

REPUBLICA Y'U RWANDA



URUKIKO RW'IKIRENGA

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IMIRONGO YATANZWE MU MANZA ZACIWE N'URUKIKO RW'IKIRENGA

Nyakanga -Ukwakira 2022

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IJAMBO RYIBANZE

Urwego rw'Ubucamanza rwiha intego yo gutanga ubutabera bunoze kandi bwihuse. Ni muri urwo rwego, Urukiko rw'Ikirenga rwiyejeje kubaka ubutabera bushingiye ku mirongo yatanze (precedent/ Jurisprudence) hagamijwe gufata abantu kimwe ku buryo abahujwe ibibazo babona ibisubizo bisa no kwirinda imanza zitari ngombwa mu nkiko. Kugira ngo ibyo bigerweho, hafashwe ingamba ko imirongo yafashwe mu manza Urukiko rw'Ikirenga ruca, izajya ihurizwa hamwe ikamenyeshwa abo bireba bose, nibura rimwe mu gihembwe.

Abacamanza, abashakashatsi mu nkiko, ababuranyi (Abavoka n'Abashinjacyaha cyane cyane), basabwe kujya bayitaho kugira ngo twese hamwe dufatanye guteza imbere no gushimangira uyu muco wo gutanga ibisubizo bimwe ku bibazo bisa.

Turasaba Abacamanza kwita kuri iyi mirongo mu manza baca tunabibutsa ko batemerewe kunyuranya nayo kimwe n'indi mirongo yatanze n'izindi nkiko uko zigenda zisumbana nk'uko biteganywa mu mabwiriza ya Perezida w'Urukiko rw'Ikirenga yo kuwa 15/03/2021 agenga itangazwa ry'ibyemezo by'inkiko.

Abavoka kimwe n'undi wese ubifitemo inyungu, barashishikarizwa kubaha imirongo yatanze, ntibagumye gutanga ibirego bitari ngombwa kandi bazi igisubizo inkiko zatanze kuri ibyo birego. Igihe kandi hari umurongo batemera cyangwa bumva utanoze, bakwibuka ko itegeko ryateganyijwe uko bene iyo mirongo iregerwa ikaba yakosorwa (reba ingingo ya 65 na 73 y'itegeko rigena ububasha bw'inkiko). Mu gihe ariko umurongo utarahinduka, uba ugomba kubahirizwa na bose.

Dr NTEZILYAYO Faustin

IRIBURIRO

Aka gatabo gakubiyemo imirongo yatanze n'Urukiko rw'Ikirenga kuva mu kwezi kwa Nyakanga kugeza mu Ukwakira 2022. Iyo mirongo ikaba yarafashwe mu byiciro bikurikira:

➤ **IMANZA MBONEZAMUBANO**

- Kudahungabanywa mu butunzi bw'icyaguzwe (imirongo 2)
- Uryozwa igihombo cyatejwe n'ubugure bwateshejwe agaciro (umurongo 1)
- Ubugure bw'umutungo utimukanwa butakozwe mu buryo bw'inyandiko mpamo (imirongo 1)

➤ **IMANZA Z'UBUTEGETSI**

- Kwirukanwa binyuraniye n'amategeko
 - Uko indishyi zihabwa umukozi wa Leta wirukanwe binyuraniye n'amategeko zibarwa (umurongo 1)
 - Umukozi wirukanwe binyuraniye n'amategeko yahabwa Lumpsum (umurongo 1)

➤ **IMANZA Z'UBUCURUZI**

- Inyungu zikomoka ku nguzanyo zikomeza kubarwa igihe cyose umwenda utarishyurwa (umurongo 1)

➤ **IMANZA Z'UMURIMO**

- Umushahara fatizo ubarirwaho indishyi (imirongo 2)
- Aho bahera babara ubuzime bw'imishahara (umurongo 1)
- Usabwa kugaragaza ikimenyetso cy'impamvu umukozi adahembwa kimwe n'abo bakora akazi kamwe (imirongo 2)

➤ **IMIRONGO RUSANGE**

- Urubanza rwaburanywe na « Avocat » udafite ububasha ruteshwa agaciro (umurongo 1)
- Inzitizi ijyanye no gusuzuma niba ikirego cyari cyujuje ibisabwa kugira ngo cyakirwe mu rwego rw'akarengane (umurongo 1)
- Ubusobekerane bw'imanza (imirongo 3)
- Ingingo zitajuririwe ntizishobora gusuzumwa mu karengane (umurongo 1)

IMANZA
MBONEZAMUBANO

1. Kudahungabanywa mu butunzi bw'icyaguzwe

Urubanza rwasuzumwe: Urubanza RS/INJUST/RC 00002/2022/SC, rwaciye ku wa 22/07/2022 haburana NGEZAHOGUHOORA Ildephonse, INGABIRE Jacqueline na BNR

Ibibazo byasuzumwe: Kumenya ukwiye kwishingira kudahungabanywa mu butunzi bw'icyaguzwe - Kumenya uryozwa igihombo cyatejwe n'ubugure bwateshejwe agaciro.

Imvano y'ikibazo:

NGEZAHOGUHOORA Ildephonse yaguze na REKERAHO Aloys ikibanza ariko mu gihe yari atangiye kucyubaka, Ubuyobozi bumuhagarika buvuga ko icyo kibanza BNR yari yarakigurishije BIRIKUNZIRA Aloys akiri umukozi wayo. Ibyo byatumye NGEZAHOGUHOORA Ildephonse agana inkiko arega INGABIRE Jacqueline, umugore wa REKERAHO Aloys wapfuye, asaba gusesa amasezerano y'ubugure yagiranye na REKERAHO Aloys kuko yamugurishije ikibanza azi neza ko atari icye, kubera ko hari urubanza N° RCAA 0031/14/CS rwemeje ko ari icya BIRIKUNZIRA Jean Baptiste. BNR BNR yagobokeshejwe mu rubanza, itanga inzitizi yo kutakira ikirego kuko ikiburanwa cyamaze gufatwaho icyemezo n'inkiko ndetse imanza zikaba zarabaye itegeko.

Ku wa 30/04/2019, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza N° RC 00047/2018/TGI/NYGE, rusanga inkiko ntacyo zavuze ku bijyanye n'ugomba gusubiza NGEZAHOGUHOORA Ildephonse agaciro k'ikibanza yaguze, ruha ishingiro bimwe mu byo yaregeye, rutegeka INGABIRE Jacqueline kumusubiza 6.700.000 Frw REKERAHO Aloys yakiriye y'ubugure bw'ubutaka. Rwasanze kandi BNR yakoze ikosa ryo gutanga ikibanza kabiri bikaba intandaro y'ibibazo byose, ruyitegeka gusubiza NGEZAHOGUHOORA Ildephonse ikinyuranyo gisigaye kingana na 15.800.000 Frw ku gaciro kose k'ikibanza kagenwe n'umuhanga kangana na 22.500.000 Frw, n'indishyi zingana na 300.000 Frw, igihembo cy'Avoka n'amafaranga y'ikurikiranarubanza bingana na 1.100.000.

INGABIRE Jacqueline yajuririye Urukiko Rukuru avuga ko ari BNR igomba kubazwa agaciro kose, nayo ijurira isaba Urukiko gusuzuma inzitizi yo kutakira ikirego, yatanze mu rubanza rujuririrwa no gusuzuma niba yari ikwiye gutegekwa kwishyura no gutanga indishyi, kandi nta masezerano yagiranye na NGEZAHOGUHOORA Ildephonse. Urwo

Rukiko rwaciye urubanza ku wa 27/08/2020, rwemeza ko BNR ifatwa nk'umugurisha wa mbere, bikaba biyiha inshingano yo kwishingira kudahungabanywa k'umutungo REKERAHO Aloys yaguze, ruyitegeka gusubiza agaciro k'ikibanza kose. BNR ntiyishimiye iyo mikirize maze isaba Perezida w'Urukiko rw'Ubujurire ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, na we amaze kubyemeza, yandikira Perezida w'Urukiko rw'Ikirenga abisaba, bimaze gusuzumwa, ruhabwa n° RS/INJUST/RC 00002/2022/SC, ruburanishwa mu ruhamye ku wa 15/06/2022.

Urukiko rw'Ikirenga rwasuzumye ikibazo cyo kumenya ukwiye gusubiza NGEZAHOGUHORA Ildephonse agaciro k'ikibanza yaguze na REKERAHO Aloys, rusanga ihame ryo kudahungabanywa mu butunzi bw'ikibanza cyaguzwe ryaragombaga kubahirizwa na REKERAHO Aloys wapfuye, nk'uwagurishije NGEZAHOGUHORA Ildephonse ikibanza akaza kucyamburwa hashingiwe ku rubanza N° RCA 0412/10/HC/KIG, rwemeza ko INGABIRE Jacqueline umuhagarariye ariwe ugomba gusubiza NGEZAHOGUHORA Ildephonse 22.500.000 Frw y'ikiguzi cy'icyo kibanza.

Umurongo watanze :

- Ihame ryo kudahungabanywa mu mutungo waguzwe ryishingirwa n'uwagurishije. Mu yandi magambo, uwagurishije niwe wishyura agaciro k'icyagurishijwe mu gihe amasezerano y'ubugure ateshejwe agaciro (reba igika cya 37).
- Iyo uwaguze umutungo awusubije nyirawo, abagurishije bagomba gusubiza abaguzi bavukijwe ibyo baguze agaciro kabyo ku munsu babivukijweho, kandi hagomba gushingirwa ku gaciro uwo mutungo ubwawo ugezeho (reba igika cya 38).

Izindi manza zihuriye kuri uyu murongo :

- Urubanza n° RCAA 00031/2016/SC haburana NISHIMWE Claudine, MASHAMI Gisèle v. MUGENGA Joseph, rwaciye ku wa 25/09/2019.
- Urubanza n°RS/INJUST/RC 00007/2020/SC, haburana TWAGIRAYEZU Alice na bagenzi be v. TWAGIRAYEZU Albert na UMUMARANYOTA Agnès, rwaciye ku wa 10/12/2021, igika cya 41 na 42.

Inyandiko z’abahanga :

- Le Tourneau, Philippe & Cadiet, Loïc, Droit de la responsabilité. (1998). Page 715 – 716.
- Corbière, P. H. (1867). Le droit privé administratif et public dans ses rapports avec la conscience et le culte catholique. Martin-Beaupré., p. 493-496.

2. Uryozwa igihombo cyatejwe n’ubugure bwateshejwe agaciro

Ikibazo cyari kumenya niba REKEREHO Aloys, uhagarariwe n’umugore we INGABIRE Jacqueline hari uruhare yagize mu gutuma amasezerano yagiranye na NGEZAHOGUHORA Ildephonse aseswa. Urukiko rwasanze amasezerano yarasheshwe kubera ko BNR yabahaye ikibanza yari yarahaye undi muntu. Bituma rwemeza ko BNR igomba kuryozwa igihombo yateje REKERAHO Aloys ku bw’amakosa yakoze yo guha ikibanza kimwe abakozi babiri, byatumye cyamburwa uwo REKERAHO yari yakigurishije, ruyitegeka guha INGABIRE Jacqueline amafaranga 17.000.000 Frw.

Umurongo watanze :

- Uwateje abandi igihombo ni we ukiryozwa, hashingiwe ku ihame ryo kuryoza nyiri ugukora ikosa ryagize uwo ryangiriza (reba igika cya 41).

Urubanza bihuza umurongo :

- Urubanza N° RS/INJUST/RC 00005/2021/SC haburana RADIANT INSURANCE COMPANY Ltd na DUSABIMANA Fulgence rwaciwe ku wa 21/01/2022.

Inyandiko z’abahanga :

- Serge BRAUDO et Alexis BAUMANN, Dictionnaire Juridique, 1996-2019, available on <https://www.dictionnaire-juridique.com>,

3. Ubugure bw'umutungo utimukanwa (ubutaka) butakozwe mu buryo bw'inyandiko mpamo

Urubanza rwasuzumwe : Urubanza N° RS/INJUST/RC 00012/2021/SC rwaciwe kuwa 22/07/2022 haburana, NSENGIYUMVA Théoneste, NTAGUNGIRA Jérôme, GITUNGWA Esther n'abana babo.

Ibibazo byasuzumwe :

Kumenya agaciro kahabwa amasezerano y'ubugure bw'ubutaka butakozwe mu buryo bw'inyandiko mpamo

Imvano y'ikibazo :

NTAGUNGIRA Jérôme n'umugore we GITUNGWA Esther bakoranye na NSENGIYUMVA Théoneste amasezerano bise ay'agateganyo yo kumugurisha isambu, bandikirana ko bayiguze 8.000.000 Frw, ko NSENGIYUMVA Théoneste abahaye avansi ya 3.000.000 Frw, asigaye akazayabaha ku wa 05/07/2013, ari nabwo bazakora amasezerano ya burundu, akinjira mu isambu. Kuri iyi tariki bakoranye amasezerano bise aya burundu, bandikirana ko guhera iyo tariki isambu ibaye iya NSENGIYUMVA Théoneste, ko ibyangombwa nibiboneka bazajya kumuhinduriza mu Karere ka Nyabihu.

Ku wa 07/01/2015, NTAGUNGIRA Jérôme yandikiye NSENGIYUMVA Théoneste avuga ko amasezerano bagiranye asheshwe kuko bayakoranye nta muntu wo mu muryango we uhari, ko rero bamusubiza amafaranga yatanze na we akabasubiza isambu. NSENGIYUMVA Théoneste yareze NTAGUNGIRA Jérôme n'umugore we GITUNGWA Esther mu Rukiko Rwisumbuye rwa Rubavu asaba ko isambu yaguze yamwandikwaho kuko yayiguze mu buryo bukurikije amategeko. Urwo rubanza rwaraburanishijwe kugera mu Rukiko Rukuru, Urugereko rwa Musanze. Abana babiri ba NTAGUNGIRA Jérôme na GITUNGWA Esther, aribo NTIVUGURUZA Martin na NTIHEMUKA Albert bagobotse ku bushake muri urwo rubanza bavuga ko amasezerano NTAGUNGIRA Jérôme n'umugore we GITUNGWA Esther bakoranye na NSENGIYUMVA Théoneste ku wa 22/05/2013 anyuranyije n'amategeko yakurikizwaga igihe amasezerano yakorwaga kuko

batayasinyeho, ndetse ko n'amasezerano yo ku wa 05/07/2013 nayo anyuranyije n'amategako kuko yakozwe nyina ubabyara adahari.

Mu rubanza n° RCA 0005/16/HC/MUS rwaciwe ku wa 28/11/2017, Urukiko Rukuru, Urugereko rwa Musanze, rwemeje ko amasezerano NTAGUNGIRA Jérôme n'umugore we GITUNGWA Esther bakoranye na NSENGIYUMVA Théoneste atakurikije amategako, bityo akaba agomba guseswa, NTAGUNGIRA Jérôme n'umugore we GITUNGWA Esther bagasubiza NSENGIYUMVA Théoneste 8.000.000 Frw baguze isambu, bakamuha 1.000.000 Frw akubiyemo indishyi z'akababaro kuko atakaje aho bamugurishije n'igihembo cy' Avoka, na we akabasubiza isambu bari baguze kuko buri ruhande rwakuye inyungu kucyo rwari rufite, akanabasubiza ½ cy'igarama batanze barega, ni ukuvuga 75.000 Frw. NSENGIYUMVA Théoneste yatanze ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, kiburanishwa n'Urukiko rw'Ikirenga, hafatwa imirongo ikurikira :

Ingingo z'itegeko umurongo ushingiyeho : Ingingo ya 26 y'Itegeko ngenga no 08/2005 ryo kuwa 14/07/2005 ryagengaga imicungire y'ubutaka mu Rwanda igihe hakorwaga amasezerano yiswe ay'agateganyo yateganyaga ko « *kwemeza ko ubutaka butanzwe cyangwa bukodeshejwe ku buryo burambye bigaragazwa n'icyemezo gihamya iyandikwa ry'ubutaka gitangwa n'umubitsi w'impapuro mpamo z'ubutaka* ». Ibi kandi nibyo byagarutse mu ngingo ya 18 y'Itegeko n° 43/2013 ryo kuwa 16/06/2013 ryagengaga ubutaka mu Rwanda igihe amasezerano yiswe aya burundu yakorwaga.

Umurongo watanze :

- Kugira ngo byemezwe ko ubutaka buhererekanyijwe, hagomba kubaho icyemezo cy'iyandikisha ryabwo gitangwa n'Umwanditsi w'inyandiko mpamo z'ubutaka, kandi kugira ngo uwo mwanditsi atange icyo cyemezo agomba gushingira gusa ku masezerano yo kwegurira undi ubutaka yakozwe mu buryo bw'inyandiko mpamo

Izindi manza zihuriye kuri uyu murongo :

- Urubanza N° RS/INJUST/RC 00004/2020/SC rwaciwe ku itariki ya 09/04/2021 haburana NSANZIMANA Wilson na GACUNGA Esperance n'abandi ;
- Urubanza N° RS/INJUST/RC 00003/2020/SC rwaciwe ku wa 30/09/2021 rwa CIFTCI na NSHIMIYIMANA Yvon na SEBUTINDE Edourd (igika cya 35) ;

- Urubanza N°RS/INJUST/RC 00014/2021/SC rwaciwe ku wa 13/05/2022 haburana MUKANDORI Costasie na KAYITESI Elyne (ibika bya 31- 34).

Urubanza ruyoboye izindi kuri iki gice:

Urubanza N° RS/INJUST/RC 00010/2019/SC rwaciwe ku wa 25/09/2020 haburana MANIZABAYO Kennedy na TWIZERIMANA Theoneste (ibika bya 22-27): umurongo watanze muri uru rubanza:

- Ku birebana n'ubutaka, nk'umutungo uri mu murage rusange w'imbaga y'abanyarwanda bose, Umushingamategeko yashatse ko umuguzi n'ugurisha batajya biherera bonyine ngo bakore amasezerano y'ubugure, ateguka ko kugira ngo agire agaciro hubahirizwa imihango yihariye.
- Umushingamategeko yakuye amasezerano y'ubugure bw'ubutaka mu cyiciro cy'amasezerano y'ubugure asanzwe, aho abantu biyumvikanira ku kigurishwa no ku giciro nta yindi mihango yihariye ibaye (contrats consensuels), ayashyira mu cyiciro cy'amasezerano yubahiriza imihango yihariye kugira ngo agire agaciro (contrats solennels) igihe cy'iyandikisha ry'umutungo, ari naryo rihesha uwaguze uburenganzira ku mutungo we.

IMANZA
Z'UBUTEGETSI

1. Kwirukanwa binyuranije n'amategeko

Urubanza rwasuzumwe : RS/INJUST/RAD 00001/2021/SC haburana KATABARWA Richard na Akarere ka Nyaruguru.

Ibibazo byasuzumwe : Kumenya uko indishyi zihabwa umukozi wa Leta wirukanywe mu buryo binyuranije n'amategeko zibarwa- Kumenya niba ashobora kwishyura lumpsum yagombaga kuba yarabonye.

Imvano y'ikibazo : KATABARWA Richard yari Umunyamabanga Nshingwabikorwa w'Umurenge wa Munini. Yaje kwirukanwa burundu azira ko yatemesheje ibiti 22 kandi yari yemerewe 13, kutubaha abayobozi be no kunyereza umutungo w'Akarere. KATABARWA Richard yareze mu Rukiko Rwisumbuye rwa Nyamagabe asaba gutesha agaciro icyemezo kimwirukana burundu anasaba n'indishyi bijyanye. Mu Rukiko Rwisumbuye yaratsinzwe, ruvuga ko yirukaniwe amakosa ye.

Yajuririye mu Rukiko Rukuru, Urugereko rwa Nyanza, urwo Rukiko rusanga yarirukanwe binyuranije n'amategeko, rutegeka ko ahabwa indishyi ariko rusanga izo asaba ari nyinshi rumuha 10.746.060 Frw. Izi ndishyi nizo zatumye asubirishamo urubanza ku mpamvu z'akarengane.

Mu iburanisha, uhagarariye Akarere ka Nyamagabe yatanze inzitizi yo gusaba ko Urukiko rubanza gusuzuma niba amakosa KATABARWA Richard aregwa yarayakoze, ibindi bikaza ari ingaruka ku cyemezo cyafatwa. Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko atari inzitizi ahubwo ari uburyo Akarere ka Nyaruguru kumva iyo ngingo, kandi nk'uko rwabitanzeho umurongo mu manza zitandukanye, « *ingingo ya 63 y'itegeko rigena ububasha bw'inkiko igomba kumvikana ko gusuzuma urubanza bundi bushya bidasobanuye ko hirengagizwa izindi manza ziba zaraciwe mbere, ko ahubwo urubanza rusuzumwa bundi bushya mu mbibi z'icyaregowe mu karengane; bivuze ko umuburanyi wumva yararenganye aba agomba kugaragaza ingingo avuga ko yarenganyeho akaba arizo zisuzumwa zigafatwaho umwanzuro*»¹. Urubanza rwakomeje mu mizi hasuzumwa uburyo ikibazo cy'indishyi KATABARWA Richard asaba zabarwa.

¹ RS/INJUST/RCOM 00002/2020/SC Road Solutions Pavement Products vs MAILCO Ltd rwaciwe ku wa 29/09/2020; RS/INJUST/RC 00024/2018/SC haburana NGIRINSHUTI vs MUHIMA Giovani rwaciwe ku wa 21/02/2020 ku gika cya

a. Uko indishyi zihabwa umukozi wa Leta wirukanywe ku buryo bunyuranije n'amategeko zibarwa.

Itegeko N° 017/2020 ryo ku wa 07/10/2020 rishyiraho Sitati igenga abakozi ba Leta ntiriteganyanya uburyo indishyi zibarwa ku mukozi wa Leta wirukanwe mu buryo budakurikije amategeko. Mu kugena indishyi hitabwa ku manza zaciwe n'ibyo abahanga mu mategeko bavuga mu bihe bisa nk'ibi. Abahanga mu mategeko bemeza ko mu kugena indishyi hagenderwa ku bintu bitatu :

- i. Icyo umukozi aba yarangirijwe mu by'ukuri (préjudice effectivement subi par l'agent) ;*
- ii. Amakosa yakozwe n'ubutegetsi (faute commise par l'administration) : abo bahanga bavuga ko indishyi ziba nyinshi iyo habaye ikosa ry'ireme (vice de fond), ariko zikaba nkeya iyo ari ikosa ryo kutubahiriza umuhango (vice de forme) ;*
- iii. Ikosa ryakozwe n'umukozi (faute commise par l'agent) : abo bahanga bakavuga ko iryo kosa rishobora gutuma umukozi ahabwa indishyi nkeya, cyangwa ntanagire izo abona.*

Umurongo watanzwe :

- Iyo umukozi wa Leta yaregeye gutesha agaciro icyemezo cyo kwirukanwa mu buryo budakurikije amategeko, Urukiko rugasanga icyo kirego gifite ishingiro, rumugenera indishyi zibarwa ku rugero rw'umushahara umukozi yahembwe bwa nyuma, zikabarwa guhera igihe yahagarikiwe kugeza urubanza rusomwe, hagendewe ku mushahara yatahanaga mu ntoki (net salary) (reba ibika bya 28-34).

Urubanza rundi rwatanzwemo uwo murongo :

- RADA 0006/12/CS rwaciwe ku wa 04/01/2013 haburana Leta y'u Rwanda na NDAHINDURWA Kimenyi Jérémie.

Inyandiko z'abahanga :

19-22 n'urubanza RS/INJUST/RP 00001/2020/SC MAGARA GAHAKWA et Crts rwaciwe ku wa 21/02/2021 mu gika cyarwo cya 21

- M. Long, P. Weil, G. Braibant, Les grands arrêts de la jurisprudence administrative, 20 éditions, Collection Dalloz 2015. P.260

b. Kumenya niba uwo mukozi ashobora kwishyuza Lumpsum yagombaga kuba yarabonye

Ikibazo cyari icyo kumenya niba umukozi wirukanywe binyuranije n'amategeko usanzwe ahabwa lumpsum, ashobora gusaba ko ahabwa Lumpsum yavukijwe igihe cyose amaze yarirukanwe. Urukiko rwasanze Lumpsum ayihabwa ariko ko hashingirwa ku masezerano uwo mukozi yari yaragiranye na Leta, hakarebwa iyo yahabwaga n'igihe yari asigaje ngo ayo masezerano arangire.

Umurongo watanze :

- Lumpsum iri mu mafaranga agomba kubarirwa mu ndishyi umukozi wa Leta akwiye, mu gihe bigaragara ko yasezerewe ku kazi mu buryo binyuranije n'amategeko. Ibarwa hashingiwe ku masezerano yagiranye na Leta n'igihe yari asigaje ngo arangire.

Urundi rubanza rwatanzwemo uwo murongo : Urubanza N° RADA 0003/14/CS, Dr. KAREMANGINGO Charles yaburanaga na Leta y'u Rwanda rwaciwe n'Urukiko rw'Ikirenga ku wa 17/02/2017.

IMANZA Z'UBUCURUZI

1. Inyungu zikomoka ku nguzanyo zikomeza kubarwa igihe cyose umwenda utarishyurwa

Amasezerano y'inguzanyo, uwahawe inguzanyo wananiwe kwishyura Banki, igakora denonciation de credit, umwenda remezo.

Urubanza rusuzumwe : Urubanza RS/INJUST/RCOM 00005/2021/SC rwa NSENGIYUMVA Fulgence na Bank of Kigali Plc (BK), rwaciwe kuwa 07/10/2022 (igika cya 31)

Ikibazo cyasuzumwe : Kumenya niba inyungu zigomba gukomeza kubarwa nyuma y'uko Banki isheshe amasezerano (dénonciation du crédit/denunciation of credit) y'imikoranire n'ugasabye umwenda ntabashe kwishyura ndetse ikanagurisha ingwate ntivemo ubwishyu, ariko Banki ntihite imurega.

Imvano y'ikibazo: Ikibazo gikomoka ku mwenda NSENGIYUMVA Fulgence yasabye muri Bank of Kigali Plc ariko ntashobore kwishyura uko bikwiye, maze Banki ikamurega mu nkiko. Ikibazo kiri mu rubanza kijyanye n'uburyo umwenda ugomba kwishyurwa n'inyungu zawo bibarwa.

Mu rubanza rumaze kuvugwa, NSENGIYUMVA Fulgence wasubirishijemo urubanza ku mpamvu z'akarengane, yaburanye yemera ko yasabye umwenda muri BK kandi ko atashoboye kwishyura, ariko akavuga ko umwenda agomba kwishyura ungana n'amafaranga yari asigayemo BK igihe yamwandikiraga imumenyesha ko ihagaritse imikoranire yari isanzwe hagati yabo (dénonciation de crédit) havuyemo ayagurishijwe ingwate yari yatanze, kandi ntihabariwemo inyungu kuko igihe Bank yahagaritse imikoranire na we, ndetse ikabona ko ingwate NSENGIYUMVA yatanze igurishijwe ntivemo ubwishyu, yagombaga kuba yarahise iregera inkiko, maze inyungu zigahagarara kubarwa.

Bank of Kigali Plc yo yaburanaga ivuga ko inyungu zagombaga kubarwa igihe cyose NSENGIYUMVA Fulgence atarishyura umwenda yari ayisigayemo, gusa ntizirenge umwenda remezo. Yongeraho ko n'ibyo NSENGIYUMVA avuga ko BK iyo yiyambaza inkiko atari kuba yishyuzwa inyungu zingana gutya, bitahabwa agaciro, kuko mu gihe

cy'imyaka itanu yose impande zombi zari mu mishyikirano yo kureba uburyo umwenda wakwishyurwa, ndetse NSENGIYUMVA Fulgence akandikira BK asaba koroherezwa uburyo bwo kwishyura.

Ingingo y'itegeko umurongo ushingiyeho : Ingingo ya 112 (2⁰) y'itegeko n° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki, iteganya ko *"inyungu amabanki yishyura ku nguzanyo zitishyurwa zitagomba kurenza umwenda shingiro utarishyurwa kugeza igihe inguzanyo yageraga ku rwego rwo kutishyura"*.

Umurongo watanzwe n'Urukiko:

- Nta kibanza ko inyungu zikomeza kubarwa nk'uko amasezerano y'inguzanyo abiteganyaga igihe cyose uwagurijwe atararangiza kwishyura umwenda abereyemo banki. Izo nyungu zikomeza kubarwa kugeza umwenda wose wishyurwa, ariko ntizigomba kurenza umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa (reba igika cya 31).

Urundi rubanza rwafashwemo uyu murongo:

- Urubanza RS/INJUST/RCOM 00008/2021/SC rwa SIMACO Ltd na I&M Bank rwaciye kuwa 25/02/2022 (igika cya 42 -46, ndetse n'igika cya 48 – 50) ni narwo ruyoboye (**Leading case**):

Muri uru rubanza Urukiko rw'Ikirenga rwasobanuye ko kuba SIMACO Ltd yarananiwe kwishyura umwenda yari ifitiye I&M Bank bikageza ubwo iyi banki isesa amasezerano ikamenyesha SIMACO umwenda usigaye igomba kuyishyura, ibyo bidakuraho inshingano ayo masezerano yateganyaga ku ruhande rw'uwahawe inguzanyo, ko uyu aba agomba kwishyura umwenda ndetse n'inyungu zawo, gusa izo nyungu yishyura ntizirenze umwenda shingiro utarishyurwa kugeza igihe inguzanyo yageraga ku rwego rwo kutishyurwa.

IMANZA Z'UMURIMO

1. Umushahara fatizo ukwiye kubarirwaho indishyi

Kwirukanwa ku kazi mu buryo bunyuranije n'amategeko, umushahara fatizo, ubuzime, usabwa ibimenyetso

Urubanza rwasuzumwe: Urubanza N° RS/INJUST/RSOC 00001/2022/SC rwa SONARWA Life Assurance Company Ltd na RUGINA Jason, rwaciwe kuwa 08/07/2022.

Ibibazo byasuzumwe: Kumenya umushahara fatizo ukwiye kubarirwaho indishyi – Kumenya aho bahera babara ubuzime bw'imishahara – Kumenya niba ingingo zitajuririwe zigomba gusuzumwa mu karengane - Kudahabwa umushahara umwe n'abo muri ku rwego rumwe

Imvano y'ikibazo: RUGINA Jason yari umukozi wa SONARWA SA, nyuma y'uko habaye ivugururwa ikagabanywamo ibigo bitatu, we yashyizwe muri SONARWA Life Assurance Company Ltd, ndetse aza kuzamurwa mu ntera kuwa 14/11/2013 agirwa Umuyobozi w'Ishami rya Huye (Branch Manager), ashingwa no gukurikirana Ishami rya Rusizi. Yaje kwandikira umukoresha we yishyura imishahara kuko yabonaga adahemberwa umwanya w'umurimo yarimo, asabwa gutegereza bikigwaho, ariko aho kugira ngo ahabwe igisubizo, kuwa 12/04/2017 yirukanwa ku kazi, aricyo kibazo yashyikirije Urukiko Rwisumbuye rwa Nyarugenge arega SONARWA Life Assurance Ltd. Urwo Rukiko rwayitegetse kumuha ikinyuranyo cy'imishahara atahembwe ibariwe ku mushahara mbumbe. Urwo rubanza rwarajuririwe kugeza mu Rukiko rw'Ubujurire.

Mu iburanisha ry'urubanza N° RS/INJUST/RSOC 00001/2022/SC, SONARWA Life Insurance Ltd yasubirishijemo urubanza ku mpamvu z'akarengane, yaburanye ivuga ko Urukiko rw'Ubujurire rutagombaga gushingira icyemezo cyarwo kuri Règlement d'ordre intérieur yo mu mwaka wa 2005 kuko byatumye rugenera RUGINA Jason umushahara utariwo, rwivanga no mu mikorere y'ibigo byigenga ku buryo icyo cyemezo kigumyeho cyabangamira abakoresha n'iterambere rusange. Yanavuze ko kuba RUGINA Jason yarazamuwe mu ntera bitavuze ko byanze bikunze yagombaga no kuzamurirwa umushahara ndetse ko atari ihame ko abakozi bari ku rwego rumwe bahembwa kimwe

cyane cyane ko RUGINA Jason yari yamenyeshejwe ko umushahara we utazahinduka, akemera kongererwa gusa amafaranga y'ingendo.

RUGINA Jason we yaburanye avuga ko kuba yarazamuwe mu ntera akagirwa Branch Manager w'Ishami rya Huye, agahabwa n'inshingano zo gukurikirana amashami ya Nyamagabe, Rusizi na Nyamasheke ariko agakomeza guhembwa umushahara yahembwaga atarazamurwa mu ntera, binyuraniye n'ingingo ya 30 y'Itegeko Nshinga rya Repubulika y'u Rwanda, iteganya ko abakozi bakora akazi kamwe bagomba guhembwa kimwe.

Ingingo y'itegeko iyi mirongo ishingiyeho: Ingingo ya 30 y'Itegeko Nshinga Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 ivuga ko abantu bakora umurimo umwe bagomba guhembwa kimwe nta vangura iryo ari ryo ryose.

Imirongo yatanzwe muri uru rubanza:

- Abakozi bari ku ntera imwe y'akazi kandi bakora akazi kamwe bagomba guhembwa umushahara ungana, cyeretse umukoresha agaragaje impamvu zifatika zatuma abakozi bari ku ntera imwe kandi bakora akazi kamwe bahembwa mu buryo butandukanye.
- Ikinyuranyo cy'imishahara umukozi yagombaga guhembwa, kibarirwa ku mushahara yatahanaga aho kuba ku mushahara mbumbe (reba ibika bya 18-29).

Inyandiko z'abahanga:

- Fanie Van Jaarsveld na Stefan Van Eck, Principles of Labour Law, Durban, Butterworths, 2002, p. 78.
- Nsengiyuma Métusera, Droit social, Manuel de droit Rwandais, 1993, p. 79.

Imanza zo mu mahanga :

Cour de Cassation, Chambre sociale, n° 07-42-107, 16 décembre 2008, Bull Civ, V. n° 250.

2. Aho bahera babara ubuzime bw'imishahara

Mu miburanire ye, uhagarariye SONARWA Life Assurance Company Ltd yavugaga ko umushahara urenze imyaka ibili (2ans) utishyuzwa uba warashaje, bityo ukaba utakishyujwe.

Ingingo y'itegeko uwo murongo ushingiyeho:

Ingingo ya 83 y'Itegeko n° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda ryakoreshwaga ubwo RUGINA Jason yari Umuyobozi w'Ishami rya Huye muri SONARWA Life Assurance Company Ltd ivuga ko umushahara umaze imyaka ibiri (2) utarishyuzwa uba utakishyujwe. Icyo gihe gitangira kubarwa guhera umunsi umukozi yagombaga guhemberwaho kigahagarikwa n'uko umukoresha yakoze umubaruro w'amafaranga, umukoresha n'umukozi bemeranyijwe ko ari umwenda, urubanza rw'umukozi rukiri mu rukiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo.

Umurongo w'Urukiko:

- Ubuzime bw'imishahara ntibugomba gutangira kubarwa guhera igihe umukozi yatangiye ikirego ku Mugenzuzi w'Umurimo, ahubwo bubarwa buhereye igihe umukozi yatangiye kwandikira umukoresha we yishyuzwa, umukoresha ntahakane uburenganzira umukozi yishyuzwa kugeza amusezereye mu buryo bunyuranyije n'amategeko.

Inyandiko z'abahanga:

- Françoise Favenec-Hery et Pierre-Yves Verkindt, Droit du Travail, Paris, LDGJ, 2020, p.661.

3. Usabwa kugaragaza ikimenyetso cy'impamvu umukozi adahembwa kimwe n'abo bakora akazi kamwe

Urubanza rwasuzumwe: RS/INJUST/RSOC 00002/2022/SC rwa MUTWARE Jean de Dieu na Guaranty Trust Bank (Rwanda) Plc (GT Bank)

Ikibazo cyasuzumwe: Ninde ufite inshingano zo gutanga ibimenyetso mu manza z'umurimo?

Imvano y'ikibazo: MUTWARE Jean de Dieu wari umukozi wa GT Bank, avuga ko yakoraga nka Cashier, nyuma akaza kuzamurwa mu ntera akagirwa Branch Management Officer uwo mwanya awumarahaho amezi 20, ariko agahembwa nka Cashier kugeza yirukanwe ku kazi, maze arega GT Bank mu Rukiko Rwisumbuye rwa Nyarugenge asaba guhabwa ikinyuranyo cy'imishahara atahawe, agahabwa n'integuza n'imperekeza bibariye ku mushahara wa Branch Management Officer. Uru Rukiko rwasanze ikirego cye gifite ishingiro, ariko GT Bank ijuririra mu Rukiko Rukuru, ruha ishingiro ubujurire bwayo, ruvuga ko MUTWARE adafite ibimenyetso by'uko yagombaga guhembwa umushahara wa Cash Management Officer, maze ibyo bituma asubirishamo urubanza ku mpamvu z'akarengane.

Ingingo z'amategeko umurongo ushingiyeho:

- Ingingo ya 30 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015;
- Ingingo ya 23 ya Déclaration Universelle des Droits de l'Homme du 10 décembre 1948, in Codes et Lois du Rwanda, Vol I, p. 66;
- Ingingo ya 15 ya Charte Africaine des Droits de l'Homme et des Peuples du 27/06/1981 ;
- Ingingo ya 9 igika cya 3 n'ingingo ya 40 (2⁰) z'itegeko n° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda ;

Umurongo watanze:

➤ Abakozi bakora umurimo umwe bagomba guhembwa kimwe, inshingano y'umukozi akaba ari ukwerekana ko akora umurimo nk'uw'abandi bari ku rwego rumwe na we kandi ko umukoresha atamuhemba nk'uko ahemba abandi bakozi bari ku rwego rwe. icyo gihe, umukoresha afite inshingano zo gutanga ibimenyetso bivuguruza ibitangwa n'umukozi (reba ibika 15 -29).

- Igihe umukozi avuga ko ibimenyetso bifitwe n'umukoresha, agomba gusaba Urukiko kumutegeka kubitanga, atabitanga Urukiko rugasuzumana ubushishozi ibyo rwashyikirijwe n'umukozi hagamijwe gukumira ivangura ku isoko ry'umurimo.

Izindi manza zafashe uyu murongo:

- Urubanza N° RS/INJUST/RSOC 00001/2022/SC rwa SONARWA Life Assurance Company Ltd na RUGINA Jason, rwaciwe kuwa 08/07/2022.

Imanza zaciwe n'inkiko zo mu mahanga:

- Urubanza Pinkas and Others v. Bosnia and Herzegovina, (Application no. 8701/21), 04/10/2022, para 63 et 65.
- Galina Meister contre Speech Design Carrier Systems GmbH, n° C-415/10, Cour de Justice de l'Union Européene, 12 janvier 2012, para 47.
- Cour de cassation, civile, Chambre sociale, 12 juin 2013, 11-14.458 :
- Cour de Cassation, Chambre sociale, n° 00-41.63326 novembre 2002, na Cour de cassation, Chambre sociale, n° 04- 40.169, 25 mai 2005.
- Cour de cassation, Chambre sociale, n° 08-43.088, 17 mars 2010.

IMIRONGO RUSANGE

1. Urubanza rwaburanywe na « Avocat » udafite ububasha ruteshwa agaciro

Urubanza rwasuzumwe : Urubanza RS/INJUST/RC 00012/2019/SC rwaciwe ku wa 22/07/2022 haburana ; BAYINGANA NTANGO Theodomir, BAYINGANA NTANGO Christine na NDABAMENYE Eraste.

Ibibazo byasuzumwe : Kumenya uko bigenda iyo urukiko rukemanze ubutumwa bwahawe avocat bwo guhagararira umuntu mu rubanza - Kumenya ingaruka ziba iyo Avoka ahagarariye umuntu mu rubanza atarabimuhereye uburenganzira.

Imvano y'ikibazo : BAYINGANA NTANGO Théodomir yaguze muri cyamunara ikibanza n'amazu acyubatsemo bya NDABAMENYE Eraste, biherereye mu Kagari ka Kiyovu, Umurenge wa Nyarugenge, ku giciro cya 12.600.000 Frw hashingiwe ku cyemezo no 285/96 cyo ku wa 04/04/1996 giteza cyamunara umutungo wa NDABAMENYE Eraste kugira ngo hishyurwe umwenda yari afitiye BACAR S.A.

Me RUDAKEMWA Jean Félix, mu izina rya NDABAMENYE Eraste yaregeye Urukiko Rwisumbuye rwa Nyarugenge asaba ko rutesha agaciro icyemezo cy'umutungo cyanditse kuri BAYINGANA NTANGO Théodomir na BAZIGAGA Adèle kikamwandikwaho, aratsindwa, ajuririra mu Rukiko Rukuru, urwo Rukiko rwemeza ko urubanza rujuririrwa ruhindutse, ko ikibanza kiburanwa gifite n° UPI 1/01/09/03/ 1077 ari icya NDABAMENYE Eraste.

Urwo rubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane, ruburanishwa bundi bushya. Mu iburanisha Urukiko rwaje kumenya ko NDABAMENYE Eraste yitabye Imana, rusanga Me RUDAKEMWA Jean Félix yari abizi ariko ntiyabimenyesha Urukiko, yitwara nk'aho amuhagarariye kandi abizi ko atakiriho. Rwasanze kandi kuva urubanza rwatangira mu Rukiko Rwisumbuye rwa Nyarugenge, umwirondoro wa NDABAMENYE Eraste watanze na Me RUDAKEMWA Jean Félix uriho amakuru atari ukuri ndetse amwe akagenda avuguruzanya. Ibyo byose byaruteye gukemanga ubutumwa yaba yarahawe na nyiri urubanza, rumusaba kubugaragaza cyangwa se kwerekana ikindi kintu icyo ari cyo cyose cyerekana ko hari imikoranire bari basanzwe bafitanye, ariko ntiyagira ibyo atanga.

Urukiko rwasuzumye ikibazo cyo kumenya niba hari ubutumwa (mandat) Me RUDAKEMWA Jean Félix yahawe bwo kuburanira NDABAMENYE Eraste, no kumenya

ingaruka ziba iyo Avoka ahagarariye umuntu mu rubanza atarabimuhereye uburenganzira.

Ingingo z'itegeko umurongo ushingiyeho :

Ingingo ya 2 z'itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda rikanagena imitunganyirize n'imikorere yarwo iteganya ko : “ Avoka ni Umunyamwuga w'amategeko ufasha ubutabera, ushinzwe guhagararira, kunganira no kuburanira abantu mu nzego z'ubutegets, iz'ubucamanza n'izindi zose zifata ibyemezo”.

Ingingo ya 47 y'iryo tegeko ikavuga ko Abavoka bonyine aribo bafite uburenganzira bwo kuburanira imbere y'Inkiko, kandi ko umwavoka afite ububasha bwo kuburana imbere y'Inkiko atagombye kwerekana ko hari uwamutumye, keretse iyo itegeko risaba ubutumwa bwihariye.

Umurongo watanzwe :

- Hari ihame risanzwe (présomption simple) ry'uko mu Rukiko, Avoka afatwa nk'ufite ubutumwa bwo guhagararira umuntu atagombye kubwerekana ;
- Iryo hame ariko rishobora guhinduka (renversée) iyo habayeho gukemanga ubwo butumwa ;
- Iyo bigenze gutyo, Avoka asabwa kugaragaza ko koko afite ubutumwa bwo guhagararira umuntu mu Rukiko
- Iyo adashoboye kugaragaza ko yahawe ubutumwa n'uwo avuga ko ahagarariye, ibyo yakoze byose mu manza biteshwa agaciro, ibintu bigasubira uko byari biri mbere y'uko izo manza zibaho .

Izindi manza zihuriye kuri uyu murongo :

- Urubanza N° RCAA 0028/11/CS haburana UWITONZE Nasira, RWAGASANA Jean Paul, ECOBANK RWANDA / RWIGEMA Jeanne Chantal rwaciwe ku wa 11/05/2012,
- Urubanza N° RS/REV/RCOMA 003/12/CS haburana NYAMUHUNGU NATUKUNDA Jane, Cooperative CACAM na BCR, Rusenya Coffee Growers na BIGIRIMANA Robert rwaciwe kuwa 06/09/2013,

- Urubanza RPAA 0056/06/CS- RPAA 0155/06/CS haburana RWIGASS CIGARETTE COMPANY SARL / Pierre Marie NOAH rwaciwe ku wa 30/05/2008.

Inyandiko z'abahanga :

- D. CHOLET, « Représentation et assistance en justice », Rép.pr.civ, 2012 (actualisation juin 2016).
- Antoine Bolzele, Règles du mandat ad litem : inapplication au tiers qui mandate un avocat, <https://www.dallozactualite.fr/flash/regles-du-mandat-ad-litem-inapplication-au-tiers-qui-mandate-un-avocat#.YsVy2HZBzIU>, 10 janvier 2019, consultée le 07 Juin 2022. *Affaire Civ. 1re, 12 déc. 2018, FS-P+B, n° 17-19.387 rendue par la cour de cassation première chambre civile entre l'Association française d'épargne et de retraite (l'AFER), constituée par Gérard C... et André D.. contre Mme Catherine C... et M. Pascal C..., et contre Mme Claude E..., veuve D.*
- H. SOLUS – R. PERROT, Droit judiciaire privé, t.3: Procédure de première instance, Sirey, Revue internationale de droit comparé, 1991, P.45.
- Serge GUINCHARD, Droit et pratique de la procédure civile, 8 éd., Paris, Dalloz, 2014/2015, p. 544).
- Natalie Fricero na Pierre Julien, Procédure civile, 5e édition, édition LGDJ, Extensio éditions, Paris, 2014, page 54 – 55.

2. Inzitizi ijyanye no gusuzuma niba ikirego cyari cyujuje ibisabwa kugira ngo cyakirwe mu rwego rw'akarengane

Urubanza rwasuzumwe : RS/INJUST/RCOM 00003/2022/SC haburana Rwanda Public Procurement Authority (RPPA) na WAPCOS Ltd, rwaciwe kuwa 15/07/2022 (igika cya 11).

Ikibazo cyasuzumwe :

Kumenya niba ari ngombwa ko umuburanyi abanza kwiambaza inzira y'ubujurire bwa kabiri kugira ngo agire uburenganzira bwo gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane.

Imvano y'ikibazo :

WAPCOS Ltd yareze isaba gutesha agaciro no gukuraho icyemezo n° 384/2018/BD/D cyafashwe na RPPA cyo guheza Mr Thomas POULOSE na WAPCOS Ltd gupiganwa mu masoko ya leta mu gihe cy'imyaka itanu (5). Ku wa 12/03/2019, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 02587/2018/TC, rwemeza ko icyo cyemezo kivanweho kuko RPPA yagifashe itabifitiye ububasha. RPPA yajuririyemo mu Rukiko Rukuru rw'Ubucuruzi, icyemezo kigumaho maze RPPA isaba gusubirishamo urubanza RCOMA 00331/2019/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku mpamvu z'akarengane.

Mu iburanisha ry'urubanza RS/INJUST/RCOM 00003/2022/SC ryo ku wa 17/05/2022, WAPCOS Ltd yatanze inzitizi, isaba ko Urukiko rwabanza gusuzuma niba koko ikirego cya RPPA cyari cyujuje ibisabwa kugira ngo cyakirwe mu rwego rw'akarengane, aho yavugaga ko ingano y'ikiburanwa ishingiyemo ku masezerano afite agaciro ka 709, 608, 000 Frw ko icyo kirego cyagombaga kujuririrwa bwa kabiri mu Rukiko rw'Ubucuruzi hashingiwe ku ngingo ya 52 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

RPPA yo yavuze ko urubanza rusubirishwamo ku mpamvu z'akarengane rutarebana n'amasezerano ku buryo harebwa agaciro kayo, ko ahubwo rurebana n'amasoko ya Leta kuko WAPCOS Ltd yaregeye gukuraho icyemezo cyafashwe na RPPA cyo kuyiheza mu masoko ya Leta mu gihe cy'imyaka itanu.

Umurongo watanze n'Urukiko:

- Si ngombwa ko umuburanyi abanza kwiambaza inzira y'ubujurire bwa kabiri kugira ngo agire uburenganzira bwo gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, cyane cyane iyo we abona ko nta mpamvu n'imwe yujuje muzo itegeko riteganywa kugira ngo ubujurire bwa kabiri bwakirwe. Mu gihe yiyambaje inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, aba yemeye ko urubanza yatsinzwe mu bujurire bwa mbere rubaye ndakuka².

² Ibi ni nabyo byasobanuwe mu gatabo k'Imiburanishirize y'imanza zisabirwa gusubirishwamo ku mpamvu z'akarengane, ku rupapuro rwako rwa 22, uretse ko ho bashyizemo irengayobora, rigira riti: "keretse iyo hari impamvu igaragarira buri wese mu ziteganywa n'itegeko umuburanyi yivukije kandi yashoboraga kumuhesha uburenganzira bwo kujuririra bwa kabiri urubanza rwe (Urugero: Nko kuba urubanza rwaraciwe n'inteko itaraburanishijwe, rwaraciwe n'inteko itubahirije umubare ugenwa n'amategeko, rutaraburanishirijwe mu ruhamye kandi nta muhezo wategetswe, rwarashingiye kwitegeko ritariho cyangwa ingingo z'amategeko zitakiriho cyangwa rwaraciwe n'Urukiko rutabifitiye ububasha.....)"

3. Ubusobekerane bw'imanza

Iyo hari ubusobekerane bw'imanza mu nkiko urukiko ruri ku rwego rwo hasi nirwo rwoherereza urubanza ururi ku rwego rwo hejuru – urubanza rwaregawe mu rwego rw'akarengane ntirushobora guhuzwa n'urubanza rugifite inzira zisanzwe z'ubujurire.

Urubanza rwasuzumwe: Urubanza rubanziriza urundi RS/INJUST/RCOM 00007/2021/SC rwa SIKUBWABO Raphael vs RDB, UMUGIRANEZA Jean Michel, MUREGO Paulin & Bank of Africa rwaciwe kuwa 15/07/2022.

Ikibazo cyasuzumwe: Kumenya niba urubanza n° RCOMAA 00024/2022/CA ruburanishwa n'Urukiko rw'Ubujurire rwahamagazwa rugahuzwa n'urubanza n° RS/INJUST/RCOM 00007/2021/SC

Imvano y'ikibazo: Mu rwego rwo kugira ngo hishyurwe umwenda SIKUBWABO Raphaël yari abereyemo Bank of Africa, Umwanditsi Mukuru muri RDB yatanze uruhushya rwo kugurisha umutungo ufite UPI: 1/02/09/01/844, bituma SIKUBWABO Raphaël atanga ikirego gifite n° RCOM 01971/2017/TC/NYGE mu Rukiko rw'Ubucuruzi rwa Nyarugenge, asaba gutesha agaciro iyo cyamunara. Mu gihe urwo rubanza rwari rutaracibwa, Umwanditsi Mukuru yatanze urundi ruhushya rwo kugurisha umutungo ufite UPI: 1/02/13/03/115, maze SIKUBWABO Raphaël atanga ikirego cyihutirwa asaba guhagarikisha cyamunara kuri uyu mutungo, urubanza rugera ku rwego rw'ubujurire kuri n° RCOMA 00793/2017/CHC/HCC, Urukiko Rukuru rw'Ubucuruzi rwemeza ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza n° RCOM 01971/2017/TC/NYGE.

Nyuma y'uko Urubanza n° RCOM 01971/2017/TC/NYGE ruburanishijwe rukarangiza inzira z'ubujurire, hakemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara ku mutungo ufite UPI: 1/02/09/01/844, byatumye SIKUBWABO Raphaël arega RDB mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, Urubanza ruhabwa n° RCOM 00767/2020/TC,

MUREGO Paulin waguze uwo mutungo muri cyamunara na UMUGIRANEZA Jean Michel wari ushinze kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda.

Urukiko rwacye urwo rubanza rwemeza ko ikirego cya SIKUBWABO Raphaël kidafite ishingiro, rwemeza ko cyamunara yakozwe ku mutungo UPI: 1/02/13/03/115 igumaho. SIKUBWABO Raphaël yajurirye urwo rubanza ruhabwa n° RCOMA 00793/2017/HCC, maze Urukiko Rukuru rw'Ubucuruzi rwemeza ko ikirego kitagombaga kwakirwa mu Rukiko rw'Ubucuruzi kuko SIKUBWABO yagitanze impitagihe. SIKUBWABO Raphaël yajurirye urwo rubanza mu Rukiko rw'ubujurire, ruhabwa N° RCOMAA 00061/2020/CA rucibwa ku wa 18/12/2020, Urukiko rw'Ubujurire rugumishaho icyemezo cyari cyafashwe n'Urukiko Rukuru rw'Ubucuruzi.

SIKUBWABO Raphaël yahise asubirishamo uru rubanza ku mpamvu z'akarengane, arirwo rwahawe n° RS/INJUST/RCOM 00007/2021/SC. Urukiko rw'ikirenga nyuma yo gufata icyemezo cyo kvanaho urubanza n° RCOMAA 00061/2020/CA, rwaciye n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe na N° RCOMA 00398/2020/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020, rukagumishaho urubanza n° RCOM 00767/2020/TC rwaciye n'Urukiko rw'Ubucuruzi ku wa 22/06/2020 ndetse rukemeza ko arirwo rugomba gusuzuma ingingo z'ubujurire SIKUBWABO Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi, yahise yandika asaba ko urubanza n° RCOMAA 00024/2022/CA ruri mu Rukiko rw'Ubujurire rujyanye n'ikindi kirego yatanze asaba gutesha agaciro cyamunara ku mutungo ufite UPI: 1/02/13/03/115, rwahamagazwa rugahuzwa n'uru kugirango hatazabaho kuvuguruzanya kubera isano zifitanye.

Ingingo y'itegeko umurongo ushingiyeho:

Ingingo ya 100 y'itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko igira iti: "Iyo inkiko zitandukanye ziregewe urubanza rumwe kandi zose zirufitiye ububasha, rumwe muri zo rurwoherereza urundi"

Imirongo yatanzwe n'Urukiko

- Mu gihe hari ubusobekerane bw'imanza ziburanishwa mu nkiko zitandukanye zitari ku rwego rumwe, urukiko ruri ku rwego rwo hasi nirwo rugomba koherereza urubanza ururi ku rwego rwo hejuru. Umuburanyi usaba ko imanza zihuzwa, ashyikiriza ubusabe bwe urukiko rugomba koherereza urubanza, ni ukuvuga urukiko ruri ku rwego rwo hasi. (Igika cya 29)
- Ntibishoboka guhuza imanza ziburanishwa hashingiwe ku birego byatanzwe binyuze mu nzira yo gusubirishamo urubanza ku mpamvu z'akarengane, n'imanza zirimo kuburanishwa ku birego byatanzwe binyuze mu nzira zisanzwe, bishobora no kuba birimo kuburanishwa ku rwego rwa mbere, kuko byaba bibangamiye imigendekere myiza y'ubutabera. Urubanza rwaregawe mu rwego rw'akarengane ni urubanza ruba rwararangije inzira z'ubujurire, rushobora no kuba rwararangijwe, rukaba rudashobora guhuzwa n'urubanza rugifite inzira zisanzwe z'ubujurire. Uburyo bwiza bwo gukuraho impungenge z'uko hashobora kubaho ivuguruzanya hagati y'izo manza zombi, ni uko inkiko zaregawe mu nzira zisanzwe zategereza icyemezo cyafatwa n'inkiko zaregawe mu rwego rw'akarengane (Igika cya 34 – 37).

Urundi rubanza rwatanze uyu umurongo: RS/INJUST/RCOM 00005/2019/SC10 rwa Kigali Ceramica & Furniture Ltd na Guaranty Trust Bank (Rwanda) Plc, rwasomewe mu ntebe mu iburanisha ryo ku wa 22/06/2020 (reba ku rupapuro rwa 11 mu nyandiko mvugo y'iburanisha).

4. Ingingo zitajuririwe ntizishobora gusuzumwa mu karengane

Urubanza rwasuzumwe: Urubanza n° RS/INJUST/RSOC 00001/2022/SC rwa SONARWA Life Assurance Company Ltd na RUGINA Jason, rwaciwe kuwa 08/07/2022.

Ikibazo cyasuzumwe: Ikibazo cyari icyo kumenya niba umuburanyi ashobora kuzana mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane ingingo atajuririye mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane.

Umurongo w'urukiko

➤ Umuburanyi utarajuririye ingingo atanyuzwe nazo hakurikijwe inzira zisanzwe kandi yari abyemerewe n'amategeko, aba yivukije inzira y'ubujurire yari gutuma ibyo yanengaga bikosorerwa mu bujurire. Bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, yirengagije ko hari izindi manza zabaye, ngo ingingo yanze kujuririra ku bushake bwe asabe ko zisuzumwa mu karengane kuko byaba binyuranyije n'ibiteganywa n'amategeko (reba ibika bya 43-44).

Izindi manza zafashwemo uyu murongo:

- Urubanza n° RS/INJUST/RC 00024/2018/SC rwaciwe ku wa 21/02/2020 haburana NGIZWENINSHUTI Albert na MUHIMA Giovanni;
- Urubanza n° RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana NDITIRIBAMBE Samuel, GATERA Jason na NYAMASWA Faustin;
- Urubanza n° RCOM RS/ INJUST/ RC 00004/2019/SC rwaciwe ku wa 28/07/2020, haburana MUKAMANA, HAVUGIMANA, UMUHOZA na CANDALI.

UMWANZURO

Kugira ngo intego yo guhuriza hamwe iyi mirongo igerweho, abagana inkiko n'abatanga ubutabera (Abacamanza, Abashakashatsi n'abanditsi b'inkiko...) bakwiye kujya bayifashisha mu gihe cyose batanga cyangwa basuzuma ibirego bihuje imiterere n'ibyatanzweho umurongo.

Kubera ko umurongo watanzwe n'Urukiko ushobora guhinduka bitewe n'impamvu zitandukanye, abifuza kwifashisha imirongo yatanzwe n'Urukiko bakwiye kujya bihatira kumenya ibyemezo by'inkiko uko byagiye bikurikirana, kugira ngo binabafashe kumenya impinduka zabaye ku mirongo yagiye itangwa mbere.