

RWANDA / JUDGMENT

NSEKARIJE N'ABANDI vs. LETA Y'U RWANDA (MINISITERI Y'UBUREZI)

RADA 00003/2022/CA

COURT

Court of Appeal

DECIDED

9 June 2023

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NSEKARIJE N'ABANDI vs. LETA Y'U RWANDA (MINISITERI Y'UBUREZI)

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Text

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NSEKARIJE N'ABANDI vs. LETA Y'U RWANDA (MINISITERI Y'UBUREZI) [Rwanda URUKIKO RW'UBUJURIRE – RADA 00003/2022/CA – (Munyangeri, J. P.) 09 Kamena 2023] Amategeko agenga imanza z'umurimo – Ivugurura ry'umwanya w'umurimo – Gushyira umukozi wa Leta mu mwanya w'umurimo wahindutse – Iyo umwanya w'umurimo umukozi yarasanzwe akoramo uhinduriwe inyito, ukaguma ku mbonerahamwe y'imyanya y'imirimo mu kigo akoramo, awugumamo mu gihe nta cyahindutse ku ntera no ku byo agomba kuba yujuje. Incamake y'ikibazo: Nsekarije n'abagenzi be bari abakozi muri Minisiteri y'uburezi bashinzwe ubugenzuzi mu mashuri, baje guhagarikwa kuri iyo myanya yari imaze gukurwa ku mbonerahamwe y'imirimo muri iyo minisiteri. Iki cyemezo cyo guharikwa baragitakambiye ariko ntibanyurwa n'igisubizo bahawe bituma batanga ikirego mu Rukiko Rukuru basaba gusubizwa mu kazi no kugenerwa indishyi zitandukanye zijyanye n'iryo hagarikwa mu kazi ridakurikije amategeko. Leta y'u Rwanda (Minisiteri y'Uburezi) isobanura ko nyuma y'amavugurura muri iyo Minisiteri imyanya y'aba Bakozi ntabwo yari ikibarizwamo hibangombwa ko basezererwa hakurikijwe amategeko agenga

abakozi ba Leta. Urukiko Rukuru rwaciye urubanza rwemeza ko ikirego cy'Abarega nta shingiro gifite kuko batahagaritswe by'agateganyo mu buryo bunyuranyije n'amategeko, bityo ko batasubizwa mu kazi, ko n'indishyi basaba nta shingiro zifite. Abarega bajuririye icyo cyemezo mu Rukiko rw'Ubujurire habanza gusuzumwa ikibazo cyo kumenya niba hari ikosa Urukiko Rukuru rwakoze mu kwemeza ko basezerewe mu buryo bukurikije amategeko, aho bavuga ko bahagaritswe mu kazi kubera ko imyanya bakoragamo yari yavanyweho, nyamara hari ingingo ya 10, agace ka 4 y'amabwiriza ya MIFOTRA yavugaga ku bigo byahujwe, iteganya ko mu gihe hazaba habaye guhuza ibigo, abakozi bakoragamo ari bo bazashyirwa mu myanya. Bakomeza bavuga ko abakozi bose bakoraga muri icyo Minisiteri ntibafashwe kimwe kubera ko hari bagenzi babo bari bashinzwe ubwubatsi bafashwe na Rwanda Housing Authority, abandi bari bashinzwe ibizamini bajyanwa muri NESA, mu gihe bo nk'abari bashinzwe ubugenzuzi babwiwe ko imyanya yabo idahari nyamara yarimuriwe muri NESA. Basaza bavuga ko kuba Minisiteri y'Uburezi yari izi ko inshingano zabo zimuriwe muri NESA kandi ikaba ari Ikigo gishamikiye kuri icyi Minisiteri, bagombaga guhita bimurirwa muri NESA, kuba rero bitarakozwe basanga harabayeho kuvutswa uburenganzira bwabo ku murimo. Leta y'u Rwanda yisobanuye ivuga ko icyo myanya abajuriye bakoragamo yavanyweho yimurirwa muri NESA, intera yayo irahinduka maze ibakoresha ikizamini mu buryo bw'ikiganiro (examen oral/interview), ariko Komisiyo ishinze abakozi ba Leta ibasaba kugitesha agaciro, barabyubahiriza. Ivuga kandi ko itari ifite inshingano zo kohereza abo bakozi muri NESA, dore ko itegeko ryishyiraho riteganya ko ari yo yishyiraho abakozi bayo, abajuriye bakaba bagombaga gupiganira icyo myanya yahinduriwe intera, bagakora ibizamini nk'abandi. Isoza ivuga ko yahagaritse abakozi by'agateganyo mu gihe yarimo ibashakira ahandi bakorera, bamwe barahabona abandi barimo abajuriye ntibashobora kuhabona muri icyo gihe cy'amezi atandatu, bahabwa ibaruwa ibamenyesha ko batakirira abakozi ba Leta, ko rero yakoze ibyo yagombaga gukora. Incamake y'icyemezo: Iyo umwanya w'umurimo umukozi yarasanzwe akoramo uhinduriwe inyito, ukaguma ku mbonerahamwe y'imyanya y'imurimo mu kigo akoramo, awugumamo mu gihe nta cyahindutse ku ntera no ku byo agomba kuba yujuje. Bityo, Nsekariye n'abagenzi ntibahagaritswe

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by'agateganyo mu buryo budakurikije amategeko kuko umwanya w'ubugenzuzi bw'amashuri bakoragaho wahinduriwe inyito, intera n'ibyo bagombaga kuba bujuje ndetse uvanwa muri Minisiteri y'Uburezi ushyirwa muri NESA, bakaba bagombaga kuwupiganira nk'umwanya mushya w'umurimo. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko Nshinga rya Repubilika y'u Rwanda ryo muri 2003 ryavugururwe muri 2015, ingingo ya 15. Itegeko N° 017/2020 ryo ku wa 07/10/2020, rishyiraho Sitati rusange igenga abakozi ba Leta, ingingo ya 40 n'ya 80. Itegeko No 67/2018 ryo ku wa 30/08/2018 rigenga inshingano, imitunganyirize n'imikorere bya Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta, ingingo ya 5. Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamu, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111. Iteka rya Perezida N° 128/01 ryo ku wa 03/12/2020, ryerekeye gushakira abakozi ba Leta n'amahugurwa ahabwa abakozi batangira akazi, ingingo ya 28 n'ya 31. Iteka rya Perezida No121/01 ryo ku wa 15/10/2020 rishyiraho Ikigo cy'Igihugu Gishinzwe

Ibizamini n'Ubugenzuzi bw'Amashuri, ingingo ya 23 n'ya 25. Iteka rya Minisitiri w'Intebe No111/03 ryo ku wa 15/10/2020 rishyiraho imbonerahamwe y'imyanya y'imirimo, imishahara n'ibindi bigenerwa abakozi b'Ikigo cy'Igihugu gishinzwe Ibizamini n'Ubugenzuzi bw'Amashuri. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Habiryayo Athanase na bagenzi be bari abakozi ba MINEDUC ari abagenzuzi b'amashuri ariko mu nshingano zitandukanye. Minisitiri w'Uburezi yagiye yandikira buri wese ku giti cye ibaruwa imumenyesha ko ahagaritswe ku kazi kubera ko imyanya bakoragamo itari ikiri ku mbonerahamwe y'imyanya y'imirimo (organigramme) y'iyi Minisiteri. Nyuma yo gutakamba no kujurira ntibanyurwe n'igisubizo bahawe, baregeye Urukiko Rukuru, basaba kurenganurwa, gusubizwa mu kazi no kugenerwa indishyi zo gusezererwa by'agateganyo mu kazi mu buryo bunyuranyije n'amategoko. [2] Uhagarariye Leta y'u Rwanda (Minisiteri y'Uburezi) asobanura ko ubwo habaga amavugurura (rationalization) muri iyi Minisiteri habaye impinduka, aho abari basanzwe ari abagenzuzi b'amashuri batahise babonerwa imyanya bajyamo kuko urwo rwego rutari rugikorera muri MINEDUC, abo bakozi bakaba batari bakigaragara ku mbonerahamwe y'imyanya y'imirimo muri Minisiteri y'Uburezi, hafatwa icyemezo cy'uho hakurikizwa Amabwiriza ya Minisiteri y'Abakozi ba Leta (MIFOTRA) ndetse n'amategoko agenga abakozi ba Leta, abo bakozi barasezererwa. [3] Mu rubanza RAD 00009/2021/HC/KIG CMB RAD 00010/2021/HC/KIG CMB RAD 00011/2021/HC/KIG CMB RAD 00013/2021/HC/KIG CMB RAD 00014/2021/HC/KIG CMB RAD 00015/2021/HC/KIG CMB RAD 00016/2021/HC/KIG CMB RAD 00018/2021/HC/KIG CMB RAD 00019/2021/HC/KIG rwaciye ku wa 23/09/2022, Urukiko Rukuru rwemeje ko ikirego cya Habiryayo Athanase, Nsekariye Aloys, Nzayisenga Léopold, Kamana Rudatinya Laurent, Nsengiyumva Jean Baptiste, Habyarimana Augustin, Nsengimana Jean Pierre, Bavugayundi Dominique na Munyambonera

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Thomas, nta shingiro gifite, rwemeza ko Minisitiri w'Uburezi atabahagaritse by'agateganyo mu buryo bunyuranyije n'amategoko, bityo ko batasubizwa mu kazi, rwemeza ko indishyi basaba nta shingiro zifite kubera impamvu zasobanuwe, rwemeza ko ikirego kiregera kwiregura cyatanze na Leta y'u Rwanda (Minisiteri y'Uburezi) gifite ishingiro, rutegeka abajuriye gufatanya guha Leta y'u Rwanda (Minisiteri y'Uburezi) 1.000.000 Frw y'igihembo cya Avoka, rutegeka ko amafaranga yatanze ingwate y'amagarama ahera mu Isanduku ya Leta. [4] Ku wa 21/10/2022, Nsekariye Aloys, Nzayisenga Léopold, Kamana Rudatinya Laurent, Nsengiyumva Jean Baptiste, Habyarimana Augustin, Habiryayo Athanase, Nsengimana Jean Pierre, Bavugayundi Dominique na Munyambonera Thomas bajurirye icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwabo bwandikwa kuri RADA 00003/2022/CA, basaba gusuzuma niba impamvu Urukiko Rukuru rwashingiyeho rwemeza ko batsinzwe ikurikije amategoko, no gusuzuma niba haragombaga gutangwa igihembo cya Avoka kingana na 1.000.000 Frw. Ababuranyi basaba indishyi kuri uru rwego. [5] Urubanza rwaburanishijwe mu ruhame ku wa 08/05/2023, Habiryayo Athanase, Nsekariye Aloys, Nsengimana Jean Pierre na Kamana Rudatinya Laurent bunganiwe na Me Mukakarangwa Delphine, anahagarariye abandi barega, ababuranyi bamenyeshwa ko icyemezo kizasomwa ku wa 25/05/2023, uwo munsu ntibyashoboka, isomwa ry'icyemezo ryimurirwa ku wa 09/06/2023. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba hari ikosa Urukiko Rukuru rwakoze mu kwemeza ko abajuriye basezerewe mu buryo bukurikije amategeko [6] Nsekarije Aloys avuga ko Urukiko Rukuru rwavuze ko we na bagenzi be bahagaritswe mu kazi kubera ko imyanya bakoragamo yari yavanyweho, nyamara hari ingingo ya 10, agace ka 4 y'amabwiriza ya MIFOTRA yavugaga ku bigo byahujwe, iteganya ko mu gihe hazaba habaye guhuza ibigo, abakozi bakoragamo ari bo bazashyirwa mu myanya, kandi ko Minisiteri y'Uburezi yari yabanje kubaha ikizamini cy'ikiganiro, iza kubihagarika. Asobanura ko bakoraga mu ishambi rishinzwe amashuri muri Minisiteri y'Uburezi, hari n'abashinzwe ibizamini bakoreraga muri REB, ko mu gihe cy'ivugurura abakoreraga muri REB bashyizwe muri NESAs, we na bagenzi be ntibashyirwa mu myanya yabo yari yimuriwe muri NESAs. Avuga kandi ko Iteka rya Perezida riteganya ko umwanya uba mushya iyo wavanyweho cyangwa wazamuriwe intera, ko rero umwanya bakoragamo utazamuriwe intera ahubwo yamanuwe. Avuga ko bahawe imperekeza z'agateganyo, icyo bifuzwa ubu akaba ari ugusubizwa mu myanya bakoragamo, bashingiye ku gisobanuro cy'uko niba amashuri agikora, n'ubugenzuzi bwayo butahagaze. [7] Nsengimana Jean Pierre avuga ko ibaruwa ibahagarika by'agateganyo itubahirije amategeko, ko ingingo ya 31, 2° y'Iteka rya Perezida ryo muri 2020 ivuga ko guhinduka kw'intera y'umurimo ikorerwa ikizamini igihe yazamurwe gusa, umwanya barimo ukaba wari wamanuriwe intera banyemeje kuwujyamo. Avuga ko imyanya bakoragamo itavuyeho, ko ahubwo yakuwe muri Minisiteri y'Uburezi ijyanwa mu kigo cyayo cyitwa NESAs. Avuga kandi ko hari abandi bakozi bakoreraga muri iyo Minisiteri bari bashinzwe ubwubatsi, bo bimuriwe muri Rwanda Housing Authority kandi ko ibaruwa icyo kigo cyabandikiye, igaragaza ko ari Minisiteri y'Uburezi yari yabasabiye kwakirwa muri Rwanda Housing Authority. [8] Habiryayo Athanase avuga ko asanga abakozi bose batarafashwe kimwe, kubera ko hari bagenzi babo bari bashinzwe ubwubatsi bafashwe na Rwanda Housing Authority, abandi bari bashinzwe ibizamini bajyanwa muri NESAs, abari bashinzwe ubugenzuzi bo babwirwa ko imyanya idahari. [9] Kamana Rudatinya Laurent avuga ko asanga Minisiteri y'Uburezi yari izi ko bagomba kwimurirwa muri NESAs, kubera ko yabakoresheje ibizamini kuko umubare wabo wari munini

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ugereranyije n'umubare w'Uture, nyuma y'amezi atandatu ibandikira ibamenyesha ko batakiribakozi ba Leta, kandi ko nyuma y'ayo mezi atandatu, NESAs yashyize ku isoko imyanya bakoragamo, ishyirwamo abandi bantu. Asobanura ko kuba Minisiteri y'Uburezi yari izi ko inshingano zabo zimuriwe muri NESAs, NESAs ikaba ishamikiye kuri iyi Minisiteri, bagombaga guhita bimurirwa muri NESAs, kuba rero bitarakozwe bityo, asanga harabayeho kuvutswa uburenganzira bwabo ku murimo. [10] Me Mukakarangwa Delphine wunganira Habiryayo Athanase, Nsekarije Aloys, Nsengimana Jean Pierre na Kamana Rudatinya Laurent, agahagararira Nzayisenga Léopold, Nsengiyumva Jean Baptiste, Habyarimana Augustin, Bavugayundi Dominique na Munyambonera Thomas, avuga ko mu rubanza RAD 00009/2021/HC/KIG RAD 00010/2021/HC/KIG RAD 00011/2021/HC/KIG RAD 00013/2021/HC/KIG RAD 00014/2021/HC/KIG RAD 00015/2021/HC/KIG RAD 00016/2021/HC/KIG RAD 00018/2021/HC/KIG-RAD 00019/2021/HC/

KIG, Urukiko rwitiranyije ko Nsengimana Jean Pierre, Habyarimana Augustin, Habiryayo Athanase, Nzayisenga Léopold, Nsengiyumva Jean Baptiste, Bavugayundi Dominique, Munyambonera Thomas, Nsekarije Aloys na Kamana Rudatinya Laurent nk'aho bari abakozi ba Minisiteri y'Uburezi gusa, aho kuba abakozi ba Leta, nk'uko bigaragara kuva ku gika cya 9 kugeza ku cya 11, rukaba rwarasuzumye ibisobanuro byatanzwe n'uruhande rumwe, ruvuga ko abajuriye batarenganyijwe kuko Minisiteri y'Uburezi itagombaga kubasabira akazi muri NESAs, kandi bari abakozi ba Leta, ndetse n'imyanya yabo itarakuwe ku mbonerahamwe y'imirimo muri Leta. [11] Avuga kandi ko abajuriye basobanuriye Urukiko ko basabye kwimurirwa aho inshingano zabo zimuriwe nk'uko byagenze ku bakozi bari bashinzwe gutegura ibizamini bya Leta bahise bahabwa imyanya, ndetse na Minisitiri w'Uburezi ubwe yari yabyivugiye mu kiganiro yagiranye n'ikinyamakuru Kigali Today ku wa 04/01/2021, ariko ko rutabihaye agaciro. Ko barugaragarije ko bamwe mu bakozi bahawe akazi muri NESAs, ariko rukarenga rukavuga ko nta kimenyetso kigaragaza ko ari Minisiteri y'Uburezi yakabahaye, kandi bitarasabaga ko hashakwa ikimenyetso kindi kuko kuba NESAs ari ikigo cya Minisiteri y'Uburezi byari bihagije. [12] Akomeza avuga ko Minisiteri y'Uburezi ari yo yarebereraga NESAs nk'ikigo cyayo nk'uko bigaragara ku mbonerahamwe y'imyanya y'imirimo yayo, ibi bikaba bishimangira ko NESAs igengwa na Minisiteri y'Uburezi ku buryo nta n'ibaruwa ivuye muri icyo Minisiteri abo bakozi basabwaga kujyana muri NESAs, kandi ko kuri iyi ngingo, abajuriye bagaragaje ko habayeho guhererekanya abakozi (transfer), batanga urugero rw'abandi bakozi bakoranye n'abagenzuzi bo mu Ishami rishinzwe ireme ry'uburezi ryari muri Minisiteri y'Uburezi bimuriwe muri Rwanda Housing Authority aho inshingano zabo zimuriwe, nk'uko n'inshingano z'abagenzuzi b'uburezi zimuriwe muri NESAs. [13] Me Mukakarangwa Delphine asobanura ko mu gika cya 9 cy'urubanza rujuririrwa, Urukiko Rukuru rwashingiye ku ngingo ya 40 y'Itegeko N° 017/2020 ryo ku wa 07/10/2020, rishyiraho Sitati rusange igenga abakozi ba Leta, iteganya ko umukozi wa Leta ashobora guhagarikwa by'agateganyo ku murimo icyo ...³ atarabona undi mwanya w'umurimo kandi uwo yari asanzweho wavanywe ku mbonerahamwe y'imyanya y'imirimo cyangwa ibisabwa kuri uwo mwanya w'umurimo yariho byahindutse akaba atabyujuje, ko mu kuvuga ko "job level" yahindutse, Urukiko rwirengagije ingingo ya 31, agace 2° y'Iteka rya Perezida N° 128/01 ryo ku wa 03/12/2020, iteganya ko mu gihe guhinduka kw'inyito kwatumye habaho guhinduka kw'intera y'umwanya w'umurimo, umwanya w'umurimo ufatwa nk'umwanya mushya ugomba gupiganirwa, kuri we icyo ntera y'umwanya w'umurimo ntiyazamuwe, ahubwo yaramanuwe iva kuri 4.III ijya kuri 5.II muri NESAs, kandi ko ibi nta kibazo abajuriye bari babigizeho. [14] Avuga kandi ko kuba ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, iteganya ko "abantu bose bareshya imbere y'amategako kandi akabarengera kimwe, Minisiteri y'Uburezi itagombaga guha bamwe mu bakozi bayo imyanya y'ubusigire (Acting post), ikohereza abandi (transfer) mu bindi bigo byimurirwemo inshingano zabo nka Rwanda Housing Authority (RHA) na

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National Examination and School Inspection Authority (NESA), ngo abandi ibahagarikiye kandi bujuje ibyo amategako ateganya, ko asanga harabayeho itonesha. [15] Avuga na none ko Urukiko Rukuru rutasuzumye ingingo ya 10, agace ka 1 y'Amabwiriza n° 02 y'ubushyamba ku wa 07/12/2020 ya

MIFOTRA (determining modalities for new placement and recruitment of public servants after 2020 rationalization of public institutions), iteganya ibirebana n'ihuzwa ry'ibigo bya Leta, n'ingingo ya 31, agace ka 2° y'Iteka rya Perezida N° 128/01 ryo ku wa 03/12/2020, zivuguruzwa ibivugwa na Minisiteri y'Uburezi ndetse n'Urukiko, ko imyanya y'ubugenzuzi bw'uburezi itakibarizwa muri icyo Minisiteri kandi atari byo, ahubwo MIFOTRA yari yarateganyije ko mu mavugurura hashobora kubaho kuvana imyanya mu kigo kimwe igashyirwa mu kindi, kugira ngo imikorere igende neza, ko icyo habayeho kwimura icyo myanya, hakabaho guhinduka kw'ibisabwa (Job profiles), intera y'umwanya (job level) cyangwa inyito (job title) umwanya uba mushya ugapiganirwa icyo uwari uwurimo atujuje ibisabwa cyangwa wazamuriwe intera. [16] Me Cyubahiro Fiat uhagarariye Leta y'u Rwanda/Minisiteri y'Uburezi, asobanura ko imyanya y'abakozi bashinzwe ubugenzuzi bw'amashuri yavanywe muri Minisiteri y'Uburezi yimurirwa muri NESA, intera yayo irahinduka, ko Minisiteri y'Uburezi yabakoresheje ikizamini mu buryo bw'ikiganiro (examen oral/interview), Komisiyo ishinzwe abakozi ba Leta iyimenyesha ko icyo kizamini kitubahirije amategeko, isaba ko giteshwa agaciro (annulation) birakorwa kandi ko nta kindi Minisiteri y'Uburezi yagombaga gukora kitari ukubahiriza inama yari yahawe na Komisiyo ishinzwe abakozi ba Leta. [17] Akomeza avuga ko Minisiteri y'Uburezi itari ifite inshingano zo kohereza abakozi muri NESA, ko Iteka rishyiraho NESA riteganye ko icyo kigo ari cyo gishyiriraho abakozi bacyo, abajuriye kakaba baragombaga gupiganira icyo myanya bagakora ibizamini nk'abandi, kubera ko icyo bari basanzwemo yari yahinduriwe intera (level) muri NESA. Asobanura kandi ko Minisiteri y'Uburezi yahagaritse by'agateganyo abakozi bakoraga mu myanya yari yavanyweho mu gihe yarimo ibashakira ahandi bakorera, bamwe barahabona abandi barimo abajuriye ntibashobora kuhabona muri icyo gihe cy'amezi atandatu, bahabwa ibaruwa ibamenyesha ko batakirira abakozi ba Leta, ko rero Minisiteri yakoze ibyo yagombaga gukora. [18] Ku bijyanye n'abandi bakozi bavuye muri Minisiteri y'Uburezi bakabona imyanya y'akazi muri NESA, avuga ko icyo Minisiteri atari yo yabohejeyo kandi ko n'Urukiko Rukuru rwabonye ko amabaruwa abaha akazi atari aya Minisiteri y'Uburezi, ahubwo ari aya NESA. Asoza avuga ko abajuriye bahagaritswe by'agateganyo mu buryo bukurikije amategeko. UKO URUKIKO RUBIBONA [19] Ingingo ya 40, igika cya mbere y'Itegeko N° 017/2020 ryo ku wa 07/10/2020 rishyiraho Sitati Rusange igenga abakozi ba Leta iteganya ko umukozi wa Leta ashobora guhagarikwa ku murimo by'agateganyo icyo: 3° atarabona undi mwanya w'umurimo kandi uwo yari asanzweho ku mbonerahamwe y'imyanya y'imurimo cyangwa ibisabwa kuri uwo mwanya w'umurimo yariho byahindutse kandi akaba atabyujuje, 4° avanwe ku mwanya udapiganirwa kandi akaba atarabona undi mwanya. [20] Ingingo ya 80 y'Itegeko rimaze kuvugwa iteganya ko gusezerera umukozi wa Leta mu butegatsi bwite bwa Leta ni icyemezo gifatwa mu nyandiko n'umuyobozi washyize umukozi mu mwanya icyo: 5° hashize igihe cy'amezi atandatu (6) nyuma y'ihagarikwa ry'agateganyo bitewe n'ikurwaho ry'umwanya w'umurimo ku mbonerahamwe y'imyanya y'imurimo.

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[21] Ingingo ya 31, igika cya mbere y'Iteka rya Perezida N°128/01 ryo ku wa 03/12/2020 ryerekeye gushaka abakozi ba Leta n'amahugurwa ahabwa abakozi batangira akazi iteganya ko umukozi wa Leta, umwanya we wahinduriwe inyito gusa, awugumamo iyo afite amanota y'isuzumabushobozi asabwa akaba kandi yujuje ibisabwa bishya ku mwanya w'Umurimo. icyakora, 1° mu gihe guhinduka kw'inyito kwatumye habaho guhinduka kw'ibisabwa ku mwanya w'umurimo ufatwa nk'umwanya mushya ugomba gupiganirwa, iyo uwari uwurimo atujuje ibisabwa bishya kuri uwo mwanya w'umurimo; 2° mu gihe guhinduka kw'inyito kwatumye habaho guhinduka kw'intera y'umwanya w'umurimo, umwanya w'umurimo ufatwa nk'umwanya mushya ugomba gupiganirwa, iyo intera y'umurimo yazamuwe. Igika cya kabiri cy'ingingo y'Iteka rya Perezida rimaze kuvugwa yo iteganya ko amabwiriza ya Minisitiri akena ubundi buryo abakozi ba Leta bashyirwa mu myanya nyuma y'ivugururwa ry'inzeze za Leta. [22] Mu gufata umwanzuro wo kudaha agaciro ikirego cyatanzwe na Habiryayo Athanase na bagenzi be ku ingingo irebana no kuba barahagaritswe by'agateganyo mu buryo bunyuranyije n'amategeko no gusubizwa mu kazi, Urukiko Rukuru rwashingiye ku biteganywa n'ingingo ya 40 y'Itegeko N°017/2020 ryo ku wa 07/10/2020 rishyiraho Sitati Rusange igenga Abakozi ba Leta, rusobanura ko bahagaritswe by'agateganyo kubera ko imyanya bakoragamo yari yavanywe ku mbonerahamwe y'imyanya y'imirimo muri Minisitiri y'Uburezi, na ho ku kibazo cy'uko bavugaga ko Minisitiri y'Uburezi yagombaga kubimurira muri NESAs, rwasobanuye ko NESAs ifite imiterere y'imyanya y'imirimo yayo, kandi ko intera y'imyanya y'imirimo yari yahindutse, inshingano zirahinduka kandi ko Minisitiri y'Uburezi itari ifite ububasha bwo kwimurira abo bakozi muri NESAs kandi icyo kigo gifite ubuyobozi bwihariye. [23] Dosiye y'urubanza igaragaza inyandiko ikubiyemo abanota yatanze mu kizamini cyakozwe mu buryo bw'ikiganiro kuva ku wa 29 kugeza ku wa 31/12/2020 iyo Minisitiri yari yahaye abahoze ari abagenzuzi b'amashuri, bakaba barakorera umwanya wa "Pool of District Inspectors for NESAs". Nyuma yo gutangaza ayo manota, Umunyamabanga Uhoraho muri Minisitiri y'Uburezi yandikiye Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta agisha inama, ku wa 23/02/2021, ubuyobozi bw'iyi Komisiyo busubiza ko Minisitiri y'Uburezi itarebwa n'ishyirwaho ry'abakozi ba NESAs nk'ikigo gishyashya, imenyesha kandi ko ikizamini cyatanzwe mu buryo bw'ikiganiro kuri icyo myanya yo muri NESAs kigomba kuvanwaho kuko kitakurikije umurongo w'Iteka rya Perezida ryerekeye gushaka abakozi ba Leta, Komisiyo imenyesha Minisitiri y'Uburezi ko mu rwego rwo kwirinda icyuho cyaba mu bugenzuzi bw'amashuri, haba hashyizweho abakozi bakorera ku masezerano y'umurimo nk'uko biteganywa n'Amabwiriza ya Minisitiri, mu gihe NESAs itarashaka abakozi. Hari kandi amabaruwa yanditswe ku wa 08/10/2021, Minisitiri y'Uburezi yandikiye abahoze ari abagenzuzi b'amashuri banyuranye, ibamenyesha ko basezerewe mu kazi. [24] Urukiko rw'Ubujurire rurasanga Nsekarije Aloys, Nzayisenga Léopold, Kamana Rudatinya Laurent, Nsengiyumva Jean Baptiste, Habyarimana Augustin, Habiryayo Athanase, Nsengimana Jean Pierre, Bavugayundi Dominique na Munyambonera Thomas bemeranya na Minisitiri y'Uburezi ko imyanya y'umurimo bakoragaho yakuwe ku mbonerahamwe y'imyanya y'imirimo muri Minisitiri y'Uburezi bari

basanzwe babarizwamo. [25] Urukiko rw'Ubujurire rurasanga nk'uko biteganywa n'ingingo ya 40 y'Itegeko rishyiraho Sitati Rusange igenga Abakozi ba Leta, kuba imyanya bakoragamo yari yakuwe ku mbonerahamwe y'imyanya y'imirimo muri Minisitiri y'Uburezi, nta kindi iyo Minisitiri yari gukora uretse kuba ibahagaritse by'agateganyo, bityo, Urukiko Rukuru rukaba nta tegeko rwishe mu kwemeza ko bahagaritswe by'agateganyo mu buryo bukurikije amategeko. [26] Ku bijyanye no kuba abajuriye bavuga ko Minisitiri y'Uburezi yagombaga kubohereza gukora akazi mu kigo cya NESA (National Examination and School Inspection Authority) kubera ko inshingano zabo zari zimuriwe muri icyo kigo, kandi ko Urukiko Rukuru rwafashe icyemezo rwirengagije ibiteganywa n'ingingo ya 31 y'Iteka rya Perezida N°128/01 ryo ku wa 03/12/2020

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ryerekeye gushaka abakozi ba Leta n'amahugurwa ahabwa abakozi bagitangira akazi, ndetse n'ingingo ya 10 y'Amabwiriza N° 02 yo ku wa 07/12/2020 ya Minisitiri w'Abakozi ba Leta. [27] Urukiko rurasanga ingingo ya 10, 1° y'Amabwiriza ya Minisitiri w'Abakozi ba Leta akena uburyo bushya bwo gushyira mu myanya no gushaka Abakozi ba Leta nyuma y'amavugurura ya 2020 y'Inzego za Leta (Ministerial Instructions n°02 of 07/12/2020 determining modalities for new placement and recruitment of Public Servants after 2020 rationalization of Public Institutions), abajuriye bavuga ko Urukiko Rukuru rwirengagije, iteganya ko "A public servant whose job position in respective former institution has not changed in terms of job profile, job level or job title of the structure of the new institution, remains on his or her job position if he or still fulfils the new institution and has performance contract evaluation score of at least seventy (70%)". [28] Urukiko rurasanga ibiteganywa n'iyi ngingo y'Amabwiriza ya Minisitiri ari byo byubahirizwa nyuma y'uko ingingo ya 31 y'Iteka rya Perezida ryavuzwe haruguru, iteganya ko amabwiriza ya Minisitiri akena ubundi buryo abakozi ba Leta bashyirwa mu myanya nyuma y'ivugururwa ry'inzego z'ibanze. Urukiko rurasanga ibiteganywa n'iyi ngingo y'aya Amabwiriza, bidaha Minisitiri y'Uburezi ububasha bwo gushyira abakozi mu kigo cya NESA, kuko Amabwiriza ateganya ko umukozi agoma mu mwanya yari asanzwemo mu gihe nta cyahindutse ku byo agomba kuba yujuje (job profile), ku ntera y'umwanya w'umurimo (job level) cyangwa nyito y'umwanya w'umurimo (job title). [29] Urukiko rurasanga kandi icyumvikana muri iyi ngingo y'Amabwiriza ya Minisitiri, ibi bikorwa mu gihe uwo mwanya mushya w'umurimo wagumye ku mbonerahamwe y'imyanya y'imirimo mu kigo yari asanzwemo akoreramo inshingano, wenda abajuriye bakaba babihiraho bavuga ko Minisitiri y'Uburezi itabashyize mu myanya mishya kandi yaragumishijweho. Kuba rero abajuriye bemera ko imyanya bakoragamo itari ikiri ku mbonerahamwe y'imyanya y'imirimo muri Minisitiri y'Uburezi, kuba bemera ko intera y'umwanya w'umurimo yari yahindutse ndetse n'inyito y'umwanya w'umurimo kuko muri NESA abagenzuzi b'amashuri bahawe "titre" ya "District based pool inspectors" mu gihe muri Minisitiri y'Uburezi bari bafite "titre" ya "Inspector of [hakurikiraho isomo runaka bashinzwe kugenzura]1. [30] Urukiko rw'Ubujurire rurasanga rero, kuba imyanya y'ubugenzuzi bw'amashuri yari yahinduriwe inyito, ndetse ikanavanwa muri Minisitiri y'Uburezi igashyirwa mu kigo gishyasha, Minisitiri y'Uburezi idafiteho uburenganzira mu ishyirwa mu myanya ry'abakozi, nta kabuza ko

yafashwe nk'imyanya mishya yagombaga gukorera ipiganwa mu kigo yajyanywemo, ari na byo Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta yasobanuriye Minisitiri y'Uburezi mu ibaruwa yavuzwe haruguru yo ku wa 23/02/2021, aho iyo Komisiyo yibukije Minisitiri y'Uburezi ko nta bubasha ifite bwo gushakira NESA abakozi. Ibi kandi binateganywa n'ingingo ya 28, igika cya kabiri y'Iteka rya Perezida N°128/01 ryo ku wa 03/12/2020 ryerekeye gushaka abakozi ba Leta n'amahugurwa ahabwa abakozi bagitangira akazi, ivuga ko iyo urwego rwa Leta rufite mu nshingano kureberera ishakwa ry'abakozi rusanze hari amategako atarubahirijwe, urwego rwa Leta rufite mu nshingano kureberera ishakwa ry'abakozi rusaba mu nyandiko urwego rushaka umukozi wa Leta gukosora ibitaragenze neza. Iyo bibaye ngombwa urwego rwa Leta rufite mu nshingano kureberera ishakwa ry'abakozi rushobora gusaba ko ibizamini bisubirwamo. [31] Ibyakozwe na Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta kandi ibihererwa ububasha n'ingingo ya 5,1° y'Itegeko N° 67/2018 ryo ku wa 30/08/2018 rigena inshingano, imitunganyirize n'imikorere bya Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta, iteganya ko Komisiyo ifite inshingano zo kugenzura ko inzego za Leta zishyira abakozi mu myanya y'imirimo binyuze mu mucyo kandi mu buryo bumwe ku bashaka akazi bose.

1 Reba Iteka rya Minisitiri w'Intebe N°111/03 ryo ku wa 15/10/2020 rishyiraho imbonerahamwe y'imyanya y'imirimo, imishahara n'ibindi bigenerwa abakozi b'Ikigo cy'Igihugu Gishinzwe Ibizamini n'Ubugenzi bw'Amashuri.

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[32] Urukiko rurasanga kuba Minisitiri y'Uburezi ari yo ireberera NESA, bitavuze ko ifite ububasha bwo kuyishakira abakozi, abajuriye bakaba bari bafite inshingano zo gupiganirwa imyanya mishya muri NESA, mu gihe Minisitiri y'Uburezi yari yagaragaje ko ifite ubushake bwo kubashyira mu myanya ibakoresha ikizamini mu buryo bw'ikiganiro, Komisiyo ifite inshingano zo kureberera uko inzego za Leta zishyira mu myanya abakozi ba Leta, ikayimenyesha ko ibyo yakoze binyuranyije n'amategako, ndetse igasaba ko icyo kizamini giteshwa agaciro. [33] Ibi kandi bishimangirwa n'Iteka rya Perezida N°121/01 ryo ku wa 15/10/2020 rishyiraho Ikigo cy'Igihugu Gishinzwe Ibizamini n'Ubugenzi bw'Amashuri, aho ukurikije ibyo riteganywa, nta nshingano Minisitiri y'Uburezi ifite mu micungire yaba iy'abakozi ndetse n'umutungo wa NESA nk'uko biteganywa n'ingingo ya 23, igika cya 2, 1° y'Iteka rya Perezida rimaze kuvugwa, iteganya ko by'umwihariko, Umuyobozi Mukuru wa NESA ashinzwe gukurikirana imikorere ya buri muni ya NESA, imicungire y'abakozi n'imikoreshereze y'ingengo y'imari. Na ho ingingo ya 25 igateganywa ko NESA itegura ingengo y'imari yayo ya buri mwaka yemezwa n'urwego rubifitiye ububasha. [34] Ku bijyanye no kuba abajuriye bavugaga ko hari bamwe mu bakozi bakoranaga Minisitiri y'Uburezi yohereje mu bindi bigo aho batanze urugero rw'uwitwa Nsabimana David wari ushinze ubwubatsi iyo Minisitiri yahaye akazi muri Rwanda Housing Authority, Urukiko rurasanga ibaruwa imuha akazi, igaragaza ko ari Rwanda Housing Authority yamwandikiye imumenyesha ko yahawe akazi muri icyo kigo, ikaba igaragaza ko icyo Minisitiri y'Uburezi yakoze ari ugushyikiriza icyo kigo dosiye ye kugira ngo kiyigeho, akaba rero atari Minisitiri y'Uburezi yamuhaye akazi muri Rwanda Housing Authority. [35] Ku bijyanye no kuba abajuriye basaba

gushyirwamo mu kazi ngo kubera ko imyanya bakoragamo igihari muri NESAs, Urukiko rurasanga bivugira ko iyo myanya yakorewe ibizamini ishyirwamo abandi bakozi, kuba rero iyo myanya yari yafashwe nk'imyanya mishyashya bitewe no kuba yari yahinduriwe inyito, ibisabwa ndetse n'inshingano, bakiyambura uburenganzira bwo kugerageza amahirwe ngo bapiganwe nk'abandi bakozi bashaka akazi, batasaba kujya mu myanya yarangije gushyirwamo abakozi, cyane ko hagaragajwe ko bahagaritswe by'agateganyo, banasezerwa mu bakozi ba Leta mu buryo bukurikije amategeko. [36] Hashingiwe ku biteganywa n'amategeko yavuzwe haruguru ndetse n'ibisobanuro bitanzwe, Urukiko rurasanga abajuriye barahagaritswe by'agateganyo mu kazi, basezererwa mu bakozi ba Leta mu buryo bukurikije amategeko, akaba nta karengane bakorewe, ku buryo bashyirwa mu myanya y'ubugenzuzi bw'amashuri muri NESAs.

2. Kumenya niba abajuriye baragombaga gutegekwa kwishyura Leta y'u Rwanda (Minisiteri y'Uburezi) igihembo cya Avoka kingana na 1.000.000 Frw [37] Me Mukakarangwa Delphine wunganira Habiryayo Athanase, Nsekarije Aloys, Nsengimana Jean Pierre, Kamana Rudatinya Laurent, agahagararira Nzayisenga Léopold, Nsengiyumva Jean Baptiste, Habyarimana Augustin, Bavugayundi Dominique na Munyambonera Thomas, avuga ko Urukiko Rukuru rwategetse abo abajuriye gufatanya kwishyura Leta y'u Rwanda (Minisiteri y'Uburezi) 1.000.000 Frw kandi mu isesengura rwakoze, rwaravuze ko urubanza rwaburaniwe hamwe, aho kuba 1/2 cy'ayategetswe ku rwego rubanza nk'uko Itegeko ribiteganywa, akaba asanga haragombaga gutangwa igihembo cya Avoka kingana na 500.000 Frw, hashingiwe ku Mabwiriza agena ibihembo mbonera by'Abavoka mu Rwanda. [38] Me Cyubahiro Fiat uhagarariye Leta y'u Rwanda (Minisiteri y'uburezi), avuga ko iyi ngingo y'ubujurire na yo nta shingiro ifite, kubera ko amafaranga y'igihembo cya Avoka Urukiko rwageneye Leta y'u Rwanda (Minisiteri y'Uburezi) atari menshi, cyane ko abajuriye na bo basaba igihembo cya Avoka kingana na 2.000.000 Frw.

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UKO URUKIKO RUBIBONA [39] Urukiko rurasanga, kuba Urukiko Rukuru rwaragenyeye amafaranga y'igihembo cya Avoka mu bushishozi bwarwo, nta tegeko ryishwe ku buryo hahindurwa umubare w'amafaranga yagenwe.

3. Kumenya ishingiro ryamafaranga asabwa n'ababuranyi [40] Me Cyubahiro Fiat uhagarariye Leta y'u Rwanda (Minisiteri y'Uburezi) asaba Urukiko rw'Ubujurire gutegeka abajuriye kwishyura urwego uhagarariye 1.000.000 Frw y'igihembo cya Avoka, yiyongera ku yo yagenewe mu rubanza rujuzirirwa, yose hamwe akaba 2.000.000 Frw. [41] Me Mukakarangwa Delphine wunganira bamwe mu barega, abandi akabahagararira, avuga ko amafaranga MINEDUC isaba nta shingiro yababwira, kubera ko impamvu abajuriye bashingiyeho bajurira zifite ishingiro, kandi ko ari umurenge kuko zakabaye kimwe cya kabiri cy'izatanze mu rubanza rujuzirirwa. UKO URUKIKO RUBIBONA [42] Ingingo ya 111 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganywa ko ikirego

cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [43] Urukiko rurasanga, kuba Minisiteri y'Uburezi yarashyizeho uyiburanira, igomba kugenerwa mu bushishozi bwarwo amafaranga y'igihembo cya Avoka kuko ayo isaba ari menshi, bityo abaregwa bakaba bagomba kuyiha 700.000 Frw y'igihembo cya Avoka kuri uru rwego. III. ICYEMEZO CY'URUKIKO [44] Rwemeje ko ubujurire bwatanzwe na Nsekarije Aloys, Nzayisenga Léopold, Kamana Rudatinya Laurent, Nsengiyumva Jean Baptiste, Habyarimana Augustin, Habiryayo Athanase, Nsengimana Jean Pierre, Bavugayundi Dominique na Munyambonera Thomas, nta shingiro bufite. [45] Rwemeje ko urubanza RAD 00009/2021/HC/KIG CMB RAD 00010/2021/HC/KIG CMB RAD 00011/2021/HC/KIG CMB RAD 00013/2021/HC/KIG CMB RAD 00014/2021/HC/KIG CMB RAD 00015/2021/HC/KIG CMB RAD 00016/2021/HC/KIG CMB RAD 00018/2021/HC/KIG CMB RAD 00019/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 23/09/2022, rudahindutse. [46] Rutegetse Nsekarije Aloys, Nzayisenga Léopold, Kamana Rudatinya Laurent, Nsengiyumva Jean Baptiste, Habyarimana Augustin, Habiryayo Athanase, Nsengimana Jean Pierre, Bavugayundi Dominique na Munyambonera Thomas guha Minisiteri y'Uburezi 700.000 Frw y'igihembo cya Avoka kuri uru rwego. [47] Ruvuze ko amafaranga y'ingwate y'amagarama yatanze n'abajuriye, ahwanye n'ibyakoze mu rubanza.

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