HOTEL CHEZ LANDO v NSHIMIYEYEZU

[Rwanda URUKIKO RUKURU – RSOCA 00129/2018/HC/KIG (Bandora, P.J) 20 Gicurasi 2019]

Amategeko agenga imanza z'umurimo – Iseswa ry'amasezerano y'akazi – Guhindurirwa akazi kw'umukozi agashyirwa mu mwanya wo hasi atabyemeye bifatwa nko gusesa amasezerano mu buryo bunyuranyije n'amategeko kabone n'ubwo uyu mukozi yakwanga gukora ku mwanya yahawe atabyemeye, umukoresha abitangira indishyi.

Incamake y'ikibazo: Nshimiyeyezu yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko yagiranye amasezerano y'akazi y'igihe kitazwi na Hotel Chez Lando yo kwakira abagana hotel aza kuzamurwa mu ntera ashyirwa ku mwanya w'ukuriye abandi bakozi ariko agaragariza Umukoresha we ko arwaye uyu mwanya mushya atazawushobora. Akomeza avuga ko yaje kumanurwa mu ntera ubwo yaravuye mu cy'iruhuko cy'uburwayi ntiyabyishimira ariko asubiye mu kazi baramwangira bityo, atangira inzira yo gutakamba ariko ntibyagira icyo bitanga ahubwo amasezerano y'akazi araseswa.

Hotel chez Lando ivuga ko Urega yahinduriwe umwanya yanga gusubira mu kazi, aramutegereza aramubura, bigera naho amwandikira abinyujije ku mwunganizi we, asabwa kugaruka ku kazi ariko ntiyabyubahiriza bituma amasezerano aseswa kubera ikosa rikomeye ryo guta akazi.

Urukiko rwemeje ko ikirego cy'Urega gifite ishingiro kuko atataye akazi ahubwo yirukanywe nta mpamvu ifatika no mu buryo bunyuranyije n'amategeko bityo, Uregwa akaba agomba kumuha indishyi zitandukanye.

Hotel Chez Lando yajuririye Urukiko Rukuru ivuga ko hirengagijwe impamvu yashingiweho yatumye Urega ahindurirwa umwanya ndetse ahabwa indishyi kandi umushahara we utaragabanyijwe n'ubwo we avugako yirukanywe mu buryo budakurikije amategeko.

Mu bujurire bwayo, ivuga kandi ko ishingiye kw'ibaruwa Nshimiyeyezu yanditse agaragaza ko umwanya akoraho wa "*Superviseu*r" utamworohera kubera ikibazo cy'umugongo amaranye iminsi bituma ahindurirwa ashyirwa kuwa "*Serveur*" ibinyujije mw'ibaruwa isubiza iyo yari yamwandikiye. Urega yongeye amwandikira ibaruwa amugaragariza akarengane ke ko yamanuwe mu ntera, nayo imusubiza imubwira ko ataragaruka ku kazi kandi imusaba kuza ku kazi ku mwanya yahawe.

Nshimiyeyezu avuga ko Urukiko Rwisumbuye nta kosa rwakoze kubera ko umukoresha yamumanuye mu ntera batabyumvikanyeho ndetse akaba yarangiwe ku garuka mu kazi ubwo yaravuye kwivuza nyuma yo gusaba ko yahindurirwa ako kazi yari amaze guhabwa kubera ko yari akirwaye bakamwangira. Ibi byatumye yandikira "*ADMIN email"* ntiyamusubiza bituma Umunyamategeko, nawe abandikira abasaba ko asubizwa ku kazi yakoraga baranga.

Incamake y'icyemezo: Guhindurirwa akazi kw'umukozi agashyirwa mu mwanya wo hasi atabyemeye bifatwa nko gusesa amasezerano mu buryo bunyuranyije n'amategeko kabone n'ubwo uyu mukozi yakwanga gukora ku mwanya yahawe atabyemeye, umukoresha abitangira indishyi.

Ubujurire nta shingiro bufite.
Ikirego cyo kwiregura gifite ishingiro kuri bimwe.
Urubanza rugumanye agaciro karwo.
Amagarama ahwanye n'ibyakozwe.

Amategeko yashingiweho:
Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 21
Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshingwanwa cyangwa amasezerano, ingingo ya 258.

Imanza zifashishijwe:
Ntukamazina Jean Baptiste vs Prime Insurance Ltd (PRIME), RSOCA 0072/15/HC/KIG, RSOCAA 0001 & 0002/16/CS

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu Rukiko rwisumbuye rwa Nyarugenge Nshimiyeyezu Albin yunganiwe na Me Ntabwoba yavuze ko tariki ya 14/06/2012 yagiranye na Hotel Chez Lando amasezerano y'igihe kitazwi yo gukora nk'ushinzwe kwakira abagana Hotel. Kuwa 08/12/2016 ngo yazamuwe mu ntera agirwa ukuriye abandi bakozi ariko bigeze kuwa 27/01/2017 avuye mu kiruhuko cy'uburwayi yahinduriwe imirimo amanurwa mu ntera agirwa Serveur hashingiwe y'uko kuwa 11/12/2016 yari yababwiye ko arwaye umwanya yahawe utaribumworohere ariko awujyamo anagaragarizwa inshingano, asaba konji kugira ngo yivuze neza. Yanavuze ko nyuma yo kumanurwa mu ntera ntabyishimire tariki ya 29/01/2017 yasubiye mu kazi Umukoresha yanga ko yinjira, nawe ngo ahita atangira inzira yo gutakamba kugira ngo umukoresha asubire ku cyemezo cye ariko ngo arabyanga, bituma yitabaza Avocat, yandikira umukoresha asaba ko bamusubiza mu kazi ke, aho kubikora ngo basesa amasezerano bavuga ko yataye akazi.

[2] Hotel Chez Lando mw'izina ry'umuyobozi wayo ihagarariwe na Me Ntabwoba Joseph yo yireguye avuga ko urega yasezerewe kubera ikosa rikomeye ryo guta akazi, ko adakwiye kuvuga ko yasezerewe nta mpamvu kandi mu buryo bunyuranye n'amategeko. Me Ntabwoba yanavuze ko nyuma yo guhindurirwa umwanya urega yita ko yamanuwe mu ntera ngo yanze gusubira mu kazi, Umukoresha aramutegereza aramubura, bigera ngo naho amwandikira abinyujije ku mwunganizi we, asabwa kugaruka ku kazi bitarenze kuwa 06/02/2017, ntiyubahiriza iyo tariki, kuwa 07/02/2017 amasezerano ye araseswa nk'uko amategeko abiteganya. Me Ntabwoba yanavuze ko urega atigeze asubira ku kazi ngo asubizwe inyuma nk'uko abivuga. Asaba Urukiko kudaha ishingiro ikirego cye ahubwo ngo agategekwa guha Hotel Chez Lando Indishyi zo gushorwa mu manza n'igihembo cy'avoka.

[3] Mu mwanzuro warwo wo kuwa 11/04/2018, urukiko rwisumbuye rwa Nyarugenge Rwemeje ko ikirego cya Nshimiyeyezu Albin gifite ishingiro kuri bimwe, Rwemeje ko Nshimiyeyezu Albin atataye akazi ahubwo yasezerewe mu kazi nta mpamvu yumvikana kandi mu buryo bunyuranye n'amategeko,Rwategetse Hotel Chez Lando mw'izina ry'umuyobozi wayo guha Nshimiyeyezu Albin indishyi zo kwirukanywa binyuranye n'amategeko zingana na 2 097 500Frw; 419 500Frw y'imperekeza; 419 500Frw y'Integuza; Indishyi z'ikurikiranarubanza zingana na 200 000Frw n'igihembo cy'Avoka kingana na 500 000frw, Rwemeje ko nta zindi ndishyi akwiye.

[4] Rutegetse Hotel Chez Lando gusubiza Nshimiyeyezu Albin amafaranga 50 000frw yatanzeho ingwate y'Ikirego, itabikora ku neza urubanza rubaye itegeko, akazakurwa mu mutungo wayo ku ngufu za Leta.

[5] Hotel Chez Lando mw'izina ry'umuyobozi wayo ihagarariwe na Me Ntabwoba Joseph ntabwo yishimiye uwo mwanzuro aribwo kuwa 10/05/2018 yagejeje ubujurire bwayo mu Rukiko Rukuru, avuga ko hari ibyirengaijwe n'umucamanza birimo impamvu Hotel Chez Lando yashingiyeho ihindurira Bwana Nshimiyeyezu Albin umwanya yakoragamo, bityo ko nta ndishyi umukozi yari akwiye cyane ko umushahara we utagabanijwe

[6] Nshimiyeyezu Albin n'umwunganira bavuze ko umukoresha yasheshe amasezerano y'umurimo mu buryo butubahirije amategeko ariyo mpamvu biyambaje inzego zitandukanye kugira ngo umukozi arenganurwe.

[7] Iburanisha ryabaye kuwa 12/02/2019 rirasozwa, isomwa rishirwa kuwa 06/03/2019 saa cyenda ariko iyo tariki igeze ntirwasomwa isomwa ryarwo rigenda risubikwa kubera impamvu zitandukanye kugeza kuwa 20/05/2019 saa cyenda.

[8] Muri uru rubanza harasuzumwa ikibazo giteye gitya:

- Kumenya niba urukiko rwisumbuye rwa Nyarugenge rwarirengagije impamvu Hotel chez Lando yashingiyeho ihindurira bwana Nshimiyeyezu Albin umwanya yakoragamo, no kumenya niba indishyi z'akababaro nizindi zitandukanye zaragombaga gutangwa.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- **Kubijyanye no kumenya niba urukiko rwisumbuye rwa Nyarugenge rwarirengagije impamvu Hotel chez Lando yashingiyeho ihindurira bwana Nshimiyeyezu Albin umwanya yakoragamo, no kumenya niba indishyi z'akababaro nizindi zitandukanye zaragombaga gutangwa.**

[9] Uhagarariye Hotel Chez Lando yavuze ko Mu ibaruwa yo kuwa 11/12/2016 yandikiye Ubuyobozi bwa Hotel Chez Lando, mu gika cya kabiri, Bwana Nshimiyeyezu Albin yabwiye umukoresha ko bitamworohera gukora ku mwanya "*Superviseur*" kubera ikibazo cy'umugongo amaranye iminsi. Tariki ya 27/01/2017, Ubuyobozi bwa Hoteli Chez Lando bushingiye kuri iyo baruwa ya Bwana Nshimiyeyezu Albin no ku ngingo ya kabiri (2) y'amasezerano y'umurimo yasinywe hagati y'impande zombi, mu gika cyayo cya gatatu (3) ivuga ko: Umukozi yiyemeje gukora imirimo yose ijyanye n'ubumenyi ashobora guhabwa n'umukoresha, bwandikiye Bwana Nshimiyeyezu Albin ibaruwa nimero Pers/19/DA/017 bumumenyesha ko ahinduriwe imirimo akaba guhera tariki ya 27/01/2017 azakora nka "*Serveur*" aho gukora nka "*Superviseur*". Na none ngo Bwana Nshimiyeyezu Albin yasinye ko yakiriye iyi baruwa kuwa 28/01/2017, Kuwa 03/02/2017 Avoka wa Bwana Nshimiyeyezu Albin yandikiye ubuyobozi bwa Hotel Chez Lando "*Warning letter*" avuga ko umukiliya we yarenganye kubera kumanurwa mu ntera, kuwa 04/02/2018 Avoka wa Hotel Chez Lando yashubije iyi baruwa asobanura ko kuva kuwa 28/01/2018 umukiriya we ariwe Nshimiyeyezu Albin ataragaruka ku kazi kandi isaba uyu mukozi kugaruka ku kazi tariki ya 06/02/2018 ku mwanya yahawe. Asoza asaba ko urubanza rwajuririwe rwahinduka, indishyi z'akababaro nizindi zitandukanye zatanzwe mu rwego rwa mbere zikavanwaho.

[10] Nshimiyeyezu Albin n'umwunganira babwiye urukiko ko umucamanza ntakosa yakoze kubera impamvu zikurikira :1. Umukoresha yamanuye umukozi muntera batabyumvikanyeho bityo rero bakumva umukozi adashobora guhindurirwa imirimo asubizwa hasi atariwe ubwe ubyemeye. 2.Ntanarimwe Nshimiyeyezu Albin yigeze yanga akazi yahawe n'ikimenyimenyi amaze kugahabwa yahise agatangira, ahubwo yabwiye umukoresha ko katazamworohera mugihe yari akirwaye, ko bishobotse yamuhindurira, ibi umukoresha yarabyanze biba ngombwa ko Albin ashaka uko ajya

kwivuza ndetse akize agaruka kukazi ari nabwo yahise amanurwa muntera. 3.Nyuma yo kugaragaza ko atishimiye kumanurwa muntera Albin yagarutse kukazi asanga hatanzwe amabwiriza y'uko atagomba kwinjira, yandikiye ADMIN email ntiyamusubiza ari nabwo yiyambaje umunyamategeko. 4.Umunyamategeko yabandikiye abasaba ko asubira kukazi yakoraga baranga, umukozi rero akurikije imanza zaciwe mbere ndetse n'amategeko agenga umurimo yumvise ko yarenganijwe niko kwiyambaza ubutabera. Asoza asaba ko urwo rubanza rwahamana agaciro karwo ahubwo hakiyongeraho n’ izindi ndishyi zirimo amafanga y'ikurikirana rubanza 1,000,000Frw, gushorwa mumanza kumaherere 1,000,000Frw, ndetse n’igihembo cya Avoka 1,000,000Frw.

UKO URUKIKO RUBIBONA

[11] Urukiko rubona uburanira Hotel Chez Lando impamvu avuga zirengagijwe n’urukiko rwisumbuye rwa Nyarugenge zashingiweho bahindurira umwanya w’umurimo Nshimiyeyezu Albin, ni uko umukozi ubwe yiyandikiye ko kubera uburwayi umwanya yari ariho atawushoboye, kuba kandi ingingo ya kabiri y’ amasezerano y’umurimo yasinywe hagati y’impande zombi ateganya ko “umukozi yiyemeje gukora imirimo yose ijyanye n’ubumenyi afite ashobora guhabwa n’umukoresha, no kuba yarasobanuriwe ko umushahara we utagabanijwe

[12] Urukiko rusanga muri izi mvugo z’uyu Munyamategeko, icyumvikana kitagirwaho impaka, ni uko nawe yemera ko Hotel Chez Lando yahinduriye Nshimiyeyezu Albin umwanya w’umurimo yari asanzwe akora.

[13] Mu rwego rw’Itegeko ryakoreshwaga icyo gihe, ingingo ya 21 y’Itegeko Nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, yateganyaga ko “amasezerano y’akazi ashobora guhindurwa akazi kagikomeza bisabwe na rumwe mu mpande zayagiranye”.

[14] Urukiko rubona dosiye y’urubanza igaragaza ko ibaruwa nimero Pers/19/DA/017 yanditswe n’Ubuyobozi bwa Hotel Chez Lando bumumenyesha Nshimiyeyezu Albin ko ahinduriwe imirimo akaba guhera tariki ya 27/01/2017 azakora nka “*Serveur*” aho gukora nka “*Superviseur*”.

[15] Urukiko rubona nyuma y’icyo cyemezo, Nshimiyeyezu Albin mu myitwarire ye yaragiye yerekana ko atishimiye umwanya yashizweho cyane ko yabonaga ko yamanuwe mu ntera. Iyo myitwarire yerekanwa n’inyandiko zitandukanye ziri muri dosiye yagiye yandikira umukoresha we na cyana cyane ibaruwa yanditswe n’umunyamategeko we aho yamenyeshaga Hotel Chez Lando ko ashaka gusubira mukazi ku myanya yakoragaho.

[16] Urukiko rusanga mu manza[1] zitandukanye zagiye zicibwa ndetse n’inyandiko zitandukanye z’abanyamategeko[2], zaragiye zihuriza ku ihame ry’uko iyo amasezerano y’umurimo ahinduwe n’uruhande rumwe, bigira abaciro iyo urundi ruhande rwabyemeye.

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[1] R SOC A 0072/15/HC/KIG, R SOC AA 0001 & 0002/16/CS Ntukamazina Jean Baptiste vs Prime Insurance Ltd (PRIME)

[2] Gilles Auzero et Emmanuel Dockes, Droit du travail, 30ème éd. Dalloz, Paris, 2016, p. 694. « Toute modification du contrat requiert l’accord des parties. C’est-à-dire, dans l’immense majorité des hypothèses, l’acceptation par le salarié de la modification proposée par l’employeur, et que celui-ci peut seulement proposer, jamais imposer…»

[17] Urukiko rusanga na none mu manza zitandukanye[3] ndetse n'inyandiko zitandukanye z'abanyamategeko[4] zemeza ko « guhindurirwa akazi ugashyirwa mu mwanya wo hasi urundi ruhande rutabyemeye, ari ugusesa amasezerano mu buryo bunyuranyije n'amategeko, ibyo bikaba bigomba gufatwa nko kwirukanwa ku kazi gukozwe n'umukoresha nta kosa ry'umukozi kabone n'ubwo uyu wa nyuma yakwanga gukora ku mwanya yahawe atabyemeye,kandi ko muri icyo gihe ukwirukanwa kuba kwabaye nta mpamvu, umukoresha akaba agomba kubitangira indishyi».

[18] Urukiko rusanga ko nyuma y'ibyo bisobanuro, byatanzwe ndetse n'ibyatanzwe mu rwego rwa mbere, byerekana ko ntacyo Urukiko rwisumbuye rwa Nyarugenge rwirengagije, bityo ko nta kosa rwakoze , ariyo mpamvu n'indishyi z'akababaro nizindi zitandukanye rwatanze, zishingiye kuri uko kwica amasezerano y'umurimo yari hagati y'impande zombi na cyane ko icyatanzwe ntabwo ari ikinyuranyo cyari hagati y'imishahara yagiye ahembwa kuri iyo myanya itandukanye kuko ataricyo cyari cyaregewe, ahubwo yahawe indishyi zishingiye kumushahara w'umwanya yariho atarawukurwaho . Bityo indishyi Hotel Chez Lando yasabye nta shingiro yazo.

- **Kubijyanye no kumenya niba hari izndi ndishyi Nshimiyeyezu Albin yahabwa**

[19] Nshimiyeyezu n'umwunganizi we basaba urukiko gutegeka Hotel Chez Lando kumwishyura amafanga y'ikurikirana rubanza 1,000,000Frw, amafaranga yo gushorwa mu manza ku maherere 1,000,000Frw, n'ay' igihembo cya Avoka 1,000,000Frw. Mu gihe uburanira Hotel Chez Lando asanga izo ndishyi zidakwiye.

UKO URUKIKO RUBIBONA

[20] Urukiko rubona mu ngingo ya 33 y'amabwiriza nimero 01/2014 y'Urugaga rw'Abavoka agena ibihembo mbonera by'abavoka. Iyo ngingo iteganya ko mu bujurire igihembo cya Avoka ari ½ cy'igihembo yahawe ku rwego rwa mbere.

[21] Urukiko rubona mu rwego rwa mbere Nshimiyeyezu Albin yarahawe amafaranga y'u Rwanda angana n'ibihumbi magana atanu [500 000frw] y'igihembo cy'avoka.

[22] Ku bijyanye n'indishyi n'igihembo cy'Avoka z'amafaranga ku rwego rw'ubujurire Nshimiyeyezu Albin asaba, rushingiye ku ngingo ya 258 y'Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshingwanwa cyangwa amasezerano iteganya ko «igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyirugukora ikosa rigikomokaho kuriha icyangiritse,» rusanga kubera ko ari Hotel Chez Lando mw'izina ry'umuyobozi wayo yajuriye , ubujurire bwayo bukaba nta shingiro bwahawe, no kuba iyo Hotel Chez Lando mw'izina ry'umuyobozi wayo itajurira Nshimiyeyezu Albin ataba yarafashe umwunganira, bibaye ngombwa ko agenerwa amafaranga ibihumbi magana atatu y'igihembo cy'Avoka n'ay'ikurikiranarubanza (300.000frw) yiyongera kuyatanzwe mu Rukiko rwisumbuye rwa Nyarugenge . Bityo ku zindi ndishyi zasabwe n'uregwa yamaze kuzihabwa mu rwego rwa mbere.

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[3] R SOC A 0072/15/HC/KIG, R SOC AA 0001 & 0002/16/CS Ntukamazina Jean Baptiste vs Prime Insurance Ltd (PRIME)

[4] Gilles Auzero et Emmanuel Dockes, ibidem, p.698. «Lorsque l'employeur impose unilatéralement une modification au contrat de travail, son comportement s'interprète comme une violation du contrat de travail……S'il cesse purement et simplement de travailler dans les conditions nouvelles que l'employeur prétend lui imposer, la rupture aux allures de démission sera …qualifiée de licenciement. L'employeur sera normalement condamné à lui payer une indemnité de licenciement, de préavis, et des dommages-intérêts pour licenciement sans cause réelle et sérieuse».)

III. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko ubujurire bwa Hotel Chez Lando nta shingiro bufite

[24] Rwemeje ko Ikirego kiregera kwiregura cya Nshimiyeyezu Albin gisaba indishyi,'igihembo cy'avocat n'amafaranga y'ikurikiranarubanza gifte ishingiro kuri bimwe.

[25] Rwemeje ko urubanza RSOC 00268/2017/TGI/NYGE rwaciwe kuwa 11/04/2018 n'urukiko rwisumbuye rwa Nyarugenge ruhamanye agaciro karwo hakiyongeraho amafaranga ibihumbi magana atatu (300.000frw) Hotel Chez Lando Ltd mw'izina ry'umuyobozi wayo igomba gusubiza Nshimiyeyezu Albin.

[26] Ruvuze ko amafaranga yatanzwe hagwatirizwa uru rubanza ahwanye n'ibyarukozwemo byose.

[27] Ruvuze ko ibyemejwe n'ibyategetswe byose muri uru rubanza, bigomba kuba byashyizwe mu bikorwa mu gihe uru rubanza ruzaba rutagishoboye kujuririrwa byemewe n'amategeko.