

RWANDA / JUDGMENT

MUHIRE vs. AKARERE KA KAYONZA

002/MOH/2019 OF 08/04/2019

COURT

Supreme Court

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MUHIRE vs. AKARERE KA KAYONZA

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Text

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MUHIRE vs. AKARERE KA KAYONZA [Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RAD 00006/2023/CA – (Rukundakuvuga, J. P., Ngagi na Munyangeri, J.) 18 Mutarama 2024] Amategeko agenga imanza z'ubutegetsi – Urwego rwa Leta – Ipiganwa ry'akazi – Gushyira mu mwanya w'umurimo umukozi watsinze ikizamini – Gutsinda ikizamini ntibihagije kugira ngo umuntu ahite ashwirwa mu mwanya w'umurimo wa Leta yatsindiye, ahubwo urwego rwa Leta rugiyeye gushyiraho umukozi watsinze ikizamini rufite inshingano yo gusuzuma niba nta nenge cyangwa se impamvu yatuma adashwirwa muri uwo mwanya harimo no gusuzuma ko uwo muntu ari inyangamugayo.

Incamake y'ikibazo: Muhire wakoze ikizamini cy'akazi ku mwanya w'umunyamabanga nshingwabikorwa w'umurenge akagitsinda ariko ntashyirwe muri uwo mwanya, yareze Akarere ka Kayonza mu Rukiko Rwisumbuye rwa Ngoma arusaba gutegeka ako Karere kakamushyira muri uwo mwanya, rukagategeka kumwishyura imishahara yose yakagombye kuba yarahembwe, ibazwe kuva igihe yawutsindiye ndetse no kumuha izindi ndishyi zijyanye nabyo. Urukiko Rwisumbuye rwemeje ko ikirego cy'Urega nta shingiro gifite kubera ko atimwe akazi n'ako Karere nkuko abivuga ahubwo impamvu ari uko yirukanwe hashingiwe ku ibaruwa Minaloc yandikiye

Akarere ka Kayonza ikamenyesha iryo yirukanwa rye ubwo yari umukozi mu mushinga wakoreraga muri icyo cyemezo, Urega yakijuririyemo mu Rukiko Rukuru, urugereko rwa Rwamagana, avuga ko impamvu Urukiko Rwisumbuye rwashingiyeho rwemeza ko atimwe akazi, idakurikije amategeko kuko we yari umukozi wa CTB, ikaba itari ikigo cya Leta, nk'uko bigaragazwa n'amasezerano y'akazi, ndetse ko n'ibyo yagenerwaga bidahabwa abakozi ba Leta. Akarere ka Kayonza kireguye kavuga ko ubujurire bw'Urega nta shingiro bugomba guhabwa gashingiye ku mabaruwa kandikiwe yaho Urega yakoraga agaragaza imyitwarire mibi yamuranze ndetse akaba atagomba no kubiharerwa indishyi. Urukiko Rukuru rwemeje ko ubujurire bw'Urega nta shingiro bufite kuko impamvu yatumye adashyirwa mu mwanya w'akazi yatsindiye ikurikije amategeko. Ibi byatumye Urega asaba ko uru rubanza rusubirwamo ku mpamvu z'akarengane, arabyemererwa ruhabwa kuburanishwa n'uru Rukiko rw'Ubugurire. Avuga ko yareganyijwe kubera ko atigeze aba umukozi wa Leta, akaba yarabitangiyemo ibimenyetso birimo amasezerano y'akazi, ibyo yagenerwaga bitagenerwa abakozi ba Leta ariko ibyo byose Urukiko Rukuru ntirwabihaye agaciro. Akomeza avuga ko mu rubanza rusubirishwamo, urukiko rwashingiye ku bisobanuro n'ibimenyetso Akarere katanze mu kwemeza ko atagomba guhabwa umwanya yari yatsindiye, aha akaba ari ho akarengane yagiriwe gashingiye. Akarere gasobanura ko katigeze kemeza ko Urega yirukanwe mu bakozi ba Leta ahubwo ko kanze kumushyira mu mwanya yari yatsindiye w'umunyamabanga nshingwabikorwa w'umurenge kubera amakosa yamuranze mu bihe bitandukanye kugeza ubwo yirukanywe burundu mu gihe yakoraga muri Rwanda Decentralisation Support Program (RDSP), umushinga waterwaga inkunga na Cooperation Technique Berge (BTC- CTB) Rwanda muri Minisitiri y'Ubutegetsi bw'Igihugu. Ikindi ni uko no mu manza zabanje ntaho Urukiko rwigeze rubivuga ahubwo zo zagiye zemeza ko impamvu kashingiyeho kanga kumushyira mu mwanya yatsindiye yemewe n'amategeko. Bityo, Akarere kakaba gasaba uru Rukiko kwemeza ko Urega nta karengane yagiriwe. Incamake y'icyemezo: Gutsinda ikizamini ntibihagije kugira ngo umuntu ahite ashirwa mu mwanya w'umurimo wa Leta yatsindiye, ahubwo urwego rwa Leta rugiyeho gushyiraho umukozi

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watsinze ikizamini rufite inshingano yo gusuzuma niba nta nenge cyangwa se impamvu yatuma adashyirwa muri uwo mwanya harimo no gusuzuma ko uwo muntu ari inyangamugayo. Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, nta shingiro gifite. Amategeko yashingiyeho: Sitati Rusange igenga abakozi ba Leta N° 017/2020 yo ku wa 07/10/2020, ingingo ya 5 n'ya 6. Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza, iz'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111. Iteka rya Perezida No128/01/ ryo ku wa 03/12/2020 ryerekeye gushaka abakozi ba Leta n'amahugurwa ahabwa abakozi bagitangira akazi, ingingo ya 25. Iteka rya Perezida N°144/01 ryo ku wa 13/04/2017 rigena uburyo bwo gushaka, gushyiraho no gushyira mu myanya abakozi ba Leta, ingingo ya 21 n'ya 25. Iteka rya Perezida N°45/01 ryo ku wa 30/06/2015 rigena imyitwarire mbonezamurimo y'abakozi ba Leta, ingingo ya 7. Iteka rya Minisitiri N° 03/mifotra/15 du 09/06/2015 rigena uburyo bwo gushaka no gucunga abakozi ba Leta bagengwa n'amasezerano mu butegetsi bwa Leta, ingingo ya 5, 6 n'ya 7. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Muhire Constatin yatsinze

ikizamini cyo kuba Umunyamabanga Nshingwabikorwa mu Karere ka Kayonza, ariko ntiyashyirwa mu kazi, ajuririra ikosorwa ry'ibizamini muri Komisiyo y'Abakozi ba Leta, iyi yemeza ko yatsinze ikizamini ko akwiye guhabwa akazi. Impamvu atashyizwe mu kazi, akaba ari imyitwarire yagiye imuranga aho yakoreye muri CTB akaza kwirukanwa, ko rero iyo myitwarire itamwemerera kuba mu nshingano z'Umunyamabanga Nshingwabikorwa w'Umurenge. [2] Muhire Constatin yareze Akarere ka Kayonza mu Rukiko Rwisumbuye rwa Ngoma, arusaba gutegeka ko ashirwa mu mwanya w'Umunyamabanga Nshingwabikorwa w'Umurenge muri ako Karere kubera ko yatsinze ibizamini nk'uko raporo ibigaragaza. Asaba kandi ko kamwishyura amafaranga angana na miliyoni icyenda (9.000.000 Frw) y'imishahara yakagombye kuba yarahembwe kuva yatsindira uwo mwanya mu kwezi kwa 8/2020, ndetse kakanamuha amafaranga angana na miliyoni imwe (1.000.000 Frw) y'indishyi z'akababaro n'igihembo cya Avoka kubera kumushora mu manza bitari ngombwa, no kumusubiza igaragama yatanze. [3] Mu rubanza RAD 00002/2021/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 13/01/2021, Urukiko rwemeje ko ikirego cya Muhire Constantin nta shingiro gifite, ko kuba MINALOC yarandikiye Akarere ka Kayonza ikamenyesha ko Muhire Constantin yirukamwe mu bakozi ba Leta, bihamya ko ibikubiye muri iyo baruwa byabayeho, bityo ko atimwe akazi n'ako Karere binyuranyije n'amategeko, kuko gafite gihamya ko yirukanwe mu bakozi ba Leta, bityo ko amafaranga y'igarama Muhire Constantin yatanze arega ahwanye n'ibyakozwe muri urwo rubanza. [4] Muhire Constatin yajuririje Urukiko Rukuru, Urugereko rwa Rwamagana, avuga ko impamvu Urukiko Rwisumbuye rwa Ngoma rwashingiweho ruvuga ko atimwe akazi n'Akarere ka Kayonza binyuranyije n'amategeko atari yo, kuko we yari umukozi wa CTB, kandi ikaba itari ikigo cya Leta, nk'uko bigaragazwa n'amasezerano y'akazi, ndetse ko n'ibyo yagenerwaga bidahabwa

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abakozi ba Leta. Avuga kandi ko ako Karere kanze kugaragaza ibaruwa yandikiwe MINALOC isaba kumenya niba CTB wari umushinga uyishamikiyeho. [5] Akarere ka Kayonza kireguye kavuga ko iyi mpamvu y'ubujurire nta shingiro yahabwa, kuko MINALOC yemeje ko umushinga CTB/ENABEL ushamikiye kuri Minisiteri nk'uko yabyanditse isubiza ibaruwa yari yandikwe n'ako Karere, ndetse hakaba hari n'ibaruwa yanditswe na CTB isezerera Muhire Constatin mu kazi. Kavuga kandi ko nta ndishyi akwiye guhabwa. Mu gusoza gasaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [6] Mu rubanza RADA 00002/2022/HC/RWG (CMB RADA 00003/2022/HC/RWG) rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku wa 18/10/2022, urwo Rukiko rwemeje ko: - ikirego cy'ubujurire cya Muhire Constatin nta shingiro gifite; - Muhire Constatin atashyizwe mu mwanya yatsindiye mu Karere ka Kayonza kubera impamvu iteganywa n'amategeko; - urubanza RAD 00002/2021/TGI/NGOMA rwo ku wa 13/01/2022 rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ruhindutse gusa ku ndishyi; Rutegeka Muhire Constatin kwishyura Akarere ka Kayonza amafaranga ibihumbi magana atandatu (600.000 Frw) agenwe ku nzego zose, ko kandi amagarama Muhire Constatin yatanze ajurira aherejwe ku Isanduku ya Leta. [7] Muhire Constantin yasabye ko urubanza RADA 00002/2022/HC/RWG rusubirwamo ku mpamvu z'akarengane, mu cyemezo nimeru 139/CJ/2023 Perezida w'Urukiko rw'Ikirenga yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, arwohereza mu

Rukiko rw'Ubujurire kugira ngo abe arirwo ruruburanisha, ikirego cyandikwa kuri RS/INJUST/RAD 00006/2023/CA; urubanza ruburanishwa mu ruhame ku wa 03/01/2024, Muhire Constantin yunganiwe na Me Sematungo Clément, naho Akarere ka Kayonza gahagarariwe na Me Hategekimana Gratien. [8] Mu myanzuro no mu miburanire ye Muhire Constantin avuga ko yarenganyijwe n'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko yirukanwe mu bakozi ba Leta kandi atarigeze aba umukozi wa Leta, ko n'ikigo yakoreraga CTB atari ikigo cya Leta, bityo ko icyemezo cyafashwe n'Akarere ka Kayonza cyo kutamushyira mu mwanya yatsindiye w'Umunyabanga Nshingwabikorwa w'Umurenge kinyuranyije n'amategeko, akaba agomba guhabwa indishyi mbonezamusaruro zingana na miliyoni mirongo itandatu (60.000.000 Frw) zibazwe mu gihe cy'amezi mirongo ine (40) ashize kuva atsinze ikizamini, hashingiwe ku mushahara wa miliyoni imwe n'ibihumbi magana atanu (1.500.000 Frw) yagombaga guhembwa ku kwezi, ndetse n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Mu iburanisha, uhagarariye Akarere ka Kayonza yavuze ko aretse inzitizi yari mu myanzuro yari yatanze ijyanye n'uko Muhire Constantin atubahirije ibihe byo gusubirishamo urubanza. Avuga kandi ko nta karengane kari mu rubanza rusubirwamo ku mpamvu z'akarengane kuko mu cyemezo Urukiko Rukuru, Urugereko rwa Rwamagana, rwafashe ntahavugwamo ko yari umukozi wa Leta, ko ahubwo inkiko zabanje zavuze ko Akarere ka Kayonza kashingiye ku myitwarire ye mibi yamuranze aho yakoregaga muri CTB bigatuma adashyirwa mu mwanya yatsindiye, ko rero icyemezo ako Karere kafashe gikurikije amategeko, bityo ko nta ndishyi mbonezamusaruro Muhire Constantin akwiye guhabwa kuko nta musaruro yatanze, ko nta n'igihombo yagize. Asoza asaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [9] Muri uru rubanza Urukiko rurasanga ibibazo bigize impaka ari ibijyanye no kumenya niba:

- a) Muhire Constantin yararenganyijwe mu kudashyirwa mu mwanya yari yatsindiye w'Umunyabanga Nshingwabikorwa w'Umurenge mu Karere ka Kayonza;

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- b) Muhire Constantin yahabwa indishyi mbonezamusaruro za 60.000.000 Frw asaba;
 - c) amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro. II. ISESENGURA RY' IBIBAZO BIGIZE URUBANZA
1. Kumenya niba Muhire Constantin yararenganyijwe mu kudashyirwa mu mwanya yari yatsindiye w'Umunyabanga Nshingwabikorwa w'Umurenge mu Karere ka Kayonza [10] Muhire Constantin n'umwunganira bavuga ko atigeze aba umukozi wa Leta, ko umukoresha we ari CTB akaba yarabitangiye ibimenyetso byerekana umushahara yahembwaga, amasezerano y'akazi, ubwishingizi n'ibindi bigenerwa umukozi ariko Urukiko rukaba rutarabihaye agaciro, rukemeza ko yirukanywe mu bakozi ba Leta rushingiye ku bisobanuro byatanze n'Akarere ka Kayonza bishingiye ku mabaruwa yo ku wa 28/04/2017 yanditswe na CTB isesa amasezerano y'akazi, iyo ku wa 15/12/2021 ya MINALOC kandi atarabaye umukozi wa MINALOC, n'iyi ku wa 30/12/2020 idakurikije amategeko, kuko Akarere ka Kayonza kayimwandikiye katarabona amakuru, kuko ibaruwa yo ku wa 01/12/2021 yasabaga

MINALOC amakuru ye yasubijwe ku wa 15/12/2021 kamaze umwaka karafashe icyemezo cyo kutamushyira mu mwanya yatsindiye wo kuba Umunyamabanga Nshingwabikorwa w'Umurenge. Bityo ko kuba amakuru Akarere ka Kayonza kashingiyeho nta shingiro yari afite, Urukiko Rukuru rutagombaga gushingira ku bisobanuro n'ibimenyetso katanze mu kwemeza ko atagomba guhabwa umwanya yari yatsindiye, ko rero aho ari ho akarengane yagiriwe gashingiye. [11] Basobanura ko Urukiko rutasobanukiwe icyo umukozi wa Leta bisobanuye, cy'uko ari umuntu uri mu mwanya w'umurimo uhoraho cyangwa ugengwa n'amasezerano y'umurimo mu butegetsi bwite bwa Leta, nk'uko biteganywa n'ingingo ya 5, igika cya 10, ya Sitati Rusange igenga abakozi ba Leta N° 017/2020 yo ku wa 07/10/2020, iya 6 yayo ivuga ko Urwego rwa Leta rushobora gukoresha umukozi ugengwa n'amasezerano, iya 5 y'Iteka rya Minisitiri N° 03/mifotra/15 yo ku wa 09/06/2015 rigena uburyo bwo gushaka no gucunga abakozi ba Leta bagengwa n'amasezerano mu butegetsi bwa Leta igateganya ko Urwego rwa Leta rukeneye umukozi ugengwa n'amasezerano rumushaka rwifashishije inzira yo gushaka abakozi iteganywa n'Iteka rya Perezida, iya 6 yayo ikavuga ko umukandida watsindiye umwanya w'umurimo adahabwa ibaruwa, ahubwo ahabwa amasezerano y'akazi n'urwego rwa Leta rumuhaye akazi kandi ayo masezerano ntashobora kurenza umwaka umwe, kongera ayo masezerano bikorwa mu nyandiko, ko aha bivuze ko umukozi wa Leta adashobora guhabwa amasezerano y'akazi y'igihe kitazwi (durée indéterminée). [12] Basobanura kandi ko ku birebana n'umushahara, ingingo ya 7 y'iryo Teka iteganya ko umushahara n'ibindi bigenerwa umukozi wa Leta ugengwa n'amasezerano y'akazi mu butegetsi bwa Leta ugomba kuba ungana n'umushahara n'ibindi bigenerwa umwanya w'umurimo uhoraho bihujwe urwego mu butegetsi bwa Leta, bityo ko asaba Urukiko kuzasuzuma izi ngingo ndetse n'ibikubiye mu masezerano yagiranye na CTB Rwanda, maze rukabona ko atari umukozi wa Leta. [13] Bakomeza basobanura ko Muhire Constantin yasabye akazi muri CTB Rwanda, imaze kumukoresha ibizamini asinyana na yo amasezerano y'akazi ku wa 30/09/2015 ihagarariye n'umuyobozi wayo Benoit Piret, ayo masezerano akaba yari ay'igihe kitazwi (indéterminée) nk'uko ingingo yayo ya mbere (1) ibigaragaza, mu ya 5.3 yayo hakavugaga ko yahabwaga prime ya "13ème mois" buri mwaka (1/12 de salaire), mu ya 6,2 hakavugaga ko yahabwaga ibihumbi mirongo irindwi na bitanu ku mwaka (75.000 Frw/an) yo kurihira abana ishuri, kandi ko ayo mafaranga yabarwaga kuri buri mwana, ko rero ibyo ari ibimenyetso simusiga bigaragarira buri wese ko atari umukozi wa Leta, na cyane ko CTB Rwanda itari Ikigo cya Leta, cyangwa ikiyishamikiyeho, bityo ko abakozi bacyo batari bakwiye kwitiranwa n'abakozi ba Leta.

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- [14] Uhagarariye Akarere ka Kayonza yiregura avuga ko Akarere ka Kayonza katavuze ko Muhire Constantin yirukanywe mu bakozi ba Leta, kuko ibaruwa ifite Ref. 993/07.05.04 yo ku wa 30/12/2020 kamwandikiye kamumenyesha ko adashyirwa mu mwanya yari yatsindiye, kubera amakosa yamuranze mu bihe bitandukanye kugeza ubwo yirukanywe burundu mu gihe yakoraga muri Rwanda Descentralisation Support Program (RDSP), umushinga waterwaga inkunga na Cooperation Technique Berge (BTC- CTB) Rwanda muri Minisitiri

y'Ubutegetsu bw' igihugu, ko iyo myitwarire yagiye imuranga aho yakoreye itamwemerera kuba mu nshingano z'umunyamabanga nshingwabikorwa w'umurenge, bityo ko ibyo avuga bihabanye n'impamvu yatumye katamushyira muri uwo mwanya, kandi ko no mu cyemezo Urukiko Rukuru, Urugereko rwa Rwamagana, rwafashe ntahavugwamo ko yari umukozi wa Leta, ko ahubwo inkiko zabanje zavuze ko Akarere ka Kayonza kashingiye ku myitwarire ye mibi yamuranze bigatuma adashyirwa mu mwanya yatsindiye (autonomie de la répression disciplinaire). [15] Avuga kandi ko icyemezo Akarere ka Kayonza kafashe cyo kudashyira Muhire Constantin mu mwanya gikurikije amategeko, kuko cyari mu bubasha bw'Umuyobozi wako kandi kikaba cyari gishingiye ku biteganywa n'ingingo ya 25, igika cya mbere, y'Iteka rya Perezida No 128/01/ ryo ku wa 03/12/2020 ryerekeye gushaka abakozi ba Leta n'amahugurwa ahabwa abakozi bagitangira akazi, ariko ko Muhire Constantin usaba ko urubanza RADA 00002/2022/HC/RWG rusubirwamo ku mpamvu z'akarengane atagaragaza ku buryo bweruye ibimenyetso, Itegeko cyangwa umurongo waba waratanzwe n'inkiko (jurisprudence) bigaragarira buri wese Urukiko rwaba rwariengagije bigatuma arengana, ku buryo iyo rubiha agaciro byari gutuma atarengana. Bityo ko nta karengane yagiriwe mu rubanza RADA 00002/2022/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 18/10/2022. UKO URUKIKO RUBIBONA [16] Impaka kuri iyi ngingo zishingiye ku kuba Muhire Constantin avuga ko yarenganyijwe n'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, kuko rwemeje ko yirukanwe mu bakozi ba Leta kandi atarigeze aba umukozi wa Leta, Akarere ka Kayonza ko kavuga ko impamvu Muhire Constantin atashyizwe mu mwanya yatsindiye atari uko yari umukozi wa Leta, ko ahubwo ari imyitwarire mibi yamuranze aho yakoreraga muri CTB/ENABEL kugeza ubwo imwirukanye, ko rero nta kosa kakoze ryo kutamushyira mu mwanya yari yatsindiye. [17] Ingingo ya 7, igika cya 1, y'Iteka rya Perezida N°45/01 ryo ku wa 30/06/2015 rigena imyitwarire mbonezamurimo y'abakozi ba Leta yubahirizwaga ubwo Muhire Constantin yatsindaga ikizamini iteganya ibikurikira: umukozi wa Leta agomba kuba inyangamugayo kandi akiyubaha, yitwara mu buryo bwubahiriza imyifatire myiza isabwa n'umuco nyarwanda, nko kwirinda uburaya, ubusinzi, kubeshya, gushotorana, gusebanya no kutubaha abakuru. [18] Ingingo ya 21 y'Iteka rya Perezida N°144/01 ryo ku wa 13/04/2017 rigena uburyo bwo gushaka, gushyiraho no gushyira mu myanya abakozi ba Leta yubahirizwaga ubwo Muhire Constantin yatsindaga ikizamini iteganya ibikurikira: gushyira mu myanya abakandida batsinze bikorwa mu gihe kitarenze iminsi mirongo itatu (30) y'akazi, uhereye ku itariki amanota ya nyuma yatangarijwe, naho ingingo ya 25, igika cya 1, y'Iteka igateganya ibikurikira: mu nzego z'imitegekere y'Igihugu zegerejwe abaturage, umunyamabanga nshingwabikorwa ashidikiriza Komite Nyobozi raporo y'ipiganwa kugira ngo iyemeze kandi ishyire abakozi mu myanya. [19] Izi ngingo zimaze kwibutsa zisuzumiwe hamwe zumvikanisha ko umuntu watsinze ikizamini mu rwego rw'ubutegetsu bwa Leta agomba gushyirwa mu mwanya n'urwego rubifitiye ububasha nyuma yo gusuzuma niba uwo muntu ari inyangamugayo kandi bigakorwa mu gihe kitarenze iminsi 30 y'akazi, uhereye ku itariki amanota ya nyuma yatangarijwe. Mu yandi magambo

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urwego rwa Leta rugiyeye gushyira mu mwanya umukozi watsinze ikizamini rufite inshingano yo gusuzuma niba nta nenge afite nk'uko biteganywa mu ngingo ya 7, igika cya 1, y'Iteka rya Perezida N°45/01 ryo ku wa 30/06/2015 yatuma adashyirwa kuri uwo mwanya yatsindiye; byaramuka bigaragaye ko ntayo agashyirwa mu mwanya yatsindiye, byagaragara ko ihari ntawushyirwemo kandi akamenyeshwa impamvu.

- [20] Ku birebana n'uru rubanza dosiye igaragamo ibaruwa numero REPRWA 40.10 OUT/17/0104 yo ku wa 28/04/2017, CTB yandikiye MUHIRE Constantin imumenyesha ko yirukanwe ku kazi kubera ikosa rikomeye ryo kunyereza 248.000 Frw hakoreshejwe "bons" za lisensi. Igaragaramo kandi amasezerano y'akazi yo ku wa 30/09/2015 yasinywe hagati ya Cooperation Technique Belge (CTB) ihagarariwe na Benoit Piret na Muhire Constantin y'igihe kitazwi (durée indéterminée). [21] Dosiye igaragaza ko ku itariki ya 07/12/2020, Komisiyo y'Igihugu ishinzwe Abakozi ba Leta yandikiye Umuyobozi w'Akarere ka Kayonza imusaba gutangaza muri "E-recruitment system" amanota ya Bwana Muhire Constantin, bityo amanota ye yose hamwe akava kuri 67% akaba 70%. Dosiye igaragaramo kandi ibaruwa Akarere ka Kayonza kandikiye Muhire Constantin ku wa 30/12/2020, kamumenyesha ko atemerewe gushyirwa ku mwanya w'umunyamabanga nshingwabikorwa w'umurenge kubera imyitwarire yagiye imuranga aho yakoreye itamwemerera kuba mu nshingano z'Umunyamabanga Nshingwabikorwa w'Umurenge, gashingiye ku mategeko atandukanye, ku ibaruwa numero REPRWA 40.10 OUT/17/0104 yo ku wa 28/04/2017 ya CTB Rwanda yahamije iyirukanwa rya Muhire Constantin kubera uburemere bw'ikosa yakoze, ndetse no ku mwanzuro wa Komite nyobozi y'Akarere ka Kayonza yateganye ku wa 29/12/2020, yemeje ko adashyirwa mu mwanya kubera amakosa yakoze mu bihe bitandukanye kugeza ubwo bamwirukanye burundu aho yakoraga muri Rwanda Decentralization Support Program (RDPS), Umushinga waterwaga inkunga na Cooperation Technique Belge (BTC-CTB) Rwanda muri Minisiteri y'Ubutegetsi bw'Igihugu. [22] Dosiye igaragaramo na none ibaruwa yo ku wa 01/12/2021, Akarere ka Kayonza kandikiye MINALOC gasaba ibisobanuro ku byerekeranye no kumenya niba umushinga CTB (ENABEL) cyari ikigo gishamikiye kuri Leta. Mu ibaruwa yo ku wa 15/12/2021, Minisiteri y'Ubutegetsi bw'Igihugu yasubije ko Muhire Constantin yari umukozi w'umushinga Rwanda Decentralization Support Program waterwaga inkunga na CTB ubu yitwa ENABEL ku bufatanye na Leta y'u Rwanda, uwo mushinga ukaba warakoreraga muri Minisiteri y'Ubutegetsi bw'Igihugu, ko kandi Muhire Constantin yaje kwirukanwa mu kazi bifashweho icyemezo n'ubuyobozi bwa CTB/ENABEL kubera amakosa yakoze mu kazi. [23] Nk'uko byagaragajwe haruguru, Muhire Constantin yari umukozi wa CTB (ENABEL) yateraga inkunga umushinga wa Rwanda Decentralization Support Program wakoreraga muri Minisiteri y'Ubutegetsi bw'Igihugu hanyuma azakwirukanwa ku kazi kubera amakosa akomeye yo kunyereza 248.000 Frw hakoreshejwe "bons" za lisensi, kandi iyo myitwarire mibi yamuranze nk'uko bigaragara mu ibaruwa yo ku wa 30/12/2020, niyo Akarere ka Kayonza kashingiyeho kemeza ko atagomba gushyirwa mu mwanya w'umunyamabanga ushingwabikorwa w'umurenge kuko iyo myitwarire itamwemerera kuba muri uwo mwanya. [24] Urukiko rurasanga nk'uko byagaragajwe mu gika cya 19, gutsinda ikizamini ntibihagije

kugira ngo umuntu ahite ashwirwa mu mwana w'umurimo wa Leta yatsindiye, ahubwo urwego rwa Leta rugiyeho umukozi watsinze ikizamini rufite inshingano yo gusuzuma niba nta nenge cyangwa se impamvu yatuma adashwirwa muri uwo mwana harimo no gusuzuma ko uwo muntu ari inyangamugayo. Kuba rero Muhire Constantin yarirukanwe na CTB (ENABEL) kubera kunyereza umutungo, birumvikana ko Akarere ka Kayonza katagombaga kurenga kuri icyo myitwarire mibi

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yamuranze aho yakoreraga ngo kamushyire mu mwana w'Umunyamabanga Nshingwabikorwa w'Umurenge. [25] icyakora, nk'uko nabyo byasobanurwe mu gika cya 19, nyuma yo gusuzuma ibijyanye n'imitwarire, urwego rutanga umurimo rugomba no kwita ku bihe byo kumenyesha biteganywa n'itegeko, ni ukuvuga kutarenza iminsi 30 y'akazi, uwangiwe guhabwa akazi ataramenyeshwa. Hakurikijwe ibigaragara muri dosiye nk'uko byibukijwe mu gika cya 21, ku wa 07/12/2020, Komisiyo y'Abakozi ba Leta yasabye Umuyobozi w'Akarere ka Kayonza gutangaza amanota ya Muhire Constantin, akava kuri 67% akaba 70%, hanyuma ku wa 30/12/2020, Akarere ka Kayonza kamwandikira kamumenyesha ko atemerewe gushwirwa ku mwana w'Umunyamabanga Nshingwabikorwa w'Umurenge yatsindiye, bityo iminsi 30 iteganywa n'itegeko ikaba yarubahirijwe. [26] Kubera izo mpamvu, Urukiko rusanga nta kosa ako Karere kakoze ryo kudashyira Muhire Constantin muri uwo mwana. [27] Ku bijyanye n'ibyo Muhire Constantin n'umwunganira bavugaga ko atigeze yirukanwa mu kazi yakoraga muri CTB, ko ahubwo yasezeye mbere y'uko CTB imwandikira imubwira ko yirukanwe, Urukiko rurasanga usibye kubivugaga gusa nta kimenyetso mu byo Muhire Constantin yashyize muri dosiye kigaragaza ko ibyo bavugaga ari ukuri, bityo ibyo bavugaga nta shingiro bifite, cyane ko nk'uko byagaragajwe haruguru hari ikimenyetso cyerekana ko yirukanwe. [28] Urukiko rurasanga ibivugwa na Muhire Constantin n'umwunganira ko ibaruwa ya Minisiteri y'Ubutegetsi bw'Igihugu (MINALOC) isobanura ko yirukanwe na CTB yatanze nyuma y'uko Akarere ka Kayonza kamwandikiye kamumenyesha ko atemerewe gushwirwa ku mwana w'Umunyamabanga Nshingwabikorwa w'Umurenge yatsindiye, ntacyo byabamarira kuko nk'uko byagaragajwe haruguru, ibaruwa nimerwa REPRWA 40.10 OUT/17/0104 yo ku wa 28/04/2017, CTB yandikiye Muhire Constantin imumenyesha ko yirukanwe mu kazi kubera ikosa rikomeye niyo yashyigirwaho n'Akarere ka Kayonza kemeza ko atagombaga gushwirwa mu mwana w'Umunyamabanga Nshingwabikorwa w'Umurenge kubera imitwarire yagiye imuranga aho yakoreye, ikaba itamwemerera kuba muri izo nshingano. [29] Hashyigirwe ku ngingo z'amategeko zavuzwe haruguru no bisobanurwe byatanze, Urukiko rurasanga nta karengane kari mu rubanza RADA 00002/2022/HC/RWG (CMB RADA 00003/2022/HC/RWG) rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku wa 18/10/2022; bityo bikaba bitakiri ngombwa gusuzuma ikibazo cy'indishyi asaba kuko ntacyo zigishyigirwaho.

2. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro [30] Muhire Constantin n'umwunganira bashyigirye ku biteganywa n'ingingo ya 111 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza, iz'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi basaba Urukiko

rw'Ubujurire gutegeka Akarere ka Kayonza guha Muhire Constantin miliyoni eshatu (3.000.000 Frw), y'igihembo cya Avoka na miliyoni imwe y'ikurikiranarubanza (1.000.000 Frw). [31] Bavuga kandi ko amafaranga asabwa n'Akarere ka Kayonza nta shingiro afite, kuko ari ko kabaye nyirabayazana w'uru rubanza kanga kumushyira mu mwanya yatsindiye. Ko kuba ari ko kakoze amakosa, katayashingiraho kamusaba indishyi kandi karamurenganyije. [32] Uhagarariye Akarere ka Kayonza avuga ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Muhire Constantin asaba nta shingiro afite, kandi ko atagomba kuyahabwa, kuko ari we wabaye nyirabayazana w'uru rubanza, kubera ikosa rikomeye yakoze, aho yakoraga akazi atarangwa n'ubunyangamugayo.

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[33] Avuga kandi ko ashingiye ku biteganywa n'ingingo ya 111 y'Itegeko N° 22/2018 ryibukijwe haruguru asaba Urukiko rw'Ubujurire gutegeka Muhire Constantin guha Akarere ka Kayonza amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na miliyoni imwe n'ibihumbi magana atanu (1.500.000 Frw). UKO URUKIKO RUBIBONA [34] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'ayo ikirego cy'iremezo cyaba kitakiriwe. [35] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ikurikiranarubanza Akarere ka Kayonza gasaba afite ishingiro, kuko hari ibyo katakaje gakurikirana kandi kaburana uru rubanza, mu bushishozi bwawo rukageneye ibihumbi Magana arindwi (700.000 Frw) y'ibyagiye ku rubanza kuri uru rwego; naho ayo Muhire Constantin asaba akaba ntayo akwiye guhabwa kuko nta karengane yatewe n'urubanza RADA 00002/2022/HC/RWG (CMB RADA 00003/2022/HC/RWG) rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku wa 18/10/2022. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ikirego cyatanzwe na Muhire Constantin cyo gusubirishamo ku mpamvu z'akarengane urubanza RADA 00002/2022/HC/RWG (CMB RADA 00003/2022/HC/RWG) rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku wa 18/10/2022, nta shingiro gifite. [37] Rutegetse Muhire Constantin guha Akarere ka Kayonza ibihumbi magana arindwi (700.000 Frw) y'ibyagiye ku rubanza, kuri uru rwego.

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