

RWANDA / JUDGMENT

RADA 00007/2022/HC/NYZ

COURT

High Court

DECIDED

30 June 2023

CASE / FILE NUMBER

RADA 00007/2022/HC/NYZ

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

RADA 00007/2022/HC/NYZ

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2023-06-30
- Case/document no.: RADA 00007/2022/HC/NYZ
- Collection: High Court

Text

Page 1

AKARERE KA GISAGARA vs. UWIMANA [Rwanda URUKIKO RUKURU – RADA 00007/2022/HC/NYZ – (Uwamariya, J. P.) 30 Kamena 2023] Amategeko agenga imanza z’ubutegetsi – Ikirego gisaba gukuraho icyemezo cy’ubutegetsi – Ibarwa ry’ibihe byo gutanga ikirego – Ibihe byo gutanga ikirego gisaba gukuraho icyemezo cy’ubutegetsi, nyuma yo gutakamba no kujuririra ibyemezo mu nzego z’ubuyobozi, bibarwa uhereye ku munsu uwatakambye yasubirijwe, aho kuba igihe yagombye kuba yarasubirijwe. Amategeko agenga imanza z’umurimo – Kwirukanwa binyuranyije n’amategeko – Ibishingirwaho mu kugenera indishyi umukozi wirukanwe – Mu kugena indishyi z’umukozi wa Leta wirukanywe nta mpamvu ifatika kandi yumvikana hagenderwa ku icyo umukozi aba yarangirijwe mu by’ukuri, ku makosa yakozwe n’ubutegetsi no ku ikosa ryakozwe n’umukozi rishobora, gutuma ahabwa indishyi nkeya cyangwa ntanagire izo abona. Amategeko agenga imanza z’umurimo – Kwirukanwa binyuranyije n’amategeko – Amafaranga y’indishyi agenerwa umukozi igihe yirukanwe mu buryo bunyuranyije n’amategeko – Umukozi wasezerewe mu buryo bunyuranyije n’amategeko ahabwa indishyi zibarwa ku rugero rw’umushahara yahembwe bwa nyuma, zikabarwa guhera igihe yahagarikiwe kugeza urubanza rusomwe, hagendewe ku mushahara yatahanaga mu ntoki. Incamake y’ikibazo: Uwimana wari umunyamabanga nshingwabikorwa w’umurenge wa Muganza mu Karere ka Gisagara yaje

guhagarikwa by'agateganyo kuri iyi mirimo kubera amakosa yo mu kazi yarakurikiranweho n'umukoresha we. Nyuma y'amezi atandatu yasabye Akarere ka Gisagara nk'umukoresha we kumusubiza mu kazi maze ntiyasubizwa, yandikira Komisiyo y'Igihugu ishinzwe abakozi ba Leta yemeza ko agomba gusubizwa mu kazi, asubizwamo ariko ahagarikwa amezi atatu adahembwa. Nyuma yuko asubijwe mu kazi yagiye yandikirwa amabaruwa atandukanye asabwa ibisobanuro ariko ntibinyure umukoresha maze amwirukana burundu. Nyuma yo kwirukanwa burundu, yandikiye Akarere agasaba gukuraho icyo cyemezo kamusubiza ko katakwisubiraho bituma yandikira Komisiyo y'Igihugu ishinzwe abakozi ba Leta, yemeza ko yahabwa igihano cyo guhagarikwa by'agateganyo adahembwa mu gihe cy'amezi atatu aho kwirukanwa burundu, ariko ntibyubahirijwe maze atanga ikirego mu Rukiko Rwisumbuye rwa Huye asaba gusubizwa mu kazi kuko yirukanywe mu buryo bunyuranyije n'amategeko no guhabwa indishyi zitandukanye zijyanye na byo. Akarere ka Gisagara kireguye kavuga ko icyemezo cyafashwe na Komisiyo y'Igihugu ishinzwe abakozi ba Leta kitagomba gushyirwa mu bikorwa kuko cyafashwe impitagihe bityo kikaba kidakurikije amategeko. Urukiko Rwisumbuye rwemeje ko ikirego cy'Urega giftite ishingiro kuko yirukanywe mu buryo bunyuranyije n'amategeko akaba agomba kubiharerwa indishyi zitandukanye n'Uregwa. Ibi byatumye Uregwa ajuririra Urukiko Rukuru, Urugereko rwa Nyanza avuga ko urukiko rwabanje rwitiranyije ingingo ya 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuru, iz'umurimo n'iz'ubutegetsi n'ingingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, kuba Urukiko rwarafashe icyemezo hashingiwe ku cyo rwise

Page 2

amakosa ya Komisiyo y'Abakozi atari byo byaregewe ndetse na Komisiyo ikaba itararezwe, no kuba urukiko rwaratanze indishyi zidakwiye. Urega na we yatanze ubujurire bwe avuga ko Urukiko rwari gutegeka Akarere ka Gisagara kumusubiza mu kazi aho kwirukanwa burundu no kumuha indishyi zitandukanye n'imishahara atahawe yo muri cya gihe yahagarikwaga by'agateganyo. Ubujurire bw'impande zombi bwahurijwe mu rubanza rumwe maze habanza gusuzumwa ikibazo cyavuzwe haruguru cyatanzwe n'Akarere kijyanye no kwitiranya ingingo z'amategeko bikozwe n'Urukiko rwabanje. Aha gasobanura ko Urukiko rwavuze ko Uwimana yubahirije inzira ikurikizwa, ajuririra icyemezo cyamufatiwe, akurikije ingingo ya 178 y'Itegeko ryavuzwe haruguru kugirango abashe gusubizwa uburenganzira bwe yatakaje. Gakomeza kavuga ko hatabayeho gushishoza kuko uwo mukozi atigeze atakambira Komisiyo y'Abakozi ba Leta yisunze iyo ngingo, ko kandi atari no kubikora atyo kuko ibijyanye no gutakambira cyangwa kujuririra Komisiyo bikorwa hashingiwe ku ngingo ya 84 y'Itegeko No 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta. Uwimana yireguye avuga ko yirukanwe burundu mu kazi ke n'Akarere mu buryo bunyuranyije n'amategeko hashingiwe ku makosa adafite ishingiro. Bityo, iyi ngingo y'ubujurire ikaba nta shingiro ikwiye guhabwa, kuko yakaregeye ko gashyira mu bikorwa ibyemejwe na Komisiyo, bivuze ko nta cyo yanengaga, ahubwo ko gakomeza kwinangira, nako kakaba kabyivugira ko nta cyo kakora mu gihe gategereje ibyo kasabye Komisiyo, kandi kazi neza ko icyemezo cya Komisiyo kitajuririrwa. Ku kibazo cyo

kuba urukiko rwarafashe icyemezo hashingiwe ku cyo rwise amakosa ya Komisiyo y'Abakozi atari byo byaregewe ndetse na Komisiyo ikaba itararezwe, Akarere kavuga ko nta makosa kakoze mu kwirukana Uwimana haba ku birebana n'ikosa, haba no ku birebana nikurikiranakosa. Ikindi ni uko kuba Komisiyo yarasubije ubujurire bwa Uwimana itinze katabibazwa, ko kandi kuba katarashyize mu bikorwa icyo cyemezo aruko cyaje impitagihe, bikaba bigomba gufatwa nk'aho nta gihari. Uwimana yireguye kuri iyi ngingo avuga ko Akarere gakwiye kumva ko ariko karezwe kuko kakoze amakosa, ari nayo karyojwe, ko hatari kuregwa Komisiyo kuko yo icyo isabwa ari ukureba niba inzego n'ibigo bya Leta bikurikiza amategeko. Muri uru rubanza kandi Akarere kajuriye kavuga ko mu rubanza rwabanje hatanzwe indishyi zidakwiye kuko Urukiko rwaziryennye rushingiye ku itegeko ritariryo aho rwashingiye ku itegeko rigenga umurimo nyamara Uwimana atari umukozi ugengwa n'amasezerano ahubwo yagengwaga na Statut rusange y'abakozi ba Leta. Uwimana we yireguye kuri iki kibazo avuga ko Akarere katasobanuye indishyi zidakwiye Urukiko rwatanze, uretse kuvuga ko hashingiwe ku itegeko ritari ryo, akaba ari yo mpamvu na we yajuriye kuko atishimiye uko urukiko rwa mbere rwasesenguye izo ndishyi yagenewe. Mu bujurire bwe, Uwimana akomeza avuga ko Akarere kanze gushyira mu bikorwa icyemezo cyafashwe na Komisiyo y'abakozi cyasabaga ko kamuhagarika by'agateganyo aho kumwirukana burundu. Aha Akarere kaje gusubiza kuri icyo cyemezo ko katakwisubiraho dore ko muri uwo mwanya kari kamaze gushyiramo undi mukozi. Ibi bikaba bigaragaza ko yirukanwe mu buryo bunyuranyije n'amategeko akaba agomba kubiharerwa indishyi. Aha, Akarere ka Gisagara gasobanura ko urukiko rwabanje rwashingiye ku itegeko rigenga umurimo mu Rwanda kandi

Page 3

Uwimana agengwa na sitati igenga abakozi ba Leta, akaba ari nta ndishyi yagombaga guhabwa hagendewe kuri stati y'abakozi ba Leta kuko yirukanywe burundu mu kazi. Uwimana kandi yajuriye asaba uru Rukiko Rukuru gutegeka uwo baburana kumuha amafaranga ahwanye n'imishahara yavukijwe kuva yirukanwe burundu kugeza igihe urubanza rumurenganura rubereye itegeko. Akomeza asaba guhabwa izo ndishyi kuko ukwirukanwa mu kazi mu nzira zinyuranyije n'amategeko, byagize ingaruka zikomeye ku buzima ndetse n'umuryango we. Ibi asaba Akarere kavuga ko ari nta ndishyi yagombaga guhabwa hagendewe kuri sitati y'abakozi ba Leta kuko yirukanywe burundu mu kazi. By'umwihariko ntabwo kigeze kamutuma gusaba inguzanyo muri banki, ko nta n'ubwo kigeze kamubera umwishingizi, kandi nta n'itegeko ashingiraho asaba izo indishyi. Incamake y'icyemezo: 1. Ibihe byo gutanga ikirego gisaba gukuraho icyemezo cy'ubutegetsi, nyuma yo gutakamba no kujuririra ibyemezo mu nzego z'ubuyobozi, bibarwa uhereye ku munsu uwatakambye yasubirijwe, aho kuba igihe yagombye kuba yarasubirijwe.

2. Mu kugena indishyi z'umukozi wa Leta wirukanywe nta mpamvu ifatika kandi yumvikana hagenderwa ku icyo umukozi aba yarangirijwe mu by'ukuri, ku makosa yakozwe n'ubutegetsi no ku ikosa ryakozwe n'umukozi, rishobora gutuma ahabwa indishyi nkeya cyangwa ntanagire izo abona.

3. Umukozi wasezerewe mu buryo bunyuranyije n'amategeko ahabwa indishyi zibarwa ku rugero rw'umushahara yahembwe bwa nyuma, zikabarwa guhera igihe yahagarikiwe kugeza urubanza rusomwe, hagendewe ku mushahara yatahanaga mu ntoki. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 017/2020 ryo ku wa 07/10/2020 rishyiraho Sitati igenga abakozi ba Leta. Itegeko No 66/2018 ryo ku wa 30/08/2018 rigenga umurimo, iningiro ya 3 n'ya 30. Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza, z'imbenezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingiro ya 9, 12, 111 n'ya 178. Itegeko No 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta, ingiro ya 83, 84 n'ya 85. Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingiro ya 3. Iteka rya Perezida No 65/2014 ryo kuwa 04/03/2014 rigenga uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, ingiro ya 23, 33 n'ya 34. Imanza zifashishijwe: RS/INJUST/RAD 00001/2021/SC, Katabarwa Richard n'Akarere ka Nyaruguru, rwaciwe n'Urukiko rw'Ikirenga ku wa 22/06/2022.

Page 4

RADA 0006/12/CS, Leta y'u Rwanda na Ndahindurwa Kimenyi Jérémie, rwaciwe ku wa 04/01/2013. Urubanza I. IMITERERE Y'URUBANZA [1] Uwimana Marie Rose yari umukozi w'Akarere ka Gisagara, ari Umunyamabanga Nshingwabikorwa w'Umurenge wa Muganza, aza guhagarikwa by'agateganyo ku wa 15/11/2018 kugira ngo akorweho iperereza ku makosa y'akazi yakekwagaho, ariyo gukoresha amafaranga 450,000 ya fonctionnement y'utugari akayakoresha icyo atagenewe, gukoresha mu nyungu ze bwite amafaranga 290.000 yatanze na koperative KOABIKIGI yari agenewe kwishyurira abaturage bo mu murenge wa Muganza batishoboye ubwisungane mu kwivuzwa, kutubahiriza amabwiriza y'imikoreshereze y'amafaranga yari agenewe kugura ibikoresho byo mu nzu byagombaga guhabwa abagenerewabikorwa ba FARG bo mu Murenge wa Muganza, no kudaha agaciro gahunda za Leta zigamije iterambere ry'umuturage. [2] Ku wa 17/05/2019, igihe cy'amezi atandatu (6) yahawe kirangiye yandikiye Akarere ka Gisagara asaba gusubizwa mu kazi, adasubijwe mu kazi yandikira Komisiyo y'Igihugu ishinzwe abakozi ba Leta, imusubiza ko ubujurire bwe bufite ishingiro akwiye gusubizwa mu kazi. [3] Ku wa 16/07/2019, Akarere ka Gisagara kamwandikiye kamumenyesha ko ahawe igihano cyo guhagarikwa ku kazi amezi 3 adahemberwa kubera amakosa yari akurikiranyweho, icyo gihano kikabarwa kuva ku ya 16/11/2018 ahagarikwa by'agateganyo, kugera ku ya 16/02/2019, ndetse asabwa gusubira mu kazi ku ya 16/05/2019. [4] Ku wa 25/09/2019 yandikiwe amabaruwa atandukanye asabwa ibisobanuro ku yandi makosa, ibisobanuro yatanze ntibyangura Akarere ka Gisagara kugeza ubwo Akanama gashinzwe gukurikirana amakosa gatanga umwanzuro wo kumwirukana burundu ku kazi, ku wa 30/01/2020 akaba aribwo yandikiwe ibaruwa No 2747/07.02.02.HRM yo kwirukanwa burundu ku kazi. [5] Ku wa 31/01/2020 yandikiye Umuyobozi w'Akarere ka Gisagara, amusaba kwisuburaho ku cyemezo yafashe, avuga ko kirimo akarengane hashingiwe ku byirengagijwe mu kugifata, maze ku ya 06/02/2020 asubizwa ko Ubuyobozi bw'Akarere butakwisubira ku gihano bwatanze. [6] Ku wa 13/02/2020, Uwimana Marie Rose yandikiye Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta ayisaba kumurenganura ku gihano yahawe cyo kwirukanwa burundu mu kazi. Ku wa 30/12/2020, nyuma yo gusesengura ubujurire bwe, Komisiyo isaba Akarere ka Gisagara gukuraho igihano

yahawe cyo kwirukanwa burundu, kigasimbuzwa guhagarikwa ku kazi amezi 3 adahembwa. [7] Ku wa 19/01/2021 Uwimana Marie Rose yandikiye Akarere ka Gisagara agasaba gushyira mu bikorwa imyanzuro ya Komisiyo, ariko ntikabikora, bituma aregera Urukiko Rwisumbuye rwa Huye, arusaba kugategeka kumusubiza mu kazi kuko kamwirukanye mu buryo bunyuranyije n'amategeko, asaba no guhabwa indishyi zinyuranye zingana n'imishahara y'igihe amaze yarirukanwe burundu mu kazi binyuranyije n'amategeko kugeza igihe urubanza rubaye ndakuka.

Page 5

[8] Me Mbonigaba uhagarariye Akarere ka Gisagara yaburanye avuga ko icyemezo cya Komisiyo y'Abakozi ba Leta cyo ku wa 30/12/2020 cyafashwe impitagihe, bityo kikaba kitagomba guhabwa agaciro, kuko yagombaga kumusubiza mu gihe kitarenze iminsi 60, Akarere ka Gisagara kakaba kataragombaga kubahiriza icyemezo kinyuranyije n'amategeko. [9] Nyuma yo gupfundikira iburanisha, Akarere ka Gisagara kashyikirije Urukiko ibaruwa ivuguruzwa iyo komisiyo yanditse mbere, ivuga ko icyemezo cyafashwe n'Akarere ka Gisagara cyo kwirukana Uwimana Marie Rose kigumaho. Ariko Me Munyemana Pascal uhagarariye Uwimana, yasabye Urukiko ko rwatesha agaciro iki cyemezo cya nyuma kuko ibyemezo bya Komisiyo y'abakozi ba Leta bitajuririrwa. [10] Urukiko rwaciye urubanza rwemeza ko ikirego cya Uwimana Marie Rose gifite ishingiro, rwemeza ko yirukanywe mu buryo bunyuranyije n'amategeko, rutegeka Akarere ka Gisagara kumwishyura indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko zingana na miliyoni esheshatu n'ibihumbi Magana ane na mirongo itatu n'icyenda na Magana abiri na cumi n'umunani (6.439.218), no kumwishyura indishyi z'ikurikiranarubanza zingana n'amafaranga ibihumbi ijana (100.000) n'igihembo cy'avoka cy'ibihumbi Magana atanu (500.000), kakamusubiza kandi ingwate y'amagarama ingana n'amafaranga ibihumbi makumyabiri (20.000). [11] Akarere ka Gisagara na Uwimana Marie Rose bose ntibishimiye imikirize y'urubanza barujurira mu Rukiko Rukuru Urugereko rwa Nyanza. Ubujurire bw'Akarere ka Gisagara bwanditswe kuri RADA 00007/2022/HC/NYZ, naho ubwa Uwimana Marie Rose bwandikwa kuri RADA 00009/2022/HC/NYZ, izi manza zombi zihurizwa mu rubanza rumwe ziburanishirizwa hamwe. [12] Akarere ka Gisagara kavuga ko kajuririye kuba Urukiko Rwisumbuye rwaritanyije ingingo 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi n'ingingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, kuba Urukiko rwarafashe icyemezo hashingiwe ku cyo rwise amakosa ya Komisiyo y'Abakozi atari byo byaregewe ndetse na Komisiyo ikaba itararezwe, no kuba urukiko rwaratanze indishyi zidakwiye. [13] Uwimana Marie Rose we avuga ko impamvu yajuriye aruko Urukiko rwari gutegeka Akarere ka Gisagara kumusubiza mu kazi aho kwirukanwa burundu, kuba urukiko rwaragombaga gutegeka ko ahabwa indishyi mbonezamusaruro zijyanye n'igihe amaze yarirukanwe burundu ku kazi binyuranyije n'amategeko kugeza igihe urubanza rubereye ndakuka, akaba agomba kurihwa n'Akarere ka Gisagara igihombo yatewe no kwirukanwa ku karengane ntasubizwe mu kazi, bigatuma atabasha kwishyura umwenda wa banki yari yafashe. Avuga kandi ko yagombaga kugenerwa n'Urukiko Rwisumbuye indishyi z'akababaro

zikomoka ku kwirukanwa burundu mu kazi mu buryo banyuranyije n'amategeko, no kuba Uwimana Marie Rose agomba kugenerwa, agahabwa Umushahara w'amezi atandatu (6 mois) atahembwe mu gihe yahagarikwaga by'agateganyo. Arasaba kandi guhabwa amafaranga yakoresheje muri uru rubanza agizwe n'ikurikiranarubanza n'igihembo cy'avoka. [14] Urubanza rwaburanishijwe mu ruhamwe Akarere ka Gisagara gahagarariwe n'Intumwa ya Leta Me Mbonigaba Eulade, naho Uwimana Marie Rose yunganiwe na Me Habarurema Anglebert.

Page 6

[15] Akarere ka Gisagara kavuga ko kajuriye kuko urukiko Rwisumbuye rwitiranyije ingingo ya 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamusubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi n'ingingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, rukakira ikirego cya Uwimana Marie Rose, kuba urukiko rwarafashe icyemezo rushingiye ku makosa yakozwe na Komisiyo y'Abakozi ba Leta Atari yo yaregewe, kandi iyi komisiyo itararezwe, no kuba urukiko rwaragennye indishyi zidakwiye. [16] Uwimana Marie Rose ajurira avuga ko yasubizwa mu kazi aho kwirukanwa burundu, agahabwa indishyi mbonezamusubano zijyanye n'igihe amaze yarirukanwe burundu ku kazi binyuranyije n'amategeko, kurihwa igihombo yatewe no kwirukanwa ku karengane ntasubizwe mu kazi, no huhabwa indishyi z'akabaro yatewe n'iryo yirukanwa, akishyurwa umushahara w'amezi atandatu (6 mois) atahembwe mu gihe yahagarikwaga by'agateganyo. Arasaba kandi guhabwa amafaranga yatanze mu gukurikirana urubanza n'igihembo cy'avoka. [17] Ibibazo urukiko rugomba gusuzuma muri uru rubanza ni: - Kumenya niba Urukiko Rwisumbuye rwatiranyije ingingo 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamusubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi n'ingingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, rukakira ikirego cya Uwimana Marie Rose. - Kumenya niba Urukiko rwarafashe icyemezo hashingiwe ku cyo rwise amakosa ya Komisiyo y'Abakozi atari byo byaregewe ndetse na Komisiyo ikaba itararezwe. - Kumenya niba urukiko rwaratanze indishyi zidakwiye. - Kumenya niba Akarere ka Gisagara kasubiza mu kazi Uwimana Marie Rose aho kwirukanwa burundu mu kazi. - Kumenya niba Uwimana Marie Rose yahabwa indishyi mbonezamusubano zijyanye n'igihe amaze yarirukanwe burundu ku kazi binyuranyije n'amategeko. - Kumenya niba hari igihombo Uwimana Marie Rose yatewe no kwirukanwa ku karengane cyarwozwa Akarere ka Gisagara katamusubije mu kazi. - Kumenya niba hari Umushahara w'amezi atandatu (6 mois) Uwimana Marie Rose atahembwe mu gihe yahagarikwaga by'agateganyo. - Gusuzuma amafaranga yatanze mu gukurikirana urubanza n'igihembo cy'avoka asabwa kuri uru rwego rw'ubujurire. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Ubujurire bw'Akarere ka Gisagara

1. Kumenya niba Urukiko Rwisumbuye rwaritiranyije ingingo 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi n'ingingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, rukakira ikirego cya Uwimana Marie Rose

Page 7

- [18] Uburanira Akarere ka Gisagara avuga ko impamvu ya mbere yatumye kajurira aruko Urukiko Rwisumbuye rwitiranyije ingingo 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, n'ingingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi. [19] Asobanura ko ingingo ya 84 y'Itegeko No 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta (ryakoreshwaga ubwo Uwimana yirukanwaga) iteganya ko iyo icyemezo gifashwe ku rwego rwa mbere kitamushimishije, umukozi wa Leta wahanwe ashobora kujuririra Komisiyo, mu rwego rwa nyuma, mu gihe kitarenze iminsi itanu (5) y'akazi uhereye igihe yaherewe igisubizo. Komisiyo igomba gutanga umwanzuro mu gihe kitarenze iminsi mirongo itandatu (60). Icyemezo cya Komisiyo ntikijuririrwa mu rwego rw'ubutegetsi, ngo ni nako ingingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi ibitegeka. [20] Avuga ko ingingo ya 178 yavuzwe iteganya ko ikirego gisaba gukuraho icyemezo cy'umuyobozi cyakirwa iyo cyerekeye icyemezo cy'umuyobozi cyaba cyeruye cyangwa kiteruye. Ngo mbere yo gutanga ikirego, unenga icyemezo cy'umuyobozi agomba kubanza gutakambira umuyobozi ufite ububasha bwisumbuye k'uwashe icyemezo kinengwa. Umuyobozi utakambiwe agomba gusubiza ubwo butakambe mu gihe cy'ukwezi kumwe (1) kubarwa uhereye umunsi yabuboneyeho. Iyo adasubije, ubutakambe bufatwa nk'aho bufite ishingiro. Mu gihe uwatakambye atishimiye igisubizo yahawe, afite igihe cy'amezi atandatu (6) cyo kuregera urukiko gitangira kubarwa kuva ku munsi yaboneyeho igisubizo. [21] Avuga ko urukiko mu bika bya 14 na 15 ruvuga ko Uwimana Marie Rose yubahirije "procedure" ikurikizwa, ajuririra icyemezo cyamufatiwe, nyamara komisiyo yo ntiyubahiriza igihe cyateganyijwe mu kumusubiza, ruvuga ko hakwibazwa niba bituma Uwimana Marie Rose atakaza uburenganzira bwe mu gihe adasubijwe, urukiko ruvuga ko hashingirwa ku ngingo ya 178 y'Itegeko ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yavuzwe haruguru, iteganya uburyo bigenda iyo uwatakambiye umuyobozi adasubijwe ku birego bisaba gukuraho icyemezo cy'ubutegetsi. [22] Avuga ko icyo urukiko rutashishojeho aruko Uwimana Marie Rose atigeze atakambira Komisiyo y'Abakozi ba Leta yisunze ingingo ya 178 yavuzwe, ko kandi atari no kubikora atyo kuko ibijyanye no gutakambira cyangwa kujuririra Komisiyo y'Abakozi ba Leta bikorwa hashingiwe ku ngingo ya 84 y'Itegeko No 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta (ryakoreshwaga ubwo Uwimana yirukanwaga) no ku ngingo ya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi. Ngo

n'iyoye kandi ingingo ya 178 CPCCSA yari kuba ihuye na kamere y'icyaburanwaga, icyo gihe ikirego cya Uwimana Marie Rose nticyari kwakirwa kuko atashoboraga gutanga ikirego nyuma y'amezi arindwi atakambye Komisiyo y'abakozi ba Leta, akubiyemo ukwezi kumwe yari kuba yaramaze ategereje igizubizo ntakibone kongeraho amezi atandatu atarashoboraga kurenza atararega. [23] Avuga ko nyamara ku wa 13/02/2020 Uwimana Marie Rose aribwo yandikiye komisiyo ishinze Abakozi ba Leta ayisaba kumurenganura ku gihano yahawe cyo kwirukanwa burundu mu kazi, ari nabyo urukiko rwise gutakamba rukabyitiranya n'ingingo ya 178 CPCCSA, bityo ko hashingiwe kuri iyi ngingo Uwimana Marie Rose atashoboraga kuregera urukiko nyuma y'itariki ya 12/09/2020, ariko akaba yatanze ikirego ku wa 11/05/2021 nyuma y'amezi 15 atakambye,

Page 8

bikaba rero byumvikana ko urukiko rwaciye urubanza mu buryo bunyuranyije n'amateko kuko gushingira ku ingingo ya 178 CPCCSA byari gutuma ikirego kitakirwa. [24] Uwimana Marie Rose n'umwunganizi we biregura bavuga ko yirukanwe burundu mu kazi ke n'Akarere ka Gisagara mu buryo bunyuranyije n'amategeko hashingiwe ku makosa adafite ishingiro. Bavuga ko ku wa 25/09/2019, yandikiwe ibaruwa asabwa ibisobanuro, atanga ibisobanuro yasabwe ku wa 01/10/2019, ariko ku wa 15/10/2019 Umuyobozi w'Akarere amwandikira ko ibisobanuro yatanze bitamunyuze, ahera ko asaba Akanama gashinzwe gukurikirana amakosa kuzabikurikirana kagatanga umwanzuro, ku wa 06/11/2019 yongeye gusabwa ibindi bisobanuro ku yandi makosa yagaragaye abitanga ku wa 13/11/2019, maze ku wa 15/11/2019 yongera kwandikirwa ko ibisobanuro yatanze bitanyuze Ubuyobozi hasabwa Akanama gashinzwe gukurikirana amakosa kubikurikirana kagatanga umwanzuro, ku wa 30/01/2020 yandikirwa ibaruwa numero 2747/07.02.02.HRM yo kwirukanwa burundu ku kazi. [25] Bavuga ko ku wa 31/01/2020 Uwimana Marie Rose yandikiye Umuyobozi w'Akarere ka Gisagara agasaba kwisubira ku cyemezo kafashe agaragaza akarengane karimo hashingiwe ku byirengagijwe mu kugifata, maze ku ya 06/02/2020 asubizwa ko Ubuyobozi bw'Akarere butakwisubira ku gihano bwatanze. Ku wa 13/02/2020, ngo yandikiye Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta ayisaba kumurenganura ku gihano yahawe cyo kwirukanwa burundu mu kazi, ku wa 30/12/2020, Komisiyo nyuma yo gusesengura ubujurire bwe, yasabye Akarere ka Gisagara gukuraho igihano yahawe cyo kwirukanwa burundu, ahubwo agahanishwa amezi 3 adahembwa. [26] Bavuga ko ku wa 19/01/2021 yandikiye Akarere ka Gisagara agasaba ko kashyira mu bikorwa imyanzuro ya Komisiyo nk'uko nabo bahawe kopi, Akarere kamwandikiye kamubwira ko kasabye Komisiyo kongera gusuzuma umwanzuro wayo, bityo ko gategereje umwanzuro ku bujurire Akarere katanze. Ku wa 29/01/2021 yongeye kwandikira Akarere ka Gisagara akagaragariza ko atanyuzwe n'igisubizo yahawe ashingiye ku kutajuririrwa kw'ibyemezo by'urwego rwa Leta rwakira ubujurire mu micungire y'abakozi ba Leta, maze Akarere nako ku wa 03/02/2021 kamwandikira ko gasobanukiwe neza amategeko, ko nyamara n'ubwo Itegeko ribiteganyaga gutyo ariko kasabye ko hakongeraga gusuzumwa ibyirengangijwe, bityo asabwa gutegereza. Ngo ni nyuma yo kubona akarengane yakorewe, hakiyongera ho ko nyuma yo gusesengura ubujurire bwe akarenganurwa Akarere kakomeje kwinangira kumurenganura, akaba ariyo mpamvu yiyambaje ubutabera ngo bumurenganure.

[27] Bavuga ko iyi ngingo y'ubujurire y'Akarere ka Gisagara nta shingiro ikwiye guhabwa, kuko Uwimana yaregeye ko Akarere ka Gisagara gashyira mu bikorwa ibyemejwe na Komisiyo, bivuze ko nta cyo yanengaga ibyo Komisiyo yasesenguye, ahubwo Akarere gakomeza kwinangira, nako kakaba kabyivugira ko nta cyo kakora mu gihe gategereje ibyo kasabye Komisiyo, kandi kazi neza ko icyemezo cya komisiyo kitajuririrwa. [28] Bavuga kandi ko kuba umwanzuro wa Komisiyo ari uwo ku wa 30/12/2020, ikirego kikaba cyaratanzwe mu kwezi kwa Gicurasi, hubahirijwe ibihe biteganywa n'amategeko, bityo ko ibyo Akarere ka Gisagara kavuga ko atubahirije ibihe byo kurega bikaba ari nta shingiro bigomba guhabwa. UKO URUKIKO RUBIBONA

Page 9

[29] Ingingo ya 178 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikirego gisaba gukuraho icyemezo cy'umuyobozi cyakirwa iyo cyerekeye icyemezo cy'umuyobozi cyaba cyeruye cyangwa kiteruye. Mbere yo gutanga ikirego, unenga icyemezo cy'umuyobozi agomba kubanza gutakambira umuyobozi ufite ububasha bwisumbuye k' uwafashe icyemezo kinengwa. Umuyobozi utakambiwe agomba gusubiza ubwo butakambe mu gihe cy'ukwezi kumwe (1) kubarwa uherye umunsi yabuboneyeho. Iyo adasubije, ubutakambe bufatwa nk'aho bufite ishingiro. Mu gihe uwatakambye atishimiye igisubizo yahawe, afite igihe cy'amezi atandatu (6) cyo kuregera urukiko gitangira kubarwa kuva ku munsi yabuboneyeho igisubizo. Iyo nta gisubizo yahawe kandi atasubijwe uburenganzira bwe, ashobora gusaba urukiko ruburanisha imanza z'ubutegetsi gutegeka ko uburenganzira bwe bwubahirizwa. Icyo kirego gitangwa mu gihe kitarenze ukwezi kumwe (1) mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe. [30] Naho ingingo ya 83 y'Itegeko N°86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta, iteganya ko Umukozi wa Leta utemera igihano yahawe mu rwego rw'akazi, afite uburenganzira bwo kujuririra inzego z'ubuyobozi cyangwa inkiko. Iya 84 igateganya ko mu gihe kitarenze iminsi itanu (5) y'akazi amenyeshejwe icyemezo yafatiwe, umukozi wahanwe iyo atemera igihano yahawe, ashobora kujuririra mu nyandiko ku rwego rwa mbere umuyobozi w'Urwego akoramo agahabwa igisubizo mu minsi itarenze cumi n'itanu (15) y'akazi uherye igihe ubujurire bwakiriwe. Igika cya kabiri cy'iyi ngingo giteganya ko iyo icyemezo gifashwe ku rwego rwa mbere kitamushimishije, umukozi wa Leta wahanwe ashobora kujuririra Komisiyo, mu rwego rwa nyuma, mu gihe kitarenze iminsi itanu (5) y'akazi uherye igihe yaherewe igisubizo. Komisiyo igomba gutanga umwanzuro mu gihe kitarenze iminsi mirongo itandatu (60). Icyemezo cya Komisiyo ntikijuririrwa mu rwego rw'ubutegetsi. Ibi biteganywa muri iki gika cya kabiri cy'iyi ngingo ya 84 ivugwa, ni nako biteganywa mu ngingo ya 33 igika cya mbere y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi. Nayo isobanura ko iyo icyemezo cy'umuyobozi wahanwe umukozi ku bujuriye yagejejweho kitanyuze umukozi, umukozi wahanwe ajuririra Komisiyo ishinze Abakozi ba Leta, mu rwego rwa nyuma, mu gihe kitarenze iminsi itanu (5) y'akazi uherye ku munsi yaherewe igisubizo. Komisiyo itanga umwanzuro mu gihe kitarenze iminsi mirongo itandatu (60) y'ingengaminsi.

Icyemezo cya Komisiyo ntikijuririrwa mu rundi rwego rw'ubuyobozi. [31] Naho iya 85 y'Itegeko N°86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta iteganya ko Umukozi wa Leta utanyuzwe n'icyemezo cy'umuyobozi yajuririye ku rwego rwa nyuma, ashobora kujyana ikibazo cye mu Nkiko akurikije amategeko abigenga. Ibi ni nako biteganywa n'ingingo ya 34 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi. [32] Urukiko rubona ko kuba uburanira Akarere ka Gisagara avuga ko ingingo ya 178 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itagombaga gushingirwaho kuko ngo atariyo yakoreshejwe na Uwimana Marie Rose atakambira icyemezo cyamufatiwe, nta shingiro bigomba guhabwa kuko iyi ngingo ireba imiburanishirize y'imanza z'ubutegetsi, kandi urubanza rwaregewe akaba ari urubanza 1 Ingingo ya 34 y'iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi: Umukozi wa Leta utanyuzwe n'icyemezo cy'umuyobozi yajuririye ku rwego rwa nyuma, ashobora gutanga ikirego cye mu rukiko rubifitiye ububasha hakurikijwe amategeko abigenga

Page 10

rw'ubutegetsi, naho ingingo 84 y'Itegeko N°86/2013 ryo kuwa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta igateganya inzira umukozi anyuramo mu kujuririra ibyemezo yafatiwe n'ubuyobozi. Izi ngingo rero imwe ntiyarebwa ukwayo indi ukwayo kuko zuzuzanya. [33] Kuvuga ko ingingo ya 178 CPCCSA yitiranyijwe n'iya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, urukiko na byo rurasanga ari nta shingiro bigomba guhabwa, kuko iri Teko rya Perezida ari irishyira mu bikorwa Itegeko N°86/2013 ryo kuwa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta. Kandi nkuko urukiko rwabigaragaje haruguru, ibiteganywa n'igika cya kabiri cy'ingingo ya 84 y'Itegeko N°86/2013 ryo kuwa 11/09/2013, ni nabyo biteganywa mu ngingo ya 33 igika cya mbere y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi. [34] Urukiko kandi rurasanga mu gukemura iki kibazo rutashingira gusa ku biteganywa n'ingingo ya 84 ya sitati rusange igenga abakozi ba Leta n'iya 33 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, kuko impaka uburanira Akarere ka Gisagara asaba ko zisuzumwa ari izishingiye ku bihe byo gutanga ikirego nyuma yo gutakamba no kujuririra ibyemezo mu nzego z'ubuyobozi. Nkuko rero Urukiko rwabigaragaje haruguru, mu ngingo ya 85 y'Itegeko N°86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta, no mu ya 34 y'Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, hateganywa ko Umukozi wa Leta utanyuzwe n'icyemezo cy'umuyobozi yajuririye ku rwego rwa nyuma, ashobora kujyana ikibazo cye mu Nkiko akurikije amategeko abigenga. Urukiko rukabona ko nta yandi mategeko abigenga, uretse iyi ngingo ya 178 y'Itegeko rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kuko inzira zo gutakamba no kujurira mu rwego rw'ubuyobozi (procedure administrative) ziba zirangiye, kandi akaba ari nta handi hateganywa uburyo ibirego bitangwa uretse muri iri tegeko rigenga imiburanishirize. [35]

Ibyo Me Mbonigaba Eulade avuga ko ingingo ya 178 urukiko rwashingiyeho idahura na kamere y'ikiburanwa, akavuga ko ikirego cya Uwimana Marie Rose kitagombaga kwakirwa kuko yakerere kugitanga, akavuga ko niyo iyi ngingo yari kuba ihuye na kamere y'icyaburanwaga, n'ubundi ikirego kitari kwakirwa kuko atashoboraga gutanga ikirego nyuma y'amezi arindwi atakambiye Komisiyo y'abakozi ba Leta, akubiyemo ukwezi kumwe yari kuba yaramaze ategereje igizubizo ntakibone kongeraho amezi atandatu atarashoboraga kurenza atararega, urukiko rurasanga ibi bivugwa nta shingiro bigomba guhabwa, kuko iyi ngingo ya 178 itegenye ko igihe cy'amezi atandatu (6) cyo kuregera urukiko gitangira kubarwa kuva ku munsu umukozi yaboneyeho igisubizo. Kuba Uwimana Marie Rose yarasubijwe na Komisiyo y'Abakozi ba Leta ku wa 30/12/2020 agatanga ikirego mu kwezi ku wa 11 Gicurasi 2021, urukiko rurasanga igihe cy'amezi atandatu atarakirengeje, akaba ari nta cyari kubuza urukiko kwakira ikirego cye. Ibyo Me Mbonigaba avuga ko mu kwakira ikirego urukikiko rwari kubara amezi atandatu ruherereye igihe yagombye kuba yarasubirijwe na Komisiyo, urukiko rurasanga ari nta shingiro bigomba guhabwa kuko itegeko rivuga igihe umukozi yasubirijwe, si igihe yagombye kuba yarasubirijwe. [36] Kubera izi mpamvu zose urukiko rusobanuye, kuba Urukiko Rwisumbuye rwa Huye rwarashingiye ku ngingo ya 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuru, iz'umurimo n'iz'ubutegetsi, rukakira ikirego cyatanzwe na Uwimana Marie Rose, bifite ishingiro.

Page 11

2. Ku kuba Urukiko rwarafashe icyemezo hashingiwe ku cyo rwise amakosa ya Komisiyo y'Abakozi atari byo byaregewe ndetse na Komisiyo ikaba itararezwe [37] Uburanira Akarere ka Gisagara asobanura ko impamvu ya kabiri yatumye kajurira, aruko urukiko rwafashe icyemezo hashingiwe ku cyo rwise amakosa ya Komisiyo y'Abakozi atari byo byaregewe ndetse na Komisiyo ikaba itararezwe. Asobanura ko nta makosa Akarere ka Gisagara kakoze mu kwirukana Uwimana Marie Rose, haba ku birebana n'ikosa, haba no ku birebana nikurikiranakosa, ko ahubwo mu buryo budafite ishingiro, Urukiko rwagerageje kugaragaza ko ibyemezo Komisiyo y'Abakozi yafashe bidakwiye, ndetse urukiko runabikuraho kandi atari byo byaregewe nkuko bigaragara mu gika cya 15 cy'urubanza rujuririrwa. [38] Avuga ko kuba Komisiyo yaba yarasubije ku bujirire bwa Uwimana itinze bitabazwa Akarere ka Gisagara, ko kandi kuba itarashyize mu bikorwa icyo cyemezo aruko cyaje impitagihe, bikaba bigomba gufatwa nk'aho nta gihari. Avuga ko kubahiriza ibihe bigenwa n'amateko ari ndemyagihugu, bityo ibikozwe nyuma y'ibyo bihe bikaba biba imfabusa. [39] Avuga ko iminsi 60 imaze gushira nta gisubizo cya Komisiyo, Akarere kashyize uwo mwanya ku isoko maze hajyamo undi mukozi, bikaba byumvikana ko kuva ku munsu ibyo bihe byarangiriyeho, icyemezo cya cy'Akarere cyo kwirukana Uwimana Marie Rose cyahise kiba itegeko, bityo icyemezo cya komisiyo cyaje nyuma kikaba kigomba gufatwa nk'ikidahari. [40] Uwimana Marie Rose n'umwunganizi we biregura bavugaga ko Akarere gakwiye kumva ko harezwe Akarere kuko ariko kakoze amakosa, ari nayo karyojwe, ko hatari kuregwa Komisiyo kuko yo icyo isabwa ni ukureba niba inzego n'ibigo bya Leta bikurikiza amategeko, binavuze ko Akarere nako iyo katishimira Umwanzuro wa komisiyo, atariyo kari kurega, ko

ahubwo hari kuregwa uwo bagiranye ibibazo, kagasaba Urukiko ko ibyemezo byafashwe bivanwaho kuko urwego rubishinzwe rwabibonye ukundi. Bityo, bakabona ko ari nta kosa urukiko rwa mbere rwakoze aho rugaragaza ko niyo itamusubiza byari gufatwa nk'aho ibyo avuga bifite ishingiro. UKO URUKIKO RUBIBONA [41] Ingingo ya 3 y'Itegeko No 15/2004 ryereke ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. [42] Urukiko rubona ko mu gika cya 15 cy'urubanza rujuririrwa, Urukiko Rwisumbuye rwa Huye rwavuze ko hashingirwa ku ngingo ya 178 y'Itegeko No 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya uburyo bigenda iyo uwatakambiye umuyobozi adasubijwe ku birego bisaba gukuraho icyemezo mu manza z'ubutegetsi, bityo kuba komisiyo y'abakozi ba Leta itarasubije Uwimana Rose ku gihe bifatwa nk'aho ibyo yasabaga bifite ishingiro, byongeye ko n'icyemezo cyafashwe impitagihe cyaje cyemeza ko ubujurire bwe bufite ishingiro. Rwanavuze ko rusanga ibyo Akarere ka Gisagara kireguza ko icyo cyemezo gifatwa nk'ikitaraho bitahabwa ishingiro kuko ntaho itegeko ribiteganya. [43] Urukiko rubona ko iyo usesenguye iki cyemezo urukiko rwafashe, usanga kidashingiye ku makosa ya Komisiyo y'Abakozi ba Leta, kuko komisiyo iyo idasubije mu gihe, bigira ingaruka ku rwego rwafashe icyemezo cyajuririwe, kuko giteshwa agaciro no kuba ubujurire bw'umukozi buhabwa ishingiro no kuba atarasubirijwe igihe. Icyo gihe umukoresha agomba

Page 12

kongerera kubana n'umukozi nkaho ari nta cyemezo yigeze amufatira, niba hari inshingano umukozi yari yarambuwe akazikomorerwa agakomeza akazi umukoresha akamuhemba. [44] Urukiko rukabona ko haba gutinda gusubizwa k'umukozi, haba no kuba umukozi yarasubijwe impitagihe ariko icyemezo cya Komisiyo kikavuguruzwa icyemezo Akarere ka Gisagara kafashe, ikemeza ko umukozi asubizwa mu kazi, byose bibyara uburyozwe ku karere mu gihe katemeye kwisubiraho ku cyemezo kafashe. Rukabona rero ko iki cyemezo urukiko rwafashe kidashingiye ku makosa yakozwe na Komisiyo y'Abakozi ba Leta kuko yo ntacyo iryozwa, kuko uwakagize icyo ayiryoza ari Akarere ka Gisagara kagize ibyo gategekwa ariko kakaba katarigeze kayizana mu rubanza, bityo kuvuga gusa ko katakwirengera amakosa katakoze ubwabyo bikaba bidahagije ngo Urukiko ruteshe agaciro icyemezo cya Komisiyo cyafashwe impitagihe. [45] Urukiko rukabona kandi ko icyaregwe ari na cyo cyasuzumwe, kuko Uwimana Marie Rose yasabaga urukiko gutegeka Akarere ka Gisagara kumusubiza mu kazi kuko kamwirukanye burundu. Ntiyaregeye icyemezo cya Komisiyo y'abakozi ba Leta, kuko iyi itigeze ifata icyemezo kimwirukana, ko ahubwo yo yafashe icyemezo kimusubiza mu kazi.

3. Ku kuba urukiko rwatanzwe indishyi zidakwiye [46] Uburanira Akarere ka Gisagara avuga ko impamvu ya gatatu yatumye kajurira, aruko ngo Urukiko rwatanzwe indishyi zidakwiye. Asobanura ko kuba icyemezo cy'Akarere ka Gisagara cyaravanyweho n'urukiko hashingiye ku isesengura urukiko rwakoze uko bidakwiye, byatumye rugenera Uwimana Marie Rose indishyi zidafite ishingiro, ndetse ruzishingira ku itegeko ritari ryo kubera ko rwashingiye ku ngingo za 3 na 30 y'Itegeko No 66/2018 ryo ku wa 30/08/2018 rigenga umurimo, rituma

hatangwa indishyi, nyamara Uwimana Marie Rose atari umukozi ugengwa n'amasezerano, ko ahubwo yagengwaga na Statut rusange y'abakozi ba Leta. [47] Avuga ko kandi indishyi zishingiye ku cyemezo cyafashwe na Komisiyo y'Abakozi ba Leta cyaje impitagihe, nazo zigomba guteshwa agaciro, uretse ko n'ubundi iki cyemezo ubwacyo na cyo Komisiyo yaje kugitesha agaciro ikemeza ko Uwimana yirukanywe mu buryo bukurikije amategeko, n'ubundi akaba ari nta cyo bimarira Uwimana Marie Rose. [48] Uwimana Marie Rose n'umwunganizi we bavuga ko Akarere ka Gisagara kadasobanura indishyi zidakwiye Urukiko rwatanze, uretse kuvuga ko hashingiwe ku itegeko ritari ryo, akaba ari yo mpamvu na Uwimana yajuriye kuko atishimiye uko urukiko rwa mbere rwasesenguye indishyi yagenewe. UKO URUKIKO RUBIBONA [49] Urukiko rubona ko nkuko rwamaze kubigaragaza haruguru, kuba Uwimana Marie Rose yarasubijwe na komisiyo y'Abakozi ba Leta impitagihe, si ikosa rye kuko we ibyari mu nshingano ze yarabyubahirije kandi mu gihe. Kandi nkuko urukiko rwabigaragaje, iminsi mirongo itandatu ikimara gushira komisiyo itamusubije, yagombaga gufatwa nkaho ubujurire bwe bufite ishingiro agasubizwa ku kazi. N'igihe kandi yasubirijwe igisubizo cya Komisiyo y'Abakozi ba Leta kikaza kivuguruzwa icyafashwe n'Akarere ka Gisagara, nabyo ntibikuraho uburyozwe bw'Akarere kuko kagombaga kucyubahiriza, ariko kakaba katarabikoze kuko uyu mwanya kari karamaze kuwushyiramo undi mukozi, bikaba byumikana neza ko Uwimana Marie Rose atagombaga guhezwa mu gihirahiro n'inzego, ari yo mpamvu Akarere ka Gisagara kafashe

Page 13

icyemezo kigahindurwa kagombaga kumuha indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko. [50] Urukiko rubona ko haba mu Itegeko N° 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta yakurikizwaga igihe Uwimana Marie Rose yirukanwaga, ndetse no mu Iteka rya Perezida No 65/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, nta na hamwe hateganywa uko byagenda mu gihe bidashoboka ko umukozi watsinze asubizwa mu kazi. Kuba mu kugena indishyi harashingiwe ku Itegeko No 66/2018 ryo ku wa 30/08/2018 rigenga umurimo, urukiko rurasanga ari nta shingiro bifite kuko Uwimana Marie Rose atari umukozi ugengwa n'amasezerano, ahubwo ko yari umukozi wa Leta. Bityo mu gusuzuma iki kibazo Urukiko rukaba rwashingira ku manza zaciwe, nk'urubanza, RS/ INJUST/RAD 00001/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 22/06/2022, haburana Katararwa Richard n'Akarere ka Nyaruguru, aho urukiko rwageneye indishyi Katararwa Richard wirukanywe mu buryo bunyuranyije n'amategeko. [51] Ku bireba Uwimana Marie Rose, kuba umwanya we warashyizwemo undi mukozi, bigakorwa mu buryo bukurikije amategeko, kwirukana uyu mukozi mushya nta kosa ryamugaragayeho, byatuma Akarere na none karyozwa indishyi, bityo kuba Uwimana Marie Rose yaragenewe indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko bikaba ari byo bifite ishingiro. Ubujurire bwa Uwimana Marie Rose

1. Kumenya niba Akarere ka Gisagara kasubiza mu kazi Uwimana Marie Rose aho kwirukanwa burundu mu kazi. [52] Uwimana Marie Rose n'umwunganizi we bavuga ko yandikiwe ibaruwa No 2747/07.02.02.HRM yo kwirukanwa burundu ku kazi. Bavuga ko yajurirye icyo cyemezo nkuko amategeko abiteganyaga, kuko yabanje gusaba umuyobozi we ko yakwisubira

ku cyemezo yafashe ariko ntiyabyemera, yandikira Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta ayisaba kumurenganura ku gihano yahawe cyo kwirukanwa burundu mu kazi, nyuma yo gusesengura ubujurire bwe, iyi Komisiyo isaba Akarere ka Gisagara gukuraho igihano yahawe cyo kwirukanwa burundu, agahanishwa amezi 3 adahembwa, ariko Akarere ka Gisagara kanga kugishyira mu bikorwa, ahubwo kavuga ko kasabye Komisiyo kongera gusuzuma umwanzuro wayo, bityo ko gategereje umwanzuro ku bujurire, kandi iki cyemezo kitajuririrwa. [53] Bavuga ko impamvu Uwimana yajuririye icyemezo cy'urukiko, aruko rwavuze ko atasubizwa mu kazi kandi ari cyo cyari cyasabwe, rukavuga ko aruko ari nta tegeko ribiteganywa. Bavuga ko basanga nyuma y'uko Urukiko rusanze ko Uwimana yarenganijwe hashingiwe ku isesengura rwakoze, rwagombaga gutegeka ko arenganurwa kuko hatigeze hateganywa ko yirukanwa, ko ahubwo yagombaga gusubizwa mu kazi kuko yakirukanyweho mu nzira zinyuranyije n'amategeko, akaba yaragombaga guhabwa uburenganzira yavukijwe. [54] Uhagarariye Akarere ka Gisagara avuga ko iyo Akarere kaza kubona igisubizo cya Komisiyo mu gihe cyagenwe cy'iminsi 60, kari kugishyira mu bikorwa, ko ariko iminsi 60 imaze gushira nta gisubizo cya Komisiyo, kashyize uwo mwanya ku isoko maze hajyamo undi mukozi. Avuga ko iyo ibihe biteganywa n'amategeko birangiye bifatwa nk'aho icyemezo cyafashwe kibaye itegeko. Bityo rero iyo baruwa ya Komisiyo ikaba itagomba gushingirwaho kuko nayo yaje mu buryo no mu bihe binyuranyije n'amategeko, ikaba igomba gufatwa nk'idahari. Ngo kuba Komisiyo yarasubije ku bujire bwa Uwimana itinze, ngo ntibyabazwa

Page 14

Akarere ka Gisagara, kuko kubahiriza ibihe ari ihame ndemyagihugu, ko ibije nyuma y'igihe biba imfabusa. [55] Avuga ko nta ko nta kosa na rimwe Akarere ka Gisagara kakoze, bityo n'icyemezo cy'urukiko kivuga ko Uwimana Marie Rose yirukanywe ku buryo bunyuranyije n'amategeko kikaba ari nta shingiro gifite, Akarere ka Gisagara kakaba gasaba urukiko rwajuririwe gukuraho icyo cyemezo. UKO URUKIKO RUBIBONA [56] Ingingo ya 9 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko. Umucamanza ntashobora kandi kwanga guca urubanza yitwaje impamvu iyo ari yo yose, n'iy ntacyo itegeko ryaba riteganywa, ridasobanutse mu buryo bwumvikana cyangwa ridahagije. [57] Urukiko rubona ko Komisiyo y'Abakozi ba Leta yahinduye igihano cyari byatanzwe n'Akarere ka Gisagara, ihanisha Uwimana kumara amezi atatu adahembwa ariko agasubizwa mu kazi. Ariko iki cyemezo kikaba cyarasanze Akarere ka Gisagara karamaze gushyira undi mukozi muri uyu mwanya, kuko cyafashwe nyuma y'ibihwe itegeko riteganywa. [58] Urukiko rurasanga kuba Akarere ka Gisagara karapiganishirije uyu mwanya byari bifite ishingiro kuko ku bikareba muri iyi minsi 60 kari karabyubahirije, Uwimana aza gusubizwa mu gihe kijya kungana n'umwaka. Urukiko rukabona ko Akarere katagombaga kumara iki gihe cyose uyu mwanya w'umurimo utarimo

umukozi. [59] Nyamara, nkuko Urukiko rwabigaragaje haruguru, gutinda gusubizwa k'umukozi, no gusubizwa bitinze k'umukozi ariko icyemezo kikaza gihindura icyajuririwe, byose bigira ingaruka ku mukoresha, kuko byombi bitesha agaciro icyemezo cyari cyarafatiwe umukozi umukoresha akaba yabiryoze. Akarere rero kakaba karagombaga kubahiriza icyemezo cyafashe na Komisiyo y'Abakozi ba Leta. Ku rundi ruhande ariko, mu rwego rwo gushyira mu gaciro, no kwirinda igihombo cyaturuka ku kongera kwirukana undi mukozi washyizweho mu buryo bukurikije amategeko nta kosa yakoze, iki cyemezo kikaba kitagomba gushyirwa mu bikorwa ngo Uwimana Marie Rose asubizwe mu kazi. Ari nayo mpamvu urukiko mu bushishozi bwaro rusanga agomba kugenerwa indishyi kuko gusubizwa ku kazi bidashoboka.

2. Kumenya niba Uwimana Marie Rose yahabwa indishyi mbonezamushyamba ziyanye n'igihe amaze yarirukanwe burundu ku kazi binyuranyije n'amategeko [60] Uwimana Marie Rose n'umwunganizi we bavuga ko nyuma y'uko akoze icyo amategeko ateganyaga agasaba inzego zibishinzwe gusuzuma iby'yirukanwa rye, bikaza kugaragazwa ko ryanyuranyije n'amategeko, hakomezwa ko asubizwa mu kazi ariko Akarere ka Gisagara kakaba karanze kubahiriza ibyo kasabwe, ndetse kakanabyibutsa ntikagire icyo kabikoraho, arasaba ko gategekwa kumuha amafaranga ahwanye n'imishahara yavukijwe kuva yirukanwe burundu kugeza igihe urubanza rumurenganura rubereye itegeko.

Page 15

- [61] Bavuga ko urukiko ku rwego rwa mbere rwabonye ko izi ndishyi zikwiye, ndetse rubona n'aho zigomba gushingirwa zibarwa (umushahara), nyamara mu kujya kuzibara, ruvuga ko imanza basabye ko urukiko rwazashingiraho rutazihawe, rushingira ku itegeko rigenga umurimo mu Rwanda, nyamara atari ryo tegeko rimugenga kuko we yari umukozi wa Leta. [62] Ku byerekeye imanza Urukiko ruvuga ko rutahawe, bavuga ko nta shingiro bikwiye guhabwa, kuko Urukiko rwahawe reference yuzuye yagomba kurufasha gutanga ubutabera nk'uko amahame agenga imiburanishirize n'umwuga w'Ubucamanza abiteganyaga, kuko Umuburanyi atanga uko ibintu bimeze (les faits), inkiko zigashingira ku mategeko n'ibindi byarufasha mu gutanga ubutabera, ariko bikaba byarirengagijwe. [63] Uhagarariye Akarere ka Gisagara avuga ko urukiko rwashingiye ku itegeko rigenga umurimo mu Rwanda kandi Uwimana agengwa na stati igenga abakozi ba Leta, akaba ari nta ndishyi yagombaga guhabwa hagendewe kuri stati y'abakozi ba Leta kuko yirukanywe burundu mu kazi. UKO URUKIKO RUBIBONA [64] Ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganyaga ko urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho iya 3 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igateganyaga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. [65] Urukiko rubona ko urubanza rwa Nkongoli n'urwa Ndahinyuka zombi zaciwe n'Urukiko rw'Ikirenga, Uwimana Marie Rose n'umwunganizi we bavuga ko zemeje ko indishyi zibarwa uherye igihe umukozi yahagarikiwe kugeza hafashwe icyemezo n'urukiko, urukiko rurasanga batagaragaza ko iki kibazo basabye ko urukiko rusuzuma cyaba gisa n'icyasuzumwe muri izo manza bavuga. Bityo urukiko rukaba ari ntaho rwahera

ruzishingiraho. [66] Ahubwo mu gusubiza iki kibazo, urukiko rurasanga hashingirwa ku rubanza RS/INJUST/RAD 00001/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 22/06/2022, haburana Katabarwa Richard n'Akarere ka Nyaruguru, aho mu gika cya 28 rwavuze ko ku birebana no kubara indishyi z'umukozi wa Leta wirukanywe mu buryo budakurikije amategeko bigatuma abura umushahara ku maherere, Urukiko rusanga yaba Sitati y'Abakozi ba Leta yakoresheye ubwo Katabarwa Richard yirukanwaga, n'Itegeko N° 017/2020 ryo ku wa 07/10/2020 rishyiraho Sitati igenga abakozi ba Leta rikoresheye ubu ntahateganyijwe uburyo izo ndishyi zigomba kubarwa, hashingiwe ku ngingo imaze kuvugwa mu gika kibanziriza iki2, mu gukemura iki kibazo hakaba hakwiye kwifashishwa ibisobanuro by'abahanga mu mategeko (Doctrines) cyangwa imanza zagiye zicibwa ku bibazo bisa n'ikiburanwa muri uru rubanza. Abahanga mu mategeko arebana n'imanza z'ubutegetsi M. Long, P. Weil na G. Braibant bavuga ko mu kugena indishyi z'umukozi wa Leta wirukanywe nta mpamvu ifatika kandi yumvikana hagenderwa ku bintu bitatu: 2 Ingingo ya 9 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'Imbonezambano, iz'Ubucuruzi, iz'Umurimo n'iz'Ubutegetsi iteganya ko umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko; igika cya kabiri cy'iyi ngingo kigateganya ko umucamanza ntashobora kandi kwanga guca urubanza yitwaje impamvu iyo ari yo yose, n'iyi ntacyo itegeko ryaba riteganya, ridasobanutse mu buryo bwumvikana cyangwa ridahagije.

Page 16

- icyo umukozi aba yarangirijwe mu by'ukuri (préjudice effectivement subi par l'agent); - Amakosa yakozwe n'ubutegetsi (faute commise par l'administration): abo bahanga bavuga ko indishyi ziba nyinshi iyo habaye ikosa ry'ireme (vice de fond), ariko zikaba nkeya iyo ari ikosa ryo kutubahiriza umuhango (vice de forme); - Ikosa ryakozwe n'umukozi (faute commise par l'agent): abo bahanga bakavuga ko iryo kosa rishobora gutuma umukozi ahabwa indishyi nkeya, cyangwa ntanagire izo abona. [67] Urukiko rubona ko muri uru rubanza ruvuzwe, Urukiko rw'Ikirenga rwashingiye ku rubanza RADA 0006/12/CS rwaciwe ku wa 04/01/2013 haburana Leta y'u Rwanda na Ndahindurwa Kimenyi Jérémie ku kibazo gisa n'ikiburanwa muri uru rubanza (Gutesha agaciro icyemezo cyo kwirukanwa mu buryo budakurikije amategeko) mu gika cyarwo cya 30 rwemeje ko izo ndishyi zibarwa ku rugero rw'umushahara umukozi yahembwe bwa nyuma, zikabarwa guhera igihe yahagarikiwe kugeza urubanza rusomwe, hagendewe ku mushahara yatahanaga mu ntoki (Net Salary), rubarira Ndahindurwa indishyi zingana n'imishahara ihera igihe icyemezo kimwirukana kugeza igihe urubanza yasubirishijemo ku mpamvu z'akarengane rusomewe. [68] Urukiko rubona ko ku bireba Uwimana Marie Rose, nkuko Urukiko rwabigaragaje haruguru ko mu kugena indishyi hagenderwa no ku ikosa ryakozwe n'umukozi (faute commise par l'agent), rishobora no gutuma umukozi ahabwa indishyi nkeya, cyangwa ntanagire izo abona,

urukiko rurasanga Uwimana Marie Rose usaba guhabwa imishahara yavukijwe kugeza igihe urubanza ruciriwe nkuko byagenze muri uru rubanza. Kuko muri izi manza zivuzwe, Urukiko rwasanze aba bakozi barirukanwe ku mpamvu zidafite ishingiro. Ariko kuri Uwimana Marie Rose, nubwo Komisiyo y'Abakozi ba Leta yemeje ko asubizwa ku kazi, ntiyasanze ari umwere ku makosa Akarere ka Gisagara kari kamwirukaniye. Ahubwo Komisiyo yahinduye igihano, yemeza ko ahanishwa kudahembwa mu gihe cy'amezi atatu. [69] Urukiko rukabona ko rero kuba Uwimana Marie Rose yarasanganywe amakosa, ni impamvu ituma indishyi agomba guhabwa zigabanuka, Urukiko rukabona ko izo yagenewe mu bushishozi bw'urukiko zingana n'umushahara w'amezi atandatu ungana 1.073.203 x 6 ungana na miliyoni esheshatu ibihumbi Magana ane na mirongo itatu n'icyenda na Magana abiri na cumi n'umunani (6.439.218), ari zo zikwiye.

4. Kumenya niba hari igihombo Uwimana Marie Rose yatewe no kwirukanwa ku karengane cyarwozwa Akarere ka Gisagara katamusubije mu kazi [70] Uwimana M. Rose avuga ko ukwirukanwa mu kazi mu nzira zinyuranyije n'amategeko, byagize ingaruka zikomeye ku buzima ndetse n'umuryango we kuko yari yarafashe inguzanyo ashingiye ku mushahara yahembwaga ndetse na lampsum mensuel ishingiye ku nguzanyo y'ikinyabiziga ku bufatanye n'umukoresha, Akarere kakaba karabimuvukije ku maherere, bituma Banki imubaraho umwenda wose hamwe n'ibirarane bihwaye na 11.433.042 Frw, ibyo agasanga byaraturutse ku makosa y'Akarere ka Gisagara katubahirije amategeko bikamugiraho ingaruka, akabisabira indishyi zingana na 11.433.042 Frw. [71] Bavuga ko Urukiko Rwisumbuye rwa Huye mu gufata umwanzuro kuri iyi ngingo, rukavuga ko nta shingiro byahabwa kuko Uwimana atagaragaza ko Akarere ka Gisagara kari umwishingizi ndetse ko inguzanyo yayatse ku giti cye no mu nyungu ze, nta shingiro bigomba

Page 17

guhabwa, kuko mu by'ukuri, Akarere mu gihe byagaragajwe ko ariko nyirabayaza w'iyirukanwa binyuranyije n'amategeko, ndetse inguzanyo yatswe ikaba ishingiye ku bimufasha kugera ku nshingano ze nk'umukozi wa Leta mu Karere ka Gisagara, karangiza kagakora amakosa, ntaho Urukiko rukwiye gushingira ruvuga ko inguzanyo yari mu nyungu za Uwimana Marie Rose harebwe imiterere y'inguzanyo ndetse n'icyo ishingiyeho. [72] Bavuga ko amategeko ateganya ko usaba indishyi agomba kugaragaza isano cyangwa ihuriro (lien de causalite), iyi rero ikaba igaragara nta gushidikanya kuko umuntu yibaza ko iyo Uwimana ataza kuba ari umukozi w'Akarere ka Gisagara wemerewe ubwoko bw'inguzanyo ivugwa atari kuyisaba kuko abakozi bose b'Akarere ka Gisagara atariko bemerewe ubwo bwoko bw'inguzanyo. Bavuga ko ikindi gikwiye kurebwa ari imiterere y'amasezerano ashingiye ku gikoreshe cyamufashaga gushyira mu bikorwa inshingano ze kandi ikishyurwa ku mushahara. Bivuze ko rero uwamuvukije ubwo burenganzira adakwiye kwigira ntibindeba ku ngaruka zibikomokaho. [73] Uhagarariye Akarere ka Gisagara avuga ko nta kosa Akarere ka Gisagara kakoze nk'uko byasonuwe haruguru, bityo akaba nta ndishyi izo ari zo zose zatangwa kuko ntacyo zaba zishingiyeho. By'umwihariko ntabwo Akarere ka Gisagara kigeze kamutuma gusaba inguzanyo muri banki, ko nta n'ubwo kigeze kamubera umwishingizi, kandi nta n'itegeko Uwimana Marie Rose ashingiraho asaba izo indishyi. UKO

URUKIKO RUBIBONA [74] Urukiko rubona ko izi ndishyi Uwimana Marie Rose asaba atagomba kuzihabwa, kuko Itegeko N°86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta ritaziteganya.

4. Kumenya niba hari indishyi z'akababaro zikomoka ku kwirukanwa burundu mu kazi mu buryo bunyuranyije n'amategeko Uwimana Marie Rose agomba kugenerwa [75] Uwimana M. Rose avuga ko asaba indishyi z'akababaro zihwanye na 10.000.000 Frs kubera akababaro no gusiragizwa mu bihe binyuranye asaba kurenganurwa, byamara no kugaragazwa ko akwiye kurenganurwa Akarere ka Gisagara kagakomeza kwinangira. Bavuga ko izi ndishyi zareberwa no mu buryo Akarere kakomeje kugirwa inama y'icyo kakora ariko bikagaragara ko Uwimana Marie Rose akomeza gushyirwa ku nkenke y'amabaruwa amusaba ibisobanuro ku bintu bidafite ishingiro, akaba yaranarezwe mu rukiko ibirego bifitanye isano n'ibyo aregwa n'Akarere, Urukiko rw'Ibanze rwa Ndora rumugira umwere mu rubanza RP 00509/2020/TB/NDO rwo ku wa 26/03/2021. [76] Bavuga ko kuba Urukiko Rwisumbuye ruvuga ko izi ndishyi ntaho ziteganyijwe mu itegeko rigenga umurimo mu Rwanda, bityo ko nta shingiro zifite, kuko n'Urukiko rwiambaje itegeko ritagombaga gushingirwaho. Bavuga ko impamvu z'izi ndishyi ari ingaruka igikorwa cy'Akarere ka Gisagara cyagize ku buzima bwe, umuryango we, imibereho ye, igitinyiro n'icyubahiro cye nk'uko Itegeko Nshinga rya Repubulika y'u Rwanda ribiteganya, akaba ariho urukiko rwari guhera rwemeza ko indishyi asaba zifite ishingiro.

Page 18

- [77] Uhagarariye Akarere ka Gisagara yiregura avuga ko nta kosa Akarere ka Gisagara kakoze nk'uko byasonuwe haruguru, ko nta kababaro yatewe n'Akarere ka Gisagara, uretse ko atanasobanura ako ariko, nta n'ubwo agaragaza amategeko ashingiraho. UKO URUKIKO RUBIBONA [78] Ingingo ya 3 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. [79] Urukiko rurasanga izi ndishyi zisabwa na Uwimana Marie Rose ari nta shingiro zigomba guhabwa, kuko Itegeko N°86/2013 ryo kuwa 11/09/2013 rishyiraho sitati rusange igenga abakozi ba Leta ritaziteganya.
5. Kumenya niba hari Umushahara w'amezi atandatu (6 mois) Uwimana Marie Rose atahembwe mu gihe yahagarikwaga by'agateganyo [80] Uwimana Marie Rose n'umwunganizi we, basobanura ko ingingo ya 23 y'Iteka rya Perezida No 65/01 ryo kuwa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, iteganya ko umukozi wa Leta ukekwa ikosa riremereye rishobora gutuma ahanishwa igihano cyo mu rwego rwa kabiri, ashobora guhagarikwa by'agateganyo mu gihe kitarenze amezi atandatu (6), kugira ngo hakorwe iperereza ryimbitse ku ikosa rye. Ikomeza ivuga ko muri icyo gihe umushahara w'umukozi wahagaritswe by'agateganyo kubera iperereza ukomeza kubarwa wose akanawubikirwa. [81] Nyamara mu gusesengura iyi ngingo, Urukiko rurasanga ku wa 15/11/2018 yarahagaritswe by'agateganyo kugira ngo akorweho iperereza ku ikosa ry'akazi. Uwimana Marie Rose yahise atakambira Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta asaba

kurenganurwa. Ashingiye ku Itegeko ndetse no ku ibaruwa yavuzwe haruguru imuhagarika by'agateganyo mu gihe cy'amezi 6, ku wa 17/05/2019, igihe yahawe kirangiye, yandikiye Akarere ka Gisagara asaba gusubizwa mu kazi. Ku wa 28/06/2019, yandikiwe na Komisiyo y'Igihugu Ishinzwe Abakozi ba Leta isubiza ibaruwa yabandikiye, aho yasanze ubujurire bwe bufite ishingiro, bityo ko akwiye gusubizwa mu kazi, kuko igihano yahawe kandi giteganywa n'amategeko cyarangiye nta kosa rimuhamye amenyeshejwe. Ku wa 16/07/2019, nibwo Akarere ka Gisagara kamwandikiye kamumenyesha ko ahawe igihano cyo guhagarikwa ku kazi amezi 3 adahemberwa kubera amakosa yari akurikiranyweho, icyo gihano kikabarwa kuva ku ya 16/11/2018 ahagarikwa by'agateganyo kugera ku ya 16/02/2019, ndetse asabwa gusubira mu kazi ku ya 16/05/2019. [82] Ni mu gihe rero asanga nyuma y'igihe cy'amezi 6 avugwa mu Iteka rya Perezida ryavuzwe, nta kosa ryamuhamye ryigeze rimumenyeshwa (Kuva ku ya 15/11/2018 kugeza ku ya 15/05/2019), ko ahubwo yasubijwe mu kazi ku wa 16/07/2019 nk'uko bigaragazwa n'ibaruwa yo kuri iyo tariki. bivuze ko yasubijwe mu kazi amaze amezi 8 adahembwa ndetse ko amezi ateganywa n'Iteka rya Perezida yarangiye nta kosa rimuhamye, nyamara yahembwe amezi abiri (2 mois) gusa, ariyo mpamvu asaba guhabwa amezi 6 asigaye nk'uko bikubiye mu ibaruwa yo ku wa 15/07/2020 yandikiye Akarere ka Gisagara yishyura imishahara atahembwe. Ni ukuvuga 1.073.203 Frs X 6 mois = 6.439.218 Frs, Uwimana M. Rose akavuga ko ibi biIrengagijwe kuko Urukiko ruvuga ko yahagaritswe amezi atatu nyamara ibisabwa bikaba bitari muri ayo mezi kuko nyuma yayo yagombaga guhabwa ibyo yemerewe n'amategeko nk'uko byavuzwe.

Page 19

- [83] Uhagarariye Akarere ka Gisagara yiregura avuga ko Uwimana Marie Rose yirukanywe mu buryo bukurikije amategeko, bityo izi ndishyi asaba zikaba nta shingiro zifite. UKO URUKIKO RUBIBONA [84] Ingingo ya 23 y'Iteka rya Perezida No 65/01 ryo kuwa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, iteganya ko Umukozi wa Leta ukekwa ikosa riremereye rishobora gutuma ahanishwa igihano cyo mu rwego rwa kabiri, ashobora guhagarikwa by'agateganyo mu gihe kitarenze amezi atandatu (6), kugira ngo hakorwe iperereza ryimbitse ku ikosa rye. Muri icyo gihe umushahara w'umukozi wahagaritswe by'agateganyo kubera iperereza ukomeza kubarwa wose akanawubikirwa. Iyo nta kosa rimuhamye ahabwa imishahara ye uko yayibikiwe, iyo ikosa rimuhamye, atakaza uburenganzira ku mishahara yose yari yarabikiwe. [85] Urukiko rubona ko mu gihe Uwimana Marie Rose yari yahagaritswe by'agateganyo kugira ngo akorweho iperereza ku makosa yakoze, ku wa 09/5/2019 Minisitiri w'Abakozi ba Leta n'umurimo yasanze amakosa Uwimana Marie Rose yaregwaga amuhama, ariko basanga atagomba guhanishwa igihano cyo kwirukanwa burundu nkuko byasabwaga, ahubwo Minisitiri igira inama Akarere ka Gisagara yo kumuhanisha igihano cyo guhagarikwa ku kazi mu gihe cy'amezi atatu adahembwa aho kumuhanisha kwirukanwa burundu, kikagira agaciro kuva igihe yahagarikiweho by'agateganyo. [86] Ku wa 17/05/2019, Uwimana Marie Rose yandikiye Akarere ka Gisagara agasaba gusubizwa ku kazi, ku wa 16/07/2019, Akarere ka Gisagara kamwandikira kamumenyesha ko ahawe igihano cyo guhagarikwa ku kazi mu gihe cy'amezi

atatu adahembwa kubera amakosa yari akurikiranyweho, kandi ko iki gihano gifite agaciro guhera ku wa 16/11/2018 ubwo yahabwaga ibaruwa imihagarika ku wa 16/05/2019, bityo akaba asabwa kuba yasubiye ku kazi ku wa 16/05/2019. [87] Urukiko rubona ko nubwo Uwimana Marie Rose atabaye umwere akaba yarahanwe, hakurikijwe ubwoko bw'igihano yahawe, rukabihuza n'imiterere y'iyi ngingo ivuzwe haruguru Urukiko Rwisumbuye rwashingiyeho, rurasanga atatakaza imishahara ye yose nkuko akarere kabyifuza kuko atirukanwe burundu, ahubwo hagenwe igihe igihano kigomba gutangira kubarwa no kurangirira, bikaba byumvikana neza ko ko mu gihe igihano cyari kirangiye yagombaga gusubizwa uburenganzira bwe nk'umukozi, urukiko rugasanga atabuvutswa hitwajwe ko atabaye umwere, bityo Akarere ka Gisagara kakaba kagomba kumuhembera aya mezi atatu, ni ukuvuga guhera ku wa 16/02/2018 kugeza ku wa 16/05/2018, agahabwa angana na 1.073.203 Frw X 3 mois = 3.219.609 frw.

6. Gusuzuma amafaranga yatanze mu gukurikirana urubanza n'igihembo cy'avoka asabwa kuri uru rwego rw'ubujurire [88] Uwimana Marie Rose n'umwunganizi we, bavuga ko mu gihe Urukiko Rukuru rwasanga ubujurire bwe bufite ishingiro, rwamugenera amafaranga y'ikurikiranarubanza angana na 200.000 Frw, ndetse n'ay'igihembo cya Avocat angana na 2.000.000 Frw ku rwego rw'ubujurire. [89] Uhagarariye Akarere ka Gisagara yiregura avuga ko ku birebana n'igihembo cya Avoka basabye, utsinze urubanza ahabwa igihembo cya Avoka iyo amufite, ariko igihembo ahabwa akaba ari igifiwe ibimenyetso, ko iyo bitagenze bityo agenwa n'Urukiko.

Page 20

UKO URUKIKO RUBIBONA [90] Ingingo ya 111 y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [91] Naho iya 33 y'Amabwiriza No 01/2014 agenga ibihembo mbonera by'abavoka, igateganya ko mu bujurire, avoka w'urega n'uw'uregwa bafite uburenganzira kuri ½ cy'igihembo cyumvikanyweho ku rwego rwa mbere. [92] Urukiko rubona ko muri ubu bujurire ugize icyo atsindira ari Uwimana Marie Rose nubwo adatsindiye byose. Akaba rero ari we ugomba kugenerwa amafaranga y'ikurikiranarubanza kuko yunganiwe, agahabwa n'ay'igihembo cy'avoka. Bityo akagenerwa mu bushishozi bw'urukiko amafaranga y'ikurikiranarubanza angana n'ibihumbi ijana, n'igihembo cy'avoka kingana na 250.000 frw angana na ½ cy'icyagenwe ku rwego rwa mbere hashingiwe kuri iyi ngingo ya 33 yavuzwe haruguru. III.ICYEMEZO CY'URUKIKO [93] Rwemeje ko ubujurire bw'Akarere ka Gisagara budafite ishingiro. [94] Rwemeje ko ubujurire bwa Uwimana Marie Rose bufite ishingiro kuri bimwe. [95] Rwemeje ko urubanza RAD 00006/2021/TGI/HYE rwajuririwe ruhindutse kuri bimwe. [96] Rutegetse Akarere ka Gisagara kwishyura Uwimana Marie Rose indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko zingana na muriyoni esheshatu n'ibihumbi magana ane na mirongo itatu n'icyenda na Magana abiri na cumi n'umunani (6.439.218),

kumwishyura 3.219.609 frw y'imishahara y'amezi atatu atahawe n'Akarere ka Gisagara nyuma yo kurangiza igihano cyo guhagarikwa amezi atatu adahembwa, kumwishyura 350.000 frw y'indishyi z'ikurikiranarubanza n'igihembo cy'avoka yiyongera kuri 600.000 frw yari yegenewe n'urukiko ku rwego rwa mbere, no kumusubiza 60.000 frw yatanzeho ingwate y'igarama mu nkiko zombi, bityo indishyi zose hamwe Akarere ka Gisagara kagomba kumuha zigahwana n'amafaranga y'u Rwanda miriyoni icumi n'ibihumbi Magana atandatu na mirongo itandatu n'umunani na Magana inani na makumyabiri n'arindwi (10.668.827 frw).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/3443/3607>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/unlawfuldismissal-high-court-2023>

Prepared on 11 October 2026 · Esheria