ADVENTIST UNIVERSITY OF CENTRAL AFRICA (UAAC) v. NYIRASAFARI

[Rwanda URUKIKO RUKURU – RSOCA 0226/13/HC/KIG (Hitimana, J.) 27 Kamena 2014]

Amategeko agenga Umurimo – Uburyo amasezerano y'akazi akorwamo – Amasezerano y'akazi ni amasezerano yanditse cyangwa atanditse umuntu agirana n'undi mu gihe yemeye kumukorera agamije kubona igihembo kandi ayo masezerano ashobora kuba ay'igihe kizwi cyangwa kitazwi – Itegeko N° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 1 n'iya 15.

Amategeko agenga Umurimo – Icyemezo cy'imirimo yakozwe – Indishyi – Igihe umukoresha adahaye umukozi icyemezo cy'imirimo yakozwe hamwe n'umushahara wa nyuma bifatwa nk'aho yanze kugitanga n'ubwo umukozi yaba ataragisabye ngo umukoresha akimwime – Kudatanga icyemezo cy'imirimo yakozwe, kudashyiramo kimwe mu bisabwa cyangwa kugitanga bitinze bitangirwa indishyi – Itegeko N° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 38.

Indishyi – Iz'ikurikiranarubanza, insimburamubyizi n'izubukererwe – Iyo uzisaba adashoboye kuzigaragariza ibimenyetso, zigenwa mu bushishozi bw'Urukiko.

Amategeko agenga imiburanishirize y'imanza z'umurimo – Isubizwa ry'amagarama y'urubanza – Umuburanyi utsinzwe urubanza niwe ugomba kwishyura amagarama y'urubanza, bityo uwatsinze urubanza ayasubizwa mu gihe cy'irangizarubanza – Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 360.

Incamake y'ikibazo: Nyuma y'uko UAAC ishakiye guhindura amasezerano atanditse y'igihe kitazwi yari ifitanye na Nyirasafari kugira ngo ahinduke amasezerano yanditse y'igihe cy'amezi atandatu, ariko we ntiyemere gusinya ayo masezerano mashya ahubwo akabwira UAAC ko yabanza gusesa amasezerano y'akazi yari asanzwe mbere y'uko asinya amashya, maze UAAC yabona adasinye ayo masezerano ikamwirukana, byatumye Nyirasafari ayirega mu Rukiko Rwisumbuye rwa Gasabo ayishinja ko yamwirukanye nta mpamvu, ko itamutangiye imisanzu y'ubwiteganyirize bw'abakozi, ko igomba kumusubiza amafaranga yamukase, ndetse ayisaba indishyi zijyanye no kudahabwa icyemezo cy'imirimo yakozwe.

Uhagarariye UAAC yiregura avuga ko Nyirasafari yayikoreraga adafite amasezerano yanditse, ibyo bikaba byari byemewe hakurikijwe Itegeko N° 51/2001 ryo ku wa 30 Ukuboza 2001, nyamara aho Itegeko N° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda ritangarijwe ikamusaba gusinya amasezerano mashya nk'uko iryo tegeko rishya ribiteganya, hanyuma Nyirasafari ntabyemere. Yongeraho ko ku byerekeye indishyi zose urega asaba, UAAC yamugeneye imperekeza, ahembwa umushahara we n'amafaranga y'ikiruhuko atahawe, bityo ko nta ndishyi zo kwirukanwa nta mpamvu agomba guhabwa.

Urwo rukiko rwemeje ko Nyirasafari yirukanywe mu buryo bunyuranyije n'amategeko bityo rutegeka ko agomba gutangirwa imisanzu y'ubwiteganyirize, ko ahabwa amafaranga yakaswe, runamugenera indishyi zo kudahabwa icyemezo cy'imirimo yakoze n'ay'ikurikiranarubanza.

UAAC yajuriye mu Rukiko Rukuru, ivuga ko Urukiko rwamugeneye indishyi z'uko yirukanywe nta mpamvu kandi ariwe wanze gusinya amasezerano yanditse, runamugenera indishyi zo kudahabwa icyemezo cy'imirimo yakoze kandi atarigeze aza kugisaba ngo acyimwe kandi ko yanagenewe indishyi z'amafaranga y'ikurikiranarubanza kandi ariwe wishoye mu manza zitari ngombwa.

Nyirasafari yiregura avuga ko umucamanza yasobanuye ko iseswa ry'amasezerano ryaturutse ku bushake bw'umukoresha ritaturutse kuri we, naho ku birebana n'icyemezo cy'imirimo yakoze akavuga ko bitumvikana uburyo cyari kuba gihari ntagihabwe igihe yahabwaga umushahara we wa nyuma, ibyo bikaba bigaragaza ubushake buke bwo kugitanga. Avuga kandi ko atariwe wishoye mu rubanza, ahubwo ari UAAC yamushoye mu manza akaba ariyo mpamvu igomba kumuha amafaranga y'ikurikiranarubanza, ndetse yanatanze ubujurire bwuririye ku bundi asaba ko yakongererwa indishyi yagenewe n'Urukiko rubanza.

Incamake y'icyemezo: 1. Amasezerano y'akazi ni amasezerano yanditse cyangwa atanditse umuntu agirana n'undi mu gihe yemeye kumukorera agamije kubona igihembo kandi ayo masezerano ashobora kuba ay'igihe kizwi cyangwa kitazwi, bityo kuba uwajuriye yarasheshe amasezerano y'akazi yitwaje ko uregwa yanze ko amasezerano atanditse y'igihe kitazwi ahindurwamo ayanditse y'igihe kizwi bigomba gufatwa nk'aho yayasheshe nta mpamvu yumvikana.

2. Igihe umukoresha adahaye umukozi icyemezo cy'imirimo yakozwe hamwe n'umushahara wa nyuma bifatwa nk'aho yanze kugitanga n'ubwo umukozi yaba ataragisabye ngo umukoresha akimwime.

3. Umukoresha wanze gutanga icyemezo cy'imirimo yakozwe cyangwa kuba atashyizemo kimwe mu bisabwa, cyangwa kuba agitanze atinze abitangira indishyi.

4. Kuba Nyirasafari yarirukanywe nta mpamvu, bivuze ko UAAC ariyo yamushoye mu manza, bityo yagombaga kwishyura amafaranga yakoresheje akurikirana urubanza agenwa mu bushishozi bw'Urukiko kuko uzisaba atagaragaza ibimenyetso by'ingano yayo.

5. Kuba UAAC itsindwa urubanza niyo igomba kwishyura amagarama y'urubanza, bityo Nyirasafari akaba akwiye kuyasubizwa mu gihe cy'irangizarubanza.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye ku wajuriye.

Amategeko yashingiweho:
Itegeko N° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 1, iya 38 n'iya 15.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyirasafari Edissa yari umukozi wa UAAC agengwa n'amasezerano atanditse y'igihe kitazwi. UAAC yaje gushaka guhindura ayo masezerano mo amasezerano yanditse y'igihe kizwi cy'amezi atandatu, Nyirasafari Edissa ntiyemera gusinya ayo masezerano mashya ahubwo akabwira UAAC ko yabanza gusesa amasezerano y'akazi ya mbere, mbere y'uko asinya amashya. UAAC yabonye adasinye ayo masezerano iramwirukana.

[2] Nyirasafari yaregeye Urukiko Rwisumbuye rwa Gasabo, aregera ko yirukanywe nta mpamvu, imisanzu y'ubwiteganyirize bw'abakozi, amafaranga yakaswe, icyemezo cy'umukoresha.

[3] Uhagarariye UAAC yasobanuye ko basabye Nyirasafari ko amasezerano ya mbere aseswa kugira ngo babone uko basinya andi masezerano y'amezi atandatu arabyanga, ahubwo asaba ko babanza gusesa aya mbere y'igihe kitazwi, barayasesa bamuha imperekeza n'amafaranga ya konji akaba icyo gihe nta masaha y'ikirenga yagaragarije ibimenyetso.

[4] Urukiko Rwisumbuye rwemeje ko iseswa ry'amasezerano y'akazi ya Nyirasafari Edissa ryaturutse ku mukoresha nta bwumvikane bwa bombi bwarimo kuko atamenyeshejwe impamvu ishingiye ku mategeko ituma bahisemo kumusinyisha amasezerano ageretse ku yandi, ibyo bikaba bwari uburyo bwo gushaka gusesa amasezerano ya mbere mu buryo butaziguye bamwizeza gusinya ay'igihe kizwi cy'amezi atandatu ayambere yarasheshwe ntahabwe andi masezerano ngo abyange ni ikigaragaza ko nta mpamvu ifatika yari ihari itumye aya mbere aseswa kandi n'uburyo yasheshwemo bukaba butarakurikije amategeko kuko batagaragaza uburyo yabariwe ibyo amategeko amuteganyiriza igihe amasezerano asheshwe. Bityo rwemeje ko amasezerano ye yasheshwe mu buryo bunyuranyije n'amategeko, rumugenera, rushingiye ku ngingo ya 33 y'Itegeko rigenga umurimo mu Rwanda, indishyi zingana n'umushahara we w'amezi ane (30.000 x 4) ni ukuvuga amafaranga 120.000.

[5] Urukiko Rwisumbuye rwemeje ko Nyirasafari Edissa agomba gutangirwa imisanzu y'ubwiteganyirize, kuko kuva yatangira akazi muri Kamena 2005, UAAC itagaragaza ko yigeze imutangira iyo misanzu. Urukiko rwategetse kandi ko ahabwa amafaranga 1.100 yakaswe, bamubwira ko ari aya Noheri n'ubunani. Rwamugeneye n'indishyi zo kudahabwa icyemezo cy'imirimo yakoze, zingana n'amafaranga 50.000, amafaranga 50.000 y'ikurikiranarubanza.

[6] UAAC ntiyishimiye imikirize, iyijuririra muri uru Rukiko, ivuga ko:

Urukiko rwageneye Nyirasafari indishyi z'uko yirukanywe nta mpamvu kandi ariwe wanze gusinya amasezerano yanditse;

Urukiko rwamugeneye indishyi zo kudahabwa icyemezo cy'imirimo yakoze kandi atarigeze aza kugisaba ngo acyimwe;

Urukiko rwamugeneye indishyi z'amafaranga y'ikurikiranarubanza kandi ariwe wishoye mu manza bitari ngombwa.

[7] Nyirasafari avuga ko ubujurire bwa UAAC nta shingiro bufite, ahubwo agasaba ko yakongererwa indishyi yari yagenewe.

[8] Izi ngingo z'ubujurire nizo zisuzumwa.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba nyirasafari yaragombaga kugenerwa indishyi zo kwirukanwa nta mpamvu.

[9] Uhagarariye UAAC avuga ko Nyirasafari yakoreraga UAAC nta masezerano yanditse yari yagiranye n'umukoresha we kuko itegeko ryagengaga umurimo mu Rwanda, Itegeko N° 51/2001 ryo ku wa 30 Ukuboza 2001 ryabyemeraga mu gihe yabaga ari amasezerano adafite igihe azarangirira. Avuga ko ubwo hari hamaze gusohoka Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, UAAC yasabye Nyirasafari Edissa ko yasinyana nayo amasezerano yanditse nk'uko amategeko mashya abiteganya, cyane cyane mu ngingo yaryo ya 17. Avuga ko Nyirasafari yayanze avuga ko adashaka guhindura uburyo yakoraga bwo kugendera ku masezerano atanditse kandi yarasobanuriwe ko ubwo buryo itegeko rishya ritabwemera. Uhagarariye UAAC avuga ko kubera ko Nyirasafari yari atagishaka gukorera UAAC, yahawe integuza yo gusesa

amasezerano atanditse yari afite kandi ahabwa imperekeza nk'uko amategeko abiteganya ndetse ahembwa umushahara we anishyurwa n'amafaranga ya konji atari yarafashe. Bityo ngo nta ndishyi zo kwirukanwa nta mpamvu yagombaga guhabwa.

[10] Nyirasafari Edissa avuga ko iyi mpamvu y'ubujurire nta shingiro ifite kuko umucamanza wa mbere yaciye urubanza mu bushishozi nk'uko bigaragara mu ncarubanza y'urubanza rwajuririwe, aho yasobanuye ko iseswa ry'amasezerano ryaturutse ku bushake bw'umukoresha ritaturutse kuri we.

[11] Urukiko rurasanga ibyo uhagarariye UAAC avuga ko iseswa ry'amasezerano y'akazi Nyirasafari Edissa yari afitanye na UAAC ryaturutse kuri Nyirasafari wanze gusinya amasezerano yanditse, nta shingiro bifite kuko atagaragaza impamvu yumvikana UAAC yari ifite yo guhindura amasezerano y'igihe kitazwi, mo amasezerano y'igihe kizwi cy'amezi atandatu. Ibyo avuga ko ubwo hari hamaze gusohoka itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, UAAC yasabye Nyirasafari Edissa ko yasinyana nayo amasezerano yanditse nk'uko amategeko mashya abiteganya, nta shingiro bifite kuko atagaragaza aho iryo tegeko rivuga ko abakozi bafite amasezerano y'igihe kitazwi agomba guhindurwamo amasezerano y'igihe kizwi. Nta n'aho iryo tegeko ritegeka ko amasezerano y'akazi yose agomba kuba yanditse. Ingingo ya mbere, agaka ka kabiri, y'itegeko rimaze kuvugwa, ivuga ko amasezerano y'akazi ari "amasezerano yanditse cyangwa atanditse umuntu agirana n'undi mu gihe yemeye kumukorera agamije kubona igihembo". Ibyo bishimangirwa no mu ngingo ya 15 y'iryo tegeko, ivuga uburyo amasezerano akorwamo, ivuga ko amasezerano y'akazi ashobora kuba yanditse cyangwa atanditse, kandi akaba ashobora kuba ay'igihe kizwi cyangwa ay'igihe kitazwi, cyangwa akaba arebana n'igikorwa kizwi. Biragaragara ko kuba Nyirasafari Edissa yari afite amasezerano y'akazi y'igihe kitazwi atanditse, ntaho byari binyuranyije n'itegeko ryavuzwe, ku buryo UAAC yari kubyitwaza ngo iyahindure. Nta n'indi mpamvu kandi igaragaza yatumye iyahindura, bityo kuba Nyirasafari ataremeye ko ahindurwa bifite ishingiro, kuko nta mpamvu yumvikana yasobanuriwe. Kuba kandi UAAC yarasheshe amasezerano, yitwaje ko Nyirasafari yanze ko ahindurwa, bigomba gufatwa nk'aho yayasheshe nta mpamvu yumvikana, kuko nta mpamvu yari ihari ituma Nyirasafari ahatirwa gusinya amasezerano y'akazi y'igihe kizwi cy'amezi atandatu, kandi yari asanzwe afite amasezerano y'akazi yemewe n'amategeko, y'igihe kitazwi, nta n'impamvu yabayeho ituma ayo masezerano aseswa. Bityo ibyo Urukiko Rwisumbuye rwemeje ko UAAC yasheshe amasezerano nta mpamvu bifite ishingiro.

2. Kumenya niba Nyirasafari yaragombaga guhabwa indishyi zo kudahabwa icyemezo cy'umukoresha.

[12] Uhagarariye UAAC avuga ko amafaranga 50.000 y'icyemezo cy'akazi Nyirasafari yagenewe nta shingiro afite kuko umukoresha we atakimwimye.

[13] Nyirasafari avuga ko iyi mpamvu y'ubujurire nta shingiro ifite kuko nk'uko umucamanza yabisobanuye, nta bushake bwo gutanga icyo cyemezo UAAC yigeze igaragaza, kuko bitumvikana uburyo icyo cyemezo cyari kuba gihari ntagihabwe igihe yahabwaga umushahara we wa nyuma, ibyo bikaba bigaragaza ubushake buke bwo kugitanga.

[14] Urukiko rurasanga ibyo uhagarariye UAAC avuga ko Nyirasafari atahabwa indishyi zo kudahabwa icyemezo cy'imirimo yakozwe kuko ngo umukoresha we atakimwimye, nta shingiro bifite kuko icyo ingingo ya 38 y'itegeko rigenga umurimo mu Rwanda ivuga ko gitangirwa indishyi, ni ukuba umukoresha yanze gutanga icyemezo, kuba atashyizemo kimwe mu bisabwa, cyangwa kuba agitanze atinze. Kwanga gutanga icyemezo, si ukuvuga ngo umukozi yagisabye umukoresha arakimwima, ahubwo ni ukuvuga ko umukoresha atagihaye umukozi mu gihe itegeko ribiteganyamo. Ingingo imaze kuvugwa, mu gika cyayo cya mbere, ivuga ko iyo igihe

cy'amasezerano y'akazi kirangiye (à l'expiration du contrat de travail), umukoresha agomba guha umukozi umushahara wa nyuma hamwe n'icyemezo ko yamukoreye. Iyi ngingo igaragaza ko umukozi atagombera gusaba icyemezo cy'imirimo yakoze, kimwe n'uko atagombera gusaba umushahara we wa nyuma umukoresha amugomba. Ahubwo umukoresha aribwiriza akabimuha "iyo igihe cy'amasezerano kirangiye". Kuba UAAC itarabikoze, Urukiko Rwisumbuye rukayitegeka guha Nyirasafari indishyi, ntaho rwanyuranyije n'amategeko kuko ibyo bivuga ko yanze kumuha icyemezo cy'imirimo yakoze. Bityo ingingo y'ubujurire nta shingiro ifite.

3. Kumenya niba Nyirasafari yaragombaga guhabwa amafaranga y'ikurikiranarubanza.

[15] Uhagarariye UAAC avuga ko amafaranga y'ikurikiranarubanza Nyirasafari yagenewe atari ngombwa kubera ko ariwe wishoye mu manza.

[16] Nyirasafari avuga ko iyi mpamvu y'ubujurire nta shingiro ifite kuko mu bushishozi bw'urukiko rwamugeneye amafaranga 50.000 y'ikurikiranarubanza, mu gihe yari yasabye amafaranga 200.000. Avuga ko atariwe wishoye mu rubanza, ahubwo ni UAAC yamushoye mu manza, kuko yamwirukanye mu buryo bunyuranyije n'amategeko, kandi yanga kumukemurira ikibazo, bityo niyo yagombaga kwirengera ingaruka.

[17] Urukiko rurasanga ibyo uhagarariye UAAC avuga ko amafaranga y'ikurikiranarubanza Nyirasafari yagenewe atari ngombwa kubera ko ariwe wishoye mu manza, nta shingiro bifite kuko Urukiko Rwisumbuye rwari rumaze kwemeza ko Nyirasafari yirukanywe nta mpamvu, ni ukuvuga ko byari bigaragaye ko UAAC ariyo ahubwo yamushoye mu manza nyuma yo kumwirukana nta mpamvu ntimuhe n'ibyo yasabaga kubera iryo kosa, bityo yagombaga kwishyura ibyo yakoresheje akurikirana urubanza.

4. Ubujurire bwuririye ku bundi.

[18] Nyirasafari asaba ko amafaranga y'ikurikiranarubanza yari yagenewe yongerwa agahabwa amafaranga 200.000 kuko amafaranga 50.000 yari yagenewe ari make. Asaba kandi kugenerwa indishyi z'akababaro z'ibyo yatakaje mu gufotoza impapuro, ingendo, itumanaho, gukoresha imyanzuro, amafunguro, byose bingana n'amafaranga 250.000, hakiyongeraho n'indishyi z'ubukererwe zingana n'amafaranga 250.000, yose hamwe akaba amafaranga 500.000. Asaba na none guhabwa amafaranga y'insimburamubyizi, kuko iyo yitabye Urukiko aba aretse akazi kamwinjiriza 20.000 ku munsi, bityo ayo mafaranga akaba yayahabwa kuri buri munsi yitabye, kugeza no ku munsi wo gusomerwa, agasubizwa n'amafaranga 7.200 y'igarama yatanze mu Rukiko Rwisumbuye, yose hamwe akaba amafaranga 825.200.

[19] Urukiko rurasanga amafaranga 50.000 y'ikurikiranarubanza Nyirasafari yagenewe n'Urukiko Rwisumbuye, ayo mafaranga akaba avuga ko ari make, ahubwo agasaba ko yakongerwa agahabwa amafaranga 200.000, nta shingiro bifite kuko ayo mafaranga yayagenewe mu bushishozi bw'urukiko, kuko atashoboye kugaragaza amafaranga nyayo yakoresheje, kugira ngo abe ariyo asubizwa. No muri uru rukiko nta bimenyetso agaragaza by'amafaranga nyayo yakoresheje, bityo akwiye kugumana amafaranga 50.000 yagenewe mu rubanza rwajuririwe.

[20] Urukiko rurasanga amafaranga Nyirasafari asaba, avuga ko ari indishyi z'akababaro z'ibyo yatakaje mu gufotoza impapuro, ingendo, itumanaho, gukoresha imyanzuro, amafunguro, byose bingana n'amafaranga 250.000, ntiyayahabwa yose, kuko atagaragaza ibimenyetso ko ayo mafaranga yose yayakoresheje koko. Ahubwo akwiye kuyagenerwa mu bushishozi bw'urukiko, bityo akaba agenewe amafaranga 50.000 y'ikurikiranarubanza ku rwego rw'ubujurire. Ibyo asaba ko hiyongeraho n'indishyi z'ubukererwe zingana n'amafaranga 250.000, nta shingiro bifite kuko ubwo bukererwe ntabwo asobanura ubwo aribwo.

[21] Urukiko rurasanga amafaranga 20.000 y'insimburamubyizi Nyirasafari asaba, kuko ngo iyo yitabye Urukiko aba aretse akazi kamwinjiriza amafaranga 20.000 ku munsi, ntayo yahabwa kuko atagaragaza ibimenyetso ko ayo mafaranga ayatakaza koko, ariyo mpamvu amafaranga 50.000 y'ikurikiranarubanza yagenewe ahagije.

[22] Urukiko rurasanga amafaranga y'amagarama Nyirasafari asaba gusubizwa agomba kuyasubizwa igihe cyo kurangiza urubanza, kuko umuburanyi utsinzwe urubanza ariwe wishyura amagarama yose y'urubanza, nk'uko biteganywa n'ingingo ya 362 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano.

III. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko ubujurire bwa UAAC nta shingiro bufite.

[24] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Nyirasafari Edissa bufite ishingiro kuri bimwe.

[25] Rwemeje ko imikirize y'urubanza RSOC 0031/13/TGI/GSBO, rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, ku wa 05/09/2013, idahindutse, uretse ku byerekeye amafaranga y'ikurikiranarubanza.

[26] Rutegetse Adventist University of Central Africa (UAAC) guha Nyirasafari Edissa amafaranga 50.000 y'ikurikiranarubanza, yiyongera ku mafaranga yagenewe mu rubanza rwajuririwe.

[27] Ruyitegetse gutanga amagarama y'uru rubanza, angana n'amafaranga 75.000, ihereye ku mafaranga yatanzeho ingwate y'amagarama.