

## MULINDAHABI v. EWSA

[Rwanda URUKIKO RW'IKIRENGA – RADA0015/13/CS (Kanyange, P.J., Mukandamage na Rugabirwa, J.) 08 Ugushyingo, 2013]

*Amategeko y'umurimo – Amasezerano y'akazi – Imiterere y'umurimo w'umukozi w'ikigo cya Leta wasinye amasezerano y'akazi – Umukozi wa Leta wasinye amasezerano y'akazi agengwa n'itegeko ry'umurimo aho kugengwa na sitati rusange y'abakozi ba leta igihe atagaragaza inyandiko yamushyize muri uwo mwanya (acte de nomination) – Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 2.*

*Amategeko y'umurimo – Amasezerano y'akazi – Igihe cy'igerageza – Iseswa ry'amasezerano y'akazi mu gihe cy'igeragezwa – Uburenganzira bwo kwisobanura – Gusesa amasezerano y'akazi y'umukozi uri mu gihe cy'igerageza ntibisaba kumuha integuza ariko iseswa riturutse ku ikosa umukozi atamenyeshejwe ngo aritangire ibisobanuro bitangirwa indishyi – Itegeko Nshinga rya Repuburika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryujujwe kandi ryahinduwe kugeza ubu, ingingo ya 18.*

*Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka – Umuburanyi agomba kugaragariza Urukiko imirimo yakozwe n'Avoka asabira indishyi.*

**Incamake y'ikibazo:** Mulindahabi yagiranye amasezerano y'akazi na RECO RWASCO (yahindutse EWSA) hakaba hari hakubiyemo amezi atandatu (6) y'igeragezwa ari nacyo yaje kwirukanwamo.

Yareze EWSA mu Rukiko Rukuru avuga ko yirukanywe mu buryo bunyuranyije n'amategeko anabisabira indishyi zinyuranye. Uru Rukiko rwemeje ko yirukanywe bidakurikije amategeko kuko atamenyeshejwe amakosa yaba yarakoze kugira ngo ayisobanureho nk'uko biteganywa n'itegeko rishyiraho sitati rusange igenga abakozi ba Leta. Rwemeje kandi ko n'ubwo yasinye amasezerano y'igerageza bitahabwa agaciro kuko EWSA ari ikigo cya Leta nk'uko bigaragara mu masezerano akaba agegwa na sitati aho kugegwa n'amategeko y'umurimo, maze runemeza ko agomba guhabwa indishyi z'akababaro z'uko yavukijwe akazi.

Ababuranyi bombi bajuririye icyo cyemezo mu Rukiko rw'Ikirenga, EWSA ivuga ko Urukiko Rukuru rwirengagije ibyo impade zombi zari zumvikanyeho rukavuga ko agengwa na Sitati rusange igenga abakozi ba Leta kandi agengwa n'amasezerano ari byo byatumye EWSA igaragara nk'aho yakozwe amakosa, naho Mulindahabi akavuga ko habayeho kwivuguruzwa mu mikirize y'urubanza ko kandi n'indishyi yahawe ari nke, ntacyo Urukiko rubanza rwazishingiyeho.

**Incamake y'icyemezo:** 1. Umukozi wa Leta wasinye amasezerano y'akazi agengwa n'itegeko ry'umurimo aho kugengwa na sitati rusange y'abakozi ba leta igihe atagaragaza inyandiko yamushyize mu bakozi ba Leta (acte de nomination).

2. Gusesa amasezerano y'akazi y'umukozi uri mu gihe cy'igerageza ntibisaba kumuha integuza ariko iseswa riturutse ku ikosa umukozi atamenyeshejwe ngo aritangire ibisobanuro ritangirwa indishyi.

3. Iyo umukozi ukiri mu igeragezwa yirukanywe ku mpamvu irimo iy'imikorere, Urukiko ntirwasuzuma ibyerekeye isubizwa mu kazi kwe.
4. Igihe umuburanyi usaba igihembo cy'Avoka atagaragariza Urukiko imirimo yakozwe n'Avoka ntaho rwashingira rumugenera ayo mafaranga.

**Ubujurire bwa EWSA bufite ishingiro kuri bimwe.  
Ubujurire bwa Mulindahabi nta shingiro bufite.  
Amagarama y'urubanza aherereye ku baburanyi bombi.**

**Amategeko yashingiweho:**

Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 kamena 2003 nk'uko ryujijwe kandi ryahinduwe kugeza ubu, ingingo ya 18.

Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 2, 19 n'ya 27.

Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64.

**Nta manza zifashishijwe.**

**Ibitekerezo by'abahanga:**

Jean Pélissier, Alain Supiot, Antoine Jeammaud, *Droit du travail*, 2e édition, p.365.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Mulindahabi yakoranye amasezerano y'akazi na RECO RWASCO (yahindutse EWSA) kuwa 17/11/2009, yirukanwa kuwa 13/04/2010, EWSA ikavuga ko yari umukozi ugengwa n'amasezerano ko kandi yirukanwe akiri mu gihe cy'igeragezwa, naho Mulindahabi akavuga ko yahawe akazi mu nzira zateganyijwe na sitati y'abakozi ba Leta, ko rero nawe yagengwaga n'ayo sitati.

[2] Mulindahabi yaregeye Urukiko Rukuru ikirego cyasobanuwe haruguru, mu rubanza rwacye rwemeza ko icyo kirego gifite ishingiro, rutegeka EWSA kumwishyura 6.000.000 Frw z'igihombo yatejwe no kwirukanwa akabura icyo yinjiza, 2.000.000 Frw y'indishyi z'akababaro z'uko yasebye na 200.000 Frw y'ikurikiranarubanza.

[3] Mu gufata icyo cyemezo, Urukiko rwabishingiye ko n'ubwo Mulindahabi yasinye amasezerano ateganya igeragezwa, ayo masezerano atahabwa agaciro kuko EWSA ari ikigo cya Leta, kandi hashingiwe ku ngingo ya 5 n'ya 6 z'itegeko n° 22/2002 ryo kuwa 9/7/2002 rishyiraho sitati igenga abakozi ba Leta no ku miterere y'ikigo cya EWSA, gifite abakozi bashinzwe kukiyobora barimo na Mulindahabi kuko yari "Head of planning and strategy section" nk'uko amasezerano ye y'akazi abigaragaza, akaba rero yari umu "sous statut", aho kuba umu "sous contrat".

[4] Ku birebana n'uburyo yirukanwemo, Urukiko rwasanze hatarubahirijwe ibiteganywa n'ingingo za 90 na 94 z'itegeko n° 22/2002 ryo kuwa 9/7/2002 ryavuzwe haruguru, kuko mbere yo kumwirukana, EWSA itabanje kumumenyesha amakosa yakoze kugira ngo ayisobanureho, cyangwa ngo imugezeho umushinga w'igihano yagombaga kumufatira kugira ngo atange ibisobanuro. Urukiko rwasanze kandi Mulindahabi yaragombaga gusubizwa ku kazi kuko icyemezo kimwirukana cyafashwe mu buryo bunyuranije n'amategeko, ko ariko mu gihe umwanya we wamaze gutangwa kandi nta kigaragaza ko hari undi ujya kureshya nawo muri "organigramme", yahabwa indishyi z'uko yavukijwe akazi aho kuba imishahara avuga ko atahembwe kuko kuva yirukanwa atakoraga.

[5] Rwasobanuye kandi ko Mulindahabi agomba guhabwa indishyi z'akababaro kuko bamuteje urubwa akareganywa, asezererwa ku kazi hashingiwe ku makosa atabanje kugaragazwa ko yakozwe, bikaba byaramuteye akababaro.

[6] EWSA yajuririye urwo rubanza mu Rukiko rw'Ikirenga ivuga ko Urukiko rwemeje ko Mulindahabi yagengwaga na sitati y'abakozi ba Leta kandi nyamara yari yarasinnye amasezerano na RECO RWASCO (yahindutse EWSA) kuwa 17/11/2009 ko kandi n'ikirego yatanze gishingiye kuri ayo masezerano avuga ko atubahirijwe, bityo akaba nta ndishyi zagombaga gucibwa EWSA kuko nta kosa yakoze.

[7] Mulindahabi nawe yarajuriye avuga ko habayeho kwivuguruza mu mikirize y'urubanza kuko mu mwanya umwe Urukiko rwavuze ko yakagombye gusubizwa ku kazi, mu wundi mwanya ruvuga ko atagasubizwaho kuko umwanya utagihari. Avuga kandi ko Urukiko rwamugeneye indishyi za 6.000.000 Frw ntacyo rushingiyeho ko kandi ari nke, ko n'indishyi z'akababaro hamwe n'amafaranga y'ikurikiranarubanza yagenewe ari bike cyane. Na none kandi ngo ntacyo Urukiko rwavuze ku mafaranga 200.000 yahaye avoka.

[8] Urubanza rwaburanishijwe mu ruhamwe kuwa 02/07/2013 no kuwa 01/10/2013, EWSA ihagarariwe na Me Rusanganwa Jean Bosco, Mulindahabi yunganiwe na Me Habiyambere Aphrodis na Me Gasasira J. Claude.

## **II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO.**

### **UBUJURIRE BWA EWSA**

**Kumenya niba harabayeho kwibeshya mu kwemeza ko Mulindahabi yagengwaga na sitati y'abakozi ba Leta.**

[9] Uburanira EWSA avuga ko Urukiko Rukuru rwemeje ko Mulindahabi yasinnye amasezerano y'akazi ariko rubirengaho ruhindura ibyo impande zombi zari zumvikanye, rwemeza ko yagengwaga na sitati y'abakozi ba Leta, rubiheraho rwemeza ko EWSA yakoze amakosa mu kumwirukana kandi nyamara haragombaga gukurikizwa ayo masezerano yateganyaga ko umuntu ashobora kwirukanwa nta nteguza, ko no mu kirego Mulindahabi yatanze yashingiye kuri ayo masezerano kuko avuga ko yirukanwe atubahirijwe.

[10] Avuga kandi ko imanza zashingiweho mu ikiza ry'urubanza rwajuririwe zitandukanye n'urubanza rwa Mulindahabi kuko abareze muri izo manza batari mu igeragezwa nka

Mulindahabi, n'ikiburanwa mu rubanza rwajuririwe kikaba gitandukanye n'icyaburanwe muri izo manza kuko hasabwaga ivanwaho ry'ibyemezo.

[11] Mulindahabi n'abamwunganira bavuga ko kugira ngo amasezerano ahabwe agaciro ari uko aba akurikije amategeko nk'uko byategenywaga n'ingingo ya 33 CCLIII yakurikizwaga igihe yirukanwaga hamwe n'ingingo ya 64 y'itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ko igihe yahabwaga akazi, EWSA yari yaramaze gutanga itangazo ku rubuga rwayo rwa "internet" ivuga ko itanga akazi ikurikije Iteka rya Perezida n° 37/01 ryo kuwa 30/08/2004 ryashyiraga mu bikorwa itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho sitati y'abakozi ba Leta, ko rero abakozi bashyizwe mu kazi mu nzira zateganywaga n'iryo Teko baba bagengwa na sitati y'abakozi ba Leta, ko amasezerano yasinyishijwe binyuranije n'amategeko agomba guteshwa agaciro.

[12] Bavuga kandi ko ikindi kigaragaza ko yagengwaga na sitati y'abakozi ba Leta ari uko yahawe umwanya uteganyijwe muri "cadre organique" kandi ahembwa amafaranga aturuka ku mutungo wa Leta. Ku birebana n'izindi manza zashingiweho, avuga ko ikiburanwa ari kimwe n'icyo mu rubanza rwe kuko kuba yararegeye ko yirukanwe nta mpamvu, bivuga ko yasabaga kuvanaho icyemezo kimwirukana.

[13] Bakomeza bavuga ko kuba Mulindahabi yarasinye amasezerano adakurikije amategeko biturutse ku ikosa rya EWSA atabiryozwaga, ko kandi kuvuga ko yari mu igeregezwaga atari byo, ko ahubwo yari muri "stage", ko igeragezwaga yarivuyemo akinjira muri "Fonction Publique" kuko yatangiye akazi ka Leta mu 1986 kandi igeragezwaga rikaba ryaramaraga amezi abiri. Bavuga kandi ko mu mwanzuro wa Mulindahabi utanga ikirego ntaho bigaragara ko yashingiye ku masezerano.

## **UKO URUKIKO RUBIBONA**

[14] Ku birebana n'itegeko rigomba gukurikizwa ku kibazo cya Mulindahabi, dosiye igaragaza ko yabaye umukozi wa RECO-RWASCO (yahindutse EWSA) nyuma yo gutsinda ikizamini nk'uko abivugaga, bakorana amasezerano kuwa 17/11/2009 arimo igihe cy'igeragezwaga cy'amezi atandatu. Usibye ayo masezerano, nta yindi nyandiko Mulindahabi yagaragaje yaba yaramwinjije mu bakozzi ba Leta kugira ngo ibe yashingirwaho hemezwa ko agengwa na sitati igenga abo bakozzi.

[15] Kuba yarasinye amasezerano y'akazi na RECO – RWASCO, byumvikanisha ko yagengwaga n'itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo hashingiwe ku biteganywa n'ingingo ya kabiri yaryo iteganywa ko iryo tegeko rigenga imikoranyire y'akazi hagati y'abakozi n'abakoresha (...) bishingiye ku masezerano.

[16] Na none kandi, kuba Mulindahabi yarigeze kuba umukozi wa Leta ugengwa na sitati, ntibyashingirwaho ngo hemezwe ko ari muri urwo rwego yinjijwe muri EWSA mu gihe atagaragaza inyandiko abishingiraho (acte de nomination), ntanagaragaze uburyo yavuye muri Minisiteri y'abakozi ba Leta usibye kuvuga gusa ko yasabye guhagarika akazi mu gihe kitazwi (mise en disponibilité), kugasubizwaho kandi bikaba byaragombaga gukorwa mu buryo buteganywa n'ingingo ya 64 y'itegeko rishyiraho sitati rusange igenga abakozi ba Leta, akaba atariko byagenze kuri Mulindahabi wasinye amasezerano arimo n'igihe cy'igeragezwaga nk'uko

byasobanuwe haruguru, kandi mu iperereza ryakozwe n'Urukiko Rukuru muri EWSA, rwasobanuriwe ko muri icyo kigo harimo n'abandi bakozi bagengengwa n'amasezerano y'umurimo.

[17] Urukiko rurasanga rero mu gusuzuma ikibazo cy'iyirukanwa ku kazi rya Mulindahabi, hagomba gushingirwa ku itegeko ry'umurimo ryavuzwe haruguru aho gushingira kuri sitati igenga abakozi ba Leta nk'uko Urukiko Rukuru rwabyemeje, n'indishyi Mulindahabi yasabye zikaba zigomba kureberwa mu biteganywa n'iryo tegeko.

**Kumenya niba hari indishyi Mulindahabi agomba kugenerwa.**

[18] Uburanira EWSA avuga ko indishyi yategetswe gutanga zingana na 8.200.000 Frw nta shigiro zifite kuko Urukiko rwazitegetse rubishingiye ku kuba Mulindahabi yarirukanwe mu buryo bunyuranije n'amategeko kandi nyamara nta kosa yakoze mu kumusezerera kuko yashingiyeye ku masezerano y'akazi y'igeragezwa bari baragiranye.

[19] Na none kandi ngo uburyo izo ndishyi zagenwe ntibusobanutse kuko zagenwe mu bushishozi ntacyo urukiko rushingiyeho mu gihe umushahara yahembwaga uzwi kandi igihombo kigira uko kibarwa, ko mu bisanzwe indishyi nyinshi zitangwa ari umushahara w'amezi atandatu.

[20] Mulindahabi n'abamwunganira bavuga ko ishingiro ry'indishyi yagenewe ari uko yirukanwe mu buryo bunyuranije n'amategeko kuko atamenyeshejwe amakosa yakoze, ibyo bikaba binyuranije n'ingingo ya 18 y'itegeko Nshinga hamwe n'ingingo za 88, 90, 93 na 94 z'itegeko n° 22/2002 ryo kuwa 09/07/2002 ryavuzwe haruguru, ko izo ndishyi zinashingiyeye kandi ku kuba mu kumwirukana, EWSA yarakoresheje amagambo mabi amusebya bimugiraho ingaruka zirimo kubura akazi.

[21] Ku birebana n'uburyo indishyi zagenwe, Mulindahabi nawe avuga ko yabijuririye kuko hagombaga gushingirwa ku mushahara we kugeza umunsi azasubirizwa ku kazi cyangwa kugeza ku myaka yo kujya mu kiruhuko cy'izabukuru.

## **UKO URUKIKO RUBIBONA**

[22] Nk'uko byavuzwe haruguru, amasezerano Mulindahabi yakoranye na RECO RWASCO yateganyijwemo igihe cy'igeragezwa cy'amezi atandatu, akaba yarasheshwe muri icyo gihe cy'igeragezwa kuko ibaruwa iyahagarika yanditswe kuwa 13/04/2010 kandi amasezerano yarasinywe kuwa 17/11/2009.

[23] Ku birebana n'iseswa ry'amasezerano mu gihe cy'igeragezwa, ntacyo itegeko rigenga umurimo ryavuze haruguru ryabiteganyijeho usibye ku birebana n'integuza, aho ingingo ya 27 y'iryo tegeko, iteganya ko nta nteguza ishobora kubaho mu gihe cy'amasezerano y'akazi y'igeragezwa.

[24] Ku birebana n'uburyo ayo masezerano aseswa, abahanga mu mategeko bavuga ko buri ruhande rushobora kuyasesa igihe cyose, ko kandi umukoresha adategetswe gutanga integuza

cyangwa ngo atange impamvu nyakuri itumye ayasesa<sup>1</sup>, byumvikanisha ko nta ndishyi zagombye gutangwa zishingiye kuri iryo seswa. Abo bahanga mu mategeko bavuga ariko ko n'ubwo buri ruhande rufite ubwo burenganzira, bitagomba gukorwa mu buryo bwo guhohoterana, ko umukozi ashobora guhabwa indishyi mu gihe atanze ikimenyetso ko umukoresha yasheshe amasezerano agamije kumwangiriza, ko n'umukoresha ashobora guhabwa indishyi n'umukozi washeshe amasezerano muri ubwo buryo<sup>2</sup>.

[25] Ku birebana n'impamvu yashingiweho mu gusesa ayo masezerano, bisobanuye mu ibaruwa yavuzwe haruguru ko Mulindahabi yadindizaga akazi bigahesha isura mbi ikigo no kuba imyitwarire ye yararanzwe n'amakimbirane hagati ye n'inzego zitandukanye bakorana.

[26] Urukiko rurasanga ku birebana n'impamvu ya mbere ivugwa muri iyo baruwa, ireberwa mu rwego rw'imikorere n'umusaruro w'umukozi, ari nacyo amasezerano y'igeragezwa aba agamije nk'uko biteganywa n'ingingo ya 19 y'itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo, ivuga ko muri icyo gihe umukoresha asuzuma cyane cyane imikorere y'umukozi n'umusaruro we, umukozi nawe akagenzura cyane cyane imiterere y'akazi, iy'imibereho, iy'umushahara, iy'ubuzima, iyo kwirinda impanuka n'iy'ubusabane bw'abo bakorana. Abahanga mu mategeko bavuzwe haruguru nabo bavuga ko icyo gihe kiba kigamije gutuma umukoresha amenya niba umukozi afite ubushobozi n'ubumenyi mu kazi, kigatuma n'umukozi amenya ko akazi yahawe kamunogeye.<sup>3</sup>

[27] Urukiko rurasanga ariko ku birebana n'impamvu ya kabiri ivugwa muri iyo baruwa, EWSA nayo yemera ko ishingiyeye ku ikosa Mulindahabi ivuga ko yakoze ryo kugonganisha inzego, akaba yaragombaga kurimenyeshwa akaryisobanuraho kuko, n'ubwo itegeko rigenga umurimo ryavuzwe haruguru ritabiteganywa, ntawe ushobora gufatirwa icyemezo atabanje kwisobanura kubyo aregwa nk'uko Itegeko Nshinga rya Repubulika y'u Rwanda ribiteganywa mu ngingo yaryo ya 18.

[28] Hashingiye ku bimaze kuvugwa, Urukiko rurasanga kuba EWSA itaramenyeshye iryo kosa Mulindahabi ngo aryisobanureho, agomba kubihirwa indishyi, zikagenwa hashingiye ku mushahara yahembwaga. Nk'uko bigaragara mu masezerano yavuzwe haruguru, hateganyijwe ko Mulindahabi yahembwaga umushahara mbumbe ungana na 650.000 Frw, akaba ariwo washingirwaho kuko hatagaragajwe umushahara yatahanaga (net), bityo akagererwa indishyi zingana na 1.350.000 Frw zihwanye n'umushahara w'amezi atatu.

## **UBUJURIRE BWA MULINDABAHI**

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<sup>1</sup> Le trait essentiel, en même temps que la raison d'être de l'engagement à l'essai, est de conférer à chaque partie, sauf stipulation contraire, la faculté de rompre le contrat à tout moment. L'employeur n'a pas à respecter un préavis sauf, bien entendu, si la convention collective applicable a institué un délai d'avertissement avant que la cessation du travail devienne effective: Jean Pélissier, Alain Supiot, Antoine Jeammaud, Droit du travail, 2e édition, p.365.

2 Le droit de rompre le contrat n'est pas pour autant discrétionnaire. Comme tous les droits, le droit de mettre fin à l'essai est susceptible d'abus. Le salarié peut obtenir des dommages et intérêts s'il rapporte la preuve que l'employeur a agi par malveillance à son égard ou avec une légèreté blâmable. Il arrive aussi- même si cela est plus rare- qu'un employeur obtienne la condamnation d'un salarié pour rupture abusive en cours d'essai. Op.Cit p. 366.

3 (...) Pareille pratique présente pour les deux contractants un intérêt. L'employeur portera un jugement mieux éclairé sur la compétence et l'aptitude professionnelle du salarié à tenir l'emploi; ce dernier vérifiera si la tâche confiée lui convient. Op.Cit p.361.

## **Kumenya niba Mulindahabi agomba gusubizwa ku kazi.**

[29] Mulindahabi avuga ko Urukiko Rukuru rwivugurujye kuko mu mwanya umwe rwavuze ko yakagombye gusubizwa mu kazi, mu wundi mwanya ruvugaga ko atagasubizwaho kuko umwanya utagihari kandi ntaho rwavanywe ko uwo mwanya utagihari kuko bitavuzwe n'ababuranyi, akaba kandi ataryozwa amakosa ya EWSA yimwa uburenganzira bwe bwo gusubizwa ku kazi. Avuga kandi ko kuba umwanya we waratanzwe hashize igihe kirekire nk'uko Urukiko rwabyemeje, binyuranye n'ibyemejwe mu rubanza RAD 0124/07/HC/KIG, aho urukiko rwemeje ko n'iyi umwanya waba waratanzwe hashize imyaka myinshi, iyo hafashwe icyemezo cyo kuvanaho icyo kwirukana umukozi, agomba gusubizwa mu kazi, akaba ari muri ubwo buryo uwitwa Kabera Pierre Claver yasubijwe mu kazi, ko rero na Mulindahabi yagombye kugasubizwaho cyangwa agashakirwa ahandi muri Leta kuko amakosa yo kuba umwanya utagihari ataturutse kuri we.

[30] Uburanira EWSA avuga ko nta buryo urukiko rutari kwivuguruzwa kuko rwafatanyije ibintu bibiri bidashobora guhura, ko kandi Urukiko rutari gutegeka umukoresha gukorana n'umukozi wirukanwe kubera gusuzugura inzego zimukuriye, kumusezerera bikaba byarakozwe mu rwego rwo kurengera inyungu z'ikigo.

## **UKO URUKIKO RUBIBONA**

[31] Urukiko rurasanga mu gihe byagaragajwe haruguru ko Mulindahabi yirukanwe akiri mu igeragezwa ku mpamvu zirimo n'iyerekeye imikorere ku muntu ukiri mu igeragezwa, ntaho urukiko rwashingira rusuzuma ibyerekeye gusubizwa mu kazi asaba.

### **Ku birebana n'uburyo indishyi zagenwe.**

[32] Mulindahabi avuga ko yagenewe indishyi za 6.000.000 Frw zijya mu mwanya w'ibyo yagombaga kwinjiza kandi ibyo yinjizaga ari umushahara ungana na 650.000 Frw buri kwezi hiyongereyeho amashimwe, ko rero yagombye kubona uwo mushahara kugeza igihe azasubirizwa mu kazi, bitakorwa akawuhabwa kugeza igihe cyo kujya mu kiruhuko cy'iza bukuru. Avuga ko kuba izo ndishyi zigomba gushingira ku mushahara yahembwaga abishingira ku rubanza RADA 006/12/CS rwaciwe n'uru Rukiko.

[33] Avuga ko kandi indishyi za 2.000.000 Frw yagenewe kubera urubwa no kumusebya ari nke cyane harebwe ingaruka byamugizeho kandi bikomeje kumugiraho, bikaba byaratewe n'amagambo mabi yakoreshejwe mu ibaruwa imwirukana ntanahabwe icyemezo cy'akazi, ko byatumye atabona umwanya muri CHUK no muri Rwanda Housing Authority, aho yakoze ibizamini ariko ntahabwe akazi, akaba yagombye kugenerwa indishyi za 20.500.000 Frw hashingiwe ku ngingo ya 258 CCLIII.

[34] Mulindahabi avuga kandi ko 200.000 Frw yagenewe y'ikurikirabarubanza ari macye harebwe ibyo yatanze akurikirana ikibazo cye mu nzego zitandukanye, akaba yagenerwa 1.500.000 Frw yasabye ku rwego rwa mbere hakiyongeraho 500.000 Frw yo ku rwego rw'ubujurire, akanahabwa 2.000.000 Frw y'igihembo cya avoka nk'uko amasezerano bakoranye abigaragaza.

[35] Na none kandi ngo ntacyo urukiko rwavuze kuri 200.000 Frw yahaye avoka kandi yaragaragaje amasezerano bakoranye hamwe n'inyemeza bwishyu (reçu) yamuhaye.

[36] Uburanira EWSA avuga ko Mulindahabi atasaba kugenerwa umushahara kuko ari ikiguzi ku muntu uba wakoze, ko kandi EWSA itamubujije ubushobozi bwo kuba yakora akandi kazi.

[37] Ku birebana n'amagambo ari mu ibaruwa imusezerera, avuga ko nta magambo arimo asebanya ko kandi ibyo avuga ko yimwe akazi kubera iyo baruwa yagombye kubitangira ibimenyetso.

[38] Ku birebana n'amafaranga y'ikurikiranarubanza, avuga ko atayasaba EWSA kuko aho yagiye hose ari we bireba kandi bakaba batabona icyari kimujyanyeyo usibye muri Komisiyo y'abakozi ba Leta yanatanze umwanzuro ivuga ko yirukanwe ari mu igeragezwa, akaba anatuye mu Mujyi wa Kigali.

[39] Ku byerekeye amafaranga yishyuye avoka, avuga ko atayagenerwa kuko mu Rukiko Rukuru yariburaniye, naho amasezerano avuga ko yakoranye na avoka muri uru rukiko akaba atareba EWSA, ko kandi amafaranga asaba harimo ugukabya hagereranjwe n'ayo avuga yishyuye ku rwego rwa mbere, ko rero mu gihe yatangwa hakurikizwa uburyo Urukiko rusanzwe ruyagena.

### **UKO URUKIKO RUBIBONA**

[40] Nk'uko byasobanuwe haruguru, kuba amasezerano Mulindahabi yari afitanye na EWSA yarasheshwe mu gihe cy'igeragezwa, nta zindi ndishyi yasaba kugenerwa kuko zidafite ishingiro mu rwego rw'amategeko y'umurimo, usibye izasobanuwe haruguru zishingiye ku kuba atarahawe umwanya wo kwisobanura mbere yo gusesa amasezerano y'igeragezwa.

[41] Ku birebana n'amafaranga y'ikurikiranarubanza angana na 1.500.000 Mulindahabi avuga ko yagombye kuba yaragenewe ku rwego rwa mbere mu mwanya wa 200.000 Frw, hamwe na 500.000 Frw ku rwego rw'ubujurire, Urukiko rurasanga yaragenewe 200.000 Frw ku rwego rwa mbere yagenwe mu bushishozi bw'urukiko, akaba atagaragaza mu buryo bw'imibare uburyo ayo mafaranga ari macye, ahubwo nawe ayasaba mu buryo bwa rusange (forfait), bityo akaba ariyo akwiye kugumaho kuko ari mu rugero rukwiye.

[42] Ku birebana na 500.000 Frw y'ikurikiranarubanza n'ay'igihembo cya avoka angana na 2.000.000 Frw asaba ku rwego rw'ubujurire, Urukiko rurasanga mu gihe ubujurire bwe nta shingiro buhawe ahubwo EWSA ikaba ariyo ifite ibyo itsindiye, ayo mafaranga atayagenerwa.

[43] Ku byerekeye amafaranga 200.000 Frw Mulindahabi avuga ko atagenewe ku rwego wa mbere kandi yarayahembye avoka, Urukiko rurasanga nta kirugaragariza imirimo avuga ko yaba yarakozwe na avoka kuko inyandiko za dosiye zigaragaza ko yiburaniye, n'imyanzuro yatanze ikaba igaragaza ko ariwe wayikoreye, rukaba rero ntaho rwashingira rumugenera ayo mafaranga.

### **III. ICYEMEZO CY'URUKIKO**

[44] Rwemeje ko ubujurire bwa EWSA bufite ishingiro kuri bimwe;



[45] Rwemeje ko ubujurire bwa Mulindahabi Fidèle nta shingiro bufite;

[46] Rutegetse EWSA guha Mulindahabi indishyi zingana na 1.350.000 Frw, yiyongera kuri 200.000 Frw y'ikurikiranarubanza yagenewe ku rwego rwa mbere, yose hamwe akaba 1.550.000 Frw;

[47] Rutegetse EWSA na Mulindahabi Fidèle gufatanya gutanga amagarama y'urubanza 27.600 Frw, batayatanga mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu byabo ku ngufu za Leta.