SALIMINI v LETA Y'U RWANDA (MINISITERI Y'UBUZIMA)

[Rwanda URUKIKO RW'IKIRENGA – RADA 0002/16/CS– (Nyirinkwaya, P.J., Mukandamage na Rugabirwa, J.) 23 Gashyantare 2018]

Amategeko agenga imanza z'ubutegetsi – Gutanga igihano ku mukozi wa Leta – Umukozi wa Leta utubahirije ibyo ashinzwe cyangwa udakoze ibyo asabwa – Iyo umukozi wa Leta atubahirije inshingano ze agakora amakosa atari ateganyijwe mu mategeko afatirwa ibihano byo mu rwego rw'akazi hakurikijwe uburemere bw'ikosa bigenwa n'umuyobozi w'urwego umukozi yakoragamo abanje kugezwaho raporo n'akanama gashinzwe gukurikirana amakosa – Iteka rya Perezida Nº 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, ingingo ya 15.

Amategeko agenga imanza z'ubutegetsi – Ibihano mu rwego rw'akazi – Gushyingura dosiye y'inshinjabyaha – Icyemezo gifashwe mu rwego rw'imanza nshinjabyaha ntikibangamira cyangwa ngo gikureho ko umukozi wa Leta atakurikiranwa ngo anafatirwe n'ibihano mu rwego rw'akazi kuko aba ashobora guhanirwa mu rwego rw'akazi ibikorwa yagizweho umwere mu manza nshinjabyaha.

Incamake y'ikibazo: Salimini wari umutekinisiye wa "*maintenance*" mu bitaro bya Byumba yareze mu Rukiko Rukuru Leta y'u Rwanda (Minisiteri y'ubuzima) avuga ko yamwirukanye mu buryo budakurikije amategeko, asaba ko

yasubizwa mu kazi, ikamuhemba ibirarane by’imishahara atahembwe mbere y’uko yirukanwa burundu ku kazi, ikanamuha n’indishyi zinyuranye zirimo iz’uko atahawe icyemezo cy’umurimo.

Leta y’u Rwanda yireguye ivuga ko yirukanye Salimini mu buryo bukurikije amategeko kubera amakosa akomeye yakoreye muri ibyo bitaro ajyanye no guhindura moteri nshyashya na’” *amortisseurs*” bya moto yakoreshaga mu kazi, kugira uburangare bwatumye moteri yacaniraga ibyo bitaro “*groupe électrogène*” ihagarara kandi byashoboraga kugira ingaruka zikomeye kuri serivisi zitangirwa muri ibyo bitaro ndetse no ku barwayi bari barwariye muri ibyo bitaro harimo n’abana bari muri za “*couveuses*”.

Urukiko Rukuru nyuma yo kwemeza ko Salimini agomba kwirukanwa burundi ku kazi, rwanemeje ko ikirego cye gifite ishingiro kuri bimwe kuko atahawe icyemezo cy’umurimo no ku mafaranga y’ikurikiranarubanza n’igihembo cy’Avoka, bituma rutegeka Leta y’u Rwanda kumuha amafaranga y’indishyi zijyanye nabyo.

Salimini yajuririye Urukiko rw’Ikirenga avuga ko Urukiko Rukuru rwemeje ko agomba kwirukanwa burundu ku kazi, rwirengagije ko yirukanwe mu buryo bunyuranyije n’amategeko kubera ko atakoze amakosa yaregwaga, kandi ko yirukanwe atabanje kuyisobanuraho, ndetse ko yaba yarahawe igihano kinyuranije n’amategeko kandi dosiye yari yarezwe mu bugenzacyaha yari yarashyinguwe.

Leta y’u Rwanda yireguye ivuga ko kuba Urukiko Rukuru rwemeje ko Urega atasubizwa mu kazi ari uko rwasanze yarakoze amakosa yaregwaga yashoboraga kugira ingaruka kuri serivisi zatangirwaga mu bitaro no barwayi bari babirwarimo.

Ku kibazo kijyanye no kwisobanura, Leta y'u Rwanda yireguye ivuga ko Uwajuriye atirukanwe ku kazi mu buryo bunyuranyije n'amategeko kubera yahawe uburenganzira bwe bwo kwisobanura ku makosa akomeye yakoze yavuzwe haruguru.

Ku ngingo ijyanye no kwirukanwa mu buryo bunyuranyije n'amategeko no guhabwa ibihano binyuranyije nayo, Leta y'u Rwanda yabyisobanuyeho ivuga ko Urukiko Rukuru rwasanze Uwajuriye akwiye kwirukanwa burundu ku kazi kubera uburemere bw'amakosa akomeye yakoze ajyanye n'imicungire mibi y'ibikoresho bya Leta yari ashinzwe kurinda, kandi ayo makosa yashoboraga guteza ingaruka zikomeye ku buryo atareberwa gusa ku gaciro k'amafaranga y'igikoresho cyangijwe.

Leta y'u Rwanda yatanze ubujurire bwuririye kubwa Salimini isaba guhabwa indishyi z'ikurikiranarubanza zingana na 5.000.000 frw. Salimini yireguye avuga ko ntazo yatanga kuko Leta itigeze ijuririra ibyo yatsindiwe ku rwego rwa mbere.

Incamake y'icyemezo: 1. Umukozi wa Leta utubahirije inshingano ze agakora amakosa atari ateganyijwe mu mategeko afatirwa ibihano byo mu rwego rw'akazi hakurikijwe uburemere bw'ikosa bigenwa n'umuyobozi w'urwego umukozi yakoragamo abanje kugezwaho raporo n'akanama gashinzwe gukurikirana amakosa. Bityo, Salimini akaba yarakoze amakosa akomeye yaregwaga ajyanye n'imicungire mibi y'ibikoresho bya Leta byari mu nshingano ze.

2. Kuba ubushinjacyaha bushyinguye dosiye bwari bukurikiranyeho umukozi mu rwego rw'inshinjabyaha ntibikuraho kuba yakurikiranwa ngo afatirwe ibihano mu rwego rw'akazi. Bityo, Salimini yirukanwe burundu mu kazi mu buryo bukurikije amategeko kubera amakosa akomeye yakoze, n'ubwo yayagizweho umwere mu rwego rw'inshinjabyaha.

Ubujurire nta shingiro bufite;
Ubujurire bwuririye ku bundi bufite ishingiro;
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko N° 86/2013 ryo ku wa 11/09/2013 rishyiraho Sitati rusange igenga abakozi ba Leta (ryakoreshwaga icyo gihe), ingingo ya 76, 77 na 79.
Itegeko ryo kuwa 30/07/1888, rigenga amasezerano cyangwa imirimo nshinganwa (ryakoreshwaga icyo gihe), ingingo ya 258.
Iteka rya Perezida Nº 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, ingingo ya 5 n'iya 15.

Inyandiko z'abahanga zifashishijwe:
Jean Rivero, « Droit Administratif», Dalloz, 2011, p. 374.

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Salimini Saidi wari umutekinisiye wa "Maintenance" mu bitaro bya Byumba arega Leta y'u Rwanda (Minisiteri y'Ubuzima), asaba ko yamusubiza ku kazi kubera ko yamwirukanye mu buryo bunyuranije n'amategeko, ikamuhemba ibirarane by'imishahara atahembwe mbere y'uko yirukanwa burundu ku kazi, ikanamuha n'indishyi zinyuranye.

[2] Mu myiregurire ye, uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko itirukanye Salimini Saidi mu buryo bunyuranije n'amategeko, ko ahubwo yamwirukanye

kubera amakosa akomeye yakoreye muri ibyo bitaro arimo kuba Moto Yamaha AG 100 (GPM) 319 B yakoreshaga mu kazi ke yahinduriwe moteri nshashya yari ifite ishyirwamo ishaje, kandi ko yanahinduriwe za "*amortisseurs*" zayo, no kuba yaragize uburangare bwatumye moteri icanira ibyo bitaro "*groupe électrogène*" ihagarara kandi ko byashoboraga kugira ingaruka zikomeye ku barwayi bari barwariye muri ibyo bitaro harimo n'abana bari muri za "*couveuses*".

[3] Urwo rukiko rwaciye urubanza RAD 0003/15/HC/KIG ku wa 30/11/2015, rwemeza ko ikirego cya Salimini Saidi gifite ishingiro kuri bimwe bijyanjye n'uko atahawe icyemezo cy'umurimo no ku mafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, rutegeka Leta y'u Rwanda (Minisiteri y'Ubuzima) kumuha 460.000 Frw (ariko rwasobanuye ko agomba guhabwa 462.000 Frw) y'indishyi z'uko atahawe icyemezo cy'umurimo na 500.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.

[4] Salimini Saidi yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwemeje ko agomba kwirukanwa burundu ku kazi, rwirengagije ko yirukanwe mu buryo bunyuranyije n'amategeko kubera ko atakoze amakosa yaregwaga, kandi ko yirukanwe atabanje kuyisobanuraho, ndetse ko yaba yarahawe igihano kinyuranije n'amategeko mu gihe rwasanga yarakoze ayo makosa.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 16/01/2018, Salimini Saidi yunganiwe na Me Nsengiyumva Enos, naho Leta y'u Rwanda (Minisiteri y'Ubuzima) ihagarariwe na Me Rubango Epimaque.

II. IBIBAZO BIRI MU RUBANZA N’ISESENGURWA RYABYO

Kumenya niba Salimini Saidi yarirukanwe ku kazi mu buryo bunyuranyije n’amategeko

1. Kumenya niba Salimini Saidi yarirukanwe ku kazi mu buryo bunyuranyije n’amategeko kubera ko atakoze amakosa y’akazi.

[6] Salimini Saidi n’umwunganira bavuga ko yirukanwe ku kazi mu buryo bunyuranyije n’amategeko kubera ko yirukanwe burundu ku kazi kandi atarakoze amakosa yaregwaga ajyanye no kwangiza moto Yamaha AG 100 (GPM 319 B) yakoreshaga mu kazi ke kuko yangijwe na Biraguma, igihe yayimuhaga kugira ngo ayikorere “*entretien*”. Bavuga kandi ko atangije “*groupes électrogènes*” z’ibitaro bya Byumba, ko ahubwo bishoboka ko hari umukozi wa *Garage Tropical* washyize “*code*” muri “*groupe électrogène*” imwe y’ibyo bitaro kugira ngo azibonere amafaranga ya “*main d’oeuvre*” kuko ikimenyetso kigaragaza ko atakoze ayo makosa, ari uko yayagizweho umwere na Polisi ikorera kuri “*Station*” ya Byumba kuko yashyinguye burundu dosiye ye.

[7] Bavuga na none ko Urukiko Rukuru rwemeje ko Salimini Saidi akwiye kwirukanwa burundu ngo kuko amakosa akomeye yakoze yateje ingaruka zikomeye ku barwayi bari barwariye mu bitaro bya Byumba, no ku bana bari muri za “*couveuses*”, rwirengagije ko nta kimenyetso kigaragaza ko izo ngaruka zabayeho koko. Basaba ko Leta y’u Rwanda (Minisiteri y’Ubuzima) ikwiye kumusubiza ku kazi, bitashoboka kubera ko umwanya yakoragamo utagihari, ikamuha 12.000.000 Frw

y'indishyi z'uko yamwirukanye mu buryo bunyuranyije n'amategeko.

[8] Uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko Salimini Saidi atirukanwe ku kazi mu buryo bunyuranyije n'amategeko kubera ko Urukiko Rukuru rwasanze yarakoze amakosa akomeye yo guhindura moteri na "*amortisseurs*" bya moto yari ashinzwe kurinda, no kuba yaragize uburangare bwatumye moteri icanira ibitaro bya Byumba ihagarara ku buryo byashoboraga kugira ingaruka ku barwayi bari barwariye muri ibyo bitaro barimo ababagwaga n'abahabwaga umwuka, ndetse n'abana bari muri za "*couveuses*", bityo ko atasubizwa mu kazi cyangwa ngo ahabwe indishyi asaba zavuzwe haruguru.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 77 y'Itegeko N° 86/2013 ryo ku wa 11/09/2013 rishyiraho Sitati rusange igenga abakozi ba Leta, iteganya ko "Igihe umukozi wa Leta adakoze ibyo ashinzwe cyangwa atubahirije ibyo asabwa biba ikosa rihanishwa kimwe mu bihano biteganyijwe mu ngingo ya 76 y'iri tegeko hakurikijwe uburemere bw'iryo kosa". Naho ingingo ya 15 y'Iteka rya Perezida Nº 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, iteganya ko iyo umukozi akoze igikorwa cyangwa agize imyitwarire binyuranyije n'inshingano ze z'akazi bikabyara ikosa ridateganyijwe muri iri teka, umuyobozi w'urwego akorera ashingiye ku myanzuro y'Akanama gashinzwe gukurikirana amakosa, agena uburemere bw'icyabyaye ikosa n'ubwoko bw'igihano bikwiranye mu bihano biteganyijwe n'iri teka.

[10] Dosiye y'urubanza igaragaza ko Umuyobozi Mukuru w'ibitaro bya Byumba yandikiye Salimini Saidi, "*Technicien*" wa "*Maintenance*" wakoreraga muri ibyo bitaro, ibaruwa nimero 20/02.1/OPH BY/2009 yo ku wa 27/12/2013, amusaba gutanga ibisobanuro ku makosa yakoze ajyanye n'uko moto GPM 319 B yatwaraga ikanamufasha kuzuza inshingano ze yahinduriwe moteri na "*amortisseurs*" byayo ku buryo moteri yayo nshya yasimbujwe ishaje, Salimini Saidi yamwandikiye ibaruwa yo ku wa 08/01/2014, amumenyesha ko atariwe wahinduye moteri na "*amortisseurs*" by'iyo moto, ko ahubwo byahinduwe na Biraguma, igihe yayimuhaga kugira ngo ayikorere "*entretien*" kubera ko Kevin wari usanzwe uyikorera "*entretien*" atari ahari. Ku bijyanye na "*groupe électrogène*", avuga ko atariwe wayishyizemo "*code*" yatumaga itaka, ko ahubwo akeka ko yaba yarashyizwemo n'umukozi wa *Garaje Tropical* wazikoreraga "*entretien*" kugira ngo azibonere amafaranga ya "*main d'oeuvre*".

[11] Nk'uko raporo ya Garaje Tropical yo ku wa 17/02/2014 ibigaragaza, "*Générateur*" ya mbere y'ibitaro bya Byumba yitwa SDM yibweho "*chargeur automatique*" yayo inangirika "*Solnoïde*" na "*démarreur*" byayo, naho iya kabiri yitwa PRAMAC 65 KVA yashyizwemo "*code*" yayibuzaga kwaka no gutanga umuriro, kandi ko "*chargeur automatique*" yayo yahiye, nyamara ari Salimini Saidi wari ufite urufunguzo rw'ahantu zari ziri.

[12] Dosiye igaragaza kandi ko Umuyobozi Mukuru w'ibyo bitaro, ashingiye kuri raporo yo ku wa 17/02/2014 imaze kuvugwa haruguru, no ku mabaruwa menshi Salimini Saidi yagiye yandikirwa mu kazi ke yamumenyeshaga amakosa atandukanye yakoze, ariko ntiyikosore, yamuhagaritse

by'agateganyo ku kazi guhera ku wa 17/02/2014 kubera amakosa yakoze yatumye moto na "*Générateurs*" ebyiri z'ibyo bitaro zibwaho moteri n'ibindi byuma bigateza ingaruka mbi kuri ibyo bitaro kuko bitashoboraga gutanga serivisi nziza ku bakiriya babyo nk'uko bivugwa mu ibaruwa nimero 20/87/OPH BY/2014 yo ku wa 17/02/2014.

[13] Raporo yo ku wa 02/05/2014 yakozwe n'itsinda rigizwe n'abakozi ba Minisiteri y'Ubuzima na Minisiteri y'Abakozi ba Leta n'Umurimo igaragaza na none ko Salimini Saidi akwiye kuryozwa amakosa akomeye yakoze yo kwangiza ibikoresho by'ibitaro bya Byumba yari ashinzwe kurinda kubera ko Moto Yamaha AG 100 (GPM 319 B) yahinduriwe moteri nk'uko bigaragazwa na nimero za "chassis" zayo, kandi ariwe wari ushinzwe icyo kinyabiziga, ndetse ko "*Generateur*" yamurikiraga ibyo bitaro yananiwe gutanga ingufu z'amashanyarazi mu buryo bwa "automatisme" inahindurirwa "ceronoïde" yayo, kandi ari Salimini Saidi wabikaga imfunguzo zayo, maze iryo tsinda risaba ko yahanishwa igihano cyo guhagarikwa amezi atatu (3) adahemberwa kubera ayo makosa yakoze yo kutuzuza inshingano ze no gufata nabi ibikoresho bya Leta.

[14] Muri dosiye hari raporo yo ku wa 17/06/2014 yatanzwe n'abagize Komite ya Discipline y'ibitaro bya Byumba, ishimangira na none ko Salimini Saidi akwiye guhagarikwa burundu ku kazi kubera ko amakosa akomeye yakoze yo kwangiza ku bushake Moto Yamaha AG 100 (GPM 319 B) n'imashini zitanga umuriro w'amashanyarazi z'ibitaro bya Byumba nk'uko bigaragazwa na raporo y'abatekinisiye ba *Garaje Tropical* yavuzwe haruguru, ku buryo ayo makosa yashoboraga gushyira ubuzima bw'abarwayi mu kaga

nk'ababaga bari ku iseta, abari mu byuma nk'ama "*Cuveuses*", abahabwaga umwuka, bikanahesha ibitaro bya Byumba isura mbi, no kuba Salimini Saidi yaragiye yandikirwa amabaruwa menshi agaragarizwa amakosa y'imikorere mibi yakoraga mu kazi ke, ariko ntiyikosore.

[15] Ashingiye ku mabaruwa n'amaraporo atandukanye yavuzwe haruguru, Minisitiri w'Ubuzima yandikiye Salimini Saidi ibaruwa yo ku wa 03/07/2014, amumenyesha ko yirukanwe burundu ku kazi kubera amakosa akomeye yakoze yavuzwe haruguru.

[16] Urukiko rurasanga, amabaruwa n'amaraporo amaze kuvugwa haruguru agaragaza ko Salimini Saidi yakoze amakosa akomeye yaregwaga ajyanye n'imicungire mibi y'ibikoresho bya Leta byari mu nshingano ze kubera ko Moto Yamaha AG 100 (GPM 319 B) y'ibitaro bya Byumba yibweho moteri na "*amortisseurs*" zayo, kandi ko "*groupe électrogène*" ya mbere y'ibyo bitaro yibweho "*chargeur automatique*" yayo, inangirika "*Solnoïde*" na "*démarreur*" byayo, naho iya kabiri ishyirwamo "*code*" ku buryo itashoboraga kwaka no gutanga umuriro w'amashanyarazi muri ibyo bitaro, kandi ariwe wari ushinzwe ibyo bikoresho kubera ko ariwe wakoreshaga iyo moto mu kazi ke ka buri munsi akanabika urufunguzo rw'aho "*groupes électrogènes*" zabaga nk'uko bivugwa muri raporo yo ku wa 17/02/2014 yatanzwe n'abatekinisiye ba *Garaje Tropical* yavuzwe haruguru.

[17] Ku bijyanye n'imvugo ya Salimini Saidi y'uko atahamwa n'amakosa y'akazi mu gihe yagizwe umwere ku cyaha cyo kwangiza moto na "*Générateurs*" yari akurikiranyweho kubera ko dosiye ye yashyinguwe burundu "*classement sans suite*" n'Ubugenzacyaha bukorera kuri Station ya Polisi iri i Byumba,

ingingo ya 78 y'Itegeko Nº 86/2013 ryo ku wa 11/09/2013 rishyiraho sitati rusange igenga Abakozi ba Leta, iteganya ko igihano cy'umukozi wa Leta mu rwego rw'akazi ntikibangamira uburyozwe bw'icyaha n'igihano giteganywa n'amategeko ahana, ku buryo ikosa ry'umukozi wa Leta rishobora gukurikiranwa mu kazi no mu nkiko.

[18] Na none umuhanga mu mategeko witwa Jean Rivero, mu gitabo cye yise "*Droit Administratif*", asobanura ko igikorwa kimwe gishobora gutuma umukozi akurikiranwaho icyarimwe ikosa mu rwego rw'akazi n'icyaha mu rwego rw'imanza nshinjabyaha, kandi ko icyemezo gifashwe mu rwego rw'imanza nshinjabyaha kitabangamira icyemezo gishobora gufatwa mu rwego rw'akazi, keretse ku birebana n'ibikorwa umucamanza uburanisha imanza nshinjabyaha yemeje ko byabaye cyangwa bitabaye mu buryo bwabaye ndakuka, ariko ko umukozi ashobora guhanirwa mu rwego rw'akazi ibikorwa yagizweho umwere mu manza nshinjabyaha[1].

[19] Hashingiwe ku biteganywa n'ingingo ya 78 y'Itegeko ryavuzwe haruguru no ku bisobanuro by'umuhanga bimaze kuvugwa haruguru, Urukiko rurasanga ntacyabuzaga ko Salimini Saidi akurikiranwa ngo anafatirwe ibihano mu rwego rw'akazi kabone n'ubwo atakurikiranwe mu rwego rw'imanza

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[1] « *(...) lorsqu'un même fait constitue, à la fois, une faute disciplinaire et une faute pénale, les deux formes de répression peuvent s'exercer parallèlement; si la décision pénale intervient la première, elle est sans conséquence sur la décision disciplinaire, sous une seule réserve: les constatations de fait du pénal juge, en vertu de l'autorité de la chose jugée, lient l'autorité disciplinaire; mais elle peut déclarer disciplinairement punissables les faits qui, au pénal, ont entrainé l'acquittement, et inversement. C'est ce que l'on exprime en parlant de l'autonomie de la répression disciplinaire », par Jean Rivero, « Droit Administratif», Dalloz, 2011, p.374.*

nshinjabyaha nk'uko abivuga, bityo ibyo Salimini Saidi aburanisha by'uko yirukanwe mu buryo bunyuranyije n'amategeko kubera ko nta makosa yakoze nta shingiro bifite.

2. Kumenya niba Salimini Saidi yarirukanwe ku kazi mu buryo bunyuranyije n'amategeko kubera ko atabanje kwisobanura ku makosa yaregwaga

[20] Salimini Saidi n'umwunganira bavuga ko Urukiko Rukuru rwemeje ko akwiye kwirukanwa burundu ku kazi, rwirengagije ko yirukanwe mu buryo bunyuranyije n'amategeko kubera ko yirukanwe atabanje kwisobanura ko makosa yaregwaga ajyanye no kwangiza moto na za "*groupes électrogènes*" z'ibitaro bya Byumba.

[21] Uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko Salimini Saidi atirukanwe ku kazi mu buryo bunyuranyije n'amategeko kubera ko yisobanuye ku makosa akomeye yakoze yavuzwe haruguru.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 79 y'Itegeko N° 86/2013 ryo kuwa 11/09/2013 rishyiraho Sitati rusange igenga abakozi ba Leta, iteganya ko nta kosa na rimwe umukozi wa Leta ashobora guhanirwa atabanje guhabwa umwanya wo kwisobanura mu nyandiko.

[23] Nk'uko byasobanuwe haruguru, nyuma y'uko Umuyobozi Mukuru w'ibitaro bya Byumba yandikiye Salimini Saidi ibaruwa nimero 20/116/HOPBYABA 2014 yo ku wa 27/12/2013, amusaba kwisobanura ku makosa akomeye yakoze yavuzwe haruguru ajyanye n'uko Moto Yamaha AG 100 (GPM 319 B) y'ibyo bitaro yahinduriwe moteri na "amortisseurs"

byayo, kandi ariwe wari ushinzwe kuyirinda, Salimini Saidi yamwandikiye ibaruwa yo ku wa 08/01/2014, amumenyesha ko atakoze ayo makosa, ko ahubwo yakozwe na Biraguma, ubwo yamuhaga iyo moto kugira ngo ayikorere "*entretien*" kubera ko Kevin wari usanzwe uyikorera "*entretien*" atari ahari.

[24] Amaze kubona iyo baruwa, Umuyobozi Mukuru w'ibitaro bya Byumba yandikiye Salimini Saidi ibaruwa yo ku wa 17/02/2014, amumenyesha ko amuhagaritse ku kazi by'agateganyo kubera ko yakoze amakosa akomeye yavuzwe haruguru, bituma Salimini Saidi yandikira Umuyobozi w'Inama y'Ubutegetsi w'ibitaro bya Byumba ibaruwa yo ku wa 24/02/2014, amusaba kumurenganura, anamusobanurira ko Umuyobozi we atagombaga kumuhagarika ku kazi by'agateganyo, kandi nta ruhare yagize mu kwangiza moteri na "*amortisseurs*" bya Moto Yamaha AG 100 (GPM 319 B) kuko byahinduwe na Biraguma, kandi ko atangije "groupes électrogènes" z'ibyo bitaro kubera ko ku wa 14/02/2014, atari afite urufunguzo rw'umuryango winjira aho ziri, ko ahubwo rwari rufitwe na mugenzi we witwa Serge.

[25] Dosiye igaragaza na none ko nyuma y'aho, abagize itsinda ryari rigizwe n'abakozi ba Minisiteri y'Ubuzima na Minisiteri y'Abakozi ba Leta n'Umurimo batanze raporo yo ku wa 17/06/2014, aho basobanuye ko batanyuzwe n'ibisobanuro bahawe na Salimini Saidi kubera ko yikuragaho uburyozwe bw'amakosa yaregwaga yatumye "*Generateur*" na Moto bihindurirwa ibyuma "*pieces*" kandi ariwe wari ushinzwe kubirinda, ahubwo akayashyira kuri bagenzi be barimo "*Charroi*" w'ibyo bitaro na Serge, maze Minisitiri w'Ubuzima, ashingiye ku ma raporo atandukanye yavuzwe haruguru, yandikiye Salimini Saidi ibaruwa yo ku wa 03/07/2014,

amumenyesha ko yirukanwe burundu ku kazi guhera ku wa 17/02/2014, igihe yahagarikwaga by'agateganyo ku kazi, kubera amakosa akomeye yakoze yo kwangiza ibyo bikoresho bya Leta yari ashinzwe kurinda, no ku yandi makosa y'imikorere mibi yagiye agaragarizwa mu kazi ke, ariko ntiyikosore.

[26] Urukiko rurasanga, amabaruwa n'amaraporo yavuzwe haruguru agaragaza ko mbere y'uko Salimini Saidi yirukanwa burundu ku kazi na Minisitiri w'Ubuzima ku wa 03/07/2014, yari yabanje kwisobanura ku birebana n'amakosa yaregwaga yavuzwe haruguru imbere y'Umuyobozi we n'imbere y'Umuyobozi w'Inama y'Ubutegetsi w'ibitaro bya Byumba, ndetse n'imbere y'abagize itsinda ryari rigizwe n'abakozi ba Minisiteri y'Ubuzima na Minisiteri y'Abakozi ba Leta n'Umurimo nk'uko byasobanuwe haruguru, bityo imvugo ye y'uko yirukanwe mu buryo bunyuranyije n'amategeko kubera ko atisobanuye ku makosa yaregwaga nta shingiro ifite.

3. Kumenya niba Salimini Saidi yarirukanwe ku kazi mu buryo bunyuranyije n'amategeko kubera ko yahawe ibihano binyuranyije n'amategeko

[27] Salimini Saidi n'umwunganira bavuga ko yirukanwe mu buryo bunyuranyije n'amategeko kubera ko yahawe igihano kidakwiranye n'uburemere bw'amakosa yaregwaga, kuko iyo Urukiko Rukuru rugaragarizwa ibimenyetso by'uko yangije moto ifite agaciro kari hejuru ya 1.000.000 Frw, ariko katarengeje 1.500.000 Frw, yari guhanishwa igihano cyo gukererezwa kuzamurwa mu ntera giteganywa n'ingingo ya 12 y'Iteka rya Perezida Nº 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, cyangwa yari guhagarikwa ku kazi mu gihe kitarenze amezi atatu (3) adahemberwa giteganywa n'ingingo ya 13 y'iryo Teka rya

Perezida, aho guhabwa igihano cyo kwirukanwa burundu ku kazi kuko kidakwiranye n'uburemere bw'amakosa ashobora kuba yarakoze yavuzwe haruguru.

[28] Uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko Salimini Saidi atirukanwe ku kazi mu buryo bunyuranyije n'amategeko kubera ko Urukiko Rukuru rwashingiye ku ngingo ya 5 y'Iteka rya Perezida ryavuzwe haruguru, iteganya uburyo bwo gupima uburemere bw'ikosa, rusanga akwiye kwirukanwa burundu ku kazi kubera uburemere bw'amakoza akomeye yakoze ajyanye n'imicungire mibi y'ibikoresho bya Leta yari ashinzwe kurinda, kandi ayo makosa yashoboraga guteza ingaruka zikomeye ku buryo atareberwa gusa ku gaciro k'amafaranga y'igikoresho cyangijwe nk'uko n'Urukiko Rukuru rwabisobanuye mu gace ka 8 k'urubanza rwajuririwe muri uru rukiko.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 5 y'Iteka rya Perezida Nº 65/01 ryo ku wa 04/03/2014 rigena uburyo bwo gutanga ibihano ku bakozi ba Leta bakoze amakosa mu kazi, iteganya ko uburemere bw'ikosa ryo mu kazi bupimwa hitawe ku buryo ryabayemo n'ingaruka zaryo. Naho ingingo ya 15 y'iryo Teka rya Perezida, igateganya ko iyo umukozi akoze igikorwa cyangwa agize imyitwarire binyuranyije n'inshingano ze z'akazi bikabyara ikosa ridateganyijwe muri iri teka, umuyobozi w'urwego akorera ashingiye ku myanzuro y'Akanama gashinzwe gukurikirana amakosa, agena uburemere bw'icyabyaye ikosa n'ubwoko bw'igihano bikwiranye mu bihano biteganyijwe n'iri teka.

[30] Ku byerekeranye n'igihano Salimini Saidi agomba guhabwa, hashingiwe ku ngingo ya 5 na 15 z'Iteka rya Perezida ryavuzwe haruguru, Urukiko rurasanga, kuba Salimini Saidi yarakoze ikosa ry'imicungire mibi y'ibikoresho bya Leta nk'uko byasobanuwe haruguru, kandi iryo kosa rikaba ryaratumye "*groupes électrogènes*" ebyiri zangirika kubera ko zibweho ibyuma (ama pièces) zinashyirwamo "*code*" bituma zidashoboraga kwaka no gutanga umuriro w'amashanyarazi muri ibyo bitaro ku buryo byashoboraga guteza ingaruka zikomeye zirimo gutakaza ubuzima kw'abarwayi babagwaga, abahabwaga umwuka, n'abana bari muri za "*Couveuses*", kandi ayo makosa akaba yaranatumye ibyo bitaro bigira isura mbi kuko bitashoboraga gutanga serivisi zinogeye abakiriya babyo nk'uko bivugwa muri raporo ya Komisiyo ya "*Discipline"* yo ku wa 04/06/2014 yavuzwe haruguru, bigaragara ko imvugo ye y'uko yirukanwe mu buryo bunyuranyije n'amategeko kubera ko yahawe igihano cyo kwirukanwa burundu ku kazi kinyuranyije n'amategeko nta shingiro ifite, bityo akaba atasubizwa mu kazi ngo anahabwe indishyi z'akababaro asaba zijyanye n'uko yirukanwe mu buryo bunyuranyije n'amategeko, kandi akaba atari ngombwa gusuzuma ibibazo bijyanye n'uko yahabwa ibirarane by'imishahara atahembwe igihe yari yarahagaritswe ku kazi by'agateganyo n'igihe cy'amezi 16 amaze yarirukanwe burundu ku kazi, ndetse n'imperekeza.

4. Kumenya niba Salimini Saidi yahabwa indishyi zihwanye n'umushahara we w'amezi 6 kubera ko atahawe icyemezo cy'umurimo

[31] Salimini Saidi n'umwunganira bavuga ko Leta y'u Rwanda (Minisiteri y'Ubuzima) ikwiye kumuha indishyi z'uko atahawe icyemezo cy'umurimo zihwanye n'umushahara we w'amezi 6, ni ukuvuga 154.000 Frw x amezi 6 = 924.000 Frw,

aho kuba izihwanye n'umushahara we w'amezi 3, zingana na 462.000 Frw yagenewe n'Urukiko Rukuru.

[32] Uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko Salimini Saidi atahabwa 924.000 Frw ahwanye n'umushahara we w'amezi 6 kuko ntacyo anenga urubanza rwaciwe n'Urukiko Rukuru rwamugeneye indishyi zingana na 462.000 Frw zihwanye n'umushahara we w'amezi atatu (3) z'uko atahawe icyemezo cy'umurimo.

UKO URUKIKO RUBIBONA

[33] Kopi y'urubanza RAD 0003/15/HC/KIG rwajuririwe muri uru rukiko, igaragaza ko Urukiko Rukuru rwageneye mu bushishozi bwarwo, Salimini Saidi 460.000 Frw (ariko rwasobanuye ko agomba guhabwa 462.000 Frw = 154.000 Frw x 3) y'indishyi ahwanye n'umushahara we w'amezi atatu (3) z'uko Leta y'u Rwanda (Minisiteri y'Ubuzima) itamuhaye icyemezo cy'umurimo igihe yamwirukanaga burundu ku kazi.

[34] Urukiko rurasanga izo ndishyi Salimini Saidi yagenewe n'Urukiko Rukuru mu bushishozi bwarwo z'uko atahawe icyemezo cy'umurimo ziri mu rugero rukwiye, bityo akaba atahabwa indishyi zihwanye n'umushahara we w'amezi 6 asaba kuko atagaragaza aho azishingira mu rwego rw'amategeko.

5. Kumenya niba Salimini Saidi yahabwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka

[35] Salimini Saidi n'umwunganira bavuga ko Leta y'u Rwanda (Minisiteri y'Ubuzima) ikwiye kumuha 800.000 Frw y'ikurikiranarubanza yo kuva ku rwego rwa mbere kugera muri

uru rukiko na 1.500.000 Frw y'igihembo cy'Avoka yakoresheje mu nkiko zose yaburaniyemo, yose hamwe akaba 2.300.000 Frw.

[36] Uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko itaha Salimini Saidi ayo mafaranga kuko yakoze amakosa akomeye yavuzwe haruguru, arangije, yishora mu manza nta mpamvu.

UKO URUKIKO RUBIBONA

[37] Urukiko rurasanga Salimini Saidi atahabwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asaba kubera ko ubujurire bwe nta shingiro bufite.

6. Kumenya niba ubujurire bwa Leta y'u Rwanda (Minisiteri y'Ubuzima) bwuririye ku bundi bufite ishingiro

[38] Uburanira Leta y'u Rwanda (Minisiteri y'Ubuzima) avuga ko atanze ubujurire bwuririye ku bundi asaba ko Salimini Saidi ayiha 5.000.000 Frw y'indishyi z'ikurikiranarubanza.

[39] Salimini Saidi n'umwunganira bavuga ko ataha Leta y'u Rwanda (Minisiteri y'Ubuzima) izo ndishyi kubera ko itajuririye ibyo yatsindiwe ku rwego rwa mbere.

UKO URUKIKO RUBIBONA

[40] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse.

[41] Hashingiwe kuri iyo ngingo, Urukiko rurasanga Salimini Saidi akwiye guha Leta y'u Rwanda (Minisiteri y'Ubuzima) 800.000 Frw y'ikurikiranarubanza agenwe n'urukiko mu bushishozi bwarwo kuko hari ibyo yatakaje bitari ngombwa ikurikirana ubu bujurire inabuburana kandi byagaragaye ko ubujurire bwe nta shingiro bufite.

[42] Ku bijyanye no guhwanya imyenda, hakurikijwe ibisobanuro byavuzwe haruguru, Urukiko rurasanga Leta y'u Rwanda (Minisiteri y'Ubuzima) igomba guha Salimini Saidi 462.000 Frw y'indishyi z'uko itamuhaye icyemezo cy'umurimo na 500.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka yagenewe ku rwego rwa mbere, yose hamwe akaba 962.000 Frw, naho Salimini Saidi akayiha 800.000 Frw y'ikurikiranarubanza. Hakozwe ihwanya ry'iyo myenda yombi, Urukiko rusanga Leta y'u Rwanda (Minisiteri y'Ubuzima) igomba guha Salimini Saidi ikinyuranyo cy'iyo myenda yombi, ni ukuvuga 962.000 Frw - 800.000 Frw Frw = 162.000 Frw.

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko ubujurire bwa Salimini Saidi nta shingiro bufite;

[44] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Leta y'u Rwanda (Minisiteri y'Ubuzima) bufite ishingiro;

[45] Rutegetse Leta y'u Rwanda (Minisiteri y'Ubuzima) guha Salimini Saidi 162.000Frw nyuma yo guhwanya imyenda nk'uko byasobanuwe haruguru;

[46] Rutegetse ko 100.000Frw y'ingwate y'amagarama yatanzwe na Salimini Saidi ajurira ahwanye n'ibyakozwe muri uru rubanza.