

RWANDA / JUDGMENT

UWAMALIYA v. API BUSINESS DEVELOPMENT COMPANY (ABDC) Ltd

RSOCA 0157/13/HC/KIG

COURT

High Court

DECIDED

2 May 2014

CASE / FILE NUMBER

RSOCA 0157/13/HC/KIG

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

UWAMALIYA v. API BUSINESS DEVELOPMENT COMPANY (ABDC) Ltd

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-05-02
- Case/document no.: RSOCA 0157/13/HC/KIG
- Collection: High Court

Text

Page 1

UWAMALIYA v. API BUSINESS DEVELOPMENT COMPANY (ABDC) Ltd [Rwanda URUKIKO RUKURU – RSOCA 0157/13/HC/KIG (Hitimana, P.J.) 02 Gicurasi 2014] Amategeko agenga umurimo –Kwimura amasezerano y’akazi – Igihe kigeragezwa – amasezerano akurikizwa iyo habayeho iherekanya ry’abakozi mu bigo bitandukanye – Umukozi nta shobora guhabwa igihe cy’igeragezwa mu gihe habaye kwimura amasezerano y’akazi kuko hakomeza gukurikizwa amasezerano y’umukoresha wa mbere – Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo 23(2). Amategeko y’umurimo – Kwirukanwa nta mpamvu – Indishyi z’akababaro – Kwirukanwa nta mpamvu ni guhagarika amasezerano y’akazi bikozwe n’umukoresha nta mpamvu igaragara cyangwa hadakurikijwe uburyo bwateganyijwe n’amategeko bituma umukozi ahabwa indishyi z’akababaro zidashobora kujya muni y’umushahara w’amezi atatu (3), ariko kandi ntizishobora kurenza amezi atandatu (6) – Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo 1(21), 33. Amasezerano y’umurimo – Iseswa ry’amasezerano y’akazi – Integuza – Ingaruka zo gusesa amasezerano y’akazi y’igihe kitazwi –

Iseswa ryose ry'amasezerano y'akazi y'igihe kitazwi, nta nteguza cyangwa se igihe cy'integuza kitarubahirijwe cyose, bituma uyasheshe aha undi indishyi z'amafaranga angana n'umushahara n'andi mashimwe yagombaga kubona mu gihe cy'integuza kitubahirijwe – Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo³². Amategeko agenga umurimo – Indishyi z'akababaro – Nta indishyi z'akababaro gizenwa igihe uzisaba atagaragaza ishingiro ryazo ndetse n'aho zitandukanira n'indishyi zo kwirukanwa nta mpamvu Incamake y'ikibazo: Uwamaliya yagiranye na ARDI amasezerano y'akazi y'igihe kitazwi ariko nyuma yaho habaho iherekanya ryabakozi hagati ya ARDI na ABDC akaba ari murwo rwego Uwamariya yimuriwe muri ABDC. ABDC Ltd nayo yaje kugira n'Uwamariya andi masezerano y'akazi y'igihe kizwi hakubiyemo amezi atandatu y'igeragezwa. Igihe cy'amezi atandatu kirangiye, ABDC Ltd yasheshe amasezerano, nta nteguza, kubera ko ngo nyuma yo gukorerwa igenzurwa, ABDC Ltd yasanze nta bushobozi Uwamaliya afite bwo kuzura inshingano ze mu kazi yari ashinzwe ndetse ko indi impamvu amasezerano asheshwe ari uko atubaha inzego zimukuriye, ubushobozi buke bwo gukora amaraporo ajyanye n'akazi ke no gusiba uko yishakiye nta mpamvu. Uwamaliya yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, aregera ko yirukanywe nta mpamvu, guhabwa integuza, guhabwa umushahara w'igihe cyari gisigaye kugira ngo amasezerano arangire, indishyi z'akababaro, imperekeza, igihembo cya Avoka, amafaranga ya RAMA yakatwaga ariko ntavuzwe, amafaranga y'ingendo n'ay'itumanaho ndetse anasobanurira Urukiko ko atari mu gihe kigerageza kuko yahoze ari umukozi wa ARDI. Urukiko Rwisumbuye ruvuga ko yagiranye amasezerano na ABDC Ltd ko ibaruwa Uwamaliya avuga yandikiye ARDI agaha kopi ABDC Ltd yayimenyashaga ko azemera iryo hererekanya

Page 2

aruko umukoresha mushya yemeye kumugenera uburenganzira bwose yari afite akiri muri ARDI; iyo baruwa yayanditse nyuma yo kugirana amasezerano mashya na ABDC Ltd koreroiyo baruwa ntaho ihuriye na masezerano yabaye hagati ya ABDC Ltd n'Uwamaliya. Urwo Rukiko rwemeje ko ABDC Ltd nta nshingano yari afite zo gusaba ibisobanuro Uwamaliya mbere yuko isesa ayo masezerano cyane ko itegeko ry'umurimo ntayindi mihango riteganyije kugusesa amasezerano k'umuntu uri mu gihe k'igeragezwa; runamutegeka gutanga amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka. Uwamaliya ntiyishimiye imikurizwe, ayijururira muri uru Rukiko, avuga ko mu guca urubanza, Urukiko Rwisumbuye rutahaye agaciro ibimenyetso yarushyikirize n'ibikubiye mu masezerano yarushyikirije mu gihe cyo gutanga ikirego no mu iburanisha. Muri make avuga ko ingingo y'amasezerano ivuga igeragezwa ry'amezi atandatu itamureba kuko yari asanzwe ari umukozi wa ARDI. Incamake y'icyemezo:1. Umukozi nta shobora guhabwa igihe cy'igeragezwa mu gihe habaye kwimura amasezerano y'akazi kandi hakomeza gukurikizwa amasezerano y'umukoresha wa mbere.

2. Kwirukanwa nta mpamvu ni guhagarika amasezerano y'akazi bikoze n'umukoresha nta mpamvu igaragara cyangwa hadakurikijwe uburyo bwateganyijwe n'amategeko bituma umukozi ahabwa indishyi z'akababaro zidashobora kujya muni y'umushahara w'amezi atatu (3), ariko kandi ntizishobora kurenza amezi atandatu (6).

3. Iseswa ryose ry'amasezerano y'akazi y'igihe kitazwi, nta nteguza cyangwa se igihe cy'integuza kitarubahirijwe cyose, bituma uyasheshe aha undi indishyi z'amafaranga angana n'umushahara n'andi mashimwe yagombaga kubona mu gihe cy'integuza kitubahirijwe; Uwamaliya akaba akwiye indishyi z'integuza z'ukwezi kuko yaramaze igihe kirenga umwaka akora.
4. Kuba amasezerano yabaye hagati ya Uwamaliya na ABDC Ltd yarateshejwe agaciro bituma amafaranga y'umushahara Uwamaliya yaka igihe cyari gisigaye kugirango ayo masezerano arangire ntayo yahabwa.
5. Amafaranga y'umushahara wa nyuma "décompte final" ntatangwa igihe uyasaba atagaragaza amafaranga awugize mu byukuri.
6. Kwirukanwa binyuranyije n'amategeko bihesha umukozi amafaranga y'imperekeza igihe Atari akiri mu gihe kigeragezwa.
7. Uwamaliya ntiyahabwa amafaranga yakatwaga ngo ayatangirwa muri Rama kuko yayasubijwe.
8. Kuba usaba indishyi z'akababaro atagaragaza ishingiye ryazo ndetse n'aho zitandukanira n'indishyi zo kwirukanwa nta mpamvu bituma atazigenerwa.
9. Kuba umuburanyi ataravuze ibijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cy'avoka imbere y'umugenzuzi ntibikuraho uburenganzira bwo gusaba Urukiko ayo mafaranga kuko atandukanye n'amafaranga aba akomoka ku mpaka z'umurimo, ahubwo ni ingaruka zo kuba ikirego cyagombye kujya mu Rukiko, kandi ayo mafaranga yishyurwa n'utsinzwe urubanza.
10. Amafaranga y'ikurikiranarubanza n'igihembo cy'avoka agenwa mu bushishozi bw'Urukiko.

Page 3

Ubujurire bufite ishingiye. Ubujurire bwuririye kubundi nta shingiye bufite. Amagarama y'urubanza aherereye kuwarezwe. Amategeko yashingiweho: Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo 1(21), 23, 27(3); 32; 33 . Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uwamaliya Floride yagiranye na Api-Business Development Company (ABDC Ltd) amasezerano y'umurimo y'igihe kizwi cy'imyaka. Muri ayo masezerano hateganyijwemo igihe cy'igeragezwa cy'amezi atandatu. Igihe cy'amezi atandatu kirangiye, ABDC Ltd yasheshe amasezerano, nta nteguza, kubera ko ngo nyuma yo gukorerwa igenzurwa, ABDC Ltd yasanze nta bushobozi Uwamaliya Floride afite bwo kuzuza inshingano ze mu kazi yari ashinzwe. ABDC Ltd yasobanuye mu ibaruwa isesa amasezerano ko impamvu asheshwe ari uko atubaha inzego zimukuriye, ubushobozi buke bwo gukora amaraporo ajyanye n'akazi ke no gusiba uko yishakiye nta mpamvu. [2] Uwamaliya Floride yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, aregera ko yirukanywe nta mpamvu, guhabwa integuza, guhabwa umushahara w'igihe cyari gisigaye kugira ngo amasezerano arangire, indishyi z'akababaro, imperekeza, igihembo cya Avoka, amafaranga ya RAMA yakatwaga ariko ntavuzwe,

amafaranga y'ingendo n'ay'itumanaho. Yasobanuye ko ubundi yari asanzwe ari umukozi wa ARDI, yemera koherezwa (transfert) muri ABDC Ltd ari uko uburenganzira yari afite ubwo yari umukozi wa ARDI (les droits acquis) bwubahirijwe, bityo ngo ntabwo yari mu igeragezwa nk'uko Uwamaliya Floride abisobanura. [3] Urukiko Rwisumbuye rwemeje ko ku wa 01/06/2011 aribwo Uwamaliya Floride yagiranye na ABDC LTD amasezerano, bityo ngo ibaruwa yandikiye ARDI ku wa 16/11/2011, agaha kopi ABDC Ltd, ayimenyesha ko azemera "transfert" y'amasezerano ari uko umukoresha yemeye uburenganzira yari afite ubwo yari umukozi wa ARDI (les droits acquis), yayanditse yaramaze kugirana na ABDC Ltd amasezerano, bityo ngo iyo baruwa ntaho ihuriye n'amasezerano y'murimo yari hagati ya Uwamaliya Floride na ABDC Ltd. [4] Urukiko Rwisumbuye rwashingiye ku ngingo ya 20 y'itegeko rigenga umurimo mu Rwanda, rwemeza ko iyo ngingo nta yindi mihango iteganya mu gusesa amasezerano mu gihe cy'igeragezwa. Rwemeje ko kuba mu gihe cy'igeragezwa cy'amezi atandatu nk'uko byari byumvikanyweho n'impande zombi, ABDC Ltd yarasuzumye imikorere n'umusaruro wa Uwamaliya Floride igasanga bidashimishije, mu nama y'ubutegetsi yateranye ku itariki ya 29/11/2013 ishinze kugenzura imikorere y'abakozi ba ABDC Ltd nyuma y'igeragezwa (commission d'évaluation du personnel ABDC LTD en fin de période d'essai) ikaba yaremeje ko

Page 4

Uwamaliya Floride atashoboye kuzuza inshingano ze z'akazi kubera kutuhaba inzego zimukuriye, ubushobozi buke bwo gukora raporo zijyanye n'akazi no gusiba uko yishakiye na mpamvu, ABDC Ltd nta nshingano yari ifite yo kubanza gusaba Uwamaliya Floride ibisobanuro ku myitwarire ye mu kazi mbere yo gusesa amasezerano bari bagiranye. [5] Urukiko Rwisumbuye rwemeje ko ABDC Ltd itari itegegetswe guha Uwamaliya Floride integuza kandi yari akiri mu gihe cy'igeragezwa, kuko ingingo ya 27 y'itegeko rigenga umurimo, mu gika cyayo cya gatatu, ivuga ko nta nteguza igomba gutangwa mu gihe cy'amasezerano y'akazi mu gihe cy'igeragezwa. [6] Urukiko rwemeje ko n'ibindi birego bya Uwamaliya Floride nta shingiro bifite, ahubwo rumutegeka kwishyura ABDC Ltd amafaranga 300.000 y'ikurikiranarubanza n'igihembo cya Avoka. [7] Uwamaliya Floride ntiyishimiye imikirize, ayijururira muri uru Rukiko, avuga ko mu guca urubanza, Urukiko Rwisumbuye rutahaye agaciro ibimenyetso yarushyikirize n'ibikubiye mu masezerano yarushyikirije mu gihe cyo gutanga ikirego no mu iburanisha. Muri make avuga ko ingingo y'amasezerano ivuga igeragezwa ry'amezi atandatu itareba Uwamaliya Floride, kuko yari asanzwe ari umukozi wa ARDI. [8] Igisuzumwa muri uru rubanza ni ukumenya niba ingingo iteganya amezi 6 y'igeragezwa mu masezerano y'akazi yabaye hagati ya Uwamaliya Floride na ABDC Ltd igomba gufatwa nk'itaraho. Iyo ngingo iramutse nta gaciro ihawe, hasuzumwa ishingiro ry'indishyi Uwamaliya Floride asaba zishingiye ku kuba yarirukanywe mu buryo bunyuranyije n'amategeko. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA KUMENYA NIBA MU KWIMURIRA UWAMALIYA Floride muri ABDC Ltd AMASEZERANO Y'UMURIMO YAGIRANYE NA ABDC Ltd YARASHOBORAGA GUTEGANYA IGIHE CY'IGERAGEZWA. [9] Uhagarariye Uwamaliya Florida avuga ko impamvu yajuriye ari uko Urukiko Rwisumbuye rutahaye agaciro ibimenyetso yarushyikirije n'ibikubiye mu masezerano. Avuga ko Uwamaliya Florida yagiranye amasezerano y'umurimo na ABDC Ltd, ariko ngo hari habaye "transfert" y'amasezerano kuko

Uwamaliya Florida yari avuye muri ARDI ku bwumvikane na ABDC Ltd. Avuga ko Uwamaliya Florida yari yandikiye ARDI, agenera kopi ABDC Ltd, abagezaho ko azemera iyo “transfert” ari uko umukoresha mushya yemeye kubahiriza uburenganzira bwe umukoresha wa mbere yubahirizaga, kandi ko haba umukoresha wa mbere haba umukoresha wa kabiri ntacyo babivuzeho, bivuga ko babyemeye. Avuga kandi ko ingingo ya 5 y’amasezerano hateganyijwemo ko amasezerano mashya atazagira icyo ahungabanya ku yari asanzwe. [10] Uhagarariye ABDC Ltd avuga ko ibyo uhagarariye Uwamaliya Floride avuga ari ukwirengagiza ko amasezerano y’umurimo yasheshwe hashingiwe ku ngingo ya 4 y’amasezerano yagiranye na ABDC Ltd ku wa 01/06/2011 ivuga ibijyanye n’igihe

Page 5

cy’amasezerano n’igeragezwa n’iya 19 y’itegeko n° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ivuga ibijyanye n’igeragezwa ku murimo. Avuga ko amasezerano yasheshwe nyuma y’uko umukoresha asuzumwa imikorere y’urega ku bijyanye n’umusaruro we mu kazi nk’uko byari byumvikanyweho mu masezerano agasanga nta bushobozi afite bwo kuzuza inshingano ze. Avuga ko ibaruwa Uwamariya Floride ARDI ngo akagenera kopi ABDC Ltd ko azemera “transfert” ari uko umukoresha mushya yemeye uburenganzira bwe umukoresha wa mbere yubahirizaga. Ngo iyi baruwa nta gaciro yahabwa kuko itavanaho amasezerano yagiranye na ABDC Ltd ku wa 01/06/2011 cyane cyane ko iyo baruwa yayandikiye ARDI ku wa 15/06/2011 yaramaze kugirana amasezerano na ABDC Ltd. Umucamanza ku rwego rwa mbere ibi akaba yarabisobanuye neza mu gika cya 7 cya matorewa y’urubanza rujuririrwa. [11] Urukiko rurasanga nk’uko ababuranyi babyemeranywaho, Uwamaliya Floride yari asanzwe ari umukozi wa ARDI, kubera ubwumvikane bwa ARDI na ABDC Ltd, hemeranwa ko yimurirwa muri ABDC Ltd (transfert). Ibyo kandi bigaragarira mu mu masezerano (Protocole d’Accord) ARDI yagiraye na ABDC Ltd mu ngingo yayo ya 5, iyo ngingo ikaba ivuga ko kugira ngo imirimo ya sosiyete nshya igende neza, ARDI na ABDC Ltd bumvikanye ko abakozi bari basanzwe bakora muri CESAPI, bimuriwe (transféré) muri ABDC Ltd guhera ku wa 1/06/2011. Iyo ngingo isobanura ko abo bakozi ari Uwamaliya Floride, Umutesi Liliane, na Ndagijimana Vital. Nyuma n’aya masezerano y’ubwumvikane (protocole d’accord), mu rwego rwo kuyashyira mu bikorwa, ARDI yandikiye Uwamaliya Floride ibaruwa imwimurira muri ABDC Ltd (objet : transfert du contrat de travail), iyi baruwa yo ku wa 1/06/2011 ikaba isobanura ko ishingiyeye ku ngingo ya 21 na 22 z’itegeko rigenga umurimo mu Rwanda (2009). [12] Ingingo ya 23, igika cya kabiri, y’itegeko rigenga umurimo mu Rwanda (2009), yerekeranye no kwimura amasezerano y’akazi (transfert du contrat de travail), ivuga ko “Thererekanya ntirigomba guhagarika umukozi gukomeza akazi ke. Ako kazi kagomba gukomereza ku mukoresha yoherejweho nk’aho ari umukoresha we wa mbere.” [13] Urukiko rurasanga Uwamaliya Floride agikora muri ARDI ntiyari akiri mu gihe cy’igeragezwa, ahubwo yagengwaga n’amasezerano y’igihe kitazwi. Ukurikikije iyi ngingo imaze kuvugwa mu gika kibanziriza iki, ni ukuvuga ko amasezerano ya Uwamaliya Floride yimuriwe muri ABDC Ltd, ntiyagombaga guhagarikwa, ahubwo yagombaga gukomeza nk’aho agikorera ku mukoresha wa mbere (ARDI). Nk’uko iyi ngingo ibivuga, kuba Uwamaliya Floride yaragiranye andi masezerano na ABDC Ltd, ayo masezerano agateganya mu ngingo yayo ya 4 igihe cy’igeragezwa cy’amezi 6, iyi ngingo

igomba gufatwa nk'idahari, kuko inyuranyije n'iyi ngingo ya 23, igika cya 2, y'itegeko rigenga umurimo mu Rwanda (2009) ivuga ko akazi kagomba gukomereza ku mukoresha umukozi yoherejweho nk'aho ari umukoresha wa mbere. Bityo Uwamaliya Floride ntiyagombaga gufatwa nk'uri mu igeragezwa kandi ntiyagombaga gushyirwa mu igeragezwa. [14] Urukiko rurasanga ibyo uhagarariye ABDC Ltd avuga ko amasezerano yasheshwe nyuma y'uko umukoresha asuzumye imikorere y'urega ku bijyanye n'umusaruro we mu kazi nk'uko byari byumvikanyweho mu masezerano agasanga nta bushobozi afite bwo kuzuza inshingano ze, ko ibaruwa Uwamariya Floride yandikiye ARDI akagera kopi ABDC Ltd ko azemera "transfert" ari uko umukoresha mushya yemeye uburenganzira bwe umukoresha wa mbere yubahirizaga, akaba avuga ko iyi baruwa nta gaciro yababwira kuko itavanaho amasezerano yagiranye na ABDC Ltd ku wa 01/06/2011 cyane cyane ko iyo baruwa yayandikiye ARDI ku wa

Page 6

15/06/2011 yaramaze kugirana amasezerano na ABDC Ltd nk'uko n'Umucamanza ku rwego rwa mbere yabisobanuye neza mu gika cya 7 cya matorewa y'urubanza rujuririrwa, ibi nta shingiro byahabwa kuko nk'uko byasobanuwe, ingingo ya 23, igika cya kabiri, y'itegeko rigenga umurimo mu Rwanda (2009) itemera ko umukozi ukorewe "transfert" afatwa nk'aho atangiye akazi bundi bushya, ahubwo afatwa nk'aho ari amasezerano yo ku mukoresha wa mbere agikomeza. [15] Urukiko rurasanga kandi uretse no kuba itegeko rigenga umurimo mu Rwanda rivuga ku buryo bwumvikana ko kuba umukozi yimuriwe mu kindi kigo (transfert du contrat de travail) bidahagarika amasezerano y'akazi yari asanganywe, ni nabyo byemejwe n'inkiko zo mu bihugu bifite amategeko asa n'ay'u Rwanda. Urukiko Rusesa imanza rw'Igihugu cy'Ubufaransa rwemeje ko umukozi adashobora guhabwa igihe cy'igeragezwa mu gihe habaye kwimura amasezerano y'akazi (Cour de Cassation soc 13 novembre 2001 : Il ne peut être imposé une nouvelle période d'essai au salarié transféré)¹. [16] Urukiko rurasanga nk'uko bigaragara mu masezerano Uwamaliya Floride yari yaragiranye na ARDI ku wa 6/06/2005, ni amasezerano y'igihe kitazwi (contrat à durée déterminée). Aya masezerano niyo yimuriwe muri ABDC Ltd (transfert du contrat de travail), bityo Uwamaliya Floride akaba afatwa nk'uwagengwaga n'amasezerano y'igihe kitazwi mu mikoranire ye na ABDC Ltd, kuko habayeho « transfert du contrat de travail » nk'uko byasobanuwe. [17] Urukiko rurasanga ABDC Ltd yemera ko yirukanye Uwamaliya Floride itamuhaye integuza, kubera ko ngo yari mu igeragezwa. Ibyo bigaragazwa kandi n'uko Uwamaliya Floride yandikiye ibaruwa isesa amasezerano ku wa 30/11/2011 amenyeshwa ko amasezerano asheshwe guhera kuri iyo tariki. Nyamara nk'uko bimaze gusobanurwa, ntabwo Uwamaliya Floride yafatwa nk'uwari mu gihe cy'igeragezwa, kuko akiri muri ARDI yari yararangije igeragezwa, kandi nk'uko byasobanuwe ABDC Ltd ntiyari yemerewe kumusinyisha andi masezerano mashya amushyira mu gihe cy'igeragezwa ry'amezi atandatu (ingingo ya 23, igika cya kabiri, y'itegeko rigenga umurimo yavuzwe). Bityo ibyo Uwamaliya Floride avuga ko yirukanywe mu buryo bunyuranyije n'amategeko kubera ko yasezererwe nta n'integuza ahawe bifite ishingiro, kuko ingingo ya mbere, igika cya 21, isobanura ko kwirukanwa nta mpamvu ari "guhagarika amasezerano y'akazi bikozwe n'umukoresha nta mpamvu igaragara cyangwa hadakurikijwe uburyo bwateganyijwe n'amategeko". Urukiko rurasanga kandi n'impamvu zashingiweho

amasezerano y'akazi ya Uwamaliya Floride aseswa, ntiyasabwe kuzisobanuraho, kuko yafatiwe icyemezo cyo kwirukanwa nk'aho ari umukozi wari ukiri mu igeragezwa utakeneye kugira ibyo yisobanuraho, kandi nk'uko byasobanuwe yari atakiri mu mu igeragezwa. KU BYEREKEYE INDISHYI UWAMALIYA Floride ASABA. [18] Uwamaliya Floride asaba amafaranga 3.480.000 angana n'amezi atandatu y'umushahara we w'ukwezi w'amafaranga 580.000 kubera kwirukanwa nta mpamvu. Asaba amafaranga y'integuza, amafaranga 3.480.000 (580.000 Frw x 6) yita aya "décompte final", amafaranga 10.400.000 y'umushahara w'igihe cyari gisigaye kugira ngo amasezerano arangire (580.000 x 18), amafaranga 10.000.000 y'indishyi z'akababaro n'amafaranga 1.160.455 y'imperekeza, 1 Bisomwe kuri <http://www.ldh.com.fr/restructuration.html>, mu nyandiko yitwa « Point Droit Social, Les conséquences des restructurations.

Page 7

n'amafaranga 1.185.000 (197.500 Frw x 6) yakatwaga ngo ayatangirwe muri RAMA ariko ntavuzwe. [19] Uhagarariye ABDC Ltd avuga ko Uwamaliya Floride atirukanywe nta mpamvu nk'uko abivuga kuko amasezerano yasheshwe hashingiwe ku ngingo ya 4 y'amasezernao. Avuga ko nta nteguza Uwamaliya Floride yagombaga guhabwa kuko ingingo ya 27 igika cya 3 y'itegeko rigenga umurimo mu Rwanda, ivuga ko nta nteguza ishobora kubaho mu gihe cy'amasezerano y'akazi y'igeragezwa. Avuga ko amafaranga Uwamaliya Floride asaba y'igihe cyari gisigaye ngo amasezerano arangire ntayo yahabwa kuko ngo nk'uko biteganywa n'ingingo ya 4 y'ayo masezerano yagiranye na ABDC Ltd hagombaga kubaho igeragezwa ry'amezi atandatu, ayo masezerano ngo akaba yarangiye. Uhagarariye ABDC Ltd avuga kandi kko amafaranga ya RAMA Uwamaliya Floride asaba ntayo yahabwa, kuko icyo kibazo cyumvikanyweho imbere y'umugenzuzi w'umurimo, asubizwa amafaranga 315.000, ibyo ngo n'Urukiko Rwisumbuye rwarabisobanuye mu gika cya 24 cy'urubanza. [20] Uhagarariye ABDC Ltd avuga kandi ko amafaranga 3.840.000 Uwamaliya Floride asaba nka "décompte final", ay'imperekeza, ay'ingendo, aya communication, ngo ntiyasuzumwa kuko ibyo birego bitigeze biregerwa umugenzuzi w'umurimo. Avuga ko Urukiko ruramutse rugomba kubisuzuma, amafaranga 3.480.000 ya "décompte final" ntayo yahabwa kuko ntayo akwiye, amafaranga 1.160.455 y'imperekeza ngo ntayo yahabwa kuko atari yakamaze amezi 12 akorera ABDC Ltd. Naho amafaranga 10.000.000 y'indishyi z'akababaro ngo ntayo yahabwa kuko nta kosa ABDC Ltd yamukoreye. [21] Urukiko rurasanga nk'uko byasobanuwe, Uwamaliya Floride yirukanywe nta mpamvu, adahawe integuza kandi yaragombaga kuyihabwa. Ingingo ya 27 y'itegeko rigenga umurimo ivuga ko igihe cy'integuza ari iminsi 15 iyo umukozi yakoze igihe kiri muni y'umwaka, n'ukwezi kumwe iyo ukozi yakoze igihe cy'umwaka cyangwa urenga. Ingingo ya 32 y'itegeko rigenga umurimo mu Rwanda (2009) ivuga ko "Iseswa ryose ry'amasezerano y'akazi y'igihe kitazwi, nta nteguza cyangwa se igihe cy'integuza kitarubahirijwe cyose, bituma uyasheshe aha undi indishyi y'amafaranga angana n'umushahara n'andi mashimwe yagombaga kubona mu gihe cy'integuza kitubahirijwe". Uwamaliya Floride akwiye guhabwa integuza y'ukwezi kumwe, ni ukuvuga amafaranga 580.000 kubera ko yirukanywe nta nteguza, kandi yari afite uburenganzira ku nteguza y'ukwezi kumwe, kuko nk'uko byasobanuwe, yatangiye akazi mu mwaka wa 2005 muri ARDI, amasezerano ye yimurirwa muri ABDC Ltd, bityo kuba yarasezerewe mu mwaka wa 2011,

yari arengeje umwaka akora. [22] Urukiko rurasanga amafaranga 3.480.000 angana n'amezi atandatu y'umushahara we w'ukwezi w'amafaranga 580.000 kubera kwirukanwa nta mpamvu Uwamaliya Floride asaba yayahabwa, kuko nk'uko byasobanuwe, yirukanywe nta mpamvu, kuko yirukanywe nta nteguza, nk'umukozi wari uri mu igeragezwa, kandi nta geragezwa yari arimo n'ubwo ryari riteganyijwe mu masezerano. Ingingo ya 33 y'itegeko y'itegeko rigenga umurimo ivuga ko "Indishyi z'akababaro zihabwa umukozi wirukanwe binyuranyije n'amategeko ntizishobora kuja muni y'umushahara w'amezi atatu (3), ariko kandi ntizishobora kurenza amezi atandatu (6)". Urukiko rurasanga indishyi Uwamaliya Floride asaba, zingana n'amafaranga amafaranga 3.480.000 (amezi atandatu y'umushahara we w'ukwezi w'amafaranga 580.000) yazihabwa kuko ziri mu rugero ruteganywa n'itegeko, kandi Urukiko rukaba rubona ziri mu Rukiko ukurikije

Page 8

ikosa ABDC Ltd yamukoreye ryo kumwirukana nk'umutangizi ukiri mu igeragezwa kandi atari byo. [23] Urukiko rurasanga amafaranga 10.400.000 y'umushahara w'igihe cyari gisigaye kugira ngo amasezerano Uwamaliya Floride yagiranye na ABDC Ltd yari asigaje arangire (580.000 x 18), ntayo yahabwa, kubera ko ayo masezerano, nk'uko byasobanuwe, atariyo yagengaga imikoranire ye y'akazi na ABDC Ltd, kuko amasezerano y'akazi yari afitanye na ARDI ariyo yimukiye kuri ABDC Ltd kandi ayo masezerano yari ay'igihe kitazwi. Ntabwo kandi Uwamaliya Floride yavugaga ko igice cyerekeranye n'igeragezwa kivugwa mu ngingo ya 4 y'ayo masezerano kigomba gufatwa nk'ikitanditswe, ariko ngo igice gisigaye cy'igihe amasezerano azamara (imyaka ibiri) cyo gisigaye, kuko impamvu zituma iby'igeragezwa bitagira agaciro, bituma n'ayo ngingo yose itagira agaciro, ku mpamvu y'uko amasezerano mashya nta gaciro afite mu gihe cyose ahindura amasezerano Uwamaliya Floride yari afitanye na ARDI. [24] Urukiko rurasanga amafaranga 3.480.000 (580.000 Frw x 6) Uwamaliya Floride yita aya "décompte final" ntayo yahabwa kuko adasobanura impamvu zayo, kuko ubundi "décompte final" ari amafaranga umukoresha aba agomba umukozi igihe amasezerano asheshwe, ayo mafaranga akaba ashobora kuba nk'integuza igihe ayimugomba, amafaranga ya konji yaba atarafashe, umushahara yaba yari atarahembwa, amafaranga y'imperekeza n'ibindi. Kuvuga gusa ko asaba amafaranga ya "décompte final" (umushahara we w'amezi atandatu) ntibihagije mu gihe atagaragaza ayo amafaranga agize "décompte final" ayo ariyo mu by'ukuri. [25] Urukiko rurasanga amafaranga 1.160.455 y'imperekeza Uwamaliya Floride asaba akwiye kuyahabwa, kuko ibyo uhagarariye ABDC Ltd avugaga ko Uwamaliya Floride yari atarakora amezi cumi n'abiri, kuko yasezerewe arangije igeragezwa ry'amezi 6, nta shingiro bifite, kuko nk'uko byasobanuwe, ntabwo Uwamaliya Floride yatangiye akazi igihe yari atangiye gukorana na ABDC Ltd, ahubwo yatangiye igihe yari ahawe akazi na ARDI, ayo masezerano y'akazi na ARDI akaba ariyo yimuriwe muri ABDC Ltd, kandi ni ayo mu mwaka wa 2005, bityo yujuje ibisabwa kugira ngo ahabwe imperekeza. [26] Urukiko rurasanga ibyo uhagarariye ABDC Ltd avugaga ko aya mafaranga y'imperekeza Uwamaliya atayahabwa kuko atayasabye imbere y'umugenzuzi w'umurimo, nta shingiro bifite kuko n'ubwo nta jambo "imperekeza" rigaragara mu nyandiko mvugo yakozwe n'umugenzuzi, ariko ikigaragara ni uko Uwamaliya Floride yaregeye "kwirukanwa binyuranyije n'amategeko". Ntabwo yasobanuye

ku buryo burambuye ibikubiye muri ayo magamba, kimwe n'uko atagaragaje amafaranga asaba guhabwa n'umukoresha. Ariko ntibyafatwa nk'aho imperekeza yo itasabwe, kandi kwirukana umukozi mu buryo bunyuranyije n'amategeko harimo no kumwirukana utamuhaye imperekeza kandi yari ayikwiye. Ariko amafaranga y'imperekeza Uwamaliya agomba guhabwa agomba kuba 1.160.000, kuko nk'uko Uwamaliya Floride yagiye abiyandikira, umushahara we wari amafaranga 580.000, wakubwa kabiri ukaba amafaranga 1.160.000, aho kuba amafaranga 1.160.455. [27] Urukiko rurasanga amafaranga 1.185.000 (197.500 Frw x 6) yakatwaga ngo ayatangirwe muri RAMA ariko ntavuzwe ntayo yahabwa, kuko amafaranga yakatwaga yayashubijwe nk'uko bigaragara kuri fotokopi ya sheki y'amafaranga 315.000 yo ku wa 29/03/2011, akayisinyira ku wa 9/04/2011, akaba atagaragaza aho amafaranga yishyuzwa atandukaniye n'ayo yahawe.

Page 9

[28] Urukiko rurasanga amafaranga 10.000.000 y'indishyi z'akababaro Uwamaliya Floride asaba ntayo yahabwa, kuko indishyi zo kwirukanwa nta mpamvu yazigenewe, akaba atagaragaza aho izi ndishyi z'akababaro zitandukaniye n'izo yahawe, n'ishingiro ryazo. KU BYEREKEYE IGIHEMBO CYA AVOKA N'IKURIKIRANARUBANZA. [29] Uhagarariye Uwamaliya asaba amafaranga 2.500.000 y'igihembo cya Avoka wayiburaniye ku rwego rwa mbere, n'amafaranga 1.000.000 y'igihembo cya Avoka wayiburaniye kuri uru rwego, n'amafaranga 1.000.000 y'ingendo, gutumanaho (communication) n'ibindi. [30] Uhagarariye ABDC Ltd avuga ko amafaranga 1.000.000 asaba y'ingendo, aya communication n'ibindi, ngo ntiyasuzumwa kuko ibyo birego bitigeze biregerwa umugenzuzi w'umurimo. [31] Uhagarariye ABDC Ltd avuga ahubwo ko ariyo ikwiye guhabwa amafaranga 2.000.000 zo gushorwa mu manza ku maherere, amafaranga 1.000.000 y'ikurikiranarubanza n'igihembo cya Avoka, naho ku rwego rw'ubujurire akaba asaba amafaranga 1.500.000 y'ikurikiranarubanza n'igihembo cya Avoka. [32] Urukiko rurasanga ibyo uhagarariye ABDC Ltd avuga ko amafaranga 1.000.000 y'ingendo, aya communication n'ibindi, uhagarariye Uwamaliya Floride atasuzumwa kuko ibyo birego ngo bitigeze biregerwa umugenzuzi w'umurimo, nta shingiro bifite kuko n'ubwo yaba atarabiregeye, ntiyabura gusaba mu Rukiko amafaranga yakoresheje mu gukurikirana urubanza, kuko ayo mafaranga kimwe n'igihembo cya Avoka atandukanye n'amafaranga aba akomoka ku mpaka z'umurimo, ahubwo ni ingaruka zo kuba ikirego cyagombye kujya mu Rukiko, kandi ayo mafaranga yishyurwa n'utsinzwe urubanza. [33] Urukiko rurasanga ariko amafaranga 1.000.000 y'ingendo no gutumanaho Uwamaliya Floride asaba atayahabwa kuko ari menshi kandi akaba atayagaragariza ibimenyetso, bityo akwiye kuyagenerwa mu bushishozi bw'Urukiko, akaba agenewe amafaranga 100.000. [34] Urukiko rurasanga amafaranga 2.500.000 y'igihembo cya Avoka yo ku rwego rwa mbere n'amafaranga 1.000.000 yo kuri uru rwego Uwamaliya Floride asaba ntiyayahabwa yose kuko ari menshi, ahubwo akwiye kuyagenerwa mu bushishozi bw'Urukiko, bityo akaba agenewe amafaranga 300.000 y'igihembo cya Avoka wamuburaniye ku rwego rwa mbere, n'amafaranga 200.000 y'igihembo cya Avoka wamuburaniye kuri uru rwego. [35] Urukiko rurasanga amafaranga y'igihembo cya Avoka

n'ikurikiranarubanza ABDC Ltd isaba ntayo yahabwa, kuko ariyo nyirabayazana w'urubanza kuko ariyo yirukanye Uwamaliya Floride mu buryo bunyuranyije n'amategeko, bigatuma yiyambaza inkiko. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwa Uwamaliya Floride bufite ishingiro. [37] Rwemeje ko ubujurire bwuririye ku bundi bwa ABDC Ltd nta shingiro bufite.

Page 10

[38] Rwemeje ko imikirize y'urubanza RSOC 0066/12/TGI/NYGE, rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ihindutse kuri byose. [39] Rwemeje ko Uwamaliya Floride yirukanywe nta mpamvu. [40] Rutegetse ABDC Ltd guha Uwamaliya Floride amafaranga 3.480.000 y'indishyi zo kwirukanwa nta mpamvu, amafaranga 580.000 y'integuza, amafaranga 1.160.000 y'imperekeza, amafaranga 100.000 y'ingendo, n'amafaranga 500.000 y'igihembo cya Avoka. [41] Rutegetse ABDC Ltd gutanga amagarama y'uru rubanza, angana n'amafaranga 75.000, ikayatanga uru rubanza rukimara kuba itegeko agakurwa mu byayo ku ngufu za Leta.

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/6839/7114>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/uwamaliya-floride-v-api-business-development-company-abdc-ltd-transferofemploymentcontracts-high-court-2014>

Prepared on 11 October 2026 · Esheria