwe wongerwa mu buryo bunyuranije n'amategeko bagasaba indishyi zitandukanye. Urwo Rukiko rukiza ko IRST itsinzwe , ruyitegeka guha abarega amafaranga atandukanye. IRST ntiyishimiye imikirize y'urwo rubanza ijurira mu Rukiko Rukuru urugereko rwa Nyanza, ivuga ko Urukiko rubanza rwa yiciye indishyi zikabije kuba nyinshi kandi nta gihombo abaregwa bigeze bagaragaza, ikavuga ko nanone ko amasezerano y'igihe kizwi iyo asheshwe igihe cyateganyijwe kitageze, umukoresha atanga umushahara ungana n'igihe cyari gisigaye, ngo kandi ko abaregwa nta ndishyi bari bakwiye kuko amasezerano yabo na IRST mu ngingo ya 5 yavugaga ko umukoresha ashobora guhagarika amasezerano igihe cyose umukozi adakora neza. Abaregwa bakisobanura bavuga ko Urukiko rubanza rwubahirije ingingo ya 28 y'itegeko ry'umurimo, kandi mu gihe IRST yabirukanye mu buryo bunyuranyije n'amategeko igomba kubibahera indishyi kandi urukiko rwazigennye rugendeye ku biteganywa n'amategeko. Incamake y'icyemezo: Iseswa ryose ry'amasezerano y'akazi rinyuranyije n'amategeko rishobora gutuma hatangwa indishyi z'akababaro zihabwa umukozi wirukanwe binyuranyije n'amategeko zidashobora kujya mu nsi y'umushahara w'amezi atatu, ariko kandi ntizirenze amezi atandatu. Itegeko ry'umurimo niryo rigenga amasezerano akozwe hagati y'abakozi n'abakoresha. Umukoresha ntaho yakora amasezerano anyuranya n'itegeko ry'umurimo ngo narangiza aritwaze mu kwima abakozi uburenganzira bwabo. Rero IRST kuvuga ko yabasezereye ishingiyeye ku gingo ya 5 yamasezerano nta shingiro bifite.

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Indishyi Dusabe, Ingabire, Kampire, Uwimana na Kagabo bahawe zuko batahawe konji y'umwaka wa 2009 zitahabwa agaciro kuko barahawe konji. IRST igomba gutanga amafaranga y'ikurikirana rubanza. IRST igomba guha abaregwa buri wese icyemezo cyuko yayikoreye nkuko biteganywa n'itegeko. Ubujurire bufite ishingiro; IRSR igomba guha abaregwa icyemezo cyuko bayikoreye; Amagarama y'urubanza aherera kw'isanduku ya Leta. Amategeko yishingiweho: Itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga Umurimo, ngingo za 2,5,8,10,27,33,38 and 83. Igitabo cya gatatu cy'amategeko mbonezamubano , ngingo ya 258 Nta mategeko yifashishijwe. Urubanza I.IMITERERE Y'URUBANZA [1] Urubanza RAD0020/013/TGI/HYE rwaciye ku wa 31/10/2013 n'urukiko rwisumbuye rwa Huye, Uwitije Claudine, Dusabe Jeanette, Uwimana Joselyne, Kampire Valentine , Kagabo Bernard, Ntahonkuriye Jacqueline, Nyiramihama, Ingabire Francoise, Mukankaka Chantal bareze IRST gusesa amasezerano bari baragiranye y'akazi y'umwaka umwe wongerwa, kuva 2007 ayo masezerano akaba yaragombaga kurangira 03/11/2010, IRST yaje kuyasesa binyuranyije n'amategeko, basaba indishyi zitandukanye zigaragara mu kirego. Urukiko rwemeye kwakira ikirego cy'abaregwa maze rugisuzumye rusanga gifite ishingiro kuri bimwe, rwemeza ko IRST mu izina ry'umuyobozi wayo iha Uwitije Claudine frw 386,564, Dusabe Jeanette frw 386,564 , Uwimana Joselyne frw 386,564 , Kampire Valentine frw 521,082 , Kagabo Bernard frw 521,082, Ntahonkuriye Jacqueline frw 521,082 , Nyiramihama frw 521,082, Ingabire Francoise frw 521,082, Mukankaka Chantal frw 386,564; rukiza ko IRST itsinzwe , ruyitegeka guha abaregwa amafaranga nkuko yasobanuwe haruguru. [2] IRST ntibishimiye imikirize y'urwo rubanza bajurira mu rukiko rukuru urugereko rwa Nyanza. Ku munsu w'iburanisha wo ku wa 5/05/2014 IRST ihagararirwa na Me Mbonera Theophile naho abaregwa bese mu bujurire bahagararirwa na

Me Munyemana G. Pascal. Me Mbonera Theophile avuga ko IRST yaciwe indishyi nyinshi kandi zidateganywa n'amategeko kuko abirukanywe birukanwe mu buryo bukurikije amategeko, ko hatanzwe indishyi zijyanye na conge kandi hari abazihawe. Me Pascal Munyemana avuga ko indishyi zatanzwe n'urukiko ziteganywa n'itegeko kuko abakozi birukanywe nta kosa bakoze. Ko kubijyanye na Konje ya 2009 abakozi bari batarayihabwa igihe IRST yabirukanaga.

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[3] Muri uru rubanza harasuzumwa niba indishyi abaregwa bagenewe zidateganywa n'amategeko, hasuzumwe niba hari abahawe indishyi z'ikiruhuko kandi baragihawe, hasuzumwe niba indishyi zisabwa mu bujurire bwuririye ku bundi zatangwa. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO Ku kibazo cyo kumenya niba indishyi abaregwa bagenewe zidateganywa n'amategeko. [4] . Me Mbonera uhagarariye IRST avuga ko impamvu z'ubujurire bwabo zikubiye mu mwanzuro bashyikirije urukiko aho avuga ko urukiko rwaciye IRST indishyi zikabije kuba nyinshi kandi nta gihombo abaregwa bigeze bagaragaza. Avuga ko amasezerano y'igihe kizwi iyo asheshwe igihe cyateganyijwe kitageze, umukoresha atanga umushahara ungana n'igihe cyari gisigaye nyamara ko urukiko rubanza rwashingiye ku ngingo ya 33 y'itegeko no 13/2009 ryo ku wa 27/05/2009, ko rero habayeho ikibazo cyo gusobanura amategeko, ko ari byo basaba ko urukiko rwasobanura. Ko ariko na none ukobyamera kose kwirukana umuntu hasigaye ukwezi kumwe bitamuhesha indishyi z'umushahara wikubye gatanu. Akomeza avuga ko abaregwa nta ndishyi bari bakwiye kuko amasezerano yabo na IRST mu ngingo ya 5 yavugaga ko umukoresha ashobora guhagarika amasezerano igihe cyose umukozi adakora neza, ko rero iyi ngingo ihujwe n'ingingo ya 28 y'itegeko no 13/2009 ryo ku wa 27/05/2009 ry'umurimo usanga guhagarikwa kwabo gufite ishingiro. [5] Me Munyemana Pascal uburanira abaregwa avuga ko urukiko rubanza rwubahirije ingingo ya 28 y'itegeko ry'umurimo, ko mu gihe IRST birukanye abakozi mu buryo bunyuranyije n'amategeko bagomba kubibahera indishyi, ko kandi urukiko rwazigennye rugendeye ku biteganywa n'amategeko. Ko abakozi birukanwe nta kosa kuko IRST itabashije kubigaragaza. Avuga ko nta kundi hagaragazwa akababaro k'abaregwa uretse kugaragaza ko birukanwe hasigaye ukwezi kumwe IRST ntibakwihanganire. Avuga ko kuvuga ko hagendewe ku ngingo ya 5 y'amasezerano ndetse n'ya 28 y'itegeko ry'umurimo atari byo kuko nta bwumvikane bwabaye mbere yo gusesa amasezerano. [6] Nkuko byavuzwe mu rukiko rubanza, urukiko rusanga IRST mu gusesa amasezerano yayo n'abaregwa nta mpamvu igaragara yagaragajwe. Ni nako bigaragara mu bujurire kuko uburanira IRST agaragaza ahanini ko icyo atishimiye ari uko mu gutanga indishyi ku baregwa hatanzwe indishyi nyinshi. Kuvuga ko amasezerano y'igihe kizwi iyo asheshwe igihe cyateganyijwe kitageze, umukoresha atanga umushahara ungana n'igihe cyari gisigaye nkuko biteganywa mu ngingo ya 28 y'itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga umurimo, urukiko ntirwabiha agaciro kubera ko mu byo iyo ngingo iteganywa inakomeza ivuga ko nyuma yo gutanga uwo mushahara w'ukwezi kumwe hatirengagizwa izindi ndishyi zakwishyurwa. [7] Kuba rero ingingo ya 33 y'itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga umurimo ivuga ko iseswa ryose ry'amasezerano y'akazi rinyuranyije n'amategeko rishobora gutuma hatangwa indishyi

z'akababaro zihabwa umukozi wirukanwe binyuranyije n'amategoko zidashobora kujya mu nsi y'umushahara w'amezi atatu, ariko kandi ntizirenze amezi atandatu(6),urukiko rusanga indishyi zahawe abaregwa muri uru rubanza zari zikwiye kandi ziteganywa n'itegeko. Kuvugwa ko hatanzwe indishyi nyinshi nyamara nta gihombo kigaragazwa, urukiko rusanga nta gaciro byahabwa kubera ko igihombo cyabo kigaragarira mu kwirukanwa kikongera kugaragara mu kinegu batejwe no kwirukanwa mbere y'igihe cy'amasezerano.

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- [8] Kuvuga ko abaregwa birukanwe hagendewe ku ngingo y'amasezerano bagiranye na IRST kandi hagendewe ku ngingo ya 28 y'itegeko ry'umurimo,urukiko rusanga bitahabwa agaciro kuko itegeko ry'umurimo ariryo rigenga amasezerano akozwe hagati y'abakozi n'abakoresha nkuko biteganywa mu ngingo ya 2 y'itegeko ryavuzwe.Ntago rero IRST bakora amasezerano anyuranya n'itegeko ry'umurimo ngo nibarangiza baryitwaze mu kwima abakozi uburenganzira bwabo. b.Ku kibazo cyo kumenya niba hari abahawe indishyi z'ikiruhuko kandi baragihawe. [9] Me Mbonera uburanira IRST avuga ko urukiko rwategetse ko abaregwa bose bahabwa indishyi za konje batahawe kandi harimo abari barafashe konje,avuga ko abo ari nka Uwimana Joselyne,Kampire Valentine,Dusabe Jeannette,Ingabire Francoise na Kagabo Bernard.Avuga ko konje igibwaho impaka ari yo muri 2009,ko decompote final bahawe yari ibariwemo konje ya 2010,ko ari yo baherewe indishyi zo kudahabwa ikiruhuko.Me Pascal avuga ko ku bijyanye na konje ya 2009 abaregwa bari batarayihabwa igihe IRST yabirukanaga. Ko babaye barabishyuye babyereka urukiko kuko nta bimenyetso bashyikirijwe. Ko inyandiko zigaragazwa zatanze muri 2009 zabaga ari izo mu myaka yabanjije. [10] Urukiko rusanga uburanira IRST agaragaza ko Dusabe Jeannette,Ingabire Francoise,Kampire Valentine,Uwimana Joselyne na Kagabo Bernard bahawe ikiruhuko mu mwaka wa 2009 nkuko bigaragazwa n'inyandiko bahereweho ikiruhuko. Kuba bavuga ko inyandiko z'ikiruhuko zigaragazwa ari iz'imyaka yabanje, urukiko ntirwabiha agaciro kuko nta bimenyetso nkuko biteganywa mu ngingo ya 3 y'itegeko no 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, bigaragazwa. Rusanga kandi kuvuga ko inyandiko zigaragazwa ari iz'imyaka ibanza na none bitakwemerwa kuko abaregwa basinyaga kontaro y'umwaka umwe,bakaba rero batasigarwamo ikiruhuko cy'umwaka ngo bohe kukishyuzwa kandi kontaro yabo irangirana n'umwaka. [11] Rusanga rero indishyi Dusabe Jeannette,Ingabire Francoise,Kampire Valentine,Uwimana Joselyne na Kagabo Bernard bahawe zuko batahawe konji y'umwaka wa 2009 zitahabwa agaciro kuko bahawe izo ndishyi nyamara barahawe konji. c.Ku bijyanye no kumenya niba indishyi zisabwa mu bujurire bwuririye ku bundi zatangwa. [12] Me Pascal avuga ko IRST yajuriye byo gutesha igihe,ko itaraha abaregwa attestation de service rendu abo yirukanye nyuma y'imyaka itanu.Ko urukiko rwabitangiye indishyi z'amafaranga ibihumbi mirongo itanu,ko basaba ibihumbi Magana atanu kuri buri wese,bagasaba ibihumbi ijana y'ingendo n'ifunguro,urukiko rugatega IRST gutanga iyo attestation de service rendu hiyongereyeho indishyi z'ubukererwe n'igihembo cy'avoka cy'amafaranga ibihumbi Magana atanu(500000Frw).Me Mbonera avuga ko icyemezo cy'umurimo abaregwa

batigeze begera IRST ngo ikibime,ko indishyi z'amafaranga ibihumbi 50000 zatanzwe mbere zihagije nubwo ntacyo zashingiyeho,ko ay'ikurikiranarubanza hatagaragazwa ibimenyetso byuko yakoreshejweko igihembo cy'avoka kidakwiye kuko bajuriye bashaka ubutabera,ko urukiko rubibonye ukundi rwabagenera hagati y'ibihumbi magana abiri na magana atatu.

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- [13] Urukiko rusanga indishyi zisabwa n'abaregwa mu bujurire bwuririye ku bundi izikwiye gutangwa ari amafaranga ibihumbi ijana y'ikurikiranarubanza abaregwa batakaje bakurikiranye uru rubanza. Rusanga kandi hagomba gutangwa igihembo cy'avoka kingana n'ibihumbi Magana ane(400000Frw) kuko bahagarariwe mu rubanza. Aya yose akaba atanzwe hagendewe ku ngingo ya 258 y'igitabo cya gatatu cy'amategako mbonezamubano ivuga ko igikorwa cy'umuntu cyangirije undi gitegeka nyir'ugukora ikosa kuriha ibyangiritse. [14] Ku bijyanye n'indishyi zo kudahabwa cyemezo cy'umurimo,urukiko rusanga izo bagenewe ibihumbi mirongo itanu(50000Frw) zihagije rusanga kandi IRST igomba guha abaregwa buri wese icyemezo cyuko yayikoreye nkuko biteganywa mu ngingo ya 38 y'itegeko y'itegeko no 13/2009 ryo ku wa 27/05/2009 rigenga umurimo kuko ari uburenganzira bwabo bateganyirizwa n'itegeko(The work certificate is the right of an employee).Kuvuga ko bitaregwe mu rukiko rubanza,ko ari yo mpamvu bitasabwa mu bujurire,urukiko rusanga byaba ari ukwirengagiza kuko mu kiregerwa harimo no gusaba indishyi zo kudahabwa icyemezo cy'umurimo(refus de deliverance de l'attestation de service rendus). III.ICYEMEZO CY'URUKIKO [15] Rwemeje ko ubujurire bwa IRST bufite ishingiro kuri bimwe; [16] Rwemeje ko nta ndishyi zo kudahabwa konji ya 2009 zikwiye guhabwa Dusabe Jeannette,Ingabire Francoise,Kampire Valentine,Uwimana Joselyne na Kagabo Bernard; [17] Rwemeje ko IRST igomba guha abaregwa icyemezo cyuko bayikoreye; [18] Rwemeje ko IRST igomba guha Uwitije Claudine,Dusabe Jeannette,Uwimana Joselyne,Kampire

Valentine,Kagabo

Bernard,Ntahonkuriye

Jacqueline,Nyiramihama Constance,Ingabire Francoise na Mukankaka Ckantal bese hamwe amafaranga ibihumbi ijana(100000Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana ane(400000Frw) y'igihembo cy'avoka; [19] Rutegetse ko urubanza rujuririrwa rudahinduka uretse ku byategetswe mu bika bya 15,16 na 17; [20] .Rutegetse ko amagarama y'urubanza uko ari amafaranga ibihumbi bitanu magana cyenda mirongo itanu(5950Frw) aherera ku isanduku ya Leta.

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Prepared on 11 October 2026 · Esheria