NSHUNGUYINKA v. RWANDA SOCIAL SECURITY BOARD (RSSB)

[Rwanda URUKIKO RW'IKIRENGA – RADA0066/12/CS (Mutashya, P.J., Gatete na Mukamulisa, J.) 22 Nyakanga 2014]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Guhindura ikiregо ku rwego rw'ubujurire – Ihinduka ry'ikigo mu gihe cy'urubanza – Ntibifatwa nko guhindura ikiregо, iyo ikigo cyarezwe ku rwego rwa mbere gihindutse ku rwego rw'ubujurire hagahamagazwa icya gisimbuye.

Amategeko agenga imanza z'ubutegetsi – Kurahira ku mukozi ugengwa na sitati rusange y'abakozi ba Leta – Mu gihe umukozi yirukanywe bitewe no kwanga kurahira,ntibifatwa nk'ikosa ry'akazi ku buryo mbere yo kumusezerera umukoresha yagomba kubanza kugisha inama Komisiyo y'Abakozi ba Leta, kuko indahiro ariyo igomba gushingirwaho kugirango afatwe mu buryo bwuzuye nk'umukozi wa Leta ugengwa na Sitati – Itegeko Nº22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati Rusange igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta, ingingo ya 29

Amategeko agenga imanza z'ubutegetsi – Imyemerere – Nta wakwitaza uburenganzira bwo guhitamo imyemerere imunogeye ngo abangamire amategeko n'amabwiriza y'Igihugu – Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nkuko ryavuguruwe kugeza ubu,ingingo ya33.

Incamake y'ikibazo: Nshunguyinka yareze Caisse Sociale du Rwanda (CSR) yahindutse Rwanda Social Security Board (RSSB) mu Rukiko Rukuru asaba ko havanwaho icyemezo cyo kumwirukana n'indishyi zigishamikiyeho. Urukiko rwasanze n'ubwo mbere yo kumwirukana CSR itabanje kugisha inama Komisiyo y'Abakozi ba Leta yarirukanwe kubera impamvu yumvikana kuko yananiwe kubahiriza amabwiriza yo kurahirira ku ibendera ry'Igihugu kandi yari umukozi wa Leta ugengwa na sitati rusange y'abakozi ba Leta, bityo rwemeza ko icyemezo cyamufatiwe gifite ishingiro.

Nshunguyinka yajuririye Urukiko rw'Ikirenga avuga ko amabwiriza y'irahira atamureba kuko atakozwe mbere yuko atangira akazi kandi akaba yari umukozi wa Leta ugengwa n'amasezerano, bityo atari afite inshingano zo kurahira. agasanga rinyuranyije n'uburenganzira bwa muntu n'Itegeko Nshinga kuko atagombaga gukora ibinyuranye n'imyemerere ye kuko guhitamo idini n'imyemerere yaryo ari uburenganzira ntavogerwa. Akomeza avuga ko yashoboraga kurahirira kuri Bibiriya nkuko imyemerere ye ibiteganya, kandi ko umukoresha we yamwirukanye atabanje kugisha inama Komisiyo y'abakozi ba Leta.

Mu iburanisha, RSSB yatanze inzitizi yo kutakira ikiregо kuko harezwe Caisse Sociale du Rwanda (CSR) itakibaho yasimbuwe na RSSB, bityo ikavuga ko niba hararezwe CSR, mu bujurire hakavugwa RSSB byaba ari uguhindura ikiregо.

Kuri iyo nzitizi, Nshunguyinka avuga ko ku rwego rwa mbere harezwe CSR, kandi kuba RSSB yarayisimbuye, bivuze ko yanayisimbuye mu nshingano zayo zose, kandi ko nta kiregо cyahindutse.

RSSB yabyukije indi nzintizi ivuga ko ikirego atari icy'ubutegetsi ahubwo ari icy'umurimo kuko cyerekeranye n'amasezerano y'umurimo. Nshunguyinka we avuga ko ikirego cyatanzwe ku rwego rwa mbere kigamije gutesha agaciro icyemezo cy'ubutegetsi, akaba ari nako kigomba kwakirwa ku rwego rw'ubujurire.

RSSB yatanze ubujurire bwuririye ku bundi isaba indishyi zo gusiragizwa mu manza nta mpamvu ku nzego zombi. Naho Nshunguyinka vuga ko ntayo yahabwa kuko uyiburanira ari umukozi wa Leta ubihemberwa buri kwezi, akaba asanga nta cyiyongera ku byo isanzwe imutangaho.

Incamake y'icyemezo:1. Ntibifatwa nko guhindura ikirego ku rwego rw'ubujurire, iyo ikigo cyarezwe ku rwego rwa mbere ariko ku rwego rw'ubujurire hagahamagazwa icyagisimbuye. Bityo rero kuba ku rwego rwa mbere hararezwe CSR nyuma ku rwego rw'ubujurire hagahamagazwa RSSB yayisimbuye si uguhindura ikirego ku rwego rw'ubujurire.

2. Icyemezo gisabirwa kuvaho muri uru rubanza ni icyo ubutegetsi kandi gishamikiyeho n'indishyi zikomoka ku ngaruka zacyo. Bityo Urukiko ruburanya imanza z'ubutegetsi nirwo rufite ububasha bwo kuruburanisha.

3. Mu gihe umukozi yirukanywe bitewe no kwanga kurahira,ntibifatwa nk'ikosa ry'akazi ku buryo mbere yo kumusezerera umukoresha yagomba kubanza kugisha inama Komisiyo y'Abakozi ba Leta, kuko indahiro ariyo igomba gushingirwaho kugirango afatwe mu buryo bwuzuye nk'umukozi wa Leta ugengwa na Sitati.

4. Nta wakwitwaza uburenganzira bwo guhitamo imyemerere imunogeye ngo abangamire amategeko n'amabwiriza by'Igihugu. Bityo uwajuriye yangombaga kubahiriza amabwiriza ajyanye no kurahira kw'abakozi ba Leta.

5. Nubwo uburanira uregwa yakagize ibindi akora mu gihe aje kuburana bene izi manza, uwajuriye yari afite uburenganzira bwo kwiyambaza inzira zose zimurenganura yisunze ibyo amategeko ateganya, ubujurire bwe bukaba butari bugamije gusiragiza uregwa mu manza.

Ubujurire nta shingiro bufite;
Ubujurire bwuririye ku bundi nta shingiro bufite;
Amagarama y'urubanza aherereye ku wajuriye.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nkuko ryavuguruwe kugeza ubu,ingingo ya 1 n'iya 33

Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 93.

Itegeko Nº22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati Rusange igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta, ingingo ya 29.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Nshunguyinka arega RSSB asaba ko icyemezo cyo kumwirukana cyateshwa agaciro n'indishyi zigishamikiyeho. Urwo rukiko rwemeje ko ikirego cye nta shingiro gifite, kuko Nshunguyinka yari umukozi wa Leta ugengwa na statut rusange y'abakozi ba Leta, kubera iyo mpamvu akaba yaragombaga kubahiriza amabwiriza yo kurahira. Urukiko rwasanze rero kuba atarabikoze byarabaye impamvu yo kumwirukana, rwemeza ko icyemezo cyamufatiwe gifite inshingiro.

[2] Rwasanze kandi Nshunguyinka yaragombaga kubahiriza amabwiriza y'umukoresha we nkuko biteganwa n'ingingo ya 84 ya sitati rusange igenga abakozi ba Leta, akarahirira ku ibendera ry'Igihugu nkuko biteganywa n'ingingo ya 19 y'itegeko N°34 ryo kuwa 08/08/2008 rigena imiterere, ibisobanuro, imikoreshereze n'iy'ubahirizwa ry'ibendera ry'igihugu aho kurahirira kuri Bibiliya nkuko we yabyifuzaga.

[3] Urwo Rukiko rwasanze na none, nubwo mbere yo kwirukana Nshunguyinka, RSSB itabanje kugisha inama (avis conforme) Komisiyo y'Abakozi ba Leta nkuko biteganwa n'ingingo ya 93 ya Sitati rusange igenga abakozi ba Leta, nyuma iyo komisiyo yaje kugenzura isanga yarirukanywe ku mpamvu zumvikana, hubahirijwe amategeko (ingingo za 28, 29 &120 za sitati igenga abakozi ba Leta).

[4] Nshunguyinka yajuririye Urukiko rw'Ikirenga, cyane cyane avuga ko amabwiriza y'irahira atamureba kuko atakozwe mbere yuko atangira akazi, ko kandi umukoresha we yamwirukanye atabanje kugisha inamaKomisiyo y'abakozi ba Leta.

[5] Iburanisha mu ruhame ryabaye kuwa 17/06/2014, Nshunguyinka aburanirwa na Me Nkurunziza François-Xavier, naho RSSB yahoze ari CSR ihagarariwe na Me Kamonyo Rugaba Serge.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

a. Inzitizi yo kutakira ikirego kubera ko harezwe Caisse Sociale du Rwanda (CSR) itakibaho.

[6] Me Kamonyo uburanira RSSB yabyukije inzitizi yo kuba hararezwe CSR kandi hariho itegeko ryayivanyeho igasimburwa na RSSB.Asobanura kandi ko niba hararezwe CSR, mu bujurire hakavugwa RSSB byaba ari uguhindura ikirego, bikaba binyuranye n'ibiteganywa n'ingingo ya 4 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[7] Me Nkurunziza uhagarariye Nshunguyinka avuga ko iyo nzitizi nta shingiro ifite, kubera ko ku rwego rwa mbere harezwe CSR, kandi niba RSSB yarasimbuye CSR, bivuze ko yanayisimbuye mu nshingano zayo zose. Akomeza avuga ko nta kirego cyahindutse, ko niba RSSB yarasimbuye CSR, ubu hakwandikwa ko uregwa ari RSSB.

UKO URUKIKO RUBIBONA

[8] Urukiko rurasanga iyi nzitizi nta gaciro yahabwa kubera ko ku rwego rwa mbere harezwe CSR yagengwaga n’Itegeko Nº60/2008 ryo kuwa 10/09/2008 ubu yasimbuwe na RSSB yashyizweho n’Itegeko Nº45/2010 ryo kuwa 14/12/2010, bikaba byumvikana ko hatangwa ikirego mu bujurire handitswe ko haregwa CSR yari yarezwe no ku rwego rubanza, bitabujije ko niba hagati aho RSSB yarasimbuye CSR, ubu ariyo irebwa n’uru rubanza. Ntabwo rero ikirego cyahinduwe ku rwego rw’ubujurire nkuko uhagarariye RSSB abivuga, kuko byumvikana ko niba hari hahamagajwe na none CSR ku rwego rw’ubujurire, nta gushidikanya ko kuri uru rwego rw‘ubujurire urubanza rureba RSSB yasimbuye CSR.

b. Inzitizi yo kuba urubanza ari urw’ubutegetsi kandi nyamara ikiburanwa ari ugusesa amasezerano y’akazi.

[9] Me Kamonyo asobanura ko ku rwego rwa mbere yagaragaje ko ikiregoatari icy’ubutegetsi (administratif) ahubwo ari icy’umurimo (social) kukocyerekeranye n’amasezerano y‘umurimo ariko umucamanza akaba ntacyo yabivuzeho.

[10] Me Nkurunziza we asobanura ko ikirego cyatanzwe ku rwego rwa mbere kigamije gutesha agaciro icyemezo cy’ubutegetsi, akaba ari nako kigomba kwakirwa ku rwego rw’ubujurire.

UKO URUKIKO RUBIBONA

[11] Urukiko rusanga iyi nzitizi nta gaciro yahabwa kubera ko icyemezo gisabirwa kuvaho cyafashwe ari icy’ubutegetsi nkuko biteganywa n’ingingo ya 93(2º) y’Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n‘ububasha bw’inkiko nkuko ryahinduwe kandi ryujujwe kugeza ubu, kikaba gishamikiyeho n’indishyi zikomoka ku ngaruka z’icyo cyemezo cyafashwe.

c. Ikibazo cyo kumenya niba Nshunguyinka Eric yarirukanywe mu buryo bunyuranyije n’amategeko.

[12] Me Nkurunziza avuga ko Nshunguyinka aburanira yari umukozi waLeta ugengwa n’amasezerano (sous contrat), ko atari afite inshingano zo kurahira kubera ko atari umukozi wa Leta ugengwa na “statut”.

[13] Akomeza asobanura ko Nshunguyinka yirukanywe hatabanje kugishwa inama Komisiyo y’Abakozi ba Leta, anirukanwa mu buryo bunyuranyije n’uburenganzira bwa muntu, kubera ko atarahiriye ku ibendera ry’Igihugu, ku bwe akaba asanga ibyo binyuranyije n’Itegeko Nshinga, kuko atagombaga gukora ibinyuranye n’imyemerere ye. Avuga ko guhitamo idini n’imyemerere yaryo ari uburenganzira ntavogerwa, kubw’izo mpamvu akaba ataragombaga kwirukanwa kubera ko yanze kurahirira ku ibendera kuko yashoboraga kurahirira kuri Bibiriya nkuko yabyifuzaga kubera ko imyemerere ye aribyo iteganya.

[14] Me Kamonyo uburanira RSSB avuga ko mu nyandiko Nshunguyinka yashyikirijwe ahabwa akazi, ntahagaragara ko yagengwaga n’amasezerano y’igihe runaka (sous contrat). Asobanura ko mu nyandiko zashyikirijwe Urukiko, yagaragaje ko hari amategeko ateganya ko abakozi ba Leta barahira mu gihe bagiye gutangira akazi. Akomeza asobanura ko hari n’amabwiriza ya Minisitiri w’Abakozi ba Leta n’Umurimo agena uburyo irahira rikorwa, akaba

ari byo Nshunguyinka yasabwe gukora akabyanga, ku bwe akaba asanga yarirukanywe mu buryo bukurikije amategeko.

UKO URUKIKO RUBIBONA

[15] Urukiko rurasanga hari ibarwa Nº9.00/2022/RI/umc yo ku itariki ya 27/05/2010 CSR yandikiye Nshunguyinka Eric imumenyesha ko ahawe akazi (as professional officer) guhera kuwa 01/06/2010, bivuze ko urwo ari rumwe mu nzego z'akazi gakorwa n'abakozi ba Leta bagengwa na statut; iyo barwa ikaba kandi yri iherekejwe (attached) n'amasezerano(Terms of Employment) yasinywe n'impande zombi kuwa 01/06/2010, mu ngingo yayo ya 3 akaba ateganya gusa igihe cy'igeragezwa (probation period) cy'amezi 6 gishobora kwongerwa inshuro imwe gusa. Urukiko rusanga rero iby'uko Nshunguyinka yari umukozi ‚sous contrat' nta gaciro byahabwa.

[16] Ingingo ya mbere, igika cya mbere cy'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nkuko ryavuguruwe kugeza ubu, iteganya ko Leta y'u Rwanda idashingiye ku idini.

[17] Ingingo ya 29 y'Itegeko Nº22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati Rusange igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta ryakurikizwaga igihe Nshunguyinka yasezererwaga ku kazi, yateganyaga ko mbere yo gutangira akazi, umukozi wa Leta arahirira imbere y'Umuyobozi ufite ububasha bwo kwakira indahiro.

[18] Urukiko rurasanga hari ibarwa Nº2119.19.19/19 yo kuwa 16/08/2010 n'indi Nº035/19.23 yo kuwa 05/04/2011 Minisitiri w'Abakozi ba Leta n'Umurimo yandikiye Abayobozi b'Ibigo bya Leta byose atanga amabwiriza yo kurahiza Abakozi ba Leta, muri iyo barwa hakaba hateganyije ko harahizwa abakozi batarahiye ku mpamvu zitandukanye, abatabikoze bagafatirwa ibihano birimo ugusezererwa ku kazi bikozwe n'Umuyobozi ubifitiye ububasha nyuma y'integuza y'iminsi cumi n'itanu(15) mu gihe umukozi yanze kurahira.

[19] Urukiko rurasanga kandi hari ibarwa Nº9.00/1661/RI/umc yo kuwa 27/04/2011 CSR yandikiye Nshunguyinka imusaba ibisobanuro ku mpamvu yo kutitabira irahira ryari riteganyijwe inamuha n'integuza y'iminsi 15 kugirango abe yubahirije uwo muhango, atabikora agasezererwa; Nshunguyinka ayisubiza kuwa 03/05/2011 avuga ko atanze kurahira ariko ntagire icyo akora, noneho kubera ko yabyanze, kuwa 04/05/2011 CSR imwandikira ibarwa Nº9.00/1721/R.I/umc imwirukana ku mirimo nkuko amabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo abiteganya.

[20] Urukiko rurasanga mu gihe Nshunguyinka yirukanywe bitewe no kwanga kurahira, bidakwiye gufatwa nk'ikosa ry'akazi ku buryo mbere yo kumusezerera CSR yagombaga kubanza kugisha inama Komisiyo y'Abakozi ba Leta, kuko indahiro ye ariyo yagombaga ahubwo gushingirwaho kugirango afatwe mu buryo bwuzuye nk'umukozi wa Leta ugengwa na Sitati hashingiwe ku biteganywa n'ingingo ya 19 y'itegeko N°34/2008 ryo ku wa 08/08/2008 ryavuzwe haruguru. Ntiyakwitwaza kandi ko yari asanzwe akorera CSR ngo bimuhe uburenganzira bwo kwanga kubahiriza amabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo ateganya ko n'abakozi bari basanzwe bakora batarahiye ku mpamvu zinyuranye bagomba kurahira, batabyubahiriza bagasezererwa ku kazi.

[21] Urukiko rurasanga kandi Nshunguyinka atakwitwaza imyemerere ye ngo yange kurahirira ku ibendera ry'igihugu avuga ko habayeho ukubangamira uburenganzira bwa muntu, mu gihe Leta y'u Rwanda idashingiye ku idini nkuko byagaragajwe, ku bw'izo mpamvu akaba yaragombaga kurahira mu buryo buteganywa n'ingingo ya 13 y'Itegeko Nº34/2008 ryo kuwa 08/08/2008 rigena imiterere, ibisobanuro, imikoreshereze n'iyubahirizwa ry'Ibendera ry'Igihugu iteganya ko "abantubari mu Butegetsi Nyubahirizategeko, abari mu Butegetsi Nshingamategeko n'abari mu Butegetsi bw'Ubucamanza bateganywa n'amategeko n'abandi bose babisabwa n'amategeko yihariye abagenga barahirira imbere y'Ibendera ry'Igihugu".

[22] Hakurikijwe ibimaze kuvugwa nanone, uburenganzira umuntu afite bwo guhitamo imyemerere imunogeye bunashimangirwa mu ItegekoNshinga rya Repubulika y'u Rwanda mu ngingo ya 33, ntawe ukwiye kubwitwaza ngo abangamire amategeko n'amabwiriza y'Igihugu.

d. Ku byerekeranye n'ubujurire bwa RSSB bwuririye ku bundi.

[23] Uhagarariye RSSB avuga ko ku rwego rwa mbere yagenewe gusa 200.000Frw, akaba asanga ikomeje gusiragizwa mu manza nta mpamvu, ku bw'izo mpamvu ikaba ikwiye kugenerwa 500.000Frw ku nzego zombi.

[24] Uhagarariye Nshunguyinka asanga iyi mpamvu y'ubujurire nta gaciro yahabwa, kubera ko uburanira RSSB ari umukozi wa Leta ubihemberwa buri kwezi, akaba asanga nta cyiyongera ku byo isanzwe imutangaho.

[25] Urukiko rusanga nubwo uburanira RSSB yakagize ibindi akora mu gihe aje kuburana bene izi manza, Nshunguyinka wumvaga ko yarenganyijwe yari afite uburenganzira bwo kwiyambaza inzira zose zimurenganura yisunze ibyo amategeko ateganya, akaba yararegeye inkiko amaze gutakambira urwego rwamufatiye icyemezo cyo kumusezerera ku kazi, ubujurire bwe bukaba butari bugamije na gato gusiragiza uregwa mu manza, akaba ariyo mpamvu ubujurire bwuririye ku bwe nta gaciro bwahabwa.

III. ICYEMEZO CY'URUKIKO.

[26] Rwemeje ko ubujurire bwa Nshunguyinka Eric nta shingiro bufite;

[27] Rwemeje ko ubujurire bwa Rwanda Social Security Board bwuririye ku bundi nabwo nta shingiro bufite;

[28] Rutegetse Nshunguyinka Eric kwishyura amagarama y'urubanza ahwanye na 50.300Frw;

[29] Ruvuze ko imikirize y'urubanza rwajuririwe RAD0092/11/HC/KIG idahindutse.