# KK SECURITY v. HARERIMANA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – R.SOC.AA006/07/CS (Rugege, P.J., Ruyenzi na Mukanyundo, J.) 11 Mutarama 2008]

*Amategeko agenga umurimo – Isezererwa mu kazi rishingiye ku mpamvu z'ubukungu – Nta kigaragaza ko umukozi usezerewe aba ari we ugomba gusezererwa mu bakozi b'ikigo iyo ibyo amategeko ateganya kugira ngo hakorwe ijonjora ry'abagomba gusezererwa cyangwa kugabanywa mu bakozi, hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n'umubare w'abo batunze bitubahirijwe, bikaba bifatwa nko kwirukana umukozi nta mpamvu – Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo, ingingo ya 29.*

*Amategeko agenga umurimo – Umushahara – Ufite inshingano yo kugaragaza ikimenyetso cy'uko umukozi yahembwe – Ihagarara ry'igihe cy'ubuzime bw'uburenganzira bwo kwishyuza umushahara – Iyo umukozi atemeye ko yahembwe umushahara we kandi umukoresha akabura inyandiko yemeza ko yamuhembye cyangwa se kopi yayo, umukoresha agomba kumuhemba – Igihe cy'ubuzime bw'iyushyuzwa ry'umushahara gihagarikwa n'uko urubanza rw'umukozi rukiri mu nkiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo – Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo, ingingo ya 102.*

*Amategeko agenga umurimo – Icyemezo cy'umurimo – Umukoresha ntaryozwa indishyi mu gihe umukozi yagombaga kujya gufata icyemezo cy'umurimo yakoze ariko ntajyeyo kugifata – Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo, ingingo ya 30.*

**Incamake y'ikibazo:** KK Security yahagaritse bamwe mu bakozi bayo ivuga ko yari igize ikibazo cy'ubukungu nyuma yo gusesa amasezerano yari ifitanye na SOGEA SATOM ndetse na ROKO CONSTRUCTION s.a.r.l. Harerimana n'abandi bamwe muri bo basezerewe ku mirimo biyambaje inkiko basaba indishyi zinyuranye, barega KK Security mu Rukiko Rwisumbuye rwa Gasabo. Urwo Rukiko rwemeje ko KK Security itsinzwe kandi itegetswe guha Harerimana n'abandi indishyi zinyuranye.

KK Security yajuririye mu Rukiko Rukuru, Urwo Rukiko rwemeza ko KK Security itsinzwe, buri wese akaba agomba guhabwa amafaranga yagenewe n'urukiko rwabanje uretse gusa amafaranga yo kudahabwa icyemezo cy'uburambe mu kazi, hamwe n'ay'urugendo, ay'icumbi ndetse no kwivuza.

Na none, KK Security yongeye kujuririra mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rwirengagije ibisobanuro bya KK Security, abareze bagenewe indishyi z'amasaha y'ikirenga, n'ay'ikiruhuko kandi ngo byari bikubiye mu mushahara bahembwaga, ikanavuga ko habayeho ubuzime bw'ikirego.

Harerimana n'abandi batanze n'inzitizi yo kutakira ubujurire bavuga ko KK Security yajuririye imanza 13 ariko itanga amagarama y'ikirego kimwe ndetse ko hakurikijwe amafaranga yagenewe buri muburanyi mu bareze atageze ku gaciro k'amafaranga agenwe kugirango urubanza rube mu bubasha bw'Urukiko rw'Ikirenga, bityo ubujurire bukaba butari mu bubasha bw'Urukiko rw'Ikirenga.

Ku bijyanye n'ingingo z'ubujurire za KK Security bireguye bavuga ko kuvuga ko birukanwe kubera igihombo atari byo kubera ko KK Security itigeze yerekana igihombo yagize naho

kubyerekeranye n’amafaranga KK Security ivuga ko yabahembye bakavuga ko umukoresha ari we utanga ibimenyetso ko yahembye umukozi we. Bavuga kandi ko inyandiko yatanzwe na KK Security batayemera kuko ari ubwa mbere bari bayibonye. Banatanga n’ubujurire bwuririye ku bundi bavuga ko basaba kugenerwa indishyi zingana n’amezi atandatu y’umushahara wa buri muntu kubera ko umukoresha atabahaye icyemezo cy’imirimo bakoze n’amafaranga y’ingendo, icumbi no kwivuza.

KK Security isubiza ko urubanza rwatangiye ari urubanza rumwe bisabwe n’abarega bifuzaga ko ibirego byabo bihuzwa, Urukiko Rwisumbuye rwa Gasabo rukaba rwarahaye urwo rubanza nimero imwe. Ariko Urukiko rwabibukije ko Itegeko rivuga “imanza”, ko ritavuga “ikirego” umwunganizi w’abaregwa mu bujurire ahita abwira Urukiko ko niba ari uko bimeze, inzitizi bari babyukije bayiretse.

**Incamake y’icyemezo:** 1. Nta kigaragaza ko umukozi usezerewe aba ari we ugomba gusezererwa mu bakozi b’ikigo igihe hatubahirijwe ibyo amategeko ateganya kugira ngo hakorwe ijonjora ry’abagomba gusezererwa cyangwa kugabanywa mu bakozi, hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n’umubare w’abo batunze, bikaba bifatwa nko kwirukana umukozi nta mpamvu.

2. Iyo umukozi atemeye ko yahembwe umushahara we kandi umukoresha akabura inyandiko yemeza ko yamuhembye cyangwa se kopi yayo, umukoresha agomba kumuhemba.

3. Igihe cy’ubuzime bwo kwishyuza umushahara gihagarikwa n’uko urubanza rw’umukozi rukiri mu nkiko cyangwa se n’uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo.

4. Abaregwa bagomba kugenerwa igihembo cy’Avoka cy’urubanza rumwe kuko umu Avoka yaburanye urubanza rumwe atanga n’imyanzuro y’urubanza rumwe.

5. Umukoresha ntaryozwa indishyi mu gihe umukozi yagombaga kujya gufata icyemezo cy’umurimo yakoze ariko ntajyeyo kugifata.

**Ubujurire nta shingiro bufite uretse ku byerekeye igihembo cy’Avoka;**
**Amagarama y’urubanza aherereye kuri KK Security.**

**Amategeko yashingiweho:**
Itegeko N°51/2001 ryo kuwa 30/12/2001 rishinga amategeko agenga umurimo, ingingo za 29, 30, 97, 102.

**Nta manza zifashishijwe.**

## Urubanza

# I. IMITERERE Y’URUBANZA

[1] Mu mwaka wa 2004, Sosiyete KK Security yahagaritse bamwe mu bakozi bayo ivuga ko yari yagize ikibazo gikomeye cy’ubukungu. Iyo Sosiyete ivuga ko byatewe n’uko yari imaze gusesa amasezerano yari ifitanye na SOGEA SATOM ndetse na ROKO CONSTRUCTION s.a.r.l, aho hombi hakaba harakoraga abakozi benshi ba KK Security.

[2] Bamwe muri abo bakozi basezerewe ku mirimo ntibishimiye uburyo byakozwe; biyambaza inkiko basaba indishyi.

[3] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo kuri N° R.Soc.0006/06/TGI/GSBO Harerimana Enos, Munyaneza Jean, Safari Théogène, Gasore Jean Baptiste, Munyanshongore Théodore, Harindintwari Augustin, Uwizera Sadock, Sebagabo Prince, Hagenimana Moussa, Setakwe André, Mwungura André, Mberwa Innocent na Sebasoni Jérôme barega KK Security. Urubanza rwaciwe ku wa 20/10/2006, rwemeza ko KK Security itsinzwe, itegekwa kwishyura Harerimana Enos na bagenzi be amafaranga ahwanye n'ibyo buri wese mu bareze yagenewe, ni ukuvuga amafaranga y'amasaha y'ikirenga; ay'iminsi y'ikiruhuko, ay'icumbi, ay'urugendo n'ayo kwivuza; indishyi zo kwirukanwa binyuranije n'amategeko; indishyi zo kudahabwa icyemezo cy'akazi hamwe n'igihembo cya Avoka.

[4] KK Security ntiyishimiye imikirize y'urubanza, iyijuririra mu Rukiko Rukuru rwa Repubulika ku cyicaro gikuru i Kigali, ubujurire bwandikwa kuri N° R.SOC.A0277/06/HC/KIG. Urwo rukiko rwaciye urubanza ku wa 13/4/2007, rwemeza ko KK Security itsinzwe, buri wese akaba agomba guhabwa amafaranga yagenewe n'urukiko rwabanje uretse gusa amafaranga yo kudahabwa icyemezo cy'uburambe mu kazi ("*attestation de services rendus*") hamwe n'ay'urugendo, ay'icumbi ndetse no kwivuza. Urukiko rwemeje ko amafaranga yose hamwe KK Security igomba guha abareze ari 21.102.528, ikanatanga n'umusogongero wa Leta ungana na 4% y'ayo mafaranga, ni ukuvuga 844.101Frw, hamwe n'andi mafaranga 21.450 y'amagarama y'urubanza.

[5] Na none, KK Security ntiyishimiye icyo cyemezo, ikijuririra mu Rukiko rw'Ikirenga mu ibaruwa yageze mu bwanditsi bw'urwo rukiko ku wa 9/5/2007; ikirego cyahawe N° R.SOC.AA0006/07/CS. Muri iyo baruwa, Me Rutabingwa Athanase wunganira KK Security yavuze ko ingingo bashingiraho ubujurire ari izi zikurikira:

> Urukiko Rukuru rwa Repubulika rwirengagije ibisobanuro bya KK Security kubera ko rwemeje ko impamvu yo kwirukana bariya bakozi ifite ishingiro, ngo ariko rwemeza ko ari ukwirukanirwa ubusa ngo kubera kutubahiriza ingingo ya 29 y'Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo.
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> Ngo urukiko rwemeje ko abareze bagomba guhabwa indishyi z'amasaha y'ikirenga n'ay'ikiruhuko kandi ngo byari bikubiye mu mushahara bahembwaga. Ngo abareze ni bo bagombaga kugaragaza ko bakoze ntibayahembwa.
>
> Ngo Avoka yagombye guhemberwa dosiye imwe kubera ko akazi ari kamwe kuko ibirego byahurijwe hamwe.
>
> Ngo amafaranga aregerwa aratangirira mu 1996 kugeza 2004 kandi harabaye ubuzime nk'uko ingingo ya 102 y'Itegeko N°51/2001 ryo kuwa 30/12/2001 rishinga amategeko agenga umurimo ibivuga.
>
> Ngo asanga baregera ibyo badafiteho uburenganzira.

[6] Ikirego cy'ubujurire bwa KK Security cyakorewe ibanzirizasuzuma. Mu cyemezo cye N° RSOC 0004/07/Pré-ex/CS cyo ku wa 14/6/2007, umucamanza w'ibanzirizasuzuma yemeje ko ikirego cy'ubujurire KK Security yashyikirije Urukiko rw'Ikirenga cyatanzwe mu nzira no mu buryo bikurikije amategeko, ko kandi kiri mu bubasha bw'Urukiko rw'Ikirenga.

**Iburanisha ry'urubanza R.SOC.AA0006/07/CS mu Rukiko rw'Ikirenga.**

[7] Urubanza rwahamagajwe bwa mbere mu Rukiko rw'Ikirenga ku wa 07/8/2007 ariko ntirwaburanishijwe kubera ko Me Rutabingwa Athanase wunganira KK Security yari yanditse asaba ko rwahabwa indi tariki kubera ko yari yagize ibyago. Rwimuriwe ku wa 30/10/2007. Kuri iyo tariki, urukiko rwasanze ababuranyi bahari, Me Rutabingwa Athanase aburanira KK Security, Harerimana na bagenzi be baburanirwa na Me Kayitare Serge.

[8] Me Rutabingwa yasabwe gusobanura ingingo ashingiraho ubujurire bwe. Akimara gutanga ibyo bisobanuro, Me Kayitare yasabye ijambo ahita abyutsa inzitizi ku iyakirwa ry'ubujurire bwa KK Security. Yavuze ko KK yajuririye imanza 13 ariko yatanze amagarama y'ikirego kimwe, akaba yumva ubujurire butari mu bubasha bw'Urukiko rw'Ikirenga.

[9] Urukiko rumaze kwumva impande zombi, rwariherereye kugira ngo rubanze rufate umwanzuro kuri iyo nzitizi. Icyakora, urukiko rwasanze hari ikindi kibazo cy'uko mu bacamanza bari bagize inteko, harimo umucamanza wafashe icyemezo cy'ibanzirizasuzuma ku iyakirwa ry'ubujurire n'ububasha bw'Urukiko rw'Ikirenga; bityo inteko ikaba igomba guhinduka, iburanisha rikimurirwa undi munsi kandi n'icyo kibazo kikazigwa icyo gihe. Urubanza rwimuriwe ku wa 12/11/2007. Kuri iyo tariki, urubanza rwarasubukuwe ruburanishwa n'inteko nshya.

[10] Me Kayitare yahawe ijambo ngo yongere asobanure inzitizi yari yabyukije. Yavuze ko KK Security yari yarezwe n'abantu 13 buri wese atanga ikirego cye. Izo manza ngo zaje guhurizwa mu rubanza rumwe mu nkiko zabanje. Mu Rukiko rw'Ikirenga, KK Security ngo yajuririye imanza 13 itanga amagarama y'ikirego kimwe. Me Kayitare ngo yumvaga umucamanza w'ibanzirizasuzuma yari kureba ikirego cya buri muntu n'amagarama arebana na cyo. Ngo habayeho guhuza imanza atari ukugirango urubanza rube rumwe, ahubwo ari ukugirango imanza ziburanishirizwe hamwe.

[11] Me Rutabingwa asubiza kuri iyo nzitizi ya Me Kayitare, yavuze ko urubanza rwatangiye ari urubanza rumwe bisabwe n'abarega bifuzaga ko ibirego byabo bihuzwa, Urukiko Rwisumbuye rwa Gasabo rukaba rwarahaye urwo rubanza nimero imwe. No mu bujurire mu Rukiko Rukuru rwa Repubulika ngo urwo rubanza rwahawe nimero imwe, kandi ngo bemeye kuruburana, nta nzitizi bigeze babyutsa.

[12] Urukiko rwabajije Me Kayitare icyo avuga ku Itegeko rigenga Urukiko rw'Ikirenga ku byerekeye ububasha. Me Kayitare yasubije ko iryo tegeko rivuga ko iyo ikiburanwa kingana cyangwa kirenze 20.000.000Frw kiba kiri mu bubasha bw'Urukiko rw'Ikirenga; ngo ariko we yumva muri uru rubanza ububasha bwareberwa ku gaciro ka buri kirego. Urukiko rwamwibukije ko Itegeko rivuga "imanza", ko ritavuga "ikirego". Me Kayitare yahise abwira Urukiko ko niba ari uko bimeze, inzitizi yari yabyukije ayiretse.

[13] Urukiko rwamenyesheje ababuranyi ko urubanza rugiye kuburanishwa mu mizi, rusaba Me Rutabingwa gusubiramo impamvu z'ubujurire bwa KK Security kubera ko inteko yahindutse. Me Rutabingwa yavuze ko bajuriye kubera impamvu zikurikira:

> Urukiko rwirengagije ibimenyetso n'ibisobanuro batanze. Urukiko rubanza rwemeje ko bariya bakozi birukanywe kubera ko KK Security yagize igihombo; ariko rwarivuguruje aho rwavuze ko ibiteganywa n'ingingo ya 29 y'Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo bitubahirijwe. Ngo ingingo ya 26 y'iryo tegeko iteganya indishyi iyo impamvu yo kwirukanwa itumvikana; ntabwo ivuga ko indishyi zitangwa iyo "*procédure*" itubahirijwe, kandi ngo ingingo ya 29 nta bihano iteganya;

Ngo Urukiko rwabanje ntirwitaye ku bisobanuro KK Security yatanze ku byerekeye amasaha y'ikirenga kimwe n'iminsi y'ikiruhuko;

Ku byerekeye igihembo cya Avoka, ngo amafaranga 80.000 kuri buri muntu ni menshi kubera ko urubanza ari rumwe;

Ngoingingo ya 102 y'Itegeko rigenga umurimo ntiyitaweho. Iyo ngingo ivuga ko imishahara irengeje imyaka itanu itaregerwa; kandi ngo urubanza rwaregewe muri 2004 ku bintu bimwe byabaye muri 1996.

[14] Me Kayitare na we ahawe ijambo yavuze ko, nk'uko bigaragara kuri kopi y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Gasabo (urupapuro rwa 3, Rumaze ya 4) no kuri kopi y'urubanza rwo mu Rukiko Rukuru (urupapuro rwa 12, Rusanze ya 5) KK Security yemeye ko yishe ingingo ya 29 y'Itegeko rigenga umurimo, ko ariko nta bihano itegeko riteganya. Yakomeje avuga ko, hakurikijwe ingingo ya 110 y'Itegeko N°15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, kwiyemerera mu rubanza bitsindisha uwemeye.

[15] Me Kayitare yakomeje avuga ko, kuvuga ko abakozi birukanywe kubera igihombo atari byo kubera ko KK Security itigeze igaragaza icyo gihombo mu mibare. Icyakora ngo n'ubwo igihombo cyari kuba, hagakurikizwa ingingo ya 29 y'Itegeko rigenga umurimo, nta cyerekana ko abo aburanira ari bo bari kwirukanwa. Bityo, ngo niba batari kwirukanwa, aribaza niba bitafatwa nk'aho birukanywe nta mpamvu. Ku byerekeye amasaha y'ikirenga n'iminsi y'ikiruhuko KK Security ivuga ko yabahembeye, ngo harebwa ingingo ya 97 y'Itegeko rigenga umurimo aho ivuga ko umukoresha ari we utanga ikimenyetso cy'uko yahembye abantu bavuga ko atabahembye. Ku gihembo cya Avoka, Me Kayitare yavuze ko yakuyeho inzitizi ye, ko ariko atavuze ko urubanza ari rumwe; bityo ngo uko bisanzwe umuntu yumvikana n'urega ku giti cye. Ku byerekeye ubusaze bw'ikirego cyerekeye umushahara, yavuze ko harebwa ingingo ya 102 y'Itegeko ryerekeye umurimo aho ivuga ko ubusaze buhagarara iyo habaye kuregera urwego rushobora kubakiranura. Yavuze ko uko kurega kwabayeho mu Bugenzuzi bw'umurimo, yerekana inyandiko mvugo yo ku wa 18/11/1998, anavuga ko iyo nyandiko no mu Rukiko Rwisumbuye rwa Gasabo bayitanze.

[16] Me Kayitare yatanze n'ubujurire bwuririye ku bundi, avuga ko abo yunganira basaba kugenerwa indishyi zingana n'amezi atandatu y'umushahara wa buri muntu kubera ko KK Security itabahaye icyemezo cy'imirimo bakoze (attestation de services rendus). Ikindi yavuze ko basaba muri ubwo bujurire ni amafaranga y'ingendo, icumbi no kwivuza, nk'uko ateganywa n'Iteka rya Minisitiri N°10/19 ryo ku wa 14/3/2003.

[17] Me Rutabingwa yongeye gusaba ijambo, avuga ko KK Security itigeze yemera ko yishe amategeko; ngo ahubwo mu isesengura ry'ingingo ya 29 y'Itegeko rigenga umurimo, bavuze ko iyo ngingo nta bihano yateganyije mu gihe "*procedure*" iteganya yaba itubahirijwe; kandi ngo urukiko ntirwateganya ibihano kuko rwaba rukoze umurimo w'umushingamategeko.

[18] Ku bijyanye n'ubusaze bw'ikirego cyerekeye umushahara, Me Rutabingwa yavuze ko inyandikomvugo yo ku wa 18/11/1998 yavuzwe na Me Kayitare atayemera kubera ko atabonaho abayishyizeho umukono, kandi ngo ni ubwa mbere yari ayibonye.

[19] Ku bujurire bwuririye ku bundi bwatanzwe na Me Kayitare, Me Rutabingwa yavuze ko icyemezo Urukiko Rukuru rwabifasheho cyumvikana kubera ko umukozi wese waje gufata icyemezo cy'imirimo yakoze yagihawe. Ku byerekeye amafaranga y'ingendo, icumbi

no kwivuza, ngo ingingo ya 5 y'amasezerano bagiranye na KK Security, iteganya ko umushahara ukubiyemo indamunite z'urugendo, iz'icumbi n'izo kwivuza kandi ngo Iteka rya Minisitiri Me Kayitare avuga ntiriteganya ko ayo mafaranga atangwa ukwayo.

[20] Ku kibazo yabajijwe n'urukiko niba yumva ingingo ya 29 yavuzwe haruguru yarubahirijwe, Me Rutabingwa yavuze ko yumva barayubahirije, ko gusa icyo batakoze ari inama yagombaga kubahuza n'abakozi.

## II. ISESENGURA RY'INGINGO Z'UBUJURIRE

**(a) Ku kibazo cyo kwirukanwa nta mpamvu.**

[21] Mu bujurire bwayo, KK Security yavuze ko Urukiko Rukuru rwayirenganyije kubera ko rwemeje ko impamvu yo kwirukanwa ifite ishingiro kubera igihombo no gutakaza abakiriya, ariko ngo ruvuga na none ko kutubahiriza "*procédure*" iteganywa n'ingingo ya 29 y'Itegeko rigenga umurimo bituma KK Security igomba kuriha indishyi.

[22] Ingingo ya 29 y'Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo iteganya ko: "Iyo umukoresha ateganya kugabanya abakozi bitewe n'impamvu z'ubukungu, mbere yo gushyira icyemezo cye mu bikorwa, agomba kubanza kugirana inama n'abahagarariye abakozi mu kigo kugira ngo abamenyeshe impamvu ateganya iryo gabanya, ibyo ashingiraho arikora, itariki y'igabanya, akanabasaba kumuha inama zatuma iryo gabanya ritabaho cyangwa ritagendamo abakozi benshi.

> Abakozi bagabanywa mu kigo cy'ubukozi batondekwa hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n'umubare w'abo batunze.
>
> Inyandiko mvugo y'iyo nama hamwe n'urutonde rw'abakozi bagabanyijwe, itariki n'impamvu zisobanura icyo cyemezo byohererezwa Minisitiri ufite umurimo mu nshingano ze mu minsi itarenze cumi n'itanu (15) ikurikira iyo nama".

[23] Iyo ngingo ya 29 yashyiriweho kugira ngo irengere abakozi, umukoresha atabarenganya mu gihe hagiye kuba impinduka mu kigo irimo guhagarika bamwe mu bakozi bitewe n'impamvu zumvikana z'ubukungu. Nk'uko byavuzwe haruguru, iyo ngingo itegeka ko umukoresha agomba kugirana inama n'abahagarariye abakozi mu kigo kugira ngo abamenyeshe impamvu ateganya iryo gabanya, ibyo ashingiraho arikora, itariki y'igabanya, akanabasaba kumuha inama zatuma iryo gabanya ritabaho cyangwa ritagendamo abakozi benshi. Ni ukuvuga ko hagomba kuba imishyikirano igamije gushakisha uburyo abakozi bakomeza akazi kabo hatabayeho igabanya kandi bitabangamiye umukoresha. Ibi kandi bivuga ko gusezerera abakozi kubera impamvu z'ubukungu bitagomba kuba ari byo umuntu yahitamo mu ikubitiro, ahubwo bishobotse umuntu yabihitamo nk'amaburakindi (*as a last resort*). Igihe bibaye ngombwa kugabanya abakozi, bigomba gukorwa hashingiwe ku byateganyijwe n'amategeko, hatabayeho amarangamutima n'akarengane. Ibi bituma abasezererwa babona ko ibyakozwe byabaye mu mucyo (*transparent*), mu buryo buboneye (*fairly*) kandi ko nta kundi byari kugenda (*unavoidable*). Ibyo bigomba kugenderwaho (*criteria/critère*) biri mu ngingo ya 29, igika cya kabiri aho ivuga ngo: "*Abakozi bagabanywa mu kigo cy'ubukozi batondekwa hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n'umubare w'abo batunze*". Muri uru rubanza, nta cyerekana ko KK Security yabigendeyeho.

[24] Mu iburanisha mu Rukiko rw'Ikirenga, ku kibazo Me Rutabingwa yabajijwe n'urukiko cyo kumenya niba KK Security yemeza ko ingingo ya 29 yubahirijwe, yasubije ko

icyo KK Security itubahirije ari ukugirana inama n'abakozi, nk'aho ibyo ntacyo bitwaye. Inama ihuza umukoresha n'abakozi cyangwa ababahagarariye ntabwo ari umugenzo gusa, ahubwo bifasha abakozi, nk'abantu bafite inyungu mu kigo, kumva neza impamvu zituma hagomba kubaho igabanya ry'abakozi. Nk'uko abahanga mu by'amategeko babivuga: "*Important decisions, such as that to retrench, should be subject to the greatest possible degree of consultation with employees or their representatives, not merely for reasons of procedural fairness but as part of establishing whether substantive grounds for dismissal are present and, if so, the most appropriate manner of mitigating the consequences*."[1] Ibi bivuga ngo: "*Ibyemezo bikomeye nko kugabanya abakozi, byagombye kubanzirizwa no kugisha inama abakozi cyangwa ababahagarariye, bitari iby'umugenzo gusa, ahubwo ari ukugira ngo bifashe mu kumenya niba koko ari ngombwa gusezerera abakozi, basanga ari ngombwa bagashaka uko ingaruka z'icyo cyemezo zitaba nyinshi*". Abo bahanga bakomeza bavuga ngo: "*The statutory requirement to seek alternatives to dismissal indicates that dismissal should be avoided if reasonably possible and that alternatives put forward by consulting parties should be considered seriously, even though the employer retains a broad discretion in taking final decision*". Ni ukuvuga ngo: "*Mu bisabwa n'amategeko kugira ngo hafatwe icyemezo cyo gusezerera abakozi, harimo ko icyo cyemezo kigomba kwirindwa mu buryo bwose bushoboka, kandi ko imishyikirano ihuza impande zirebwa n'ikibazo igomba guhabwa agaciro gakomeye, n'ubwo bwose umukoresha ari we ufite ububasha bwo gufata icyemezo cya nyuma*".

[25] Ku byerekeye inama hagati y'abakoresha n'abakozi mbere y'uko hafatwa icyemezo cyo gusezerera abakozi, iki kibazo cyasuzumwe kenshi n'inkiko z'ibindi bihugu. Urukiko rw'Ubujurire rwa Afurika y'Epfo, mu rubanza *Atlantis Diesel*[2], rwasuzumye ingingo y'itegeko ry'icyo gihugu igiye gusa n'iy'itegeko ry'u Rwanda, ruvuga ruti: "*The purpose of the duty to consult is to give the employer an opportunity to explain the reasons for the proposed retrenchments, to hear representations on possible ways of avoiding or minimising the effects of retrenchments and to discuss and consider possible alternatives*". Ibi ni ukuvuga ngo: *"Ikiba kigamijwe mu gutegeka ko hakorwa imishyikirano, ni ukugira ngo umukoresha abone akanya ko gusobanura impamvu hateganywa igabanya ry'abakozi, kumva ibitekerezo ku cyakorwa kugira ngo iryo gabanya ritabaho cyangwa uko ingaruka zaryo zitaba nyinshi, ndetse no gushakisha izindi nzira zishoboka"*. Biragaragara ko iyi nzira igamije kurengera abakozi, kandi kutayikurikiza bigafatwa nko kwirukana mu buryo bw'akarengane (*unfair dismissal*). Urukiko rukaba rufite inshingano yo kureba ko amategeko yubahirijwe, n'abarengana bakarenganurwa.

[26] Kuvuga ko itegeko ritateganije ibihano byo kutubahiriza ibivugwa mu ngingo ya 29, nk'uko Me Rutabingwa yavuze mu iburanisha, nta gaciro byahabwa. Uru ntabwo ari urubanza rw'inshinjabyaha. Niba harabaye akarengane kubera kudakurikiza itegeko, uwarenganye agomba kurenganurwa. Nk'uko Urukiko Rukuru rwa Repubulika rwabivuze muri Rusanze ya 7 ku rupapuro rwa 12, "Iyo KK Security iza kubahiriza ibyo amategeko ateganya kugira ngo hakorwe ijonjora ry'abagomba gusezererwa cyangwa kugabanywa mu bakozi bayo hakurikijwe ubushobozi ku murimo, uburambe muri icyo kigo n'umubare w'abo batunze, nta kigaragaza ko ari abo bakozi bavuzwe haruguru bari gusezererwa mu bakozi ba KK Security." Ni ukuvuga ko abareze bavanywe ku kazi kubera kutubahiriza amategeko ku ruhande rwa KK Security; bikaba byarabateye igihombo, bakaba bafite uburenganzira bwo kubona indishyi.

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[1] Du Toit, D. Woolfrey, J. Murphy, S. Godfrey, D. Bosch and S. Christie, *Labour Relations Law: A Comprehensive Guide*, Butterworths, 3rd Edition, p.382.
[2] National Union of Metalworkers of S.A v. Atlantis Diesel Engines (Pty) Ltd (1994) 15 ILJ 12 47 (A).

[27] Mu gusoza kuri iyi ngingo y'ubujurire ngo y'uko KK Security yarenganyijwe n'Urukiko Rukuru rwa Repubulika, Urukiko rw'Ikirenga rusanga KK Security itarubahirije "*procédure*" iteganywa n'ingingo ya 29 yavuzwe haruguru; iyo mikorere ikaba yaratumye abareze bahagarikwa ku kazi mu buryo budakurikije amategeko, Urukiko rukaba rwemeza ko ibi bigomba gufatwa nko kwirukana umukozi nta mpamvu (*licenciement abusif*). KK Security ntiyarenganyijwe n'inkiko zabanje. Bityo, iyo ngingo y'ubujurire ya KK Security ikaba nta gaciro igomba guhabwa.

**(b) Amasaha y'ikirenga n'iminsi y'ikiruhuko.**

[28] Indi ngingo y'ubujurire Me Rutabingwa wunganira KK Security yatanze ni iyerekeye amasaha y'ikirenga n'iminsi y'ikiruhuko. Yavuze ko Urukiko Rukuru rwa Repubulika rwongeye kwemeza ko amasaha y'ikirenga n'iminsi ine y'ikiruhuko bigomba gutangirwa indishyi, ariko rwirengagiza ko ibyo byari bikubiye mu mushahara. Icyakora, nta bimenyetso KK Security yigeze itanga byerekana ko ayo mafaranga y'amasaha y'ikirenga bayahawe. Kandi nk'uko ingingo ya 97 y'Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo ibiteganya "*Iyo umukozi atemeye ko yahembwe umushahara we kandi umukoresha akabura inyandiko yemeza ko yamuhembye […] cyangwa se kopi yayo, umukoresha agomba kumuhemba*". Urukiko rw'Ikirenga rusanga hagomba kugumaho icyemezo cy'Urukiko Rukuru rwa Repubulika kuri iyi ngingo y'ubujurire.

**(c) Ibyerekeye ubuzime bw'ikirego (*prescription*).**

[29] Me Rutabingwa yatanze na none ingingo y'ubujurire y'uko ngo amafaranga aregerwa atangirira mu 1996 kugeza 2004 kandi harabaye ubuzime nk'uko ingingo ya 102 y'Itegeko ry'Umurimo ibivuga. Ingingo ya 102 iteganya ko: "*Umushahara umaze imyaka itanu (5) utarishyuzwa ntiwishyuzwa. Igihe cyo gutangira kutishyuzwa gihera umunsi umukozi yagombaga guhemberwaho*". Icyakora iyo ngingo yongeraho ko "*Icyo gihe gihagarikwa n'uko […] urubanza rw'umukozi rukiri mu nkiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo*". Inyandiko iri muri dosiye kuri *cote* ya 1 kugeza kuri 6, yerekana ko mbere y'uko ikibazo cy'abarega KK Security kigera mu nkiko, cyatangiriye mu bugenzuzi bw'umurimo ku wa 18/11/1998. Kuri yo tariki habaye inama yahuje umugenzuzi w'imirimo muri Perefegitura y'Umujyi wa Kigali, abayobozi ba KK Security n'aba*garde*, kandi inyandiko mvugo y'iyo nama yashyizweho umukono n'uwari umugenzuzi w'umurimo. Kuba uwunganira KK Security avuga ko iyo nyandiko batayemera, nta gaciro byahabwa kubera ko batigeze bayihakana mu nkiko zabanje, byongeye kandi bakaba ntacyo bagaragaje cyatuma Urukiko rushidikanya ko iyo nama yabaye; na none, abavugwa mu nyandiko mvugo y'inama ko bari bahari nta kimenyetso cyatanzwe cyerekana ko batari bahari. Bityo, Urukiko rw'Ikirenga rusanga uko kwiyambaza urwego rw'ubugenzuzi bw'umurimo bivanaho ubuzime bw'ikirego cyo kwishyuza amafaranga nk'uko ingingo ya 102 yavuzwe haruguru ibiteganya.

**(d) Igihembo cy'Avoka**

[30] Ikindi Me Rutabingwa yavuze ko ajuririra ni igihembo cy'Avoka cyagenwe n'umucamanza w'Urukiko Rukuru rwa Repubulika. Me Rutabingwa yavuze ko amafaranga 80.000 kuri buri muntu ari menshi kubera ko urubanza ari rumwe. Urukiko rw'Ikirenga rusanga iyi ngingo ifite ishingiro kubera ko urubanza rwaburanishijwe ari rumwe nk'uko byasobanuwe, ndetse na Me Kayitare akaba yararetse inzitizi ye aho yari yagerageje kwerekana ko ari imanza 13. Ikindi, Me Kayitare yatanze imyanzuro y'urubanza rumwe, akaba yaraburanye urubanza rumwe. Urukiko rusanga mu bushishozi bwarwo rugomba kumugenera igihembo cy'amafaranga y'u Rwanda 300.000.

**(e) Ubujurire bwuririye ku bundi**

[31] Me Kayitare, mu izina ry'abo yunganira, yatanze ubujurire bwuririye ku bundi. Yavuze ko ingingo ya mbere y'ubwo bujurire ari ugusaba ko abo yunganira bagenerwa indishyi zingana n'amezi atandatu y'umushahara wa buri muntu kubera ko KK Security itabahaye icyemezo cy'imirimo bakoze (*attestation de services rendus*). Ingingo ya 30 y'Itegeko N°51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo iteganya ko: "*Iyo amasezerano y'umurimo arangiye, […], umukoresha ahita akorera umukozi icyemezo kivuga gusa uburambe bwe muri icyo kigo n'imirimo yagiye agikoreramo. Icyo cyemezo umukozi agiherwa rimwe n'umushahara we wa nyuma. Umukoresha wanze gutanga icyo cyemezo abitangira indishyi ingana n'umushahara umukozi yahembwaga ariko ntirenze uw'amezi atandatu*". Icyakora, nta kimenyetso cyatanzwe cyerekana ko hari uwagiye gufata icyo cyemezo KK Security ikakimwima; kandi ingingo imaze kuvugwa ireba umukoresha wanze gutanga icyo cyemezo. Bigaragara ko umushahara wa nyuma w'abo bakozi wanyujijwe kuri konti zabo. Icyo gihe abo bakozi bagombaga kujya gufata ibyemezo by'imirimo bakoze kuri KK Security; kuba bataragiyeyo bikaba bitaryozwa KK Security. Bityo, iyi ngingo y'ubujurire bwuririye ku bundi nta gaciro yahabwa, ahubwo hagumishwaho icyemezo cy'Urukiko Rukuru rwa Repubulika.

[32] Indi ngingo y'ubujurire bwuririye ku bundi bwatanzwe na Me Kayitare yerekeye amafaranga y'ingendo, ay'icumbi n'ayo kwivuza. Icyakora, amasezerano y'akazi KK Security yari yaragiranye n'abakozi bayirega yari yarateganyije uko ayo mafaranga bagombaga kuyahabwa, kandi nta wigeze abyutsa ikibazo cy'inenge kuri ayo masezerano. Ingingo ya 5 y'ayo masezerano, mu gika cya 4, iteganya ko: "*imishahara fatizo y'abakozi iba ibumbatiye ibintu by'akarusho bidatangirwa ubu imisoro:*

akarusho k'icumbi ka 15% ;

akarusho ko gutwarwa mu modoka ka 10%;

akarusho ko kwivuza ka 8%".

Hakurikijwe ibimaze kuvugwa biteganywa n'iyi ngingo, Urukiko rusanga ayo mafaranga barayahabwaga hamwe n'umushahara nk'uko bari barabisezeranye. Bityo, iyi ngingo y'ubujurire bwuririye ku bundi na yo nta gaciro igomba guhabwa.

# III. ICYEMEZO CY'URUKIKO RW'IKIRENGA

[33] Urukiko rw'Ikirenga rwemeje:

- kwakira ubujurire bwa KK Security kuko bwatanzwe mu buryo bukurikije amategeko, rubusuzumye rusanga nta shingiro bufite uretse ku byerekeye igihembo cya Avoka.

- rwemeje kwakira ubujurire bwuririye ku bundi bwatanzwe na Harerimana Enos na bagenzi be kuko bwatanzwe mu buryo bukurikije amategeko, ariko ruvuze ko nta shingiro bufite.

[34] Urukiko rw'Ikirenga rwemeje ko KK Security itsinzwe. Ruvuze ko imikirize y'urubanza N° R.Soc.A0277/06/HC/KIG rwajuririwe ihindutse gusa ku byerekeye igihembo cya Avoka.

[35] Urukiko rw'Ikirenga:

- rutegetse KK Security gutanga amafaranga y'u Rwanda 300.000 y'igihembo cy'Avoka; bityo amafaranga yose hamwe akaba ari 20.362.528Frw aho kuba 21.102.528 yari yategetswe n'Urukiko Rukuru rwa Repubulika.

- rutegetse KK Security kwishyura umusogongero wa Leta wa 4% w'ayo mafaranga uhwanye na 814.501Frw.

[36] Urukiko rw'Ikirenga rutegetse KK Security gutanga amafaranga y'u Rwanda 33.800 y'amagarama y'urubanza; ikayatanga mu gihe giteganyijwe n'amategeko, itayatanga akavanwa mu byayo ku ngufu za Leta.