UMUJYI WA KIGALI v NDAKENGERWA GASANA

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/RAD00005/2018/SC – (Kayitesi Z, P.J., Mutashya na Cyanzaire J.) 15Werurwe 2019]

Amategeko agenga imanza z'ubutegetsi – Ibihano mu rwego rw'akazi – Uburyozwe bw'icyaha – Kuba Ubushinjacyaha bushyinguye dosiye bwari bukurikiranyeho umukozi mu rwego rw'inshinjabyaha ntibikuraho kuba yahanwa mu rwego rw'akazi.

Amategeko agenga imanza z'ubutegetsi – Ikosa rikomeye – Impamvu yongera uburemere bw'ikosa – Kuba umukozi wakoze ikosa ari umuyobozi ukuriye abandi, wagombye kubabera urugero mu kwirinda ibikorwa byose bishobora gusebya umukoresha we, ni impamvu yongera uburemere bw'ikosa.

Incamake y'ikibazo: Ndakengerwa wari Umuyobozi Mukuru ushinzwe Imibereho Myiza y'Abaturage mu Mujyi wa Kigali hamwe n'umushoferi we bakurikiranywe n'Ubushinjacyaha ku cyaha cyo gushimuta n'ukwambura bakoresheje kiboko uwitwa Twahirwa, ibyo bikaba byarakozwe bamukingirana mu modoka, bakamujyana kumufungira mu Kigo cya "Kigali Rehabilitation Transit Center" i Gikondo, kubera ibibazo bwite bari bafitanye ariko bageze muri icyo Kigo, abahakora banze kumufunga kubera ko bafungiramo abazanywe na Polisi. Nyuma Ubushinjacyaha bwaje gusanga atari ngombwa gukomeza gukurikirana iyo dosiye burayishyingura.

Umujyi wa Kigali wamusabye kwisobanura ku makosa yakoze yitwaje akazi akora, ku makosa yo gusiba akazi nta ruhushya no kuba atarubahirije amabwiriza y'imyubakire kandi ari Umukozi ushinzwe kurwanya imyubakire y'akajagari, ibisobanuro yatanze ntibyanyuze Umujyi wa Kigali, nyuma yo kugisha inama Minisiteri ifite abakozi ba Leta mu nshingano zayo Umujyi wa Kigali wamwirukanye burundu ku kazi kubera amakosa akomeye.

Yaje gutakambira Komisiyo y'Abakozi ba Leta, ariko imisubiza ko atarenganye, nyuma yaho yatanze ikirego mu Rukiko Rwisumbuye, asaba ko icyo cyemezo cyavanwaho kuko yirukanywe mu buryo budakurikije amategeko, asaba n'indishyi zinyuranye. Urwo Urukiko rwemeje ko ikirego cye gifite ishingiro kuri bimwe, rutegeka Umujyi wa Kigali kumuha indishyi zo kwirukanwa binyuranyije n'amategeko n'amafaranga y'igihembo cy'Avoka

Ababuranyi bombi ntibanyuzwe maze bajuririra Urukiko Rukuru, Urukiko rwemeza ko ubujurire bwa Ndakengerwa bufite ishingiro kuri bimwe, ko ubujurire bw'Umujyi wa Kigali nta shingiro bufite, ko icyemezo cyo kwirukana Ndakengerwa kivanyweho, rutegeka Leta y'u Rwanda kumuha imishahara atishyuwe no kumusubiza mu kazi byaba bidashobotse ikamuha indishyi.

Umujyi wa Kigali wandikiye Urwego rw'Umuvunyi usaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, nyuma yugusuzuma ikibazo cy'Umujyi wa Kigali, rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, nawe ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, yemeza ko urubanza rusubirwamo. Urukiko rwabanje gusuzuma niba amakosa yashingiweho yirukanwa amuhama; mu gihe yaba amuhama, hagasuzumwa niba igihano yahawe aricyo cyari gikwiye no kuba cyaba cyaratanzwe mu nzira zikurikije amategeko.

Ku birebana nu kumenya niba ahamwa n'amakosa yashingiweho yirukanwa, Umujyi wa Kigali uvuga ko kuba atarahamwe n'icyaha yari akurikiranyweho, Ubushinjacyaha bugashyingura dosiye, bitavanaho kuba yarakoze ikosa mu rwego rw'akazi yagombaga gukurikiranwaho kandi ikosa yari akurikiranyweho ari ugutwara umuntu ku bw'urugomo hakaba hari n'ibimenyetso bidashidikanywaho.

Ku bijyanye n'ikosa ryo kubaka mu kajagari, Umujyi wa Kigali uvuga ko nk'Umuyobozi wari ushinzwe kurwanya akajagari, nawe yagateje nk'uko komisiyo yasuye aho yubakaga yabyemeje, nyuma yo gusanga yarubatse indi nzu nyuma yo guhabwa ingurane.

Mu kwiregura kwe, Ndakengerwa avuga ko ibyo Umujyi wa Kigali uvuga ko ari amakosa ataribyo ndetse n'Akanama gashinzwe imyitwarire kabisesenguye kagasanga atari amakosa, kagategeka ko asubira mu kazi kandi ko icyo yari akurikiranyweho atari ukugerageza gufungira abantu mu Kigo mu nyungu ze bwite, ko ahubwo ari ikibazo cy'amasezerano y'abantu babiri, ko kandi abo bantu bishyuranye kuri Polisi dosiye igahita isozwa. Avuga ko n'iyo byaba ari icyaha atariwe wagombaga kubihanirwa, akaba ariyo mpamvu yarekuwe n'Ubushinjacyaha n'ibye byari byarafatiriwe akabihabwa. Naho ku bijyanye no kuba yarubatse mu kajagari avuga ko nta nyubako yigeze yubaka mu buryo bw'akajagari nyuma y'uko amaze guhabwa ingurane kandi ko n'umukozi ushinzwe iterambere mu Mujyi wa Kigali yahasuye akemeza ko nta nzu yubatse nyuma yo guhabwa ingurane.

Incamake y'icyemezo: 1. Kuba Ubushinjacyaha bushyinguye dosiye bwari bukurikiranyeho umukozi mu rwego rw'inshinjabyaha ntibikuraho kuba yahanwa mu rwego rw'akazi.

2. Umukozi ufata umuntu udafite icyaha aregwa n'inzego zibishinzwe, yitwaje akazi akora agashaka kumufungisha (detention) ni ikosa rikomeye mu rwego rw'akazi.

3. Kuba umukozi wakoze ikosa ari umuyobozi ukuriye abandi, wagombye kubabera urugero mu kwirinda ibikorwa byose bishobora gusebya umukoresha we, ni impamvu yongera uburemere bw'ikosa.

Ndakengerwa Gasana Aimable yirukanywe mu buryo bukurikije amategeko;
Imikirize y'urubanza RADA00023/2017/HC/KIG-RADA00027/2017/HC/KIG rugakosorwa n'urubanza RS/RECT/RAD 00003/2017/HC/KIG, ihindutse kuri byose;
Amagarama aherereye ku Isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 13n'iya 29

Itegeko Ngenga N°11/2013/OL ryo ku wa 11/09/2013 rihindura kandi ryuzuza itegeko ngenga N°61/2008 ryo ku wa 10/09/2008 rigenga imyitwarire y'abayobozi mu nzego za Leta, ingingo ya 2 n'iya 3

Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 64

Iteka rya Perezida N°65/01 ryo ku wa 4/3/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta, ingingo ya 5, ya 7, n'iya12

Itegeko N°86/2013 ryo ku wa 11/09/2013 rishyiraho Sitati Rusange y'Abakozi ba Leta, ingingo ya 3,76,78, 80,81, n'iya 98.

Nta manza zifashishijwe.

Ibitekerezo bya bahanga:

Georges Dupuis, Marie-Josée Guédon, Patrice Chretien, Droit Administratif, 10 éme Edition, Sirey, 2007

Urubanza

I.IMITERERE Y'URUBANZA

[1] Ndakengerwa Gasana Aimable yari Umuyobozi Mukuru ushinzwe Imibereho Myiza y'Abaturage mu Mujyi wa Kigali. Yakurikiranywe n'Ubushinjacyaha hamwe na Nsengiyumva Gilbert wari umushoferi, ku cyaha cyo gushimuta Twahirwa Oswald no kumwambura ibye bakoresheje kiboko, kikaba cyarakozwe bamukingirana mu modoka, bakamujyana kumufungira mu Kigo cya "Kigali Rehabilitation Transit Center" i Gikondo, kubera ibibazo bwite bari bafitanye. Dosiye igaragaza ko bageze muri icyo Kigo, abakozi banze kumufunga kubera ko bafungiramo abazanywe na Polisi. Ubushinjacyaha bwaje gusanga atari ngombwa gukomeza gukurikirana iyo dosiye buyishyingura ku wa 17/12/2015.

[2] Ndakengerwa Gasana Aimable yasabwe n'Umujyi wa Kigali kwisobanura ku makosa yakoze yitwaje akazi akora, ku makosa yo gusiba akazi nta ruhushya kuva ku itariki ya 04 kugeza ku ya 11/09/2015, no kuba atarubahirije amabwiriza y'imyubakire ngo kuko yubatse mu kibanza Nº 385 kiri ahantu hatemewe kubakwa, akabikora kandi ari Umukozi w'Umujyi wa Kigali ushinzwe kurwanya imyubakire y'akajagari. Ibisobanuro Ndakengerwa Gasana Aimable yatanze ntibyanyuze Umujyi wa Kigali, umuhagarika ku kazi by'agateganyo nyuma yo kugisha inama Minisiteri ifite abakozi ba Leta mu nshingano (MIFOTRA), igatanga inama yo kumwirukana burundu kubera amakosa akomeye.

[3] Ku wa 29/01/2016, Umujyi wa Kigali wamwirukanye burundu ku kazi kubera amakosa akomeye, atakambira Komisiyo y'Abakozi ba Leta, iyi Komisiyo nayo imusubiza ko atarenganyijwe, ko yahawe igihano gikwiye. Ndakengerwa Gasana Aimable yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, asaba ko icyo cyemezo cyavanwaho kuko yirukanywe mu buryo budakurikije amategeko, asaba n'indishyi zinyuranye. Ikirego cyanditswe kuri RAD00272/2016/TGI/NYGE, Urukiko rwemeza ko gifite ishingiro kuri bimwe, rutegeka Umujyi wa Kigali kumuha indishyi zo kwirukanwa binyuranyije n'amategeko zingana na 11.520.738Frw, n'amafaranga y'igihembo cy'Avoka angana na 1.000.000Frw.

[4] Urukiko Rwisumbuye rwa Nyarugenge, mu kwemeza ko yirukanywe binyuranyije n'amategeko, rwashingiye ku kuba yaramaze icyumweru afungiye kuri Sitasiyo ya Police ya Muhima kuva ku wa 04/09/2015 kugeza ku wa 11/09/2015, kandi n'Ubuyobozi bw'Umujyi wa Kigali bukaba bwari bubizi; naho ku yandi makosa Umujyi wa Kigali wamwirukaniye ukaba utarabashije kuyatangira ibimenyetso.

[5] Ababuranyi bombi ntibanyuzwe bajuririra Urukiko Rukuru, urubanza rwandikwa kuri RADA00023/2017/HC/KIG- RADA00027/2017/HC/KIG, rucibwa ku wa 21/09/2017, Urukiko rwemeza ko ubujurire bwa Ndakengerwa Gasana Aimable bufite ishingiro kuri bimwe, ko ubujurire bw'Umujyi wa Kigali nta shingiro bufite, ko icyemezo cyo kwirukana Ndakengerwa Gasana Aimable kivanyweho, rutegeka Leta y'u Rwanda kumuha imishahara atishyuwe ingana na 26.820.060Frw no kumusubiza mu kazi byaba bidashobotse ikamuha indishyi zingana na 8.046.018Frw, n'indishyi z'ikurikiranarubanza zingana na 1.000.000Frw. Urubanza rwasabiwe gukosorwa, ahanditse Leta y'u Rwanda handikwa Umujyi wa Kigali.

[6] Mu gufata icyemezo, Urukiko Rukuru rwashingiye ku kuba koko Ndakengerwa Gasana Aimable yarakoze amakosa nk'uko byari byagaragajwe n'Akanama gashinzwe gukurikirana amakosa y'abakozi mu Mujyi wa Kigali, ariko ko yari akwiye guhanishwa gutinzwa kuzamurwa mu ntera aho kwirukanwa nk'uko Umujyi wa Kigali wabikoze.

[7] Nyuma y'uko urubanza ruciwe, Umujyi wa Kigali wandikiye Urwego rw'Umuvunyi usaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Urwego rw'Umuvunyi rwasuzumye ikibazo cy'Umujyi wa Kigali, rwemeza ko urubanza RADA00023/2017/HC/KIG- RADA00027/2017/HC/KIG rwaciwe ku wa 21/09/2017 rurimo

akarengane, rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

[8] Urwego rw'Umuvunyi rwavuze ko urubanza RADA00023/2017/HC/KIG- RADA 00027/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 21/09/2017 rurimo akarengane kubera impamvu zikurikira:

Urwego rw'Umuvunyi ruvuga ko Urukiko rwafashe icyemezo rushingiye ku biteganywa n'Iteka rya Perezida N^{o}65/01 ryo ku wa 4/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, naho Umujyi wa Kigali ukaba warafashe icyemezo cyo kwirukana burundu Ndakengerwa Gasana Aimable ushingiye ku Itegeko Ngenga N^{o}11/2013/OL ryo ku wa 11/09/2013 rihindura kandi ryuzuza Itegeko Ngenga N^{o}61/2008 ryo ku wa 10/09/2008 rigena imyitwarire y'Abayobozi mu nzego za Leta.

Urwego rw'Umuvunyi rusanga kuba Akanama gashinzwe gukurikirana amakosa y'abakozi mu Mujyi wa Kigali kari kasabiye Ndakengerwa Gasana Aimable igihano cyo gukererezwa kuzamurwa mu ntera, ndetse icyo gihano n'Urukiko Rukuru rukaba aricyo rwasanze yari akwiriye guhanishwa, aruko ikosa yakoze rijyana n'ibihano byo mu rwego rwa kabiri, bisobanuye ko ikosa yakoze rikwiriye igihano kirenze kwihanangirizwa no kugawa.

Urwego rw'Umuvunyi rusobanura ko ingingo ya 20 y'Itegeko Nº61/2008 ryo ku wa 10/09/2008 rigena imyitwarire y'abayobozi mu nzego za Leta itahinduwe cyangwa ngo ivanweho n'Itegeko Ngenga Nº11/2013 ryo ku wa 11/09/2013, iyo ngingo ikaba iteganya ibihano ku muyobozi uhamwe n'amakosa birimo kwihanangirizwa mu nyandiko, kugawa mu nyandiko, kwirukanwa ku murimo no kwirukanwa ku murimo bigatangazwa mu binyamakuru, bigaragara ko muri iri Tegeko, igihano gikurikiraho mu gusumbya uburemere kwihanangirizwa no kugawa ari ukwirukanwa ku murimo; akaba ariyo mpamvu Ndakengerwa Gasana Aimable yari akwiye igihano cyo kwirukanwa ku murimo, ari nacyo yahawe n'Umujyi wa Kigali. Ndakengerwa Gasana Aimable yari Umuyobozi Mukuru ushinzwe Imibereho myiza y'Abaturage, akaba rero nawe agengwa n'Itegeko Ngenga ryavuzwe haruguru, cyane cyane mu ngingo yaryo ya 2 (3º)[1]

Urwego rw'Umuvunyi ruvuga ko mu guhana Ndakengerwa Gasana Aimable hagombaga gushingirwa ku Itegeko Ngenga rigena imyitwarire y'abayobozi mu nzego za Leta aho gushingira ku Iteka rya Perezida rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, harebwe uburyo amategeko asumbana, byongeye kandi ingingo ya 5 igika cya mbere y'Iteka rya Perezida Nº65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi iteganya ko umuyobozi ubifitiye ububasha ashobora, ashingiye ku mpamvu zongera uburemere bw'ikosa, guha umukozi wakosheje igihano gisumba igiteganyirijwe ikosa[2].

Urwego rw'Umuvunyi rwasanze niyo hashingirwa kuri iryo Teka rya Perezida, ntacyari gutuma Umujyi wa Kigali utirukana Ndakengerwa Gasana Aimable, mu gihe byabonekaga ko hari impamvu zongera uburemere bw'ikosa yari yakoze, kuko yakoze ikosa riremereye cyane.

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[1] Abayobozi Bakuru: abagize Guverinoma, abagize Inteko Ishinga Amategeko, Abacamanza mu Rukiko rw'Ikirenga n'abandi bashyirwaho n'Iteka rya Perezida n'abandi bayobozi bashyirwaho n'Iteka rya Minisitiri w'Intebe kugeza ku Muyobozi Mukuru n'abandi bakozi bari ku rwego rumwe n'Umuyobozi Mukuru

[2] Hashingiwe ku mpamvu zoroshya cyangwa zongera uburemere bw'ikosa ziteganyijwe mu ngingo ya 6 n'iya 7 z'iri teka, Umuyobozi ubifitiye ububasha ashobora gukuriraho umukozi wokosheje igihano, kumuha igihano gito cyangwa igisumba igiteganyirijwe ikosa".

[9] Nyuma y'Uko Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga, rusaba ko urubanza RADA00023/2017/HC/KIG-RADA00027/2017/HC/KIG rwasubirwamo ku mpamvu z'akarengane, yasesenguye ikibazo, anashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, yemeza ko urubanza rwandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe. Urubanza rwanditswe kuri RS/INJUST/RAD00005/2018/CS.

[10] Iburanisha ryashyizwe ku wa 05/02/2019, ribera mu ruhame, Umujyi wa Kigali witabye uburanirwa n'Intumwa ya Leta Me Cyubahiro Fiat, Ndakengerwa Gasana Aimable yitabye yunganiwe na Me Musirimu Jean Claude. Muri uru rubanza ikibazo nyamukuru kigomba gusuzumwa akaba ari ukumenya niba Ndakengerwa Gasana Aimable yarirukanywe mu buryo bukurikije amategeko

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba Ndakengerwa Gasana aimable yarirukanywe mu buryo bukurikije amategeko.

[11] Kugirango Urukiko rushobore kwemezwa niba Ndakengerwa Gasana Aimable yarirukanywe mu buryo bukurikije cyangwa budakurikije amategeko, ni ngombwa guzuzuma niba amakosa yashingiweho yirukanwa amuhama ; mu gihe yaba amuhama, hagasuzumwa niba igihano yahawe aricyo cyari gikwiye kandi niba cyaratanzwe mu nzira zikurikije amategeko.

Kumenya niba Ndakengerwa Gasana Aimable ahamwa n'amakosa Umujyi wa Kigali washingiyeho umwirukana burundu ku kazi

[12] Me Cyubahiro Fiat uburanira Umujyi wa Kigali avuga ko kuba Ndakengerwa Gasana Aimable atarahamwe n'icyaha yari akurikiranyweho, Ubushinjacyaha bugashyingura dosiye, bitavanaho kuba yarakoze ikosa mu rwego rw'akazi yagombaga gukurikiranwaho nk'uko biteganywa n'ingingo ya 78 y'Itegeko rigenga abakozi ba Leta.

[13] Avuga kandi ko mu Bushinjacyaha, Ndakengerwa Gasana Aimable atari akurikiranyweho ibijyanye n'amasezerano y'ubwishyu nk'uko abivuga, ahubwo ari ugutwara umuntu ku bw'urugomo, ibimenyetso byerekana ikosa yakoze bikaba bihari kandi bidashidikanywaho, ndetse n'Abapolisi baba ku Kigo yari agiye gufungiramo uwo muntu bakaba barabajijwe bakemeza ko yahageze akabasaba ko bamufunga bakabyanga, nawe ubwe akaba adahakana ko yahageze koko.

[14] Ku bijyanye n'ikosa ryo kubaka mu kajagari, Me Cyubahiro Fiat avuga ko Ndakengerwa Gasana Aimable nk'Umuyobozi wari ushinzwe kurwanya akajagari, nawe yagateje nk'uko komisiyo yasuye aho yubakaga yabyemeje, nyuma yo gusanga yarubatse indi nzu nyuma yo guhabwa ingurane.

[15] Ndakengerwa Gasana Aimable avuga ko nta karengane kagaragara mu rubanza rwaciwe n'Urukiko Rukuru, ko iby'uburanira Umujyi wa Kigali avuga ko ari amakosa ataribyo kuko Akanama gashinzwe imyitwarire kabisesenguye kagasanga atari amakosa, kagategeka ko asubira mu kazi. Ku kibazo cyo kuba yaragiye gufungira abantu I Gikondo mu Kigo cya "Kigali Rehabilitation Transit Center", avuga ko ntabyo yigeze akora, ko ahubwo yagiye kuri icyo Kigo ajyanywe no gusaba raporo umudamu wahakoraga witwa Kayitesi, kubera ko yari imaze iminsi itaza kandi ubundi yarayihabwaga.

[16] Ndakengerwa Gasana Aimable avuga ko abantu bari mu modoka ye, bivugwa ko yari agiye kubafunga, ari abo yari atwaye bisanzwe abahaye "Lift". Asobanura ko yabanje guhura

n'uwitwa Twahirwa Oswald akamutwara, yagera imbere agashyiramo uwitwa Nsengiyumva Gilbert, nyuma akaza kumenya ko bari bafitanye ikibazo cy'ideni, ko rero atari abashimuse nk'uko uburanira Umujyi wa Kigali abivuga. Yabajijwe niba hari icyo apfa n'abakozi bakora mu Kigo cya "Kigali Rehabilitation Transit Center", avuga ko ntacyo bapfa uretse ko ibyo bavuze ataribyo.

[17] Me Musirimu Jean Claude uburanira Ndakengerwa Gasana Aimable we avuga ko kugeza ubu uwo yunganira yirukanwe mu buryo bunyuranyije n'amategeko, kuko ikosa cyangwa amakosa Umujyi wa kigali washingiyeho umwirukana atigeze ayakora nk'uko byemejwe na Komisiyo yo kurwanya akarengane y'Umujyi wa Kigali kuwa 11/12/2015, ndeste n'Inama Njyanama idasanzwe y'Umujyi wa Kigali yateranye tariki ya 13/12/2015 ikaba aribyo yemeje.

[18] Avuga ko ikosa Umujyi wa Kigali uvuga ko Ndakengerwa Gasana Aimable yakoze ryo kugerageza gukoresha abakozi akuriye b'ikigo cya "Kigali Rehabilitation Transit Center" mu nyungu ze bwite, ritigeze ribaho kuko nta bimenyetso birimuhamya byigeze bigaragarizwa Urukiko, bityo ko ibyo Urukiko rwavuze mu gika cya 35 bidakwiye gufatwa nk'akarengane ahubwo ari imvugo y'Umucamanza. Avuga ko icyo Ndakengerwa Gasana Aimable yari akurikiranyweho atari ukugerageza gufungira abantu mu Kigo mu nyungu ze bwite, ko ahubwo ari ikibazo cy'amasezerano y'abantu babiri, ko kandi abo bantu bishyuranye kuri Polisi dosiye igahita isozwa. Avuga ko n'iyo byaba ari icyaha atariwe wagombaga kubihanirwa, akaba ariyo mpamvu yarekuwe n'Ubushinjacyaha n'ibye byari byarafatiriwe akabihabwa.

[19] Me Musirimu Jean Claude yongeraho ko Ikigo gishyirwamo inzererezi (Kigali Rehabilitation Transit center) atari urwego rukorerwamo n'abasivile ku buryo gishobora kubarizwa mu nshingano za Ndakengerwa gasana Aimable, nk'uko uburanira Umujyi wa Kigali abivuga. Ku bijyanye n'abatangabuhamya babajijwe bakemeza ko uwo yunganira yashatse gufunga abantu, Me Musirimu Jean Claude avuga ko imvugo zabo zidakwiye gushingirwaho, kubera ko nta nyandiko-mvugo z'ibazwa ryabo zihari.

[20] Ndakengerwa Gasana Aimable avuga ko ku bijyanye no kuba yarubatse mu kajagari, nta nyubako yigeze yongeraho nyuma y'uko amaze guhabwa ingurane kubera impamvu y'umuhanda wari umaze kumusenyera. Avuga ko amazu ahari, ari ayari ahasanzwe yashyizemo ibikoresho byavuye aho yimuwe. Me Musirimu Jean Claude umwunganira avuga ko umukozi ushinzwe iterambere mu Mujyi wa Kigali yasuye aho Ndakengerwa Gasana Aimable yubakaga, akemeza ko nta nzu yubatse nyuma yo guhabwa ingurane.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 80 y'Itegeko N^{o} 86/2013 ryo ku wa 11/09/2013 rishyiraho Sitati Rusange y'Abakozi ba Leta iteganya ko nta gihano na kimwe gishobora gushyirwa mu bikorwa ikosa ritarahama nyirubwite. Urukiko rurasanga rero hagomba kubanza gusuzumwa niba amakosa Umujyi wa Kigali washingiyeho wirukana burundu ku kazi Ndakengerwa Gasana Aimable, amuhama.

[22] Mu ibaruwa yo ku wa 29/01/2016, Umuyobozi w'Umujyi wa Kigali yanditse yirukana burundu ku kazi Ndakengerwa Gasana Aimable, hagaragaramo ko yirukaniwe amakosa atatu akurikira:

a. Kumara icyumweru kirenga atari ku kazi kandi atabanje kumenyesha abamukuriye, n'aho agarukiye ntamenyeshe mu nyandiko icyatumye atubahiriza inshingano ze;

b Kugerageza gukoresha abakozi b'Ikigo cy'Umujyi wa Kigali (Kigali Rehabilitation Transit Center) mu nyungu ze bwite;

c.Kutubahiriza amategeko n'amabwiriza ajyanye n'imiturire n'imyubakire mu Mujyi wa Kigali kandi yari mu bayobozi bakuru ku rwego rw'Umujyi wa Kigali rushinzwe kurwanya imyubakire mu buryo bw'akajagari.

Ku bijyanye n'ikosa ryo kumara icyumweru atari mu kazi kandi atamenyesheje abamukuriye

[23] Mu rubanza RADA00023/2017/HC/KIG-RADA00027/2017/HC/KIG, rwaciwe n'Urukiko Rukuru, igika cya 11, hagaragaramo ko Ndakengerwa Gasana Aimable yafunzwe na Polisi tariki ya 04/09/2015, akarekurwa by'agateganyo ku wa 11/09/2015. Muri raporo yakozwe n'Akanama gashinzwe gukurikirana amakosa y'abakozi mu kazi mu Mujyi wa Kigali ku wa 27/11/2015, bavuga ko Ndakengerwa Gasana Aimable yabagaragarije ubutumwa bugufi yandikiye Umuyobozi w'umujyi wa Kigali nawe akamusubiza, amumenyesha ko nyuma yo gufungwa na Polisi "ku wa gatanu ushize", yafunguwe by'agateganyo akazajya yitaba buri wa gatanu.

[24] Urukiko rurasanga ikigaragara mu bimaze kuvugwa, ari uko iminsi irindwi Ndakengerwa Gasana Aimable yabuze ku kazi (kuva ku wa 04/09/2015 kugera ku wa 11/09/2015), ari nabwo yari yafunzwe n'Urwego rwa Polisi, kandi akaba yarahise abimenyesha ubuyobozi bumukuriye akimara kurekurwa. Urukiko rurasanga rero, iryo kosa ritamuhama, kuko atari kubasha kujya ku kazi kandi afunzwe n'urwego rubifitiye ububasha.

Ku bijyanye n'ikosa ryo kugerageza gukoresha abakozi b'Ikigo cy'Umujyi wa Kigali kitwa "Kigali Rehabilitation Transit Center"(RTC) mu nyungu ze bwite

[25] Mu ibaruwa yirukana Ndakengerwa Gasana Aimable hagaragaramo ko yatwaye umuturage mu modoka akamugeza muri iki Kigo, agasaba abakozi bacyo ko bamufungira uwo muntu amwita igisambo. Abo bakozi bavuganye cyangwa babonanye na Ndakengerwa Gasana Aimable, bumviswe n'abagize Akanama gashinzwe gukurikirana amakosa y'abakozi mu kazi mu Mujyi wa Kigali, batanga ubuhamya bugaragara muri raporo yakozwe ku wa 27/11/2015, isinywaho n'abagize Akanama bose.

[26] Abakozi b'Ikigo RTC babajijwe bagera kuri bane, barimo na Komanda ukiyobora, bose bahurije ku kuba Ndakengerwa Gasana Aimable yarabasabye kumufungira umuntu bari kumwe mu modoka ye, avuga ko ari igisambo, ariko bakamwangira. Ibyo uburanira Ndakengerwa Gasana Aimable avuga ko nta cyemeza ko imvugo zigaragara muri iyo raporo ari izabo, ngo kuko nta nyandikomvugo y'ibazwa bashyizeho umukono, Urukiko rurasanga nta shingiro byahabwa kuko nta mpamvu yagaragaje yatuma abantu 6 basinye raporo y' Akanama gashinzwe gukurikirana amakosa y'abakozi mu kazi mu Mujyi wa Kigali babeshya.

[27] Mu bimenyetso Ndakengerwa Gasana Aimable atanga agaragaza ko atakoze iryo kosa, harimo inyandiko y'inyemezabwishyu hagati ya Nsengiyumva Gilbert na Twahirwa Oswald (uyu akaba ariwe Ndakengerwa Gasana Aimable aregwa ko yagerageje gufungira muri RTC). Iyo nyandiko igaragaza ko Nsengiyumva Gilbert yishyuye Twahirwa Oswald amafaranga 400.000 y'indishyi, Urukiko rukaba rusanga ntacyo yafasha muri uru rubanza kuko, uretse no kuba idasobanura impamvu y'izo ndishyi, ntikuraho ikosa Ndakengerwa Gasana Aimable yirukaniwe.

[28] Ibyo Ndakengerwa Gasana Aimable avuga ko Ubushinjacyaha bwamukurikiranye kubera iyo nyandiko y'inyemezabwishyu, nyuma bugasanga ari ibibazo mbonezamubano bukamurekura, ngo kikaba ari ikindi kimenyetso ko nta kosa yakoze, Urukiko rurasanga nta shingiro byahabwa kuko icyaha ubushinjacyaha bwamukurikiranyeho ari icyo gutwara

umuntu ku bw'urugomo, atari ubwishyu. Urukiko rurasanga kandi kuba iyo dosiye yarashyinguwe n'Ubushinjacyaha ntacyo byamumarira, kuko kuba umuntu adakurikiranywe mu rwego rw'inshinjabyaha, bidakuraho kuba yakurikiranwa mu rwego rw'akazi, hashingiwe ku biteganywa n'ingingo ya 78[3] y'Itegeko N^o 86/2013 ryo ku wa 11/09/2013 rishyiraho Sitati Rusange y'Abakozi ba Leta. Ibiteganywa n'iyi ngingo ninabyo bisobanurwa n'abahanga mu mategeko Georges Dupuis, Marie-Josée Guédon na Patrice Chretien[4], bemeza ko ikosa umukozi akoze mu kazi rishobora gukurikiranwa mu rwego rw'akazi no mu rwego rw'inshinjabyaha.

[29] Ibindi bimenyetso Ndakengerwa Gasana Aimable atanga agaragaza ko atakoze ikosa ryo kugerageza gukoresha abakozi akuriye mu nyungu ze bwite, ni raporo ya Komisiyo yo kurwanya akarengane y'Umujyi wa Kigali yo ku wa 11/12/2015, hamwe n'imyanzuro y'inama idasanzwe y'Inama Njyanama y'Umujyi wa Kigali yateranye ku wa 13/12/2015. Raporo ya Komisiyo yo kurwanya akarengane ivuga ko inzego zakurikiranye Ndakengerwa Gasana Aimable ari nazo zatumye abura ku kazi zasanze nta kimuhama, Urukiko rukaba rusanga kuba inzego zamukurikiranyeho icyaha zarashyinguye dosiye bidakuraho gukurikiranwaho amakosa mu rwego rw'akazi nk'uko byasobanuwe, iyi raporo ikaba rero ntacyo yafasha mu kugaragaza niba harakozwe cyangwa hatarakozwe ikosa mu rwego rw'akazi. Urukiko rurasanga Imyanzuro y'inama idasanzwe y'Inama Njyanama nayo ntacyo yafasha kuko ikivugwamo ari uko Inama Njyanama na Komite Nyobozi byabanza kuganira ku kibazo cya Ndakengerwa Gasana Aimable mu gushakisha igisubizo kimwe, hakaba nta cyemezo cyafashwe.

[30] Urukiko rurasanga kandi ibyo Ndakengerwa Gasana Aimable avuga ko atashoboraga gutanga amabwiriza mu Kigo cya RTC ngo kuko kitari mu nshingano ze, bitahabwa ishingiro, kuko hakurikijwe inyandiko igaragaza imiterere y'inzego z'imirimo mu Mujyi wa Kigali (Organizational Chart), iki Kigo kiri mu nzego z'imirimo yari akuriye nka "Director General of Social Development". Ndakengerwa Gasana Aimable kandi ntahakana kuba yaragiye ku Kigo cya RTC umunsi bivugwa ko yakoreyeho ikosa, ari kumwe na Twahirwa Oswald na nsengiyumva Gilbert mu modoka ye. Ibyo yabwiye Urukiko ko yari ajyanyweyo no gufata raporo y'akazi ihabwa abayobozi buri munsi, ku Muyobozi wungirije w'Ikigo, Urukiko rurasanga bitumvikana mu gihe we avuga ko ntaho ahurira n'icyo Kigo; ikindi kandi akaba yarashoboraga gusaba iyo raporo atagombye kwigirayo nk'Umuyobozi.

[31] Urukiko rurasanga nanone, ibyo uwunganira Ndakengerwa Gasana Aimable avuga ko kuba Umujyi wa Kigali waremeye kurangiza urubanza bishimangira ko nta makosa yakoze, nta shingiro byahabwa kuko gusubirishamo urubanza ku mpamvu z'akarengane bidahagarika

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[3] *"The disciplinary sanction of a public servant shall be independent from criminal liability and punishment as provided by the criminal code to the extent that the same fault may cause both disciplinary procedure and criminal procedure/ La sanction disciplinaire est indépendante de la responsabilité pénale et de la répression prévue par la législation pénale à tel point qu'un même fait peut déclencher des poursuites disciplinaires et pénales ».*

[4] ***Une faute professionnelle** d'un fonctionnaire peut entraîner, à la fois, une **répression disciplinaire** et une **répression pénale**. Dans les deux cas, il s'agit d'édicter une sanction en réponse à une faute. Il existe toutefois une réelle indépendance des deux procédures. L'autonomie de la répression disciplinaire tient à son lien avec l'exercice d'une fonction: la faute est fonctionnelle et la peine l'est aussi, alors que la répression pénale concerne tous les individus pour des faits qui ne sont pas liés à une fonction, et que la sanction pénale ne vise pas le coupable dans sa fonction mais dans sa liberté ou sa propriété. Pratiquement, la décision de l'autorité disciplinaire ne lie jamais le juge pénal: de nombreux agissements sont des fautes disciplinaires sans être, pour autant, des délits.*
De même, l'autorité disciplinaire n'est pas liée par la décision du juge pénal, sauf lorsque ce dernier s'est prononcé sur l'existence ou l'inexistence de certains faits: ses constatations matérielles s'imposent ál'autorité administrative » ; Georges DUPUIS, Marie-Josée GUÉDON, Patrice CHRETIEN, Droit Administratif, 10 éme Edition, Sirey, 2007, p. 381.

irangiza ryarwo hashingiwe ku biteganywa n'ingingo ya 64, igika cya mbere, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

[32] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Ndakengerwa Gasana Aimable ahamwa n'ikosa ryo kugerageza gukoresha abakozi b'Ikigo cy'Umujyi wa Kigali kitwa "Kigali Rehabilitation Transit Center"(RTC) mu nyungu ze bwite.

Ku bijyanye n'ikosa ryo kutubahiriza amategeko n'amabwiriza ajyanye n'imiturire n' imyubakire mu Mujyi wa Kigali

[33] Mu nyandiko zigize dosiye harimo raporo yakozwe ku wa 24/11/2015, n'itsinda ryashyizweho n'Umujyi wa Kigali kugirango rikore ubugenzuzi ku nyubako iri mu kibanza No 385 ya Ndakengerwa Gasana Aimable. Muri iyo raporo, hagaragaramo ifoto y'inzu ntoya ifite imiryango ibiri ngo yubakishije ibikoresho bishaje, abagize itsinda bakaba barasabye Ndakengerwa Gasana Aimable kwerekana icyemezo cyo kubaka iyo inzu ivugwa ko ari iyo kubikamo ibikoresho, yaba atabifite agahita ayikuraho. Urukiko rurasanga abagize itsinda bataremeje niba iyo nzu yarubatswe nyuma y'uko Ndakengerwa Gasana Aimable yimurwa kubera inyungu rusange, cyangwa niba yari ihasanzwe igashyirwamo ibikoresho byavuye ku nzu zakorewe "expropriation" nk'uko uyu abiburanisha.

[34] Muri raporo yo ku wa 27/11/2015, y'Akanama gashinzwe gukurikirana amakosa y'abakozi mu kazi mu Mujyi wa Kigali, hagaragaramo ko uwitwa Muhinda Arhtur, umukozi ushinzwe ibijyanye n'imyubakire mu Karere ka Gasabo, yabwiye Akanama ko nta nzu Ndakengerwa Gasana Aimable yubatse, ko ihari yari ihasanzwe mbere y'uko hakorwa "expropriation", ikaba ibitse ibikoresho by'inzu zahasenywe. Urukiko, rushingiye ku bikubiye muri raporo zimaze kuvugwa, rurasanga ikosa ryo kutubahiriza amategeko n'amabwiriza ajyanye n'imiturire n'imyubakire mu Mujyi wa Kigali ridahama Ndakengerwa Gasana Aimable.

[35] Urukiko, rushingiye ku isesengura ryakozwe ku makosa yose uko ari atatu yarezwe Ndakengerwa Gasana Aimable, rurasanga ikosa rimuhama ari rimwe ryo kugerageza gukoresha abakozi b'Ikigo cy'Umujyi wa Kigali kitwa "Kigali Rehabilitation Transit Center"(RTC) mu nyungu ze bwite**.**

Kumenya niba igihano cyo kwirukanwa burundu ku kazi cyahawe Ndakengerwa Gasana Aimable cyari gikwiye kandi cyaratanzwe mu nzira zikurikije amategeko

[36] Me Cyubahiro Fiat uburanira Umujyi wa Kigali avuga ko mu guhana Ndakengerwa Gasana Aimable hashingiwe ku Iteka rya Perezida rigena ibihano ku bakozi ba Leta, no ku Itegeko Ngenga rigenga imyitwarire y'Abayobozi, kuko yari Umuyobozi Mukuru mu Mujyi wa Kigali. Avuga ko mu bika bya 35, 36 na 37 by'urubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko Rukuru rwasanze Ndakengerwa Gasana Aimable yarahamwaga n'amakosa yo kugerageza gukoresha abakozi yari akuriye mu nyungu ze bwite, ariko rwanzura ruvuga ko yagombaga guhabwa igihano cyavuzwe n'Akanama gashinzwe gukurikirana amakosa mu kazi, aricyo cyo gukererezwa kuzamurwa mu ntera rushingiye ku ngingo ya 12 agace ka 5 y'Iteka rya Perezida N°65/01 ryo ku wa 4/3/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta, rwirengagije ko n'ubwo Akanama gashinzwe gukurikirana amakosa kari kabibonye gutyo, nta cyabuzaga Umuyobozi ufite ububasha bwo gutanga ibihano kubibona ukundi hashingiwe ku buremere bw'amakosa yari yakozwe.

[37] Me Cyubahiro Fiat avuga kandi ko ingingo ya 5 y'Iteka rya Perezida N°65/01 ryo ku wa 4/3/2014 ryavuzwe haruguru, iteganya ko bitewe n'uburemere bw'ikosa, umuyobozi ashobora gutanga igihano gisumba igiteganyijwe; naho ingingo ya 7 ikaba iteganya impamvu zongera uburemere bw'amakosa. Asobanura ko kubireba Ndakengerwa Gasana Aimable, uburemere bushingiye ku ruhurirane rw'amakosa yakoze, no kuba yarashatse gufunga

umuntu mu buryo bunyuranyije n’amategeko, kandi yari Umuyobozi Mukuru ufite mu nshingano kureberera Ikigo yashatse gukoresha mu nyungu ze bwite. Me Cyubahiro Fiat avuga ko izi mpamvu zose zahaye ikosa uburemere bwatumye Ndakengerwa gasana Aimable ahabwa igihano cyo kwirukanwa burundu.

[38] Me Cyubahiro Fiat yongeraho ko Umuyobozi w’Umujyi wa Kigali yatanze igihano amaze kubona inama yatanzwe n'Akanama gashinzwe gukurikirana amakosa ku bihano byari bikwiye gutangwa, akaba yaranagishije inama Minisiteri ishinzwe abakozi ba Leta (MIFOTRA), nayo ikaba yaramushubije ko hakurikijwe uburemere bw'amakosa yakozwe, uwo mukozi akwiye kwirukanwa burundu. Avuga ko na Ndakengerwa Gasana Aimable yandikiye Komisiyo ishinzwe Abakozi ba Leta, imusubiza ko igihano yahawe gikurikije amategeko.

[39] Me Musirimu Jean Claude wunganira Ndakengerwa Gasana Aimable avuga ko Urukiko Rukuru rwagaragaje ko uwo yunganira atagombaga kwirukanwa, ahubwo ko yagombaga guhanishwa igihano giteganywa n’Iteka rya Perezida Nº65/01 ryo kuwa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu ngingo yaryo ya 12, igika cya 2, n’ubwo we atemera iryo kosa

[40] Avuga kandi ko Umujyi wa Kigali ukoresha amategeko nabi, kuko uhera ku Iteka rya Perezida ryavuzwe haruguru mu gushaka impamvu zongera uburemere bw’icyaha, ariko mu guhana ugashingira ku Itegeko-Ngenga rigenga imyitwarire y’Abayobozi mu nzego za Leta. Yongeraho ko n’ubwo uwo yunganira atemera ko hari ikosa ryakozwe, igihano cyifujwe n’Akanama gashinzwe gukurikirana amakosa mu kazi cyo gukererezwa kuzamurwa aricyo cyagombaga gutangwa, nk’uko Urukiko Rukuru rwabyemeje.

UKO URUKIKO RUBIBONA

[41] Ingingo ya 98 y’Itegeko Nº86/2013 ryo ku wa 11/09/2013 rishyiraho Sitati Rusange y’Abakozi ba Leta iteganya ko kwirukanwa burundu ku kazi ari icyemezo gifatwa mu nyandiko n’umuyobozi ubifitiye ububasha cyo kuvana burundu umukozi wa Leta mu bakozi ba Leta, bitewe n’ikosa rikomeye yakoze. Iteganya kandi ko ikosa rikomeye rihanwa n’umuyobozi ubifitiye ububasha amaze kugisha inama Minisitiri.

[42] Ingingo ya 3 y’Itegeko rimaze kuvugwa isobanura ko ikosa rikomeye ari ikosa rikorwa hashingiwe ku buremere bw’icyakozwe, ikitakozwe cyangwa imyitwarire, uburyo byabayemo, ingaruka byateje mu butegetsi bwa Leta, kuri serivisi itangwa no ku bo serivisi igenerwa.

[43] Ikosa rikomeye rihanishwa ibihano byo mu rwego rwa kabiri, hashingiwe ku biteganywa n’ingingo ya 76 y’Itegeko Nº86/2013 ryo ku wa 11/09/2013 ryavuzwe haruguru. Ingingo ya 81 y’iryo tegeko, isobanura ko umuyobozi ufite ububasha bwo gutanga ibihano byo mu rwego rwa kabiri, ari uwashyize umukozi mu mwanya, amaze kugisha inama Minisitiri. Minisitiri uvugwa, ni Minisitiri ufite abakozi ba Leta mu nshingano ze, hakurikijwe ibiteganywa n’ingingo ya 3 y’Itegeko Nº86/2013 ryavuzwe haruguru.

[44] Hashingiwe kuri ibi bisobanuro bitangwa n’Itegeko Nº86/2013 ryo ku wa 11/09/2013 rishyiraho Sitati rusange y’abakozi ba Leta, kugirango umukozi wa Leta yirukanwe burundu ku kazi, agomba kuba ahamwa n’ikosa rikomeye. Mu kwemeza ko ikosa ryakozwe rikomeye, hakaba harebwa uburemere bw’icyakozwe, uburyo cyakozwemo, n’ingaruka zacyo. Kwirukanwa Burundu kandi ni kimwe mu bihano byo mu rwego rwa kabiri, bitangwa n’uwashyize umukozi mu mwanya kandi akabikora mu nyandiko, nyuma yo kugisha inama Minisitiri ufite abakozi ba Leta mu nshingano ze.

[45] Nk'uko byasobanuwe haruguru, Ndakengerwa Gasana Aimable ahamwa n'ikosa ryo kugerageza gukoresha abakozi b'Ikigo cy'Umujyi wa Kigali kitwa "Kigali Rehabilitation Transit Center"(RTC) mu nyungu ze bwite, abasaba kumufungira umuntu amwita igisambo. Itegeko Nshinga Igihugu kigenderaho, mu ngingo yaryo ya 13, riteganya ko umuntu ari umunyagitinyiro kandi ari indahungabanywa. Ingingo ya 29 y'iri Tegeko nayo igashimangira ihame ry'uko umuntu afungwa ari uko yakoze icyaha giteganywa kandi gihanwa n'amategeko. Kuba Ndakengerwa Gasana Aimable yaragerageje gufungisha umuntu udafite icyaha aregwa n'inzego zibishinzwe, ahantu hatagenewe gufungira abantu, Urukiko rurasanga ari uguhohotera no guhungabanya umuntu hatitawe ku mahame amurengera, ashimangirwa n'Itegeko Nshinga rya Repubulika y'u Rwanda, bikaba ari ikosa rikomeye. Urukiko rurasanga kandi, kuba yarakoze iryo kosa ari umuyobozi ukuriye abandi, ugombye kubaha urugero akirinda ibikorwa byose bishobora gusebya Leta nk'umukoresha we, ari impamvu yongera uburemere bw'ikosa.

[46] Hakurikijwe ibiteganywa n'ingingo ya 76 y'Itegeko N^{o}86/2013 ryo ku wa 11/09/2013 ryavuzwe haruguru, ikosa rikomeye rihanishwa ibihano byo mu rwego rwa kabiri. Ibihano byo mu rwego rwa kabiri ku bakozi bagengwa n'iri Tegeko, bigizwe no gukererezwa kuzamurwa mu ntera, guhagarikwa ku kazi mu gihe kitarenze amezi atatu adahemberwa, no kwirukanwa burundu. Urukiko rurasanga Ndakengerwa Gasana Aimable yari mu bakozi bagengwa n'iri Tegeko nk'umukozi wa leta, bakanagengwa ariko by'umwihariko n'Itegeko Ngenga No 11/2013/OL ryo ku wa 11/09/2013 rihindura kandi ryuzuza itegeko ngenga N^{o}61/2008 ryo ku wa 10/09/2008 rigenga imyitwarire y'abayobozi mu nzego za Leta, kubera umwanya yari ariho w'Umuyobozi Mukuru ushinzwe imibereho myiza. Ingingo ya 2 n'iya 3 z'iri Tegeko Ngenga ziteganya ko abayobozi bagengwa naryo barimo Abayobozi Bakuru (Director General) n'abandi bari kuri urwo rwego.

[47] Urukiko rurasanga, ibyo uwunganira Ndakengerwa Gasana Aimable avuga ko iyo ikosa rimuhama yagombaga guhanishwa gukererezwa kuzamurwa mu ntera, nta shingiro byahabwa kuko icyo gihano kitari mu biteganywa n'Itegeko Ngenga N^{o}11/2013/OL ryo ku wa 11/09/2013 rigenga imyitwarire y'abayobozi mu nzego za Leta, kandi iri Tegeko Ngenga rikaba ariryo ryagombaga gukoreshwa hashingiwe ku ihame ry'amategeko rivuga ko itegeko ryihariye riza mbere y'itegeko riri rusange (specialia generalibus derogant). Ibyo avuga nanone ko hagombaga gukurikizwa inama yatanzwe n'Akanama gashinzwe gukurikirana amakosa y'abakozi b'Umujyi wa Kigali, katanze inama ko Ndakengerwa Gasana Aimable akwiye guhabwa igihano cyo gukererezwa kuzamurwa mu ntera, Urukiko rurasanga nta shingiro bifite kuko icyemezo ntakuka kiba kigomba gufatwa n'Umuyobozi ufite ububasha bwo gutanga igihano.

[48] Hashingiwe ku biteganywa n'ingingo ya 20 y'Itegeko Ngenga rimaze kuvugwa, ibihano byo mu rwego rwa kabiri bihabwa abayobozi bahamwe n'ikosa rikomeye ni ukwirukanwa ku murimo, cyangwa kwirukanwa ku murimo impamvu igatangazwa mu binyamakuru iyo bifitiye rubanda akamaro. Urukiko rukaba rusanga rero, Ndakengerwa Gasana Aimable yarahawe igihano kijyanye n'ikosa rikomeye rimuhama.

[49] Urukiko rurasanga kandi igihano cyo kwirukanwa burundu cyahawe Ndakengerwa Gasana Aimable cyaratanzwe mu nzira zikurikije amategeko, kuko cyatanzwe mu nyandiko n'Umuyobozi wamushyize mu mwanya ariwe Umuyobozi w'Umujwi wa Kigali hakurikijwe ibaruwa yo ku wa 30/10/2014, akaba ari nawe wamwirukanye burundu hakurikijwe ibaruwa yo ku wa 29/01/2016, kandi akaba yarabikoze amaze kugisha inama Minisitiri ufite abakozi

ba Leta mu nshingano nk'uko bigaragazwa n'amabaruwa yo ku wa 11/12/2015[5] no ku wa 27/01/2016[6].

[50] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga Ndakengerwa Gasana Aimable yarakoze ikosa rikomeye ryo kugerageza gukoresha abakozi b'Ikigo cy'Umujyi wa Kigali kitwa "Kigali Rehabilitation Transit Center"(RTC) mu nyungu ze bwite, igihano yahawe cyo kwirukanwa burundu ku kazi kikaba aricyo cyari gikwiye kandi kikaba cyaratanzwe mu nzira zikurikije amategeko, akaba rero yarirukanywe mu buryo bukurikije amategeko. Kubera iyo mpamvu, Urukiko rurasanga atari ngombwa kwirirwa rusuzuma ibirebana n'indishyi yari yasabye.

III. ICYEMEZO CY'URUKIKO

[51] Rwemeje ko ikirego cyatanzwe n'Umujyi wa Kigali gisaba gusubirishamo ku mpamvu z'akarengane urubanza RADA00023/2017/HC/KIG-RADA00027/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 21/09/2017, rugakosorwa n'urubanza RS/RECT/RAD00003/2017/HC/KIG ku wa 07/11/2017, gifite ishingiro ;

[52] Rwemeje ko Ndakengerwa Gasana Aimable yirukanywe mu buryo bukurikije amategeko ;

[53] Rwemeje ko icyemezo cyo kwirukana Ndakengerwa Gasana Aimable kigumyeho ;

[54] Rwemeje ko imikirize y'urubanza RADA00023/2017/HC/KIG-RADA00027/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 21/09/2017, rugakosorwa n'urubanza RS/RECT/RAD 00003/2017/HC/KIG ku wa 07/11/2017, ihindutse kuri byose ;

[55] Rutegetse ko amagarama y'ibyakozwe mu rubanza aherera ku Isanduku ya Leta.

[5] Ibaruwa y'umuyobozi w'Umujyi wa Kigali igisha inama Minisitiri w'Abakozi ba Leta n'Umurimo ku mushinga w'ibihano.

[6] Ibaruwa ya Minisitiri w'Abakozi ba Leta n'Umurimo itanga inama ku gihano cyo kwirukana burundu ku kazi Ndakengerwa Gasana Aimable.