MUREKEZI v AKARERE KA MUHANGA

[Rwanda URUKIKO RUKURU, URUGEREKO RWA NYANZA – RADA 00011/2021/HC/NYZ – (Ndagijimana, J. P.) 10 Mutarama 2023]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Kugaragaza ibimenyetso – Inshingano y'urega yo kugaragaza ibimenyetso – Urega agomba kugaragaza ibimenyetso by'ibyo aregera, iyo abibuze, uwarezwe aratsinda.

Incamake y'ikibazo: Murekezi wari umuyobozi w'ishami ry'iterambere ry'ishoramari n'umurimo (BDE) mu Karere ka Muhanga yareze aka Karere mu Rukiko Rwisumbuye rwa Muhanga avuga ko Ubuyobozi bwako bufatanyije n'izindi nzego zitandukanye bwamuhatiye kwandika ibaruwa isaba guhagarika akazi mu gihe kitazwi akurwa ku kazi.

Avuga ko amaze guhatirwa kwegura yajuririra icyo cyemezo ku Buyobozi bw'Akarere ka Muhanga asaba ko kasubira kuri icyo cyemezo ariko bumusubiza buvuga ko guhagarika akazi mu gihe kitazwi ari icyemezo cy'umukozi wa Leta kigaragaza mu nyandiko ubushake bwe bwo guhagarika akazi ku mwanya w'umurimo yakoraga kubera impamvu ze bwite. Yajuririye Komisiyo y'Abakozi ba Leta asaba kurenganurwa, imusubiza ko yasabye guhagarika akazi mu gihe kitazwi atabyemerewe, inandikira Akarere ka Muhanga igasaba gukemura icyo kibazo kuko atari abyemerewe n'amategeko n'uko agomba gusubizwa mu kazi, ariko uwo mwanzuro ntiwashyirwa mu bikorwa.

Akarere kavuga ko ikibazo cye kirimo gukurikiranywa ku bufatanye na Komisiyo y'igihugu ishinzwe abakozi ba Leta ariko hashize amezi atandatu (6) ikibazo kitari cyakemurwa uko yabyifuzaga. Akarere ko kabonaga ko ibyo avuga atari ukuri.

Uko kutumvikana ku kibazo cye, byatumye asaba Urukiko Rwisumbuye ko yahabwa indishyi zikomoka ku gukurwa mu mirimo ku ngufu. Urukiko rwemeje ko ikirego cya Murekezi nta shingiro gifite kubera ko atatanze ibimenyetso ndetse akaba yiyemerera imbere y' Urukiko ko ari we wiyandikiye ibaruwa isezera ku kazi.

Urega yajuririye Urukiko Rukuru, Urugereko rwa Nyanza avuga ko ibyo Urukiko rwabanje rwasobanuye atari ukuri kubera ko asanga ibaruwa yanditse atari iyo gusezera ku kazi ahubwo ari iyo guhagarika akazi mu gihe kitazwi, nayo avuga ko yandikishijwe ku ngufu bityo Urukiko ruca urubanza ku kitararegewe runaha agaciro imyiregurire y'Akarere ruvuga ko nta bimenyetso yarugaragarije kuri izo ngufu yashyizweho.

Muri uru rubanza habanje gusuzumwa ikibazo cyo kumenya niba Urukiko Rwisumbuye rwarasuzumye icyo rutaregewe kuko Murekezi avuga ko yarusabye guhabwa indishyi zikomoka ku kweguzwa ku ngufu, nyamara rwo rusuzuma ibijyanye no kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko atari byo rwaregewe ndetse atari na byo byakozwe.

Akomeza asobanura ko yagaragaje ibimenyetso by'uko yategetswe kwegura ku kazi ariko Urukiko ruvuga ko ari ntakimenyetso kigaragaza agahato yashyizweho rwirengagiza ko yafungiranywe mu cyumba harimo Umuyobozi w'Akarere,Umuyobozi w'Intara y'Amajyepfo, uwa Polisi ndetse na INSS n'izindi nzego z'umutekano we n' abo bari kumwe babwirwa ko utandika yegura akurikiranwa ku bindi byaha ubwo bahabwa *formulaire* barayuzuza ariko Urukiko rurabyirengagiza kimwe n'imvugo z'abatangabuhamya harimo n'itangazamakuru byagarutse kuri icyo kibazo.

Akarere kavugako ibyo Urega avuga nta shingiro bifite kubera ko Urukiko rwafashe icyemezo ku cyasabwe cyo kwemeza ko yirukanywe mu buryo bunyuranije n'amategeko, mu gihe gahamya ko katamwirukanye muri ubwo buryo, nta n'ubwo kamweguje ku ngufu, dore ko Urukiko Rwisumbuye rwasobanuye ko ari imbere yarwo mu iburana rye yemera ko ari we wiyandikiye ibaruwa isezera ku kazi arayisinya, arabyemererwa, ayo magambo akaba amutsindisha.

Ku kibazo cyo kumenya niba Urukiko Rwisumbuye rwarirengagije ibimenyetso bya Murekezi ruha agaciro ukwiregura kw'Akarere ka Muhanga kandi ugukurwa mu mirimo kwe kwari kunyuranyije n'amategeko, Murekezi asobanura ko ibyasobanuwe mu rubanza rujuririrwa atari ukuri, ko n'ubwo Urukiko rwavuze ko Komisiyo yaje gusubira ku cyemezo yafashe cyo kunsubiza mu kazi itari ikwiriye kongera kwivuguruza kuko ibyemezo byayo uwo bitanogeye abishyikiriza Urukiko. Ikindi ni uko Urukiko rwavuze ko iyo Komisiyo yasubiye ku cyemezo cyayo ngo kuko yaje gusanga narasabye ibyo ntemererwa n'amategeko, ko ibyo atari akuri kubera ko umukozi wa Leta usabye guhagarika akazi mu gihe kitazwi, iyo itegeko ritabimwemerera akomeza kuba umukozi mu rwego yakoragamo. Ibi byose Urukiko rwabyirengagije nkana ruvuga ko yeguye kubushake bwe kandi atari cyo cyabaye.

Akarere kavuga ko Urukiko Rwisumbuye rwemeje ko ikirego rwashyikirijwe na Murekezi nta shingiro kuko atigeze yirukanywa mu buryo bunyuranije n'amategeko, rushingiye ko ubwe ari we wiyandikiye ibaruwa isezera ku kazi kandi na we akaba abyemera. Nta bimenyetso atanga bishyigikira imvugo ye, byerekana uburyo kamweguje, uburyo yeguye n'icyo yakoze nyuma yo kweguzwa, ko atagaragaza imbaraga yaba yarashyizweho imiterere yazo, anerekane uburyo atabashije kuzigobotora yanga kwegura, ko ahubwo hari ibimenyetso bigaragaza ko yasabye guhagarika akazi mu gihe kitazwi.

Incamake y'icyemezo: Urega agomba kugaragaza ibimenyetso by'ibyo aregera, iyo abibuze, uwarezwe aratsinda. Bityo, Murekezi Karangwa ntiyubahirije inshingano ye yo kugaragaza ibimenyetso nk'urega by'uko ari Akarere ka Muhanga kamwirukanye mu kazi cyangwa ngo agaragaze imbaraga zidasanzwe yashyizweho atashoboraga kwigobotora kugira ngo atandika ibaruwa yo kwegura ku mirimo yakoraraga, none akaba atsindwa n'ako Karere ka Muhanga.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Amagarama aherera ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko N° 017/2020 ryo ku wa 07/10/2020 rishyiraho sitati rusange igenga abakozi ba Leta, ingingo ya 74.

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 11, 12, 111, 150 n'iya 152.

Itegeko N° 86/2013 ryo kuwa 11/09/2013 ryashyiragaho Sitati rusange igenga abakozi ba Leta, ingingo ya 87 n'iya 90.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'iya 100.

Imanza zifashishijwe:

NAEB na SINFOTEC Sarl, RADA 0025/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25 Mata 2014.

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga ari Murekezi Karangwa Gaspard wari umuyobozi w'ishami ry'iterambere ry'ishoramari n'umurimo (BDE) mu Karere ka Muhanga urega ako Karere avuga ko Ubuyobozi bwako bufatanyije n'izindi nzego zitandukanye zirimo Ubuyobozi bw'Intara, NSS, Police, RIB n'Ubuyobozi bw'Ingabo muri ako Karere, bwamuhatiye kwandika ibaruwa isaba guhagarika akazi mu gihe kitazwi akurwa ku kazi.

[2] Yavugaga ko amaze guhatirwa kwegura yajuririra icyo cyemezo ku Buyobozi bw'Akarere ka Muhanga asaba ko kasubira kuri icyo cyemezo kamaze kumusubiza ku wa 26/08/2020 kavuga ko

guhagarika akazi mu gihe kitazwi ari icyemezo cy'umukozi wa Leta kigaragaza mu nyandiko ubushake bwe bwo guhagarika akazi ku mwanya w'umurimo yakoraga kubera impamvu ze bwite, ku wa 20/08/2020 ajuririra Komisiyo y'Abakozi ba Leta asaba kurenganurwa, maze ku wa 15/02/2021 iyo komisiyo imusubiza ko yasabye guhagarika akazi mu gihe kitazwi atabyemerewe,inandikira Akarere ka Muhanga igasaba gukemura icyo kibazo cyo guhagarika akazi mu gihe kitazwi, kuko atari abyemerewe n'amategeko n' uko agomba gusubizwa mu kazi, ariko uwo mwanzuro ntiwashyirwa mu bikorwa Akarere kavuga ko ikibazo cye kirimo gukurikiranywa ku bufatanye bw'Akarere na Komisiyo y'igihugu ishinzwe abakozi ba Leta, kugera hashize amezi atandatu(6) ikibazo kitari cyakemurwa uko yabyifuzaga.

[3] Akarere ka Muhanga ko kabonaga muri make ko ibyo avuga atari ukuri kubera ko ku wa 29/01/2020 Murekezi Karangwa Gaspard amaze kwandikira ubuyobozi bwako asaba guhagarika akazi mu gihe kitazwi, ku wa 31/01/2020, bukamusubiza bumwemerera, ku wa 28/07/2020 akongera kubwandikira ajuririra icyo cyemezo kimwemerera guhagarika akazi mu gihe kitazwi avuga ko yabyemerewe igihe cy'imyaka itatu (3) umukozi ubisaba agomba kuba yujuje giteganywa n'amategeko cyari kitaragera nyuma ikibazo kigasuzumwa na Komisiyo y' abakozi ba Leta (PSC) Akarere kamaze kuyisaba ku wa 25/02/2021 kongera gusuzuma icyemezo cyayo cyo kuba yasubizwa mu kazi, Akarere kasanze atari ko katumye asaba guhagarika akazi, ko icyo yasabye ari cyo yahawe, maze ku wa 19/07/2021, nyuma yo gusesengura neza ikibazo cye iyo komisiyo yongeye kumwandikira imumenyesha ko icyemezo cyayo yo ku wa 15/02/2021 cyasabaga ko asubizwa mu kazi gihindutse kuko yaje gusanga yarasabye ibyo atemererwa n'amategeko, bityo ko ibyo yisabiye atari byo yagira ikimenyetso.

[4] Uko kutumvikana kuri icyo kibazo byatumye ku wa 31/05/2021 Murekezi Karangwa Gaspard atanga ikirego mu Rukiko Rwisumbuye rwa Muhanga asaba guhabwa indishyi zikomoka ku gukurwa mu mirimo ku ngufu, urwo rubanza ruraburanishwa , rucibwa ku wa 11/11/2021 Urukiko rwemeza ko ikirego cya Murekezi Karangwa Gaspard nta shingiro gifite kubera ko atatanze ibimenyetso n'uko yiyemereye imbere y' Urukiko ko ari we wiyandikiye ibaruwa isezera ku kazi,ajurira avuga ko ibyo urwo Rukiko rwasobanuye atari ukuri kubera ko asanga ibaruwa yanditse atari iyo gusezera ku kazi ahubwo ari iyo guhagarika akazi mu gihe kitazwi,nayo avuga ko yandikishijwe ku ngufu bityo Urukiko ruca urubanza ku kitararegewe runaha agaciro imyiregurire y' Akarere ruvuga ko nta bimenyetso yarugaragarije kuri izo ngufu yashyizweho.

[5] Ibibazo bisuzumwa muri uru rubanza ni ibijyanye no:

- Kumenya niba Urukiko Rwisumbuye rwa Muhanga rwarasuzumye icyo rutaregewe.
- Kumenya niba Urukiko Rwisumbuye rwarirengagije ibimenyetso bya Murekezi Karangwa Gaspard ruha agaciro ukwiregura kw'Akarere ka Muhanga kandi ugukurwa ku kazi kwe kwari kunyuranyije n'amategeko.
- Indishyi zisabwa muri uru rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Urukiko Rwisumbuye rwa Muhanga rwarasuzumye icyo rutaregewe

[6] Murekezi Karangwa Gaspard n' umwuganira bavuga ko yaregeye Urukiko Rwisumbuye rwa Muhanga arusaba guhabwa indishyi zikomoka ku kweguzwa (gukurwa mu mirimo ya Leta ku ngufu), nyamara Urukiko rusuzuma ibijyanye no kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko atari byo rwaregewe ndetse atari na byo byakozwe kuko yahatiwe kwandika ibaruwa isaba guhagarika akazi mu gihe kitazwi, ko Akarere kamusubiza kashingiye ku ngingo ya 87 igika cya mbere n'icya kabiri

cy'Itegeko N^{o} 86/2013 ryo kuwa 11/09/2013 ryashyiragaho Sitati rusange igenga abakozi ba Leta igaragaza neza ko atari yemerewe gusaba guhagarika akazi mu gihe kitazwi.

[7] Basobanura ko bagaragaje ibimenyetso by'uko Murekezi Karangwa Gaspard yategetswe kwegura ku kazi ariko Urukiko ruvuga ko ari ntakimenyetso kigaragaza agahato yashyizweho rwirerengagiza ko yafungiranywe mu cyumba harimo Umuyobozi w'Akarere ka Muhanga, Umuyobozi w'Intara y'Amajyepfo, uwa Polisi ndetse na INSS n'izindi nzego z'umutekano we n'abo bari kumwe babwirwa ko utandika yegura akurikiranwa ku bindi byaha ubwo bahabwa "*formulaire*" barayuzuza ariko Urukiko rurabyirengagiza kimwe n'imvugo z'abatangabuhamya harimo n'itangazamakuru byagarutse kuri icyo kibazo, ko kandi atari kuba avuye mu bitaro ngo ahite yegura ku bushake kandi yari akeneye amafaranga yo kwishyura anivuza akoresheje ubwishingizi, ko rero hashingiwe ku mategeko anyuranye, atari kuvutswa uburenganzira bwo kugira uruhare mu buyobozi bw'Igihugu no kujya mu mirimo ya Leta, ubw' uko Abanyarwanda bose bafite uburenganzira bwo kugira uruhare mu buyobozi bw'Igihugu, baba babukoresheje ubwabo cyangwa se babinyujije ku babahagarariye bihitiyemo nta gahato n' uko bose bafite uburenganzira bungana bwo kujya mu mirimo ya Leta hashingiwe ku bumenyi n'ubushobozi bwabo.

[8] Me Mbonigaba Eulade uburanira Akarere ka Muhanga avuga ko ibyo Murekezi Karengwa Gaspard n'umwunganira bavuga nta shingiro bifite kubera ko Urukiko rwafashe icyemezo ku cyasabwe kuko ubwe ari we wareze asaba ko Urukiko rwemeza ko yirukanywe mu buryo bunyuranije n'amategeko, ko kandi uko byasobanuwe no ku rwego rwa mbere Akarere ka Muhanga gahamya ko katamwirukanye mu buryo bunyuranyije n'amategeko nta n'ubwo kamweguje ku ngufu, ko Urukiko Rwisumbuye rwasobanuye ko ari imbere yarwo mu iburana rye yemera ko ari we wiyandikiye ibaruwa isezera ku kazi arayisinya, arabyemererwa, bityo rwemeza ko ayo magambo yivugiye mu Rukiko amutsindisha, ko rwanasanze yakabaye aburana iyo Akarere kamuhagarika mu kazi mu gihe kitazwi kandi ntabyo yagasabye, bityo ko kuba urega atagaragaza ibimenyetso by'uko ari Akarere ka Muhanga kamwirukanye mu Kazi cyangwa ngo agaragaze imbaraga zidasanzwe yashyizweho atashoboraga kwigobotora kugira ngo atandika ibaruwa yo kwegura kumirimo yakoraga ikirego cye nta shingiro gifite.

[9] Asobanura kandi ko ibyo Murekezi Karangwa Gaspard aburanisha bidashoboka kubera ko biramutse byarabaye haba harabaye icyaha urega akaba yakagombye kuba yarabiregeye nk'icyaha ,kuba bitararegewe rero akavuga ko Urukiko rutabiha ishingiro, ko kubijyanye n'abatangabuhamya Murekezi n'umwunganira bavuga ko birengagijwe nabyo nta shingiro bifite kubera ko Urukiko ari rwo ruha agaciro imvugo y'abatangabuhamya kandi ubuhamya akaba ari ikimenyetso cyavuguruza inyandiko bwite uregwa yitangiye aho yanditse yegura ku kazi ke yari ashinzwe, ko rero abatangabuhamya batari bakenewe kubera ko n'abo atanga avuga ko bahuje ikibazo, bityo Urukiko rukaba rwarashishoje mu kutababaza kuko niba ibyo avuga ari byo bari kuba bafite inyungu mu rubanza.

[10] Akomeza avuga ko n'ibyo Murekezi yavuze ko yeguye atari yamara imyaka itatu (3) ariko bikemerwa nta gaciro byagira kuko ataburanisha amakosa ye, kubera ko ikosa ritaba iry'Akarere ahubwo ryaharirwa uwasabye ibyo avuga ko atemerewe kandi biramutse bibaye ikosa byabazwa umukozi wabimwemereye ku giti cye, ko kandi icyo yasabye atari mise en disponibilite ahubwo we icyo yakoze ari *demission* yakwemerwa n'iyo yaba yarakoze umunsi umwe , ko kandi atagaragaza ko icyo kibazo kikimara kuba uwo yaba yaratakiye avuga ko yasinyishijwe ku gahato ubusabe bwe ntibwahabwa agaciro, ko niba kandi Murekezi yaremerewe gusaba kureka akazi kandi imyaka itatu (3) atangiye akazi ku Karere itararangira, atakabaye abigira impamvu yo kuba yaremerewe kubera ko niba atari yakagize uburenganzira bwo gusaba guhagarika akazi, ariko akabirengaho akabisaba, atagaragaza icyo byamwangiririje nyuma y'uko abyemerewe, kuko ari we wabanje gukora ikosa ryo kubisaba kandi atabyemerewe, ko rero uyu munsi adakwiye guhindukira ngo ashingire ku makosa yakoze ngo agire ibyo asaba, ko yakabaye aburana iyo Akarere kamuhagarika mu kazi mu gihe kitazwi kandi ntabyo yagasabye, ko ari nacyo Komisiyo y'Abakozi ba Leta yashingiyeho isubira ku cyemezo yari yafashe cyo

gusaba ko Murekezi Karangwa asubizwa mu kazi, ko rero Akarere katigeze kamwirukana, ko icyabaye ari uko yemerewe guhagarika akazi mu gihe kitazwi kandi ibyo akaba atari ukwirukana umukozi mu buryo bunyuranyije n'amategeko.

UKO URUKIKO RUBIBONA

[11] Mu kuvuga ko Urukiko Rwisumbuye rwaciye urubanza ku kitararegewe, Murekezi Karangwa Gaspard n'umwunganira bavuga ko yaregeye indishyi zikomoka ku kweguzwa yita gukurwa mu mirimo ya Leta ku ngufu nyamara Urukiko rusuzuma ibijyanye no kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko atari byo rwaregewe ndetse atari na byo byakozwe kuko yahatiwe kwandika ibaruwa isaba guhagarika akazi mu gihe kitazwi, bagashingira ku biteganywa n'ingingo ya 87 igika cya mbere n'icya kabiri y'Itegeko Nº 86/2013 ryo kuwa 11/09/2013 ryashyiragaho Sitati rusange igenga abakozi ba Leta ryakurikizwaga yavugaga ku bijyanye no gusaba guhagarika akazi mu gihe kitazwi bavuga ko igaragaza neza ko atari yemerewe gusaba guhagarika akazi mu gihe kitazwi[1] bihura n'ibiteganywa ubu mu ngingo ya 74 y'Itegeko Nº 017/2020 ryo ku wa 07/10/2020 rishyiraho sitati rusange igenga abakozi ba Leta, agace ka mbere n'aka kabiri (2).

[12] Rusuzumye iyo miburanire ye n'uko yaburanye ku rwego rwa mbere, rugasanga ikigaragara ari uko yaburanye agaragaza ko atavuye ku kazi ku bushake, Akarere ka Muhanga kamusubiza ko kemeye uguhagarika akazi kwe avuga ko byakozwe ku buryo bunyuranyibiye n' amategeko, bityo rugasanga ibyo yagiye aburanisha birebwe mu buryo bwagutse bigaragaza ko byafatwa nko gusezererwa mu kazi mu buryo bunyuranyije n' amategeko uko byari mu bibazo byasuzumwe n'Urukiko Rwisumbuye rwa Muhanga.

[13] Rushingiye kandi ku bimaze gusobanurwa n'ibiteganywa n'ingingo ya 87 igika cya mbere n'icya kabiri y'Itegeko Nº 86/2013 ryo kuwa 11/09/2013 ryavuzwe, rugasanga kuba iyo ngingo yaba yaragarutsweho mu byemezo byafashwe no mumiburanire yabanje ku itakamba ubwabyo bidasobanura ko ibikorwa avuga ko byamukorewe bigize gusa uguhagarika akazi igihe kitazwi (*leave of absence for non-specific period/ mise en disponibilité pour une durée indéterminée*) ngo hirengagizwe ko ibyo asobanura mu miburanire ye byanafatwa nko kureka akazi burundu (*deliberate resignation/Démission volontaire*) biteganywa mu ngingo ya 90 y'iryo Tegeko kuko ibyo byombi bigusha ku kuva cyangwa kuvanwa mu kazi, bityo kuba Urukiko Rwisumbuye rwarasuzumye ikibazo kijyanye no kumenya niba Murekezi Karangwa Gaspard yarirukanywe mu kazi n'Akarere mu buryo bunyuranyije n'amategeko, rugasanga urwo Rukiko nta kosa rwakoze, kubera ko uru Rukiko runasanga ibivuzwe haruguru bishimangirwa n'uko ikirego yatanze ku rwego rwa mbere giteye aho agira ati: gutegeka Akarere ka Muhanga gutanga indishyi zikomoka ku kweguzwa (gukurwa mu mirimo ya Leta) ku ngufu.

[14] Byongeye kandi kuba haba hari amabaruwa arimo iyo na we yandikiwe n'Ubuyobozi bw'Akarere ku wa 31/01/2020 ifite nimero 796/07.0207 imwemerera guhagarika akazi mu gihe kitazwi, rusanga na zo ubwazo zitatesha ireme ibigaragara mu miburanire ye uko byasobanuwe, dore ko n'iyo yakwandika asaba guhagarika akazi mu gihe kitazwi akabyemererwa atari abikwiye bitaba impamvu yaburanishwa hashingiwe kuri uko kwibeshya mu gihe byagaragara ko ari we wabyisabiye cyangwa nta bimenyetso bigaragaza ko yahatiwe kubisaba uko Urukiko Rwisumbuye rwabibonye. Ku bw'ibyo n'ibiburanishwa na Murekezi Karangwa Gaspard n'umwunganira by'uko Atari yemerewe guhagarika akazi igihe kitazwi kandi atari yakamara imyaka itatu (3) ku mwanya yari arimo nk' uko biteganywa n'

[1] Ingingo ya 87 y'Itegeko Nº 86/2013 ryo kuwa 11/09/2013 ryashyiragaho Sitati rusange y'abakozi ba Leta iteganya ko gusaba guhagarika akazi mu gihe kitazwi ni icyemezo cy'umukozi wa Leta kigaragaza mu nyandiko ubushake bwe bwo guhagarika akazi ku mwanya w'umurimo yakoraga kubera impamvu ze bwite. Umukozi wa Leta agira uburenganzira bwo gusaba guhagarika akazi mu gihe kitazwi iyo amaze nibura imyaka itatu (3) ku mwanya w'umurimo asabiraho guhagarika akazi mu gihe kitazwi. Iyo umukoziwa Leta yemerewe guhagarika akazi mu gihe kitazwi aba avuye mu bakozi ba Leta kandi umwanya yari arimo ushakirwa undi mukozi.

ingingo ya 87 y’ Itegeko Nº 86/2013 ryo kuwa 11/09/2013 ryavuzwe ku buryo yaba yarakuwe mu mirimo ya Leta hirengagijweibiteganywa n’ iyo ngingo bikaba nta shingiro byahabwa, ahubwo ikibazo kigomba gusuzumwa akaba ari ukumenya niba hari ibimenyetso bye byo kuva mu mirimo ya Leta abihatiwe byirengagijwe.

2. Kumenya niba Urukiko Rwisumbuye rwarirengagije ibimenyetso bya Murekezi Karangwa Gaspard ruha agaciro ukwiregura kw’Akarere ka Muhanga kandi ugukurwa mu mirimo kwe kwari kunyuranyije n’amategeko

[15] Murekezi Karangwa Gaspard n’umwunganira bavuga ko ibyasobanuwe mu rubanza rujuririrwa by’umwihariko ibika bya 13 na 14 byarwo atari ukuri basobanura ko n’ubwo Urukiko rwavuze ko Komisiyo yaje gusubira ku cyemezo yafashe cyo gusubiza Murekezi Karangwa mu kazi, icyo gihe ubwo yamushyiraga mu kazi yari ishingiye ku ngingo ya 87 y’Itegeko rya Sitati rusange yagengaga abakozi ba Leta ryariho icyo gihe, ko iyo komisiyo itari ikwiriye kongera kwivuguruza kuko ibyemezo byayo uwo bitanogeye abishyikiriza Urukiko, ko kandi Murekezi Karangwa Gaspard yari yaramaze kuregerera Urukiko asaba indishyi zo kudasubizwa mu kazi, kandi ajya gutanga icyo kirego akaba yaragiriwe inama n’iyo komisiyo, ko ikindi Urukiko rwavuze ko Komisiyo y’abakozi ba Leta yasubiye ku cyemezo cyayo ngo kuko yaje gusanga Murekezi Karangwa Gaspard yarasabye ibyo atemererwa n’amategeko, ko ibyo atari akuri kubera ko umukozi wa Leta usabye guhagarika akazi mu gihe kitazwi, iyo itegeko ritabimwemerera akomeza kuba umukozi mu rwego yakoragamo, ko atirukanwa nk’uko byagendekeye Murekezi Karangwa Gaspard, ko rero ibyo Urukiko rwabyirengagije nkana ruvuga ko yeguye kubushake bwe kandi atari cyo cyabaye.

[16] Bakomeza bavuga ko n’iyo Murekezi Karangwa Gaspard aza guhagarika akazimu gihe kitazwi kubushake bwe bitari kwemerwa kuko binyuranye n’amategeko, bityoagakomeza gukorera Akarere nta mananiza, ko Urukiko rutari kuvuga ko Akarere katamwirukanye mu buryo bunyuranyije n’amategeko nyamara ubu atakiri umukozi wako, ko ibyasobanuwe n’urwo Rukiko ko Murekezi Karangwa Gaspard yemera ko ari we wiyandikiye ibaruwa isezera ku kazi akayisinya, atari ukuri kuko ibaruwa yahatiwe kwandika itari iyo gusezera ku kazi.

[17] Banavuga ko Murekezi Karangwa Gaspard yategetswe kwandika yegura ku kazi, ko ibyakozwe binyuranye n’amategeko, ko kandi nta bandi batangabuhamya barenga abantu bari muri icyo cyumba, hanirengagijwe ibyavuzwe n'ibinyamakuru, ko atari afite uburwayi bwo mu mutwe ku buryo yari gusezera akazi mu gihe yari arwaye arimo kwivuza akoresheje ubwishingizi bw’ indwara afite n’umwenda wa Banki wishyurwaga ku mushahara we, ko hari n’urutonde rw'abakozi basezerewe umunsi umwe na we mu mabaruwa yabo hakoreshwa amagambo amwe, ko bibaye ngombwa Urukiko rwakwikorera iperereza ku bijyanye n’iryo yeguzwa ku gahato mu nama yiswe iy'imihigo y'Akarere ka Muhanga yo ku wa 29/01/2020, bityo akarenganurwa.

[18] Me Mbonigaba Eulade Uburanira Akarere ka Muhanga avuga ko Urukiko Rwisumbuye rwa Muhanga rwemeje ko ikirego rwashyikirijwe na Murekezi Karangwa Gaspard nta shingiro kuko atigeze yirukanywa mu buryo bunyuranije n’amategeko, rushingiye ko ubwe ari we wiyandikiye ibaruwa isezera ku kazi kandi nawe akaba abyemera, ko Akarere katigeze kamweguza nk’uko abivuga uretse kubivuga mu magambo gusa, nta bimenyetso atanga bishyigikira imvugo ye, byerekana uburyoAkarere kamweguje, uburyo yeguye n'icyo yakoze nyuma yo kweguzwa, ko atagaragaza imbaraga yaba yarashyizweho imiterere yazo, anerekana uburyo atabashije kuzigobotora yanga kwegura, ko ahubwo hari ibimenyetso bigaragaza ko yasabye guhagarika akazi mu gihe kitazwi, ko rero ataburanisha amakosa ye uko byasobanuwe mu myanzuro , n’abatangabuhamya avuga bakaba batarahawe agaciro cyane cyane ko yivugira ko bahuje ikibazo bakaba batavugisha ukuri, kuba atabasha kugaragaza ibimenyetso by'ibyo aregera rero akavuga akwiye gutsindwauko n’ Urukiko Rwisumbuye rwabyemeje.

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[19] Ingingo 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igateganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, ko iyo abibuze uwarezwe atsinda. Ibijyanye n'inshingano y'urega y'uko urega ari we ugomba kugaragaza ukuri kw'ibyo aburana yabibura uwarezwe akamutsinda binahura n'ibyemejwe mu rubanza RADA 0025/12/CS rwo ku wa 25 Mata 2014 haburana NAEB na SINFOTEC Sarl[2].

[20] Mu kwemeza ko Akarere ka Muhanga katirukanye Murekezi Karangwa Gaspard mu buryo bunyuranyije n'amategeko, Urukiko Rwisumbuye rwasobanuye ko nta bimenyetso atanga bishyigikira imvugo ye, byerekana uburyo Akarere kamweguje, imbaraga yashyizweho kugira ngo yegure, ngo yerekane uburyo atabashije kuzigobotora ngo yange kwandika ibaruwa yegura,wenda abihanirwe ariko adashyize umukono ku ibaruwa yiyandikiye asaba guhagarika imirimo yakoraga mu gihe kitazwi ku mpamvu ze bwite, ko kuvuga ko yanditse ibaruwa ashyiramo amakosa no gusiribanga bidakuraho icyo yasabaga (*objet* y'ibaruwa ye) n'umukono yashyize kuri iyo baruwa. Kuba atabasha kugaragaza ibimenyetso by'ibyo aregera, nk'uko ingingo ya 3 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko buri muburanyi agomba kugaragaza ibimenyetso by'ibyo aregera; ibyo bimutsindishwa.

[21] Urwo Rukiko rwanashingiye kandi ku byo Murekezi Karangwa Gaspard yemereye mu iburanisha avuga ko yemera ko ari we wiyandikiye ibaruwa isezera ku kazi arayisinya, arabyemererwa, atagaragaza ibimenyetso by'uko ari Akarere ka Muhanga kamwirukanye mu Kazi, cyangwa ngo agaragaze imbaraga zidasanzwe yashyizweho atashoboraga kwigobotora kugira ngo atandika ibaruwa yo kwegura ku mirimo yakoraraga nk'uko ingingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi iz'umurimo n'iz'ubutegetsi iteganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, rwemeza ko ikirego cye nta shingiro gifite.

[22] Uru Rukiko rusuzumye izo mpamvu zasobanuwe ku rwego rwa mbere n'ibyasobanuwe haruguru mu bijyanye n'inshingano z'urega mu kugaragaza ibimenyetso by'ibyo aregera, runashingiye ku biteganywa n'ingingo ya 150 y'iryo Tegeko Nº 22/2018 ryo ku wa 29/04/2018 rivuzwe by'umwihariko mu gace ka 6^0 iteganya ko ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza ibi bikurikira: …6° ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa. Urukiko rugasanga n' ubundi kuri uru rwego Murekezi Karangwa Gaspard agaruka ku miburanire yo ku rwego rwa mbere, atavuguruza ibyashingiweho kuri urwo rwego birimo kuba ntacyo rwari gushingiraho rumenya niba koko hari agahato yashyizweho agaragaza imbaraga zidasanzwe yashyizweho atashoboraga kwigobotora uko byasobanuwe.

[23] Kuba Murekezi Karangwa Gaspard avuga ko hirengagijwe abatangabuhamya, n'uko hari ikinyamakuru cyanditse ko abakozi benshi b'Akarere basabwe kwandika basezera ku kazi , uru Rukiko rukaba rusanga bitarirengagijwe kuko Urukiko ari rwo rwagombaga kubisuzuma rukamenya agaciro byahabwa, kubera ko nanone Urukiko mu kwemera bimwe mu bimenyetso bimutsindisha bivuguruza ibyo we yabonaga ko byashingirwaho, byongeye kandi, by'umwihariko ku bijyanye n'uko itangazamakuru ryaba ryaragaragaje ko hari abakozi benshi b'Akarere basabwe kwandika basezera ku kazi, bishaka kugaragaza ko ari ikibazo cyaba cyaramenyekanye, rugasanga uretse n'uko Urukiko ari rwo rwagombaga guha agaciro ibyo bimenyetso uko byavuzwe nta n'ikindi cyari gushingirwaho uretse ibimenyetso n'ibindi byasobanuwe mu iburanishahashingiwe ku biteganywa n'ingingo ya 11 y' Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe iteganya ko Umucamanza adashobora gushingira icyemezo cye ku bitagaragajwe mu iburanisha n'uko adashobora kandi no guca urubanza ashingiye ku

[2] Icyegeranyo cy' ibyemezo by'Inkiko, Vol.2, 2015, P. 3.

byo aruziho ku giti cye ,bityo kuba Murekezi Karangwa Gaspard atarubahirije inshingano ye yo kugaragaza ibyo bimenyetso nk'urega , Akarere ka Muhanga kagomba kumutsinda.

[24] Rugasanga kubw'ibyo n'iperereza risabwa mu rwego rwo gushakisha ibimenyetso bitarugaragarijwe, ryakorwa ahabereye inama Murekezi Karangwa Gaspard n'umwunganira bavuga ko yiswe iy'imihigo y'Akarere ka Muhanga yo ku wa 29/01/2020 nta gaciro ryahabwa, dore ko Urukiko ari rwo rusuzuma niba iperereza rishobora gukorwa rwaba rubyibwirije cyangwa rubisabwe n'umwe mu baburanyi uko biteganywa n'ingingo ya 100 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe.

3. Kumenya ibijyanye n'indishyi zatangwa muri uru rubanza

[25] Murekezi Karangwa Gaspard n' umwunganira bavuga ko Urukiko rujuriwe rwazasuzuma ko Murekezi Karangwa Gaspard akwiye guhabwa indishyi zingana n'umushahara yakoreraga kuva igihe yahagarikiwe ku kazi hakuweho imisoro n'ibindi umukozi wa Leta akurwa ku mushahara ku geza igihe azasubirizwa mu kazi kuko yarenganye, mu gihe Urukiko rwaba rwemeje ko icyemeze cy'Urukiko Rwisumbuye rwa Muhanga kivanyweho Urukiko kandi rukamugenera indishyi z'ikurikiranarubanza zingana na 3 500 000 frw n'igihembo cy'avoka ndetse no gusubizwa igarama ringana 60 000 frw , izo asabwa ntizihabwe ishingiro kuko yarenganyijwe.

[26] Me Mbonigaba Eulade uburanira Akarere ka Muhanga avuga ko indishyi Karangwa yaka nta shingiro zahabwa kuko Akarere katigeze kamwirukana cyangwa ngo kamweguze nk'uko we abivuga, ko ahubwo icyabaye ari uko yemerewe guhagarika akazi bikaba atari ikosa, bityo indishyi asaba aramutse azihawe akaba yaba ageze ku mugambi we wo guhuguza Akarere , ko ahubwo kubera gukomeza gusiragizwa mu Nkiko na Karangwa nta mpamvu Akarere ka Muhanga gasaba Urukiko kumutegeka guha Akarere indishyi zingana na 2.000.000Frw ay'ikurikirana rubanza 500.000 frw n'igihembo cya Avocat cya 500.000 Frw.

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[27] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, ko ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo …, ingingo ya 152 y'iryo Tegeko yo igateganya ko uregwa mu Rukiko rujuririrwa ashobora na we kugira ibyo asaba yiregura naho iya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe igaha umuburanyi inshingano yo kugaragaza ukuri kw' ibyo avuga.

[28] Rushingiye ku bimaze gusobanurwa rugasanga indishyi zisabwa na Murekezi Karangwa Gaspard ntazo yahabwa kuko urubanza rumutsinda, naho izisabwa n'Akarere ka Muhanga, zikaba zigomba kugenwa mu bushishozi bw'Urukiko kuko rusanga izisabwa ari nyinshi, kandi ntabindi bimenyetso bizishyigikiye rwabonye uretse gusa kuba ikidashidikanywaho ari uko indishyi z'ikurikiranarubanza rusanga ari ngombwa kubera gusiragizwa mu manza, Akarere ka Muhanga kakaba kagenewe ibihumbi magana atanu (500.000 Rfws) kagomba kwishyurwa na Murekezi Karangwa Gaspard, ku bw'ibyo imikirize y'urubanza RAD 00004/2021/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 11 /11/ 2021 ikaba igomba guhinduka kubijyanye n'izo ndishyi zitanzwe kuri uru rwego.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeje ko ubujurire bwatanzwe na Murekezi Karangwa Gaspard nta shingiro bufite.

[30] Rwemeje ko ubujurire bw'Akarere ka Muhanga bwuririye ku bundi bufite ishingiro kuri bimwe.

[31] Rutegetse Murekezi Karangwa Gaspard kwishyura Akarere ka Muhanga indishyi zingana n'amafaranga ibihumbi magana atanu (500.000 Frws) yiyongera ku yo yaciwe ku rwego rwa mbere akayishyura ku neza kuva uru rubanza rubaye ndakuka, bitaba ibyo agakurwa mu bye ku ngufu za Leta.

[32] Rutegetse ko imikirize y'urubanza RAD 00004/2021/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 11 /11/ 2021 ihindutse gusa ku birebana n'indishyi.

[33] Rutegetse ko amafaranga yatanzweho ingwate mu kujurira ahwanye n'ibyakozwe muri uru rubanza akaba aheze mu isanduku ya Leta.