

RWANDA / JUDGMENT

NIYONAGIZE v DUHUZUMURIMO WA KAROTI

RS/INJUST/RSOC 00012/2022/SC

COURT

Supreme Court

DECIDED

17 February 2023

CASE / FILE NUMBER

RS/INJUST/RSOC 00012/2022/SC

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NIYONAGIZE v DUHUZUMURIMO WA KAROTI

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- Date: 2023-02-17
- Case/document no.: RS/INJUST/RSOC 00012/2022/SC
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NIYONAGIZE v DUHUZUMURIMO WA KAROTI [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RSOC 00012/2022/SC – (Mukamulisa, P.J., Nyirinkwaya na Muhumuza, J.) 17 Gashyantare 2023]

Amategeko agenga imiburanishirize y'imanza zisabirwa gusubirishwamo ku mpamvu z'akarengane – Inzitizi yatuma urubanza rutaburanishwa mu mizi – Iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa, nta yindi nzitizi yakirwa cyeretse umuburanyi ashoboye kugaragaza impamvu idasanzwe, nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego. Amategeko agenga umurimo – Amasezerano y'umurimo – Gusesa amasezerano y'umurimo – Inshingano yo gutanga ibimenyetso – Igihe havutse impaka, umukoresha washeshe amasezerano niwe utanga ibimenyetso bigaragaza ko umukozi yakoze ikosa cyangwa yagize imyitwarire mibi. Amategeko agenga umurimo – Amasezerano y'umurimo – Gusesa amasezerano y'akazi y'igihe kizwi – Iseswa ry'amasezerano y'umurimo rikozwe mu buryo budakurikije amategeko ritangirwa indishyi zitandukanye. Incamake y'ikibazo: Niyonagize yareze Koperative Duhuzumurimo wa Karoti mu Rukiko Rwisumbuye rwa Nyarugenge asaba

indishyi zitandukanye zo kwirukanwa ku kazi mu buryo budakurikije amategeko, aho yakoraga ku mwanya w' umucungamutungo n'umunyamabanga wa koperative. Akomeza avuga ko nyuma yo kutumvikana n'Umuyobozi mushya wa Koperative yahinduriwe imirimo avanwa mugukorera muri biro kandi ari ko kari akazi ke, ajyanwa kuri "terrain" nta yandi masezerano akoranye n'umukoresha we, nyamara nabwo akomeza kubazwa ibyo mu biro. Uwo muyobozi yaje gusesa amasezerano ye y'akazi nta mpamvu abwiwe cyangwa ikosa rikomeye yaba yarakoze. Koperative yireguye ivuga ko Urega yasezerewe kubera kudashobora akazi no kudatanga umusaruro yari yitezweho hamwe no kutubaha inzego z'ubuyobozi bwayo. Ivuga kandi ko mu masezerano y'umwimerere yabagengaga, Urega yahinduye amasaha yo gutangiriraho akazi n'igihe amasezerano azamara. Ku byerekeye guhindurirwa imirimo, ivuga ko ari inshingano zahindutse gusa, ko umwanya n'umushahara ndetse n'imiterere y'akazi bitahindutse, uretse ko yakuwe mu biro akajyanwa gukorera kuri terrain. Isoza isaba ko ikirego cy'Urega kitahabwa ishingiro, ko ahubwo akwiye gutegekwa kuyiha indishyi zo gushorwa mu manza n'igihembo cy'Avoka. Urukiko Rwisumbuye rwemeje ko ikirego cy'Urega gifite ishingiro kuri bimwe maze Koperative ijuririra Urukiko Rukuru ivuga ko Urukiko rwabanje rwemeje ko amasezerano yashyizweho umukono n'impande zombi zibifitiye ububasha ngo kandi hari n'andi masezerano y'umwimerere Urega yahinduye. Niyonagize nawe yatanze ubujurire bwuririye kubundi asaba indishyi zitandukanye. Uru Rukiko rwemeje ko Koperative yirukanye Niyonagize mu buryo bukurikije amategeko, ko indishyi yahawe ku rwego rwa mbere zivuyeho. Ibi byatumye Niyonagize asaba ko uru rubanza rwasubirwamo ku mpamvu z'akarengane, agaragaza ko mu icibwa ryarwo habayeho kwirengagiza nkana amategeko n'ibimenyetso bigaragaza ko yirukanwe mu buryo bunyuranyije n'amategeko maze hemezwa ko rusubirishwamo. Nyuma yo gufata icyemezo cyo kutakira inzitizi yari yatanze na Koperative isaba ko ikirego cy'Urega kitakagombye kwakirwa ngo gisuzumwe, Urukiko rw'Ikirenga rwabanje gusuzuma iyo mpamvu y'akarengane no kumenya niba hari indishyi zigomba gutangwa muri uru rubanza. Kuri iki kibazo, Urega asobanura ko Urukiko Rukuru rwemeje ko yirukanywe mu buryo bukurikije amategeko nta kimenyetso na kimwe ashingiyeho, rwirengagiza ibimenyetso bitandukanye birimo inyandiko y'iherekanyabubasha hagati ye nk'umunyamabanga nshingwamari wa Koperative n'ubuyobozi bwa Koperative. Akomeza asaba uru Rukiko gusuzuma agasuzuguro ashinjwa kiswe

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amakosa akomeye, kuko mu nyandiko yakozwe ahabwa akazi, bari bavuze ko ibyakozwe mbere y'uko ahabwa akazi atazabibazwa. Anavuga ko nta baruwa yigeze abona imumenyesha iseswa ry'amasezerano y'akazi mu masaha mirongo ine n'umunani (48h), ko ndetse n'inama ivugwa n'uregwa ko yavugiyemo ibyo kumusezerera ku kazi ntayo yigeze amenyeshwa. Uregwa asobanura ko ikimenyetso kigaragaza ko Urega atakoraga raporo yagombaga gukora inyandikomvugo y'inama, ndetse uwasuzuguwe yabikorera constat. Ku byerekeye ikibazo cy'uko Urega yaba yarahinduye inyandiko y'amasezerano y'akazi avuga ko batakibiburanisha nk'impamvu yo gusesa amasezerano kuko batayifiye ibimenyetso, asaba ko bitanasuzumwa muri uru rubanza. Ku kibazo cyo kumenya niba hari indishyi zigomba gutangwa muri uru rubanza, Urega asaba ko harebwa izo yari yaregeye mu Rukiko Rwisumbuye zirimo izo kwirukanwa mu

buryo bunyuranyije n'amategako, imishahara atahembwe n'iz'ikurikiranarubanza hamwe n'igihembo cy'avoka; mu gihe Uregwa avuga ko atazihabwa, ngo kuko ariwe ugomba gusobanura ikirego cye, akanagitangira ibimenyetso. Incamake y'icyemezo: 1. Iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa, nta yindi nzitizi yakirwa cyeretse umuburanyi ashoboye kugaragaza impamvu idasanzwe, nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego.

2. Igihe havutse impaka, umukoresha washeshe amasezerano niwe utanga ibimenyetso bigaragaza ko umukozi yakoze ikosa cyangwa yagize imyitwarire mibi. Bityo, Koperative Duhuzumurimo wa Karoti yirukanye mu buryo budakurikije amategako Niyonagize Augustave kuko nta kimenyetso itanga kigaragaza imyitwarire mibi imushinja cyangwa ko yananiwe kuzuza inshingano ze, usibye kubivuga mu magambo gusa.
3. Iseswa ry'amasezerano y'umurimo rikozwe mu buryo budakurikije amategako ritangirwa indishyi zitandukanye. Bityo, Koperative Duhuzumurimo wa Karoti yasheshe amasezerano y'akazi yagiranye na Niyonagize Augustave mu buryo bunyuranyije n'amategako, ikaba igomba kumuha indishyi zitandukanye. Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe. Amategako yashingiweho: Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 3. Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55. Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111. Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 28. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Imanza zifashishijwe: Niwemugeni Jeannette yaburanaga na KCB Bank Rwanda Ltd, RS/INJUST/RSOC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2019. Busoro Gervais na Busoro Mugunga Desire n'abandi, RS/INJUST/RC 00022/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21/06/2021.

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Urubanza I. IMITERERE Y'URUBANZA [1] Niyonagize Augustave yareze Koperative Duhuzumurimo wa Karoti (Koperative) mu Rukiko Rwisumbuye rwa Nyarugenge, asaba indishyi zitandukanye zo kwirukanwa ku kazi mu buryo budakurikije amategako, ikirego cye cyandikwa kuri RSOC 00274/2017/TGI/NYGE. Avuga ko ku wa 31/03/2016, yahawe akazi na Koperative, bakorana amasezerano y'umurimo y'imyaka 2, ashyirwa ku mwanya wa Secrétaire-Comptable, ahembwa umushahara mbumbe wa 97.223 Frw naho umushahara umugeraho (net salary) ari 80.869 Frw. Avuga ko n'ubwo yahawe uwo mushahara mbumbe wa 97.223 Frw, atigeze awuhembwa ahubwo umushahara yatahanaga wari 70.000 Frw buri kwezi. [2] Avuga kandi ko nyuma yo gutangira akazi haje kuza umuyobozi mushya wa Koperative witwa Kubitiro K. Audace ngo uyu ntiyamwishimira, kubera ko yashakaga gukoresha nabi amafaranga ya Koperative we akabimwangira, bituma ahora amusaba ibisobanuro mu nyandiko ku makosa atazi, bigera naho ku wa 08/12/2016 amuhinduriye inshingano yoherezwa gukorera kuri terrain ku mwanya utazwi. [3] Niyonagize Augustave akomeza avuga ko yavanywe ku gukorera mu biro kandi ari ko kari

akazi ke, ajyanwa kuri terrain kandi nta yandi masezerano akoranye n'umukoresha we, nyamara nabwo akomeza kubazwa ibyo mu biro. Avuga ko bigeze tariki ya 23/01/2017, uwo muyobozi yasheshe amasezerano ye y'akazi nta mpamvu abwiwe cyangwa ikosa rikomeye yaba yarakoze, asaba urukiko kwemeza ko yasezerewe binyuranye n'amategako no gutegeka ko ahabwa indishyi zose asaba nk'uko zikubiye mu kirego cye. [4] Koperative mw'izina ry'Umuyobozi wayo yireguye ivuga ko urega yasezerewe kubera kudashobora akazi no kudatanga umusaruro yari yitezweho hamwe no kutubaha inzego z'ubuyobozi bwa Koperative. Ivuga kandi ko mu masezerano y'umwimerere yabagengaga, urega yahinduye amasaha yo gutangiriraho akazi n'igihe amasezerano azamara. [5] Ku byerekeye umushahara, Koperative ivuga ko Niyonagize Augustave yahembwaga 97.223 Frw kandi akayafata yuzuye cyane cyane ko ariwe wari ushinze gutegeka imishahara nk'umubaruramari n'umunyamabanga wa Koperative, ko niba yaribariraga nabi bitabazwa Koperative. Ku byerekeye guhindurirwa imirimo, Koperative ivuga ko ari inshingano zahindutse gusa, ko umwanya n'umushahara ndetse n'imiterere y'akazi bitahindutse, uretse ko yakuwe mu biro akajyanwa gukorera kuri terrain. Isoza ivuga ko ikirego cya Niyonagize Augustave nta shingiro gikwiye guhabwa, ko ahubwo akwiye gutegekwa kuyiha indishyi zo gushorwa mu manza n'igihembo cy'Avoka. [6] Mu rubanza RSOC 00274/2017/TGI/NYGE rwaciwe ku wa 03/05/2018, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Niyonagize Augustave gifite ishingiro kuri bimwe; rwemeza ko nta kigaragaza ko amasezerano yashyizweho umukono ku wa 31/03/2016 hagati ya Niyonagize Augustave n'uware uhagarariye Koperative Niyoyita Jean Claude atari umwimerere; rwemeza ko Niyonagize Augustave yasezerewe mu buryo binyuranye n'amategako; rwemeza ko umushahara wageraga mu ntoki (net salary) za Niyonagize Augustave wagombaga kuba ungana na 80.869Frw; rutegeka Koperative mw'izina ry'Umuyobozi wayo guha Niyonagize Augustave indishyi zo kwirukanwa binyuranye n'amategako zingana na 1.361.262 Frw; umushahara w'amezi 2 atahembwe: $80.869 \text{ Frw} \times 2 = 161.739 \text{ Frw}$; ikinyuranyo cy'umushahara atahawe mu mezi 8 angana na 86.952 Frw; indishyi z'ikurikiranarubanza zingana na 200.000 Frw, 500.000 Frw y'igihembo cy'Avoka na 50.000 Frw yatanzeho ingwate arega.

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- [7] Koperative yajuririye urubanza mu Rukiko Rukuru ivuga ko Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko amasezerano yashyizweho umukono n'impande zombi zibifitiye ububasha ngo kandi hari n'andi masezerano y'umwimerere Niyonagize Augustave yahinduye. [8] Niyonagize Augustave nawe yatanze ubujurire bwuririye kubwa Koperative asaba ibi bikurikira: guhabwa préavis, 7.000.000 Frw y'indishyi z'akababaro zo gusiragizwa mu nkiko, 500.000 Frw y'ikurikiranarubanza na 700.000 Frw y'igihembo cy'Avoka mu bujurire. [9] Mu rubanza RSOC 00003/2019/HC/KIG rwaciwe ku wa 27/02/2020, Urukiko Rukuru rwemeje ko Koperative yirukanye Niyonagize Augustave mu buryo bukurikije amategako, ko indishyi yahawe ku rwego rwa mbere zihwanye na 1.361.262 Frw kimwe n'amafaranga y'igihembo cy'Avoka n'ay'ikurikiranarubanza bivuyeho. Rwemeje kandi ko Koperative, igomba kwishyura Niyonagize Augustave indishyi zingana na 86.952 Frw y'ikinyuranyo cy'umushahara hamwe na 161.739 Frw y'amezi 2 atahembwe. [10] Mu guca urubanza, Urukiko Rukuru rwashingiye ku kuba Niyonagize Augustave yarandikiwe kenshi

asabwa ibisobanuro kandi ko atari Perezida wa Koperative wenyine wamugizeho ikibazo ahubwo ko na Komite ya Koperative yose yamubonagamo ikibazo, bityo akaba yaragombaga kwirukanwa. Urukiko rwavuze ko byagaragaye ko hari ikimenyetso cy'uko Niyonagize Augustave atuzuzaga igitabo yari ashinzwe kuzuza, ko Komite yabanje gusaba ko ahagarikwa by'agateganyo, ariko na nyuma akaza kuyisuzugura bigatuma yirukanwa. [11] Ku wa 18/03/2020, Niyonagize Augustave yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RSOCA 00003/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/02/2020 rwasubirwamo ku mpamvu z'akarengane, kubera ko mu icibwa ryarwo habayeho kwirengagiza nkana amategako n'ibimenyetso bigaragaza ko yirukanwe mu buryo bunyuranyije n'amategako. Nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire nawe yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza rwavuzwe rusubirwamo ku mpamvu z'akarengane. [12] Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma raporo yakozwe kuri urwo rubanza, ku wa 30/08/2022, yafashe icyemezo nimeron 162/CJ/2022 ko urubanza RSOCA 00003/2019/HC/KIG rwongera kuburanishwa, ikirego gihabwa RS/INJUST/RSOC 00012/2022/SC. [13] Iburanisha ry'uru rubanza ryashyizwe ku wa 24/01/2023, ribera mu ruhamwe, Niyonagize Augustave yunganiwe na Me Ruberwa Pierre, Koperative ihagarariwe na Me Ntihemuka Clément. [14] Mbere yo kwinjira mu mizi y'urubanza, Urukiko rwabanje gusuzuma ibivugwa n'uhagarariye Koperative asa n'utanga inzitizi, aho ku wa 4/11/2022 yashyize muri system inyandiko ivuga ko Urega atagaragaza uko impamvu ashingiraho asaba ko urubanza rusubirwamo ihuye n'ibiteganywa n'ingingo ya 55 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya impamvu z'akarengane zituma urubanza rusubirishwamo; ko ku bw'ibyo, ikirego cya Niyonagize Augustave kitakagombye kwakirwa ngo gisuzumwe. Ibi Urukiko rwahise rubifataho icyemezo, ruvuga ko rwabitanzeho umurongo mu manza zinyuranye, ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwongera kuburanishwa, nta yindi nzitizi yakirwa cyeretse umuburanyi ashoboye kugaragaza impamvu idasanzwe, nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego.¹ [15] Muri uru rubanza harasuzumwa ibibazo byo kumenya niba Urukiko Rukuru rwarirengagije ibimenyetso bigaragaza ko Niyonagize Augustave yirukanywe ku kazi mu buryo budakurikije amategako no kumenya niba hari indishyi zigomba gutangwa muri uru rubanza.

1 Reba nk'urubanza RS/INJUST/RC 00022/2018/SC haburana Busoro Gervais na Busoro Mugunga Desire n'abandi.

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II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Niyonagize Augustave yarirukanwe ku kazi mu buryo budakurikije amategako [16] Me Ruberwa Pierre wunganira Niyonagize Augustave avuga ko akarengane muri uru rubanza gashingiye ku kuba Umucamanza wo mu Rukiko Rukuru, yaremeje ko uwo yunganira yirukanywe mu buryo bukurikije amategako nta kimenyetso na kimwe ashingiyeho, ko Koperative yavuze ko atatanze raporo nyamara ikagaragaza ko umunsi

bamuhindurira inshingano z'umurimo hakoze ihererekanyabubasha (remise et reprise) hagati ye nk'Umunyamabanga nshingwamari wa Koperative n'ubuyobozi bwa Koperative. [17] Akomeza avuga ko asaba Urukiko ko rwasuzuma agasuzuguro uwo yunganira ashinjwa kiswe amakosa akomeye, kuko mu nyandiko yakozwe Niyonagize Augustave ahabwa akazi, bari bavuze ko ibyakozwe mbere y'uko ahabwa akazi atazabibazwa. Anavuga ko nta baruwa Niyonagize Augustave yigeze abona ya Koperative imumenyeshya iseswa ry'amasezerano y'akazi mu masaha mirongo ine n'umunani(48h), ko ndetse n'inama ivugwa n'uregwa ko yavugiwemo ibyo kumusezerera ku kazi ntayo yigeze amenyeshwa. Asoza avuga ko Urukiko Rukuru rwamurenganyije kuko yirukanwe mu buryo budakurikije amategeko bityo ko agomba guhabwa indishyi nk'uko amategeko abiteganyaga. [18] Me Ruberwa Pierre avuga kandi ko Urukiko Rukuru rwirengagije ibimenyetso bitandukanye birimo inyandiko y'iherekanyabubasha ryakozwe ku wa 29/11/2016 nyuma y'uko Niyonagize Augustave ashyizwe muri mise à pied y'iminsi cumi n'itanu ku wa 28/11/2016, n'ibaruwa yo ku wa 08/12/2016 yamuhinduriraga inshingano za Secrétaire-Comptable akagirwa umukozi ukorera hanze (Agent sur terrain). [19] Avuga nanone ko Urukiko Rukuru rwirengagije ko Niyonagize Augustave yirukanwe ku wa 24/01/2017 nta baruwa yabanje guhabwa yo kwisobanura ku ikosa rikomeye yamenyeshejwe ubwo yahabwaga ibaruwa imusezerera mu buryo bunyuranyije n'amategeko nk'uko bigaragara mu gika cya 13 cy'urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane. Asobanura ko muri icyo gika, Urukiko Rukuru rwavuze ko Niyonagize Augustave yagombaga kwirukanwa kubera ko yandikiwe kenshi kandi akaba yarasuzuguraga Perezida na Komite nyamara nta kimenyetso rushingiyeho. [20] Niyonagize Augustave avuga ko ntaho yahuriye na Komite kuko nta baruwa imutumira yabonye cyangwa ngo ibe yaragaragajwe nk'ikimenyetso cya Koperative mu rubanza, ko atumva uburyo Urukiko rwamuhamije agasuzuguro nk'ikosa rikomeye kandi nta kibigaragaza. [21] Akomeza avuga ko atemeranya nibyo uregwa avuga ko yasuzuguye ubuyobozi, kuko yakoraga akazi ke neza, ko ahubwo icyo yapfuye n'Umuyobozi ari uko yakorehaga umutungo wa Koperative nabi, ko ariyo mpamvu nyuma y'uko akoze raporo y'amezi atandatu, yayitanye ariko umuyobozi wa Koperative akanga kuyakira, bituma ayitanga muri RCA (Rwanda Cooperative Agency), ari nabwo hahise hatangira umugambi wo kumwirukana ashinjwa agasuzuguro n'ibindi bitumvikana, akaba ariyo mpamvu asaba Urukiko kumurenganura. Anavuga ko inyandiko yatanze muri RCA yayikoze kugira ngo agaragaze ahaturuka igihombo cya Koperative mbere y'uko kiba nk'uko byari biteganyijwe mu ngingo ya 14 y'amasezerano y'akazi. [22] Me Ntihemuka Clement, uhagarariye Koperative, avuga ko ku bijyanye no kuba Niyonagize Augustave avuga ko Urukiko rwamuhamije ikosa ryo kudakora raporo nta kimenyetso cyagaragajwe na Koperative rushingiyeho, atari byo, ko ahubwo ari we wagombaga kugaragaza ko raporo zose yagombaga gukora yazikoze neza kandi ku gihe nk'uko byari byaremejwe mu masezerano y'akazi, ndetse n'amabwiriza y'akazi. Anavuga ko kugeza ubu registres yagombaga gukoreramo zimwe muri izo

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raporo zihari, kandi ko zigaragaza ko bitakozwe uko yari abitegetswe, kandi ko nubwo yitwaza inyandiko y'iherekanyabubasha yakorewe, iyo nyandiko atari raporo. [23] Akomeza avuga ko ku bijyanye no kuba Niyonagize Augustave avuga ko nta baruwa yahawe yo kwisobanura mu masaha 48, asanga yirengagiza nkana ko ingingo ashingiraho ireba amasezerano y'igihe kitazwi. Asobanura ko amasezerano y'igihe kizwi agengwa n'ingingo ya 28, igika cya 2, y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko icyemezo cyo gusesa amasezerano kubera ikosa rikomeye umukozi akimenyeshwa mu masaha 48, kandi ko ibyo byubahirijwe, cyane cyane ko Niyonagize Augustave amaze gusuzugura Komite, akayibwira ko ntacyo yayisubiza, icyemezo cyo gusesa amasezerano ye yakimenyeshejwe mu gihe cyagenwe n'amategeko. [24] Me Ntihemuka Clement yongeraho ko ibijyanye no gusuzugura Komite byabaye kenshi: ko ubwa mbere, umuyobozi wa Niyonagize Augustave yamumenyesheje bikozwe mu nyandiko, ko yagombaga gukora raporo yuzuza registres, anabyandika muri registre imwe yari yasanze hariho gukererwa gukabije, Niyonagize Augustave aho gusubiza ko yumvise amabwiriza amukebura, ahubwo yanditse akebura umuyobozi we avuga ko yakagombye kumwandikira ahandi hatari muri registre, nkaho ari we wagenaga uburyo registres zikoreshe. Avuga ko ubwa kabiri, Komite yamuhamagaje kugira ngo yisobanure ku myitwarire ye yo gusuzugura uwamuyoboraga, agasubiza ko abanza kubyitegura ariko ntavuye igihe azaba yiteguye, ko ari nabwo yafatiwe icyemezo cyo guhagarikwa ku kazi by'igihe gito, bikanakurikirwa no guhindurirwa inshingano ubwo yahabwaga kujya gukorera kuri terrain. [25] Akomeza avuga ko ubwa gatatu Niyonagize Augustave yahamagajwe na Komite ngo yisobanure ku mpamvu zo gukererwa ku kazi no gusuzugura umuyobozi we, akabasubiza ko nta mwanya abifitiye, kandi ko izi nshuro ziyongera ku zindi nyinshi yagiye asuzugura uwamuyoboraga ku buryo byari bigoye gukomeza gukorana nawe. Anavuga ko asanga Niyonagize Augustave yarirukanwe kubera amakosa ye yo kutuzura inshingano ze uko bikwiriye, kutubaha amasaha y'akazi no gusuzugura ubuyobozi, bityo ko nta ndishyi akwiriye guhabwa. [26] Me Ntihemuka Clément abajijwe niba hari ikimenyetso kigaragaza ko Niyonagize atakoraga raporo yagombaga gukora, n'igihe yagombaga kuzikorera, ndetse niba hari ikigaragaza ko yasuzuguye Komite n'igihe byabereye, asubiza ko ikimenyetso ari inyandikomvugo y'inama. Yabajijwe niba hari ikindi kimenyetso kigaragaza ko bamusabaga raporo agasuzugura ubuyobozi, asubiza ko agasuzuguro ari fait juridique atari acte juridique ku buryo babibonera ikindi kimenyetso, ko ahubwo uwasuzuguwe yabikorera constat. Ku byerekeye ikibazo cy'uko Niyonagize yaba yarahinduye inyandiko y'amasezerano y'akazi, Me Ntihemuka Clement avuga ko bata kibiburanisha nk' impamvu yo gusesa amasezerano kuko batayifiye ibimenyetso, asaba ko bitanasuzumwa muri uru rubanza. UKO URUKIKO RUBIBONA [27] Ingingo ya 28, igika cya kabiri y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ari naryo ryariho igihe cy'amasezerano yavuzwe, igira iti: amasezerano y'akazi y'igihe kizwi cyangwa ku murimo uzwi neza ashobora kurangizwa mbere y'igihe cyateganyijwe iyo habayeho ikosa rikomeye cyangwa kumvikana hagati y'impande zombi. Mu gihe iseswa ry'amasezerano ritewe n'ikosa rikomeye, uyasheshe amenyesha undi mu gihe cy'amasaha mirongo ine n'umunani (48). [28] Ingingo ya 3 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko buri muburanyi agomba

kugaragaza ibimenyetso by'ibyo aburana.

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[29] Muri dosiye hagaragaramo amasezerano y'akazi yasinywe ku wa 31/3/2016 Niyonagize Augustave yagiranye na Koperative, aho uyu yahawe akazi ko gukora nk'Umubaruramari n'Umunyamabanga (Secrétaire-Comptable) wa Koperative. [30] Ingingo ya 9 y'ayo masezerano iteganya ko azamara igihe cy'imyaka ibiri (2) ishobora kuzongerwa uherye igihe yashyiriweho umukono; ayo masezerano ateganya kandi ibyerekeye iseswa ryayo aho avuga ko Umukoresha ashatse gusezerera Umukozi amumenyesha mu nyandiko mbere y'ukwezi kandi uko kwezi akakumuhembera. Impande zombi kandi zumvikanye ko ayo masezerano ashingiye ku biteganywa n'itegeko rigenga umurimo mu Rwanda. [31] Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryavuzwe haruguru nta gisobanuro ritanga cy'ikosa rikomeye ryatuma umukozi yirukanwa nk'uko bimeze mu Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda ririhobaho. Itegeko rishya risobanura ikosa rikomeye nk'ikosa rikozwe n'umukozi, hashingiwe ku buremere by'icyakozwe, ikitakozwe, imyitwarire, uburyo ryakozwemo cyangwa ingaruka ryateje ku buryo umukoresha aba atagishoboye gukomeza kumukoresha.² [32] Muri dosiye na none hagaragaramo inyandikomvugo y'inama yo ku wa 15/01/2017 yahujwe Komite Nyobozi na Komite Ngenzuzi za Koperative, aho mu byigiye muri iyo nama harimo n'ikibazo cy'imyitwarire ya Niyonagize Augustave; yemeza ko agomba kwirukanwa kuko bigaragara ko afite agasuzuguro ndetse n'imyitwarire mibi, kandi ko n'akazi atagakora neza nk'uko bikwiye. [33] Dosiye igaragaza kandi ko ku wa 23/1/2017 Perezida wa Koperative witwaga Kubitiro Kayonde Audace yanditse ibaruwa asesa amasezerano y'akazi Niyonagize Augustave yagiranye na Koperative. Iyo baruwa ivuga ko impamvu zashingiweho haseswa amasezerano ari ukuba Niyonagize Augustave adashoboye akazi, adatangira umusaruro yari ategerejweho, kutubaha Umukoresha na Komite zose za Koperative. Ikindi kivugwa muri iyo baruwa nk'impamvu yo gusesa amasezerano, ni ukuyahindura ku bw'uburiganya bw'umukozi, ku buryo yanze gutanga kopi ye y'amasezerano y'akazi y'umwimerere ngo agereranywe n'ingingo zigize amasezerano ya bamwe mu bandi bakozi. Iyi ngingo ya nyuma ariko uhagarariye Koperative yavugiyemo mu iburanisha ko batakiyishyigiyeho. [34] Dosiye y'urubanza igaragaza ndetse ko ku wa 23/11/2016 no ku wa 17/01/2017 Niyonagize Augustave yanditse atanga ibisobanuro ku mabaruramari yari yandikiwe n'ubuyobozi bwa Koperative ku wa 21/11/2016 no ku wa 12/01/2017 asabwa ibisobanuro, kandi ubuyobozi ntibugaragaza ko butanyuzwe n'ibisobanuro bwahawe. [35] Mu mikirize y'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, mu gika cya 13, Urukiko rwasobanuye ko impamvu Niyonagize Augustave yagombaga kwirukanwa ari uko yandikiwe kenshi n'umuyobozi we asabwa ibisobanuro bijyanye n'imikorere ye, gusuzugura Komite no kutuzura igitabo yari ashinzwe kuzuza, runabishingiraho ruvuga ko indishyi yahawe zo kwirukanirwa ubusa, amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka yahawe ku rwego rwa mbere bivanyweho. [36] Mu miburanire ye Niyonagize Augustave asobanura ko kuva yahindurirwa inshingano ku wa 08/12/2016 kugeza yirukanwe mu kazi, nta baruwa yigeze yandikirwa asabwa ibisobanuro

ngo ayimenyeshwe cyangwa ngo abe yaratumijwe na Komite ngo yange kwitaba, bityo ko Urukiko Rukuru rwemeje ko yirukanywe mu buryo bukurikije amategeko rwamurenganyije. [37] Nk'uko byagarutsweho haruguru, Itegeko riteganywa ko mu gihe iseswa ry'amasezerano ritewe n'ikosa rikomeye, uyasheshe amenyesha undi mu gihe cy'amasaha mirongo ine n'umunani (48). Kuba Niyonagize Augustave yaramenyeshwe ko amasezerano ye y'akazi yasheshwe mu ibaruwa yo ku wa 23/01/2017 nyuma y'iminsi irindwi umwanzuro wo kumwirukana ufatiwe mu nama yo ku wa

2 Reba ingingo ya 3,7° y'iryo Tegeko.

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15/01/2017, ariko Koperative ikaba itari yabanje kumumenyesha mu gihe giteganywa n'Itegeko, ikosa rikomeye yakoze rituma agomba kwirukanwa, bigaragaza ko ubuyobozi bwa Koperative butubahirije ibyo amategeko ateganywa. [38] Byongeye kandi, Urukiko rurasanga impamvu Koperative ivuga mu ibaruwa yayo yo ku wa 23/01/2017 ko arizo zatumye isesa amasezerano y'akazi yari ifitanye na Niyonagize Augustave, cyangwa izavuzwe na Komite Nyobozi na Ngenzuzi mu nama yo ku wa 15/01/2017, aho yagarutse ku myitwarire ya Niyonagize Augustave, nta shingiro zifite mu gihe nta kimenyetso Koperative yatanze kigaragaza imyitwarire mibi imushinja cyangwa ko yananiwe kuzuza inshingano ze, usibye kubivuga mu magambo gusa. [39] Urukiko rurasanga rero mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, Urukiko Rukuru rwaremeje ko Niyonagize Augustave yirukanywe mu buryo bwemewe n'amategeko hatitawe kureba uburyo byakozwe ngo bihuzwe n'ibigomba kubahirizwa mbere yo gusesa amasezerano nkuko amategeko abiteganywa.

2. Kumenya niba hari indishyi zigomba gutangwa muri uru rubanza [40] Me Ruberwa Pierre wunganira Niyonagize Augustave avuga ko uregwa agomba gutanga indishyi mu buryo bukurikira: - 2.500.000 Frw kubera kwirukanwa ku kazi mu buryo budakurikije amategeko; - 1.000.000 Frw y'indishyi mbonezamusaruro akomoka ku mishahara y'amezi abiri atahembwe; - 2.000.000 Frw akubiyemo ay'ikurikiranarubanza n'igihembo cy'Avoka. [41] Ku bijyanye n'ibindi bisobanuro by'indishyi Niyonagize Augustave asaba, Me Ruberwa Pierre avuga ko hazarebwa izari zaregwe mu Rukiko Rwisumbuye rwa Nyarugenge, zigizwe n'ibi bikurikira: - Indishyi zo kwirukanwa ku kazi: 97.223 Frw x14=1.361.262 Frw; - Umushahara w'amezi abiri atahembwe: 80.869x2=161.739 Frw - Imishahara ituzuye atahembwe mu mezi 8: (80.869-70.000) X8=86. 952 Frw; - Konji z'imyaka ibiri zishyurwa: 97.233 Frw X2=192.466 Frw; - Pécule de congés :97 233 Frw x 2=194. 466 Frw; - Iminsi 7 yakoze ku ma konji ya Leta: 97.233 Frw x7/2=30.934 Frw; - Integuza iteganyijwe mu masezerano: 97. 233 Frw; - Indishyi zo kudahabwa icyemezo cy'umurimo gikoze neza: 97. 233 Frw x 6=583. 398 Frw; - Indishyi z'akababaro :2.000.000 Frw; - Igihembo cy' Avoka :500.000 Frw; - Ikurikiranarubanza:500.000 Frw; - Kwishyura igarama:50.000 Frw. [42] Me Ntihemuka Clément uhagarariye Koperative avuga ko Niyonagize Augustave adasobanura indishyi n'icyo zishingiyeho, bityo ko ntazo yahabwa kubera ko ariwe ugomba gusobanura ikirego cye, akanagitangira ibimenyetso. Avuga ko nta ndishyi z'ikurikiranarubanza n'igihembo cy'Avoka Niyonagize Augustave

yahabwa kuko nta kuri afite, ko ahubwo, ashingiye ku ngingo ya 111 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi,

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kuba Niyonagize Augustave yarashoye Koperative mu rubanza ku maherere, ariwe ukwiye kuryozwa ubwishyu bw'amafaranga akurikira: - 1.200.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka ku rwego rwa mbere n'urwa kabiri; - 1.300.000 Frw y'igihembo cy'Avoka n'ikurikiranarubanza kuri uru rwego, yose hamwe akaba 2.500.000 Frw. UKO URUKIKO RUBIBONA [43] Ingingo ya 28, igika cya mbere y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ryavuzwe haruguru, iteganya ko kwirukanwa bidashingiye ku mategeko cyangwa kwegura mbere y'uko amasezerano y'akazi y'igihe kizwi arangira bituma uruhande rusheshe amasezerano rutanga indishyi zingana n'umushahara w'igihe cy'amasezerano cyari gisigaye, hatirengagijwe izindi ndishyi zakwishyurwa. [44] Ingingo ya 33 igika cya mbere y'Itegeko ry'umurimo ryavuzwe haruguru, iteganya ko iseswa ryose ry'amasezerano y'akazi rinyuranyije n'amategeko rishobora gutuma hatangwa indishyi z'akababaro. Indishyi z'akababaro zihabwa umukozi wirukanwe binyuranyije n'amategeko ntizishobora kuja muni y'umushahara w'amezi atatu (3), ariko kandi ntizishobora kurenza amezi atandatu (6). [45] Urukiko rurasanga nk'uko byagaragajwe haruguru, Koperative ariyo yasheshe amasezerano y'akazi yagiranye na Niyonagize Augustave mu buryo binyuranyije n'amategeko, bityo hashingiwe ku ngingo y'itegeko rimaze kuvugwa, indishyi zisabwa na Niyonagize Augustave zifite ishingiro, ikaba igomba kubitangira indishyi. [46] Nk'uko byasobanuwe haruguru, amasezerano y'akazi Niyonagize Augustave yagiranye na Koperative yari afite igihe cy'inyaka ibiri (2) uhereye kuri 31/03/2016, bivuga ko yagombaga kurangira ku wa 31/03/2018. Koperative yasheshe ayo masezerano ku wa 23/01/2017, hasigaye amezi 14 ngo igihe cyayo kirangire. [47] Dosiye igaragaza kandi ko umushahara mbumbe Niyonagize Augustave yahembwaga ungana na 97.233Frw, havanwaho imisoro n'ibindi, agahembwa angana na 80.869 Frw nkuko n'inkiko zibanza zabyemeje. Nk'uko byagarutseho ariko muri urubanza, Niyonagize Augustave yatahanaga 70.000 Frw gusa nkuko bigaragazwa na receipt yo ku wa 03/08/2016 yakiriyeho umushahara w'ukwezi kwa 07/2016 iri muri dosiye. [48] Urukiko rurasanga mu kugenera Niyonagize Augustave indishyi Urukiko Rwisumbuye rwarabariye ku mushahara mbumbe wa 97.233Frw, ariko hashingiwe ku murongo watanze n'uru Rukiko mu rubanza Niwemugeni Jeannette yaburanaga na KCB Bank Rwanda Ltd3 w'uko umukozi usezerewe mu kazi adahabwa umushahara mbumbe ahubwo ahabwa umushahara atahana mu ntoki (net salary), Niyonagize Augustave agomba guhabwa indishyi z'igihe yari asigaje kingana n'amezi 14 ngo amasezerano ye y'akazi arangire, zibazwe hashingiwe ku mushahara yagombaga gutahana mu ntoki (net salary), bityo akaba agomba guhabwa 80.869 Frw x 14=1.132.166 Frw. [49] Kubyerekeye indishyi z'akababaro Niyonagize Augustave avuga ko yatewe no kwirukanwa ku kazi zingana na 2.000.000 Frw yari yasabye mu Rukiko Rwisumbuye ntazihabwe, Urukiko rurasanga zitasuzumwa muri uru rubanza rw'akarengane kuko atazijuririye mu Rukiko Rukuru ngo ruzimwime, ngo ubu abe avuga ko yazirenganyijweho. Ibi kandi ni nako bimeze ku 7.000.000 Frw y'indishyi

3 Reba urubanza RS/INJUST/RSOC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2019 igika cya 36.

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z'akababaro ko gusiragizwa mu nkiko yasabye bwa mbere muri urwo Rukiko zitari zararegewe mu Rukiko rwabanje. [50] Urukiko rurasanga kandi n'indishyi mbonezamusaruro zingana na 1.000.000 Frw Niyonagize Augustave yasabiye bwa mbere muri uru Rukiko avuga ko zikomoka ku mishahara y'amezi abiri atahawe hamwe n'inyungu zayo, nazo zitasuzumwa muri uru rubanza hakurikijwe umurongo watanzwe n'Urukiko rw'Ikirenga mu manza zinyuranye, w'uko kuba umuburanyi wemerewe gusubirishamo urubanza ku mpamvu z'akarengane rukaburanishwa bundi bushya, atakwitwaza iyo nzira kugirango azane ibirego bishya bitari mu murongo w'ibyaregewe urubanza rugishingwa mu rwego rwa mbere cyangwa ingingo zitasuzumwe mu rubanza rusubirishwamo kuko yaba yavuye mu mbibi z'urwo rubanza. [51] Urukiko rusanga hari amafaranga y'integuza Niyonagize Augustave yari yasabye mu Rukiko Rwisumbuye rwa Nyarugenge, rusanga akwiye guhabwa 48.611 Frw, ariko ntirwayashyira mu cyemezo cyarwo, akaba nayo agomba kuyahabwa. [52] Ku birebana n'indishyi z'ikurikiranarubanza n'igihembo cy'Avoka Niyonagize Augustave asaba kuri uru rwego zingana na 2.000.000 Frw, Urukiko rurasanga akwiye kugira amafaranga agenerwa kuko byabaye ngombwa ko akurikirana urubanza, anashaka Avoka umwunganira, kandi akaba hari ibyo yatsindiye, ariko kuko amafaranga asaba akabije kuba menshi, Urukiko rurasanga rwamugenera mu bushishozi bwarwo 300.000 Frw y'ikurikiranarubanza, na 500.000 Frw y'igihembo cy'Avoka, yose hamwe akaba 800.000 Frw. [53] Urukiko rurasanga kandi Niyonagize Augustave akwiye guhabwa indishyi z'ikurikiranarubanza n'igihembo cy'Avoka mu Rukiko Rukuru kuko naho byabaye ngombwa gukurikirana urubanza no gushaka Avoka umwunganira bitewe n'ubujurire bwa Koperative bwahawe ishingiro kandi butaragombaga kurahabwa. Rurasanga ariko 1.200.000 Frw yose hamwe yasabaga kuri urwo rwego atarayatangiye ibimenyetso, bityo mu bushishozi bwarwo akaba agenewe 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw. [54] Urukiko rurasanga nanone agomba guhabwa 200.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka yari yahawe mu Rukiko Rwisumbuye rwa Nyarugenge, ndetse akanasubizwa 50.000 Frw yatanzeho ingwate arega muri urwo rukiko nk'uko rwari rwabyemeje kuko urwo rubanza rwavanyweho nta mpamvu. [55] Urukiko rurasanga indishyi zisabwa na Koperative itazihabwa kuko ntacyo itsindiye muri uru rubanza. II. ICYEMEZO CY'URUKIKO [56] Rwemeje ko ikirego cya Niyonagize Augustave gisaba gusubirishamo ku mpamvu z'akarengane urubanza RSOCA 00003/2019/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 27/02/2020 gifite ishingiro kuri bimwe. [57] Rwemeje ko Niyonagize Augustave yasezerewe ku kazi mu buryo bunyuranyije n'amategeko. [58] Rutegetse Koperative Duhuzumurimo wa Karoti, mu izina ry'umuyobozi wayo guha Niyonagize Augustave indishyi zikurikira:

4 Reba urubanza RS/INJUST/RSOC 00001/2018/SC, rwaciwe ku wa 25/09/2020 haburana Banki y'abaturage na Ukwibishaka Alexis; n'Urubanza RS/INJUST/RC 00024/2018/SC, rwaciwe ku wa 21/02/2020 haburana Ngizweninshuti Albert na Muhima Giovani

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- Indishyi zo gusesa amasezerano y'akazi mu buryo bunyuranyije n'amategeko zingana na 1.132.166 Frw; - Umushahara w'amezi 2 atahembwe: 161.739 Frw; - Ikinyuranyo cy'umushahara atahawe mu mezi 8: 86.952 Frw; - Integuza ingana n'iminsi 15: 48.611 Frw; - Amafaranga 200.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka yari yahawe mu Rukiko Rwisumbuye; - Amafaranga 50.000 Frw yatanzeho ingwate y'Ikirego mu Rukiko Rwisumbuye rwa Nyarugenge; - Amafaranga 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka mu Rukiko Rukuru; - Amafaranga 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka kuri uru rwego; Yose hamwe akaba ari 3.779.468 Frw.

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Prepared on 12 October 2026 · Esheria