KANYARUKIKO v. WORLD VISION RWANDA

[Rwanda URUKIKO RW'IKIRENGA– RS/REV/SOC 0001/16/CS – RSOCAA 00002/2016/SC (Mutashya, P.J., Karimunda na Ngagi, J.) 09 Werurwe 2018]

Amategeko agenga imiburanshirize y'imanza z'umurimo – Inzitizi – Ihamagazwa ry'amashyirahamwe adafite ubuzima gatozi – Ishyirahamwe ridafite ubuzima gatozi iyo ryabaye umuburanyi mu rubanza nyuma rigahagarika imirimo yaryo,rishobora kwongera kuhamagazwa mu rubanza rihagarariwe n'uwari umuyoboi waryo kuko ibikorwa iryo shyirahamwe ryitirirwa ari ibikorwa by'abanyamuryango akaba ari nabo baba bari mubufatanye – Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.ingingo ya 3.

Incamake y'ikibazo: Kanyarukiko yareze World Vision Rwanda mu Rukiko Rwisumbuye rwa Gasabo ayirega kutamuha ibyo amategeko amugenera harimo n'agenga abakozi bakorera World Vision Rwanda, avuga ko atahawe umushahara n'ibindi agenerwa n'amategeko ku mwanya mushya wa "SD Operator" yari yatangiye gukoraho, kwanga nkana gushyira mu nyandiko amasezerano y'akazi bagiranye, kwirukanwa binyuranyije n'amategeko. Akaba abisabira indishyi; urwo rukiko rwategetse WVR guha Kanyarukiko indishyi.

World Vision Rwanda yajuririye Urukiko Rukuru maze rwemeza ko ubujurire bwayo bufite ishingiro maze rutegeka Kanyarukiko kuyiha amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka.

Kanyarukiko yajuririye nawe Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rutagombaga kwakira ubujurire bwa World Vision Rwanda kuko bwatanzwe bukerewe, ko Kisaro ADP Committee itagombaga guhatirwa kugoboka mu rubanza bwa mbere mu rwego rw'ubujurire ntawayibisabiye, ko kandi anenga Urukiko Rukuru kuba rwaremeje ko umukoresha we yari Kisaro ADP Committee rwirengagije ibimenyetso yari yarushyikirije byerekana ko yari umukozi wa World Vision Rwanda, ikaba ari yo yagombaga gusesa amasezerano yagiranye na Kisaro ADP Committee nk'agashami ka World Vision Rwanda. Ikindi ngo ntiyashyizwe ku umwanya wa "SD Operator" mu gihe yarugaragarije ibimenyetso byerekana ko yakoze kuri uwo mwanya. Urwo Rukiko rwemeje ko ikirego cye nta shingiro gifite.

Kanyarukiko yongeye gutanga ikirego mu Rukiko rw'Ikirenga asaba gukosora no gusobanura urubanza RSOCAA0002/12/CS kuko ubujurire bwe bwanditswe kuri RSOCAA0002/14/CS, nyamara kuri kopi y'urubanza yahawe hakagaragaraho numero itandukanye n'iyo. Kandi ko hari nibindi bika by'urubanza, harimo ibyo Urukiko rwagiye ruvuga ku buryo umuntu ubisomye adasobanukirwa icyo rwashakaga kuvuga, ku buryo yabyumva mu buryo butandukanye. Urwo Rukiko rwemeje ko ikosa ryakozwe mu myandikire rigomba gukosorwa, ndetse ruvuga ko nta kidasobanutse mu bika yari yavuze ko bitasobanutse.

Yongeye nanone gutanga ikirego cyo gusubirishamo urubanza ingingo nshya, Kisaro ADP Committee itanga inzitizi yo kutakira ikirego kuko nta gishya kirugaragaramo, Kanyarukiko yasubije ko nta cyo bavuze kuri iyo nzitizi kuko ntayo bagaragarijwe ahubwo nawe atanga inzitizi ijyanjye n'iyitaba ry'ababuranyi, kuko Kisaro ADP Committee itakomeza guhamagazwa muri uru rubanza kandi itakiriho.

Kisaro ADP Committee yireguye ivuga ko inzitizi yatanzwe n'urega nta shingiro ifite kuko kuba Kisaro ADP Committee yaba itakiriho bidakuraho gukurikirana cyangwa gukurikiranwa ku byabaye ikiriho, cyane cyane ko iki kirego irimo nk'iyagobokeshejwe kikaba ari ikirego gisubirishijwemo ingingo nshya,

kandi kikaba cyaratanzwe Kisaro ADP Committee iriho ndetse n'impamvu yateye Kanyarukiko gutanga ikirego akaba ari iseswa ry'amasezerano y'akazi yagiranye na Kisaro ADP Committee bivuga ko nta buryo idakwiye kuba muri uru rubanza. World Vision Rwanda ivuga ko niba Kisaro ADP Committee yarabaye umuburanyi mu rubanza rusubirishwamo ingingo nshya, ntabwo urega yavuga ko itagomba kugaragara muri uru rubanza

Incamake y'icyemezo: Ishyirahamwe ridafite ubuzima gatozi iyo ryabaye umuburanyi mu rubanza ariko rigahagarika imirimo yaryo,rishobora kwongera kuhamagazwa mu rubanza rihagarariwe n'uwari umuyobozi waryo kuko ibikorwa iryo shyirahamwe ryitirirwa ari ibikorwa by'abanyamuryango akaba ari nabo baba bari mubufatanye, bityo kisaro ADP igomba kuguma mu rubanza.

Inzitizi nta shingiro ifite.
Urubanza ruzakomeza mu mizi;
Amagarama y'urubanza abaye asubitswe.

Amategeko yashingiweho:
Itegeko N°21/2012 ryo ku wa 14/06/ 2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3.

Nta manza zifashishijwe:

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Kanyarukiko Jean Jacques César arega World Vision Rwanda kutamuha ibyo amategeko amugenera harimo n'agenga abakozi bakorera World Vision Rwanda, kutamuha umushahara n'ibindi agenerwa n'amategeko ku mwanya mushya wa "*SD Operator*" yatangiye gukoraho kuwa 5 Ugushyingo 2009, kwanga nkana gushyira mu nyandiko amasezerano y'akazi bagiranye nyamara atarahwemye kubibibutsa, kwirukanwa binyuranyije n'amategeko nta n'icyo bashingiyeho, kubuzwa amahwemo no kusiragizwa mu kazi azizwa gusa ibitekerezo yatanze, cyane cyane ku kuba ari mu basabaga ko bahabwa amasezerano yanditse y'akazi.

[2] Kanyarukiko Jean Jacques César, mu kirego cye, yasabaga nk'umukozi wa World Vision Rwanda, indishyi zose hamwe zingana na 125.892.536Frw hiyongereyeho 176.040USD. Kuwa 7/12/2012, Urukiko Rwisumbuye rwa Gasabo, rwaciye urubanza RSOC 0107/11/TGI/GSBO, rutegeka World Vision Rwanda guha Kanyarukiko Jean Jacques César 26.279.472Frw na 108.000USD.

[3] World Vision Rwanda ntiyishimiye imikirize y'urubanza ijuririra Urukiko Rukuru, kuwa 08/01/2013, urwo Rukiko ruca urubanza RSOCA 0004/13/HC/KIG, rwemeza ko ubujurire bwatanzwe na World Vision Rwanda bufite ishingiro, rutegeka Kanyarukiko guha World Vision Rwanda 100.000Frw y'ikurikiranarubanza na 300.000Frw y'igihembo cy'Avoka.

[4] Kanyarukiko Jean Jacques César ntiyishimiye imikirize y'urubanza ajuririra mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rutagombaga kwakira ubujurire bwa World Vision Rwanda kuko

bwatanzwe bukerewe, ko Kisaro ADP Committee itagombaga guhatirwa kugoboka mu rubanza bwa mbere mu rwego rw'ubujurire ntawayibisabiye, ko kandi anenga Urukiko Rukuru kuba rwaremeje ko umukoresha we yari Kisaro ADP Committee rwirengagije ibimenyetso yari yarushyikirije byerekana ko yari umukozi wa World Vision Rwanda, ikaba ari yo yagombaga gusesa amasezerano yagiranye na Kisaro ADP Committee nk'agashami ka World Vision Rwanda.

[5] Mu rubanza RSOCAA0002/12/CS rwaciwe kuwa 15/01 /2016, Urukiko rw'Ikirenga rwemeje ko ubujurire bwa Kanyarukiko Jean Jacques César nta shingiro bufite, rwemeza ko urubanza RSOCA0004/13/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali kuwa 10/03/2014 rudahindutse.

[6] Kanyarukiko Jean Jacques César yongeye gutanga ikirego mu Rukiko rw' Ikirenga asaba gukosora no gusobanura urubanza RSOCAA0002/12/CS rwaciwe kuwa 15/01/2016 rumaze kuvugwa, kuko ubujurire bwe bwanditswe kuri RSOCAA0002/14/CS, nyamara kuri kopi y'urubanza yahawe hakagaragaraho numero itandukanye n'iyo, kuko hariho RSOCAA000 2/12/CS, akaba ariyo mpamvu atanga ikirego kigamije gukosoza iyo nimero y'urubanza. Yavugaga, na none, ko mu bika bya 11, 17, 19, 22, 40, 41 n'icya 45 by'urubanza, harimo ibyo Urukiko rwagiye ruvuga ku buryo umuntu ubisomye adasobanukirwa icyo rwashakaga kuvuga, ku buryo yabyumva mu buryo butandukanye, akaba ari yo mpamvu ahisemo kubisobanuza kugira ngo yumve icyo Urukiko rwashatse kuvuga muri ibyo bika.

[7] Kuwa 24/06/2016, Urukiko rw'Ikirenga rwaciye urubanza RS/RECT&INTER/SOC0001/16/CS, rwemeza ko ikosa ryakozwe mu myandikire rigomba gukosorwa, ahanditse urubanza RSOCAA0002/12/CS hakandikwa RSOCAA 0002/14/CS, ndetse ruvuga ko nta kidasobanutse mu bika bya 11, 17, 22, 40, 41 na 45 by'urwo rubanza.

[8] Kanyarukiko Jean Jacques César yatanze ikirego cyo gusubirishamo ingingo nshya urubanza RSOCAA0002/14/CS asaba gusuzuma ibibazo bikurikira:

> 1º Gusuzuma niba hari ibimenyetso kamarampaka Urukiko rutabonye n'amakosa akabije yakozwe mu guca urubanza, byashingirwaho nk'ingingo nshya, Urukiko rukongera gusuzuma iby'iyakirwa ry'ubujurire bwa World Vision Rwanda mu Rukiko Rukuru ;
>
> 2º Gusuzuma niba hari ibimenyetso Urukiko rutabonye n'amakosa akabije yakozwe yo kwitiranya uko ibintu byagenze, byashingirwaho nk'ingingo nshya, hakongera gusuzumwa niba Kisaro ADP Committee ari urwego (structure) rwa World Vision Rwanda ;
>
> 3º Gusuzuma niba hari ibimenyetso kamarampaka Urukiko rutabonye hakaba hari amakosa akabije yakozwe mu guca urubanza, byashingirwaho nk'ingingo nshya, Urukiko rukongera gusuzuma niba Kanyarukiko Jean Jacques César yari umukozi wa Worl Vision Rwanda
>
> 4º Gusuzuma indishyi asaba ko yagenerwa n'uru Rukiko.

[9] Urubanza rwaburanishijwe mu ruhame kuwa 20/02/2018, Kanyarukiko Jean Jacques César yunganiwe na Me Rutaganira Alexandre, World Vision Rwanda iburanirwa na Me Muhozi Paulin afatanyije na Me Gasarabwe Claudine, naho Kisaro ADP Committee ihagarariwe na Habarurema Phocas, ikaba yari yunganiwe na Me Gatera Kanisa.

[10] Kisaro ADP Committee yatanze inzitizi yo kutakira iki kirego cyo gusubirishamo urubanza ingingo nshya kubera ko nta gishya kigaragara muri iki kirego kuko byose byaburanywe, Kanyarukiko Jean Jacques César asubiza ko iyo nzitizi ntayo babonye, akaba ariyo mpamvu ntacyo bayivuzeho. Yahise avuga ko nabo batanze inzitizi ijyanjye n'iyitaba ry'ababuranyi, kuko Kisaro ADP Committee

itakiriho. Iki kibazo cyo kumenya niba Kisaro ADP Committee yakomeza guhamagazwa muri uru rubanza akaba aricyo kigomba kubanza gusuzumwa.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

Kumenya niba Kisaro ADP Committee yavanwa mu rubanza ku mpamvu ko yaba itakiriho

[11] Kanyarukiko Jean Jacques César avuga ko Kisaro ADP Committee ubu ntaho izwi ibarizwa akaba ntaho igaragara, ko idakwiye kugaragara nk'umuburanyi, asaba ko urubanza ruburanishwa rwakomeza itarurimo kuko itakiriho. Avuga ko mu gihe urubanza rwaburanishijwe nk'iriho bakagira icyo bagenerwa uwagaragara mu rukiko wese avuga ko ahagarariye Kisaro ADP Committee, kandi urwo rwego ubu ntaho ruzwi cyangwa rubarizwa mu Rwanda, yabanza kugaragaza aho Kisaro ADP Committee avuga ko ahagarariye ibarizwa, ibyo ikora ndetse na bene yo.

[12] Kisaro ADP Committee ivuga ko ibyo urega avuga nta shingiro bifite kuko kuba Kisaro ADP Committee yaba itakiriho bidakuraho gukurikirana cyangwa gukurikiranwa ku byabaye ikiriho, iki kirego irimo nk'iyagobokeshejwe kikaba ari ikirego gisubirishijwemo ingingo nshya, kandi kikaba cyaratanzwe Kisaro ADP Committee iriho ndetse n'impamvu yateye Kanyarukiko Jean Jacques Cesar gutanga ikirego akaba ari isozwa ry'amasezerano y'akazi yagiranye na Kisaro ADP Committee bivuga ko nta buryo idakwiye kuba muri uru rubanza. Ibyo kuba ihamagara yarasinywe n'uwahoze ari umuyobozi wayo nta kibazo bikwiye gutera kubera ko n'ubusanzwe ariwe wayisinyagaho, kandi akaba ari ikibazo (ikirego) kimwe kigikomeza. Ibyo bindi ntibikwiye kuba byaba ikibazo cy'urega, ahubwo birareba Kisaro ADP Committee.

[13] Abahagarariye World Vision Rwanda bavuga ko niba Kisaro ADP Committee yarabaye umuburanyi mu rubanza rusubirishwamo ingingo nshya, ntabwo Kanyarukiko Jean Jacques César yavuga ko Kisaro ADP Committee itagomba kugaragara muri uru rubanza.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 2 y'Itegeko N°21/2012 ryo kuwa 14/06/ 2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibi bikurikira: "Ikirego nticyemerwa mu rukiko iyo urega adafite ububasha, inyungu n'ubushobozi bwo kurega. Ibivugwa mu gika cya mbere cy'iyi ngingo bireba n'amashyirahamwe, imiryango n'ibigo bidafite ubuzima gatozi kuko bidashobora kurega, bitabujije ariko ko bishobora kuregwa." Naho ingingo ya 185 y'iri Tegeko rimaze kuvugwa iteganya ko "Gusaba gusubirishamo urubanza ingingo nshya byemererwa gusa abantu babaye ababuranyi cyangwa bahagarariwe mu rubanza rusabirwa gusubirwamo".

[15] Dosiye igaragaza ko Kisaro ADP Committee yabaye umuburanyi mu Rukiko Rukuru, nyuma yuko uru Rukiko rufashe icyemezo cyo kuyihatira kugoboka. Dosiye igaragaza na none ko Kanyarukiko Jean Jacques César yajuririye iki cyemezo cyo guhatira kugoboka Kisaro ADP Committee mu Rukiko rw'Ikirenga, uru Rukiko mu rubanza RSOCAA0002/12/CS rwaciwe ku wa 15/01/2016, rwemeza ko ubujurire bwa Kanyarukiko Jean Jacques César nta shingiro bufite, ko urubanza RSOCA0004/13/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali kuwa 10/03/2014 rudahidutse, bivuze ko Kisaro ADP Committee yakomeje kuba umuburanyi, bikaba ariko byanakomeje mu rubanza RSOCAA0002/12/CS rwaciwe kuwa 10/07/2015, rwaje gukosorwa numero yarwo igahinduka RSOCAA0002/14/CS ari narwo rwasabiwe gusubirishwamo ingingo nshya.

[16] Dosiye igaragaza na none ko mu manza zabanje haregwaga Kisaro ADP Committee, ihagarariwe na Perezida wayo. Iyi Komite ikaba yari igizwe n'abantu 12 nk'uko bigaragara mu nyandiko yo ku wa 29/11/2010, yiswe ADP Committee election report, Habarurema Phocas atorerwa, umwanya wa Perezida wayo, akaba ari nawe uyihagararira mu manza.

[17] Urukiko rurasanga kuba, nk'uko byavuzwe mu iburanisha ryo kuwa 20/02/2018, Kisaro ADP Committee yaba itakiriho, kubera ko yahagaritse ibikorwa byayo, iyo itaba impamvu yo kuyivana mu rubanza nk'uko Kanyarukiko Jean Jacques César ashaka kubyumvikanisha kuko n'ubundi nta buzima gatozi yigeze igira ngo habe hakurikizwa amategeko ajyanye n'iseswa ry'imiryango cyangwa ibigo bifite ubuzima gatozi, ahubwo Kisaro ADP Committee ari izina abanyamuryango ubwabo bishakiye kugira ngo ariryo bakoresha, bivuze ko n'ibikorwa yitirirwa, ari ibikorwa rw'abanyamuryango, akaba ari nabo bari mu bufatanye mu bagombwa ishingano (solidarité), bityo Kisaro ADP Committee ikaba igomba kuguma mu rubanza, kuko kuba yaba itagikora bidakuraho gukurikirana cyangwa gukurikiranwa ku byabaye ikiriho. Urukiko rurasanga na none kuba inyandiko y'ihamagara ryarasinywe n'uwahoze ari umuyobozi wayo nta kibazo bikwiye gutera kubera ko n'ubusanzwe ariwe wayisinyagaho, kandi akaba ari ikibazo (ikirego) kimwe kigikomeza, bityo ibintu bikaba bigomba gukomeza nk'uko byari bimeze mu manza zabanje, kuko bitabaye ibyo byaba binyuranyije n'ibiteganywa n'ingingo ya 2 y'itegeko Nº21/2012 ryo kuwa 14/06/2012 ryibukijwe haruguru, iteganya ko ibigo bidafite ubuzima gatozi bishobora kuregwa, kandi ibi umushingamategeko akaba yarabiteganyije agamije kurengera inyungu z'abatari abanyamuryango, ikigo gishobora kuba gifitiye inshingano runaka cyaryozwa.

[18] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga inzititi ijyanye n'iyitaba ry'ababuranyi, isaba ko Kisaro ADP Committee yavanwa mu rubanza kuko itakiriho, nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko inzitizi yatanzwe na Kanyarukiko Jean Jacques César nta shingiro ifite.

[20] Rwemeje ko urubanza ruzaburanishwa mu mizi ku wa 08/05/2018**.**

[21] Ruvuze ko amagarama y'urubanza abaye asubitswe.