BAHOZE v. BANKI NKURU Y'U RWANDA (B.N.R)

[Rwanda URUKIKO RUKURU – RADA00159/2016/HC/KIG (Ndahayo, P.J.) 23 ukuboza 2016]

Amategeko agenga imanza z'ubutegetsi – Ibihano mu rwego rw'akazi – Uburyozwe bw'icyaha – Kuba urukiko nshinjabyaha rwaremeje ko umukozi ari umwere ku cyaha yari akurikiranyweho ntibyabuza umukoresha kumuhanira andi makosa yakoze mu rwego rw'akazi – Itegeko N°86/2013 ryo kuwa 11/09/2013 rishyiraho sitati rusange igenga Abakozi ba Leta, ingingo ya 76, 77 na 78.

Amategeko agenga imiburanishirije z'imanza z'ubutegetsi – Iyakirwa ry'ikirego – Gutakamba – Umukozi wa Leta ugomba kubanza gutakamba ni usaba ko icyemezo cyafashwe n'umuyobozi kivanwaho – Itegeko N^{o}21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi iz'umurimo n'iz'ubutegetsi, ingingo ya 336 (1).

Incamake y'ikibazo: Nyuma yaho uwajuriye akurikiranywe n'Inkiko nshinjabyaha ku bufatanya cyaha cyo kunyereza umutungo wa Leta ariko akagirwa umwere. Banki Nkuru y'u Rwanda (BNR) yaje kumwirukana mu kazi kubera uburangare yangijie bwo kwandarika urufunguzo-banga yakoreshaga ku mashini y'akazi mu kwishyura amafaranga ava muri BNR ajya ku ma banki y'ubucuruzi.

Nyuma yaho ashyizwe ku rutonde rw'abakozi bahoze bakorera Leta ariko batacyemerewe kuyikorera kubera amakosa bakoze, yasabye BNR ko yamukura kuri urwo rutonde ariko imusubiza ko atari yo yarumushyizeho, ahubwo icyo yakoze n'ugushyikiriza MIFOTRA urutonde rw'abantu batakiri abakozi bayo kandi ikanagaragaza n'impamvu abo bantu batakiri abakozi bayo.

Nyuma yaho, yareze BNR mu Rukiko Rwisumbuye avuga ko nta kosa yakoze ryari gutuma afatirwa icyemezo cyo kwirukanwa no gushyirwa kuri urwo rutonde. Urwo rukiko rwemeza ko ikirego cye nta shingiro gifite.

Yajuririye Urukiko Rukuru avuga ko umucamanza yirengagije nkana ibyemezo by'inkiko nshinjabyaha kandi ko umukoresha we yamwirukanye binyuranyije n'amategeko kuko nta bushishozi cyangwa iperereza rihagaje yakoze amwirukana ndetse yihutira n'ukumuhamya icyaha, akaba arinayo mpamvu abisabira indishyi.

BNR yiregura ivuga ko itaramwirukanye kubera ko yanyereje amafaranga yayo ahubwo nukubera ko yagize uburangare bwatumye ayo mafaranga anyerezwa, ubwo burangare bukaba bushingiye ku kuba yarandaritse urufunguzo banga wakoreshwaga mu guhererekanya amafaranga bituma rukoreshwa n'abandi bantu.

Ikomeza ivuga ko nta kosa yakoze mu guha MIFOTRA urutonde kuko aribyo yari yasabwe gukora, naho kubijyanye n'iyishyurwa ry'amasaha y'ikirenga ivuga ko icyo kirego kitakwakirwa kuko ari ubwa mbere kigaragajwe mu rukiko, naho kubyerekeranye n' indishyi, isanga atari zo asaba ahubwo ari ugusaba ko BNR yategekwa kumwishyura ibyo yamugombaga, bityo nabyo bikaba byaragombaga gutakambirwa ukwabyo. Isoza isaba ko yagenerwa indishyi z'igihembo cy'avoka niz'ikurikiranarubanza ziyongera kuzo yari yagenewe mu Rukiko rubanza.

Incamake y'icyemezo: 1. Kuba urukiko nshinjabyaha rwaremeje ko umukozi ari umwere ku cyaha yari akurikiranyweho ntibyabuza umukoresha kumuhanira andi makosa yakoze mu rwego rw'akazi, bityo kuba umukozi yabaye umwere ku cyaha cyo kunyereza umutungo wa Leta ntibikuraho ko umukoresha we yamuhanira ikosa yakoze ryo kwandarika urufunguzo-banga kuko ari uburangare bukabije.

2. Umukozi wa Leta ukoze amakosa akomeye mu kazi ashyirwa ku rutonde rwa MIFOTRA, rw'abakozi bahoze bakorera Leta ariko batacyemerewe kuyikorera kubera amakosa bakoze.

3. Umuburanyi ugomba kubanza gutakamba ni usaba ko icyemezo cyafashwe n'umuyobozi kivanwaho, bityo rero nta cyemezo cyeruye cyangwa kiteruye cyari cyafashwe na BNR ku bijyanye n'amafaranga y'amasaha y'ikirenga yagombaga kumwishyura ku buryo byari kuba ngombwa kubanza gutakamba mbere yo kubitangira ikirego.

4. Umubaranyi agomba kugaragaza ibimenyetso by'ibyo aburana, iyo abibuze aratsindwa.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:

Itegeko N°86/2013 ryo kuwa 11/09/2013 rishyiraho sitati rusange igenga Abakozi ba Leta, ingingo ya 76, 77 na 78.

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 336 (1).

Urubanza rwifashishijwe:

ELECTROGAZ v. Niwenshuti Nzaramba Valens, RADAA0038/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 25/03/2011.

Ibitekerezo bya bahanga:

Georges Dupuis, Marie-Josée Guédon et Patrice Chrétien, Droit administratif, 10e édition, p.381.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Madamu Bahoze Sifa yari umukozi wa Banki Nkuru y'u Rwanda kuva kuwa 14/01/1999 kugeza kuwa 24/03/2014 ubwo yazaga kuyivamo yirukanwe. BNR isobanura ko impamvu yatumye yirukanwaari ukubera uburangare (gross negligence) yagize bwo kwandarika/gutanga urufunguzo-banga (password) yakoreshaga ku mashini y'akazi mu kwishyura amafaranga ava muri BNR ajya ku ma banki y'ubucuruzi bitewe n'icyo BNR itegetswe kwishyura, uko kwandarika/kurutanga bikaba byarorohereje Bwana Kwisanga Theoneste kunyereza amafaranga ya Banki nk'uko n'icyo cyaha yacyemejwe n'inkiko.

[2] Nyuma y'aho BNR yirukaniye Sifa Bahoze, MIFOTRA ndetse na Komisiyo y'Igihugu ishinzwe Abakozi ba Leta byaje gusaba BNR nk'uko ibikora mu bigo bya Leta byose kuyigaragariza urutonde rw'abakozi BNR yakoreshaga ariko batakiyikorera no kugaragaza impamvu bagiye bahagarika akazi. BNR yatanze urwo rutonde ishyiramo na Sifa Bahoze igaragaza ko yamwirukaniye uburangare. MIFOTRA nayo iheraho imushyira ku

rutonde rw’abantu bahoze bakorera Leta ariko ubu batemerewe kuyikorera kubera amakosa bakoze.

[3] Madamu Sifa Bahoze yaje gusaba BNR ko yamukura kuri urwo rutonde (Black list) y’abantu birukanywe mu bigo bya Leta ariko BNR imugaragariza ko atari yo yarumushyizeho, ko icyo yakoze ari ugushyikiriza MIFOTRA urutonde rw’abantu batakiri abakozi bayo kandi ikagaragaza n’impamvu abo bantu batakiri abakozi ba BNR.

[4] Sifa Bahoze we abona ko nta kosa yakoze ryari gutuma afatirwa icyemezo cyo kwirukanwa no gushyirwa ku rutonde rw’abakozi bahoze bakorera Leta ariko batacyemerewe kuyikorera kubera amakosa bakoze. Niyo mpamvu rero Bahoze Sifa yareze BNR mu Rukiko Rwisumbuye rwa Nyarugenge ariko urwo rukiko rwemeza ko ikirego cye nta shingiro gifite, nyuma ajuririra muri uru Rukiko Rukuru.

[5] Ibibazo bigombwa gusuzumwa muri uru rubanza ni ibi bikurikira:

Kumenya niba Bahoze Sifa hari ikosa yakoze ryari gutuma afatirwa icyemezo cyo kwirukanwa;

Kumenya niba hari ikosa ryakozwe na BNR mu gusaba ko Bahoze ashyirwa kuri Blacklist;

Ibyerekeye kwishyurwa amasaha y’ikirenga n’izindi ndishyi zasabwe muri uru rubanza;

II. ISESENGURA RY’IBIBAZO BIRI MURI URU RUBANZA

Ibyerekeye kumenya niba Bahoze Sifa hari ikosa yakoze ryari gutuma afatirwa icyemezo cyo kwirukanwa.

[6] Ababuranira Bahoze Sifa bavuga ko nta kosa yakoze ryari gutuma BNR ifata icyemezo cyo kumwirukana. Basobanura ko ngo nk’uko bigaragara mw’ibarwa yayo isezerera Bahoze Sifa mu kazi, BNR ivuga ko yamwirukanye ishingiye k’uburiganya bwavumbuwe aho Bahoze yagize uruhare mw’inyerezwa ry’amafaranga angana na 5.918.500Frw na 9.789.000Frw. Ariko nyamara nkuko byaburanywe mumanza nshinja byaha RP0179/14/TGI/NYGE na RPA0049/HC/KIG inkiko zemeje ko Bahoze Sifa nta ruhare namba yagize mw’inyerezwa ry’uriya mutungo wa BNR.

[7] Bakomeza basobanura ko ngo umucamanza yirengangije nkana ibyemezo by’inkiko nshinjabyaha, ko ibyo BNR yashingiyeho yirukana Bahoze bidafite ishingiro. BNR rero ngo ikaba yarirukanye Bahoze Sifa ku kazi nta bushishozi cyangwa iperereza rihagaje ikoze ndetse ikora amakosa yo kwihutira k’umuhamya icyaha akaba ariyo mpamvu basaba ko yabitangira indishyi zasobanuwe.

[8] Ababuranira BNR bo bavuga ko Bahoze Sifa atirukanwe kubera ko yanyereje amafaranga ya BNR ahubwo ko ngo yirukanywe kubera ko yagize uburangare bwatumye ayo mafaranga anyerezwa ubwo burangare bukaba bushingiye ku kuba ntacyo yakoze ngo arinde ko umubare we w’ibanga wakoreshwaga mu guhererekanya amafaranga ukoreshwa n’abandi bantu.

[9] Bakomeza bavuga ko n’umucamanza nshinjabyaha ari na we wamugize umwere mu bufatanyacyaha ku cyaha cyo kurigisa umutungo wa Leta, nawe ngo yahamije ko uburangare

bwa Madamu Sifa Bahoze bwababaye icyuho cyo kurigisa amafaranga ya BNR. Yemeza ko iyo Madamu Sifa Bahoze abungabunga urufunguzo-banga rwe BNR itari kwibwa no guhomba amafaranga yahombye nk'uko bigaragara mu gika cya 18 na 19 cy'urubanza RPA0049/HC/KIG rwaciwe kuwa 25/06/2015. Ibyo kandi ngo ni nabyo binagaragara mu cyemezo kiri mu ibaruwa kimwirukana aho BNR yagaragaje ko imwirukanye kubera gross negligence bityo rero ngo ntabwo BNR yamwirukanye ishingiye ku cyaha cyo kunyereza umutungo wa Leta ahubwo yamwirukanye kubera uruhare rwe rw'uburangare bukabije yagize bwatumye amafaranga ya BNR anyerezwa.

[10] Kuri iyi ngingo Urukiko Rukuru rurasanga nk'uko bigaragara mu nyandiko zose zanditswena Madamu Sifa Bahoze, yemera ko izina rye ryakoreshejwe mu kunyereza amafaranga, akemera ko umubare w'irufunguzo-banga yakoreshaga ari rwo rwakoreshejwe mu kunyereza ayo mafaranga, ahubwo akagaragaza ko uwari umuyobozi we yamuciye mu rihumye akarwukoresha atabizi.

[11] Rurasanga kuba Bahoze Sifa yari umukozi wa Banki, akaba yari afite mu nshingano ze guhererekanya amafaranga n'abandi bantu, kugirango abashe kurangiza inshingano yari yarahawe na BNR, byari ngombwa ko akora ibishoboka byose kugirango habe umutekano usesuye kuri ayo mafaranga kugirango atajya mu maboko y'abantu batayafiteho uburenganzira. Ni muri urwo rwego yagombaga gukora ibishoboka byose kugirango hatagira undi muntu ushobora gukoresha imashini ye akaba yakora za operations mu izina rye kuko byashoboraga gutera ingaruka zikomeye zaba izijyanye n'igihombo ashobora gutera umukoresha we ariwe we BNR ndetse n'ingaruka byashoboraga kumugiraho we ku giti cye.

[12] Kuba rero hari umuntu utari Bahoze Sifa washoboye kwinjira mu mashini ye akoresheje umubare w'ibanga wa Bahoze Sifa, uwo muntu agakora za operations zijyanye no guhererakanya amafaranga bigaragaza uburangare bukabije Bahoze Sifa yagize bwatumye uwo muntu amenya umubare w'ibanga usanzwe ukoreshwa maze akabasha kunyereza umutungo wa BNR.

[13] Urukiko Rukuru rero rurasanga ubwo burangare bukabije ku buryo bwakwitwa ikosa rikomeye ryashoboraga gutuma Bahoze Sifa afatirwa icyemezo cyo kwirukanwa n'umukoresha we, bityo rero kuba BNR yarafashe icyo cyemezo cyo kumwirukana bikaba bitari ukunyuranya n'amategeko kuko biteganyijwe mu ngingo ya 77 y'Itegeko N°86/2013 ryo kuwa 11/09/2013 rishyiraho sitati rusange igenga Abakozi ba Leta ivuga 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, muri ibyo bihano ashobora guhabwa biteganyijwe muri iyo ngingo ya 76 hakaba harimo no kwirukanwa burundu.

[14] Kuba rero Madamu Sifa Bahoze Urukiko rwaremeje ko ari umwere ku cyaha cyo kunyereza umutungo, ntibyari kubuza ko umukoresha we amuhanira andi makosa yakoze mu rwego rw'akazi. Ibi bishingiwe ku ngingo ya 74 y'Amategeko agenga abakozi ba BNR iteganya ko Igihano cy'umukozi wa BNR mu rwego rw'akazi kitabangamira uburyozwe bw'icyaha kandi buri kimwe kirigenga. Bisobanuye ko ikosa ry'umukozi rishobora kuba ikosa gusa ariko ntiribe icyaha cyangwa se rikaba ikosa rikaba n'icyaha icyarimwe.

[15] Biteganyijwe kandi mu ngingo ya 78 y'Itegeko N°86/2013 ryo kuwa 11/09/2013 rishyiraho sitati rusange igenga Abakozi ba Leta ivuga ko igihano cy'umukozi wa Leta mu

rwego rw'akazi kitabangamira uburyozwe bw'icyaha n'igihano giteganywa n'amategeko ahana, ku buryo ikosa ry'umukozi wa Leta rishobora gukurikiranwa mu kazi no mu nkiko.

[16] Byemejwe kandi mu rubanza RADAA0038/09/CS haburana ELECTROGAZ na Niwenshuti Nzaramba Valens rwaciwe 25/03/2011. Muri urwo rubanza Urukiko rw'Ikirenga rukaba rwaranzuye ko Umukoresha adategetswe byanze bikunze kubahiriza ibyemezo nshinjabyaha. Urukiko rw'Ikirenga rwifashishije ibitekerezo by'Abahanga mu mategeko barimo Georges Dupuis, Marie-Josée Guédon na Patrice Chrétien aho na bo babivuga mu gitabo cyabo, Droit administratif, 10e édition, page 381 aho bavuze ko " 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 à l'autorité administrative" bisobanuye ko umukoresha adategetswe gukurikiza ibyemejwe n'umucamanza w'inshinjabyaha, keretse iyo uwo mucamanza hari icyemezo yafashe yerekana ko habayeho cyangwa hatabayeho ibikorwa bigize amakosa umukoresha arega umukozi ari na bwo umukoresha ategetswe kugendera kuri icyo cyemezo.

Ibyerekeye kumenya niba hari ikosa ryakozwe na BNR mu gusaba ko Bahoze ashyirwa kuri Blacklist.

[17] Ababuranira Bahoze Sifa bavuga kongo Umucamanza yitiranyije bikomeye uko ibintu byagenze. Basobanura ko ngo amaze kugirwa umwere n'inkiko, BNR nibwo yandikiye MIFOTRA iyiha list y'abahoze ari abakozi ba Leta birukanwe kubera amakosa akomeye, urwo rutonde yakoze irushyiramo na Bahoze Sifa ndetse igaragaza n'amafaranga ngo Bahoze Sifa yanyereje kandi yirengagije ko yagizwe umwere n'inkiko kuri ibyo byaha byose BNR yamuregaga.

[18] Bakomeza bavuga ko MIFOTRA itangaza ikanandika ibyo yahawe n'inzego ndetse n'ibigo binyuranye bya Leta nka BNR. MIFOTRA yashyize mubikorwa ibyo BNR yayihaye ntabwo yabyibwirije kandi ko ngo Bahoze Sifa ntako atagize ngo asabe BNR ko yakwandikira MIFOTRA ikosora urutonde yohereje ariko ngo BNR irabyanga bityo rero ngo bakaba basaba urukiko rw'ubujurire kwemeza koibyo BNR yakoze ari amakosa akomeye cyane maze ikagenera Bahoze Sifa Indishyi zihwanye na 10.000.000Frw.

[19] Ababuranira BNR bo bavuga ko ngo nk'uko byasabwe na Minisiteri y'Abakozi ba Leta n'Umurimo BNR yayishyikirijwe urutonde rw'abakozi birukanwe muri BNR kubera amakosa ibyo rero ngo bikaba bitanyuranye n'amategeko.

[20] Urukiko Rukuru rurasanga mukuba Bahoze Sifa yarashyizwe kuri liste ya MIFOTRA y'abakozi bakoze amakosa atari ukunyuranya n'amategeko mu gihe yakoze amakosa akomeye mu kazi nk'uko byasobanuwe haruguru ayo makosa akaba ariyo yatumye habaho kunyereza umutungo wa BNR n'ubwo icyaha cyo kunyereza uwo mutungo kitamuhamye.

Ibyerekeye iyakirwa ry'ikirego cyerekeye kwishyurwa amasaha y'ikirenga yakozwe.

[21] Ababuranira BNR bavuga ko ikirego ku byerekeye kwishyurwa amasaha y'ikirenga kitagombaga kwakirwa kubera ko ngo kuko ngo Bahoze Sifa yakiragagaje bwa mbere mu Rukiko akaba atarigeze akigaragariza umukoresha we ngo abyange cyangwa abyemere kandi ngo icyo asaba akaba atari indishyi ahubwo ari ugusaba ko BNR yategekwa kumwishyura ibyo yamugombaga, ibyo rero ngo nabyo bikaba byaragombaga gutakambirwa ukwabyo, bityo rero ngo kuba nta gutakamba kwabayeho kuri icyo kibazo bikaba bigomba gutuma ikirego kitakirwa.

[22] Ababuranira BNR bakomeza bavuga ko ngo BNR ifite policy igenga amasaha y'ikirenga igaragaza ibigomba gukurikizwa kugirango byemezwe ko umukozi yakoze amasaha y'ikirenga nyamara ngo kuri Bahoze Sifa akaba atariko byagenze bityo ngo akaba atagomba kuvuga ko yakoze amasaha y'ikirenga

[23] Ababuranira Bahoze Sifa kuri iyi ngingo bavuga ko bo babona icyo kirego kigomba kwakirwa kubera ko kidashobora gutandukanywa n'ikirego cy'ibanze cyo kwirukanwa mu buryo budakurikije amategeko kuko ngo no kwishyurwa amasaha y'ikirenga nabyo biri mu ndishyi zishingi ku kwirukanwa mu buryo budakurikije amategeko, bityo rero ngo ibyo bikaba bitaragombaga gukorerwa itakamba mu buryo bwihariye.

[24] Urukiko Rukuru rurasanga nta cyemezo cyeruye cyangwa kiteruye cyari cyafashwe na BNR ku bijyanye n'amafaranga y'amasaha y'ikirenga yagombaga kwishyurwa BAHOZE Sifa ku buryo byari kuba ngombwa kubanza gutakamba mbere yo kubitangira ikirego nk'uko biteganyijwe mu ngingo ya 336 al.1 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi iz'umurimo n'iz'ubutegetsi kuko umuburanyi ugomba gutakamba ari usaba ko hari icyemezo cyafashwe kivaho (Recours en annulation d'une décision).

[25] Urukiko Rukuru ahubwo rukaba rusanga ingingo yo kwiregura kwa BNR kuri ayo mafaranga y'amasaha y'ikirenga y'uko nta bimenyetso Bahoze Sifa yabitangiye ariyo ifite ishingiro kuko Bahoze Sifa atagaragaje ko ibikubiye muri *Ordre de Service N°18/2001 relatif à la prestation des heures supplémentaires* byubahirijwe kugirango abe yabiheraho asaba amafaranga y'amasaha y'ikirenga avuga ko yakoze.

Ibyerekeye indishyi zasabwe muri uru rubanza.

[26] Ababuranira BNR bavuga ko ngo umucamanza wa mbere yageneye BNR indishyi za 500.000Frw gusa. BNR ikaba isanga izi ndishyi ari nke cyane kandi BNR yari yasabye indishyi z'ikurikirana rubanza ndetse n'igihembo cy'a Abavoka bayiburaniye zihwanye na 2.000.000Frw bityo indishyi BNR yagenewe muri urwo rubanza ikaba yarasanze ari nke cyane. Bityo BNR irgasaba uru Rrukiko rwajuririwe ko rwabikosora rukayigenera izo ndishyi yavukijwe ku rwego rwa mbere kandi zikwiye.

[27] Ababuranira Abahoze Sifa bo bavuga ko ari we ugomba guhabwa indishyi kubera ko ngo BNR ariyo yamwirukanye mu buryo budakurikije amategeko

[28] Urukiko Rukuru rurasanga ababuranira BNR bemeza ko bagenewe indishyi nke ariko bakaba nta kimenyetso babitangira cyashingirwaho mu kwemeza ko izo basaba arizo zikwiye, ariko kubera ko uru rubanza rwageze mu bujuririre indishyi zagenwe mu rubanza rwajuririwe zikaba zigomba kongerwaho amafaranga 250.000Frw kubera gukomeza gushora BNR mu manza nta mpamvu.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeye kwakira ubujurire rwashyikirijwe na BAHOZE Sifa.

[30] Rwemeje ko ubwo bujurire nta shingiro bufite.

[31] Rwemeje kudahindura imikirize y'urubanza rwajuririwe arirwo RAD0114/15/TGI/NYGE rwaciwe n'urukiko Rwisumbuye rwa Nyarugenge kuwa 10/05/2016.

[32] Rutegetse Bahoze Sifa kwishyura Banki Nkuru y'u Rwanda (BNR) amafaranga 250.000Frw yiyongera kuri 500.000Frw yemejwe mu rubanza rwajuririwe kubera kuyishora mu manza nta mpamvu.