NSHIZIRUNGU v. RWANDA REVENUE AUTHORITY (RRA)

[Rwanda URUKIKO RW'IKIRENGA – RADA 0027/12/CS (Kanyange, P.J., Gakwaya na Hitiyaremye, J.) 23 Mutarama 2015]

Amategeko agenga imiburanishirije y'imanza z'ubutegetsi – Ubujurire – Guhindura icyemezo cyajuririwe – Urukiko rufite ububasha bwo kuburanisha urubanza mu mizi – Urukiko rwajuririwe iyo ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregewe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha – Itegeko n^{o} 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, ngingo ya 171.

Amategeko agenga imiburanishirije y'imanza z'ubutegetsi – Gutakamba – Kwirukanwa ku kazi nta mpamvu – Ikirego kigamije gusaba isuzumwa mu mizi ry'ikibazo cy'iyirukanwa mu kazi n'indishyi zijyanye nabyo – Umukozi wakoreraga Leta ntagomba gutakamba mbere y'uko atanga ikirego kigamije gusaba isuzumwa mu mizi ry'ikirego cy'uko yirukanwe mu kazi mu buryo bunyuranyije n'amategeko no gusaba indishyi zijyanye nabyo – Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, ngingo ya 339 .

Incamake y'ikibazo: Komiseri Mukuru wa Rwanda Revenue Authority (R.R.A) yasezereye Nshizirungu ku kazi nta nteguza amuhaye kubera uburemere bw'amakosa yo kurangwa n'umusaruro muke, gusuzugura umukuriye mu Ntara y'Iburasirazuba no gusubiza atinze amabaruwa yamwandikiye. Nyuma yo gutakambira Komiseri Mukuru, Umugenzuzi w'Umurimo, Umunyamabanga Nshingwabikorwa wa Komisiyo ishinzwe abakozi ba Leta na Minisitiri w'abakozi ba Leta n'umurimo, yaregeye Urukiko Rukuru asaba ko yahabwa indishyi zikomoka ku kwirukanwa nta mpamvu, integuza n'indishyi z'akababaro, ariko urwo Rukiko rwemeza ko ikirego cye kitakiriwe.

Nshizirungu yajuririye Urukiko rw'Ikirenga avuga ko Urukiko rwakoresheje nabi Itegeko kuko rwemeje ko ikirego cye kitakiriwe kubera ko ataregeye igihe nyuma yo gutakamba nyamara yaramenyesheje Umugenzuzi w'Umurimo ikibazo cye, bityo iryo menyesha rikaba ryarasubitse igihe cy'ubuzime cy'imyaka itanu.

R.R.A yiregura ivuga ko Nshizirungu yabanje kujyana icyo kibazo ku Mugenzuzi w'Umurimo mu gihe nyamara yagombaga gutakambira Umutegetsi wafashe icyemezo kimusezerera ku kazi kubera ko mu gihe itakamba ryaba ritabayeho ngo icyo cyemezo cyamufatiwe gikurweho, Urukiko Rukuru atari rwo rwari kugira ububasha bwo kuburanisha iki kirego.

RRA ivuga na none ko Urukiko rw'Ikirenga ruramutse rubonye ko ikirego cya Nshizirungu cyagombaga kwakirwa, hashingirwa ku ngingo ya 171 n'iya 172 z'Itegeko n^{o} 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, rugasubiza uru rubanza mu Rukiko Rukuru.

Incamake y'icyemezo: Urukiko rwajuririwe iyo ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregewe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha.

Umukozi wakoreraga Leta ntagomba gutakamba mbere y'uko atanga ikirego kigamije gusaba isuzumwa mu mizi ry'ikibazo cyerekeye iyirirukanwa mu kazi mu buryo bunyuranyije n'amategeko no gusaba indishyi zijyanye nabyo.

Ubujurire burakiriwe.
Ikirego cyagombaga kwakirwa mu Rukiko Rukuru.
Iburanisha ry'urubanza mu mizi rizakomeza.
Amagarama y'u rubanza abaye asubitswe.

Amategeko yashingiweho:
Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, ingingo ya 171.
Itegeko n° 13/2009 ryo kuwa 27/5/2009 rigenga umurimo mu Rwanda, ingingo ya 32.
Itegeko Ngenga n° 51/2008 ryo kuwa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko, ingingo ya 93 na 94.
Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, ingingo ya 339.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, aho kuwa 01/12/2010, Nshizirungu Bernard yareze Ikigo cy'Imisoro n'Amahoro "RRA", kuba cyaramwirukanye ku kazi nta mpamvu, asaba ko yahabwa indishyi zikomoka kuri uko kwirukanwa nta mpamvu, integuza n'indishyi z'akababaro. Asobanura ko kuwa 04/01/2007, Komiseri Mukuru, ashingiye ku mwanzuro wa "Senior Management Team", yandikiye Nshizirungu Bernard ibaruwa imusezerera ku kazi nta nteguza kubera uburemere bw'ibyaha byo kurangwa n'umusaruro muke, gusuzugura umukuriye mu Ntara y'Iburasirazuba no gusubiza atinze amabaruwa yamwandikiye.

[2] Asobanura ko yatakambiye Komiseri Mukuru, Umugenzuzi w'Umurimo (*Inspecteur du travail)*, Umunyamabanga Nshingwabikorwa wa Komisiyo ishinzwe abakozi ba Leta na Minisitiri w'abakozi ba Leta n'umurimo, abonye nta gisubizo cyo guhindura icyemezo kimwirukana, aregera Urukiko Rukuru. Kuwa 26/04/2012, urwo Rukiko rwaciye urubanza RAD 0174/10/HC/KIG, rwemeza kutakira ikirego cya Nshizirungu Bernard.

[3] Nshizirungu Bernard ntiyishimiye imikirize y'urubanza, kuwa 24/05/2012, ajuririra mu Rukiko rw'Ikirenga, avuga ko Urukiko rwakoresheje nabi ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi (mauvaise application de la loi) kuko rwemeje ko ikirego cye kitakiriwe kubera ko ataregeye igihe nyuma yo gutakamba.

[4] Iburanisha mu ruhame ryabaye kuwa 9/12/2014, Nshizirungu Bernard aburanirwa na Me Mutembe Protais naho R.R.A. iburanirwa na Me Kabibi Spéciose.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

a. Kumenya niba ikirego cya Nshizirungu Bernard cyaragombaga kwakirwa n'Urukiko Rukuru no kumenya niba uru rubanza rwakoherezwa mu urwo Rukiko kugirango abe arirwo ruruburanisha mu mizi.

[5] Me Mutembe Protais avuga ko Urukiko Rukuru rwibeshye mu gukurikiza ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru kuko rwemeje ko ikirego cya Nshizirungu Bernard cyazimye kubera ko yagitanze yararengeje igihe cy'amezi atandatu giteganywa n'iyo ngingo.

[6] Me Mutembe Protais asobanura ko mu gushaka kumvikana n'Umukoresha we, Nshizirungu Bernard yari yatanze ikirego gisaba gukuraho icyemezo cy'umutegetsi cyo kumwirukana ku kazi, nyuma yo kubona ko uwo mutegetsi yabyanze, aregera Urukiko.

[7] Me Mutembe Protais asobanura kandi ko hakurikijwe Itegeko rigenga umurimo mu Rwanda, Nshizirungu Bernard yamenyesheje Umugenzuzi w'Umurimo (Inspecteur du travail) icyo kibazo mu kwezi kwa munani k'umwaka wa 2007 ku buryo iryo menyesha ryasubitse igihe cy'ubuzime (interruption de la prescription) cy'imyaka itanu, bityo akaba asanga kuba Nshizirungu Bernard yari yatanze ikirego cye mu kwezi kwa cumi k'umwaka wa 2010, Urukiko Rukuru rwagombaga kucyakira kuko kitari gishaje.

[8] Me Kabibi Spéciose avuga ko Nshizirungu Bernard yatakambiye Minisitiri w'abakozi ba Leta, maze akamusubiza kuwa 20/10/2009 ariko aza gutanga ikirego kuwa 1/12/2010, nyuma y'amezi abiri avugwa n'ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru.

[9] Me Kabibi Spéciose asobanura ko Nshizirungu Bernard yabanje kujyana icyo kibazo ku Mugenzuzi w'Umurimo (Inspecteur du travail) maze agaragaza ko ari Umukozi wa Leta ku buryo yagombaga mbere na mbere gutakambira Umutegetsi wafashe icyemezo kimusezerera ku kazi. Akomeza asobanura ko Urukiko Rukuru rwashingiye ku ngingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru kubera ko nawe ubwe yabanje gutakambira Umutegetsi wafashe icyo cyemezo anenga.

[10] Ku byerekeranye n'ibivugwa na Nshizirungu Bernard ko ataregeraga gukuraho icyemezo cyamukuye ku kazi, ahubwo ko yari yaregeye indishyi gusa, Me Kabibi Spéciose avuga ko bigaragara ko ikirego cye ari ''licenciement abusif'' gishingiye ku Itegeko n° 13/2009 ryo kuwa 27/5/2009 rigenga umurimo mu Rwanda no ku ngingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, bityo akaba asanga mu gihe adashaka ko icyo cyemezo cyamufatiwe gikurwaho, Urukiko Rukuru rutari rufite ububasha bwo kuburanisha iki kirego.

[11] Me Kabibi Spéciose akomeza avuga ko ariko hashingiwe ku ngingo ya 94 y'Itegeko Ngenga n° 51/2008 ryo kuwa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko ryakoreshwaga igihe Nshizirungu Bernard yaregaga, mu gihe Urukiko Rukuru rushobora kuba rwasesa isezererwa ry'umukozi rinyuranyije n'amategeko kandi rukaba rushobora kuba rwafata icyemezo cyo kugikuraho, asanga umukozi wa Leta agomba kubahiriza imihango ivugwa mu ngingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru igihe cyose abona ko icyemezo kimusezera ku kazi kinyuranyije n'amategeko.

[12] Me Kabibi Spéciose asoza avuga ko Urukiko rw'Ikirenga ruramutse rubonye ko ikirego cya Nshizirungu Bernard cyagombaga kwakirwa, asaba ko, hashingiwe ku ngingo ya 171 n'iya 172 z'Itegeko nº 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, uru rubanza rwasubizwa mu Rukiko Rukuru.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 1, agace ka 32 y'Itegeko nº 13/2009 ryo kuwa 27/5/2009 rigenga umurimo mu Rwanda iteganya ko "umukozi ari umuntu wese wemeye gukorera undi ku gihembo agategekwa nawe cyangwa se ubwibumbe bw'abantu, **agakoreshwa na Leta cyangwa undi mukoresha wigenga**".

[14] Ingingo ya 93(4º) y'Itegeko Ngenga nº 51/2008 ryo kuwa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko iteganya ko "Urukiko Rukuru ruburanisha ibirego bijyanye n'imanza z'ubutegetsi kuva ku rwego rw'Intara n'urw'Umujyi wa Kigali kugeza ku rwego rwa Perezida wa Repubulika birebana n'impaka zivutse mu kazi hagati y'abantu ku giti cyabo na Leta cyangwa ibigo byayo".

[15] Ingingo ya 94 y'Itegeko Ngenga nº 51/2008 ryo kuwa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko iteganya ko "Urukiko Rukuru rusuzuma niba ibyemezo, amasezerano n'izindi nyandiko byo mu bubasha bwarwo, byakozwe n'umuyobozi, byarakurikije amategeko. Iyo rusanze bitarayubahirije, rushobora kubisesa cyangwa kwemeza indishyi z'akababaro zikomoka ku byangijwe na byo".

[16] Ingingo ya 339 agace ka mbere y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi itegenya ko "Ikirego gisaba gukuraho icyemezo cy'umutegetsi cyakirwa gusa iyo cyerekeye icyemezo cy'umutegetsi cyeruye cyangwa kiteruye", agace kayo ka kabiri gateganya ko "Mbere yo gutanga ikirego, unenga icyemezo cy'umutegetsi agomba kubanza gutakambira umutegetsi wagifashe".

[17] Ingingo ya 171 y'Itegeko nº 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi iteganya ko ''Urukiko rwajuririwe iyo ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregewe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha".

[18] Urukiko rw'Ikirenga rurasanga bigaragara neza mu masezerano y'akazi hagati ya R.R.A. na Nshizirungu Bernard ko ayo masezerano agengwa n'Itegeko ryo kuwa 28/2/1967 ryerekeye amategeko agenga umurimo n'andi mategeko agenga ishyirwa mu bikorwa ryayo, yakurikizwaga igihe ayo amasezerano yasinywaga.

[19] Ku byerekeranye n'ibiteganywa n'ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru, Urukiko rw'Ikirenga rurasanga ku ikubitiro iyo ngingo itakurikizwa muri uru rubanza kuko ikirego cyatanzwe na Nshizirungu Bernard mu rwego rwa mbere kitari kigamije gusaba Urukiko kuvanaho icyemezo yafatiwe n'ubuyobozi bwa R.R.A. ahubwo cyari kigamije gusaba isuzumwa mu mizi ry'ikibazo cyo kuba yarirukanwe mu kazi mu buryo bunyuranyije n'amategeko no gusaba indishyi zijyanye nabyo.

[20] Byongeye kandi nk'uko byavuzwe haruguru, amasezerano y'akazi hagati ya R.R.A. na Nshizirungu Bernard ateganya ko agengwa n'Itegeko ryo kuwa 28/2/1967 ryerekeye amategeko agenga umurimo n'andi mategeko agenga ishyirwa mu bikorwa ryayo ku buryo hagomba ahubwo gukurikizwa imihango iteganywa n'Itegeko rigenga umurimo mu Rwanda mu gihe hagomba gukemurwa impaka zihariye ku kazi hagati y'umukozi n'umukoresha.

[21] Ku byerekeranye n'ibiteganywa n'ingingo ya 94 y'Itegeko Ngenga nº 51/2008 ryo kuwa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko, Urukiko rw'Ikirenga rurasanga iyo ngingo idashimangira ko umukozi wa Leta agomba igihe cyose gukurikiza imihango iteganywa n'ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru, ahubwo igaragaza gusa ko mu nshingano zarwo mu gusuzuma iyubahiriza ry'amategeko ku byemezo, amasezerano n'izindi nyandiko byakozwe n'ubuyobozi, Urukiko Rukuru rushobora cyangwa kubisesa igihe umuburanyi asaba gukuraho icyemezo cy'umuyobozi cyangwa kwemeza indishyi z'akababaro zikomoka ku byangijwe na byo igihe umuburanyi yatanze ikirego kigamije gusaba indishyi z'igihombo yatewe n'icyemezo cy'ubuyobozi.

[22] Hashingiwe ku ngingo z'amategeko zavuzwe haruguru no ku bisobanuro byatanzwe, Urukiko rw'Ikirenga rurasanga ikirego cya Nshizirungu Bernard cyaragombaga kwakirwa n'Urukiko Rukuru.

[23] Ku byerekeranye n'ibisabwa na R.R.A. ko uru rubanza rwakoherezwa mu Rukiko Rukuru mu gihe hakwemezwa ko ikirego cya Nshizirungu Bernard cyagombaga kwakirwa, Urukiko rw'Ikirenga rurasanga hashingiwe ku ngingo ya 171 n'iya 172 z'Itegeko nº 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo, iz'ubucuruzi, n'iz'ubutegetsi, uru rubanza rugomba kuburanishwa mu mizi n'uru Rukiko kuko icyemezo cyajuririwe gihinduwe ku mpamvu itari iy'uko Urukiko Rukuru rwaregewe mu buryo budakurikije amategeko cyangwa rutari rufite ububasha bwo kuburanisha icyo kirego ndetse ko kitateshejwe agaciro n'uru Rukiko.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko ubujurire bwa Nshizirungu Bernard bufite ishingiro.

[25] Rwemeje ko ikirego cya Nshizirungu Bernard mu Rukiko Rukuru cyagombaga kwakirwa.

[26] Rwemeje ko iburanisha ry'uru rubanza mu mizi rizakomeza kuwa 17/3/2015.

[27] Rwemeje ko amagarama y'uru rubanza abaye asubitswe.