URUBANZA RCOM 00181/2016/HC/HCC RWACIWE N'URUKIKO RUKURU RW'UBUCURUZI KU WA 15/07/2016.
(RRA vs MUSABYIMANA JASSON)

I. *INTANDARO Y'URUBANZA*

MUSABYIMANA Jasson akorera imirimo ye y'ubucuruzi mu karere ka Nyanza akaba yanditse ku musoro ku nyongeragaciro (TVA) bityo akaba afite inshingano yo gutunga imashini ya EBM no kuyikoresha mu gihe akora ubucuruzi. Yaje gufatirwa mu ikosa ryo kuba acuruza adafite iyo mashini ya EBM maze acibwa ihazabu ingana na 5,000,000 hashingiwe ku ngingo ya 24 *ter* y'itegeko n° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro.

MUSABYIMANA Jasson ntiyishimiye iyo hazabu yaciwe, maze ajuririra Komiseri Mukuru asaba ko iyo hazabu ivanwaho, maze Komiseri Mukuru amusubiza amubwira ko ubujurire bwe nta shingiro bufite, ko bityo akwiye kwishyura ihazabu yaciwe. Yahise aregera Urukiko rw'Ubucuruzi rwa Huye, maze rwemeza ko ikirego cye gifite ishingiro, rutegeka ko ihazabu yaciwe ivanwaho.

RRA ntiyishimiye imikirize y'uru rubanza, maze ijuririra Urukiko Rukuru rw'Ubucuruzi. RRA yanenze imikirize y'urubanza ku rwego rwa mbere ivuga ko urukiko rwemeje ko MUSABYIMANA Jasson atari afite inshingano yo kugura imashini ya EBM ngo kuko yari afite igicuruzo cya zero. RRA ikavuga ko ibi atari nako biteye, ngo kuko kuva uyu musoreshwa yiyandikisha ku musoro wa TVA mu mwaka wa 2014, yagiye acuruza akanakora imenyekanishamusoro, ku buryo ibyo kuba yaragize igicuruzo cya zero atari byo. RRA ikomeza ivuga ko mu gihe hakwemezwa ko uyu musoreshwa adafite inshingano yo kugura imashini ya EBM kuko atacuruje, byaba binyuranyije n'ibiteganywa n'ingingo ya 24 y'Itegeko n° 37/2012 ryavuzwe ahabanza, kuko iyi ngingo isaba umusoreshwa wese wanditse ku musoro wa TVA kugura iyi mashini kandi nawe akaba yari yarawiyandikishijeho.

MUSABYIMANA Jasson yisobanura avuga ko yemera ko yagombaga gukoresha imashini ya EBM, ariko akavuga ko RRA nayo ku ruhande rwayo hari ibyo yagombaga kubanza kubahiriza; bityo akabona kuyigura. Ibyo RRA yagombaga kubahiriza ngo bikaba ari ukumumenyesha ikiciro abarizwamo n'ubwoko bw'imashini agomba kugura nk'uko biteganywa n'ingingo ya 3, 9 n'iya 11 z'Iteka rya Minisitiri n° 002/13/10/TC ryo ku wa 31/07/2013 rigena imikoreshereze y'imashini y'ikoranabuhanga yemewe mu gutanga inyemezabuguzi. Akavuga kandi ko yagombaga kumenyeshwa ikiciro arimo n'ubwoko bw'imashini agomba kugura hifashishijwe ingingo ya 4 y'Itegeko n°

25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha[1] kuko ngo ariyo igaragaza uburyo "*communication*" ikorwa hagati ya RRA n'umusoreshwa; amatangazo akaba adateganywa n'itegeko.

RRA isobanura ko MUSABYIMANA Jasson yamenyeshejwe ko agomba kugura imashini ya EBM hifashishijwe amatangazo yanyuze kuri radio na televiziyo, ngo kuko ingingo ya 9 y'Iteka rya Minisitiri nº 002/13/10/TC iteganya ko umusoreshwa abimenyeshwa binyujijwe mu itangazo (par avis public). Naho kubijyanye no kuba yari kumenyeshwa hagendewe ku ngingo ya 4 y'Itegeko nº 25/2005 ryavuzwe ahabanza, RRA isanga iyi nzira ikoreshwa gusa mu gihe RRA iba igomba kumenyesha umusoreshwa ibintu bimureba ku giti cye.

Ku birebana n'ikiciro MUSABYIMANA Jasson avuga ko yagombaga kumenyeshwa, RRA ivuga ko imashini ya EBM ari imwe ko nta moko menshi yazo abaho; ikavuga gusa ko kuri izo mashini habaho A igaragaza ibicuruzwa bisonewe, B igaragaza ibicibwaho umusoro naho C ikagaragaza ibicibwaho umusoro wa zero (nko ku bantu bakora exportation bacibwa umusoro ku kigero cya zero). Ibi bikaba bisobanura ko mu gihe umucuruzi agiye kugura imashini asobanurira "*fournisseur*" ikiciro abarizwamo muri ibyo bitatu bityo bakamukorera imashini ijyanye n'ikiciro arimo.

RRA kandi ivuga ko kuba uregwa avuga ko yagombaga guhanwa hashingiwe ku ngingo ya 24 bis nº 37/2012 ryavuzwe ahabanza atari byo, kuko iyi ngingo ireba umusoreshwa ufite imashini ntayikoreshe; uyu we akaba agomba guhanwa hashingiwe ku ngingo ya 24 ter y'iryo tegeko ihana abatubahirije inshingano zirebana n'imashini ya EBM.

II. UMWANZURO W'URUKIKO

Urukiko rwasanze Ingingo ya 24 y'Itegeko nº 37/2012 ryavuzwe ahabanza iteganya ko: abantu biyandikishije ku musoro ku nyongragaciro bafite inshingano yo gukoresha imashini ya EBM, kandi uharagariye MUSABYIMANA Jasson nawe akaba yiyemerera ko umukiriya we ataguze iyo mashini, ngo kuko hari byo RRA yagombaga kubanza kuzuza ku ruhande rwayo nko kumumenyesha ikiciro abarizwamo n'ubwoko bw'imashini agomba gukoresha.

Rwasanze ariko nta moko menshi y'imashini ya EBM abaho, ahubwo imashini ya EBM ari imwe, igitandukanye kikaba ari ibigomba kuyishyirwamo mu gihe

[1]Ingingo ya 4 y'Itegeko nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha iteganya ibi bikurikira: «*Ubuyobozi bw'Imisoro bwoherereza amabaruwa, amatangazo cyangwa ubundi butumwa umusoreshwa cyangwa umuntu ku cyicaro cye cyangwa aho atuye hazwi. Igihe umusoreshwa cyangwa undi muntu ahinduye aho abarizwa agomba kubimenyesha Ubuyobozi bw'Imisoro. Igihe cyose umuntu ataramenyesha Ubuyobozi bw'Imisoro ko yahinduye aho abarizwa, ubutumwa bwe bwose bwoherezwa aho aheruka kuvuga ko ari ho abarizwa. Igihe umusoreshwa cyangwa undi muntu adafite aho abarizwa hazwi, Ubuyobozi bw'Imisoro bumugezaho ubutumwa bumureba bwose bwifashishije ikinyamakuru kigera mu Gihugu hose.*»

cyo kuyiprograma (programation) bitangwa n'ushaka kuyigura kuko ariwe utanga amakuru ajyanye n'icyiciro cy'ubucuruzi akora. Rwasanze kandi no kuba umusoreshwa avuga ko atamenyeshejwe ikiciro abarizwamo nta shingiro bifite, kuko mu itangazo ryo ku wa 09/09/2013 RRA yasabye abacuruzi kugura imashini za EBM, kandi MUSABYIMANA Jasson nk'umucuruzi usanzwe asora akaba uyu munsi atavuga ko atazi ikiciro cy'ubucuruzi abarizwamo kuko mu gusora ari cyo agenderaho. Urukiko kandi rwasanze urega atagaragaza ingingo y'itegeko yaba itegeka RRA kwandikira buri mucuruzi imumenyesha ku giti cye ko agomba kugura imashini ya EBM.

Kubera impamvu zavuzwe ahabanza, urukiko rwemeje ko ubujurire bwa MUSABYIMANA Jasson nta shingiro bufite; bityo rumutegeka kwishyura RRA amafaranga 1,000,000 Frw y'indishyi zo kuyishora mu manza, ndetse no kuyisubiza amafaranga 75,000 Frw y'igarama yatanze ijurira.