BIZIMANA v. CIMERWA Ltd

[Rwanda URUKIKO RUKURU – R.S0C.A 0003/13/HC/RSZ – (Kanyegeri, P.J.) 30 Mutarama 2014]

Amategeko agenga Umurimo – Iseswa ry'amasezerano – Ikosa rikomeye – Amasezerano y'akazi ashobora guseswa nta nteguza iyo habaye ikosa rikomeye ry'umwe mu bayagiranye – Itegeko ry'umurimo ntiriteganya ko umukoresha aryozwa indishyi ku mpamvu zo kutamenyesha umukozi iryo kosa mu gihe cy'amasaha 48 – Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 32.

Incamake y'ikibazo: Bizimana yareze CIMERWA Ltd mu Rukiko Rwisumbuye asaba indishyi ku mpamvu zo kwirukanwa bidakurikije amategeko. Urwo Rukiko rwemeje ko ikirego cye nta shingiro gifite, icyakora rutegeka CIMERWA Ltd guha Bizimana umushahara wa nyuma (décompte final). Bizimana ntiyishimiye imikirize y'urubanza ajurira mu Rukiko Rukuru, Urugereko rwa Rusizi avuga ko Urukiko rubanza rwemeje ko yakoze ikosa rikomeye "faute lourde" kandi uburyozwe bw'icyaha bwemezwa n'inzego zibishinzwe ndetse ko n'iyo iri kosa ryaba ryarakozwe, gusesa amasezerano bisaba integuza y'amasaha 48, bitaba ibyo hakaba kuryozwa indishyi.

CIMERWA Ltd ivuga ko iperereza ryakozwe n'urukiko ryemeje ko Bizimana yakoze ubujura bw'icyuma, maze rubifata nk'ikosa rikomeye kandi ko kutamenyeshwa iryo kosa nta gihombo byamuteye. Naho ku bijyanye n'umushahara wa nyuma, ivuga ko nta gihombo Bizimana agaragaza yatewe no kutawuhabwa.

Incamake y'icyemezo: 1. Amasezerano y'akazi ashobora guseswa nta nteguza iyo habaye ikosa rikomeye ry'umwe mu bayagiranye.

2. Itegeko ry'umurimo ntiriteganya ko umukoresha aryozwa indishyi ku mpamvu zo kutamenyesha umukozi ikosa rikomeye mu gihe cy'amasaha 48.

3. Umukozi ntagenerwa indishyi z'icyemezo cy'umukoresha kuko bigaragara ko cyakozwe ndetse n'amasaha y'ikirenga atahembwe kimwe na Konji zihemberwa nabyo ntiyabiherwa indishyi kuko byatanzwe nk'uko bigaragara mu nyandiko y'umushahara wa nyuma (decompte final) yakozwe n'umukoresha kandi umukozi akaba atagaragaza uburyo aya mafaranga yabariwe atariyo.

Ubujurire nta shingiro bufite;
Urubanza rwajuririwe ntiruhindutse;
Amagarama y'urubanza aherereye ku wajuriye.

Amategeko yashingiweho:
Itegeko nº 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ingigo ya 32.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Bizimana yareze uwari umukoresha we CIMERWA Ltd, asaba indishyi ku mpamvu zo kwirukanywa bidakurikije amategeko. Urukiko Rwisumbuye rwa Rusizi rwaregewe mbere iki kirego, nyuma yo kugisuzuma rwemeje ko nta shingiro gifite, ariko Cimerwa Ltd itegekwa guha Bizimana amafaranga y'u Rwanda ibihumbi magana atatu na mirongo inani n'umunani n'amafaranga magana arindwi na mirongo inani n'atatu (388.783) ya décompte final.

[2] Bizimana ntiyishimiye iyi mikirize ajuririra uru Rukiko. Muri uru rubanza hakaba hasuzumwa ingingo Bizimana ashingiraho ajurira, zijyanye no kuba iby'ikosa rikomeye bitarumvikanye neza kimwe n'ingaruka zaryo.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

Kuba urukiko rwarafashe nabi ibijyanye n'ikosa rikomeye "faute lourde", ndetse n'indishyi zijyana naryo.

[3] Mu iburana ryo ku wa 10/01/2014 Me Muhimanyi uburanira Bizimana avuga ko bajurizwa n'uko urukiko rwafashe ibintu uko bitari, rwemeza ko Bizimana yakoze ikosa rikomeye "faute lourde", kandi uburyozwe bw'icyaha bwemezwa n'inzego zibishinze. Kuko n'iyo iri kosa ryaba ryarakozwe, gusesa amasezerano bisaba integuza y'amasaha 48, bitaba ibyo hakaba kuryozwa indishyi, kuko n'icyuma "axe" Bizimana yasohokanye mu Ruganda ari icye yari yasabye kuhakoreshereza, arabyemererwa.

[4] Me Nyandwi uburanira Cimerwa avuga ko iperereza ryakozwe n'urukiko ryemeje ko Bizimana yakoze ubujura bw'icyuma, bifatwa bityo nk'ikosa rikomeye, kuko nta na prejudice Bizimana agaragaza yaba yaratewe no kudahabwa décompte final ku gihe kimwe no kutamenyeshwa ikosa rikomeye.

[5] Nubwo Bizimana avuga ko yirukanywe mu kazi arenganyijwe, kuko icyuma yasohokanaga mu Ruganda ari icyo yari yarasabye uburenganzira bwo kuhakoreshereza, ntahakana ko atashoboye kugaragaza fagitire yabyo. Kuba Cimerwa yarabifashe nk'ubujura Bizimana afatiwemo cyangwa yari agamije, ikanahita imwirukana ku mpamvu z'ikosa rikomeye "faute lourde" birumvikana, cyane ko iyo ibi byuma bijya kuba ibya Bizimana nk'uko abivuga cyangwa iyo ajya kugira uburenganzira bwo kubisohora, atari kubura ibyemezo byabyo.

[6] Nk'uko bisobanurwa mu rubanza rujuririrwa, gusesa amasezerano y'akazi ku mpamvu z'ikosa rikomeye biteganywa mu ngingo ya 32 igika cya 2º y'itegeko nº 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ntibivuga ko umukoresha aryozwa indishyi ku mpamvu zo kutamenyesha umukozi iri kosa mu masaha 48 nk'uko biri ku nteguza iteganywa mu gika cya mbere cy'iyi ngingo, cyane ko ibarwa imusezera mu kazi yanditswe ku wa 27/11/2012, mu gihe iri kosa rikomeye ryakozwe tariki ya 25/11/2012.

[7] Ku bindi Bizimana asaba bijyanye n'uyu murimo yakoraga birimo icyemezo cy'umukoresha, bigaragara ko cyakozwe tariki ya 08/12/2012, bityo akaba atabihererwa indishyi. Ku masaha y'ikirenga atahembwe kimwe na Konji zihemberwa, nabyo ntacyo Cimerwa yaryozwa kuko uyihagarariye asobanura ko ibijyanye n'imperekeza byatanzwe nk'uko bigaragara mu nyandiko ya decompte final yakozwe na Cimerwa, Bizimana akaba atagaragaza uburyo aya mafaranga yabariwe atariyo.

III. ICYEMEZO CY'URUKIKO

[8] Rwemeje ko ubujurire bwatanzwe na Bizimana Antoine nta shingiro bufite.

[9] Rwemeje ko imikirize y'urubanza nº R.SOC 0005/13/TGI/RSZ rwaciwe n'urukiko Rwisumbuye rwa Rusizi ku wa 11/10/2013 idahindutse.

[10] Rukijije ko Bizimana Antoine atsinzwe.

[11] Rumutegetse gutanga amafaranga y'u Rwanda ibihumbi cumi na kimwe na magana abiri (11.200) y'amagarama y'urubanza, akubiyemo n'ayaciwe mu rubanza rujuririrwa, akayatanga ahereye ku yo yatanze arega, atayatanga mu gihe cy'iminsi umunani kuva uru rubanza rubaye ntakuka, akava mu bye ku ngufu za Leta.