

RWANDA / JUDGMENT

MULINDAHABI v. ENERGY, WATER AND SANITATION AUTHORITY (EWSA) Ltd

RLR V.3-2017

COURT

Supreme Court

DECIDED

8 November 2013

CASE / FILE NUMBER

RADA0015/13/CS

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MULINDAHABI v. ENERGY, WATER AND SANITATION AUTHORITY (EWSA) Ltd

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Text

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MULINDAHABI v. ENERGY, WATER AND SANITATION AUTHORITY (EWSA) Ltd [Rwanda URUKIKO RW'IKIRENGA – RS/REV/AD0003/15/CS (Nyirinkwaya, P.J., Ngagi na Nyirandabaruta, J.) 27 Mutarama 2017] Amategeko agenga imiburanishirije y'imanza z'ubutegetsi – Gusubirishamo urubanza ingingo nshya – Ikimenyetso gishya cya kamarampaka – Ikimenyetso umuburanyi yari asanzwe afite cyangwa azi kuva urubanza rutaracibwa mu rwego rwa mbere kugeza ruciwe ku rwego rw'ubujurire nticyafatwa nk'ikimenyetso gishya cya kamarampaka cyabonetse nyuma y'icibwa ry'urubanza ku buryo cyashingirwaho mu gusubirishamo urubanza ingingo nshya – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 186. Amategeko agenga imiburanishirije y'imanza z'ubutegetsi – Gusubirishamo urubanza ingingo nshya – Isomwa ry'urubanza – Uburiganya – Kuba mu isomwa ry'urubanza hari abacamanza mu baruciye batabonetse ntibyafatwa nk'uburiganya – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 148. Incamake

y'ikibazo: Mulindahabi yagiranye amasezerano y'akazi na RECO RWASCO (yahindutse EWSA) hakaba hari hakubiyemo amezi atandatu (6) y'igeragezwa ari nacyo gihe yaje kwirukanwamo. Yareze EWSA mu Rukiko Rukuru avuga ko yirukanywe mu buryo bunyuranyije n'amategeko anabisabira indishyi zinyuranye. Uru Rukiko rwemeje ko yirukanywe bidakurikije amategeko kuko atamenyeshejwe amakosa yaba yakoze kugira ngo ayisobanureho nk'uko biteganywa n'itegeko rishyiraho sitati rusange igenga abakozi ba Leta. Rwemeje kandi ko n'ubwo yasinye amasezerano y'igerageza bitahabwa agaciro kuko EWSA ari ikigo cya Leta nk'uko bigaragara mu masezerano akaba agegwa na sitati aho kugegwa n'amategeko y'umurimo, maze runemeza ko agomba guhabwa indishyi z'akababaro z'uko yavukijwe akazi. Ababuranyi bombi bajuririyeye icyo cyemezo mu Rukiko rw'Ikirenga, EWSA ivuga ko Urukiko Rukuru rwirengagije ibyo impade zombi zari zumvikanyeho rukavuga ko agengwa na Sitati rusange igenga abakozi ba Leta kandi agengwa n'amasezerano ari byo byatumye EWSA igaragara nk'aho yakoze amakosa, naho Mulindahabi akavuga ko habayeho kwivuguruza mu mikirize y'urubanza ko kandi n'indishyi yahawe ari nke kandi ntacyo Urukiko rubanza rwazishingiyeho. Urukiko rwemeje ko ubujurire bwa EWSA bufite ishingiro kuri bimwe naho ubujurire bwa Mulindahabi nta shingiro bufite, rumugenera indishyi z'uko yirukanywe adahawe umwanya wo kwisobanura n'ubwo yari akiri mu igeragezwa Mulindahabi yasubirishijemo urubanza ingingo nshya avuga ko nyuma y'icibwa ry'urubanza habonetse ibimenyetso bishya bya kamarampaka bigizwe n'ibaruwa N°708 /ed &cr/10 yo ku wa 09/06/2010, ibaruwa N°2064/19.23 yo ku wa 11/08/2011, ibaruwa N°2520/19.23 yo ku wa 04/10/2011 n'ibaruwa N°10/Min/TV/10/11 yo ku wa 19/10/2011, zigaragaza akarengane yatewe n'urwo rubanza, kandi ko habaye uburiganya no kwitiranya ibintu kubera ko urubanza rwe

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rutoherejwe mu rundi Rukiko n'uko hari abacamanza bari bafitanye ibibazo ariko ntibivane mu rubanza. Ubwo buriganya abushingira ku kuba mu bacamanza basinye ku rubanza asubirishamo ingingo nshya harimo utarabonetse mu barusomye, kandi ko hirengagijwe urubanza yatanzeho ikimenyetso rufite kamere imwe n'urwe. Avuga na none ko kuba Urukiko rwaremeje ko rimwe mu makosa yakoze yagombaga kurimenyeshwa hakaba n'irindi rwemeje ko atagombaga kumenyeshwa abibonamo uburiganya. Ikindi abonamo uburiganya n'uko atagenewe indishyi zo kumusebya. WASAC na REG bavugaga ko ayo mabaruwa yose nta n'imwe igaragaza ko yari umukozi wa Leta kuko agaragaza gusa ko yanditse avuga ko yirukanywe arenganyijwe agasubizwa ko atarenganyijwe, naho ku mpamvu z'uburiganya bakavugaga ko nta shingiro zifite kuko umuburanyi aburana uko ashaka bitewe n'uko abona urubanza rwe rumeze, kandi ko mu gihe yabonaga ko hari umucamanza afiteho impungenge nta cyamubuzaga kumwihana. Ikomeza ivuga ko urubanza rwasomwe hakurikijwe amategeko, kandi ko ibjyanye no kuba atamenyeshejwe ikosa yabihereye indishyi z'amezi atatu. Incamake y'icyemezo: 1. Ikimenyetso umuburanyi yari asanzwe afite cyangwa azi kuva urubanza rutaracibwa mu rwego rwa mbere kugeza ruciriwe ku rwego rw'ubujurire nticyafatwa nk'ikimenyetso gishya cya kamarampaka cyabonetse nyuma y'icibwa ry'urubanza ku buryo cyashingirwaho mu gusubirishamo urubanza ingingo nshya. Bityo amabaruwa ari muri dosiye y'Urukiko Rukuru ntiyafatwa nk'ikimenyetso gishya cya

kamarampaka cyabonetse nyuma y'icibwa ry'urubanza cyashingirwaho ngo urubanza rusubirishwemo ingingo nshya.

2. Kuba urega yumva ko urubanza rwaciwe n'Urukiko rutabifitiye ububasha ntibyakwitiranywa n'uburiganya, ahubwo yabiregera yifashishije izindi nzira ziteganywa n'amategako. Bityo ntaburiganya bwakorewe uregwa bwashingirwaho ngo urubanza rusubirishwemo ingingo nshya.
3. Urubanza rushobora gusomwa n'abacamanza babiri cyangwa umwe mu baruciye mu gihe umwe cyangwa bamwe batabonetse, bityo uburiganya urega avuga bwakozwe n'abo bacamanza bukaba butariho.
4. Urubanza urega yatanzeho ikimenyetso ntabwo rwirengagijwe kuko ibijyanye narwo byasubijwe mu rubanza rusubirishwamo ingingo nshya.
5. Uregwa yahawe indishyi zikomoka kuba ataramenyeshajwe ikosa yakoze ngo aryisobanureho kandi kuba atarahawe indishyi zo kumusebya si impamvu yo gusubirishamo urubanza ingingo nshya iteganyijwe n'itegeko. Ikirego cyo gusubirishamo urubanza ingingo nshya nticyakiriwe; Amagarama y'urubanza aherereye ku urega. Amategako yashingiweho: Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko, ingingo ya 171. Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 148 n'ya 186. Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 17/11/2009, Mulindahabi Fidèle yagiranye amasezeranyo y'akazi na RECO- RWASCO, nyuma ku wa 13/04/2010 yirukanwa akiri mu gihe cy'igeragezwa, azira kuba yaradindizaga akazi bigahesha isura mbi ikigo no kuba imyitwarire ye yararanzwe n'amakimbirane hagati ye n'inzego zitandukanye. Mulindahabi Fidèle yaregeye Urukiko Rukuru, asaba gusubizwa mu kazi kuko yirukanwe mu buryo bunyuranyije n'amategako, kuko atari umukozi ugengwa n'amasezerano ahubwo ko yagengwaga na sitati rusange y'abakozi ba Leta, kandi n'igihe cy'igeragezwa yari yarakirangije, asaba ko yasubizwa mu kazi agahabwa indishyi zinyuranye. [2] Mu rubanza RAD0157/10/HC/Kig rwaciwe ku wa 25/01/2013 n'Urukiko Rukuru, urwo Rukiko rwemeje ko ikirego cya Mulindahabi gifite ishingiro, rutegeka EWSA Ltd kumwishyura 6.000.000Frw z'igihombo yatejwe no kwirukanwa akabura icyo yinjiza, 2.000.000Frw y'indishyi z'akababaro z'uko yasebye na 200.000Frw y'ikurikiranarubanza. [3] EWSA na Mulindahabi Fidèle bajuririyeye Urukiko rw'Ikirenga, ruca urubanza RADA0015/13/CS ku wa 18/11/2013, rwemeza ko ubujurire bwa EWSA bufite ishingiro kuri bimwe, ko ubujurire bwa Mulindahabi Fidèle nta shingiro bufite, ariko rutegeka EWSA kumuha 1.350.000Frw y'indishyi (z'uko yirukanywe atahawe umwanya wo kwisobanura n'ubwo yari akiri mu igeragezwa), yiyongera kuri 200.000Frw y'ikurikiranarubanza yagenewe ku rwego rwa mbere. [4] Mulindahabi ntiyabyishimiye, atanga ikirego ku wa 07/01/2014, asububirishamo urwo rubanza ingingo nshya, ashingiye ku ngingo ya 186, 1°, 3° na 6° z'Itegeko N°21/2012 ryo ku wa 14/06/2012

ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, avuga ko nyuma y’icibwa ry’urubanza habonetse ibimenyetso bishya bya kamarampaka, bigaragaza akarengane yatewe n’urwo rubanza, kandi ko habaye uburiganya no kwitiranya ibintu, asaba indishyi. [5] Urubanza rwaburanishijwe mu ruhame ku wa 20/09/2016, Mulindahabi Fidèle yunganiwe na Me Nyamunanage Aticus, REG ihagarariwe na Me Iyamuremye Maurice naho WASAC ihagarariwe na Me Rusanganwa Jean Bosco, kuri uwo muni iburanisha rigeze hagati Urukiko rufata icyemezo cyo kurisubika ryimurirwa ku wa 22/11/2016, kugira ngo Mulindahabi Fidèle n’umwunganira bongere bandike neza kandi bahuze imyanzuro yabo bakore umwanzuro umwe, bagaragaze neza buri impamvu bashingiraho basaba gusubirishamo urubanza ingingo nshya, bayihuza n’ibiteganywa mu ngingo ya 186 y’Itegeko N°21/2012 ryo ku wa 14/06/2012 yavuzwe haruguru, kugira ngo ibyo Urukiko rugomba gusuzuma byumvikane neza. Iburanisha mu ruhame ryasubukuwe ku wa 22/11/2016, Mulindahabi Fidèle yunganiwe na Me Cyiza Faustin, REG ihagarariwe na Me Iyamuremye Maurice naho WASAC ihagarariwe na Me Rusanganwa Jean Bosco. II. IBIBAZO BIRI MU RUBANZA N’ISESENGURA RYABYO

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Muri uru rubanza harasuzumwa niba impamvu Mulindahabi Fidèle ashingiraho asaba ko urubanza RADA0015/13/CS rusubirishwamo ingingo nshya ziri mu ziteganywa n’itegeko ku buryo ikirego cye cyakwakirwa. II.1. Kumenya niba hari ibimenyetso bishya bya kamarampaka byashingirwaho kugira ngo urubanza RADA0015/13/CS rusubirishwemo ingingo nshya. [6] Mulindahabi Fidèle avuga ko ibimenyetso bishya bya kamarampaka ashingiraho agaragaza akarengane ke ari ibi bikurikira: 1o ibaruwa N°708 /ed&cr/10, Komisiyo y’abakozi ba Leta yamwandikiye ku wa 9/6/2010 (kote 13 & 73 muri dosiye y’Urukiko Rukuru), igaragaza ko komisiyo yakurikiranye ikibazo cye, akaba asanga itari kugikurikirana iyo ataba agengwa na sitati y’abakozi ba Leta; 2o ibaruwa N°2064/19.23, Minisitiri w’Abakozi ba Leta n’Umurimo yandikiye Minisitiri muri Perezidansi ku wa 11/08/2011, asubiza ibaruwa N°36/Min/TV/6/11 Mulindahabi Fidèle yandikiye Perezida wa Repubulika amugezaho ikibazo cye, kuko muri iyo baruwa Minisitiri w’Abakozi ba Leta n’umurimo yavuze ko yanyuranyije na sitati igenga abakozi ba Leta, akaba atari kuvuga atyo iyo ataba agengwa n’amasezerano; 3o ibaruwa N°2520/19.23, Minisitiri w’Abakozi ba Leta n’Umurimo yandikiye Mulindahabi Fidèle ku wa 4/10/2011 (cote ya 38), iri ku mugereka w’imyanzuro yo kwiregura ku bujirire bwa EWSA bwo ku wa 01/03/2013, asubiza ibaruwa nawe yari yamwandikiye ku wa 22/08/2011, aho Minisitiri w’Abakozi ba Leta yavuze ko yanyuranyije na sitati y’abakozi ba Leta; 4o ibaruwa N°10/Min/TV/10/11, Minisitiri muri Perezidansi ya Repubulika yandikiye Mulindahabi Fidèle ku itariki ya 19/10/2011, asubiza iyo yari yandikiye Perezida wa Repubulika, muri iyo baruwa Minisitiri muri Perezidansi akaba yarashingiye ku ibaruwa ya Minisitiri w’Abakozi ba Leta n’umurimo ivuga ko yanyuranyije na sitati igenga abakozi ba Leta, akaba ataragombaga kuvuga atyo iyo aza kuba ari umukozi ugengwa n’amasezerano. [7] Me Cyiza Faustin, wunganira Mulindahabi, avuga ko Urukiko rwasuzuma niba ibimenyetso uwo yunganira atanga byatuma urubanza rusubirishwamo ingingo nshya kuko agaragaza ko yari afite “qualité” y’umukozi wa Leta. [8] Me Rusanganwa na Me Iyamuremye Maurice bunganira WASAC na REG bavuga ko amabaruwa yose Mulindahabi Fidèle avuga nta nimwe igaragaza ko yari umukozi wa

Leta, ko icyo agaragaza ari uko yanditse avuga ko yirukanywe arenganyijwe agasubizwa ko atarenganyijwe. UKO URUKIKO RUBIBONA [9] Ingingo ya 186(3°) y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko urubanza rushobora gusubirishwamo ingingo nshya, iyo kuva aho urubanza ruciriwe habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza

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rusabirwa gusubirwamo; icyo kimenyetso cyaba kiri mu nyandiko zatanzwe mu rubanza ariko urukiko ntirukibone cyangwa cyaragaragajwe nyuma. [10] Dosiye y'urubanza igaragaza ko ku wa 17/05/2010, Mulindahabi Fidèle yandikiye Komisiyo ishinze Abakozi ba Leta ayisaba kurenganurwa agasubizwa mu kazi muri RECO/RWASCO, Komisiyo imusubiza mu ibaruwa No708/CD/ER/10 yo ku wa 09/06/2010, imumenyesha ko nyuma yo gukurikirana ikibazo cye yasanze ntacyo yashingiraho isaba ko asubizwa mu kazi muri RECO/RWASCO, ku mpamvu y'amakosa Komisiyo yabonye yamugaragayeho atarangiza igihe cy'igeragezwa, yo guteza amakimbirane hagati ye n'abo bakorana, gutinza cyane amadosiye (kudindiza akazi) no kwandikira Umuyobozi Mukuru cyangwa abandi bayobozi ukuriye ishamba akoramo ntacyo abiziho. [11] Dosiye igaragaza kandi ibaruwa No2520/19.23 yo ku wa 04/10/2011, Minisitiri w'Abakozi ba Leta n'Umurimo yandikiye Mulindahabi Fidèle, amubwira ko ashingiye ku Itageko No22/202 ryo ku wa 09/07/2002, rishyiraho Sitati rusange igenga abakozi ba Leta cyane cyane ingingo ya 19, ku mabwiriza ya Minisitiri No 005//08/10/Min yo ku wa 01 Nzeli 2008 agenga ibiciro ngenderwaho mu gutanga indemnité z'abajya mu butumwa mu mahanga, no ku mabaruwa anyuranye avugwa muri icyo baruwa harimo ayo Mulindahabi Fidèle yandikiye n'abayobozi banyuranye n'ayo inzego zitandukanye zandikiranye hagati yazo ku kibazo cye no ku ibaruwa yo muri Werurwe 2010, HASHI Energy yandikiye Umuyobozi Mukuru ya RECO/RWASCO itumira Director of Administration kujya mu mahugurwa i Nairobi, asanga Komisiyo ishinze Abakozi ba Leta n'Umurimo yarasesenguye amakosa amuvugwaho igasanga yose amuhama (gutinza cyane amadosiye, gusimbuka inzego, no gusiba "ordre de mission" yasinywe na Minisitiri w'Intebe yohereza umukozi mu mahugurwa), ikemeza ko igihano yahawe kimukwiye, kandi ko uwo mwanzuro wafatiwe ikibazo cye ufite agaciro kuko Komisiyo yawufashe imaze gusuzuma ibaruwa ya mulindahabi Fidèle yo ku wa 17/05/2010 n'iy'Umuyobozi Mukuru wa EWSA yo ku wa 13/04/2010, no kumva ibisobanuro mu magambo bya EWSA. [12] Dosiye igaragaza na none ibaruwa yo ku wa 17/08/2011, Minisitiri muri Perezidansi yandikiye Mulindahabi Fidèle asubiza icyo yanditse asaba kurenganurwa, amumenyesha ko ikibazo cye bagikurikiranye bagasanga yaragaragarijwe impamvu zumvikana zatumye asezererwa ku kazi, anamwoherereza ku mugereka, kopi y'ibaruwa Minisitiri w'Abakozi ba Leta yandikiye Minisitiri muri Perezidansi amubwira uko ikibazo cya Mulindahabi Fidèle giteye. [13] Urukiko rurasanga ibaruwa N°708 /ed &cr/10 yo ku wa 09/06/2010, ibaruwa N°2064/19.23 yo ku wa 11/08/2011, ibaruwa N°2520/19.23 yo ku wa 04/10/2011 n'ibaruwa N°10/Min/TV/10/11 yo ku wa 19/10/2011, yose yavuzwe haruguru, Mulindahabi Fidèle ashingiraho asubirishamo urubanza RADA0015/13/CS ingingo nshya, ari ayo Mulindahabi Fidèle yagiye yandikirwa n'inzego zinyuranye zisubiza ayo yagiye

azandikira agaragaza ko yasezerewe mu kazi mu buryo budakurikije amategeko n'ayo izo nzego zagiye zandikirana hagati yazo ku kibazo cye, ayo mabaruwa akaba atafatwa nk'ikimenyetso gishya cya kamarampaka cyabonetse nyuma y'icibwa ry'urubanza, giteganywa n'ingingoya 186(3°) y'Itegeko ryavuzwe haruguru, cyashingirwaho ngo urubanza RADA0015/13/CS rusubirishwemo ingingo nshya, kuko yari asanzwe ayafite cyangwa ayazi kuva na mbere urubanza rutaracibwa mu Rukiko Rukuru kugeza aho ruciriwe mu Rukiko rw'Ikirenga.

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2. Kumenya niba hari uburiganya no kwitiranya ibintu byagaragaye mu micire y'urubanza RADA0015/13/CS byatuma rusubirishwamo ingingo nshya.
- a. Kumenya niba kuba urubanza rutaroherejwe mu rundi Rukiko bigaragaza uburiganya. [14] Mulindahabi avuga ko mu rubanza RAD0124/07/HC/Kig rwaburanishijwe mu Rukiko Rukuru, Kabera Pierre Claver aburana na RECO/RWASCO, uwari uyihagarariye yatanze inzitizi y'iburabubasha avuga ko urukiko rw'umurimo arirwo rufite ububasha bwo kumuburanisha, nyamara ko mu rubanza rwe RECO&RWASCO itatanze iyo nzitizi, bivuze ko yemeraga ko ari umukozi ugengwa na sitati, ko kuba ikomeza kumwita umukozi ugengwa n'amasezerano ari uburiganya, kandi ko Urukiko rw'Ikirenga narwo rwamukoreye uburiganya, kuko mu gihe rwasanze ari umukozi ugengwa n'amasezerano rwagombaga kwiyambura ububasha rukohereza urubanza mu rukiko rubifitiye ububasha, kuba rutarabikoze bikaba bigaragaza uburiganya. [15] Me Rusanganwa avuga ko iyi ngingo nta shingiro ifite kuko umuburanyi aburana uko ashaka bitewe n'uko abona urubanza rwe rumeze, ko urega atariwe utegeka uko uregwa yiregura. UKO URUKIKO RUBIBONA [16] Ingingo ya 186(1o) y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru iteganya ko urubanza rushobora gusubirishwamo ingingo nshya iyo ...habayemo uburiganya bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana...; [17] Dosiye igaragaza ko mu rubanza RAD0124/07/HC/Kig Mulindahabi Fidèle ashingiraho ashaka kwerekana uburiganya bwabaye mu rubanza rwe, Kabera Pierre Claver yaburanye na RECO/RWASCO (cote 123) mu Rukiko Rukuru asaba ivanwaho ry'icyemezo kimwirukana cyo ku wa 02/07/2007, Me GAJU Ines wari uhagarariye RECO/RWASCO muri urwo rubanza yatanze inzitizi y'iburabubasha ry'Urukiko avuga ko mbere yo kuregera Kabera yakagombye kubanza kuregera Urukiko rw'umurimo, urwo Rukiko rufata icyemezo ko iyo nzitizi nta shingiro ifite. Dosiye igaragaza na none ko mu rubanza RADA0015/13/CS rwa Mulindahabi na RECO/RWASCO rwaciwe n'Urukiko rw'Ikirenga ku wa 08/11/2003, RECO RWASCO yari ihagarariwe na Me Rusanganwa Jean Bosco, muri urwo rubanza akaba ari nta nzitizi y'iburabubasha yigeze itangwa. [18] Dosiye igaragaza kandi ko mu rubanza RADA0015/13/CS, igika cya [14], Urukiko rw'Ikirenga rwemeje ko Mulindahabi Fidèle yagengwaga n'Itegeko No13/2009 ryo ku wa 27/05/2009 rigenga umurimo, rubishingiye ku mpamvu y'uko nyuma yo gutsinda ikizamini Mulindahabi Fidèle yasinyanye na RECO/RWASCO amasezerano y'akazi ku wa 17/11/2009, arimo igihe cy'igeragezwa, kandi usibye ayo masezerano akaba nta yindi nyandiko agaragaza yaba yaramwinjije muri EWSA (Acte de nomination) ku buryo yashingirwaho hemezwa ko agengwa na sitati igenga abakozi ba Leta.

[19] Urukiko rurasanga niyo ruza kuba rwaraciye urubanza rutari mu bubasha bwarwo, ibyo bitari kwitiranywa n'uburiganya, ahubwo Mulindahabi Fidèle yari kubiregera yifashishije izindi nzira ziteganywa n'amategeko.

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- b. Kumenya niba kuba hari abacamanza bari bafitanye ibibazo na Mulindahabi Fidèle ntibivane mu rubanza bigaragaza uburiganya. [20] Mulindahabi avuga ko mu nteko yamuburanishije harimo umucamanza witwa Mukandamage Marie Josée wari waramuburanishije urundi rubanza aburana na ATRACO, ndetse abacamanza baciye urwo rubanza akaba yarabaregeye Sena, ikibazo kikaba kitarakemuka, uwo mucamanza akaba yaragize uruhare mu gutsindwa kwe mu rwego rwo kwihimura. [21] Me Rusanganwa Jean Bosco na Me Iyamuremye Maurice baburanira WASAC na REG bavuga ko ibyo Mulindahabi avuga nta gaciro byahabwa, kuko mu gihe yabonaga hari umucamanza afiteho impungenge ntacyamubuzaga kumwihana, ariko ko adakwiye kubigira impamvu yo kuvuga ko yareganyijwe. UKO URUKIKO RUBIBONA [22] Ingingo ya 171 y'Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nk'uko ryavugururwe kandi ryujujwe kugeza ubu, iteganya impamvu zo kwihana umucamanza, agace ka 3° gateganya ko iyo umwe mu baburanyi agaragaje ishingiro ry'urwango afitanye n'umucamanza, afite uburenganzira bwo kumwihana. [23] Urukiko rurasanga Mulindahabi Fidèle avuga ko hari abacamanza bari bafitanye ibibazo, nyamara akaba atarakoresheje uburenganzira ahabwa n'amategeko ngo abihane mu rubanza rwe, akaba atavugaga rero ko bamukoreye uburiganya, bityo iyi ngingo aburanisha ikaba itashingirwaho ngo urubanza RADA0015/13/CS rusubirishwemo ingingo nshya.
- c. Kumenya niba kuba hari umucamanza utarasinye ku nyandiko mvugo y'isomwa bigaragaza uburiganya. [24] Mulindahabi Fidèle avuga ko mu bacamanza basinye ku rubanza asubirishamo harimo uwitwa Rugabirwa Ruben nyamara atarabonetse mu barusomye, ko ibyo byose asanga ari uburiganya buteganywa n'ingingo ya 186(1°) y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru. [25] Uburanira WASAC avuga ko iyi ngingo nta shingiro ifite, kubera ko urubanza rwasomwe hakurikijwe amategeko, cyane cyane ingingo ya 148 y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. UKO URUKIKO RUBIBONA [26] Ingingo ya 148 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets iteganya ko "Urubanza rwose rugomba gusomwa n'umucamanza cyangwa abacamanza baruciye bahari kandi rwanditse mu ngingo zarwo zose. icyakora, iyo umwe cyangwa bamwe mu bacamanza baciye urubanza kandi banashyize umukono ku mushinga w'urubanza batabonetse ku munsu w'isomwa ryarwo, ntibibuza ko rusomwa n'umwe cyangwa abacamanza bahari baruburanishije...".

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- [27] Dosiye y'urubanza RADA0015/13/CS rusubirishwamo ingingo nshya, igaragaza mu nyandikomvugo y'isomwa ryarwo yo ku wa 08/11/2013, ko rwasomwe n'abacamanza babiri, bafashijwe n'umwanditsi w'Urukiko, umucamanza wa gatatu adahari bitewe n'indi mirimo y'Urukiko kandi rukaba rwarasomwe Mulindahabi Fidèle ahari kuko yashyizeho umukono, naho matolewa y'urubanza ikagaragaza ko rwaciwe n'abo bacamanza uko ari batatu kuko bose barushyizeho umukono. [28] Urukiko rurasanga ku kibazo cy'umucamanza utarabonetse mu isomwa ry'urubanza ariko agashyira umukono kuri matolewa, nk'uko ingingo ya 148 yavuzwe haruguru ibiteganya, byemewe ko urubanza rushobora gusomwa n'abacamanza babiri cyangwa umwe mu baruciye mu gihe umwe cyangwa bamwe batabonetse, bityo uburiganya Mulindahabi Fidèle avuga bwakozwe n'abo bacamanza bukaba nta buhari kuko ibyakozwe byemewe n'amategeko, bityo iyi mpamvu ikaba itatuma urubanzarusubirishwamo ingingo nshya nk'uko biteganywa n'ingingo ya 186, (1o)y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru.
3. Kumenya niba kuba Mulindahabi Fidèle yariswe umu "sous-contrat" aho kwitwa umu sous-statut hatarebwe ibyemejwe mu rubanza RAD0214/HC/KIG rwa Kabera Pierre Claver bigaragaza uburiganya no kwitiranya ibintu. [29] Mulindahabi Fidèle avuga ko mu gika cya 17 cy'urubanza asubirishamo ingingo nshya, hagaragaramo "erreur judiciaire" kubera ko Urukiko rwavuze ko muri EWSA harimo abakozi bagengwa n'amasezerano kandi atari byo, naho mu gika cya 16 rukaba rwarashingiye kuri "acte de nomination" ruvuga ko umwanya yari ariho nta "acte de nomination" yari afite kandi EWSA yaravuze ko abakozi bose binjiraga mu kazi basinye amasezerano, byumvikanisha ko nta "acte de nomination" bahabwaga. Avuga kandi ko Urukiko rwavuze ko ari umu sous-contrat nyamara muri dosiye harimo itangazo ryatanzwe na EWSA ishingiye ku Iteka rya Perezida N°37/01 ryo ku wa 30/08/2004 risobanura uburyo abakozi ba Leta bashyirwa mu myanya, kubera ko Itegeko No44/2008 ryo ku wa 09/09/2008 rishyiraho RECO-RWASCO (ingingo ya19) n'Itegeko No43/2010 ryo ku wa 07/12/2010 rishyiraho EWSA, yombi avuga ko abakozi bose ari aba sous- statut, akaba yumva atariwe wenyine wagombaga kuba umukozi ugengwa n'amasezerano mu gihe abandi bose ari abakozi bagengwa na sitati y'abakozi ba Leta, ko bibaye bityo, byaba binyuranije n'Itegeko Nshinga rivuga ko abantu bose bareshya imbere y'amategeko. [30] Mulindahabi Fdèle akomeza avuga ko ashingiye ku ngingo ya 186(1°&6°) y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, asanga harabayeho uburiganya no kwitiranya ibintu kubera ko Urukiko rwirengagije imvugo ya EWSA yo ku wa 01/10/2013, aho yasobanuye ko Ndayisaba Ernest yari ku rutonde rw'abakozi bagengwa na sitati y'abakozi ba Leta, hakaba hariirengagijwe urubanza RAD0214/HC/KIG rwa Kabera Pierre Claver aho yagenewe indishyi kandi agasubizwa mu kazi. Avuga kandi ko Urukiko rutavuze ku bimenyetso by'urubanza, bigaragaza ko Ndayisaba Ernest ndetse n'abandi bakozi bose kugeza ku bashoferi, abazamu n'abaplanton, n'ubwo basinye amasezerano, bagengwa na sitati ndetse ntirwagira n'icyo ruvuga ku ibaruwa ye yo ku wa 29/10/2012, rukirengagiza ko nk'uko byagenze kuri we, ntawinjiraga mu kazi ahawe "acte de nomination", ko kandi imvugo ya EWSA yo mu iburanisha ryo ku wa 01/10/2013 ku rupapuro rwa 2 yavuze ko uwinjiragamo wese yasinyaga

amasezerano hakurikijwe imiterere (structure) iriho bivuze ko nta “acte de nomination” yasabwaga, akaba asanga ibyo byose ari uburiganya no gufata ibintu uko bitari.

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[31] Mulindahabi Fidèle avuga kandi ko Urukiko rwavuze ko yagengwaga n’amasezerano kandi atari byo, kubera ko inzira yanyuzemo ahabwa akazi zatangajwe na EWSA kuri Website yayo zigaragaza ko yagengwaga na Sitati, nk’uko bigaragara ku rubuga <http://www.ewsa.rw/recruitmentpolicy.html>, ibi kandi ngo akaba yarabigarutseho mu iburanisha, aho yavuze ko ashingiye ku Iteka rya Perezida N°37/01 ryo ku wa 30/08/2004 rigaragaza ibishingirwaho mu gushyira abakozi mu myanya y’umurimo ya Leta, ko kuba yarabivuze mu rubanza RADA0015/13/CS Urukiko ntirugire icyo rubivugaho, asanga ari uburiganya, hakaba hashingirwa ku ngingo ya 186(3°) akemererwa gusubirishamo urubanza ingingo nshya. [32] Me Rusanganwa avuga ko mu mpamvu Mulindahabi Fidèle atanga harimo ko hirengagijwe ibyavuzwe mu iburanisha, hakirengagizwa inzitizi ndetse n’urubanza rwa Kabera Pierre Claver, ariko akaba atagaragaza uburiganya bwabaye mu gihe cy’iburanisha ngo abe yarabumenye nyuma, akaba yumva nta buriganya bwabayeho kandi ko niba avuga ko hari ibyo Urukiko rwaba rwarirengagije atahindukira ngo avuge ko yabimenye nyuma. UKO URUKIKO RUBIBONA [33] Ingingo ya 186(1o&6o) y’itegeko N°21/2012 ryo ku wa 14/06/2016 ryavuzwe haruguru, iteganya ko Urubanza rushobora gusubirishwamo ingingo nshya (1o) iyo habayemo uburiganya bwagize ingaruka ku mikirize y’urubanza, kandi bukaba butarigeze bumenywa n’uwatsinzwe mu gihe cy’iburana cyangwa (6o) iyo mu icibwa ry’urubanza hakozwe amakosa akabije yo kwitiranya uko ibintu byagenze cyangwa hashingiwe ku itegeko ritariho. [34] Dosiye igaragaraza ko mu rubanza RADA0015/13/CS (urupapuro rwa 3), Urukiko rwasuzumye ibijyanye no kumenya niba harabaye kwibeshya mu kwemeza ko Mulindahabi Fdèle yagengwaga na sitati y’abakozi ba Leta, aho mu gika cya 14 ku rupapuro rwa 4 rwasobanuye ko Mulindahabi Fidèle yabaye umukozi wa RECO-RWASCO (yahindutse EWSA, ubungubu yagabanyijwemo WASAC na REG), nyuma yo gutsinda ikizamini nk’unko bivugwa na Mulindahabi Fidèle ubwe. [35] Dosiye igaragaza ko kandi Urukiko rwasobanuye ko ku wa 17/11/2009 Mulindahabi Fidèle yagiranye amasezerano y’akazi na RECO RWASCO arimo igihe cy’igerageza cy’amezi atandatu, ko uretse ayo masezerano nta yindi nyandiko yagaragaje yaba yaramwinjije muri EWSA kugira ngo ibe yashingirwaho hemezwa ko agengwa na sitati igenga abakozi ba Leta, mu gika cya 15, Urukiko rwaravuze ko ibyo bigaragaraza ko Mulindahabi Fidèle yagengwaga n’itegeko N°13/2009 ryo ku wa 27/5/2009 rigenga umurimo hashingiwe ku biteganywa n’ingingo ya kabiri yaryo rigenga imikoranire y’akazi hagati y’abakozi n’abakoresha (...) bishingiye ku masezerano. [36] Urukiko rurasanga kuba mu rubanza RADA0015/13/CS harasobanuwe impamvu Mulindahabi Fidèle agengwa n’amasezerano y’umurimo aho kuba sitati igenga abakozi ba Leta, atavuga ko habaye uburiganya kuko kuba atarishimiye icyemezo cy’Urukiko ataricyo kigaragaza uburiganya no kwitiranya uko ibintu byagenze biteganywa mu ngingo ya 186, 1° na 6° y’itegeko N°21/2012 ryo ku wa 14/06/2012, zituma urubanza rusubirishwamo ingingo nshya.

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- [37] Ku bijyanye n'urubanza RAD0214/HC/KIG rwa Kabera Pierre Claver na EWSA, Mulindahabi Fidèle avuga ko rufite kamere imwe n'urwe nyamara Urukiko rukaba ntacyo rwaruvuzeho, Urukiko rurasanga ibijyanye n'urwo rubanza byarasubijwe mu gika cya [29] cy'urubanza rusubirishwamo ingingo nshya, aho Mulindahabi Fidèle yaruburanishije asaba Urukiko ko yasubizwa mu kazi, Urukiko rusubiza mu gika cya [31] aho rwasanze mu gihe rwamaze kugaragaza ko Mulindahabi Fidèle yirukanywe akiri mu igeragezwa ku mpamvu zirimo n'iyerekeye imikorere, ntaho rwashingira rusuzuma ibyerekeye gusubizwa mu kazi. Rurasanga rero icyo kimenyetso kitarirengagijwe nk'uko abivuga, bityo kikaba kitashingirwaho ngo urubanza RADA0015/13/CS rusubirishwemo ku mpamvu y'uko hari ikimenyetso cyari mu rubanza urukiko ntirugire icyo rukivugaho.
4. Kumenya niba invugo ya Mulindahabi y'uko ngo Urukiko rwavuze ko yagombaga kumenyeshwa ikosa yakoze ariko ntagenerwe indishyi zo kumusebya ari ukwitiranya uko ibintu byagenze n'uburiganya. [38] Mulindahabi avuga ko mu ibaruwa imwirukana harimo amakosa abiri, ko Urukiko rwavuze ko rimwe mu makosa yakoze yagombaga kurimenyeshwa (kopi y'urubanza [igika cya 27], ko n'ubwo Urukiko rutabivuze rweruye, hari irindi kosa rwemeje ko atagombaga kumenyeshwa [igika cya 26], kuvangura amakosa akaba abibonamo uburiganya. Ko kuba Urukiko rutaravanyeho icyemezo kimwirukana kandi rwari rwamaze kwemeza ko kinyuraniye n'Itegeko Nshinga rya Repubulika y'uRwanda mu ngingo ya 18, igika cya 3, bigaragaza kwitiranya uko ibintu byagenze, kimwe no kuba atarahawe indishyi zo kumusebya ndetse n'Urukiko ntirugire icyo rubivugaho kandi mu ibaruwa imwirukana harimo amagambo mabi atuma atabona akazi. [39] Me Rusanganwa avuga ko ibijyanye no kuba ataramenyeshwe ikosa yabihereye indishyi z'amezi atatu, akaba asanga iyo mpamvu atari ingingo nshya, ko kandi kuba mu ibaruwa imwirukana haba harimo amagambo amusebya ku buryoatabona akazi ahandi asanga bitakwitwa uburiganya kuko Urukiko mu bushishozi rwemeza niba indishyi zikwiye cyangwa zidakwiye. [40] Me Iyamuremye avuga ko ingingo ya 186(6o) y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ijyanye no kwitiranya ibintu, ko Mulindahabi Fidèle ntaho agaragaza ko Urukiko rwaba rwaritiranyije ibintu, ibyo yavuze bikaba bitagaragaza ingingo nshya, ahubwo akaba yasobanuye uburyo ababuranyi bitiranyije ibintu atari Urukiko rwabyitiranyije akaba asanga ikirego cye kidakwiye kwakirwa. UKO URUKIKO RUBIBONA [41] Ingingo ya 186(6°) y'itegeko N°21/2012 ryo ku wa 14/06/2016 ryavuzwe haruguru iteganya ko Urubanza rushobora gusubirishwamo ingingo nshya, iyo mu icibwa ry'urubanza hakozwe amakosa akabije yo kwitiranya uko ibintu byagenze cyangwa hashingiwe ku itegeko ritariho. [42] Dosiye igaragaza ko mu rubanza rusubirishwamo ingingo nshya [igika cya 23-28], Urukiko rwasanze Itegeko No13/2009 ryo ku wa 27/05/2009 rigenga umurimo ntacyo rivuga ku bijyanye n'iseswa ry'amasezerano mu gihe cy'igerageza, usibye integuza, aho ngingo ya 27 y'iryo Tegeko iteganya ko nta nteguza ishobora kubaho mu gihe cy'igeragezwa, rushingira ku

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byavuzwe n'abahanga ko igihe cy'igeragezwa kiba kigamije gutuma umukoresha amenya niba umukozi afite ubushobozi n'ubumenyi mu kazi , kigatuma n'umukozi amenya ko akazi yahawe kamunogeye, rusobanura ko EWSA nayo yemera ko ikosa Mulindahabi Fidele yakoze ryo kugonganisha inzego yagombaga kurimenyeshwa akaryisobanuraho n'ubwo Itegeko rigenga umurimo ritabiteganywa, nk'uko ingingo ya 18, igika cya 3, y' Itegeko Nshinga rya Repubulika y'u Rwanda ibiteganywa, ko ntawe ushobora gufatirwa icyemezo atabanje kwisobanura kubyo aregwa, agenerwa indishyi. [43] Urukiko rurasanga Mulindahabi Fidele yarahawe indishyi zavuzwe haruguru zikomoka kuba ataramenyeshwe ikosa yakoze ngo aryisobanureho nubwo yari akiri mu gihe cy'igeragezwa, iby'uko atahawe indishyi zo kumusebya bikaba bitaba impamvu zo gusubirishamo urubanza ingingo nshya kubera ko bidateganyijwe n'ingingo ya 186(6o) y'Itegeko N°21/2012 ryo ku wa 14/06/2016 ryavuzwe haruguru. Ibi byose rero bigaragaza ko nta buriganya no kwitiranywa uko ibintu byagenze byabayeho. [44] Urukiko rurasanga nk'uko byagaragajwe haruguru, impamvu Mulindahabi Fidele yatanze asubirishamo urubanza RADA0015/13/CS ingingo nshya zose ntan'imwe ihura n'iziteganywa n'ingingo ya 186 y'Itegeko N°21/2012 ryo ku wa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bityo ikirego cye gisaba gusubirishamo ingingo nshya urwo rubanza kikaba kitagomba kwakirwa. III. ICYEMEZO CY'URUKIKO [45] Rwemeje ko ikirego cyatanze na Mulindahabi Fidele cyo gusubirishamo ingingo nshya urubanza RADA0015/13/CS, rwaciye n'Urukiko rw'Ikirenga ku wa 08/10/2013, kitakiriwe. [46] Rutegetse Mulindahabi Fidele kwishyura amagarama y'urubanza angana na 100.000Frw.

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