KABUNDI v RADIANT INSURANCE COMPANY Ltd

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00011/2021/CA– (Munyangeri, P.J.) 25 Werurwe 2022]

Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirwamo ku mpamvu z'akarengane – Kwirengagiza amategeko cyangwa ibimenyetso – Habaho kwirengagiza amategeko n'ibimenyetso bigaragarira buri wese, iyo amakosa yaba yakozwe ari amakosa agaragara ku buryo butagibwaho impaka nk'impamvu yatuma urubanza rusubirwamo – Ntibyakwitiranywa n'impamvu z'ubujurire busanzwe aho umuburanyi, bitewe n'uko abyumva, ashobora kugaragaza ko atemeranya n'ibisobanuro umucamanza yatanze ku myumvire y'amategeko cyangwa ku isesengura ry'ibimenyetso.

Amategeko agenga ibimenyetso – Agaciro k'inyandiko – Inyandikomvaho –Ni inyandiko yakozwe cyangwa yakiranwe imihango yabugenewe ku rupapuro cyangwa hifashishijwe ubundi buryo bw'ikoranabuhanga n'umukozi wabiherewe ububasha, uri kuzuza inshingano ze mu ifasi akoreramo, ikaba ikubiyemo amakuru yiyandikiye ubwe cyangwa yahagazeho ibyo ahamya biba.

Incamake y'ikibazo: Imodoka yo mu bwoko bwa Toyota RAV 4 ifite ubwishingizi muri RADIANT INSURANCE COMPANY Ltd yari itwawe na Rwagasore, igonga moto yari itwawe na Kabundi, arakomereka anavunika akaguru, asigarana ubumuga buhoraho bungana na 70%. Ibi byabereye mu Mudugudu wa Nyarucyamo I, Akagari ka Gahogo, Umurenge wa Nyamabuye, Akarere ka Muhanga, Intara y'Amajyepfo. Kabundi yasabye RADIANT INSURANCE COMPANY Ltd kumuha indishyi zikomoka kuri iyo mpanuka ntiyamusubiza, afata inzira yo kwiyambaza Inkiko, aregera Urukiko Rwisumbuye rwa Muhanga, asaba guhabwa

Urukiko Rwisumbuye, rwemeje ko ikirego cy'Urega cyakiriwe, rwemeza ko Uregwa amuha indishyi zikomoka ku kugongwa n'imodoka TOYOTA RAV 4 yari ifite ubwishingizi muri RADIANT INSURANCE COMPANY Ltd.

Impande zombi zajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Nyanza, imanza zombi zirahuzwa aho Uregwa yajuriye avuga ko ikirego cyatanzwe n'uwo baburana kitagombaga kwakirwa ku rwego rwa mbere, ko kandi Urukiko rubanza rwanze icyifuzo cyayo cy'uko hashyirwaho itsinda ry'abaganga bamusuzuma. Naho Urega ajurira avuga ko mu kubara indishyi mbangamirabukungu, Urukiko rubanza rwamugeneye umushahara muto (SMIG) umuntu atahana wa 2.500 Frw, rukaba rwaramufashe nk'udafite akazi kazwi, nyamara yari afite umushahara uzwi mu kazi yakoraga mu gihugu cy'u Burundi. Avuga kandi ko umucamanza w'Urukiko Rwisumbuye yaburanishije ikibazo kirebana n'insimburangingo ifite agaciro kangana na 2.534.000 Frw, ntiyagifatira umwanzuro.

Urukiko Rukuru rwemeje ko ubujurire bwatanzwe n'Urega bufite ishingiro ku birebana n'amafaranga y'insimburangingo gusa (*prothèse*), ko ubujurire bwatanzwe n'Uregwa nta shingiro bufite, ko urubanza rwaciwe n'Urukiko Rwisumbuye ruhindutse kuri bimwe. Urega yongeye kuregera Urukiko Rukuru, asubirishamo ingingo nshya urwo rubanza, asobanura ko mu guca urubanza, Urukiko rwakoze amakosa akabije yo kwitiranya uko ibintu byagenze, ndetse ko kuva aho urubanza asubirishamo ingingo nshya ruciriwe, habonetse ibimenyetso bya kamarampaka bigaragaza akarengane katewe n'urwo rubanza. Urukiko Rukuru rwemeje uko gusubirishamo ingingo nshya kutemewe, bityo ko urubanza yasubirishijemo ingingo nshya rugomba kurangizwa uko rwaciwe nta gihindutse, bibutswa ko urwo rubanza rutajuririrwa.

Urega yandikiye Urwego rw'Umuvunyi, asaba ko urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane, asobanura ko mu kumubarira indishyi mbangamirabukungu, urwo Rukiko rutitaye ku ngingo yo kuba yari amaze amezi atanu n'iminsi umunani atagihembwa kandi itegeko riteganya ko iyo uwahohotewe mu mpanuka amaze igihe kitarenze amezi atandatu adakora, abarirwa indishyi hagendewe ku mushahara wa nyuma yahembwaga. Urwego rw'Umuvunyi rwandikiye

Perezida w'Urukiko rw'Ikirenga, rumusaba kwemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane arabyemeza rwoherezwa mu Rukiko rw'Ubujurire kugira ngo ruruburanishe.

Urubanza rwaburanishijwe mu ruhame hasuzumwa ikibazo cyo kumenya niba Urukiko Rukuru, rwarirengagije inyandiko yo ku wa 19/03/2015 n'ibindi bimenyetso, mu kugenera Urega indishyi mbangamirabukungu, bigatuma rufata icyemezo kimurenganya. Aha Urega asobanura ko inyandiko zose zatanzwe zigaragaza ko yakoze impanuka ari umukozi uhembwa umushahara uzwi, zikaba ari inyandikomvaho ndetse Uregwa akaba atarashoboye kuzivuguruza, ko rero atagombaga kubarirwa indishyi mbangamirabukungu nk'umuntu udafite akazi kazwi.

Uregwa avuga ko yasabye Urega kugaragaza "*historique bancaire*" arabyanga, ko bitumvikana ukuntu agaragaza sheki imwe yonyine avuga ko yahembeweho mu myaka yose avuga ko yakoze. Ikindi ni uko atari kujya gushaka ibimenyetso by'idosiye yafunzwe kugira ngo ivuguruze ibyatanzwe n'urundi ruhande kandi ari rwo rwari rufite ibyo kuyivugaho. Avuga ko ataje kuregera inyandiko zatanzwe n'Urega ahubwo ari kugira icyo azivugaho. Asoza yibaza uburyo Urega yahembwe hakoreshejwe sheki nyamara yaritangiye icyo yita "*Memo*" yanditsemo ko azajya ahemberwa kuri konti.

Incamake y'icyemezo: 1. Habaho kwirengagiza amategeko n'ibimenyetso bigaragarira buri wese, iyo amakosa yaba yakozwe ari amakosa agaragara ku buryo butagibwaho impaka nk'impamvu yatuma urubanza rusubirwamo. Ntibyakwitiranywa n'impamvu z'ubujurire busanzwe aho umuburanyi, bitewe n'uko abyumva, ashobora kugaragaza ko atemeranya n'ibisobanuro umucamanza yatanze ku myumvire y'amategeko cyangwa ku isesengura ry'ibimenyetso.

2. Inyandikomvaho ni inyandiko yakozwe cyangwa yakiranwe imihango yabugenewe ku rupapuro cyangwa hifashishijwe ubundi buryo bw'ikoranabuhanga n'umukozi wabiherewe ububasha, uri kuzuza inshingano ze mu ifasi akoreramo, ikaba ikubiyemo amakuru yiyandikiye ubwe cyangwa yahagazeho ibyo ahamya biba.

Gusubirishamo urubanza ku mpamvu z'akarengane, nta shingiro bifite.
Urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ntiruhindutse.

Amategeko yashingiweho:

Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ingingo ya 55.

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko Nº 13 bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'ubunoteri, ingingo ya 2, 3, 12 n'iya 54.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'iya 13.

Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigendera ku butaka, ingingo ya 4.

Imanza zifashishijwe:

Nyiraganza Ramu na Sonarwa, RS/INJUST/RC 00047/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 23/09/2018, igika cya 30.

Ngizweninshuti Albert na Muhima Geovanni, RS/INJUST/RC 00024/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020, igika cya 26.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 08/02/2014, imodoka yo mu bwoko bwa TOYOTA RAV 4 ifite plaque RAC 224 B ifite ubwishingizi muri RADIANT INSURANCE COMPANY Ltd yari itwawe na Rwagasore Delphine, yagonze moto ifite plaque GR 040 D yari itwawe na Kabundi Joseph, arakomereka anavunika akaguru, asigarana ubumuga buhoraho bungana na 70%. Ibi byabereye mu Mudugudu wa Nyarucyamo I, Akagari ka Gahogo, Umurenge wa Nyamabuye, Akarere ka Muhanga, Intara y'Amajyepfo.

[2] Kabundi Joseph yasabye RADIANT INSURANCE COMPANY Ltd kumuha indishyi zikomoka kuri iyo mpanuka ntiyamusubiza, afata inzira yo kwiyambaza Inkiko, aregera Urukiko Rwisumbuye rwa Muhanga, asaba guhabwa indishyi zingana na 36.215.415 Frw.

[3] Mu rubanza RC 0024/15/TGI/MHG rwaciwe ku wa 23/04/2015, Urukiko Rwisumbuye rwa Muhanga, rwemeje ko ikirego cya Kabundi Joseph cyakiriwe, rwemeza ko RADIANT INSURANCE COMPANY Ltd iha Kabundi Joseph indishyi zikomoka ku kugongwa n'imodoka TOYOTA RAV 4 ifite *plaque* RAC 224 B yari ifite ubwishingizi muri RADIANT INSURANCE COMPANY Ltd, ruyitegeka guha Kabundi Joseph indishyi zose hamwe zingana na 9.136.864 Frw, ingwate y'amagarama yatanzwe iguma mu Isanduku ya Leta.

[4] Kabundi Joseph yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Nyanza, ubujurire bwe bwandikwa kuri RCA 0103/15/HC/NYA, RADIANT INSURANCE COMPANY Ltd na yo irajurira, ubujurire bwayo bwandikwa kuri RCA 0109/15/HC/NYA, imanza zombi zirahuzwa ziburanishirizwa kuri RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA. RADIANT INSURANCE COMPANY Ltd yajuriye ivuga ko ikirego cyatanzwe na Kabundi Joseph kitagombaga kwakirwa ku rwego rwa mbere, ko kandi Urukiko rubanza rwanze icyifuzo cyayo cy'uko hashyirwaho itsinda ry'abaganga basuzuma Kabundi Joseph.

[5] Kabundi Joseph yajuriye mu Rukiko Rukuru, Urugereko rwa Nyanza, avuga ko mu kubara indishyi mbangamirabukungu, Urukiko rubanza rwamugeneye umushahara muto (SMIG) umuntu atahana wa 2.500 Frw, rukaba rwaramufashe nk'udafite akazi kazwi, nyamara yari afite umushahara uzwi mu kazi yakoraga mu gihugu cy'u Burundi. Avuga kandi ko umucamanza w'Urukiko Rwisumbuye rwa Muhanga yaburanishije ikibazo kirebana n'insimburangingo ifite agaciro kangana na 2.534.000 Frw, ntiyagifatira umwanzuro.

[6] Mu rubanza RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA rwaciwe ku wa 30/09/2015, Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko ubujurire bwatanzwe na Kabundi Joseph bufite ishingiro ku birebana n'amafaranga y'insimburangingo gusa (*prothèse*), ko ubujurire bwatanzwe na RADIANT INSURANCE COMPANY Ltd nta shingiro bufite, ko urubanza RC 0024/15/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 23/04/2015 ruhindutse kuri bimwe, rutegeka RADIANT INSURANCE COMPANY Ltd guha Kabundi Joseph indishyi zose hamwe zingana na 12.170.864 Frw, amagarama yatanzwe n'abajuriye ahwana n'ibyakozwe mu rubanza.

[7] Ku wa 16/11/2015, Kabundi Joseph yongeye kuregera Urukiko Rukuru, Urugereko rwa Nyanza, asubirishamo ingingo nshya urubanza RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA, asobanura ko mu guca urubanza, Urukiko rwakoze amakosa akabije yo kwitiranya uko ibintu byagenze, ndetse ko kuva aho urubanza asubirishamo ingingo nshya ruciriwe, habonetse ibimenyetso bya kamarampaka bigaragaza akarengane katewe n'urwo rubanza.

[8] Mu rubanza RCA 0189/15/HC/NYA rwaciwe ku wa 03/03/2016, Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko ugusubirishamo ingingo nshya urubanza RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA kwakozwe na Kabundi Joseph kutemewe, bityo ko urubanza yasubirishijemo ingingo nshya rugomba kurangizwa uko rwaciwe nta gihindutse, rumutegeka kwishyura RADIANT INSURANCE COMPANY Ltd 600.000 Frw akubiyemo amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, ingwate y'amagarama yatanzwe na Kabundi Joseph ihwana n'ibyakozwe mu rubanza, ababuranyi bibutswa ko urwo rubanza rutajuririrwa.

[9] Ku wa 30/06/2016, Kabundi Joseph yandikiye Urwego rw'Umuvunyi, asaba ko urubanza RCA 0103/15/HC/NYA - RCA 0109/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 30/09/2015 rusubirwamo ku mpamvu z'akarengane, asobanura ko mu kumubarira indishyi mbangamirabukungu, urwo Rukiko rutitaye ku ngingo yo kuba yari amaze amezi atanu n'iminsi umunani atagihembwa kandi itegeko riteganya ko iyo uwahohotewe mu mpanuka amaze igihe kitarenze amezi atandatu adakora, abarirwa indishyi hagendewe ku mushahara wa nyuma yahembwaga.

[10] Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga, rumusaba kwemeza ko urubanza RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 30/09/2015 rusubirwamo ku mpamvu z'akarengane. Mu cyemezo nimero 0153/CJ/2021 cyo ku wa 27/04/2021, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane kandi ko rwoherezwa mu Rukiko rw'Ubujurire kugira ngo ruruburanishe. Mu Rukiko rw'Ubujurire, ikirego cyanditswe kuri RS/INJUST/RC 00011/2021/CA.

[11] Urubanza rwaburanishijwe mu ruhame ku wa 07/03/2022, Kabundi Joseph yunganiwe na Me Nsengiyumva Colette, RADIANT INSURANCE COMPANY Ltd ihagarariwe na Me Nyirangirimana Astérie.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba Urukiko Rukuru, Urugereko rwa Nyanza, rwarirengagije inyandiko yo ku wa 19/03/2015 n'ibindi bimenyetso, mu kugenera Kabundi Joseph indishyi mbangamirabukungu, bigatuma rufata icyemezo kimurenganya

[12] Me Nsengiyumva Colette wunganira Kabundi Joseph asobanura ko uwo yunganira yakoreye Louvain *Coopération au Développement* kuva mu kwezi kwa 12/2011 kugeza mu kwezi kwa 04/2013, igihe kigeze amasezerano y'akazi bari bafitanye ararangira, akorera *UCODE Microfinance* kuva mu kwezi kwa 06/2013 kugeza mu kwezi kwa 08/2013, hakaba hari ibimenyetso bigizwe n'icyemezo cy'umushahara cyatanzwe na OBR (*Office Burundais des Recettes*) cyemezwa n'Ambasade y'u Rwanda mu gihugu cy'u Burundi. Avuga ko inyandiko zirengagijwe zigizwe na "*attestation de paiement*" n'inyandiko yo ku wa 19/03/2015.

[13] Akomeza avuga ko inyandiko zose zatanzwe zigaragaza ko Kabundi Joseph yakoze impanuka ari umukozi uhembwa umushahara uzwi, izo nyandiko akaba ari inyandikomvaho ndetse RADIANT INSURANCE COMPANY Ltd ikaba itarashoboye kuzivuguruza, ko rero uwo yunganira atagombaga kubarirwa indishyi mbangamirabukungu nk'umuntu udafite akazi kazwi. Ashingira ku ngingo ya 3 n'iya 13 z'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ndetse no ku ngingo ya 4[1] y'itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe

[1]Ingingo ya 4, igika cya 4 y'itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigendera ku butaka iteganya ko inyungu zigomba gushingirwaho mu kugena izo ndishyi ku bangirijwe bahembwaga umushahara, ni umushahara ubwawo wemezwa n'inyandikompamo zose zishoboka hamwe n'izindi nyungu zidakomoka ku mushahara, uwangirijwe agaragariza ibimenyetso.

n'ibinyabiziga bigenzwa na moteri kandi bigendera ku butaka, akanavuga ko hari urubanza rwaciwe n'Urukiko rw'Ikirenga rwatanze igisobanuro cy'inyandiko mvaho n'inama yahuje Urukiko rw'Ikirenga n'ibigo by'ubwishingizi.

[14] Kabundi Joseph yabajijwe niba inyandiko avuga zirengagijwe zarashyikirijwe Urukiko Rukuru, Urugereko rwa Nyanza rukazirengagiza, avuga ko zashyizwe muri dosiye y'urubanza kuva atanga ikirego mu Rukiko Rwisumbuye rwa Muhanga, ko rero dosiye yoherejwe ku rwego rw'ubujurire izo nyandiko zose zirimo. Avuga ko "*attestation de salaire*" yayihawe n'umukoresha, akaba yarakoze impanuka ku wa 08/02/2014. Asobanura kandi ko inyandiko z'ingenzi ari izanditseho OBR, akaba ari na zo zateweho *cachet* n'Ambasade, ko Urukiko Rukuru, Urugereko rwa Nyanza rutemeye kumubarira indishyi mbangamirabukungu rushingiye ku mushahara yahembwaga, ruvuga ko nta kosa umucamanza w'Urukiko rubanza yakoze, nyamara yaravuze ko nta kigaragaza ko izo nyandiko zanyuze muri Ambassade, na ho umwunganizi we avuga ko umucamanza yavuze ko atagenera Kabundi Joseph izo ndishyi, kubera ko amafaranga y'amarundi ahindagurika.

[15] Me Nyirangirimana Astérie uhagarariye RADIANT INSURANCE COMPANY Ltd avuga ko icyo bita "*attestation de salaire*" yo ku wa 17/03/2015 nta visa ya Ambassade y'u Rwanda iteyeho, ikaba igomba gufatwa nk'inyandiko z'imbere i Burundi (*documents internes*), ukuri kwazo kukaba gushidikanywaho. Avuga ko hashingiwe ku biteganywa n'ingingo ya 54 y'itegeko ryerekeye umurimo w'abanoteri, inyandiko Kabundi Joseph avuga ko zandikiwe i Burundi yagombaga kuzinyuza muri Ambassade y'u Burundi mu Rwanda, hanyuma akazijyana no muri Minisiteri y'Ububanyi n'Amahanga y'u Rwanda (MINAFFET), kubera ko yateganyaga kuzikoresha mu Rwanda, bityo ko zitagombaga kunyuzwa muri Ambassade y'u Rwanda mu Burundi.

[16] Me Nyirangirimana Astérie akomeza avuga ko RADIANT INSURANCE COMPANY Ltd yasabye Kabundi Joseph kugaragaza "*historique bancaire*" arabyanga, ko bitumvikana ukuntu agaragaza sheki imwe yonyine avuga ko yahembeweho mu myaka yose avuga ko yakoze, bityo ko uwo ahagarariye adaha agaciro iyo sheki, ndetse ko bitumvikana ukuntu yaba yarahembwaga umushahara avuga, ntagire konti muri banki, agahembwa hakoreshejwe sheki.

[17] Avuga kandi ko Inkiko zose zitibeshye mu kubarira Kabundi Joseph indishyi mbangamirabukungu, ko umushahara muto (SMIG) washingiweho ari wo wagombaga gukoreshwa koko, cyane ko mu madosiye arebana n'impanuka hakunze kubamo ibimenyetso bidahuje n'ukuri, ko rero inyandiko zatanzwe na Kabundi Joseph zitafatwa nk'inyandiko mpamo kubera ko zitubahirije ibiteganywa n'ingingo ya 54 y'itegeko rigenga umurimo w'abanoteri ryavuzwe haruguru. Avuga na none ko "*attestation de paiement*" igomba gutangwa n'umukoresha, ko kandi uregera indishyi aba agomba no kugaragaza "*attestation de salaire*", "*attestation de service*" n'aho umushahara wanyuzwaga. Ku kibazo cyo kuba RADIANT INSURANCE COMPANY Ltd itarashatse ibimenyetso bivuguruza ibyagaragajwe na Kabundi Joseph, Me Nyirangirimana Astérie avuga ko uwo ahagarariye atari kujya gushaka ibimenyetso by'idosiye yafunzwe kugira ngo ivuguruze ibyatanzwe na Kabundi Joseph kandi Kabundi Joseph ari we wari ufite ibyo kuyivugaho, na ho ibirebana n'inama uruhande rwa Kabundi Joseph ruvuga yahuje amasosiyete y'ubwishingizi n'Urukiko rw'Ikirenga, Me Nyirangirimana Astérie avuga ko n'ubwo nta nyandikomvugo y'iyo nama yagaragajwe, ko n'iyo yaba ihari itaba ari urubanza rwatanze umurongo.

[18] Me Nsengiyumva Colette avuga ko RADIANT INSURANCE COMPANY Ltd yari ifite uburenganzira bwo gushaka ibimenyetso bivuguruza ibyatanzwe na Kabundi Joseph, ko kandi kuba hari inyandiko yemejwe n'Ambasaderi w'u Rwanda mu Burundi igaragaza ko Kabundi Joseph yari umukozi, iyo nyandiko igomba gufatwa ko ari inyandiko mvaho.

[19] Kabundi Joseph avuga ko yakoreye umuryango mpuzamahanga ahembwa amafaranga y'amarundi, ko konti ye yari mu madolari, aho amasezerano y'umurimo ahagarikiwe, biba ngombwa

ko akorera undi muryango wo mu gihugu cy'u Burundi, ko kubera ko wo yagombaga kumuhemba amafaranga y'amarundi, yasinye amasezerano y'umurimo amara amezi atatu (3), ahabwa amarundi, ko atahimbye sheki yagaragajwe.

[20] Me Nyirangirimana Astérie avuga ko ataje kuregera inyandiko zatanzwe na Kabundi Joseph, ahubwo ari kugira icyo azivugaho. Akomeza yibaza uburyo Kabundi Joseph yahembwe hakoreshejwe sheki nyamara yaritangiye icyo yita "*Memo*" yanditsemo ko azajya ahemberwa kuri konti.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 55, igika cya mbere, 2º y'itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko iteganya ko urubanza rushobora gusabirwa gusubirwamo ku mpamvu z'akarengane iyo mu icibwa ryarwo hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese.

[22] Ibyerekeye kwirengagiza amategeko cyangwa ibimenyetso, byasobanuwe na Perezida w'Urukiko rw'Ikirenga mu cyemezo cyo kutakira ubusabe bwa Mpozayo Christophe. Icyo cyemezo cyasobanuye ko ku byerekeye kwirengagiza amategeko n'ibimenyetso bigaragarira buri wese nk'impamvu yatuma urubanza rusubirwamo, bitandukanye n'impamvu z'ubujurire busanzwe aho umuburanyi, bitewe n'uko abyumva, ashobora kugaragaza ko atemeranya n'ibisobanuro umucamanza yatanze ku myumvire y'amategeko cyangwa ku isesengura ry'ibimenyetso, gisobanura ko habaho kwirengagiza amategeko n'ibimenyetso bigaragarira buri wese, iyo amakosa yaba yakozwe ari amakosa agaragara ku buryo butagibwaho impaka. [2]

[23] Ku bijyanye n'ikibazo cyo kubara indishyi mbangamirabukungu, Urukiko rw'Ikirenga rwasobanuye mu rubanza RS/INJUST/RC 00047/2017/SC, ko inyandiko yishyuriweho umusanzu, umusoro cyangwa fagitire, atari ikimenyetso kigaragaza ko umuntu akora umwuga w'ubucuruzi, bituma rwemeza ko nta kosa Urukiko rubanza rwakoze mu kubarira umuburanyi indishyi mbangamirabukungu, hashingiwe ku mushahara w'umuntu udafite akazi kazwi.[3]

[24] Ku birebana n'uru rubanza, dosiye igaragaza kopi y'amasezerano y'umurimo hagati ya Kabundi Joseph na ONG yitwa *Association "Louvain Coopération au Développement*" yatangiye ku wa 01/12/2011 kugeza ku wa 30/11/2012, kopi y'amasezerano y'umurimo hagati ya Kabundi Joseph na *UCODE Microfinance* atangira ku wa 01/06/2013 akamara igihe cy'amezi atatu (3). Hari kandi kopi y'inyandiko yitwa "*Attestation de paiement*" yanditswe ku wa 19/03/2015, aho ubuyobozi bw'Ikigo cy'Imisoro n'Amahoro mu Burundi (*Office Burundais des Recettes*) yemeza ko *Louvain Coopération au Développement* yishyuriye umukozi wayo witwa Kabundi Joseph kuva mu kwezi kwa 12/2011 kugeza mu kwezi kwa 04/2013, ko umushahara yatahanaga wanganaga na 2.004.122 Fbu kuva mu kwezi kwa 12/2011 kugeza mu kwezi kwa 11/2012, na 2.049.864 Fbu kuva mu kwezi kwa 12/2012 kugeza mu kwezi kwa 04/2013, hari indi kopi y'inyandiko yitwa "*Attestation de salaire*" na yo yanditswe ku wa 19/03/2015, aho umuyobozi w'abasoreshwa bato n'amahoro mu Kigo cy'Imisoro n'Amahoro (*Office Burundais des Recettes*) yemeza ko *UCODE Microfinance* yishyuriye umukozi wayo witwa Kabundi Joseph umusoro ungana na 208.500 Fbu, yavanwaga ku mushahara mbumbe ungana na 1.540.000 Fbu ku kwezi, kuva mu kwezi kwa 06/2013 kugeza mu kwezi kwa 08/2013.

[25] Hari izindi nyandiko zashyizwe muri dosiye y'urubanza RS/INJUST/RC 00011/2021/CA ku wa 04/03/2022 bigaragara ko zitigeze zitangwa mu Nkiko zabanje, zigizwe na kopi y'ibaruwa yo ku wa 14/03/2013, umuyobozi ushinzwe Akarere k'Afurika yo hagati muri "*Louvain Coopération au*

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[2] Icyemezo cya Perezida w'Urukiko rw'Ikirenga ku isuzuma ry'akarengane kavugwa mu rubanza RPA 00084/2018/CA, igika cya 15. Aha ni na ho impamvu zituma urubanza rusabirwa gusubirwamo zitandukanira n'impamvu z'ubujurire.

[3] Urubanza RS/INJUST/RC 00047/2017/SC rwaciwe ku wa 23/09/2018, hagati ya Nyiraganza Ramu na SONARWA, igika cya 30.

Développement" yandikiye Kabundi Joseph, amumenyesha ko amasezerano y'umurimo bafitanye agomba kurangira ku wa 30/04/2013 atazongerwa. Hari kopi y'ibaruwa yo ku wa 10/04/2013, umuyobozi wungirije wa *UCODE Microfinance* yandikira Uhagarariye "*Louvain Coopération au Développement*" i Bujumbura, amusaba gusubira ku cyemezo gikubiye mu ibaruwa yo ku wa 14/03/2013, umuryango ahagarariye ugakomeza gufasha UCODE Microfinance mu buryo bw'imikorere (*assistance technique*). Hari kopi y'inyandiko yitwa "*Memo*" yavuye ku muyobozi wungirije wa *UCODE MF* yoherejwe kuri *SAF* ku wa 27/06/2013, asobanura ko IPR Kabundi Joseph agomba kwishyura igomba kubarwa mu buryo bukurikira: umushahara mbumbe wa 1.540.000 Fbu – 150.000 x 15% = 208.500 Fbu, bityo ko umushahara atahana ungana na 1.540.000 Fbu – 208.500 Fbu = 1.331.500 Fbu, asaba ko umushahara wa buri kwezi mu gihe cyose cy'amezi atatu y'amasezerano y'umurimo, uzashyirwa kuri konti Kabundi Joseph ari buhe urwo rwego rushinzwe gutegura imishahara.

[26] Mu nyandiko zashyizwe muri dosiye y'urubanza ku wa 04/03/2022 harimo kandi kopi y'inyandiko yitwa "*Fiche de paie de Monsieur* Kabundi Joseph" y'ukwezi kwa 06/2013, umushahara mbumbe ungana na 1.540.000 Fbu, kuvanamo (1.540.000 Fbu -150.000) x 15% = 208.500 Fbu, umushahara utahanwa (*net à payer*) ungana na 1.331.500 Fbu, kopi ya sheki ya 1.331.500 Fbu yo ku wa 28/06/2013 igenewe Kabundi Joseph na kopi y'inyandiko yitwa "*Attestation de salaire*" yo ku wa 17/03/2015, aho abitwa Namukobwa Prisca, ushinzwe ubutegetsi n'imari muri *UCODE Microfinance* na Niyongabo Nicodème, umuyobozi wa *UCODE Microfinance*, bemeza ko Kabundi Joseph yakoreye *UCODE Microfinance* kuva mu kwezi kwa 06/2013 kugeza mu kwezi kwa 08/2013 agenerwa umushahara mbumbe ungana na 1.540.000 Fbu, nyuma yo gukata umusoro ungana na 208.500 Fbu, agacyura umushahara ungana na 1.331.500 Fbu (uruhande rwa Kabundi Joseph rwasobanuye ko izi nyandiko ari zo *Office Burundais des Recettes* yashingiyeho itanga *attestation de paiement*).

[27] Ku kibazo kirebana n'umusaruro w'umwaka umuntu atahana (SMIG), ingingo Kabundi Joseph yari yajuririye mu rubanza RCA 0103/15/HC/NYA-RCA 0104/15/HC/NYA ari na rwo rusubirishwamo ku mpamvu z'akarengane, Urukiko Rukuru, Urugereko rwa Nyanza rwasanze mu kubarira Kabundi Joseph ku mushahara ungana na 2.500 Frw ku munsi, nta kosa Urukiko Rwisumbuye rwa Muhanga rwakoze, kubera ko amasezerano y'akazi Kabundi Joseph yagaragaje ateye ugushidikanya mu gihe atagaragaza umushahara yahembwaga ku kwezi ndetse n'ubwoko bw'ayo masezerano niba ari ay'igihe kizwi cyangwa ari ay'igihe kitazwi, ko rero kuba bimeze gutyo, byari ngombwa kumubarira umushahara w'umuntu udafite akazi kazwi nk'uko Urukiko rw'Ikirenga rwabitanzeho umurongo mu rubanza RCAA 0202/07/CS hagati ya Nyetera Jean Baptiste na COGEAR.

[28] Ku kibazo cyo kumenya ukuri kw'inyandiko z'amasezerano y'umurimo Kabundi Joseph yagaragaje ko yagiranye na "*Louvain Coopération au Développement*" na *UCODE Microfinance*, aho inkiko zibanza zavuze ko ateye ugushidikanya, Urukiko rw'Ubujurire rurasanga izo nyandiko koko ziteye ugushidikanya mu gihe atagaragaza imyimerere yazo kandi mu iyandikwa ryazo, zisoza zivuga ko buri ruhande mu bagiranye ayo masezerano ruhawe umwimerere w'iyo nyandiko. Nk'uko byagaragajwe mbere kandi, izo nyandiko z'amasezerano y'umurimo ntizigaragaza umushahara Kabundi Joseph agomba kujya ahembwa ku kwezi.

[29] Ku kibazo cyo kumenya agaciro k'inyandiko zitwa "Attestation de paiement" zatanzwe na "*Office Burundais des Recettes* (OBR)", aho yemeza ingano y'umusoro ku mushahara watanzwe na Kabundi Joseph mu bihe binyuranye, icyo kigo kikemeza n'umushahara Kabundi Joseph yakoreraga. Izi nyandiko ababuranyi ntibazivugaho rumwe kuko uruhande rwa Kabundi Joseph ruvuga ko ari inyandiko mpamo hashingiwe ku kuba zaremejwe n'Ambasade y'u Rwanda mu gihugu cy'u Burundi, mu gihe uruhande rwa RADIANT INSURANCE COMPANY Ltd ruvuga ko zitujuje ibisabwa kugira ngo zibe zakoreshwa nk'ibimenyetso mu Nkiko zo mu Rwanda.

[30] Ingingo ya 2, 3º y'itegeko Nº 13 bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'ubunoteri iteganya ko inyandiko mpamo ari inyandiko yanditswe cyangwa yakiranywe imihango yabugenewe n'umukozi wa Leta ufite ububasha bwo gukora mu ifasi y'aho yandikiwe. Na ho ingingo ya 3, 2º y'itegeko rimaze kuvugwa, iteganya ko mu byiciro by'abanoteri harimo Ambasaderi cyangwa Umunyamabanga wa mbere w'Ambasade mu gihe Ambasaderi adahari.

[31] Mu kurushaho kumvikanisha igisobanuro cy'inyandiko mvaho, Urukiko rw'Ikirenga kandi rwabitanzeho umurongo ruvuga ko inyandiko mvaho igomba kuba yujuje ibintu bitatu bikurikira:

- kuba ari inyandiko yakozwe cyangwa yakiranwe imihango yabugenewe n'umukozi wabiherewe ububasha ku rupapuro cyangwa hifashishijwe ubundi buryo bw'ikoranabuhanga.
- kuba ari inyandiko yanditse mu gihe arimo kuzuza inshingano ze mu ifasi akoreramo.
- kuba ari inyandiko ikubiyemo amakuru yiyandikiye ubwe cyangwa yahagazeho ibyo ahamya biba. Rwanzura ko kuba inyandiko iba yakozwe n'umukozi wa Leta ubifitiye ububasha, bidahagije kugira ngo yitwe inyandiko mvaho.[4]

[32] Urukiko rw'Ubujurire rurasanga kopi z'inyandiko zashyizwe muri dosiye ku wa 04/03/2022 uruhande rwa Kabundi Joseph ruvuga ko ari zo "*Office Burundais des Recettes*" yashingiyeho itanga "*attestation de paiement*" zigizwe na "*Mémo*", kopi ya sheki ya 1.331.500 Fbu, *UCODE Microfinance* yahaye Kabundi Joseph na kopi ya "*attestation de salaire*" avuga ko yahawe n'abakozi ba *UCODE Microfinance*, zitari zihagije kugira ngo OBR yemeze umushahara Kabundi Joseph yahembwaga, ndetse hakaba hanibazwa impamvu Kabundi Joseph yaba yarahawe n'umukoresha we icyemezo cy'umushahara akumva kitihagije, kigaherwaho na OBR itanga "*attestation de paiement*" kandi hari ibitarujujwe kugira ngo ibe yuzuye harimo kuba yemejwe n'ubuyobozi bwa OBR ndetse n'Ambasade y'u Rwanda mu gihugu cy'u Burundi (iyo kopi y'*attestation de salaire* igaragaza ko hari aho OBR yagombaga kuyemeza hakajyaho na visa y'Ambasade y'u Rwanda mu gihugu cy'u Burundi, ariko ntibyakozwe).

[33] Nk'uko biteganywa n'igingo ya 54, igika cya 2 n'icya 3 y'Itegeko Nº 13 bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'abanoteri iteganya ko ikimenyetso cy'uko izo nyandiko ari mpamo kiva ku kubanza kwemerwa na Ambasade mu Rwanda y'igihugu iyo nyandiko yakorewemo. Iyo nyandiko yemezwa kandi na serivisi za Minisiteri ifite Ububanyi n'Amahanga mu nshingano zayo. Ibiteganywa n'iyi ngingo kandi biza bishimangira ibiteganywa n'ingingo ya 12, igika cya kabiri y'iryo tegeko ivuga ko icyakora mbere yo gukoreshwa mu Rwanda, inyandiko zashyizweho umukono n'Ambasaderi cyangwa Umunyamabanga wa mbere muri Ambasade zigomba kubanza kwemezwa na Minisiteri ifite Ububanyi n'Amahanga mu nshingano zayo.

[34] Urukiko rurasanga hashingiwe ku biteganywa n'ingingo z'itegeko rimaze kuvugwa, hari imihango Kabundi Joseph atubahirije kugira ngo inyandiko yo ku wa 19/03/2015 yitwa "*attestation de paiement*" avuga ko yahawe na" *Office Burundais des Recettes*" ndtese n'ibindi bimenyetso, bibe byafatwa nk'inyandiko mpamo. Iyo mihanga itarubahirijwe hakaba harimo uwo kuba Ambasade y'u Burundi mu Rwanda yaragombaga kwemeza inyandiko avuga ko zandikiwe mu gihugu cy'u Burundi ndetse no kwemezwa na Minisiteri y'u Rwanda ifite Ububanyi n'Amahanga mu nshingano zayo.

[35] Urukiko rushingiye ku bimenyetso byatanzwe na Kabundi Joseph, ku biteganywa n'amategeko yavuzwe haruguru, rurasanga kuba mu rubanza RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA, Urukiko Rukuru, Urugereko rwa Nyanza rutarahaye ishingiro ingingo y'ubujurire yatanzwe na Kabundi Joseph irebana no kuba yarabariwe indishyi mbangamirabukungu nk'umuntu udafite umushahara uzwi,

[4] Urubanza RS/INJUST/RC 00024/2018/SC rwaciwe ku wa 21/02/2020, hagati ya Ngizweninshuti Albert na Muhima Geovanni, igika cya 26.

nta karengane yagiriwe muri urwo rubanza, kuko ibyo yita ibimenyetso yarushyikirije bishidikanywaho ndetse akaba atarubahirije inzira ziteganywa n'amategeko mu itangwa ry'inyandiko zakorewe mu mahanga, bityo, akaba nta kimenyetso kigaragarira buri wese, Urukiko Rukuru, Urugereko rwa Nyanza rwirengagije mu rubanza rusubirishwamo ku mpamvu z'akarengane.

[36] Ku bijyanye no kumenya niba Kabundi Joseph akwiye kubarirwa indishyi mbangamirabukungu n'indishyi mbonezamusaruro hashingiwe ku gaciro k'ivunjisha kagezweho, Urukiko rurasanga kuba hagaragajwe ko nta karengane kabaye mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, nta mpamvu yo gusuzuma iki kibazo kirebana n'impaka ku ivunjafaranga ryashingirwaho abarirwa indishyi.

2. Kumenya ishingiro ry'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[37] Me Nsengiyumva Colette asaba Urukiko rw'Ubujurire gutegeka RADIANT INSURANCE COMPANNY Ltd guha Kabundi Joseph amafaranga angana na 1.500.000 Frw y'ibyo yatakaje akurikirana urubanza harimo n'igihembo cya Avoka, abazwe mu bushishozi bw'Urukiko, hashingiwe ku ngingo ya 32 y'amabwiriza agenga ibihembo mbonera by'Abavoka, ko na ho amafaranga RADIANT INSURANCE COMPANY Ltd isaba itayahabwa, kubera ko ari yo yakomeje kuzana amananiza yanga gukemura ikibazo ku neza, bigatuma Kabundi Joseph agana Inkiko kugeza ubwo ajya mu karengane.

[38] Me Nyirangirimana Astérie avuga ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Kabundi Joseph asaba adakwiye kuyahabwa, kubera ko ari we wishoye mu manza ku bushake, akaba agomba kwirengera ingaruka zabyo, ko ahubwo asaba Urukiko rw'Ubujurire gutegeka Kabundi Joseph guha RADIANT INSURANCE COMPANY Ltd amafaranga angana na 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[39] Ingingo ya 111 y'itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Kiburanishirizwa rimwe n'ikirego cy'iremezo.

[40] Urukiko rurasanga, kuba RADIANT INSURANCE COMPANY Ltd yariyambaje Avoka wo kuyiburanira no gukurikirana urubanza, Kabundi Joseph agomba kuyiha 200.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka agenwe mu bushishozi bw'Urukiko, kuko ayo isaba ari ikirenga.

III. ICYEMEZO CY'URUKIKO

[41] Rwemeje ko ikirego cyatanzwe na KABUNDI Joseph cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 30/09/2015, nta shingiro gifite.

[42] Rwemeje ko urubanza RCA 0103/15/HC/NYA-RCA 0109/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 30/09/2015, rudahindutse.

[43] Rutegetse Kabundi Joseph guha RADIANT INSURANCE COMPANY Ltd 700.000 Frw, akubiyemo 200.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka.

[44] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.