

RWANDA / JUDGMENT

# UWIZEYIMANA v. LETA Y'U RWANDA (MINIRENA)

RADA 0007/13/CS

COURT

Supreme Court

DECIDED

15 January 2016

CASE / FILE NUMBER

RADA 0007/13/CS

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## UWIZEYIMANA v. LETA Y'U RWANDA (MINIRENA)

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- Section: Decisions (Judgements)
- Date: 2016-01-15
- Case/document no.: RADA 0007/13/CS
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### Text

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UWIZEYIMANA v. LETA Y'U RWANDA (MINIRENA) [Rwanda URUKIKO RW'IKIRENGA – RADA 0007/13/CS (Mugenzi, P.J., Gatete na Mutashya, J.) 15 Mutarama 2016] Amategeko agenga umurimo – Ikosa rikomeye – Kuba umukozi yafashe icyemezo kivuguruza icy'umukoresha we yafashe mu nama, akagifata atamugishije inama ngo amwemerere kandi azi neza ko kijyanye n'ikoresha ry'amafaranga ya Leta riba ari ikosa rikomeye – Itegeko n° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo, ingingo ya 32.. Amategeko agenga umurimo – Kwirukana ntampamvu – kwirukana umukozi hadakurikijwe uburyo bwateganyijwe n'amategeko n'ukwirukanwa nta mpamvu bikaba byatangirwa indishyi – Itegeko n° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo, ingingo ya 1. Amategeko agenga umurimo – icyemezo cy'umurimo – Umukoresha afite inshingano zogutanga icyemezo cy'umurimo igihe cy'amasezerano y'akazi kirangiye kabone nubwo umukozi atagisaba – Itegeko n° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo, ingingo ya 38. Incamake y'ikibazo: MINIRENA yagiranye na Uwizeyimana amasezerano y'akazi y'igihe gito, kuva kuwa 24/02/2009 kugeza ku wa 31/5/2011 ariko MINIRENA

yasheshe ayo masezerano habura amezi ane ngo aragire kubera ko yakoze ikosa rikomeye.. Uwizeyimana yaraze mu Rukiko Rukuru avuga ko atamenyeshejwe iryo kosa rikomeye mu gihe cy'amasaha 48, ntahabwe n'icyemezo cy'imilimo yakoraga. Mu guca urwo urubanza, Urukiko rwemeje ko yarirukaniwe kubera amakosa akomeye (faute lourde), ariko akaba atarigeze asaba icyemezo cy'akazi umukoresha we ngo akimwime rumugenera indishyi zitandukanye. Uwihayimana yajuriye mu Rukiko rw'Ikirenga avuga ko umukoresha we ya mushinjije abakozi ba "balinga" kandi atari we wari ushinze kwinjiza abakozi mu kazi, kandi ko afata icyemezo cyo kugura "basins" byatewe nuko ku munsu mukuru w'igiti bari bafite abashyitsi, akaba yarashakaga ko ibintu bigaragara neza, kandi ko uburyo yirukanywe bunyuranyije n'amategeko kuko hatubahirijwe ibihe by'amasaha 48 ateganywa n'amategeko Leta y'u Rwanda yireguye ivuga ko Uwizeyimana yagiye akora amakosa menshi ku buryo abayobozi be batashoboye kumwihanganira ko hagaragaye ko hari abakozi batabaho bari kuri "liste de paie" yasinywaga na we atabanze kureba ko ihuye na "liste de présence" irindi kosa akaba ari uguhindura icyemezo cyari cyafashwe mu nama cyo gutwara ingemwe mu bitebo byaguzwe n'abaturage, ku bwende bwe agafata icyemezo cyo kugura za "bassins" kandi azi neza ko hagomba gutangwa isoko rya Leta, ikavuga ko isanga igihe cy'amasaha 48 atarubahirijwe, ariko ko bidakuraho amakosa yakoze, ko kandi nta ni ngaruka byamuteye kuko nta gihombo yagize

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Incamake y'icyemezo: Kuba umukozi yafashe icyemezo kivuguruzwa icy'umukoresha we yafashe mu nama, akagifata atamugishije inama ngo amwemerere kandi azi neza ko kijyanye n'ikoresha ry'amafaranga ya Leta riba ari ikosa rikomeye. Kuba Uwizeyimana yari afite ububasha mu nshingano ze bwo kugenzura abakozi yayoboraga bakoze amakosa ariko ntabikore, akwiye kubibazwa kuko byari mu nshingano ze mu kazi ke ka buri munsu. Kuba ataragenzuye ngo amenye ko hari abakozi ba baringa batagombaga guhembwa, cyangwa ngo abashe kumenya ko hari ibindi biti byagaragaye muri "pépinière" bitagize aho bihuriye n'ibikorwa by'umushinga, ndetse no ku bijyanye no kudaha abakozi amakarita kugirango hamenywe mu by'ukuri abakozi b'umushinga bakwiye guhembwa bigize amakosa akomeye yatuma Uwizeyimana yashoboraga kwirukanirwa nta nteguza. Kwirukana umukozi hadakurikijwe uburyo bwateganyijwe n'amategeko n'ukwirukanwa nta mpamvu bikaba byatangirwa indishyi. Umukoresha afite inshingano zogutanga icyemezo cy'umurimo igihe cy'amasezerano y'akazi kirangiye kabone nubwo umukozi atagisaba. Ubujurire bufite ishingiro kuri bimwe; Leta y'u Rwanda (MINIRENA) igomba guha Uwizeyimana indishyi yiyongera ku yo yagenewe mbere n'Urukiko rubanza Imikirize y'urubanza RAD 0150/11/HC/KIG ihindutse kuri bimwe; Amagarama y'urubanza aherereye ku wajuriye. Amategeko yashingiweho: Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9. Itegeko n° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo, ingingo ya 1,28,32,38. Nta manza zifashishijwe.

URUBANZA I. IMITERERE Y'URUBANZA [1]

1. Uru rubanza rwatangiriye mu Rukiko Rukuru (RAD 0150/11/HC/KIG), UWIZEYIMANA avuga ko yagiranye na Leta y'u Rwanda (MINIRENA) amasezerano y'akazi y'igihe gito, kuva kuwa 24/02/2009 kugeza ku wa 31/5/2011, akavuga ko Umukoresha we yasheshe

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amasezerano y'akazi ku wa 26/01/2011 habura amezi ane (4) ngo amasezerano arangire, kubera ko yakoze ikosa rikomeye (faute lourde) kandi atarimenyeshejwe mu gihe cy'amasaha 48, ntahabwe n'icyemezo cy'imilimo yakoraga. [2] Mu guca urubanza, Urukiko rwemeje ko ikirego cya UWIZEYIMANA gifite ishingiro kuri bimwe, rusanga yarirukaniwe amakosa akomeye (faute lourde)1, ariko akaba atarigeze asaba icyemezo cy'akazi umukoresha we ngo akimwime, ku bw'izo mpamvu akaba atabihirwa indishyi, rutegeka gusa ko ahabwa indishyi zingana na frw 281.487 ahwanye n'iminsi y'ikiruhuko (congé) atafashe, na frw 60.000 yerekeranye n'ubutumwa bw'akazi (frais de mission) atahawe. [3] UWIZEYIMANA yajuririye Urukiko rw'Ikirenga (RDA 0007/13/CS) avuga ko nta kimenyetso kigaragaza ikosa rikomeye umucamanza yashingiyeho, ntiyanaha agaciro ibisobanuro yatanze. [4] Urubanza rwaburanishijwe mu ruhamu kuwa 01/12/2015, UWIZEYIMANA yunganiwe na Me NSANZIMFURA Eugène, Leta y'u Rwanda (Minirena) ihagarariwe na Me UWALI Claire. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

- a. Kumenya niba hari ikosa rikomeye (faute lourde) ryatuma UWIZEYIMANA yirukanwa ku kazi. [5] UWIZEYIMANA avuga ko umukoresha we yamwirukanye ku kazi avuga ko yakoze amakosa akomeye yo kuba atarabashije kuzuza inshingano ze, nyamara ibyo yirukaniwe bitari mu nshingano ze kuko we yari "Superviseur", akaba yareretse urukiko inyandiko zigaragaza ko atari we wari ushinze kwinjiza abakozi mu kazi ariko rukabyirengagiza. Asobanura ko urukiko rwashingiye ku mabarwa menshi yaba yarandikiwe, nyamara iyo azi ari imwe gusa nayo yisobanuyeho, akirukanwa amaze ukwezi arwaye kandi umukoresha abizi. [6] Ku bijyanye na "bassins"2 yaguze kandi hari hafashwe icyemezo cyo kugura ibitebo, yemera ko koko byabayeho, ariko agasobanura ko afata icyo cyemezo, byatewe nuko ku munsu mukuru w'igiti bari bafite abashyitsi, akaba yarashakaga ko ibintu bigaragara neza, ko kandi yagishije inama Ubuyobozi bw'Akarere bakabyumvikanaho. [7] Ku byerekeye "cartes de présence" atakurikiranye, avuga ko ntaho yari ahuriye nazo, ariko akaba yaranditse abaza impamvu ababishinze batabikoraho raporo. [8] Asobanura kandi ko ku birebana n'ingemwe zitagize naho zihuriye n'ibikorwa by'umushinga, icyo gikorwa cyabaye adahari kuko yari arwaye, aho agarukiye ku kazi abivuganaho n'Umuyobozi w'Akarere amubwira ikibazo uko giteye. [9] Me NSANZIMFURA umwunganira asobanura ko inama yo gukemura ikibazo cy'urutonde rw'abakozi bagaragara nka ba "balinga" yateranye kuwa 12/12/2010, uwitwa NGIRUMUGENGA 1 Gukoresha abakozi batazwi n'Umushinga no gutera ibiti bitateganyijwe mu nyungu ze 2 Zagombaga gutwarwamo ingemwe z'ibiti byagombaga guterwa n'abaturage.

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Jean Marie Pierre akaba ariwe warukoraga, ibyo kandi bikagaragazwa n'ibarwa Akarere kamwandikiye kamwihanangiriza, ku bw'izo mpamvu akaba asanga UWIZEYIMANA yaragiriwe akarengane ko kwirukanwa. Ku bijyanye na "bassins" yaguze ataribyo byemejwe mu nama, asanga ibyo nta kibazo biteye, keretse iyo baza kugaragaza ko amafaranga yari agenewe icyo gikorwa yanyerejwe cyangwa ibyaguzwe byari ku giciro gihenze cyane ugereranyije n'ibiri ku isoko. [10] Me UMWALI uhagarariye Leta y'u Rwanda avuga ko UWIZEYIMANA yagiye akora amakosa menshi ku buryo abayobozi be batashoboye kumwihanganira. Asobanura ko hagaragaye ko hari abakozi batabaho bari kuri "liste de paie" yasinywaga na UWIZEYIMANA atarebye ko ihuye na "liste de présence". Avuga ko nubwo bwose atari we wari ushinze kwinjiza mu kazi abo bakozi (recrutement), ibyo bitari gutuma atareba ko akazi kakozwe koko nabo agiye guhemba. [11] Akomeza asobanura ko irindi kosa ari uguhindura icyemezo cyari cyafashwe mu nama cyo gutwara ingemwe mu bitebo byaguzwe n'abaturage, ku bwende bwe agafata icyemezo cyo kugura za "bassins" kandi azi neza ko hagomba gutangwa isoko rya Leta. [12] Avuga kandi ko hari "cartes de présence" yanze ko zihabwa abakozi, ubwo bukaba bwari uburyo bwo kugirango abakozi ba baringa bagaragare nk'abakozi nyabo. [13] Ku bijyanye n'ingemwe zaje kugaragara muri "pépinière" zitari ziteganyijwe, asanga ibyo UWIZEYIMANA avuga byuko yatunguwe bitahabwa agaciro, kuko atigeze abimenyesha abamukuriye mu buyobozi bw'umushinga, bikagaragara aruko habayeho igenzura, akaba kandi adahakana ko ibyo byabayeho. Uko Urukiko rubibona. [14]

14. Urukiko rusanga mu makosa Urukiko Rukuru rwagaragaje, UWIZEYIMANA yemera gusa irijyanye no kuba yarafashe icyemezo cyo kugura "bassins" mu mwanya wo kugura ibitebo byari byemejwe mu nama, andi makosa akavuga ko atari we wayakoze, akaba ariho ahera ajurira avuga ko nta kimenyetso Urukiko rwashingiyeho kigaragaza ko hari ikosa rikomeye (faute lourde) yakoze, ko atagombaga kwirukanwa ku kazi. [15]
15. Urukiko rusanga ikosa UWIZEYIMANA yemera, ari ikosa rikomeye kuko yafashe icyemezo kivuguruzwa icy'umukoresha we yafashe mu nama, akagifata amugishije inama ngo amwemerere kandi azi neza ko kijyanye n'ikoresha ry'amafaranga ya Leta. Kuba avuga kandi ko yabyemerewe n'Akarere nta gaciro byahabwa mu gihe umukoresha we atabimuhereye uruhushya. [16] Ku birebana n'andi makosa yavuzwe, Urukiko rusanga nabwo, kuba UWIZEYIMANA adahakana ko yari afite ububasha mu nshingano ze bwo kugenzura abakozi yayoboraga bakoze ariya makosa ariko ntabikore, akwiye kubibazwa kuko byari mu nshingano ze mu kazi ke ka buri munsu nkuko amasezerano y'akazi yo kuwa 10/3/2009 yagiranye na Leta y'u Rwanda(MINIRENA) abiteganyaga. Kuba rero ataragenzuye ngo amenye ko hari abakozi ba baringa batagombaga 3 Art. 3 : NATURE DU TRAVAIL L'employé exercera, sous l'autorité du Ministère des Ressources Naturelles, la fonction de superviseur de district affecté dans la Province du Nord et chargé de superviser les activités du Programme d'Appui à la Reforestation au Rwanda dans les districts de Musanze et Burera

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guhembwa, cyangwa ngo abashe kumenya ko hari ibindi biti byagaragaye muri “pépinière” bitagize aho bihuriye n’ibikorwa by’umushinga, ndetse no ku bijyanye no kudaha abakozi amakarita yavuzwe kugirango hamenywe mu by’ukuri abakozi b’umushinga bakwiye guhembwa batarimo aba baringa, bigize amakosa akomeye Uwizeyimana yashoboraga kwirukanirwa nta nteguza, hashingiwe ku biteganywa n’ingingo ya 32, igika cya 2, cy’Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo.

- b. Ku byerekeye indishyi Uwizeyimana asaba zo kuba yarirukanywe hatubahirijwe igihe cy’amasaha 48. [17] UWIZEYIMANA avuga ko uburyo yirukanywe bunyuranyije n’amategeko kuko hatubahirijwe ibihe by’amasaha 48 ateganywa n’amategeko. [18] Me NSANZIMFURA umwunganira avuga ko Umushingamategeko yashyizeho igihe ntarengwa cy’amasaha 48 mu gihe habaye ikosa rikomeye, akaba asanga rero kuba Leta y’u Rwanda itarubahirije ibyo bihe, binyuranyije n’amategeko, UWIZEYIMANA akaba yabiharerwa indishyi zingana n’umushahara we (ungana na frw 582,386 ku kwezi) w’amezi atandatu. [19] Me UMWARI avuga ko koko igika cya 2 cy’ingingo ya 28 y’Itegeko no 13/2009 ryo kuwa 27/05/2009 ryavuzwe, giteganywa amasaha 48, akaba asanga atarubahirijwe, ariko ko bidakuraho amakosa UWIZEYIMANA yakoze, ko kandi nta ngaruka byamuteye kuko nta gihombo yagize. Uko Urukiko rubibona [20] Urukiko rusanga Umushingamategeko yaragaragaje mu ngingo ya mbere, gace ka 21 k’Itegeko no 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda ko kwirukana umukozi “hadakurikijwe uburyo bwateganyijwe n’amategeko” nabyo ari ukwirukanwa nta mpamvu. [21] Ingingo ya 28, igika cya 2 cy’Itegeko no 13/2009 ryo kuwa 27/05/2009 ryavuzwe iteganywa ko “amasezerano y’akazi y’igihe kizwi cyangwa ku murimo uzwi neza ashobora kurangizwa mbere y’igihe cyateganyijwe iyo habayeho ikosa rikomeye cyangwa kumvikana hagati y’impande zombi. Mu gihe iseswa ry’amasezerano ritewe n’ikosa rikomeye, uyasheshe amenyesha undi mu gihe cy’amasaha mirongo ine n’umunani (48)”. [22] Na none ingingo ya 33 y’iryo Tegeko igateganywa ko “iseswa ryose ry’amasezerano y’akazi rinyuranyije n’amategeko rishobora gutuma hatangwa indishyi z’akababaro. Indishyi z’akababaro zihabwa umukozi wirukanwe binyuranyije n’amategeko ntizishobora kujya muni y’umushahara w’amezi atatu (3), ariko kandi ntizishobora kurenza amezi atandatu (6)”.
- [23] 23. Urukiko rurasanga hashingiwe ku ngingo zimaze kuvugwa, Leta y’u Rwanda ikwiye kugenera UWIZEYIMANA indishyi zingana n’umushahara w’amezi atatu atahana (salaire net), ni ukuvuga frw 1.050.438.54 Mu gifaransa no mu cyongereza ni licenciement abusif / unfair dismissal 5 Umushahara ahembwa ugaragara mu masezerano y’akazi yo kuwa 10/03/2009 ni frw 350.146

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- c. Ku bijyanye n’indishyi UWIZEYIMANA asaba zo kuba atarahawe icyemezo cy’akazi igihe yirukanwaga. [24] UWIZEYIMANA avuga ko umucamanza yemeje ko atasabye icyemezo cy’akazi ngo akimwe, nyamara we akaba asanga umukoresha afite inshingano zo kugitanga,

ibyo akabishingira kandi no ku rubanza R SOC AA 0027/11/CS rwaciwe n'uru Rukiko. [25] Me NSANZIMFURA umwunganira avuga ko nyuma yo kwirukanwa, UWIZEYIMANA atigeze ahabwa icyemezo cy'akazi, ibyo bikaba binyuranyije n'ingingo ya 38 y'itegeko no 13/2009 ryo kuwa 27/05/2009 ryavuzwe, kandi UWIZEYIMANA yanditse agisaba, akaba ariyo mpamvu umukoresha akwiye kubitangira indishyi. Asobanura ko bahereye kuwa 26/01/2011 igihe yirukaniwe kugeza ubu, nta handi yigeze akora kubera icyo cyemezo yatse ntakibone, indishyi asaba zikaba zingana n'umushahara we w'ukwezi ungana na frw 582.386 uwukubye n'igihe amaze adakora, zihwanye na frw 26.979.000. [26]

26. Me UMWARI uhagarariye Leta y'u Rwanda yemera ko UWIZEYIMANA atahawe icyemezo cy'akazi yakoraga igihe yirukanwaga. Uko Urukiko rubibona [27] Ingingo ya 38 y'itegeko n° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo iteganya ko "iyo igihe cy'amasezerano y'akazi kirangiye, umukoresha agomba guha umukozi umushahara wa nyuma hamwe n'icyemezo ko yamukoreye. Icyo cyemezo kigaragaza ko yamukoreye, itariki yatangiriyeho akazi, itariki akazi karangiriyeho n'akazi yakoraga". [28] Hakurikijwe ibiteganywa n'iyi ngingo, Urukiko rusanga umukoresha yari ifite inshingano zo gutanga iki cyemezo, kabone nubwo UWIZEYIMANA atagisaba, kuba bitarakozwe, Leta y'u Rwanda (MINIRENA) ikaba itarubahirije ibiteganywa n'iyi ngingo, akaba ariyo mpamvu ikwiye kubitangira indishyi mu buryo buteganywa mu gika cya 2 cy'ingingo ya 38 kuko "iyo umukoresha yanze gutanga iki cyemezo cyangwa ntashyiremo kimwe mu bisabwa nk'uko bigaragazwa mu gika kibanziriza iki cyangwa se akagitanga atinze, ashobora gusabwa kwishyura indishyi z'akababaro zagenwa n'urukiko rubifitiye ububasha", Urukiko rukaba rusanga UWIZEYIMANA akwiye kugenerwa na Leta y'u Rwanda (MINIRENA) indishyi zingana n'ukwezi kumwe k'umushahara guhwanye na frw 350.146.
- d. Ku byerekeye izindi ndishyi UWIZEYIMANA asaba. [29] UWIZEYIMANA asaba ko yahabwa indishyi zerekeranye na "frais de communication", amafaranga y'ingendo akurikiranye iby'urubanza rwe ndetse nayo gucumbika, yose akaba ahwanye na frw 1.254.0006. 6 Azisobanura mu myanzuro ye y'ubujurire

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- [30] Me UMWALI uhagarariye Leta y'u Rwanda asanga izo ndishyi atazigenerwa mu gihe bigaragara ko yirukaniwe ikosa rikomeye. [31]
31. Urukiko rusanga, hashingiwe ku biteganywa n'ingingo ya 9 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, indishyi UWIZEYIMANA asaba ntaho rwahera ruzigena kubera ko zitagaragarijwe ibimenyetso. III. ICYEMEZO CY'URUKIKO. [32] Rwemeje ko ubujurire bwa UWIZEYIMANA Jean Bosco bufite ishingiro kuri bimwe; [33] Rutegetse Leta y'u Rwanda (MINIRENA) guha UWIZEYIMANA Jean Bosco indishyi zingana na frw 1.400.584, yiyongera ku yo yagenewe mbere n'Urukiko rubanza, yose hamwe akaba frw 1.742.071; [34] Ruvuze ko imikirize y'urubanza RAD 0150/11/HC/KIG ihindutse kuri bimwe ; [35] Rutegetse UWIZEYIMANA Jean Bosco kwishyura amagarama y'urubanza ahwanye na frw 50.000.

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