

RWANDA / JUDGMENT

SEMALI v. RWANDA ENERGY GROUP LIMITED (REG Ltd)

RADA 0006/13/CS

COURT

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SEMALI v. RWANDA ENERGY GROUP LIMITED (REG Ltd)

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Text

Page 1

SEMALI v. RWANDA ENERGY GROUP LIMITED (REG Ltd) [Rwanda URUKIKO RW'IKIRENGA – RADA 0006/13/CS (Hatangimbabazi, P.J., Rugabirwa na Mukamulisa, J.) 15 Gicurasi, 2015]

Amategeko y'ubutegetsi – Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta – Umukozi ukorera ikigo cya Leta abagengwa na Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta n'ubwo aba yahawe akazi muri icyo kigo hashingiwe ku masezerano y'akazi iyo itegeko rishyiraho rikanagena inshingano, imiterere n'imikorere byacyo ribiteganywa. Amategeko y'ubutegetsi – Indahiro y'umukozi wa Leta afashe ku ibendera ry'Igihugu – Umukozi wa leta ntiyakwitwaza imyemerereye ngo yange kubahiriza amategeko n'amabwiriza ya Leta y'u Rwanda ajyanye n'irahira ry'abakozi ba Leta k'uko Leta y'Urwanda nta dini ishingiyeho. Incamake y'ikibazo: Nyuma yuko hasohokeye amabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo yasabaga abakozi ba Leta batarahiye kurahira EWSA ubu yahindutse Rwanda Energy Group Limited (REG Ltd) yasheshe amasezerano y'akazi bakoranye na Semali kuko yanze kurahira. Semali yareze EWSA Ltd mu Rukiko Rukuru avuga ko yasheshe amasezerano y'akazi mu buryo

bunyuranyije n'amategoko kuko we atagombaga kurahira kuko we atari umukozi n'ubwo yakoraga muri ikigo cya Leta ntabwo yari umukozi wa Leta wagengwaga na Sitati Rusange igenga Abakozi ba Leta n'Inzego z'imirimu ya Leta kuko yagengwaga n'amasezerano y'akazi, kandi yari asanzwe mu kazi, ndetse ko atashoboraga kurahira afashe ku ibendera ry'Igihugu akoreshe n'amagambo agize indahiro kuko binyuranyije n'imyemerere ye y'ubuhamya bwa Yehova. Urwo Rukiko rwemeje ko Rwanda Energy Group Limited yasheshe amasezerano y'akazi bagiranye mu buryo bukurikije amategoko. Semali yajuriye mu Rukiko rw'Ikirenga avuga ko atagombaga kurahira kubera ko atari umukozi wa Leta wagengwaga na Sitati Rusange igenga Abakozi ba Leta n'Inzego z'imirimu ya Leta, ko ahubwo yagengwaga n'amasezerano y'umurimo kandi ko icyemezo kimwirukana ku kazi kibangamiye uburenganzira bwe burimo n'imyemerere ye irengerwa n'Itegeko Nshinga rya Repubulika y'u Rwanda n'Amategoko Mpuzamahanga u Rwanda rwashyizeho umukono arimo Itangazo ryamamaza hose agaciro k'umuntu, na "Charte Africaine des Droits de l'Homme et des Peuples", asaba indishyi zitandukanye. Rwanda Energy Group Ltd ivuga ko yasheshe amasezerano y'akazi hashingiwe ku mpamvu yumvikana kubera ko yanze kurahira, nyamara amabwiriza ya Minisitiri w'Abakozi ba Leta yarasabaga abakozi ba Leta bose batarahiye kurahira, babyanga, bagasezererwa ku kazi. Incamake y'icyemezo: 1. Umukozi ukorera ikigo cya Leta abagengwa na Sitati rusange igenga abakozi ba Leta n'inzego z'imirimu ya Leta n'ubwo aba yahawe akazi muri icyo kigo hashingiwe ku masezerano y'akazi iyo itegeko rishyiraho icyo kigo ribiteganyaho.

2. Umukozi wa leta ntiyakwitwaza imyemerereye ngo yange kubahiriza amategoko n'amabwiriza ya Leta y'u Rwanda ajyanye n'irahira ry'abakozi ba Leta k'uko Leta y'Urwanda nta dini ishingiyeho.

Page 2

3. Umukoresha ntagomba guha umukozi indishyi z'ukumwirukana mu gihe Urukiko rusanze yirukanywe mu buryo bukurikije amategoko

4. Umukozi ntagomba guha umukoresha indishyi zugushorwa mu manza ku maherere kuko nta kigaragaza ko yamureze nkana agamije kumwangiriza kandi akaba afite uburenganzira bwo kujuririra urubanza mu gihe atishimiye imikirize yarwo
5. Iyo umukoresha yanze gutanga iki cyemezo cyangwa ntashyiremo kimwe mu bisabwa cyangwa se akagitanga atinze, ashobora gusabwa kwishyura indishyi z'akababaro zagenwa n'urukiko rubifitiye ububasha. Ubujurire bufite ishingiro Uwajuriye ategetswe guha uregwa amafaranga 162.681 Frw Urubanza rwajuririwe ruhindutse kuri bimwe Ababuranyi bombi bategetswe kufatanyaho mu gutanga amagarama y'urubanza. Amategoko yashyirahweho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi,, ingingo ya 162. Itegeko ryo kuwa 30/07/1988 rigenga amasezerano cyangwa imirimu shinganywa, ingingo ya 258. Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 38. Itegeko n° 34/2008 ryo kuwa 08/08/2008 rigenga imiterere, ibisobanuro, imikoreshereze n'iyubahirizwa by'ibendera ry'Igihugu, ingingo ya 13. Itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho

Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta, ingingo ya 29. Itegeko n° 43/2010 ryo kuwa 7/12/2010 rishyiraho Ikigo cy'Igihugu gishinzwe guteza imbere Ingufu, Amazi n'Isukura (EWSA) rikanagena inshingano, imiterere n'imikorere byacyo, ingingo ya 11 Imanza zifashishijwe: Urubanza RADA 0062/12/CS, Kalisa Aristide c/ Rwanda Social Security Board (RSSB) rwaciwe n'uru Rukiko kuwa 06/06/2014. Urubanza RADA 0065/12/CS, Nyirasafari Xavéra c/Komisiyo y'Abakozi ba Leta, rwaciwe nu Rukiko rw'Ikirenga kuwa 12/12/2014. Urubanza RADA 0067/12/CS, Niyonsaba Jean Claude c/ RSSB rwaciwe nu Rukiko rw'Ikirenga kuwa 22/07/2014. Urubanza RSOCA 0001/14/CS, Musabyimana Marcel c/ WASAC Ltd, rwaciwe n'Urukiko rw'Ikirenga kuwa 13/03/2015,

Page 3

URUBANZA IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Semali Alfred arega EWSA Ltd ubu yahindutse Rwanda Energy Group Limited (REG Ltd) asaba ko yamuha indishyi zinyuranye kubera ko yasheshe amasezerano y'akazi bagiranye kuwa 03/04/1992 mu buryo bunyuranyije n'amategeko yitwaje ko yanze kurahira nk'uko amabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo yo kuwa 06/01/2011 yabisabaga abakozi ba Leta batarahiye, yirengagiza ko atagombaga kurahira bitewe n'uko atari umukozi wa Leta n'ubwo yakoraga muri icyo Kigo cya Leta kuko yagengwaga n'amasezerano y'akazi, ko kandi yari asanzwe mu kazi, ndetse ko atashoboraga kurahira afashe ku ibendera ry'Igihugu, ngo anakoreshe amagambo agize indahiro bitewe n'uko binyuranyije n'imyemerere ye kuko ari Umuhamya wa Yehova. [2] Urwo Rukiko rwaciye urubanza, rwemeza ko ikirego cya Semali Alfred nta shingiro gifite, rumutegeka guha EWSA Ltd 300.000 Frw y'indishyi z'uko yayishoye mu manza ku maherere. Urukiko rwasobanuye ko Semali Alfred yagombaga kurahira kubera ko yari umukozi wa Leta n'ubwo yagengwaga n'amasezerano y'akazi, ko rero kuba atarabikoze bigaragara ko Rwanda Energy Group Limited yasheshe amasezerano y'akazi bagiranye mu buryo bukurikije amategeko. [3] Semali Alfred yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwagombaga gutegeka Rwanda Energy Group Limited kumuha indishyi zinyuranye kubera ko yamwirukanye ku kazi mu buryo bunyuranyije n'amategeko. Rwanda Energy Group Limited yo ikavuga ko Semali Alfred yagombaga kurahira kuko yari umukozi wa Leta, ko kuba atarabikoze, yamwirukanye ku kazi hashingiwe ku mpamvu yumvikana, ko ahubwo itanze ubujurire bwuririye ku bundi kugira ngo ayihe indishyi zinyuranye. [4] Urubanza rwaburanishijwe mu ruhame kuwa 14/04/2015, Semali Alfred ahagarariwe na Me Nkurunziza François Xavier, naho Rwanda Energy Group Limited ihagarariwe na Me Ntaganda Kabare Festo. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO: Kumenya niba Rwanda Energy Group Ltd yarirukanye Semali Alfred mu buryo bunyuranyije n'amategeko [5] Me Nkurunziza François Xavier uburanira Semali Alfred avuga ko Urukiko Rukuru rwasesenguye nabi amategeko, rwemeza ko Semali Alfred yagombaga kurahira nk'uko byasabwaga n'amabwiriza ya Minisitiri w'Abakozi ba Leta yo kuwa 06/01/2011, rwirengagiza ko atagombaga kurahira kubera ko atari umukozi wa Leta wagengwaga na Sitati Rusange igenga Abakozi ba Leta n'Inzego z'imirimo ya Leta, ko ahubwo yagengwaga n'amasezerano y'umurimo (Sous-contrat). Asaba ko Rwanda Energy Group Ltd imuha indishyi kuko yamwirukanye mu buryo bunyuranyije n'amategeko.

Page 4

- [6] Avuga kandi ko n'iyi Semali Alfred ajya kuba umukozi wa Leta, atarebwaga n'umuhango w'irahira uteganywa n'ingingo ya 29 y'Itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati Rusange igenga Abakozi ba Leta n'Inzego z'imirimo ya Leta, kubera ko yari amaze imyaka irenga 18 akorera Rwanda Energy Group Ltd, ko ahubwo hashingiwe kuri icyo ngingo, uwo muhango ukorwa n'umukozi wa Leta ugiye gutangira akazi, ko kandi atari kwirukanwa ku kazi Komisiyo y'Abakozi ba Leta itabanje kugishwa inama nk'uko biteganywa n'ingingo ya 93 y'iryo Tegeko. [7] Yongeraho ko kuba Semali Alfred yarirukanywe ku kazi kubera imyemerere ye, byumvikanyishye ko icyemezo cyo kuwa 11/02/2011 kimwirukana ku kazi nta gaciro gifite bitewe n'uko kibangamiye uburenganzira bwe burimo n'imyemerere ye irengerwa n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo zaryo za 33, 45 igika cya 2 na 190, n'Amategeko Mpuzamahanga u Rwanda rwashyizeho umukono arimo "Déclaration Universelle des Droits de l'Homme", mu ngingo yayo ya 18, ndetse na "Charte Africaine des Droits de l'Homme et des Peuples", mu ngingo yayo ya 2, 7, 8, 14, 15 na 19. [8] Me Ntaganda Kabare Festo uburanira Rwanda Energy Group Ltd avuga ko Semali Alfred yirukanywe ku kazi hashingiwe ku mpamvu yumvikana (motif légitime) kubera ko yanze kurahira, nyamara amabwiriza ya Minisitiri w'Abakozi ba Leta yavuzwe haruguru yarasabaga abakozi ba Leta bose batarahiye kurahira, babyanga, bagasezererwa ku kazi. Asobanura ko Semali Alfred yagombaga kubahiriza ayo mabwiriza akarahira kuko yari umukozi wa Leta n'ubwo yakoraga mu Kigo cya Leta agengwa n'amasezerano y'umurimo, cyane cyane ko igihe yasinyaga ayo masezerano, umukoresha we yari yaramumenyesheje ko natubahiriza amabwiriza yose azahabwa mu kazi ke, azahita asezererwa nta mpaka. [9] Mu gusoza, avuga ko mu guca uru rubanza, Urukiko rw'Ikirenga rwazifashisha imikirize y'urubanza RADA 0066/12/CS, Nshunguyinka Eric yaburanye na Rwanda Social Security Board (RSSB) rwaciye n'uru Rukiko kuwa 22/07/2014, kubera ko ikibazo cyakemurwa muri urwo rubanza gisa n'ikiburanwa muri uru rubanza cyerekeranye n'iyirukanwa rya Semali Alfred kubera kwanga kurahira, ko rero ibyo Semali Alfred aburanisha by'uko yirukanywe ku kazi azira imyemerere nta shingiro bifite kuko bidahuje n'ikibazo kiburanwa muri uru rubanza. UKO URUKIKO RUBIBONA [10] Ingingo ya 2 y'Itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta, iteganya ko "Iri tegeko rishyiraho sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta rikubiyemo amategeko rusange agenga imicungire y'abakozi ba Leta mu nzego z'imirimo ya Leta". [11] Ku bijyanye no kumenya niba Semali Alfred yari umukozi wa Leta cyangwa atariwe, ingingo ya 11 y'Itegeko n° 43/2010 ryo kuwa 7/12/2010 rishyiraho Ikigo cy'Igihugu gishinzwe guteza imbere Ingufu, Amazi n'Isukura (EWSA) rikanagena inshingano, imiterere n'imikorere byacyo ryakurikizwaga igihe Semali Alfred yasezerewe ku kazi, iteganya ko "Abakozi ba EWSA bagengwa na Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta". [12] Hashingiwe ku biteganywa n'izo ngingo, Urukiko rurasanga igihe Semali Alfred yakoreraga Rwanda Energy Group Ltd yari umukozi wa Leta wagengwaga na Sitati rusange

Page 5

igenga abakozi ba Leta n'inzego z'imirimo n'ubwo yahawe akazi muri icyo Kigo hashingiwe ku masezerano y'akazi yavuzwe haruguru, bivuga rero ko yagombaga kurahira nk'uko byasabwaga n'amabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo yo kuwa 06/01/2011. [13] Ibyo bihuje kandi n'ibyemejwe mu rubanza RSOCA 0001/14/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 13/03/2015, Musabyimana Marcel yaburanye na WASAC Ltd, aho rwemeje ko uyu yari umukozi wa Leta n'ubwo yagengwaga n'amasezerano y'akazi ndetse na Sitati rusange y'abakozi ba Leta. [14] Ku byerekeye n'indahiro y'abakozi ba Leta, ingingo ya 29, igika cya mbere y'Itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta, iteganya ko "Mbere yo gutangira imirimo ye, buri mukozi wa Leta arahira indahiro ikurikira: «Njyewe..., ku izina ry'Imana ishobora byose, ndahiriye u Rwanda ku mugaragaro ko nzatunganya imirimo nshinzwe, ko ntazahemukira Repubilika y'u Rwanda, ko nzubaha Umukuru w'Igihugu n'Inzego za Leta, kandi ko nzaharanira ibyagirira abaturarwanda bose akamaro, nubahiriza Itegeko Shingiro n'andi Mategeko». [15] Naho ku byerekeranye n'uburyo abakozi ba Leta barahira, ingingo ya 13 y'Itegeko n° 34/2008 ryo kuwa 08/08/2008 rigena imiterere, ibisobanuro, imikoreshereze n'iyubahirizwa by'ibendera ry'Igihugu, iteganya ko "Abantu bari mu Butegetsi Nyubahirizategeko, abari mu Butegetsi Nshingamategeko n'abari mu Butegetsi bw'Ubucamanza bateganywa n'amategeko n'abandi bose babisabwa n'amategeko yihariye abagenga barahirira imbere y'Ibendera ry'Igihugu. Urahira arifatisha ikiganza cy'ibumoso azamuye ukuboko kw'iburyo akarambura ikiganza hejuru. Uwacitse cyangwa wamugaye ukuboko kumwe cyangwa yombi araryambikwa". [16] Muri dosiye hari ibaruwa n° 035/19.23 yo kuwa 06/01/2011, Minisitiri w'Abakozi ba Leta n'Umurimo yandikiye Abayobozi b'Ibigo bya Leta bose abaha amabwiriza yo kurahira abakozi ba Leta bose batarahiye ku mpamvu zitandukanye, anabamenyesha ko abakozi ba Leta batarahira kubera impamvu izo ari zo zose bazahita basezererwa ku kazi n'Umuyobozi ubifitiye ububasha kubera ikosa ryo kutubahiriza amategeko n'amabwiriza abagenga, nyuma y'integuza y'iminsi 15 yabasabaga kurahira, bakabyanga. [17] Muri dosiye hari kandi ibaruwa yo kuwa 27/10/2010, Umuyobozi wa RECO & RWASCO yahindutse Rwanda Energy Group Ltd yandikiye Semali Alfred amusaba ibisobanuro bijyanye n'uko atubahirije gahunda y'irahira yari iteganyijwe. Mu ibaruwa ye yo kuwa 29/10/2010, Semali Alfred yasubije umukoresha we ko impamvu yatumye atarahira ari uko hakoreshejwe ibendera y'Igihugu n'indahiro bitemeranywa n'umutimanama we bitewe n'uko ari Umuhamba wa Yehova. Kuwa 25/01/2011, umukoresha we yamuhaye integuza y'iminsi 15 kugira ngo arahire, Semali Alfred ntiyabikora kugeza ubwo yasezerewe ku kazi kuwa 11/02/2011 nk'uko ibaruwa iri muri dosiye ibigaragaza. [18] Urukiko rurasanga Semali Alfred wari umukozi wa Leta igihe yakoreraga Rwanda Energy Group Ltd yaragombaga kurahira indahiro yavuzwe haruguru anafashe ku ibendera ry'Igihugu nk'uko biteganywa n'ingingo ya 13 y'Itegeko yavuzwe haruguru, kuba rero atarabikoze, bigaragara ko nta kosa Rwanda Energy Group Ltd yakozwe ubwo yamusezereraga ku kazi kubera ikosa yakozwe ryo kwanga kurahira nk'uko biteganywa n'amabwiriza ya Minisitiri

Page 6

w'Abakozi ba Leta n'Umurimo yavuzwe haruguru, bivuze rero ko Semali Alfred atirukanywe ku kazi kubera imyemerere nk'uko ashaka kubyumvikanisha. [19] Urukiko rurasanga kandi, nk'uko byemejwe mu manza nyinshi zaciwe n'uru Rukiko¹, Semali Alfred ataragombaga kwitwaza imyemerere ye ngo yange kubahiriza amategako n'amabwiriza ya Leta y'u Rwanda ajyanye n'irahira ry'abakozi ba Leta yavuzwe haruguru, kuko hashingiwe ku ngingo ya mbere, igika cya mbere n'ingingo ya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavugururwe kugeza ubu, Leta y'u Rwanda nta dini ishingiyeho, ko kandi abantu bose bareshya imbere y'amategako, ikanabarengera ku buryo bumwe nta vangura iryo ari ryo ryose². [20] Nk'uko byemejwe mu rubanza RADA 0062/12/CS, Kalisa Aristide yaburanye na Rwanda Social Security Board (RSSB) rwaciwe n'uru Rukiko kuwa 06/06/2014, Urukiko rurasanga mu gihe nta kimenyetso Semali Alfred yatanze kigaragaza ko yari yararahiye igihe yakoreraga Rwanda Energy Group Ltd, atakwitwaza uburambe ku kazi bw'imyaka irenga 18 yari afite kugira ngo yange kubahiriza amabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo ateganya ko abakozi ba Leta bose n'abari basanzwe bakora akazi batarahiye ku mpamvu zitandukanye bagomba kurahira, batayubahiriza, bagasezererwa ku kazi. [21] Nk'uko byanemejwe mu rubanza RADA 0062/12/CS rumaze kuvugwa haruguru, Urukiko rurasanga kuba Semali Alfred yarirukanywe ku kazi bitewe no kwanga kurahira bitafatwa nk'ikosa ry'akazi ryagombaga gutuma Komisiyo y'Abakozi ba Leta ibanza kugishwa inama mu gihe umukoresha we yubahirije imihango (procédure) iteganywa n'amabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo yavuzwe haruguru mbere yo kumwirukana. [22] Byongeye kandi, Urukiko rurasanga igihe Semali Alfred yatakambiraga iyo Komisiyo ntacyo yamumariye kuko Umunyamabanga Nshingwabikorwa wayo yamwandikiye ibaruwa yo kuwa 01/04/2011 amumenyesha ko atahindura icyemezo yafatiwe n'umukoresha we cyo kumusezerera ku kazi mu gihe bigaragara ko atubahirije amategako n'amabwiriza ajyanye n'irahira ry'abakozi ba Leta ategaka umukozi wese wa Leta kurahira afashe ku ibendera rya Repubilika y'u Rwanda.

2. Kumenya niba Semali Alfred yahabwa indishyi asaba z'uko yirukaniwe ubusa [23] Me Nkurunziza François Xavier uburanira Semali Alfred avuga ko Rwanda Energy Group Ltd igomba kumuha indishyi zinyuranye zijyanye n'uko yamwirukanye mu buryo bunyuranyije n'amategako zirimo iz'integuza ziteganywa n'ingingo ya 32 y'Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda kuko itigeze imumenyesha ko yakoze ikosa rikomeye mu gihe cy'amasaha 48 nk'uko amategako abiteganyaga, indishyi z'akababaro z'uko 1Urubanza RADA 0065/12/CS, Nyirasafari Xavéra c/Komisiyo y'Abakozi ba Leta, rwaciwe n'uru Rukiko kuwa 12/12/2014; Urubanza RADA 0067/12/CS, Niyonsaba Jean Claude C/RSSB rwaciwe n'uru Rukiko kuwa 22/07/2014. 2Ingingo ya mbere, igika cya mbere y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko: "Leta y'u Rwanda ni Repubulika yigenga kandi ubutegetsi bwose ni yo buturukaho, ishingiyeye kuri demokarasi, igamije guteza imbere abaturage, kandi ntishingiye ku idini ", naho ingingo ya 16 yaryo igateganyaga ko "abantu bose bangana imbere y'amategako. Itegeko ribarengera ku buryo bumwe nta vangura iryo ari ryo ryose".

Page 7

yirukaniwe ubusa ziteganywa n'ingingo ya 33 y'iryo Tegeko hamwe n'imperekeza ziteganywa n'ingingo ya 35 y'iryo Tegeko. [24] Uburanira Rwanda Energy Group Ltd avuga ko itaha Semali Alfred indishyi asaba kuko yirukanywe ku kazi kubera kwanga kurahira nk'uko byasobanuwe haruguru, ariko ko yamuhaye 295.294 Frw y'imperekeza (décompte final) nk'uko bigaragazwa n'icyemezo cyo kuwa 07/03/2011 kiri muri dosiye Semali Alfred yitangiye ubwe mu Rukiko Rukuru. UKO URUKIKO RUBIBONA [25] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". Hashingiwe ku biteganywa n'iyi ngingo, Urukiko rurasanga Rwanda Energy Group Ltd itaha Semali Alfred indishyi asaba z'uko yamwirukaniye ubusa zirimo iz'integuza, iz'akababaro n'iz'imperekeza kuko itamwirukanye mu buryo bunyuranyije n'amategeko nk'uko byasobanuwe haruguru.

3. Kumenya niba Semali Alfred yahabwa indishyi z'uko atahawe icyemezo cy'akazi Me Nkurunziza avuga ko Urukiko Rukuru rwemeje ko Rwanda Energy Group Ltd itaha Semali Alfred indishyi yasabye zijyanye n'uko itamuhaye icyemezo cy'akazi kubera ko atacyatse ngo umukoresha we akimwime, rwirengagije ko hashingiwe ku ngingo ya 38 y'Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, Rwanda Energy Group Ltd, nk'umukoresha we, ariyo yari ifite inshingano zo kumuha icyo cyemezo igihe yamuhaga umushahara we wa nyuma. [26] Avuga kandi ko Urukiko Rukuru rwivugurujye kuko rwemeje ko Semali Alfred ari umukozi wa Leta ugengwa na Sitati Rusange igenga Abakozi ba Leta, nyamara mu gusuzuma ikibazo cyerekeranye n'indishyi z'uko atahawe icyemezo cy'akazi, rushingira ku Itegeko rigenga umurimo. [27] Uburanira Rwanda Energy Group Ltd avuga ko itaha Semali Alfred indishyi asaba z'uko itamuhaye icyemezo cy'akazi kubera ko nta kimenyetso yatanze kigaragaza ko yasabye Rwanda Energy Group Ltd icyo cyemezo ngo ikimwime. UKO URUKIKO RUBIBONA [28] Urukiko rurasanga mu gihe Sitati Rusange igenga Abakozi ba Leta idateganya uburyo bwo kugenera umukozi indishyi z'akababaro zijyanye n'uko atahawe icyemezo cy'akazi hamwe n'umushahara we wa nyuma, ntacyabuza ko Urukiko rushingira ku Itegeko rigenga umurimo mu Rwanda kugira ngo rumenye ingano y'indishyi uwo mukozi agomba guhabwa. [29] Ingingo ya 38 y'Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko « Iyo igihe cy'amasezerano y'akazi kirangiye, umukoresha agomba guha umukozi umushahara we wa nyuma hamwe n'icyemezo ko yamukoreye. Icyo cyemezo kigaragaza ko

Page 8

yamukoreye, itariki yatangiriyeho akazi, itariki akazi karangiriyeho n'akazi yakoraga ». Igika cya 2 cy'iyi ngingo kigateganya ko « Iyo umukoresha yanze gutanga iki cyemezo cyangwa ntashyiremo kimwe mu bisabwa nk'uko bigaragazwa mu gika kibanziriza iki cyangwa se akagitanga atinze, ashobora gusabwa kwishyura indishyi z'akababaro zagenwa n'urukiko rubifitiye ububasha ». [30] Urukiko rurasanga kuba Rwanda Energy Group Ltd nk'umukoresha itarahise iha Semali Alfred icyemezo cy'akazi umunsi yamwirukanaga wo kuwa 11/02/2011 nk'uko n'uyiburanira

abiyemerera, kandi kugeza ubu muri dosiye hakaba nta kimenyetso kigaragaza ko Rwanda Energy Group Ltd yamuhaye icyo cyemezo, ikwiye gufatwa nk'umukoresha wanze kugitanga hakurikijwe ibiteganywa n'ingingo ya 38, igika cya 2 y'Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko umukoresha wirukanye umukozi ahita amuha icyo cyemezo, bityo akaba ari Rwanda Energy Group Ltd yagombaga kugaragaza ko yahise ikimuha. [31] Urukiko rurasanga rero Rwanda Energy Group Ltd igomba guha Semali Alfred indishyi zijyanye n'uko itamuhaye icyemezo cy'akazi, akaba agenewe indishyi zihwanye n'umushahara we w'ukwezi kumwe (1) hakurikijwe ibiteganywa n'ingingo ya 38, igika cya 2, y'Itegeko ryavuzwe haruguru, ni ukuvuga 137.319 Frw3.

4. Kumenya niba ubujurire bwuririye ku bundi bwatanzwe na Rwanda Energy Group Ltd bufite ishingiro [32] Me Ntaganda Kabare Festo uburanira Rwanda Energy Group Ltd avuga ko atanze ubujurire bwuririye ku bundi asaba ko Semali Alfred yayiha 2.000.000 Frw y'indishyi z'uko yayishoye mu manza ku maherere hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, akanayihira 1.000.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka, yose hamwe akaba 3.000.000 Frw yiyongera kuyo yagenewe ku rwego rwa mbere. [33] Me Nkurunziza François Xavier avuga ko Semali Alfred ataha Rwanda Energy Group Ltd indishyi isaba kuko atayireze ku maherere, ko ahubwo yayireze agamije kugaragaza ko yamwirukanye ku kazi mu buryo bunyuranyije n'amategeko. UKO URUKIKO RUBIBONA [34] Ingingo ya 162 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Umuntu wese wabaye umuburanyi mu rubanza ku rwego rwa mbere ashobora kurujuririra iyo abifitemo inyungu, keretse iyo amategeko abiteganywa ukundi". [35] Naho ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano igateganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". [36] Hashingiwe ku biteganywa n'ingingo ya 258 imaze kuvugwa haruguru, Urukiko rurasanga Semali Alfred ataha Rwanda Energy Group Ltd indishyi z'akababaro isaba z'ijyanye 3Uyu mushahara ugaragarira mu mwanzuro wo kuwa 27/07/2011, Semali Alfred yashingiragaho asaba indishyi mu Rukiko Rukuru.

Page 9

no gushorwa mu manza ku maherere kuko nta kimenyetso yatanze kigaragaza ko yayireze nkana agamije kuyangiriza, ahubwo hashingiwe ku ngingo ya 162 y'Itegeko ryavuzwe haruguru, afite uburenganzira bwo kujuririra urubanza mu gihe atishimiye imikirize yarwo. [37] Urukiko rurasanga kandi Semali Alfred ataha Rwanda Energy Group Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka isaba kuko buri wese afite ibyo atsindiye n'ibyo atsindiye muri uru rubanza. [38] Urukiko rusanga rero Semali Alfred agomba guha Rwanda Energy Group Ltd 162.681 Frw ahwanye n'ikinyuranyo kiri hagati ya 300.000 Frw y'indishyi z'akababaro yagombaga kuyiha yaciwe ku rwego rwa mbere na 137.319 Frw y'indishyi z'uko itamuhaye icyemezo cy'akazi nayo yagombaga kumuha. III. ICYEMEZO CY'URUKIKO [39] Rwemeje ko ubujurire bwatanzwe na Semali Alfred bufite ishingiro kuri bimwe; [40] Rwemeje ko ubujurire bwuririye ku bundi

bwatanzwe na Rwanda Energy Group Ltd nta shingiro bufite; [41] Rutegetse Semali Alfred guha Rwanda Energy Group Ltd 162.681 Frw; [42] Rutegetse ko imikirize y'urubanza n° RAD 0090/11/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 14/12/2012 ihindutse kuri bimwe; [43] Rutegetse Semali Alfred gufatanya na Rwanda Energy Group Ltd gutanga amagarama y'urubanza angana na 100.000 Frw, ni ukuvuga ko buri wese agomba gutanga kimwe cya kabiri cyayo kingana na 50.000 Frw.

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