

RWANDA / JUDGMENT

Re NYANDEKWE N'ABANDI

RS/RECT/RC 00001/2022/HC/KIG

COURT

High Court

DECIDED

28 July 2022

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Re NYANDEKWE N'ABANDI

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Text

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Re NYANDEKWE N'ABANDI [Rwanda URUKIKO RUKURU – RS/RECT/RC 00001/2022/HC/KIG – (Nyirabagande, J. P.) 28 Nyakanga 2022] Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Gukosora cyangwa gusobanura urubanza – Ikirego gisaba gukosora urubanza – Gukosora amakosa y'imyandikire mu rubanza akosorwa ntacyo ahindura ku ireme ry'urubanza. Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rukuru abarega basaba gusubizwa uburenganzira bwo kongererwa umushahara hashingiwe ku burambe ku kazi n'amashimwe bari bafite bakiri abakozi ba REB mbere yo kwimurirwa muri MINEDUC, aho bageze bagafatwa nk'abatangizi. Urukiko rwemeje ko ibyo basaba babifitiye uburenganzira, nubwo batabashije kumvikana n'abashinzwe kubara imishahara muri icyo Minisiteri bituma batanga ikirego basaba ko impaka zavutse zakemuka. Iki kirego cyafashweho icyemezo, hagaragazwa uburyo bwemewe n'amategeko imishahara yabo igomba kubarwamo. Mu kwandika icyo kirego hibagiwe kwandikwamo ikirego cya Nyandekwe n'ibya bagenzi be barega Leta y'u Rwanda (MINEDUC) ntibyaburanishwa ndetse ntibyafatwaho icyemezo bituma batanga ikirego cyo gukosora bavuga ko ari ikosa ryakozwe, ko ibyo birego n'ababuranyi byakongerwa mu cyemezo cyafashwe mu rubanza RAD 00023/2022/HC/KIG (Cmb). Banditse bagaragaza ko iryo ari ikosa ryakozwe

n'Urukiko, ko rero ryakosorwa, ibyo birego n'ababuranyi bigashyirwa mu rubanza rwaciwe, bikongerwa no mu rubanza, bityo bakarebwa n'icyemezo, kubera ko ibiburanwa ari ibimwe n'icyemezo cyafashwe bakaba bagihuriyeho. Incamake y'icyemezo: Gukosora amakosa y'imyandikire mu rubanza akosorwa ntacyo ahindura ku ireme ry'urubanza. Bityo, ibirego bitaburanishijwe n'ababuranyi bakaba bataraburanye ntibashobora gufatirwa icyemezo noneho ngo cyongerwe mu rubanza rwaciwe bo batarurimo bitwaje ko ikiburanwa ari kimwe n'icyemezo cyafashwe bakaba bagihuriyeho. Ikirego nta shingiro gifite. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 138 n'ya 140. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA

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[1] Urubanza rwatangiriyemo mu Rukiko Rukuru abarega basaba gusubizwa uburenganzira bwo kongererwa umushahara hashingiwe ku burambe ku kazi n'amashimwe bari bafite bakiri abakozi ba REB mbere yo kwimurirwa muri MINEDUC, aho bageze bagafatwa nk'abatangizi. Urukiko rwemeje ko ubwo burenganzira babwemererwa n'amategeko, ko bakwiye kubarirwa umushahara hitawe ku burambe no ku mashimwe babonye, hakababirwa ku ntambike bari bagezeho. [2] Mu gushyira mu bikorwa icyemezo cy'urukiko RAD 00009/2019/HC/KIG rwaciwe ku wa 12/02/2021 ntibumvikanye n'abashinzwe kubara imishahara ku rwego rwa MINEDUC, batanga ikirego basaba ko impaka zavutse zakemuka. Urukiko rubifataho icyemezo mu manza RAD 00023/2021/HC/KIG (CMB RAD) Habyarimana Augustin et csrt, rugaragaza uburyo bukwiye gukoreshwa mu kubabarira imishahara buteganywa mu mategeko. [3] Mu kwandika ikirego RAD 00023/2021/HC/KIG (CMB RAD) Habyarimana Augustin et csrt, ikirego RAD 00021/2021/HC/KIG cya Nyandekwe Ndagije Deogratias arega Leta y'u Rwanda (MINEDUC) n'ikirego RAD 00022/2021/HC/KIG cya Bwanakweri Ngabo Baudouin arega Leta y'u Rwanda (MINEDUC), ntibyanditswe, bityo ntibyaburanishijwe, ntibyanafashweho icyemezo. [4] Me Nsabimana Joseph yatanze ikirego ahagarariye abarega avuga ko ari ikosa ryakozwe, ko ibyo birego n'ababuranyi byakongerwa mu cyemezo cyafashwe mu rubanza RAD 00023/2022/HC/KIG (Cmb). Avuga ko hanakozwe ikosa ku buryo bwo kubarira umushahara abakozi bari bazamuwe incuro 2 ari bo Uwamungu Victorien na Ntaribi Théogène. [5] Ikibazo gisuzumwa muri uru rubanza, ni ukumenya niba kuba hari ibirego bitahujwe n'urubanza rwaciwe, ntibiburanishwe ntibinafatweho icyemezo ari ikosa ry'imyandikire rikaba ryakosorwa. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

1. Kumenya niba kuba hari ibirego bitahujwe n'urubanza rwaciwe, ntibiburanishwe ntibinafatweho icyemezo ari amakosa y'imyandikire akaba yakosorwa [6] Ingingo ya 138 n'ya 140 z'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ziteganywa ko ibirego bisaba gusobanura cyangwa gukosora amakosa ari mu rubanza, biregerwa urukiko rwaciye urwo rubanza, bigasuzumwa n'umucamanza, hagakosorwa gusa amakosa y'imyandikire, kandi urubanza rusobanura cyangwa rukosorwa urundi rwuzuzwa urubanza rwasabiwe gusobanurwa

cyangwa gukosorwa, rushobora kujuririrwa rwonyine cyangwa hamwe n'urubanza rw'iremezo mu gihe imanza zombi zishobora kujuririrwa. Izi ngingo zumvikanisha ko gukosora amakosa y'imyandikire mu rubanza akosorwa kuko ntacyo ahindura ku ireme ry'urubanza, ikirego gisaba ikosorwa gitangwa mu rukiko rwaciye urubanza, agakosorwa n'umucamanza waciye urubanza iyo bishoboka. [7] Mu rubanza RAD 00023/2021/HC/KIG (CMB RAD....) Habyarimana Augustin et csrt barega Leta y'u Rwanda (MINEDUC) rusabirwa gukosorwa, rwahurijwemo ibirego bitandukanye, ku baburanyi banyuranye ariko haburanwa ikintu kimwe. Mu kwandika ibyo birego, ikirego RAD 00021/2021/HC/KIG cya Nyandekwe Ndagije Déogratias arega Leta y'u Rwanda (MINEDUC) n'ikirego RAD 00022/2021/HC/KIG cya Bwanakweri Ngabo Baudouin arega Leta y'u Rwanda

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(MINEDUC), ntibyahujwe n'ibindi birego binyuranye, ntibyanaburanishijwe, bityo, ntibyanafashweho icyemezo. [8] Me Nsabimana Joseph yanditse asaba ko iryo ari ikosa ryakozwe n'Urukiko, ko rero ryakosorwa, ibyo birego n'ababuranyi bigashyirwa mu rubanza rwaciye, bikongerwa no mu rubanza, bityo bakarebwa n'icyemezo, kubera ko ibiburanwa ari ibimwe n'icyemezo cyafashwe bakaba bagihuriyeho. Anavuga ko hari ikosa ryakozwe mu buryo kubara umushahara ku bakozi bari bazamutse kabiri mu ngazi ntambike, ko ryakosorwa. [9] Hashingiwe ku byasobanuwe haruguru mu ngingo y'Itegeko, Urukiko rusanga kuba mu ibirego RAD 00021/2021/HC/KIG cya Nyandekwe Ndagije Déogratias arega Leta y'u Rwanda (MINEDUC) n'ikirego RAD 00022/2021/HC/KIG cya Bwanakweri Ngabo Baudouin arega Leta y'u Rwanda (MINEDUC), bitarahujwe n'ikirego cy'iremezo cyanditse kuri RAD 00023/2021/HC/KIG (CMB RAD...) Habyarimana Augustin et csrt barega Leta y'u Rwanda (MINEDUC), byumvikana ko bitari kuburanishwa kuko bitari byahujwe n'ibindi birego binyuranye byaburanishijwe, bikaba rero bitaragombaga gufatwaho icyemezo n'Urukiko; ibi bikaba bisobanuye ko nta kosa ryakozwe mu rubanza rusabirwa gukosora, ahubwo ibyo birego byasigaye ukwabyo. [10] Rusanga kuba ibyo birego bitarahujwe, ababuranyi bakaba bataraburanye, icyemezo cyafashwe mu rubanza RAD 00023/2021/HC/KIG (CMB RAD...) Habyarimana Augustin et csrt barega Leta y'u Rwanda (MINEDUC) ntikibareba, ibirego n'ababuranyi babibonekamo ntibishobora kongerwa mu rubanza rusabirwa gukosorwa kuko ibyo birego bitaburanishijwe kandi n'ababuranyi barabyemera ko bataburanye. [11] Rusanga rero ibirego bitaburanishijwe n'ababuranyi bakaba bataraburanye ntibashobora gufatirwa icyemezo noneho ngo cyongerwe mu rubanza rwaciye bo batarurimo; ikiyongeye kuri ibyo ni uko binahinduye ireme ry'urubanza, mu gihe mu ngingo zavuzwe igikosorwa ni amakosa y'imyandikire gusa adahindura ireme ry'icyemezo cyafashwe. Rwemeje rero ko ibisabwa na Me Nsabimana Joseph uhagarariye abarega bidahawe ishingiro kubera ko nta kosa ryakozwe mu rubanza asabira gukosora, urubanza rukosozwa rukaba rugumanye agaciro karwo. [12] Ku byerekeranye n'imibare yashingiweho mu kubara imishahara ku bakozi bazamuwe kabiri mu ntera y'ingazi ntambike, Urukiko rusanga nta kosa ryakozwe kubera ko hashingiwe ku mibare yatanze n'ababuranyi itaravugurujwe n'urwego rugomba kwishyura. III. ICYEMEZO CY'URUKIKO [13] Rwemeje ko ikirego rwashyikirijwe na Nyandekwe Ndagije Déogratias na Bwanakweri Ngabo Baudouin, Uwamungu Victorien na Ntaribi Théogène

nta shingiro gifite. [14] Rukijije ko kuba hari ibirego bitahurijwe mu manza RAD 00023/2021/HC/KIG (CMB RAD 00034/2021/HC/KIG, RAD 00033/2021/HC/KIG, RAD 00032/2021/HC/KIG, RAD 00031/2021/HC/KIG, RAD 00030/2021/HC/KIG, RAD 00029/2021/HC/KIG, RAD 00028/2021/HC/KIG, RAD 00027/2021/HC/KIG, RAD 00026/2021/HC/KIG, RAD 00025/2021/HC/KIG, RAD 00024/2021/HC/KIG) zaciwe ku wa 12/01/2021, ntibiburanishwe, ntibifatweho icyemezo atari amakosa yakozwe.

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[15] Rwemeje ko nta gihindutse kuri izo manza zavuzwe haruguru.

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