MUHUTUKAZI v. MAGERWA S.A

[Rwanda URUKIKO RW'IKIRENGA – RSOCAA 0019/12/CS (Kanyange, P.J., Rugabirwa na Mukandamage, J.) 18 Ukwakira 2013]

Itegeko rigenga Umurimo – Iseswa ry'amasezerano y'akazi ku mpamvu igaragara – Kwisobanura k'umukozi mbere yo kumufatira ibihano – Igikorwa cyo gutwara agapfunyika karimo "couvre pneu" nta uburenganzira ni impamvu yumvikana y'iseswa ry'amasezerano y'umurimo – Igikorwa cyo kwandikira umukozi asabwa ibisobanuro nawe agasubiza yisobanura kuri iryo kosa bifatwa nko kwisobanura biteganywa mu itegeko ry'umurimo mu Rwanda – Itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda, ingingo za 21 na 29.

Itegeko ry'umurimo – Indishyi zinyuranye zikomoka ku iseswa ry'amasezerano y'umurimo – Amafaranga y'amasaha y'ikirenga – Ishimwe ry'umwaka – Uburenganzira budasubirwaho (droits acquis – Igihembo cyo gusimbura umukozi wo hejuru by'igihe gito – Amafaranga y'amasaha y'ikirenga ntagenerwa uyasaba igihe yayakoze atabisabwe n'umukuriye mu kazi – Ishimwe ry'umwaka ntirihabwa umukozi wirukanywe atari yamara umwaka ngo ahabwe amanota yarimuheshaho uburenganzira – Mu gihe Umuyobozi wa Serivisi asimbuye Umuyobozi we (DAF) by'igihe gito (intérim) abihemberwa inyongera ihwanye n'ikinyuranyo cy'umushara we n'uw'uwo yasimburaga inkubwe zingana n'igihe yamaze amusimbuye – Amategeko agenga abakozi ba MAGERWA, ingingo za 35, 53 na 31.

Itegeko rigenga imiburanishirize y'imanza z'umurimo—Kwakira ikirego ku kibazo cyakemuriwe mu bugenzuzi bw'umurimo igihe nta kimenyetso kigaragaza ko ibyemeranyijweho byubahirijwe – Ibyemeranyijweho hagati y'umukozi n'umukoresha mu bugenzuzi bw'umurimo ntibishyirwe mu bikorwa bishobora kuregerwa Urukiko rukabyakira – Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 168.

Itegeko rigenga amasezerano cyangwa Imirimo nshinganwa – Indishyi z'akababaro n'inyungu z'amafaranga ateganywa gutsindirwa mu rubanza – Amafaranga y'ikurikiranarubanza n'igihembo cy'avocat – Ababuranyi b'impande zombi ntibatahabwa amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka n'ay'ibyakozwe mu rubanza mu gihe buri wese afite ibyo yatsindiwe – Nta ndishyi z'akababaro zerekeranye no gusebywa n'umukoresha zahabwa umukozi mu gihe atirukanywe ku kazi mu buryo bunyuranije n'amategeko – Umuburanyi ntiyahabwa inyungu z'amafaranga yatsindiye mu rubanza mu gihe aba akiburanwaho, kandi bikagaragara ko hari ibyo yatsindiye kuri uru rwego.

Incamacye y'ikibazo: Muhutukazi yashyikirije Urukiko Rwisumbuye rwa Nyarugenge ikirego asaba MAGERWA kumuha indishyi zinyuranye kubera kuba yarasheshe amasezerano y'akazi bari bafitanye mu buryo bunyuranyije n'amategeko, muri izo ndishyi hakaba harimo, amafaranga y'amasaha y'ikirenga, ishimwe ry'umwaka, igihembo cyo gusimbura umukozi mu gihe gito n'ay'uburenganzira budasubirwaho (droits acquis).

Uru Rukiko rwemeje ko ikirego cye nta shingiro gifite, rusobanura ko rutakwakira ikirego cye ku birebana n'amafaranga yakaswe ashyirwa mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda (CSR) kuko atayaregeye mu Bugenzuzi bw'Umurimo, ko atahabwa amafaranga y'ishimwe ry'umwaka wa 2006 kuko yirukanwe utari warangira, kandi ko atahabwa andi

mafaranga asaba kuko MAGERWA yayamuhaye, ndetse ko atahabwa indishyi z'akababaro asaba kuko atasobanuye akababaro yagize. Byatumye ajurira mu Rukiko Rukuru maze rutegeka MAGERWA kumuha amafaranga yakaswe ku nteguza agashyirwa mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda (CSR), Amafaranga y'uburenganzira budasubirwaho "droits acquis", Amafaranga y'igihembo cyo gusimbura umukozi mu gihe gito "indemnité d'intérim au poste du Directeur Administratif et Financier" n'amafaranga y'igihembo cya Avoka.

Ababuranyi bombi bajuriye mu Rukiko rw'Ikirenga, Muhutukazi asaba ko yakwishyurwa naMAGERWA indishyi z'uko yamwirukanye mu buryo bunyuranyije n'amategeko naho MAGERWA yo igasaba ko nta na kimwe Muhutukazi yasabye yahabwa.

Incamacye y'icyemezo: 1. Ikosa ryo gutwara agapfunyika karimo "couvre pneu" nta uburenganzira ni impamvu yumvikana y'iseswa ry'amasezerano kandi igikorwa cyo kwandikira umukozi asabwa ibisobanuro nawe agasubiza yisobanura kuri iryo kosa bifatwa nko kwisobanura biteganywa mu ngingo ya 21 y' Itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda ryakoreshwaga igihe byabereye.

2. Nta ndishyi zijyanye n'iseswa ry'amasezerano y'umurimo zahabwa uzisaba kuko hakurikijwe ibyateganywaga n'ingingo ya 26 y'Itegeko ryavuzwe haruguru, uzihabwa ari uwirukanwe nta mpamvu, nyamara akaba atariko bimeze muri uru rubanza.

3. Amafaranga y'amasaha y'ikirenga ntagenerwa uyasaba igihe inyandiko ashingiraho ayasaba itagaragaza ko yayakoze abisabwe n'umukuriye mu kazi nk'uko ingingo 27 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997 ibiteganya;

4. Haseguriwe ibiteganywa n'ingingo za 35 na 53 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997, ishimwe ry'umwaka rishobora guhabwa umukozi wahawe amanota meza, kandi wakoze byibura amezi atandatu kugera ku mpera y'umwaka bityo akaba atahabwa umukozi wirukanywe atari yamara umwaka ngo ahabwe amanota yamuhesha uburenganzira ku mafaranga y'ishimwe ry'uwo mwaka ritangwa mu mpera z'umwaka.

5. Ingingo ya 31 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997 yumvikanisha ko Umuyobozi wa Serivisi ashobora gusimbura DAF by'igihe gito (intérim) kandi akabihemberwa gusa hitawe ku buremere bw'imirimo yakoze ayifatanyije n'iye asangwanywe akaba mu bushishozi bw'Urukiko akwiye guhembwa inyongera y'ikinyuranyo cy'umushara we n'uw'uwo yasimburaga inkubwe zingana n'igihe yamaze amusimbuye.

6. Nta kosa Urukiko rwajuririwe ruba rukoze iyo rwakiriye ikirego kijyanye n'ingingo ababuranyi bumvikanyeho mu bugenzuzi bw'Umurimo mu gihe umwe mu baburanyi atagaragaza ikimenyetso ko yabishyize mu bikorwa amutangira mu isanduku y'ubwoteganyirize bw'abakozi amafaranga yari yamukase bityo akaba agomba kuyamuha.

7. Umushahara utagabanyijwe ahubwo ukongerwa, umukozi ntiyashingira ku masezerano mashya ngo asabe guhabwa amafaranga y'uburenganzira budasubirwaho "droits acquis", ay'uburambe ku kazi n'aya "régularisation" y'umushahara yatahanaga yo mu masezerano ya mbere yasheshwe.

8. Ababuranyi b'impande zombi ntibatahabwa amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka n'ay'ibyakozwe mu rubanza mu gihe buri wese afite ibyo yatsindiwe kuri uru rwego. Nta n'indishyi z'akababaro zerekeranye no gusebywa n'umukoresha zahabwa umukozi mu gihe

atirukanywe ku kazi mu buryo bunyuranije n'amategeko. Ntiyanahabwa inyungu z'amafaranga yatsindiye muri uru rubanza kuko aba akiburanwa bitewe n'uko MAGERWA yari ifite uburenganzira yemererwa n'amategeko bwo kujuririra imikirize y'urubanza atishimiye kugira ngo irenganurwe, kandi bigaragara ko hari ibyo yatsindiye kuri uru rwego.

Ubujurire bwa Muhutukazi nta shingiro bufite .
Ubujurire bw'MAGERWA bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye ku baburanyi bombi.

Amategeko yashingiweho:
Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 168.
Itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda, ingingo za 21 na 29.
Amategeko agenga abakozi ba MAGERWA, ingingo za 35, 53, 31.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 22/05/1995**,** Muhutukazi Espérance yagiranye na MAGERWA S.A amasezerano y'igihe kitazwi yo kuyikorera akazi k'Ubucungamutungo (Comptabilité). Kuwa 27/07/2006, MAGERWA yasheshe amasezerano bagiranye kubera ko yasohoye agapfunyika karimo "couvre pneu" katishyuriwe imisoro n'amafaranga ya gasutamo, agafatanwa n'abashinzwe umutekano ba INTERSEC agiye kugasohokana muri MAGERWA.

[2] Nyuma yo kutumvikana n'umukoresha we imbere y'Umugenzuzi w'Umurimo, Muhutukazi yareze MAGERWA mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko yamuha indishyi zingana na 28.189.108Frw. Urukiko rwemeje ko ikirego cye nta shingiro gifite, rusobanura ko rutakwakira ikirego cye ku birebana na 38.381Frw yakaswe ashyirwa mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda (CSR) kuko atayaregeye mu Bugenzuzi bw'Umurimo, ko atahabwa amafaranga y'ishimwe ry'umwaka wa 2006 kuko yirukanwe utari warangira, kandi ko atahabwa andi mafaranga asaba kuko MAGERWA yayamuhaye, ndetse ko atahabwa indishyi z'akababaro asaba kuko atasobanuye akababaro yagize.

[3] Muhutukazi yajuririye Urukiko Rukuru, rutegeka MAGERWA kumuha 38.381 Frw yakaswe ku nteguza agashyirwa mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda (CSR), 600.082 Frw ya "droits acquis", 1.210.120 Frw ya "indemnité d'intérim au poste du Directeur Administratif et Financier" na 500.000 Frw y'igihembo cya Avoka.

[4] Ababuranyi bombi bajuririye Urukiko rw'Ikirenga, Muhutukazi Espérance asaba ko MAGERWA yamuha indishyi zinyuranye zirimo iz'uko yamwirukanye ku kazi mu buryo bunyuranije n'amategeko, naho uburanira MAGERWA avuga ko Muhutukazi atahabwa 38.381 Frw yakaswe ashyirwa muri CSR, amafaranga ya "droits acquis", amafaranga yerekeranye n'uko

yasigariyeho DAF by'igihe gito, kandi ko akwiye kuyiha amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 10/09/2013, Muhutukazi Espérance ahagarariwe na Me Mugabonabandi Jean Maurice, naho MAGERWA ihagarariwe na Me Batware Jean Claude.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

1. Kumenya niba Muhutukazi yarirukanwe mu buryo bunyuranije n'amategeko

[6] Uburanira Muhutukazi avuga ko Urukiko Rukuru rwagombaga gushingira ku ngingo ya 26[1] y'Itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda ryakurikizwaga igihe yirukanwaga, rugategeka ko MAGERWA imuha indishyi z'akababaro z'uko yamwirukanye mu buryo bunyuranije n'amategeko zihwanye n'amezi 12 y'umushahara we zingana na 7.310.748 Frw kuko yamwirukanye atabanje kwisobanura mu magambo no mu nyandiko imbere ya Komisiyo ya "discipline", nyamara byarateganywaga n'ingingo ya 56 y'amategeko agenga abakozi bayo yo mu mwaka wa 2006, kuko nta mukozi washoboraga kwirukanwa atabanje kwisobanura imbere y'iyo Komisiyo.

[7] Avuga kandi ko undi mukozi witwa Ndikumana Vincent yabwiye Urukiko Rukuru ko mbere y'uko yirukanwa we yabanje kwisobanura imbere ya Komisiyo ya "discipline", ariko ko ubuhamya bwe butahawe agaciro, ko n'ubwo Muhutukazi yisobanuye imbere y'urwego rwitwa "Assurance Qualité" rwa MAGERWA, bitafatwa nk'aho yisobanuye kuko rutandukanye na Komisiyo ya "discipline" ya MAGERWA.

[8] Anavuga ko MAGERWA yamwirukanye idashingiye ku mpamvu yumvikana kuko yamwirukanye, nyamara atarakurikiranyweho ibyaha yavugaga ko yakoze bigizwe n'icyaha cy'ubwinjiracyaha mu kunyereza imisoro n'amahôro, icyo gukoresha umwanya yarimo w'Ubuyobozi akayobya Mukashema Devota yakagombye kuyobora, hamwe n'icyo kutavugisha ukuri.

[9] Asobanura ko atafatanije na Ngabo Martin mu gucura umugambi wo kunyereza imisoro ya Leta kuko yahembwaga amafaranga menshi yanganaga na 600.000Frw buri kwezi, naho Ngabo Martin akaba yarahembwaga 1.500.000Frw buri kwezi, mu gihe nyamara agapfunyika karimo "couvre pneu" katumye yirukanwa kari gafite agaciro gato cyane kangana n'amadorari 20, kandi ko kagombaga kwishyurira MAGERWA imisoro mike cyane ingana na 1.243Frw.

[10] Yongeraho ko MAGERWA itagombaga kumwirukana kuko mu gihe cy'imyaka 11 yose yayikoreye mu mwanya w'Umucungamutungo Mukuru, atigeze anyereza umutungo wayo, kandi yarayibikiraga inyandiko zifite agaciro (carnets de valeur) karenga miriyari ebyiri. Ikindi ngo n'uko yirukaniwe kuba yarayobeje Mukashema Devota (pointeur) kandi ataramuyoboraga, kandi ko bitumvikana ukuntu we yirukanwe, mu gihe uyu wahaye Ngabo Martin ako gapfunyika yahanishijwe igihano cyoroheje cyo guhagarikwa mu kazi mu gihe cy'iminsi umunani.

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[1] Iyo ngingo ivuga ko "Iyo umukozi yari afite uburambe ku kazi burenze imyaka icumi ku mukoresha umwe, indishyi z'akababaro zishobora kwikuba kabiri".

[11] Uburanira MAGERWA avuga ko itaha Muhutukazi indishyi asaba kuko yirukanwe hashingiwe ku mpamvu yumvikana kubera ko abakozi bashinzwe umutekano ba INTERSEC bamufashe asohokanye muri MAGERWA agapfunyika karimo “couvre pneu” katari kishyuriwe imisoro n’amafaranga ya Gasutamo mbere y’uko gasohoka kuko katari kakorewe impapuro zagombaga gutuma gasohoka, bituma MAGERWA isesa amasezerano bagiranye kuko yasanze itakwihanganira iyo myitwarire mibi yari igamije kuyihombya by’umwihariko no guhombya igihugu muri rusange.

[12] Ku byerekeye kwisobanura, avuga ko MAGERWA yamwandikiye ibaruwa yo kuwa 18/07/2006 imusaba kwisobanura ku makosa yakoze yavuzwe haruguru, ayisobanuraho mu nyandiko ye yo kuwa 20/07/2006, kandi ko yanisobanuye imbere y’urwego rwa “Assurance Qualité“ rwanamukoreye raporo yashyikirijwe Ubuyobozi Bukuru bwa MAGERWA bwasheshe amasezerano ye y’akazi bubisabwe na Komisiyo ya “discipline” kuko yasanze ibisobanuro byatanzwe na Muhutukazi mu nyandiko bitari bifite ishingiro.

[13] Anavuga ko Muhutukazi atagombaga kwisobanura imbere ya Komisiyo ya “discipline” ya MAGERWA kuko igihe amasezerano ye y’umurimo yaseswaga kuwa 27/07/2006, nta tegeko ryabiteganyaga, kuko amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 2007 abiteganya, mu ngingo yayo ya 56, atakurikizwaga icyo gihe, kubera ko yasinywe na bamwe mu bagize Inama y’Ubutegetsi ya MAGERWA n’Umugenzuzi w’Umurimo kuwa 12/01/2007.

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[14] Ingingo ya 21 y’Itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda ryakurikizwaga igihe amasezerano y’umurimo yaseswaga, ivuga ko “Iyo iyirukanwa ry’umukozi ugengwa n’amasezerano y’igihe kitazwi riturutse ku ikosa, rigomba gushingira ku mpamvu igaragara kandi nyuma y’uko ahawe umwanya wo kwisobanura ku byo aregwa”.

[15] Ku byerekeranye n’impamvu yatumye Muhutukazi yirukanwa, inyandiko ziri muri dosiye zigaragaza ko kuwa 03/07/2006, Muhutukazi Espérance yinjiye muri MAGERWA yambaye icyangombwa cy’akazi (badge) kandi yari mu kiruhuko cy’umwaka, yaka Mukashema Devota agapfunyika karimo “couvre pneu”, uyu amubwira ko atari yagakorera ibyangombwa byagombaga gutuma kishyurirwa imisoro n’amafaranga ya Gasutamo mbere y’uko gasohorwa, ko ariko yajya gusaba Gérant akamureka akakishyurira ayo mafaranga kuri “Guichet” ya 126 bis, ariko aho kujyayo, Muhutukazi yasohokanye ako gapfunyika kugeza ubwo yagafatanwe ageze ku irembo n’abashinzwe umutekano ba INTERSEC ari kumwe na Ngabo Martin, kandi nk’Umuyobozi wa Serivisi y’Icungamutungo ya MAGERWA atari ayobewe ko katishyuriwe ayo mafaranga.

[16] Urukiko rurasanga rero kuba MAGERWA yarirukanye Muhutukazi Espérance ishingiye kuri iryo kosa, bigaragara ko yamwirukanye hashingiwe ku mpamvu yumvikana nk’uko ingingo ya 21 yavuzwe haruguru ibiteganya, kuko atubahirije ibyo amategeko ya MAGERWA yateganyaga.

[17] Urukiko rurasanga ibyo Muhutukazi aburanisha y’uko atagombaga kwirukanwa kubera ko ako gapfunyika kari gafite agaciro gato no kuba karagombaga kwishyurirwa imisoro mike nta shingiro bifite, kuko bitakuraho ikosa yakoze yahaniwe n’umukoresha we mu rwego rw’akazi.

Nanone iby'uko atagombaga kwirukanwa bitewe n'uko atakurikiranyweho ibyaha MAGERWA yavugaga ko yakoze nabyo nta shingiro bifite, kuko amasezerano y'umurimo adaseswa gusa kubera ko habanje kubaho ikurikiranacyaha, ahubwo hakurikijwe ibiteganywa n'ingingo ya 21 yavuzwe, hagomba gusa kuba hari impamvu igaragara nk'uko byasobanuwe haruguru, kandi umukozi yahawe umwanya wo kwisobanura.

[18] Ku byerekeranye no kwisobanura, bigaragara ko Muhutukazi Espérance yisobanuye nk'uko ingingo ya 21 y'Itegeko n° 51/2001 ryavuzwe haruguru yabitegenyaga, kuko MAGERWA yamwandikiye ibaruwa yo kuwa 18/07/2006 imusaba kwisobanura ku ikosa yakoze ryavuzwe haruguru, nawe aryisobanuraho mu ibaruwa ye yo kuwa 20/07/2006, MAGERWA ibona gusesa amasezerano kuwa 27/07/2006.

[19] Urukiko rurasanga ibyo Muhutukazi aburanisha y'uko yirukanwe atabanje kwisobanura imbere ya Komisiyo ya "discipline" ya MAGERWA nta shingiro bifite, kuko igihe yirukanwaga nta tegeko ryabiteganyaga kuko ingingo ya 56 y'amategeko agenga abakozi ba MAGERWA ibiteganya ashingiraho itakurikizwaga icyo gihe, kuko ayo mategeko yatangiye gukurikizwa mu mwaka wa 2007 bitewe n'uko umwe mu bagize Inama y'Ubutegetsi ya MAGERWA yayasinye kuwa 12/01/2007, naho Umugenzuzi w'Umurimo ayasinya kuwa 14/02/2007.

[20] Hakurikijwe ibisobanuro byavuzwe haruguru, Urukiko rurasanga Muhutukazi atahabwa indishyi z'uko yirukanwe mu buryo bunyuranije n'amategeko kuko hakurikijwe ibyateganywaga n'ingingo ya 26 y'Itegeko ryavuzwe haruguru, uzihabwa ari uwirukanwe nta mpamvu, nyamara akaba atariko bimeze muri uru rubanza.

2. Kumenya niba Muhutukazi yahabwa amafaranga ya "droits acquis"

[21] Uburanira Muhutukazi avuga ko kuva muri Gashyantare 1995 kugeza muri Nyakanga 2005, yari yaragiye agira amanota meza yamuheshaga 160.507Frw buri kwezi y'uburambe ku kazi (ancienneté), naho "annales" zikamuhesha 28.397Frw buri kwezi, yose hamwe akaba 188.904Frw buri kwezi, ariko ko nyuma y'icyo gihe, MAGERWA itongeye kuyamuha, nyamara yari "droits acquis" ze itagombaga kumwima hakurikijwe ibyemejwe n'Urukiko rw'Ikirenga mu rubanza RCOMA 0026/08/CS rwaciwe kuwa 09/10/2009, aho rwasobanuye ko "droits acquis" ari uburenganzira umukozi adashabora kwiyima cyangwa kwamburwa n'umukoresha we.

[22] Asaba ko MAGERWA yamuha 6.054.373Frw y'uburambe mu kazi (ancienneté) nk'uko yayagaragaje mu mwanzuro we.

[23] Avuga kandi ko Urukiko Rukuru rwamugeneye 600.082Frw (= 42.863Frw[2] x amezi 14) ya "droits acquis" ya "régularisation" y'umushahara yatahanaga y'amezi 14, nyamara rwaragombaga gutegeka ko MAGERWA imuha 1.373.759 Frw ahwanye n'amezi 14.5 nk'uko asobanuye mu mwanzuro yatanze.

[24] Uburanira MAGERWA avuga ko nayo yajurijwe n'uko Urukiko Rukuru rwageneye Muhutukazi 600.082Frw ya "droits acquis" kandi yaramwongereye umushahara kuko mbere

[2] 42.863 Frw n'ikinyuranyo kiri hagati y'umushahara yatahanaga wanganaga na 286.555 Frw n'umushahara yatahanaga wanganaga na 243.692 Frw ngo Magerwa itamuhembye kuva kuwa 17/05/2005 kugeza kuwa 27/07/2006.

y'ivugurura ry'imikorere yayo no gushyiraho gahunda ihamye y'imishahara y'abakozi bayo, yamuhembaga umushahara-mbumbe (salaire brut) wanganaga na 452.055Frw buri kwezi, naho umushahara yatahanaga (salaire net) ukaba waranganaga na 325.202Frw buri kwezi, naho nyuma y'ivugurura, bagiranye amasezerano mashya kuwa 17/05/2005, bumvikana ko izajya imuhemba umushahara-mbumbe (salaire brut) ungana na 609.229Frw buri kwezi, akajya atahana umushahara ungana na 437.935Frw buri kwezi, ko bigaragara ko yamwongereye 112.733Frw buri kwezi, aho kuba 42.863Frw yagenewe n'urwo Rukiko. Avuga rero ko atahabwa "droits acquis", ko kandi hari izo yaregeye bwa mbere muri uru Rukiko.

UKO URUKIKO RUBIBONA

[25] Ku birebana na "droits acquis", Urukiko rurasanga icyaburanyweho kuva mu rwego rwa mbere kikajuririrwa mu Rukiko Rukuru, ari ikinyuranyo kiri hagati y'umushahara Muhutukazi yatahanaga kera n'uwo yahembwe hakurikijwe amasezerano mashya, akaba aricyo kigomba gusuzumwa muri uru rubanza kuko ibindi asaba ari bishya, bityo bikaba bitasuzumwa mu bujurire hakurikijwe ibiteganywa n'ingingo ya 168 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ibuza gutanga ibirego bishya mu bujurire, uretse ibyo iteganya.

[26] Kuba MAGERWA yaravuguruye imikorere yayo ikanatunganya imishahara y'abakozi bayo bikaba byaratumye yongera kugirana na Muhutukazi Espérance amasezerano mashya yo kuwa 17/05/2005, aho bumvikanye ko izajya imuhemba umushahara-mbumbe (salaire brut) ungana na 609.229 buri kwezi, aho kuba umushahara-mbumbe (salaire brut) wanganaga na 466.555Frw yamuhembaga mbere hakurikijwe amasezerano yo kuwa 22/05/1995, kandi muri ayo masezerano mashya bakaba barumvikanye ko amasezerano yose y'umurimo bagiranye mbere asheshwe (ingingo ya 5 n'iya 10)[3], Urukiko rurasanga Muhutukazi Espérance atashingira ku masezerano mashya ngo asabe guhabwa amafaranga ya "droits acquis" y'uburambe ku kazi n'aya "régularisation" y'umushahara yatahanaga yo mu masezerano ya mbere yasheshwe, cyane cyane ko MAGERWA itamugabanyirije umushahara, ko ahubwo yawongereye.

3. Kumenya niba Muhutukazi yahabwa amafaranga y'amasaha y'ikirenga

[27] Uburanira Muhutukazi avuga ko mu mwaka wa 2005 na 2006 yakoze amasaha y'ikirenga ahwanye na 4.792.791Frw nk'uko imbonerahamwe iri muri dosiye ibigaragaza, ariko ko Urukiko Rukuru rwashingiye ku ngingo ya 29 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997, ivuga ko abayobozi bayo bahembwa "prime" mu mwanya w'amasaha y'ikirenga, rwirengagiza ko iyo ngingo inyuranyije n'ingingo ya 55 y'Itegeko n° 51/2001 ryo kuwa 30/12/2001 ryagengaga umurimo mu Rwanda, kuko imuvutsa uburenganzira bwo guhembwa amasaha y'ikirenga yemererwa n'ingingo ya 55 yavuzwe.

[28] Uburanira MAGERWA avuga ko Muhutukazi atahabwa amafaranga y'amasaha y'ikirenga asaba kuko yahembwaga "prime" nk'uko ingingo ya 29 y'amategeko agenga abakozi yavuzwe haruguru yabiteganyaga, kubera ko yakoraga mu Buyobozi bwa MAGERWA, kandi ko atagaragaje ingano y'ayo masaha n'uwamusabye kuyakora.

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[3] Iyo ngingo ivuga ko «Le présent contrat entre en vigueur à la date de sa signature et remplace tout autre contrat de même nature signé antérieurement ».

UKO URUKIKO RUBIBONA

[29] Ingingo ya 27 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997, ivuga ko amasaha y'ikirenga ari ayakozwe nyuma y'amasaha asanzwe y'akazi mu bihe bidasanzwe, kandi uyakora agomba kuba yabisabwe n'umukuriye mu kazi kubera inyungu zako[4].

[30] Urukiko rurasanga amafaranga y'amasaha y'ikirenga Muhutukazi asaba atayagenerwa kuko inyandiko ashingiraho ayasaba itagaragaza ko yayakoze abisabwe n'umukuriye mu kazi nk'uko ingingo yavuzwe haruguru ibiteganya, cyane cyane ko atagaragaje ko yayasabye akiri mu kazi ngo hasuzumwe ishingiro ryayo.

4. Kumenya niba Muhutukazi yahabwa amafaranga y'ishimwe ry'umwaka (gratification annuelle) wa 2006

[31] Uburanira Muhutukazi avuga ko Urukiko Rukuru rwagombaga gutegeka ko MAGERWA imuha 609.229Frw y'ishimwe ry'umwaka wa 2006 kuko yarihaye abakozi bayo bose ititaye ku manota babonye kuko itayabahaye, ko kuba atarahawe amanota muri uwo mwaka bitatuma adahabwa iryo shimwe mu gihe yakoze amezi atandatu (6) muri uwo mwaka kuko ingingo ya 55 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997, yavugaga ko umukozi ashobora guhabwa amanota mu gihe kiri munsi y'umwaka. Anavuga ko yari guhabwa amanota meza, kuko yayikoreye neza muri ayo mezi bituma imuha "prime de bilan" y'umwaka wa 2006.

[32] Uburanira MAGERWA avuga ko Muhutukazi atahabwa ishimwe ry'umwaka wa 2006 kuko atahawe amanota muri uwo mwaka kubera ko yirukanwe ugeze hagati kubera amakosa yayikoreye yavuzwe haruguru.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 35 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997, ivuga ko mu mpera ya buri mwaka, Ubuyobozi bukuru bwa MAGERWA bwemeza niba bugomba guha abakozi bayo bamaze nibura amezi atandatu bakora ishimwe ryitwa "gratification", kandi ko ingano yaryo igenwa hashingiwe ku mushahara umukozi atahana (salaire net) no ku manota y'umwaka yahawe[5]. Naho ingingo ya 53 y'ayo mategeko, ikavuga ko amanota atangwa mu kwezi k'Ukuboza kwa buri mwaka ku byerekeye umukozi umaze byibura amezi atandatu akora muri uwo mwaka[6].

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[4]Iyo ngingo ivuga ko «Les heures supplémentaires sont celles effectuées au-délà des heures normales de travail dans des circonstances inhabituelles et qui sont demandées par un supérieur hiérarchique pour l'intérêt du service».

[5]Iyo ngingo ivuga ko « A la fin de chaque exercice, la Direction Générale décide de l'opportunité d'attribuer au personnel ayant au moins 6 mois de service effectif, une prime de fin d'exercice couramment appelé gratification. Le montant de cette prime est fonction du salaire mensuel de base et de la cotation annuelle selon les taux fixés à l'article 67.

[6] Iyo ngingo ivuga ko «La cotation se fait au mois de décembre de chaque année pour tout agent totalisant au moins 6 mois de prestation durant l'année».

[34] Hasesenguwe ibiteganywa n'izo ngingo z'amategeko agenga abakozi ba MAGERWA zavuzwe haruguru, Urukiko rurasanga ishimwe ry'umwaka rishobora guhabwa umukozi wahawe amanota meza, kandi wakoze byibura amezi atandatu kugera ku mpera y'umwaka.

[35] Kuba Muhutukazi Espérance yarirukanwe ku kazi atari yamara umwaka wa 2006 muri MAGERWA, Urukiko rurasanga atari guhabwa amanota yari kumuhesha uburenganzira ku mafaranga y'ishimwe (gratification annuelle) ry'uwo mwaka kuko ayo manota atangwa mu mpera z'umwaka, bivuze rero ko atahabwa amafaranga y'ishimwe ry'umwaka wa 2006 asaba.

[36] Urukiko rurasanga ibyo Muhutukazi aburanisha by'uko yahabwa iryo shimwe kubera ko abakozi bose ba MAGERWA barihawe muri uwo mwaka hatitawe ku manota nta shingiro bifite, kuko uretse kubivuga gusa, nta n'impamvu agaragaza yatumye iryo shimwe ritangwa mu buryo bunyuranije n'ibyagombaga gushingirwaho mu kuritanga kugira ngo nawe arihabwe. Kandi n'ubwo byaba ari uko byagenze, byumvikana ko ryahawe abari mu kazi mu mpera z'umwaka wa 2006, kandi bakoze neza.

5. Kumenya niba Muhutukazi yahabwa amafaranga yerekeranye n'uko yasimbuye DAF by'igihe gito

[37] Uburanira Muhutukazi avuga ko Urukiko Rukuru rwamugeneye 1.210.120Frw y'uko yasimbuye Umuyobozi w'Ubutegetsi n'Imari (Directeur Administratif et Financier, "DAF") mu gihe cy'amezi atanu, nyamara rwaragombaga kumugenera 1.331.132Frw ahwanye n'amezi atanu n'igice.

[38] Uburanira MAGERWA avuga ko nayo yajurijwe n'uko Urukiko Rukuru rutagombaga kugenera Muhutukazi 1.210.120Frw ya "indemnité d'intérim", kandi yaramuhaye 165.000Frw iyashyize kuri konti ye n° 040-0022532-61 iri muri BK kuko nta tegeko ryateganyaga ingano y'amafaranga yagombaga guhabwa uwasimbuye DAF by'igihe gito, kandi ko urwo Rukiko rutagombaga gushingira ku ngingo ya 111 y'Itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho sitati rusange igenga abakozi ba Leta, kuko abakozi bayo bagengwa n'amasezerano y'umurimo.

[39] Avuga ariko ko mu gihe Urukiko rwasanga hari amafaranga akwiye guhabwa, rwamugenera ikinyuranyo kiri hagati y'umushahara DAF yatahanaga n'uwo Muhutukazi yatahanaga wanganaga na 437.935Frw.

UKO URUKIKO RUBIBONA

[40] Ingingo ya 31 y'amategeko agenga abakozi ba MAGERWA yo mu mwaka wa 1997 yumvikanisha ko MAGERWA nayo yemera ihame ry'uko Umuyobozi wa Serivisi ashobora gusimbura DAF by'igihe gito (intérim), uretse gusa ko adateganya ingano y'amafaranga uwo mukozi wamusimbuye yagombaga guhabwa icyo gihe[7].

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[7] Iyo ngingo ivuga ko «L'intérim est assuré quand il ya vacance d'un poste. Il est notifié à l'intéressé par écrit par la Direction Générale. L'indemnité mensuelle d'intérim est égale à 5.000Frws pour un agent qui remplace un chef de sous-section, 10.000Frws pour un chef de sous-section qui remplace un chef de section et à 15.000 Frws pour un chef de section remplace un chef de service».

[41] Inyandiko ziri muri dosiye zigaragaza kandi ko MAGERWA yageneye Muhutukazi Espérance 165.000Frw ya "indemnité d'intérim" z'uko yasimbuye DAF mu gihe cy'amezi atanu n'igice, ni ukuvuga kuva kuwa 11/05/2005 kugeza kuwa 24/10/2005 nk'uko byanemejwe n'uyiburanira muri uru Rukiko.

[42] Urukiko rurasanga 165.000Frw MAGERWA yageneye Muhutukazi Espérance ari make harebwe uburemere bw'imirimo ya DAF yakoze icyo gihe ayifatanije n'iye, bityo akaba agomba guhabwa amafaranga abazwe mu buryo bukurikira: ikinyuranyo kiri hagati y'umushahara DAF yatahanaga ungana na 607.160Frw n'uwo yatahanaga wanganaga na 437.935Frw ugakubwa n'amezi atanu n'igice yamusimbuye, ukavanwamo 165.000Frw yamuhembye, ni ukuvuga: (607.160Frw - 437.935Frw) x amezi 5.5 - 165.000Frw = 765.737Frw.

6. Kumenya niba ikirego cya Muhutukazi kirebana na 38.381 Frw kitaragombaga kwakirwa ku rwego rwa mbere

[43] Uburanira MAGERWA avuga ko nayo yajurijwe n'uko Urukiko Rukuru rutagombaga kwakira ikirego cya Muhutukazi cyerekeranye na 38.381Frw yakaswe ku nteguza agashyirwa mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda (CSR), ngo runamugenere ayo mafaranga mu gihe "procès verbal de conciliation partielle" iri muri dosiye igaragaza ko icyo kibazo cyakemuriwe mu Bugenzuzi bw'Umurimo.

[44] Uburanira Muhutukazi avuga ko MAGERWA ikwiye kumuha ayo mafaranga kuko itayamuhaye n'ubwo yayemereye imbere y'Umugenzuzi w'Umurimo. Ikindi ngo n'uko amafaranga y'integuza adacibwaho imisanzu yo mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda.

UKO URUKIKO RUBIBONA

[45] Inyandiko-mvugo yakorewe mu Bugenzuzi bw'Umurimo kuwa 02/05/2007, igaragaza ko MAGERWA yemeye ko izaha Muhutukazi Espérance ayo mafaranga mu gihe isanze amafaranga y'integuza atajya acibwaho imisanzu yo mu Isanduku y'Ubwiteganyirize bw'Abakozi.

[46] Urukiko rurasanga mu iburanisha ry'uru rubanza, nta kimenyetso MAGERWA yatanze kigaragaza ko yayamuhaye cyangwa yayamutangiye mu Isanduku y'Ubwiteganyirize bw'Abakozi, bityo igomba kumuha 38.381Frw, bigaragara rero ko nta kosa Urukiko Rukuru rwakoze ubwo rwakiraga ikirego cye kirebana n'ayo mafaranga.

7. Kumenya niba ababuranyi b'impande zombi bahabwa indishyi basaba

[47] Uburanira Muhutukazi avuga ko ashingira ku ngingo ya 258 CCLIII, asaba ko MAGERWA yamuha 1.500.000Frw y'igihembo cya Avoka yo kuri uru rwego yiyongera kuri 500.000Frw yagenewe mbere, akaba 2.000.000Frw hamwe na 500.000Frw y'ikurikiranarubanza yo mu Nkiko zose yaburaniyemo, 12.000.000Frw y'indishyi z'akababaro z'uko MAGERWA yamusize icyaha cy'ubujura kikamugiraho ingaruka, 7.7 % y'inyungu z'amafaranga yose azatsindira muri uru rubanza, ikanamusubiza 18.000 Frw y'amagarama yatanze.

[48] Avuga kandi ko ataha MAGERWA amafaranga y'ikurikiranarubanza n'igihembo cya Avoka isaba kuko ariyo yamushoye mu manza ku maherere.

[49] Uburanira MAGERWA avuga ko itaha Muhutukazi indishyi asaba kuko yayishoye mu manza nta mpamvu, ko ahubwo nayo mu bujurire bwayo, isaba ko yayiha 300.000Frw y'ibyakozwe mu rubanza ku rwego rwa mbere, 500.000Frw yo kuri uru rwego na 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka yo kuri uru rwego, yose hamwe akaba 1.300.000Frw.

UKO URUKIKO RUBIBONA

[50] Urukiko rurasanga ababuranyi b'impande zombi batahabwa amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka n'ay'ibyakozwe mu rubanza kuko buri wese afite ibyo yatsindiwe kuri uru rwego.

[51] Urukiko rurasanga kandi Muhutukazi atahabwa indishyi z'akababaro zerekeranye n'uko yaba yarasebejwe na MAGERWA kuko itamwirukanye ku kazi mu buryo bunyuranije n'amategeko nk'uko byasobanuwe haruguru.

[52] Urukiko rurasanga na none atahabwa inyungu z'amafaranga yatsindiye muri uru rubanza kuko yari akiburanwa bitewe n'uko MAGERWA yari ifite uburenganzira yemererwa n'amategeko bwo kujuririra imikirize y'urubanza itishimiye kugira ngo irenganurwe, kandi bigaragara ko hari ibyo yatsindiye kuri uru rwego.

[53] Urukiko rurasanga rero igiteranyo cy'amafaranga MAGERWA igomba guha Muhutukazi Espérance ari: 765.737Frw + 38.381Frw hiyongereyeho 500.000Frw y'igihembo cya Avoka yatsindiye mu Rukiko Rukuru, bityo yose hamwe akaba 1.304.118Frw.

III. ICYEMEZO CY'URUKIKO

[54] Rwemeje ko ubujurire bwa Muhutukazi Espérance nta shingiro bufite;

[55] Rwemeje ko ubujurire bwa MAGERWA bufite ishingiro kuri bimwe;

[56] Rutegetse MAGERWA guha Muhutukazi Espérance 1.304.118Frw;

[57] Rutegetse Muhutukazi Espérance gufatanya na MAGERWA gutanga amagarama y'uru rubanza angana na 29.600Frw, buri wese agatanga kimwe cya kabiri (1/2) cyayo, ni ukuvuga 14.800Frw, batayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu byabo ku ngufu za Leta.

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