

RWANDA / JUDGMENT

KANYARUKIKO v. WORLD VISION RWANDA (WVR)

RLR V.4-2018

COURT

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KANYARUKIKO v. WORLD VISION RWANDA (WVR)

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KANYARUKIKO v. WORLD VISION RWANDA (WVR) [Rwanda URUKIKO RW'IKIRENGA – N°RSOCAA 0002/12/CS (Hatangimbabazi, P.J., Mukamulisa na Rugabirwa, J.) 15 Mutarama 2016]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – guhatirwa kugoboka mu rubanza – Ababuranyi bafite uburenganzira bwo guhatira umuntu atararezwe mu rubanza kurugobokamo – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets, ingingo ya 116,117 na 118.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – ibisabwa kugirango ikirego cyakirwe – iregwa ry'ibigo, amashyirahamwe, imiryango bidafite ubuzima gatozi – Amashyirahamwe, imiryango n'ibigo bidafite ubuzima gatozi nti bishobora kurega ariko bishobora kuregwa – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets, ingingo ya 2.

Amategeko agenga umurimo – amasezerano y'umurimo – ibisabwa kugirango umuntu abe yaba umukozi ku umukoresha runaka – Kugirango umuntu yitwe umukozi w'umukoresha runaka nuko baba

barumvikanye ku kazi agomba gukora, bumvikana ku buryo azagenzurwa, banumvikana umushahara – Itegeko no 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 1(32), 14. Amategeko agenga imiburanishirize y’imanza z’imbenezamubano – ibimenyetso – ingaruka zo kubura ibimenyetso mu rubanza – Umuburanyi agomba kugaragaza ibimenyetso byibyo aregera iyo abibuze aratsindwa – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 3 niya 9. Incamake y’ikibazo: Kanyarukiko yareze World Vision Rwanda (WVR) mu Rukiko Rwisumbuye rwa Gasabo ayirega kutamuha ibyo amategeko amugenera harimo n’agenga abakozi bakorera World Vision Rwanda, kutamuha umushahara n’ibindi agenerwa n’amategeko ku mwanya mushya wa “SD Operator” yari yatangiye gukoraho, kwanga nkana gushyira mu nyandiko amasezerano y’akazi bagiranye, kwirukanwa binyuranyije n’amategeko. Akaba abisabira indishyi; urwo rukiko rwategetse WVR guha Kanyarukiko indishyi. WVR yajuririye Urukiko Rukuru maze rwemeza ko ubujurire bwayo bufite ishingiro maze rutegeka Kanyarukiko kuyiha amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka. Kanyarukiko yajuririye nawe Urukiko rw’Ikirenga avuga ko Urukiko Rukuru rutagombaga kwakira ubujurire bwa WVR kuko bwatanze bukerewe, ko Kisaro ADP Committee itagombaga guhatirwa kugoboka mu rubanza bwa mbere mu rwego rw’ubujurire ntawayibisabiye, ko kandi anenga Urukiko Rukuru kuba rwaremeje ko umukoresha we yari Kisaro ADP Committee rwirengagije ibimenyetso yari yarushyikirije byerekana ko yari umukozi wa World Vision Rwanda, ikaba ari yo yagombaga gusesa amasezerano yagiranye na Kisaro ADP Committee nk’agashami ka World Vision Rwanda. Ikindi ngo ntiyashyizwe ku umwanya wa “SD Operator” mu gihe yarugaragariye ibimenyetso byerekana ko yakoze kuri uwo mwanya. Mu Rukiko rw’Ikirenga, habanje gusuzumwa ibijyane no kuba urukiko rukuru rutaragomba kwakira ubujurire bwa WVR maze rwemeza ko iyo nzitizi nta shingiro ifite. Incamake y’icyemezo: 1. Ababuranyi bafite uburenganzira bwo guhatira umuntu atarareze mu rubanza kurugobokamo ni muri urwo rwego byari ngombwa guhamagaza ADP Kisaro (Kisaro Area Development Program) kugirango itange ibisobanuro bihagije ku mikoranire yayo na World Vision Rwanda.

2. Amashyirahamwe, imiryango n’ibigo bidafite ubuzima gatozi nti bishobora kurega ariko bishobora kuregwa, muri uru rubanza, Kisaro ADP Committee ikaba itarajemo nk’irega, ahubwo izamo nk’iregwa ku cyifuzo cyatanze na World Vision Rwanda.

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3. Kugirango umuntu yitwe umukozi w’umukoresha runaka nuko baba barumvikanye ku kazi agomba gukora, bumvikana ku buryo azagenzurwa, banumvikana umushahara nkuko rero bigaragara mu rubanza kanyarukiko yari umukozi wa Kisaro ADP Committee kuko amasezerano bagiranye mu kwerekana umukoresha n’inshingano ze, akanerekana umukozi n’inshingano ze ndetse n’ibyo agenerwa (igihembo).
4. Umuburanyi agomba kugaragaza ibimenyetso byibyo aregera iyo abibuze aratsindwa byityo rero Kanyarukiko ibyo avuga ko ari umukozi wa WVR akora akazi ka “SD Operator” nta shingiro byahabwa kuko uretse kubivuga gusa atigeze agaragaza amasezerano y’akazi

amushyira kuri uwo murimo, ngo agaragaze inshingano z'umukoresha n'iz'umukozi. Ubujurire nta shingiro bufite. Amagarama y'urubanza aherereye kuri Kanyarukiko. Amategeko yashingiweho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 2, 3, 9, 116, 117 na 118. Itegeko no 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 1(32), 14 Nta rubanza rwifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, kuri no RSOC 0707/11/TGI/GSBO, KANYARUKIKO Jean Jacques César arega World Vision Rwanda kutamuha ibyo amategeko amugenera harimo n'agenga abakozi bakorera World Vision Rwanda, kutamuha umushahara n'ibindi agenerwa n'amategeko ku mwanya mushya wa "SD Operator" yatangiye gukoraho kuwa 5 Ugushyirye 2009, kwanga nkana gushyira mu nyandiko amasezerano y'akazi bagiranye nyamara atarahwemye kubibubutsa, kwirukanwa binyuranyije n'amategeko nta n'icyo bashingiyeho, kubuzwa amahwemo no kujiragizwa mu kazi azizwa gusa ibitekerezo yatanze cyane cyane ku kuba ari mu basabaga ko bahabwa amasezerano yanditse y'akazi. [2] KANYARUKIKO Jean Jacques César, mu kirego cye, yasabaga nk'umukozi wa World Vision Rwanda, indishyi zose hamwe zingana na 125.892.536 Frw ziyongereyeho amadolari y'Amerika 176.040. [3] Kuwa 7/12/2012, Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza, rutegeka World Vision Rwanda guha KANYARUKIKO Jean Jacques César 26.279.472 Frw n'amadolari y'Amerika 108.000. [4] World Vision Rwanda ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru kuwa 08/01/2013, narwo ruca urubanza RSOC 0004/13/HC/KIG, maze rwo rwemeza ko ubujurire bwatanzwe na World Vision Rwanda bufite ishingiro, rutegeka KANYARUKIKO Jean Jacques César guha World Vision Rwanda 100.000 Frw y'ikurikiranarubanza na 300.000 Frw y'igihembo cy'Avoka.

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- [5] Mu mpamvu Urukiko Rukuru rwashingiyeho rufata icyo cyemezo, harimo ijyanye n'inzitizi yatanze na KANYARUKIKO Jean Jacques César yo kutakira ubujurire bwa World Vision Rwanda kubera ko bwatanzwe impitagihe, Urukiko rusanga nta shingiro ifite kubera ko ku itariki urubanza rwasomeweho, nta kigaragaza ko ababuranyi bari barayimenyesheje kuko nta nyandiko-mvugo yimura isomwa ry'urubanza ihari. [6] Ku bijyanye n'urubanza mu mizi, Urukiko Rukuru rwasanze KANYARUKIKO Jean Jacques César yarahawe akazi na Komite y'Akarere k'amajyambere arambye-Dufatanye (Kisaro ADP Committee) aba ari nayo isesa amasezerano ku wa 17/08/2010, hakaba nta kimenyetso na kimwe yerekanye cy'uko yahawe umwanya wa "SD Operator" na World Vision Rwanda. [7] Nyuma yo kugaragaza ko Kisaro ADP Committee (Komite y'Akarere k'amajyambere arambye- Dufatanye) ariwe mukoresha wa KANYARUKIKO Jean Jacques César, Urukiko Rukuru rwasanze nta mpamvu yo gusuzuma ibijyanye n'uko World Vision Rwanda yasheshe nta mpamvu amasezerano y'akazi KANYARUKIKO Jean Jacques César avuga ko bagiranye, ndetse no gusuzuma ibijyanye no kudahabwa ibyo agenerwa n'amategeko. [8] KANYARUKIKO Jean Jacques César ntiyishimiye imikirize y'urubanza ajuririra mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rutagombaga kwakira ubujurire bwa World Vision Rwanda kuko bwatanzwe bukerewe, ko

Kisaro ADP Committee itagombaga guhatirwa kugoboka mu rubanza bwa mbere mu rwego rw'ubujurire ntawayibisabiye, ko kandi anenga Urukiko Rukuru kuba rwaremeje ko umukoresha we yari Kisaro ADP Committee rwirengagije ibimenyetso yari yarushyikirije byerekana ko yari umukozi wa World Vision Rwanda, ikaba ari yo yagombaga gusesa amasezerano yagiranye na Kisaro ADP Committee nk'agashami ka World Vision Rwanda. [9] Avuga nanone ko Urukiko Rukuru rwavuze ko ntacyo yagaragazaga cyerekana ko yashyizwe na World Vision Rwanda, ku mwanya wa "SD Operator", nyamara yararushyikirije ibimenyetso bifatika byerekana ko yakozwe kuri uwo mwanya. [10] Ingingo y'ubujurire ijyanye no kuba Urukiko Rukuru rwarakiriye ubujurire bwa World Vision kandi yarabutanze ikererewe ni yo Urukiko rw'Ikirenga rwabanje gusuzuma mu iburanisha ryo mu ruhameryabaye kuwa 02/06/2015, KANYARUKIKO Jean Jacques César yunganiwe na Me NGIRUMPETSE Jean Marie Vianney afatanyije na Me RUTAGANIRA Alexandre, World Vision Rwanda ihagarariwe na Me MUHOZI Paulin afatanyije na Me GASARABWE Claudine, hari na Kisaro ADP Committee ihagarariwe na HABARUREMA Phocas yunganiwe na Me NKONJI Aristide. [11] Mu rubanza rwaciwe kuwa 10/07/2015, Urukiko rwemeje ko ingingo y'ubujurire ya KANYARUKIKO Jean Jacques César ijyanye n'inzitizi yari yatanze mu Rukiko Rukuru yo kutakira ubujurire bwa World Vision Rwanda (WVR) nta shingiro ifite, rwemeza ko iburanisha ry'urubanza ku zindi ngingo z'ubujurire rizakomeza mu mizi kuwa 03/11/2015. [12] Kuri iyo tariki, urubanza ntirwaburanishijwe bitewe n'uko hari imyanzuro KANYARUKIKO Jean Jacques César yari yagejeje ku Rukiko atari yaragejeje ku bandi baburanyi, bituma urubanza rwimurirwa kuwa 01/12/2015, kuri uwo munsu ababuranyi bakaba baritabye, KANYARUKIKO Jean Jacques César yunganiwe na Me NGIRUMPETSE Jean Marie Vianney afatanyije na Me RUTAGANIRA Alexandre, World Vision Rwanda ihagarariwe na Me MUHOZI Paulin afatanyije na Me GASARABWE Claudine, hari na Kisaro ADP Committee ihagarariwe na HABARUREMA Phocas yunganiwe na Me NKONJI Aristide.

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IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO: Kumenya niba Kisaro ADP Committee itaragombaga guhatirwa kugoboka mu rubanza mu rwego rw'ubujurire [13] KANYARUKIKO Jean Jacques César n'abamwunganira bavuga ko Kisaro ADP Committee yahatiwe kugoboka mu rubanza bwa mbere mu rwego rw'ubujurire mu Rukiko Rukuru, nyamara ntawayibisabiye (ultra petita), iri mu badashobora guhatirwa kurugobokamo ndetse n'Urukiko rukaba ntaho ruyigaragaza nk'umwe mu baburanyi kandi rwarayifasheho icyemezo kiyihatira kugoboka, akaba asaba ko yavanwa mu rubanza kuko ari urwego rwa World Vision Rwanda. [14] Abahagarariye World Vision Rwanda bavuga ko iki kibazo cyafashweho icyemezo n'Urukiko Rukuru tariki ya 28/11/2013, byongeye kandi "organigramme" ya World Vision Rwanda bashyikirije Urukiko ikaba itagaragaza ko ADP Committee ari urwego rwa World Vision Rwanda, ari yo mpamvu basabye ko ihatirwa kugoboka mu rubanza. [15] Bakomeza bavuga ko no mu Rukiko Rwisumbuye rwa GASABO bari basabye kugobokesha umukoresha wa KANYARUKIKO Jean Jacques César, ari we Kisaro ADP Committee, mu bujurire, Urukiko Rukuru rufata icyemezo cyo kuyigobokesha. UKO URUKIKO RUBIBONA [16] Ku bijyanye no guhatira umuntu kugoboka mu rubanza, ingingo ya 116

y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, riha uburenganzira ababuranyi guhatira umuntu utarurezwemo kurugobokamo¹, iya 117 igateganya ko abantu bashobora guhatirwa kugoboka mu rubanza "bikorwa ku muntu wese utaburana urubanza akaba ategereje ko rucibwa ngo arutambamire kandi hari umuburanyi ushaka kumufatanyana n'uwo baburana ngo abatsindire mu rubanza rumwe" naho iya 118 ikavuga ko "Kugoboka bigamiye gusaba ko uhatiwe kugoboka agira ibyo acibwa bidashobora gukorwa bwa mbere mu rwego rw'ubujurire". [17] Ku bijyanye no kumenya niba Kisaro ADP Committee yarahatiwe kugoboka bwa mbere mu rwego rw'ubujurire, ni ukuvuga mu Rukiko Rukuru, nk'uko bivugwa na KANYARUKIKO Jean Jacques César, dosiye y'uru rubanza igaragaza ko mu Rukiko Rwisumbuye rwa Gasabo, uwaburaniraga World Vision Rwanda yasabye ko ADP KISARO igobokeshwa mu rubanza, ariko nk'uko bigaragara mu cyemezo cyafashwe n'urwo Rukiko kuwa 7/12/2012, ku gika cya 9, rwemeza kutagobokesha KISARO ADP kuko ari urwego World Vision Rwanda ikoreramo (structure). [18] Hakurikijwe ibimaze kuvugwa haruguru, Urukiko rurasanga ibivugwa na KANYARUKIKO Jean Jacques César by'uko mu Rukiko Rukuru ari ho Kisaro ADP Committee yagobokeshejwe gusa atari ukuri, kuko binyomozwa n'urubanza rumaze kuvugwa, aho rwerekana ko Urukiko Rwisumbuye rwanze icyifuzo cyo kutagobokesha uwo World Vision Rwanda yitaga umukoresha wa KANYARUKIKO Jean Jacques César. 1 Ingingo ya 116 y'iryo Tegeko igira iti: "Guhatirwa kugoboka ni uburenganzira bw'ababuranyi bwo kuzana mu rubanza umuntu utarurezwemo"

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[19] Urukiko rurasanga kandi kuba kiriya cyemezo cyafashwe n'Urukiko Rwisumbuye cyo kutagobokesha Kisaro ADP Committee nk'uko World Vision Rwandayabisabaga, ari imwe mu mpamvu zatumye ijuririra Urukiko Rukuru nk'uko bigaragarira mu myanzuro yayo y'ubujurire yashyikirije urwo Rukiko, maze mu cyemezo rwafashe kuwa 24/07/2013, urwo Rukiko rwemeza ko mbere yo gufata icyemezo kuri icyo kibazo, ari ngombwa guhamagaza ADP Kisaro (Kisaro Area Development Program) kugirango iruhe ibisobanuro bihagije ku mikoranire yayo na World Vision Rwanda. [20] Ni muri urwo rwego ku itariki ya 07/11/2013, Urukiko Rukuru, rwumvise Umuhuzabikorwa (coordinateur) wa ADP Kisaro witwaga NDACYAYISENGA Jean de Dieu, arusobanurira imikoranire cyangwa isano iri hagati ya World Vision Rwanda, ADP Kisaro (Kisaro Area Development Program), ADP Committee (Komite y'Akarere k'amajyambere arambye-Dufatanye) ndetse n'Akarere ka Gicumbi (Gicumbi District) izo ADP zikorera, noneho rwemeza ko impamvu y'ubujurire yatanze na World Vision Rwanda irebana no guhatira kutagobokesha mu rubanza ADP Committee ifite ishingiro; rutegeka ko ADP Committee igobokeshwa mu rubanza, ikaba yaraje kwitaba mu iburanisha mu mizi y'urubanza ryashyizwe kuwa 11/02/2014, ihagarariwe na HABARUREMA Phocas, kandi ashyikiriza Urukiko inyandiko igaragaza ko ariwe watorewe kuba Perezida wayo. [21] Urukiko Rukuru, rumaze kugaragarizwa ko Kisaro ADP Committee ariyo mukoresha wa KANYARUKIKO Jean Jacques César, rwasanze nta mpamvu yo gusuzuma ibijyanye n'uko World Vision Rwanda (WVR) yasheshe nta mpamvu amasezerano y'akazi KANYARUKIKO Jean Jacques César avugaga ko bagiranye, ndetse no gusuzuma ibijyanye no

kudahabwa ibyo agenerwa n'amategeko nk'uko byavuzwe haruguru. [22] Hashingiwe ku bisobanuro bimaze gutangwa haruguru, Urukiko rurasanga ibivugwa na KANYARUKIKO Jean Jacques César n'abamwunganira by'uko Urukiko Rukuru rwafashe icyemezo ku byo rutari rwasabwe (ultra petita), rugahatira Kisaro ADP Committee kuza mu rubanza nyamara rwaragombaga guhatira ADP Kisaro nta shingiro bifite, kuko Urukiko Rukuru rwagaragaje impamvu iyo Kisaro ADP Committee ari yo yagombaga guhatirwa kugoboka mu rubanza. [23] Naho ku bijyanye n'ibivugwa na KANYARUKIKO Jean Jacques César n'abamwunganira by'uko Kisaro ADP Committee itashoboraga kuza mu rubanza nk'umuburanyi, kubera ko nta buzima gatozi ifite, ahubwo ari agashami ka World Vision Rwanda, ko rero yari ikwiye kuvanwa mu rubanza, Urukiko rurasanga na byo nta shingiro bifite, kuko ingingo ya 2 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu gace kayo ka 2 iteganya ko amashyirahamwe, imiryango n'ibigo bidafite ubuzima gatozi bidashobora kurega ariko ko bishobora kuregwa, muri uru rubanza, Kisaro ADP Committee ikaba itazamo nk'irega, ahubwo izamo nk'iregwa ku cyifuzo cyatanzwe na World Vision Rwanda. Kumenya niba KANYARUKIKO Jean Jacques César yari umukozi wa World Vision Rwanda, cyangwa wa Kisaro ADP Committee. [24] KANYARUKIKO Jean Jacques César n'abamwunganira bavuga ko Urukiko Rukuru rwakoze amakosa akomeye yo kumwita umukozi wa Komite ya ADP KISARO nyamara yatanze ibimenyetso bihagije by'uko yakoreraga World Vision Rwanda, mu gashami kayo ka ADP Kisaro (Kisaro Area Development Program), ibyo bimenyetso bikaba birimo inyandiko ya "Job Description" yerekana ibyo yakoraga, kuba ari World Vision Rwanda yamuhembaga, ikamwishyurira amafaranga y'ubwiteganyirize muri "Caisse Sociale", ikamukata umusoro ku mushahara (TPR), amafaranga ajya mu isanduku ya FARG, ikamuha za "ordres de mission", ikamuha amabwiriza yo mu kazi, ikaba yaranamwandikiraga nk'umukozi

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wayo nk'uko hari za "emails" zibigaragaza, byose bigaragaza ko World Vision Rwanda yitwaraga nk'umukoresha we nk'uko biteganywa n'ingingo ya 47 n'ya 48 z'itegeko rigenga umurimo. [25] Bavuga ko muri ibyo bimenyetso hari na "Letter of Understanding" yasinywe hagati ya Chairman wa ADP Committee na World Vision Rwanda yerekana inshingano ndetse n'ububasha bw'iyo Committee, KANYARUKIKO Jean Jacques César we akaba yaragiranye n'iyi ADP Committee amasezerano kubera ko World Vision Rwanda yari imaze kuyiha "mandat" yo kuyasinya, ko rero nta kuntu yari kuba "mandataire" ngo ihindukire ibe n'umukoresha. [26] Bavuga ko kuba Urukiko Rukuru rwaravuze ko KANYARUKIKO Jean Jacques César yahawe akazi na Kisaro ADP (Kisaro Area Development Program), ari ukwirengagiza ko iyi ari agashami ka World Vision Rwanda, kakaba kari gafite urwego rwitwa ADP Committee. [27] Basobanura ko Kisaro ADP yashinzwe na World Vision Rwanda, iyiha ububasha n'inshingano, muri izo nshingano, akaba ariho haza ibyo gushyiraho ADP Committee, nayo ihabwa uburenganzira na World Vision Rwanda bwo gushyira abakozi mu kazi no gukurikirana imicungire yabo, ko ibyo bigaragarira mu itangazo ryatanzwe na ADP Committee ishaka abakozi, ko rero kuba ibaruwa imwirukana yarasinywe na Perezida wa

ADP Committee atari byo bivuga ko yayikorera. [28] Ababuranira World Vision Rwanda bavuga ko uwari ukuriye KANYARUKIKO Jean Jacques César yari Perezida wa ADP Committee, ko ndetse atanga ikirego bwa mbere, yifataga nk'umukozi wayo. Bavuga ko nta na hamwe KANYARUKIKO Jean Jacques César yigeze agaragaza amasezerano y'akazi yagiranye na World Vision Rwanda, ko uretse n'ibyo, hari amabaruwa yanditse agaragaza ko yari umukozi wa ADP Committee, aho kuwa 12/01/2010 yandikiye Perezida wa ADP Committee amusaba imbabazi ku kuba yarashatse kwifatanya n'abandi baturage kwivumbura kugira ngo bafatwe nk'abakozi ba World Vision Rwanda, nyamara barebwa na ADP Committee. [29] Bavuga ko abakozi bemewe ba World Vision Rwanda, bari gusa mu nzego eshatu ari zo: SD Operator, Accountant na ADP Manager, KANYARUKIKO Jean Jacques César akaba atarigeze agaragaza ko ari umwe muri abo bakozi bamaze kuvugwa. [30] Bavuga kandi ko ibyo gushyirwa muri "Caisse Sociale", cyangwa gukatwa amafaranga ya TPR n'amafaranga ya FARG n'ibindi, atari World Vision Rwanda yabikoraga, ahubwo ari ADP Committee, ko ndetse ari nayo yateguraga imishahara ye, ikanamuhemba, n'ubwo amafaranga yakoresheye muri iryo hemba yaturukaga muri World Vision Rwanda nk'umuterankunga, ko ariko "Memorandum Of Understanding" yo kuwa 09/07/2009, ari yo yasobanuraga ko ayo mafaranga yagombaga gukatwa. [31] Ku bijyanye no kuba uruhare rwa World Vision Rwanda rwari urwo gutera inkunga, bavuga ko ibyo bigaragararira muri "Memorandum Of Understanding", aho bigaragara ko icyo yatangaga ari uguteza abaturage imbere inyujije inkunga yayo muri ADP KISARO, ko rero kuba uri umuterankunga bitavugaga ko uri umukoresha w'umuntu. Bavuga ko icyo nyandiko yasinywe hagati y'impande eshatu ari zo World Vision Rwanda, Akarere ka Gicumbi na ADP Committee, igaragaraza inshingano za buri ruhande mu guteza imbere abaturage (community) bahagarariye na "ADP Chairman". [32] Bongeraho ko hadakwiye gushingirwa kuri "Letter of understanding" ivugwa na KANYARUKIKO Jean Jacques César kuko yo yasinywe hagati y'abantu babiri, kandi ikaba yarashajwe

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kuko yaragiranye n'umwaka wa 2006, nyuma y'aho akaba ari ho habaye ubwumvikane bukubiye muri "Memorandum Of Understanding" yo kuwa 09/07/2009, yavuzwe haruguru. [33] .Kuri iki kibazo cyo kumenya niba KANYARUKIKO Jean Jacques César yari umukozi wa ADP Committee cyangwa wa World Vision Rwanda, umuyobozi wa ADP Committee avugaga ko amasezerano y'umurimo KANYARUKIKO Jean Jacques César yayagiranye na ADP Committee, ariko ikaba yarahabwaga inkunga na World Vision. Asobanura ko hari ikitwa KISARO ADP, hakaba n'urwego rwitwa ADP Committee ruhagarariye abaturage, noneho ADP Committee akaba ari yo yagiranye amasezerano na KANYARUKIKO Jean Jacques César nk'urwego ruhagarariye abaturage rutagira amafaranga, ahubwo ruyahabwa na World Vision Rwanda anyujijwe kuri konti ya KISARO ADP Committee. UKO URUKIKO RUBIBONA [34] Ingingo ya 9 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivugaga ko « Urega agomba kugaragaza ibimenyetso by'ibyo aregera, iyo abibuze, uwarezwe aratsinda ». Naho ingingo ya 3 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igateganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana [.....]" [35] Ingingo ya 1, agace ka 32, y'Itegeko no 13/2009 ryo

kuwa 27/05/2009 rigenga umurimo mu Rwanda iteganya ko “umuntu wese wemeye gukorera undi ku gihembo, agengwa kandi agategukwa na we”. Naho iya 14 y’iryo Tegeko ikavuga ko “amasezerano y’akazi akorwa ashingiye ku bwumvikane bw’umukoresha n’umukozi. Umukozi yemera gukorera umukoresha kandi akayoborwa na we, umukoresha na we akemera kumuhemba umushahara bumvikanye”. [36] Ku bijyanye n’ibimenyetso bigaragaza ko KANYARUKIKO Jean Jacques César yari umukozi wa World Vision Rwanda cyangwa wa Kisaro ADP Committee, dosiye y’uru rubanza (cote 141) igaragaza ko kuwa 09/02/2006, hagati ya KANYARUKIKO Jean Jacques César nk’umukozi, na Komite ya Kisaro ADP nk’umukoresha, ihagarariwe na NTUYENABO Pierre Célestin, hasinywe amasezerano y’akazi y’igihe kitazwi, ingingo ya mbere y’ayo masezerano ikavuga ko azakora umurimo wa CRS assistant (wo kungiriza ushinzwe abana). [37] Ku bijyanye n’umushahara we, ingingo ya kane y’ayo masezerano iteganya ko azajya ahembwa “amafaranga 90.000 agakurwaho imisoro n’imisanzu nkuko amateguko ya Repubulika y’u Rwanda abiteganya”. [38] Hashingiwe kuri ayo masezerano, ikigaragarira Urukiko ni uko KANYARUKIKO Jean Jacques César yahawe akazi na Komite y’Akarere k’amajyambere arambye-Dufatanye ka Kisaro, ari yo yitwa “Kisaro ADP Committee”, ndetse ikaba ari nayo yamuhembaga nk’uko byibukijwe haruguru. 2 Agace ka 7.3 ka “Letter of understanding” kavuga ko ifite agaciro kuwa 17/04/2006 kugeza kuwa 30/09/2006 (effective from April 17 th, 2006 up to September 30th, 2006)

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[39] Urukiko rurasanga nk’uko byavuzwe n’Urukiko Rukuru, iby’ingenzi kugirango KANYARUKIKO Jean Jacques César yitwe umukozi w’undi bigaragara mu masezerano yagiranye na Kisaro ADP Committee, kuko bumvikanye ku kazi agomba gukora, bumvikana ku buryo azagenzurwa, banumvikana umushahara nk’uko bivugwa n’ingingo ya 1 n’iya 14 z’y’Itegeko no 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda zavuzwe haruguru. [40] Ibi kandi birongera gushimangirwa n’izindi nyandiko zinyuranye ziri muri dosiye y’uru rubanza, zirimo “Job description for CRS assistants” ifite uduke 14, nayo yasinywe kuwa 09/02/2006 hagati ya KANYARUKIKO Jean Jacques César n’abayobozi ba KISARO ADP, barimo NTUYENABO Pierre Célestin, ikaba yaramusobanuriraga uburyo akazi yahawe agomba kugakora, mu gace ka 13, ikerekana ko nka “CRS assistant”, yagombaga guhabwa akazi n’abamukuriye barimo “CRS secretary & ADP Coordinator). [41] Byongera gushimangirwa na “Etat des relevés nominatifs” za Rwanda Social Security Board ziri muri dosiye (cote 156) zerekana ko amafaranga y’ubwiteganyirize bwa KANYARUKIKO Jean Jacques César, icyo kigo cyayavanaga kuri ADP KISARO, mu gihe abandi bakozi nka MUGENYI Disan icyo kigo kigaragaza ko ubwiteganyirize bwe cyabuvanyaga kuri World Vision Rwanda. [42] Kuba KANYARUKIKO Jean Jacques César na we ubwe yarifataga nk’umukozi wa Kisaro ADP Committee byongera gushimangirwa n’inyandiko yo kuwa 11/10/2007 aho KANYARUKIKO Jean Jacques César na bagenzi be bandikiraga umukoresha wabo, ari we Perezida wa Komite ya ADP KISARO bamushyikiriza ibibazo n’ibyifuzo byabo birebana n’inshingano zabo mu kazi n’uburyo ibyo bibazo byakemurwa, bakaba baragaragazaga ko umushahara bahabwa udahuje n’inshingano ziremereye bafite (cote 230 dosiye HC), nyuma KANYARUKIKO Jean

Jacques César ubwe, kuwa 12/02/2010, akandikira Perezida w'iyi Komite amusaba imbabazi zo kuba yari mu banditse iyo baruwa. [43] Urukiko rurasanga KANYARUKIKO Jean Jacques César atari kwandikira Perezida wa Komite ya ADP KISARO, amugezaho icyifuzo cyo kumuhindurira umushahara kubera inshingano ziremerye afite, atari uko yemeraga ko uwo yabisabaga ari umukoresha we koko ndetse akongera kumwandikira amusaba imbabazi. [44] Ku bijyanye n'ibivugwa na KANYARUKIKO Jean Jacques César by'uko, n'ubwo hari izo inyandiko zimaze kuvugwa, yari umukozi wa World Vision Rwanda hashingiwe kuri "Letter of Understanding" yasinywe kuwa 25/04/2006 hagati ya World Vision Rwanda na Kisaro ADP Committee ihagarariwe na NTUYENABO Pierre Célestin wavuzwe haruguru, Urukiko rurasanga nta na hamwe muri icyo nyandiko havugwamo ko KANYARUKIKO Jean Jacques César yari umukozi wa World Vision Rwanda, cyane cyane ko ku rupapuro rwa kabiri rw'iyi "Letter of Understanding", ku gika cya 4.1.4, handitsemo ko "The ADP Committeeshall employ, dismiss and administer Community ADP staff. The Community ADP staff shall be

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governed by Rwandan Labor Code and their salaries will be paid from the ADP budget", bisobanuye ko ADP Committee ikoresha abakozi bayo, ifite uburenganzira bwo kubirukana no kubacunga, ndetse ifite "budget" yayo izajya ikoresha itanga imishahara y'abo bakozi, bikumvikanisha rero ko yari ifite ubwisanzure mu micungire y'abakozi n'imari ikoresha (autonomie administrative et financière). [45] Ku bijyanye n'ibivugwa na KANYARUKIKO Jean Jacques César by'uko ADP Committee yari urwego rwa Kisaro ADP, iyi nayo ikaba ishami rya World Vision Rwanda, akabiheraho yemeza ko yari umukozi wa World Vision Rwanda, Urukiko rurasanga na byo nta shingiro bifite, kuko icyo "Letter of Understanding" ashingiraho igaragaza ari impande ebyiri zitandukanye, ziswe "partners" nk'uko bigaragara mu ntangiriro y'iyi nyandiko aho igira iti: "This document is a joint declaration by two partners, World Vision Rwanda as a facilitator, and the ADP (Area Development Program), as the implementor". [46] Uretse kandi n'ibyo, kuba byonyine hagaragajwe ko hakurikijwe ingingo ya 1 n'ya 14 z'Itegeko no 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda ryavuzwe haruguru, hari iby'ingenzi byujujwe kugirango KANYARUKIKO Jean Jacques César yitwe umukozi wa Kisaro ADP Committee bihagije kugirango ye kwiyita umukozi wa World Vision Rwanda kuko atigeze agaragaza ko World Vision Rwanda ari yo yamugenzuraga mu kazi nk'uko bivugwa mu ngingo ya 14 yibukijwe haruguru, mu gihe amasezerano yagiranye na Kisaro ADP Committee asobanutse mu kwerekana umukoresha n'inshingano ze, akanerekana umukozi n'inshingano ze ndetse n'ibyo agenerwa (igihembo). [47] Naho ku bivugwa na KANYARUKIKO Jean Jacques César by'uko yari umukozi wa World Vision Rwanda, akora akazi ka "SD Operator", Urukiko rurasanga na byo nta shingiro bifite kuko, uretse kubivuga gusa, atigeze agaragaza amasezerano y'akazi amushyira kuri uwo murimo, ngo agaragaze inshingano z'umukoresha n'iz'umukozi nk'uko zivugwa mu ngingo ya 1, agace ka 32, n'ya 14 z'Itegeko no 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda zibukijwe haruguru. Ahubwo kuri cote 192 ya dosiye y'uru Rukiko, KANYARUKIKO Jean Jacques César yagaragaje amasezerano y'akazi y'igeragezwa kuri uwo mwanya wa "SD Operator", yakorewe undi

mukozi witwa Jean Claude KABALISA (Probationary employment contract), uyu akaba yaremerewe na World Vision Rwanda umushahara wa 551.588,99 Frw, kandi ako kazi akagakorera muri Kisaro, bikagaragara ko icyo KANYARUKIKO Jean Jacques César yarifuzaga na we ari uko yagira amasezerano nk'ayo yakorewe mugenzi we, nyamara rukaba rusanga kuba atarayahawe atabihinduramo ko nawe yagombaga gufatwa nka "SD Operator" kandi nta kimenyetso abigaragariza. [48] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rurasanga ubwo bigaragara ko KANYARUKIKO Jean Jacques César atari umukozi wa World Vision Rwanda (WVR), ubujurire bwe bugamije kunenga urubanza rwaciwe n'Urukiko Rukuru nta shingiro bufite.

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III. ICYEMEZO CY'URUKIKO [49] Rwemeje ko ubujurire bwa Kanyarukiko Jean Jacques César nta shingiro bufite; [50] Rwemeje ko urubanza RSOCA 0004/13/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali kuwa 10/03/2014 rudahindutse; [51] Rutegetse Kanyarukiko Jean Jacques César gutanga amagarama y'urubanza ahwanye na 100.000 Frw

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