

RWANDA / JUDGMENT

NKURUNZIZA v TECOS Ltd

RSOCA 00109/20224/HC/KIG

COURT

High Court

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NKURUNZIZA v TECOS Ltd

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Text

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NKURUNZIZA v TECOS Ltd [Rwanda URUKIKO RUKURU - RSOCA 00109/20224/HC/KIG (Hitimana, P.J.) 29 Ugushyingo 2024] Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Impaka z'umurimo ziturutse ku iseswa ry'amasezerano y'umurimo – Ikibazo kitasuzumwe n'ubugenzuzi - Kuba hari ikibazo kitasuzumwe mu bugenzuzi bw'umurimo ntibyatuma kitakirwa ngo gisuzumwe ku rwego rwa mbere mu Rukiko kuko icy'ingenzi ari uko inzira z'ubwumvikane ziteganywa n'amategeko ziba zarubahirijwe. Incamake y'ikibazo: Nkurunziza yari umukozi wa TECOS Ltd kuva ku wa 14/06/2010, afite amasezerano y'akazi y'igihe kitazwi, akora ku mwanya wa Senior Technician. Muri COVID ubwo bubakaga umuhanda wa kaburimbo wa Nyabisindu – Nyarutarama, ku itariki ya 08/04/2020 umukoresha we yamuhaye ibaruwa yo gusubika akazi by'agateganyo kubera ingamba zo kwirinda COVID. Ku wa 27/07/2020, Umuyobozi mukuru w'ikigo cya TECOS Ltd yamwandikiye ibaruwa imusaba kugaruka mu kazi ariko nyuma y'iminsi itatu agarutse, ahabwa indi baruwa isesa amasezerano ku mpamvu z'ingaruka z'icyorezo cya Covid. Nyuma y'uko kumvikana k' Umugenzuzi w'umurimo binaniranye, urega yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba indishyi zo gusesa amasezerano binyuranije n'amategeko, indishyi zitandukanye, kwishyurwa imishahara

atishyuwe no guhabwa amafaranga atagiye ahembwa kuva atangiye akazi kugeza asezerewe kubera ivangura mu by'imishahara yakorewe. Urukiko rwasanze ikirego cyeye nta shingiro gifite ngo kuko ibyo yasabye yabihawe, bituma ajuririra icyo cyemezo mu Urukiko Rukuru. Uru rukiko rwasuzumye ikibazo cyo kumenya niba ikibazo cyo guhabwa amafaranga atagiye ahembwa kuva atangiye akazi kugeza asezerewe kubera ivangura mu by'imishahara urega avuga ko yakorewe cyasuzumwa kuko atigeze agitanga k' Umugenzuzi w'Umurimo no gusuzuma ko hari indishyi zatangwa. Urega avuga ko Urukiko Rwisumbuye rwanze gusuzuma ikibazo cyo kuba yaravangurwe mu bandi bakozi bakoraga akazi kamwe bigatuma abarirwa imishahara mike itandukanye n'iy'abandi bakozi b'abenjenyeri nubwo we atari umwenjenyeri. Akomeza avuga ko urukiko rwirengagije ko afite uburambe buri hejuru y'inyaka icumi akorera umukoresha umwe rumubarira indishyi ku mishahara y'amezi arindwi gusa aho kuba amezi icyenda. Uregwa asobanura ko ikibazo cyo kumenya niba urega yarakorewe ivangura mu bandi bakozi kitasuzumwe kuko icyo kibazo kitigeze gisuzumwa mu bugenzuzi bw'umurimo bityo Urukiko narwo rukaba rutagomba kugisuzuma. Naho ku bijyanye n'indishyi, asabonaura ko urega yahawe indishyi zikwiye hagendewe ku masezerano yabo kuko haba harimo n'umushahara, bikaba byarakozwe mu bwumvikane, urega ahabwa Miliyoni ebyiri n'ibihumbi maganatanu (2.500.000Frw) akubiyemo amafaranga yose ajyanye no gusezererwa, ashirwa kuri compte ye. Incamake y'icyemezo: 1. Kuba hari ikibazo kitasuzumwe mu bugenzuzi bw'umurimo ntibyatuma kitakirwa ngo gisuzumwe ku rwego rwa mbere mu Rukiko kuko icy'ingenzi ari uko inzira z'ubwumvikane ziteganywa n'amategako ziba zarubahirijwe;

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2. Iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi ntizishobora kurenga umushahara ahabwa w'amezi icyenda. Amategako yashingiweho: Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 30, 102. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Nkurunziza Padiri Patrice yabaye umukozi wa TECOS Ltd kuwa ku wa 14/06/2010, afite amasezerano y'akazi y'igihe kitazwi, akora ku mwanya wa Senior Technician. Akavuga ko ubwo bakoraga ku mushinga wo kubaka umuhanda wa kaburimbo Nyabisindu-Nyarutarama (Construction of asphalt road nyabisindu-nyarutarama (600 m) in the City of Kigali), byageze ku itariki ya 08/04/2020, ashyikirizwa inyandiko isubika by'agateganyo amasezerano y'akazi, ivuga ko bitewe n'ingamba yashyizweho na Leta yo kwirinda ikwirakwiza rya Covid-19 harimo na Guma mu rugo kandi umurimo akora ntabwo yawukora ari mu rugo. Akavuga ko impamvu umukoresha yashingiyeho asubika amasezerano y'akazi itariyo kubera ko no muri "Guma mu rugo" barakoraga kuko uwo muhanda bakoraga wari mu mishinga y'Umujyi wa Kigali itegura inama ya CHOGM. Akavuga ko hashize amezi agera kuri atatu (3 mois) ari mu rugo, nibwo kuwa 27/07/2020, Umuyobozi Mukuru w'ikigo cya TECOS Ltd yamwandikiye ibaruwa imusaba kugaruka ku kazi kuwa 03/08/2020; ngo yarabyubahirije, asubukura akazi, ngo hashize iminsi itatu

- (3) akora, nibwo ku itariki ya 06/08/2020, yameyeshejwe mu magambo ko amasezerano y'akazi asheshwe, ibyo akaba ari ugusesa amasezerano nta mpamvu kandi muburyo binyuranije n'amategako. [2] Nkurunziza Padiri Patrice avuga ko amaze kubona ko asezerewe ku kazi mu magambo, yandikiye umukoresha we kugira ngo bakemure ikibazo mu bwumvikana ariko ntibyaba, ahubwo ku itariki ya 14/08/2020, ashikirizwa ibaruwa isesa amasezerano ku mpamvu z'ingaruka z'icyorezo cya Covid-19, ko ibyo nabyo binyuranije n'amategako, niyo mpamvu yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba ibi bikurikira: indishyi zo gusesa amasezerano binyuranije n'amategako; indishyi zo kudahabwa integuza; amafaranga y'imperekeza; kwishyurwa imishahara y'ukwezi kwa Mata, Gicurasi, Kamena na Nyakanga 2020; indishyi zingana n'umushahara we inshuro ebyiri (2) kubera igihe yamaze asiragizwa; guhabwa amafaranga atagiye ahembwa kuva yatangiye akazi kugeza asezerewe kubera ivangura mu by'imishahara yakorewe; gusubizwa amafaranga y'ingendo yagiye akora; kwishyurwa amafaranga y'umushahara wose w'ukwezi kwa Kanama 2020; amafaranga y'insimburakiruhuko z'umwana wa 2019 na 2020; amafaranga y'impozamarira; indishyi zo kudatanga icyemezo cy'umukoresha wa nyuma (Attestation de Services rendus). Ndetse agasubizwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [3] Uhagarariye TECOS Ltd yavuze ko ikirego cya Nkurunziza Padiri Patrice nta shingiro gifite kubera ko amasezerano ye y'akazi yasheshwe mu buryo bukurikije amategako bitewe

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n'ingaruka yatejwe n'icyorezo cya Covid-19, cyagize ingaruka ku bukungu bwa TECOS LTD kuko akazi kahagaze muri guma mu rugo na nyuma yayo, kuko amasoko Company yari ifite itabashije kuyakora neza ndetse no kubona ayandi ntibayoroheye kubera ihungabana ry'ubukungu kandi ni cyorezo ndakumirwa (cas fortuit); kandi mugusesa amasezerano hubahirijwe ibiteganywa mu ngingo ya 31, agace ka 2o k'Itegeko No 66/2018 ryo kuwa 30/08/2018 ryo kuwa 30/08/2018 rigenga umurimo mu Rwanda, maze ahabwa imperekeza. [4] Akomeza avuga kandi ko habaye ubwumvikane hagati ya Nkurunziza Padiri Patrice na TECOS Ltd, maze bamuha amafaranga 2.500.000 Frw nk'uko nawe abiyemerera mu mwanzuro we. Bityo ibyo asaba nta shingiro byahabwa. [5] Urubanza rwaburanishijwe mu ruhame mu matariki atandukanye, Nkurunziza Padiri Patrice yitabye kandi yiburanira, naho TECOS Ltd, ihagarariwe na Me Rumenge Nkundimana Victor. [6] Urukiko Rwisumbuye rwemeje ko ikirego cya Nkurunziza Padiri Patrice nta shingiro gifite ngo kuko ibyo yasabye yabihawe. Ruvuga ko ingwate y'amagarama yatazwe ihwanye n'ibyakozwe mu rubanza. [7] Nkurunziza Padiri Patrice ntiyishimiye imikirize y'uru rubanza, arajurira avuga ko Urukiko Rwisumbuye rwanze kwakira no gusuzuma ikibazo urega yari yagaragaje aho yasabaga ko imishahara ye y'imyaka ibiri yanyuma yabarwa hagendewe ku mushahara abandi bakozi bakoraga akazi kamwe bahebwa ariko urukiko rwanga kubyakira ruvuga ko atigeze abigaragariza umugenzuzi w'umurimo ngo nyamara tariki ya 18/10/2021 yandikiye umugenzuzi w'umurimo amugaragariza ikibazo cy'ivangura yakorewe mu kazi aho we yahembwaga amafaramba make 250,000 Frw ugereranije n'ayabandi bakozi bakoraga umurimo umwe bahembwaga 600,000 Frw; Kuba yari akwiye guhabwa indishyi zo gusesa amasezerano zibariwe ku mezi icyenda aho kuba arindwi dore ko yari amaze imyaka irenga icumi mu kazi no

kuba byari bikwiye ko urukiko rwanga gutanga indishyi zo gusiragizwa mu manza ruvuga ko urega ariwe wishoye munkiko. [8] Urubanza rwaburanishijwe Nkurunziza Padiri Patrice yitabye, yunganiwe na Me Gahamanyi Justin, TECOS Ltd ihagarariwe na Me Rumenge Nkundimana Victor. [9] Harasuzumwa niba Nkurunziza Padiri Patrice yarakorewe ivangura ku buryo yahabwa umushahara ungana n'uwahabwaga abo avuga bakoraga akazi, harasuzumwa ingano y'indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko akwiye guhabwa, harasuzumwa n'izindi ndishyi zasabwe. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA 1. Gusuzuma niba urukiko rwaranze gusuzuma ikibazo kirebana n'ivangura yakorewe mukazi ruvuga ko kitashyikirijwe umugenzuzi w'umurimo bifite ishingiro ku buryo yavutse uburenganzira ahabwa n'itegeko. [10] Nkurunziza Padiri Patrice avuga ko ngo nkuko bigaragara mu ncarubanza Urukiko Rwisumbuye rwanze kwakira no gusuzuma ikibazo urega yari yagaragaje mu myanzuro aho

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yasabaga ko imishahara ye y'imyaka ibiri yanyuma yabarwa hagendewe ku mushahara abandi bakozi bakoraga akazi kamwe bahabwaga ariko urukiko rwanga kubyakira ruvuga ko atigeze abigaragariza umugenzuzi w'umurimo. Ibi urukiko rwagendeyeho sibyo kuko tariki ya 18/10/2021 urega yandikiye umugenzuzi w'umurimo amugaragariza ikibazo cy'ivangura yakorewe mu kazi aho we yahembwaga amafaramba make 250,000 Frw ugereranije n'ayabandi bakozi bakoraga umurimo umwe bahembwaga 600,000 Frw. umugenzuzi w'umurimo nawe yarabibonye maze mu bibazo byagombaga gusuzumwa kukibazo cya 11 arabyandika, bagasanga rero iyi ngingo yari ikwiye kwakirwa maze igasuzumwa. Ibyo basaba rero biteganywa n'ingingo ya 30 y'itegeko nshinga rya Repubulika y'u Rwanda uko ryavugururwe kugeza ubu bikanashimangirwa n'itegeko rigenga umurimo mu Rwanda ingingo yaryo ya 9. Nka Senior Technician rero Nkurunziza yakoraga imirimo ya survey muri Company ibyo bikagaragazwa n' icyemezo cy'imirimo ikigo cyamuhaye ndetse n'igitabo cy'amasoko aho bigaragara ko yakoresheye no gupiganwa kubera experience y'imyaka 22 afite muri ako kazi kimwe n'uwitwaga Sibomana Athanase. Urukiko rero rukwiye kubona ko imishahara y'imyaka ibiri Nkurunziza atahabwe hagendewe kuyo abandi bakoraga akazi kamwe bahabwaga ayo mafaranga yaba $600,000 \text{ Frw} \times 24 = 14,400,000 \text{ Frw}$ hanyuma hagakurwamo ayo yahawe habariwe kuri $250,000 \text{ Frw} \times 24 = 6,000,000 \text{ Frw}$ hagasigara $8,400,000 \text{ Frw}$ urukiko akaba ariyo rwategeka ko yahabwa. [11] Me Nyirasuku Jeanne uhagarariye TECOS Ltd mw'izina ry'umuyobozi wayo, avuga ko Nkurunziza Padiri Patrice avuga ko urukiko rwanze kwakira no gusuzuma ikibazo yari yatanze asaba ko imishahara ye y'imyaka ibiri ya nyuma yabarwa hagendewe ku mushahara abandi bakozi bakoraga akazi kamwe nawe bahabwaga, ngo urukiko rwanga kubisuzuma kuko bitigeze biregerwa ku mugenzuzi w'umurimo. Kuri iyi ngingo igisuzumwa ni amasezerano ya Nkurunziza nka Technicien ntabwo ari Ingenieur nka Athanase avuga ko bagomba kunganya umushahara. Ibivugwa na Nkurunziza Padiri Patrice kuri iyi ngingo nta shingiro bifite kuko gusaba ko umushahara we wabarirwa kuri $600,000 \text{ Frw}$ ngo kuko ariyo abandi bakozi bahembwaga, nta gaciro bikwiye guhabwa kuko umukozi wasezerewe abarirwa ku mushahara ahembwa ntabwo abarirwa k'uyo abandi bahembwa, kuko kubarira ku mushahara w'abandi kwaba ari ukunyuranya n'amategeko nk'uko byemejwe n'urukiko rwisumbuye rwa Gasabo ku rupapuro rwa 10, agace ka 35 mu rubanza rujuririrwa ko ibisabwa na

Nkurunziza Padiri Patrice kuri iyi ngingo nta shigiro bifite kuko binyuranije n'ingingo ya 102 igika cya 3 iteganya ko : icyakora urukiko rushobora gufata icyemezo cyo kutakira ikirego nyuma yo gusuzuma ko inzira zikurikizwa mu gukemura impaka ziteganywa muri iyi ngingo zitubahirijwe. Ikibazo cyo kubarirwa k'umushahara ungana n'uwabandi bakozi (600.000Frw) nk'uko Padiri abivuga nta shingiro gikwiye guhabwa kuko niba yarashakaga kongezwa umushahara yagombaga kubisaba umukoresha we, akabimwemerera cyangwa akabimwangira, yumva atanyuzwe akabimurega mu rundi rubanza igihe yari akiri umukozi, ariko ntiyasaba ko amafaranga ajyanye no gusezererwa ku kazi abarirwa ku mushahara atahembwaga, kuko ayo yahembwaga ari net salary ya 250.000Frw, ntibyari gushoboka rero ko urukiko rubarira k'umushahara atigeze ahembwa. Nkurunziza Padiri Patrice arasaba kandi ko amafaranga yo gusezererwa yabarirwa ku mafaranga 600.000Frw ngo kuko ariyo abandi bakozi bahembwaga, ariko iki kibazo ntiyigeze akigeza k'umugenzuzi w'Umurimo nk'uko bigaragazwa n'inyandikomvugo yo kutumvikana yakozwe n'umugenzuzi w'Umurimo mu Karere ka Gasabo yakozwe ku wa 11/11/2021, yagitanze bwa mbere mu kirego yashyikirije urukiko rwisumbuye rwa Gasabo, bikaba binyuranije n'ingingo ya 102, agace ka 10 k'Itegeko No 66/2018 ryo kuwa 12/06/2018 rigenga umurimo mu Rwanda.

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Uko Urukiko rubibona [12] Urukiko rurasanga muri iyi ngingo y'ubujurire, icyo Nkurunziza Padiri Patrice anenga, ni uko Urukiko Rwisumbuye rwanze gusuzuma ibyo yasabaga ko yakorewe ivangura agahembwa umushahara utandukanye n'uwahabwaga abo bakoraga akazi kamwe, agasaba ko ariwo yahabwa kandi akaba ariwo ubarirwaho indishyi, Urukiko Rwisumbuye rukaba rwaranze kubisuzuma ruvuga ko atagejeje icyo kibazo ku mugenzuzi w'umurimo. [13] Urukiko rurasanga ibyo kuba ataragejeje ikibazo ku mugenzuzi w'umurimo ubwabyo ntibyagombaga gutuma ikibazo cye kidasuzumwa, kubera ko n'ubwo ingingo ya 102 y'itegeko rigenga umurimo mu Rwanda (2018) iteganya inzira yo kubanza gukemura impaka zihariye z'umurimo mu bwumvikane mbere yo kuregera Urukiko, ntabwo kuregera Urukiko ari urwego rw'ubujurire urega aba agiyemo, ku buryo ibitarasuzumwe mu nzira y'ubwumvikane bitasuzumwa bwa mbere mu Rukiko. Icyo iyi ngingo iteganya ni uko mbere yo kuregera Urukiko, ufite ikibazo cy'umurimo abanza kukigeza ku bagikemura mu buryo bw'ubwumvikane, iyo iyi nzira atabanje kuyinyuramo, nibwo Urukiko rushobora kwanga kwakira ikirego cye nk'uko biteganywa n'ingingo imaze kuvugwa, mu gika cyayo cya nyuma, iteganya ko "Icyakora, urukiko rushobora gufata icyemezo cyo kutakira ikirego nyuma yo gusuzuma ko inzira zikurikizwa mu gukemura impaka ziteganywa muri iyi ngingo zitubahirijwe". Ntaho amategeko ateganya ko ingingo z'ikirego zitari zaregowe zidashobora kuregerwa mu Rukiko, icyangombwa ni uko inzira zikurikizwa mu gukemura impaka mu bwumvikane ziteganywa n'iyi ngingo ziba zarageragejwe, kandi Nkurunziza Padiri Patrice yarazikurikije. [14] Urukiko rurasanga ku bijyanye n'ishingiro ry'ibyo Nkurunziza Padiri Patrice avuga, ko yakorewe ivangura kuko atahembwaga umushahara umwe n'uwo aba ingeniye bahembwaga n'ubwo we atari ingeniye, kubera ko bakoraga akazi kamwe, ibyo asaba abishingira ku ngingo ya 9, igika cya nyuma y'itegeko rigenga umurimo mu Rwanda, ivuga ko "Umukoresha wese agomba guhamba umushahara ungana abakozi bakora imirimo

y'agaciro kangana nta vangura iryo ari ryo ryose". Urukiko rurasanga ibyo Nkurunziza Padiri Patrice avuga, ko yakorewe ivangura kubera ko atahembwe umushahara umwe n'uwo bakoraga akazi kamwe, nta shingiro bifite, kuko n'ubwo yaba yarakoraga akazi kamwe n'aka aba Ingenieur, ntabwo yavugaga ko ako kazi kabaga gafite agaciro ko kuko nyine atari umu Ingenieur. Ni ukuvugaga ko niba hari akazi kagomba gukorwa na ingenieur, ntabwo kakorwa na A2 ngo kabe karangiye, ahubwo byasaba ko haboneka ingenieur wo kubisuzuma akabyemeza. Ntabwo rero Nkurunziza Padiri Patrice yaba yarakorewe ivangura, kuko akazi yakoraga katari gafite agaciro kamwe n'aka aba ingenieur, kuko nawe yemera ko atari ingénieur. Ku bw'ibyo, ikinyuranyo cy'imishahara asaba nta shingiro. 2. Gusuzuma niba urega yari akwiye guhabwa indishyi zo gusesa amasezerano zibariwe ku mezi icyenda aho kuba arindwi dore ko yari amaze imyaka irenga icumi mu kazi. [15] Nkurunziza Padiri Patrice avuga ko yari amaze imyaka irenga icumi mu kazi yakoraga muri TECOS Ltd nkuko n'urukiko rwabibonye rwasanze koko yarasezerewe mu buryo bunyuranyije n'amategeko ariko mukumugenera indishyi ntirwita kuburambe yari afite mu kazi kuko rwemeje ko ahabwa 1,750,000 Frw rufashe 250,000 Frw x 7 = 1,750,000 Frw. Nkuko biteganywa n'ingingo ya 30 y'itegeko rigenga umurimo mu Rwanda basanga indishyi yahawe zari zikwiye kubarirwa kumezi icyenda (9 mois) bityo bikaba 250,000 Frw x 9 = 2,250,000 Frw. Nkuko

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bigaragara rero basanga urukiko ntacyo rwashingiyeho rugena amezi arindwi aho kugena ko Nkurunziza ahabwa indishyi zihwanye n'amezi 9 nkuko ingingo ya 30 igika cya 3 y'itegeko ry'umurimo ibiteganywa cyane ko bigaragara ko urega ntako atari yaragize ngo yumvikane n'umukoresha we ariko ibyo bumvikanye umukoresha akabitesha agaciro agahitamo kutabishyira mubikorwa byose uko byumvikanyweho. Murwego rwo koroherana urega yari yemeye kwigomwa byose ariko ubwo umukoresha yanze, basanga urukiko n'izi ndishyi rukwiye kuzibarira kumushahara ya garagaje wa 600,000 Frw abandi bakoraga akazi kamwe bahembwaga, bityo urega agahabwa 600,000 Frw x 9 = 5,400,000 Frw hanyuma hagakurwamo 1,750,000 Frw hagasigara 3,650,000 Frw. [16] Me Nyirasuku Jeanne uhagarariye TECOS Ltd mw'izina ry'umuyobozi wayo, avuga ko Nkurunziza Padiri Patrice avuga ko amafaranga yo gusezererwa yagombye kubarirwa ku mezi cyenda aho kuba ku mezi arindwi. Ibisabwa na Nkurunziza Padiri Patrice kuri iki kibazo nta shingiro bifite kuko ubwe yemereye mu rukiko ko yumvikanye n'umukoresha we, amuha amafaranga Miliyoni ebyiri n'ibihumbi maganatanu (2.500.000Frw) akubiyemo amafaranga yose ajyanye no gusezererwa, ashyirwa kuri compte ye nk'uko bigaragazwa na receipt Nkurunziza yayakiririyeho, ivuga ko ahawe décompte final, préavis na congés payés, Bityo hashingiwe ku ngingo ya 110 y'itegeko ry'ibimenyetso mu manza n'itangwa ryabyo, barasanga ibyo Nkurunziza Padiri ajuririra kuri iyi mpamvu nta shingiro bikwiye guhabwa n'urukiko, kuko ku rwego rwa mbere urukiko rwarabisobanuye neza ku rupapuro rwa kane (4) agace ka (9) kandi bikurikije amategeko kuko bihura n'ibiteganywa n'ingingo ya 30 y'itegeko ry'umurimo bavuze haruguru, ivuga ko: Iseswa ry'amasezerano y'umurimo rinyuranyije n'amategeko rituma hatangwa Indishyi zihabwa umukozi wirukanwe mu buryo bunyuranyije n'amategeko ntizishobora kujya muni y'umushahara w'amezi atatu (3) ariko ntizishobora kurenza umushahara w'amezi atandatu (6); Hashingiwe kubyo bamaze gusobanura haruguru

n'amategeko abiteganya barasanga iyi mpamvu Nkurunziza Padiri Patrice atanga nta gaciro ikwiye guhabwa n'urukiko kuko idashingiye ku mategeko. Uko Urukiko rubibona [17] Urukiko rurasanga muri iyi ngingo y'ubujurire, icyo Nkurunziza Padiri Patrice anenga, ni uko atabariwe indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko zingana n'imishahara ye y'amezi icyenda, kandi yari afite uburambe mu kazi bw'imyaka irenga 10. Urukiko rurasanga nk'uko bigaragara mu gika cya 15 cy'urubanza rwajuririwe, Urukiko Rwisumbuye rwavuze ko rushingiye ku biteganywa mu ngingo ya 30 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda iteganya ko "Iseswa ry'amasezerano y'umurimo rinyuranyije n'amategeko rituma hatangwa indishyi. Indishyi zihabwa umukozi wirukanywe binyuranyije n'amategeko ntizishobora kujya muni y'umushahara w'amezi atatu (3), ariko kandi ntizishobora kurenza umushahara ahabwa w'amezi atandatu (6)", bityo ko Nkurunziza Padiri Patrice wirukanywe mu buryo bunyuranyije n'amategeko nk'uko byavuzwe haruguru, akwiye guhabwa indishyi zingana n'umushahara we w'amezi atandatu (6 mois). N'ubwo rwagezaho rukamubarira indishyi zingana n'imishahara ye y'amezi 7, kubera ko rwamubariye indishyi zingana na $250.000 \text{ Frw} \times 7 = 1.750.000 \text{ Frw}$, ariko bigaragara ko rwari rwahereye ku gika kitaricyo, kuko ukurikije uburambe bwa Nkurunziza Padiri Patrice burengeje imyaka 10, igika cya 3 cy'ingingo ya 30 y'itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda giteganya ko "Icyakora, iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi ntizishobora

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kurenga umushahara ahabwa w'amezi icyenda (9)", nicyo cyagombaga gushingirwaho. Nkurunziza Padiri Patrice akwiye guhabwa indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, zingana n'imishahara ye y'amezi 9 ($250.000 \text{ Frw} \times 9$), bihwanye n'amafaranga 2.250.000, y'indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, mu mwanya w'amafaranga 1.750.000 yari yagenewe. Ni ukuvuga ko agomba guhabwa ikinyuranyo kingana n'amafaranga 500.000 kubera ko andi yari yayahawe, abariye mu mafaranga 2.500.000 yari yarahawe. 3. Gusuzuma niba byari bikwiye ko urukiko rwanga gutanga indishyi zo gusiragizwa mu manza ruvuga ko urega ariwe wishoye mu nkiko. [18] Nkurunziza Padiri Patrice avuga ko mu gutanga ikirego urega yagaragaje ko ntako atagize ngo yumvikane n'uregwa hari n'ubwumvikane bwari bwagezweho urega yanga kubushyira mubikorwa, urega rero yari yasabye indishyi zo gusiragizwa mu nkiko no gushorwa mu manza kumaherere ariko urukiko rurazimwima rushingira ko ngo urega ariwe wishoye mu manza, bagasanga rero ataribyo cyane ko hari umwanzuro w'ubwumvikane wari wagezweho uregwa akanga kuwushyira mubikorwa, bagasanga rero indishyi urega yari yasabye urukiko rukuru rukwiye kuzimuha. Impamvu zigaragara urukiko rukwiye gutanga izi ndishyi nkuko n' umugenzuzi w'umurimo yabigaragaje ni uko hari amasezerano y'ubwumvikane yari yagezweho aho bemeraga kugira ibyo bamuha birenze ibyo bamuhaye nkuko bigaragara muri raporo yo kuwa 3/12/2020 ariko mugihe cyo kubishyira mubikorwa TECOS yanga kubyubahiriza bituma urega ajya mu rukiko urega rero ntabwo ibyo aregera yabihawe nkuko urukiko rubigaragaza mu gika cya 43 cy'incarubanza kandi sinawe wishoye mu nkiko bityo akaba asaba ko yahabwa inshuro ebyiri z'umushahara we nkuko na inspector yabibonye akaba yagenerwa 500,000 Frw ariko mugihe urukiko rwaba rusanze agomba

guhemberwa akazi yakoraga nkaba bari ku rwego rumwe nkuko babigaragaje muri issue yambere ubwo yahabwa 600,000 Frw x2=1,200,000 Frw. [19] Me Nyirasuku Jeanne uhagarariye TECOS Ltd mw'izina ry'umuyobozi wayo, avuga ko Nkurunziza Padiri Patrice avuga ko urukiko rwanze kumuha indishyi zo gusiragizwa mu manza ruvuga ko ariwe wishoye mu nkiko. Iyi mpamvu y'ubujuririre nayo nta shingiro ifite kuko niwe washoye TECOS LTD mu manza zidafite ishingiro kuko yo yari yamaze kumuha ibyo yemererwa n'amategeko ariko abirengaho arayirega kandi azi neza ko yahawe amafaranga yose ajyanye no gusezererwa; Bakaba dusanga adakwiye kwitwaza amakosa ye ngo asabe Tecos LTD kubimuhera indishyi, kuko kuzihabwa byaba ari ukwigwizaho umutungo badafite impamvu (Enrichissement sans cause) Ahubwo TECOS LTD ishingiyeye ku ngingo ya 152 ya CPCCSA, TECOS LTD, itanze ubujurire bwuririye kubwa Nkurunziza isaba ko urukiko rwategeka Nkurunziza guha Tecos LTD indishyi zingana na 5.000.000Frw zo gushorwa mu manza z'amaherere. Uko Urukiko rubibona [20] Muri iyi ngingo y'ubujurire, icyo Nkurunziza Padiri Patrice asaba, ni amafaranga avuga ko ari ayo gusiragizwa mu manza. N'ubwo ayasaba ariko, ntagaragaza uburyo ayabaramo, kandi yagombye kugaragaza amafaranga nyayo yakoresheje niba ashaka kuyasubizwa, aho kuyabarira mu mishahara. Nawe kandi bigaragara ko arimo gushakisha, kuko mu Rukiko Rwisumbuye yari yasabye 16.000.000, none arasaba 1.200.000, bigaragaza ko nawe izo ndishyi atazi uko yazibara. Ntazitandukanya kandi n'indishyi z'ikurikiranarubanza asaba mu gika gikurikira iki. Ku bw'ibyo iyi ngingo y'ubujurire nta shingiro ifite.

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4. Gutegeka uregwa gutanga amafaranga y'ikurikirana rubanza n'igihembo cya Avoka. [21] Nkurunziza Padiri Patrice avuga ko bigaragara ko urega aburana yunganiwe n'umwavoka bityo bagasaba urukiko gutegeka uregwa gusubiza igihembo cya avoka n'ikurikirana rubanza bya 1,250.000 Frw. [22] Me Nyirasuku Jeanne Uhagarariye TECOS Ltd mw'izina ry'umuyobozi wayo, avuga ko Nkurunziza Padiri Patrice arasaba urukiko gutegeka TECOS LTD kumuha amafaranga y'indishyi z'ikurikiranarubanza n'igihembo cy'Avoka, ariko yiyibagiza ko nta gihombo (Préjudice) TECOS LTD yamuteje nk'uko byemejwe n'urukiko mu rubanza rujuririrwa, ahubwo niwe ukomeje gushora TECOS LTD mu manza z'amaherere zidafite ishingiro. Kubera izo mpamvu TECOS LTD ishingiyeye ku ngingo ya 111 ya CPCCSA irasaba urukiko gutegeka Nkurunziza kuyiha amafaranga y'indishyi z'ikurikiranarubanza 500,000Frw n'igihembo cy'Avoka cya 1,000,000Frw. Uko Urukiko rubibona [23] Urukiko rurasanga indishyi z'ikurikiranarubanza n'igihembo cya Avoka Nkurunziza Padiri Patrice asaba, zingana n'amafaranga 1.250.000 ntiyazihabwa zose kubera ko ayo mafaranga asaba ari menshi, akaba agenewe amafaranga 1.000.000 akubiyemo ikurikiranarubanza n'igihembo cya Avoka, kuri uru rwego rw'urwarubanjirije. [24] Amafanga amafanga y'indishyi z'ikurikiranarubanza 500,000Frw n'igihembo cy'Avoka cya 1,000,000Frw uhagarariye TECOS Ltd asaba, ntayo yahabwa kubera ko ubujurire bwa Nkurunziza Padiri Patrice bufite ishingiro, akaba atarayishoye mu manza z'amaherere zidafite ishingiro nk'uko TECOS Ltd ibivuga. III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ubujurire bwa Nkurunziza Padiri Patrice bufite ishingiro kuri bimwe. [26] Rwemeje ko ubujurire bwuririye ku bundi

bwa TECOS Ltd nta shingiro bufite. [27] Rwemeje ko imikirize y'urubanza rwajuririwe ihindutse ku byerekeye indishyi. [28] Rutegetse TECOS Ltd guha Nkurunziza Padiri Patrice amafaranga 500.000 y'idishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, yiyongera ku mafaranga 2.500.000 yamaze guhabwa na TECOS Ltd nk'uko agaragazwa n'inyandiko yiswe "Payment Request Form". [29] Rutegetse TECOS Ltd guha Nkurunziza Padiri Patrice amafaranga 1.000.000 akubiyemo igihembo cya Avoka n'ikurikiranarubanza kuri uru rwego n'urwarubanjirije, ikamusubiza n'amagarana 60.000 yatanzeho ingwate y'amagarama. [30] Rutegetse ko amafaranga yatanzweho ingwate y'amagarama ahwanye n'ibyakozwe mu rubanza.

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