

RWANDA / JUDGMENT

UWIZEYIMANA v HAYTON Ltd

RS/INJUST/RSOC 00008/2022/SC

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UWIZEYIMANA v HAYTON Ltd

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Text

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UWIZEYIMANA v HAYTON Ltd [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RSOC 00008/2022/SC – (Nyirinkwaya, J. P., Hitiyaremye na Karimunda, J.) 14 Mata 2023] Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Umukozi ugengwa n'amasezerano y'umurimo – Nubwo umukozi nta masezerano yanditse yaba afitanye n'umukoresha we, ariko amaze nibura igihe kigeze ku mezi atandatu yikurikiranye kandi mu buryo buhoraho amukorera, agomba gufatwa nk'umukozi ugengwa n'amasezerano ariko atanditse – Umukozi uvuga ko agomba gufatwa muri ubwo buryo, agomba kugaragaza ibimenyetso byerekana ko yakoze koko mu gihe cy'amezi atandatu mu buryo buhoraho. Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Ubwiteganyirize bw'abakozi – Abakozi b'igihe gito – Nyakabyizi – Uko byagenda kose, buri mukozi agomba gutangirwa imisanzu y'ubwiteganyirize kabone n'ubwo yaba akora mu buryo bw'imirimu idashingiye ku masezerano y'akazi yanditse (secteur informel) cyangwa mu gihe yaba akora imirimu igihe gito. Incamake y'ikibazo: Rwanda Biomedical Center yakoranye na Hayton Ltd amasezerano y'ubwikorezi kuva mu mwaka wa 2014. Hayton Ltd yagombaga gushaka abantu (manpower) bo gupakira no gupakurura amakarito y'imiti n'ibindi bikoresho bigenda bishyirwa ahantu hatandukanye mu gihugu RBC yabaga yifuje kubigeza. Ni muri urwo rwego

Hayton Ltd yifashishije Uwizeyimana nk'umwe mu bakoraga ako kazi. Uwizeyimana avuga ko yakoreye Hayton Ltd nta masezerano y'akazi yanditse kuva mu mwaka wa 2014 kugera muri Kanama 2017, igihe avuga ko yageze aho asanzwe akorera abwirwa ko nta kazi gahari. Yegejeje ikibazo cye mu Bugenzuzi bw'Umurimo, ariko ubuho burananirana bituma atanga ikirego mu Rukiko Rwisumbuye rwa Nyagatare. Urukiko rweregewe ku rwego rwa mbere rwaciye urubanza, rwemeza ko ikirego nta shingiro gifite kuko Uwizeyimana yari nyakabyizi, bityo akaba atarahagaritswe mu buryo bunyuranyije n'amategeko, rutegeka ko nta ndishyi izo arizo zose zigomba gutangwa muri urwo rubanza. Ibi byatumye ajuririra Urukiko Rukuru, Urugereko rwa Rwamagana, narwo rwemeza ko ubujurire nta shingiro bufite. Iki cyemezo nicyo yasabiye gusubirishwamo ku mpamvu z'akarengane, biremezwa maze muri uru Rukiko rw'Ikirenga habanza gusuzumwa ikibazo cyo kumenya niba yarirukanywe mu buryo bunyuranyije n'amategeko. Urega asubirishamo urwo rubanza avuga ko yirukanwe mu buryo bunyuranyije n'amategeko, nta kosa yeretswe cyangwa indi mpamvu yatuma ahagarikwa igitaraganya nta nteguza, mu gihe nyamara we n'Uregwa bari bafitanye amasezerano y'igihe kitazwi. Uregwa ariwe Hayton Ltd avuga ko Urega atigeze aba umukozi wayo uhoraho, ko ahubwo yari nyakabyizi, ko yamuvanaga ahitwa ku ndege, ko iyo aba yamukoreye kuva ku itariki ya 09/09/2014 kugeza mu kwezi kwa 08/2017 ari umukozi uhoraho nk'uko abiburanisha, yari kuba afite amasezerano yanditse hagendewe ku biteganywa Itegeko rigenga umurimo, ko umukozi ukoze igihe kirengeje amezi atandatu (6) agomba kuba afite amasezerano y'umurimo yanditse.

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Ku kibazo cyo kumenya niba hari imisanzu y'ubwiteganyirize bw'abakozi agomba gutangirwa n'uwaru umukoresha we, Urega avuga ko Uregwa yakagombye kuba yaramwandikishije mu Kigo cy'ubwiteganyirize bw'abakozi kuva ku itariki yatangiriyeho akazi, akamutangira imisanzu uhariye kuyo mu gihembwe cya kane cy'umwaka wa 2014 kugeza mu kwezi kwa 8/2017. Bityo akaba asaba uru Rukiko gutegeka Uregwa kumwandikisha muri icyo Kigo (RSSB), ikanamwishyurira imisanzu y'ubwiteganyirize bw'abakozi itatanze. Uregwa yiregura avuga ko nta misanzu y'ubwiteganyirize bw'abakozi agombaga gutangira Urega kubera ko atigeze aba umukozi we. Incamake y'icyemezo: 1. Nubwo umukozi nta masezerano yanditse yaba afitanye n'umukoresha we, ariko amaze nibura igihe kigeze ku mezi atandatu yikurikiranye kandi mu buryo buhoraho amukorera, agomba gufatwa nk'umukozi ugengwa n'amasezerano ariko atanditse. Umukozi uvuga ko agomba gufatwa muri ubwo buryo, agomba kugaragaza ibimenyetso byerekana ko yakozе koko mu gihe cy'amezi atandatu mu buryo buhoraho.

2. Uko byagenda kose, buri mukozi agomba gutangirwa imisanzu y'ubwiteganyirize kabone n'ubwo yaba akora mu buryo bw'imirimo idashingiye ku masezerano y'akazi yanditse (secteur informel) cyangwa mu gihe yaba akora imirimo igihe gito. Bityo, Hayton Ltd igomba gutangira Uwizeyimana imisanzu y'ubwiteganyirize kubera ko umukozi wese agomba kuyitangirwa hatitawe ku buryo akoramo. Ikirego gisubirishamo urubanza ku mpamvu gifite ishingiro kuri bimwe. Amagarama aherera ku ruhande rw'Uregwa. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi,

ingingo ya 12. Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 1, 15, 33 n'ya 47. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Itegeko N° 06/2003 ryo ku wa 22/03/2003 rihindura kandi ryuzuza Itegeko-Teka ryo ku wa 22/08/1974 rigena ubwiteganyirize bw'abakozi, ingingo ya 2. Itegeko N° 51/2001 ryo ku wa 30/12/2001 rigenga umurimo mu Rwanda, ingingo ya 17, 29 n'ya 33. Imanza zifashishijwe: Phoenix Metal na Rwanteli Ntagara Innocent, RSOCAA 0023/09/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 18/06/2010.

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Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 09/09/2014, Rwanda Biomedical Center, RBC muri uru rubanza, yakoranye na Hayton Ltd amasezerano y'ubwikorezi numero 068/NCS/NCB/2013-2014/RBC. Ku bw'ayo masezerano, Hayton Ltd yagombaga gushaka abantu (manpower) bo gupakira no gupakurura amakarito y'imiti n'ibindi bikoresho byagendaga bishyirwa ahantu hatandukanye mu gihugu RBC yabaga yifuje kubigeza. Ni muri urwo rwego Hayton Ltd yashatse abantu bo kuyifasha muri iki gikorwa barimo Uwizeyimana Naphtal wakoreye Hayton Ltd nta masezerano y'akazi kuva mu mwaka wa 2014 kugera muri Kanama 2017 aho avuga ko yageze aho asanzwe akorera iyo mirimo akabwirwa ko nta kazi gahari. [2] Uwizeyimana Naphtal yabanje kugeza ikibazo cye mu Bugenzuzi bw'umurimo mu Karere ka Gatsibo. Ku itariki ya 29/05/2020, mu nyandikomvugo y'igikorwa cyo guhuzwa hagati ye na Hayton Ltd, habayeho kutumvikana bituma hiyambazwa inkiko. [3] Mu Rukiko Rwisumbuye rwa Nyagatare, Uwizeyimana Naphtal yareze avuga ko Hayton Ltd yamwirukanye mu buryo bunyuranyije n'amategeko, asaba indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, iz'integuza atahawe, iza kuba nta mperekeza yahawe, iziyanywe n'icyemezo cy'umurimo nacyo atahawe, amafaranga ya konji atahembewe, imisanzu y'ubwiteganyirize bw'akabozi, igihembo cya Avoka, amafaranga y'ikurikiranarubanza n'ay'ingwate y'amagarama. [4] Ku itariki ya 29/10/2019, Urukiko Rwisumbuye rwa Nyagatare rwaciye urubanza RSOC 00008/2018/TGI/NYG, rwemeza ko ikirego cya Uwizeyimana Naphtal nta shingiro gifite kuko akazi yakoraga yagakoraga bubyizi, bityo akaba atarahagaritswe mu buryo bunyuranyije n'amategeko, rutegeka ko nta ndishyi izo arizo zose zigomba gutangwa muri urwo rubanza, ko n'amagarama Uwizeyimana Naphtal yatanze arega ahwanye n'ibyarukozwemo, bityo akaba aherejwe ku Isanduku ya Leta. [5] Uwizeyimana Naphtal yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko ubujurire bwe bushingiye ku mpamvu zikurikira: - kuba Urukiko rwa mbere rwarirengagije ko yirukanywe mu buryo bunyuranyije n'amategeko kandi nta mpamvu; - kuba Urukiko rwaremeje ko yari umukozi wakurwaga ku muhanda mu gihe rwari rwamaze kubona ko yakoraga mu buryo buhoraho kuva mu mwaka wa 2014 kugeza mu wa 2017 ubwo yahagarikwaga, rwarangiza rukabyirengagiza rukavuga ko yari nyakabyizi; - kuba Urukiko rwa mbere rwaremeje ko yaba umukozi, yaba umukoresha, bese bafite amakosa yo kuba batarakurikije amategeko, aho rwavuze ko umukozi nta masezerano yanditse afitanye n'umukoresha, bityo ko yari nyakabyizi, mu gihe umukozi yagaragazaga ko yakoraga mu buryo buhoraho.

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- [6] Ku itariki ya 31/08/2020, Urukiko Rukuru rwaciye urubanza RSOCA 00011/2019/HC/RWG rwemeza ko ubujurire bwatanzwe na Uwizeyimana Naphtal nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse, rutegeka ko nta ndishyi zigomba gutangwa muri urwo rubanza kuko impande zombi hari ibyo zitubahirije. [7] Mu gufata icyo cyemezo, Urukiko rwashingiye ku mpamvu zikurikira: - Kuba ingingo ya 33, agace ka 341, y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryavuzwe haruguru, iteganya ko umukozi wa nyakabyizi ari umukozi ukoreshe umunsi ku munsi, bihura n'uburyo Hayton Ltd yakoranye na Uwizeyimana Naphtal, ko nabwo bwari ubwa nyakabyizi wakoraga umunsi ku munsi. Ariko kuba yararengeje amezi 6 akora ako kazi, akorera umukoreshe umwe bikumvikanisha ko yari umukozi uhoraho. - Kuba ariko ingingo ya 11 y'iryo tegeko, iteganya ko amasezerano y'umurimo atanditse adashobora kurenza iminsi 90 ikurikiranye, bigaragara ko Hayton Ltd na Uwizeyimana Naphtal bakoze amakosa, aho uyu yemeye gukorera Hayton Ltd igihe kirengeje amezi 6 nta masezerano y'akazi yanditse bafitanye akabyihorera kandi adateganyirizwa n'umukoreshe mu gihe hari itegeko rimurengera; na Hayton Ltd yakozwe ikosa ryo kumva ko abakozi bayifashaga gushyira mu bikorwa amasezerano yagiranye na RBC ari ba nyakabyizi batagomba gukorera amasezerano y'akazi no guteganyirizwa mu isanduku y'ubwiteganyirize bw'abakozi. - Kuba Uwizeyimana Naphtal yarirukanwe bitewe ni uko amasezerano Hayton Ltd yari ifitanye na RBC yarangiye, uwahawe isoko rishya ntiyemukoreshe, byumvikana ko atirukanywe mu buryo bunyuranyije n'amategeko kuko Hayton Ltd itari gukomeza kumukoreshe kandi atariyo igifite akazi yakoraga muri RBC. - Kuba Uwizeyimana Naphtal yarabaye umukozi wa Hayton Ltd igihe cy'imyaka igera kuri 3, ariko akaba atarigeze aregera ko atishyurirwa amafaranga y'ubwiteganyirize bw'abakozi igihe yari akiri mu kazi kandi hari itegeko ryamurengeraga yari gushingiraho asaba guteganyirizwa, ahubwo akabiregera akazi karangiye, bituma urukiko ntaho rwahera ruvuga ko ayishyurirwa kuko ariwe wabaye nyirabayazana w'ibyamubayeho. - Kuba Uwizeyimana Naphtal aregera integuza n'icyemezo kigaragaza imirimo yakoreye Hayton Ltd ariko akaba nta kimenyetso cy'uko yagisabye Umukoreshe we ngo akimwime, ntaho Urukiko rwahera ruvuga ko akwiye kubigenerwa, kimwe n'izindi ndishyi zose zirebana no kwirukanwa binyuranyije n'amategeko kuko nta masezerano y'akazi yari afite kandi akaba atagaragaza inyandiko imwirukana. [8] Ku itariki 28/09/2020, Uwizeyimana Naphtal yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RSOCA 00015/2019/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku itariki ya 31/08/2020, rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, amaze kubona raporo yarukozweho yemeza ko rwongera kuburanishwa ruhabwa RS/INJUST/RSOC 00008/2022/SC. 1 Aha ariko urukiko rwaribeshye ni agace ka 34 k'ingingo ya mbere.

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- [9] Mu myanzuro ye, Uwizeyimana Naphtal yavugaga ko akarengane kari mu rubanza yasabye ko rwasubirwamo gashingiye ku kuba yarakoreye Hayton Ltd mu buryo buhoraho yarangiza ikamwirukana mu buryo bunyuranyije n'amategeko, Urukiko rukaba rutaramuhaye indishyi zinyuranye zigendanye n'uko kwirukanwa. Yavugaga kandi ko Hayton Ltd itigeze imutangira imisanzu y'ubwiteganyirize bw'abakozi, agasaba Urukiko kuyitegeka kubikora. Hayton Ltd yashubije iyo myanzuro ivuga ko Uwizeyimana Naphtal atigeze ayikorera mu buryo buhoraho kuko yari nyakabyizi, bityo rero ko itigeze imwirukana mu buryo bunyuranyije n'amaterako ku buryo yabitangira indishyi, ko ndetse nta n'imisanzu y'ubwiteganyirize bw'abakozi yagombaga kumutangira. [10] Urubanza rwaburanishijwe mu ruhamwe ku itariki ya 20/03/2023, Uwizeyimana Naphtal yunganiwe na Me Uwiragiye Pierre Célestin afatanyije na Me Ndayambaje Gilbert, naho Hayton Ltd ihagarariwe n'Umuyobozi wayo Ruzibiza Rodrigue yunganiwe na Me Mugenzi Elie. [11] Mu rubanza, ababuranyi bagiye impaka ku bibazo bikurikira: - Kumenya niba Uwizeyimana Naphtal yarirukanywe ku kazi mu buryo bunyuranyije n'amategeko, akaba agomba kubihirwa indishyi; - Kumenya niba Hayton Ltd yategekwe kumwishyurira imisanzu y'ubwiteganyirize bw'abakozi; - Ibijyanye n'amafaranga y'igihembo cya Avoka n'ikurikiranarubanza ku nzego zose baburanyemo. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO
1. Kumenya niba Uwizeyimana Naphtal yarirukanywe mu buryo bunyuranyije n'amategeko [12] Me Uwiragiye Pierre Célestin na Me Ndayambaje Gilbert bunganira Uwizeyimana Naphtal, bavuga ko yirukanywe mu buryo bunyuranyije n'amategeko bitewe ni uko yakoreye Hayton Ltd guhera tariki ya 09/09/2014, byagera mu kwezi kwa 08/2017, nyuma y'imyaka itatu, umukoresha we akamubwira ko nta kazi bagifitanye kandi nta kosa yeretswe cyangwa indi mpamvu yatuma ahagarikwa igitaraganya nta nteguza, mu gihe nyamara bari bafitanye amasezerano y'igihe kitazwi. Bavuga ko muri icyo gihe cyose cy'imyaka itatu (3), Uwizeyimana Naphtal yakoraga mu buryo buhoraho imirimo yo gupakira no gupakurura amakarito y'imiti, kimwe no kuyapanga hakurukijwe ubwoko bwayo, iyo mirimo ikaba yari iteganyijwe mu masezerano ya RBC na Hayton Ltd muri "termes de reference", ku rupapuro rwa 21 n'urwa 22, aho bavuga ibikorwa bizakorwa ku buryo buhoraho n'umushahara w'umukozi ku kwezi, bitandukanye n'ibyo Hayton Ltd iburanisha ko bari ba nyakabyizi. [13] Bakomeza bavuga ko ibimenyetso bigaragaza ko yari umukozi uhoraho ari inyandiko z'ubwitabire ku kazi (amarisiti) abakozi basinyagaho uko baje mu kazi, zigaragaza uko Uwizeyimana Naphtal yakoraga akazi ku buryo buhoraho n'imirimo yakorwaga. Bavuga ko amarisiti babashije kubona ari ayo muri 2016 na 2017, ay'indi myaka bakaba batarayabonye kuko bandikiye RBC iyabitse kugira ngo iyabahe ntibasubize. Bavuga kandi ko ikindi kimenyetso cyerekana ko

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bakorera Hayton Ltd mu buryo buhoraho ari ibaruwa ya RBC yo ku itariki ya 27/09/2017 ivuga ko abakozi bayifashaga mu mushinga wa MPPD (Medical Procurement Product Division), bari aba Hayton Ltd yari yatsindiye isoko, ko hari ikibazo kuri abo bakozi ariyo cyashyikirizwa yo yabakoresheje. [14] Bavuga ko mu rwego rw'amategeko bashingira ku ngingo ya mbere, iya 15, igika cya mbere, iya 29 n'ya 33 z'Itegeko N° 51/2001 ryo ku wa 30/12/2001 rigenga umurimo mu Rwanda ryakoreshwaga igihe bakoraga kugeza igihe amasezerano y'akazi yaseswaga, zigaragaza ko yari umukozi uhoraho ugengwa n'amasezerano atanditse, ku buryo atari kwirukanwa nta nteguza ahawe kimwe n'ibindi amategeko amuteganyiriza. Bavuga nanone ko bashingira ku murongo watanze mu rubanza RSOCAA 0023/09/CS rwaciye ku itariki ya 18/06/2010 haburana Phoenix Metal na Rwanteli Ntagara Innocent, aho Urukiko rw'Ikirenga rwasobanuye ukwirukanwa k'umukozi mu buryo bunyuranyije n'amategeko n'ibyo agomba guhabwa. [15] Uwizeyimana Naphtal asobanura ko Hayton Ltd itigeze imukura ku ndege nk'uko ibivuga, ko ahubwo yari asanzwe akorera CAMERWA kuva mu mwaka wa 2009 kugeza mu wa 2012, ari umukozi uhoraho, ko nyuma y'aho CAMERWA ihindukiye RBC bakomeje gukorera muri icyo kigo ariko bakorera SOLIDARITE yaje guhinduka ABAKORANARUKUNDO, nyuma mu mwaka wa 2014 bakorera Hayton Ltd. Asoza avuga ko ayo masosiyete yagendaga amuherekanya kimwe na bagenzi be, ko kandi hose bakoraga nta masezerano y'akazi yanditse bafite. [16] Me Mugenzi Elie wunganira Umuyobozi wa Hayton Ltd, avuga ko Uwizeyimana Naphtal atigeze aba umukozi wayo uhoraho, ko ahubwo yari nyakabyizi yakoreshega amukuye ahitwa ku ndege, ko iyo aba yarakoreye Hayton Ltd kuva ku itariki ya 09/09/2014 kugeza mu kwezi kwa 08/2017 ari umukozi uhoraho nk'uko abiburanisha, yari kuba afite amasezerano yanditse hagendewe ku biteganywa n'ingingo ya 17 y'Itegeko rigenga umurimo ryavuzwe haruguru, iteganya ko umukozi ukoze igihe kirengeje amezi atandatu (6) agomba kuba afite amasezerano y'umurimo yanditse. [17] Ku birebana n'amarisiti basinyagaho yatanze nk'ikimenyetso kigaragaza ko Uwizeyimana Naphtal yakoraga mu buryo buhoraho, Me Mugenzi Elie avuga ko nubwo ayo marisiti Hayton Ltd itayemera kuko ntaho Umuyobozi wayo yigeze ayasinyaho, ko ariko ubwayo ari ikimenyetso cyerekana ko bagiye basinya nka ba nyakabyizi na Uwizeyimana Naphtal arimo, kuko bigaragara ko batakoraga iminsi yose kuko amazina y'abakoze agenda ahinduka umunsi ku munsi, ko muri bose ntawigeze ageza ku minsi itanu(5) y'akazi mu cyumweru. [18] Ruzibiza Rodrigue, Umuyobozi Mukuru wa Hayton Ltd, avuga ko nyuma yo kugirana amasezerano na RBC, buri munsi yajyaga ahitwa ku ndege ku masaha atandukanye agafata umubare w'abakozi bamutumye bitewe n'akazi gakenewe karebana no gupakira cyangwa gupakurura imodoka mu gihe hari iyabaga ije, na Uwizeyimana Naphtal nawe akaba yari muri abo. Asobanura ko iyo yabagezaga kuri RBC, abashinzwe umutekano babinjizaga mu kigo bagakora hari umukozi wa RBC ubagenzura, byagera nimugoroba bagashyirwa ku murongo buri wese akishyurwa amafaranga yakoreye bagataha, ariyo mpamvu ahamya ko nta marisiti bahemberwagaho ahari kuko bari ba nyakabyizi. UKO URUKIKO RUBIBONA 2 Ijambo indege rikunze gukoreshwa ku hantu abakozi ba nyakabyizi bategereza abashobora kuza kubaha akazi.

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[19] Impande zombi ziri muri uru rubanza zemeranya ko Uwizeyimana Naphtal yakoreye Hayton Ltd, ko kandi nta masezerano y’akazi bagiranye mu buryo bwanditse. icyo batemeranyaho ni uburyo bakoranye kuko Uwizeyimana Naphtal we avuga ko yakoraga mu buryo bw’amasezerano y’igihe kitazwi kuko yakoreye iyo sosiyete mu buryo buhoraho mu gihe kirenze amezi atandatu ateganywa n’itegeko, ariko Hayton Ltd yo ikavuga ko yari nyakabyizi kuko yamukoreshaga rimwe na rimwe iyo habaga habonetse akazi. Iki kibazo ni cyo kigomba kubanza gusobanuka kugira ngo bimenyekane ko Uwizeyimana Naphtal yirukanywe mu buryo bunyuranyije n’amategeko bityo abe yagenerwa n’indishyi zigendanye n’iryo yirukunwa. [20] Ingingo ya mbere, agace ka 33, y’Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ryakurikizwaga ubwo Uwizeyimana Naphtal yakoreraga Hayton Ltd, iteganya ko umukozi uhoraho ari umukozi uhabwa akazi mu gihe kizwi cyangwa kitazwi ariko umaze nibura amezi atandatu akurikiranye akorera umukoresha umwe, naho mu gace ka 34 igateganya ko umukozi wa nyakabyizi ari umukozi ukorashwa umunsi ku munsi. [21] Ingingo ya 15, igika cya mbere, y’Itegeko rimaze kuvugwa, iteganya ko amasezerano y’akazi ashobora kuba ayanditse cyangwa atanditse. Akorwa ku buryo bunogeye bene kuyagirana ku mpande zombi [...]. Gihamya y’amasezerano ishobora kuba uburyo bwose bubonetse. [22] Ingingo zimaze kuvugwa, zumvikanisha neza ko nubwo umukozi nta masezerano yanditse yaba afitanye n’umukoresha we, ariko amaze nibura igihe kigeze ku mezi atandatu yikurikiranye kandi mu buryo buhoraho amukorera, agomba gufatwa nk’umukozi ugengwa n’amasezerano kuko bihita byumvikana ko bayafitanye ariko atanditse. Kugira ngo ibyo byemezwwe ariko, umukozi uvuga ko agomba gufatwa muri ubwo buryo, agomba kugaragaza ibimenyetso byerekana ko yakozwe koko mu gihe cy’amezi atandatu mu buryo buhoraho. [23] Ingingo ya 12, igika cya mbere, y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko urega agomba kugaragaza ibimenyetso by’ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Ibiteganywa n’iyo ngingo, binahura n’ibivugwa mu ngingo ya 3, igika cya mbere, y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, iteganya ko “buri muburanyi agomba kugaragaza ukuri kw’ibyo aburana. [24] Ku birebana n’uru rubanza, Uwizeyimana Naphtal avuga ko yari umukozi uhoraho, ibimenyetso atanga akaba ari inyandiko z’ubwitabire ku kazi abakozi basinyagaho uko baje mu kazi (listes de présence), fotokopi ya sheki babikurijeho amafaranga yo kubahemba n’ibaruwa RBC yanditse yemeza ko yari mu bakozi ba Hayton Ltd. [25] Ku bivugwa n’Umuyobozi wa Hayton Ltd ko ayo marisiti atayemera kubera ko atayashyizeho umukono, Urukiko rurasanga ibi nta shingiro bigomba guhabwa kubera ko n’ubundi, hashingiwe ku masezerano yo ku itariki ya 18/09/2015 yagiranye na RBC, ntaho yagombaga gusinya kuko mu nyandiko yiswe “General Conditions of Contract” nayo iri mu zigize ayo masezerano, impande zombi zemeranyije ko ibirebana n’igenzura ry’iyubahiriza ry’ayo masezerano rizakorwa

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n'umuyobozi w'umushinga, Bwana Muhoracyeye Plagène, kandi biragaragara ko ayo marisiti yayasinyagaho.³ [26] Ibimenyetso bigizwe n'amarisiti (listes de présence) Uwizeyimana Naphtal yashyize muri dosiye ashaka kugaragariza urukiko ko yakoreye Hayton Ltd mu buryo buhoraho, byerekana ko yakoze mu buryo bukurikira: - Mu mwaka wa 2016: • Mu kwezi kwa munani yakozemo iminsi 15; • Mu kwezi kwa cyenda yakozemo iminsi 19; • Mu kwezi kwa cumi yakozemo iminsi 17; - Mu mwaka wa 2017: • Mu kwezi kwa kabiri yakozemo iminsi 19; • Mu kwezi kwa gatatu yakozemo iminsi 19; • Mu kwezi kwa kane yakozemo iminsi 15; • Mu kwezi kwa gatanu yakozemo iminsi 23; • Mu kwezi kwa gatandatu yakozemo iminsi 20; • Mu kwezi kwa karindwi yakozemo iminsi 11. [27] Hashingiwe ku bimenyetso bimaze kugaragazwa byatanzwe na Uwizeyimana Naphtal, Urukiko rurasanga ibyo avuga ko yakoreye Hayton Ltd mu gihe cy'amezi atandatu mu buryo buhoraho atari ukuri kubera ko nko mu mwaka wa 2016 yakozemo amezi atatu gusa, nabwo kandi bikaba bigaragara ko nta na hamwe yigeze yuzuza ukwezi, naho mu mwaka wa 2017 akaba yarakozemo amezi atandatu, ariko naho muri icyo gihe cyose akaba nta na hamwe yigeze yuzuza iminsi y'akazi igize ukwezi. Kubera iyo mpamvu, Urukiko rurasanga ahubwo yari umukozi wa nyakabyizi uhembwa 1363 Frw ku muni nk'uko bigaragara mu ibaruwa yo ku itariki ya 30/05/2017 we na bagenzi be bandikiye RBC basaba ubuvugizi kugira ngo bongezwe umushahara. Urukiko rurasanga kuba Uwizeyimana Naphtal atemera ko aribo bayanditse nta shingiro byahabwa kubera ko nawe ubwe yayiburanishije mu Rukiko Rwisumbuye rwa Nyagatare avuga ko nayo iri mu bimenyetso bigaragaza ko bari abakozi bahoraho⁴. [28] Ku birebana n'ibindi bimenyetso yatanze, Urukiko rurasanga ikigizwe na sheki atari ikimenyetso kigaragaza ko yakoze mu buryo buhoraho muri icyo gihe, kuko nta kindi iyo sheki igaragaza uretse umubare w'amafaranga uyiraho yahawe uwitwa Tuyisenge Gashugi. Ku kimenyetso cy'ibaruwa yanditswe na RBC, Urukiko rurasanga nta na hamwe igaragaza ko Uwizeyimana Naphtal yakoreraga Hayton Ltd mu buryo buhoraho, ahubwo nk'uko na we ubwe abyivugira, nta kindi iyo 3 CGG 25.2. For the Purpose of the contract management and inspection, the Project Manager shall be: RBC/MPPD/Muhoracyeye Plagene/warehouse operation manager. 4 Reba \$7 y'urwo rubanza.

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ibaruwa ivuga uretse kugaragaza ko yari umwe mu bakozi ba Hayton Ltd kandi ibyo nayo ntabwo. [29] Hashingiwe ku ngingo ya mbere, agace ka 33 n'ya 15, igika cya mbere, y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryavuzwe haruguru, ndetse no ku ngingo zirebana n'ibimenyetso zerekanywe haruguru hamwe no ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta kimenyetso na kimwe Uwizeyimana Naphtal yagaragarije Urukiko cyerekana ko yakoreye Hayton Ltd mu buryo buhoraho mu gihe cy'amezi nibura atandatu kugira ngo abe yafatwa nk'umukozi ugengwa n'amasezerano. Kubera iyo mpamvu, Urukiko rukaba rusanga atarirukanywe mu buryo bunyuranyije n'amategeko kuko atigeze aba umukozi uhoraho wa Hayton Ltd mu buryo bukurikije amategeko nk'uko bimaze kugaragazwa. [30] Nyuma yo gusanga Uwizeyimana Naphtal atarirukanywe na Hayton Ltd mu buryo bunyuranyije n'amategeko kubera ko atigeze aba umukozi wayo mu buryo bukurikije amategeko, Urukiko rurasanga bitakiri ngombwa gusuzuma

ikibazo kirebana n'indishyi zigendanye n'uko kwirukanwa yari yarushyikirije.

2. Kumenya niba Hayton Ltd yaragombaga gutangira Uwizeyimana Naphtal imisanzu y'ubwiteganyirize bw'abakozi [31] Me Uwiragiye Pierre Célestin na Me Ndayambaje Gilbert bunganira Uwizeyimana Naphtal, bavuga ko Hayton Ltd yakagombye kuba yaramwandikishije mu Kigo cy'ubwiteganyirize bw'abakozi kuva ku itariki 09/09/2014, ikamutangira imisanzu y'igihembwe cya kane cy'umwaka wa 2014, iy'umwaka wa 2015, iy'uwa 2016 n'iy'uwa 2017 kugeza mu kwezi kwa 8. Bavuga ko iyo misanzu igomba kubarirwa ku mushahara fatizo (salaire de base) wa 95.000 Frw gukuba 15%, icyo gipimo kikaba aricyo kigaragara ku rubuga rw'Ikigo cy'ubwiteganyirize bw'abakozi mu Rwanda: www.imisanzu.rssb.rw, bihwaye na 14.250 Frw buri kwezi, bityo bagasaba Urukiko gutegeka Hayton Ltd kwandikisha Uwizeyimana Naphtal mu Kigo cy'ubwiteganyirize bw'abakozi (RSSB), ikanamwishyurira imisanzu y'ubwiteganyirize bw'abakozi itatanze. [32] Me Mugenzi Elie wunganira Umuyobozi wa Hayton Ltd avuga ko nta misanzu y'ubwiteganyirize bw'abakozi bagombaga gutangira Uwizeyimana Naphtal kubera ko atigeze aba umukozi wa Hayton Ltd. UKO URUKIKO RUBIBONA [33] Ingingo ya 2, igika cya mbere, y'Itegeko n° 06/2003 ryo ku wa 22/03/2003 rihindura kandi ryuzuza Itegeko-Teka ryo ku wa 22/08/1974 rigena ubwiteganyirize bw'abakozi iteganya ko iri Tegeko rireba abakozi bagengwa n'amategeko agenga umurimo, abanyapolitiki bari mu nzego za Leta batarageza ku myaka y'izabukuru n'abakozi ba Leta bagengwa na Sitati. Naho igika cya kabiri cy'iyi ngingo kikagira giti: bafatwa nk'abakozi bavuzwe mu gika cya mbere cy'iyi ngingo, abakozi b'igihe gito... [34] Ingingo ya 47, agace ka 6, y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ryakurikizwaga ubwo Uwizeyimana Naphtal yakoreraga Hayton Ltd, iteganya ko imwe mu nshingano z'umukoresha ari ugushyira abakozi mu bwiteganyirize bw'abakozi.

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- [35] Ingingo zimaze kuvugwa haruguru zumvikanisha ko uko byagenda kose, buri mukozi agomba gutangirwa imisanzu y'ubwiteganyirize kabone n'ubwo yaba akora mu buryo bw'imirimo idashingiye ku masezerano y'akazi yanditse (secteur informel) cyangwa mu gihe yaba akora imirimo igihe gito. [36] Nk'uko byasobanuwe haruguru, Uwizeyimana Naphtal yari umukozi wa nyakabyizi wakoreye Hayton Ltd mu gihe cyagaragajwe mu gika 26 cy'uru rubanza, muri icyo gihe cyose akaba yaragombaga gutangirwa imisanzu y'ubwiteganyirize bw'abakozi hashingiwe ku biteganywa n'ingingo ya 47, agace ka 6 yavuzwe haruguru kuko ari inshingano y'umukoresha. [37] Ku bivugwa na Hayton Ltd ko itagombaga gutangira Uwizeyimana Naphtal imisanzu y'ubwiteganyirize bw'abakozi, ibyo ikabishingira ku kuba atarigeze ayikorera mu buryo bw'amasezerano, Urukiko rurasanga ibyo nta shingiro bifite kubera ko umukozi wese agomba gutangirwa imisanzu y'ubwiteganyirize hatitawe ku buryo akoramo, ibi Urukiko rukaba rubishingira ku biteganywa n'ingingo ya 3, igika cya 3, y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryavuzwe haruguru. [38] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rusanga Hayton Ltd igomba kwegera Ikigo cy'ubwiteganyirize bw'abakozi kugira ngo ibarishe imisanzu igomba gutangira Uwizeyimana

Naphtal mu gihe cyose yayikoreye hashingiwe ku 1363 Frw ku munsu nk'uko byagaragajwe haruguru.

3. Kumenya niba amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka zigomba gutangwa [39] Me Uwiragiye Pierre Célestin na Me Ndayambaje Gilbert bunganira Uwizeyimana Naphtal, bavuga ko Hayton Ltd ikwiye kumuha 3.000.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza mu nkiko zose, yose hamwe akaba 3.300.000Frw, agasubizwa na 60.000 Frw y'amagarama yatanze mu nkiko zabanje. [40] Me Mugenzi Elie wunganira Umuyobozi wa Hayton Ltd avuga ko Uwizeyimana Naphtal nta ndishyi agomba guhabwa kuko ariwe wishoye mu manza zidafite ishingiro, ko ahubwo ariwe ugomba kuyiha indishyi zingana na 2.000.000 Frw zo kuyishora mu manza na 1.000.000 Frw y'igihembo cya Avoka. [41] Uwizeyimana Naphtal avuga ko nta ndishyi agomba guha Hayton Ltd kuko kuba yariyambaje ubutabera yaharaniraga uburenganzira bwe kugira ngo arenganurwe. UKO URUKIKO RUBIBONA [42] Urukiko rurasanga indishyi zirebana n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Uwizeyimana Naphtal asaba agomba kuzihabwa kubera ko byagaragaye ko hari akarengane kari mu rubanza yasabye ko rwasubirwamo, kandi bikaba bigaragara ko yagombye gushaka Avoka umwunganira kuva mu nkiko zabanje kugeza kuri uru rwego. Urukiko rurasanga ariko 3,300,000 Frw asaba akabije kuba menshi kandi nta n'ibisobanuro ayatangira, bityo mu bushishozi bwawo rukaba rumugeneye indishyi zijyanye n'amafaranga y'igihembo cya Avoka kimwe n'ay'ikurikiranarubanza ziteye ku buryo bukurikira:

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- 300.000 Frw mu Rukiko Rwisumbuye rwa Nyagatare; - 300.000 Frw mu Rukiko Rukuru, Urugereko rwa Rwamagana; - 800.000 Frw mu Rukiko rw'Ikirenga. [43] Urukiko rurasanga kandi na 60.000 Frw y'igarama Uwizeyimana Naphtal yatanze mu nkiko zabanje nayo agomba kuyasubizwa na Hayton Ltd. III. ICYEMEZO CY'URUKIKO [44] Rwemeje ko ikirego cya Uwizeyimana Naphtal gisubirishamo ku mpamvu z'akarengane urubanza RSOCA 00015/2019/HC/RWG rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana, ku itariki ya 31/08/2020, gifite ishingiro kuri bimwe. [45] Rwemeje ko urwo rubanza ruhindutse ku birebana n'imisanzu y'ubwiteganyirize bw'abakozi Hayton Ltd igomba gutangira Uwizeyimana Naphtal. [46] Rutegetse Hayton Ltd kwishyurira Uwizeyimana Naphtal imisanzu y'ubwiteganyirize bw'abakozi ihwanye n'iminsi yakoze mu mwaka wa 2016 n'uwa 2017 nk'uko yagaragajwe haruguru. [47] Rutegetse Hayton Ltd kwishyura Uwizeyimana Naphtal amafaranga y'igihembo cya Avoka n'ikurikiranarubanza ahwanye na: - 300.000 Frw mu Rukiko Rwisumbuye rwa Nyagatare - 300.000 Frw mu Rukiko Rukuru, Urugereko rwa Rwamagana - 800.000 Frw mu Rukiko rw'Ikirenga. [48] Rutegetse Hayton Ltd guha Uwizeyimana Naphtal 60.000 Frw y'ingwate y'amagarama yatanze mu nkiko zabanje.

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