SANLAM AG PLc v NDISHUTSE N’ABANDI

[Rwanda URUKIKO RW’IKIRENGA - RS/INJUST/RC 00006/2023/SC (Hitiyaremye, P.J., Kalihangabo na Kazungu, J.) 05 Mata 2024]

Amategeko agenga imanza z’imbonezamubano – Indishyi z’ibangamirabukungu – Kugaragaza ko usaba indishyi yari atunzwe na nyakwigendera – Inshingano yo guhana ibibatunga ibaho gusa iyo usaba ibimutunga abikeneye, akaba agomba gutanga ibimenyetso by’uko akeneye ibimutunga kandi akagaragaza impamvu idasanzwe.

Amategeko agenga imanza z’imbonezamubano – Indishyi z’ibangamirabukungu – Ibimenyetso bigomba gutangwa - Icyemezo cyatanzwe n’Ubuyobozi bw’ibanze si cyo kimenyetso gihamya ko nyakwigendera yatangaga mu buryo buhoraho ibitunga ababyeyi be, igihe kidaherekejwe n’ibimenyetso bigizwe n’inyandiko zose zemeza ishingiro ry’indishyi zisabwa nk’impapuro zo kwa muganga zerekana niba umuntu afite ubumuga, bordereaux za banki zatangirwagaho amafaranga, messages za mobile money cyangwa ikindi kibazo kidasanzwe cyatuma atibeshaho.

Incamake y’ikibazo: Uru rubanza rukomoka ku mpanuka yabaye ikozwe na moto yari itwawe na Karangwa yataye igisate cy’umuhanda yagenderagamo igonga indi moto yari itwawe na Muhirwa ahita apfa. Ababyeyi be aribo Ndishutse na Nyirabwimana ndetse n’abavandimwe be bandikiye SANLAM AG PLc nk’umwishingizi basaba indishyi ariko ntibazumvikanaho bituma batanga ikirego mu Rukiko Rwisumbuye rwa Rusizi. Urukiko rwemeje ko abarega bahabwa indishyi zitandukanye zirimo n’indishyi z’imbangamirabukungu zahawe ababyeyi ba nyakwigendera kuko ariwe wari ubatunze. SANLAM AG PLc yajuriye icyo cyemezo mu Rukiko Rukuru ivuga ko indishyi z’imbangamirabukungu zahawe ababyeyi ba nyakwigendera zitari zikwiye kuko batabashije kugaragaza ikimenyetso cyerekana ko bari batunzwe na Muhirwa. Urukiko rwasanze ubujurire budafite ishingiro maze rugumishaho icyemezo cyafashwe n’Urukiko Rwisumbuye rwa Rusizi.

Sanlam AG PLc yaje kwiyambaza inzira z’akarengane maze urwo rubanza ruhabwa Urukiko rw’Ikirenga ngo rwongere kuburanishwa. Mu iburanisha ryarwo, hasuzumwe ikibazo cyo kumenya niba ababyeyi ba Muhirwa baragombaga kugenerwa indishyi z’ibangamirabukungu. SANLAM AG PLc ivuga ko Urukiko Rukuru rwemeje ko ababyeyi ba nyakwigendera bahabwa indishyi z’ibangamirabukungu rushingiye ku cyemezo cyatanzwe n’Umunyamabanga Nshingwabikorwa w’Akagari kivuga ko abo babyeyi bari mu zabukuru kandi ko bari batunzwe na Muhirwa ariko yo igasanga ibyo bidahagije, ko ahubwo hagombaga kugaragazwa ikimenyetso kigaragaza impamvu nyayo abo babyeyi batungwaga na nayakwigendera dore ko bari bagifite imyaka yo gukora kandi bo ubwabo baragaragaje ko bari abahinzi bityo bikaba binyuranye n’umurongo watanzwe n’uru rukiko ku bibazo nk’ibyo.

Abaregwa basobanura ko imirongo yatanzwe n’inkiko kuri iki kibazo idasobanura neza ikimenyetso kigomba kwerekana ko nyakwigendera yari atunze ababyeyi be kuko n’itegeko ubwaryo ritigeze risobanura ubwoko bw’ikimenyetso kigomba gutangwa. Bakomeza basobanura ko mu muco nyarwanda, ku bana n’ababyeyi babana mu rugo, hatabaho igitabo cyandikwamo amafunguro umwe agenera uwo babana ko ahubwo bifatwa gutyo ko umutunze iyo mubana kandi bikaba bigaragarira buri wese ko ari wowe ufite ubushobozi bwo gutanga ibitunga urugo. Bakomeza bashimangira ko indishyi z’ibangamirabukungu zatanzwe zagumaho kuko

nyakwigendera ari we wari utunze ababyeyi be nkuko byemejwe n'inzego z'ibanze kuko nta kazi bagiraga cyangwa ngo babe bafite ahandi bakura ibibatunga.

Incamake y'icyemezo: Icyemezo cyatanzwe n'Ubuyobozi bw'ibanze si cyo kimenyetso gihamya ko nyakwigendera yatangaga mu buryo buhoraho ibitunga ababyeyi be, igihe kidaherekejwe n'ibimenyetso bigizwe n'inyandiko zose zemeza ishingiro ry'indishyi zisabwa nk'impapuro zo kwa muganga zerekana niba umuntu afite ubumuga, bordereaux za banki zatangirwagaho amafaranga, messages za mobile money cyangwa ikindi kibazo kidasanzwe cyatuma atibeshaho, bityo indishyi z'ibangamirabukungu zikaba zitagomba gutangwa kuko nta kimenyetso abazisaba batanze kigaragaza ko bari batunzwe na nyakwigendera.

Ikirego cyo kuburanisha urubanza ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashingiweho:
Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 111, 121;
Itegeko N° 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 76;
Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri, ingingo ya 4, 9;
Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 22.

Imanza zifashishijwe:
RS/INJUST/RC00018/2022/SC, Niyonzima Leonidas n'abandi be na SANLAM AG Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 27/01/2022;
RS/INJUST/RC00021/2022/SC, Mukagatare Regine n'abandi na SANLAM AG Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 17/03/2023 igika cya 28;
RCAA0049/14/CS, Umuhoza Pacifique n'abandi na SANLAM AG Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016

Urubanza:

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku mpanuka yabaye ku wa 26/12/2020, ubwo mu Mudugudu wa Ruhinga, Akagari ka Kagatamu, Umurenge wa Bushenge, Akarere ka Nyamasheke, KARANGWA Joseph wari utwaye Moto Suzuki TF ifite plaque N° GPM 383 C yataye igisate yagombaga kugenderamo maze agonga moto TVS ifite plaque no RC 023 Y yari itwawe na Muhirwa Jean Paul ahita apfa.

[2] Ababyeyi ba Muhirwa Jean Paul (Nyakwigendera) aribo Ndishutse Samuel na Nyirabwimana Ildegarde hamwe n'abavandimwe be aribo Nyirarukundo Seraphine,

Nduwamungu Emmanuel, Nyirahabimana Jacqueline, Twagiramariya Consolate, Nkundwanabake Francine na Mukashyaka Judith, bashingiye ku kuba moto yateje impanuka yari ifite ubwishingizi muri SANLAM AG Plc, basabye iyo Sosiyete ko yakemura ikibazo mu bwumvikane ariko birananirana, bituma batanga ikirego mu Rukiko Rwisumbuye rwa Rusizi basaba ko rwategeka SANLAM AG Plc gutanga 19.500.00 Frw y'indishyi z'ibangamirabukungu, 1.620.000 Frw y'indishyi z'akababaro, 3.240.000 Frw y'indishyi z'ibangamirwa ku muco ku bavandimwe batandatu (6) ba Nyakwigendera, 227.512 Frw yakoreshejwe hashyingurwa Nyakwigendera, 500.000 Frw y'ikurikiranarubanza ndetse na 500.000 Frw y'igihembo cya Avoka.

[3] SANLAM AG Plc yireguye ivuga ko indishyi z'ibangamirabukungu zisabwa n'ababyeyi ba Nyakwigendera zitahabwa ishingiro kuko Nyakwigendera yapfuye ari ingaragu kandi bakaba batagaragaza ibimenyetso bihamya ko ari we wari ubatunze koko. Ivuga kandi ko igihe bageragezaga gukemura ikibazo mu bwumvikane, abaregera indishyi batagaragaje niba bemeye cyangwa bahakana indishyi SANLAM AG Plc yatangaga nk'uko biteganywa n'ingingo ya 9 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2001 ryerekeye kwishyura indishyi zatewe n'impanuka y'ibinyabiziga bigendesha moteri.

[4] Mu rubanza N° RC 00058/2021/TGI/RSZ rwaciwe ku wa 24/02/2022, Urukiko Rwisumbuye rwa Rusizi rwategetse ko SANLAM AG Plc igomba guha ababyeyi ba Nyakwigendera indishyi z'ibangamirabukungu zingana na 11.711.770 Frw; indishyi mpozamarira zingana na 810.000 Frw kuri buri wese, naho abavandimwe be uko ari batandatu (6) bagahabwa 540.000 Frw kuri buri wese; rwemeza ko SANLAM AG Plc isubiza 23.600 Frw yakoreshejwe hashyingurwa Muhirwa Jean Paul; rutegeka SANLAM AG Plc kwishyura abarega 500.000 Frw y'igihembo cya Avoka, yose hamwe akaba 17.095.370 Frw. Rwavuze kandi ko SANLAM AG Plc igomba kwishyura 20.000 Frw y'ingwate y'amagarama.

[5] SANLAM AG Plc yajuririye Urukiko Rukuru, Urugereko rwa Rusizi ivuga ko Urukiko Rwisumbuye rwa Rusizi rwageneye ababyeyi ba Nyakwigendera indishyi z'ibangamirabukungu mu buryo bunyuranyije n'amategeko kuko Muhirwa Jean Paul (Nyakwigendera) yapfuye ari ingaragu kandi ataratangira gutunga umuryango, isaba ko izo ndishyi zigomba kuvanwaho.

[6] Ndishutse Samuel na Nyirabwimana Ildegard (ababyeyi ba Nyakwigendera) bireguye bavuga ko ibisabwa na SANLAM AG Plc nta shingiro bifite kuko indishyi z'ibangamirabukungu Urukiko rwabageneye, rwazibahaye nk'ababyeyi ba Nyakwigendera bageze mu zabukuru batishoboye kandi bari basanzwe bafashwa n'umwana wabo, nk'uko byatangiwe ibimenyetso n'inzego z'ibanze z'aho batuye.

[7] Batanze kandi ubujurire bwuririye ku bundi basaba ko SANLAM AG Plc yategekwa kwishyura indishyi zo gutinda kubishyura amafaranga bagenewe; naho SANLAM AG Plc ikiregura ivuga ko itazishyura kuko ntacyo zishingiyeho.

[8] Mu rubanza N° RCA 00027/2022/HC/RSZ rwaciwe ku wa 22/02/2023, Urukiko Rukuru, Urugereko rwa Rusizi rwasanze:

i. 11.711.770 Frw y'indishyi z'ibangamirabukungu yagenewe ababyeyi ba Nyakwigendera yaratanzwe mu buryo bukurikije amategeko kuko Umunyamabanga Nshingwabikorwa w'Akagari ka Save abaregera indishyi batuyemo, yemeje ko ababyeyi

ba Nyakwigendera bari mu zabukuru kandi ko bari batunzwe na Nyakwigendera wakoraga akazi ko gutwara abantu kuri moto;

ii. Inyungu za 5% ku kwezi zibariwe ku ndishyi z'akababaro zitishyuwe zisabwa n'ababyeyi ndetse n'abavandimwe ba Nyakwigendera nta shingiro zifite kuko icyo kibazo kitagiweho impaka ku rwego rubanza, kandi hakaba nta n'itegeko cyangwa icyemezo cyahatiraga SANLAM AG Plc kurangiza urubanza rutaracibwa burundu;

iii. SANLAM AG Plc igomba kwishyura Ndishutse Samuel na Nyirabwimana Ildegard 500.000 Frw y'igihembo cya Avoka;

[9] Urukiko rwanzuye ko ubujurire bwatanzwe na SANLAM AG Plc nta shingiro bufite, rwemeza ko nta gihindutse ku mikirize y'urubanza N° RC 00058/2021/TGI/RSZ rwaciwe ku wa 24/02/2022 n'Urukiko Rwisumbuye rwa Rusizi usibye amafaranga y'igihembo cya Avoka angana na 500.000 Frw SANLAM AG Plc igomba gutanga ku rwego rw'ubujurire, rutegeka ko ingwate y'amagarama SANLAM AG Plc yatanze ijurira iherera mu Isanduku ya Leta.

[10] Ku wa 17/03/2023, SANLAM AG Plc yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza no RCA 00027/2022/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 22/02/2023, rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo, maze mu cyemezo N° 130/CJ/2023 cyo ku wa 26/09/2023, yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[11] Urubanza rwahamagajwe ku wa 06/03/2024 kugira ngo ruburanishwe, Urukiko rusanga ababuranyi bitabye, SANLAM AG Plc ihagarariwe na Me Niyondora Nsengiyumva naho Ndishutse Samuel, Nyirarukundo Seraphine, Nduwamungu Emmanuel, Nyirahabimana Jacqueline, Twagiramariya Consolate, Nkundwanabake Francine na Mukashyaka Judith bahagarariwe na Me Ndikumana Elisée, Urukiko rubanza gusuzuma ibijyanye n'icyemezo cy'uko umuntu yitabye Imana cyashyizwe muri dosiye kigaragaza ko Nyirabwimana Ildegard, nyina wa Muhirwa Jean Paul (Nyakwigendera) akaba yari umuburanyi (uregwa) muri uru rubanza yapfuye.

[12] Urukiko rwahaye ijambo Me Ndikumana Elisée avuga ko urubanza rwasubikwa kugira ngo abazungura baboneke nk'uko biteganywa n'ingingo ya 54 y'Itegeko ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura. Me Niyondora Nsengiyumva we avuga ko hakurikijwe ibiteganywa mu ngingo ya 121 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi hagomba kugaragazwa ugomba gukomeza urubanza, avuga ko, ashingiye ku gika cya mbere cy'ingingo ya 76 y'Itegeko ryerekeye imicungire y'umutungo w'abashyingiranywe, impanon'izungura iteganya uburyo izungura rikorwamo, asanga ugomba gukomeza urubanza ari Ndishutse Samuel umugabo wa Nyirabwimana Ildegard, uriho kandi uri mu rubanza.

[13] Urukiko rwarihereyeye rufata umwanzuro ukurikira:

a. "Nk'uko biteganywa n'ingingo ya 121, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko "Iyo iburanisha ry'urubanza ritarapfundikirwa, urukiko rukamenya ko habonetse inzitizi yo guhindura irangamimerere, kuva ku mirimo cyangwa urupfu rw'umuburanyi,

umuburanyi usigaye agaragariza urukiko abafite ububasha bwo kurukomeza rukabahamagara, rukurikije amategeko yerekeye ihamagara";

b. Hashingiwe ku ngingo ya 76, agace ka 1, y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko iyo umwe mu bashyingiranywe bafitanye amasezerano y'ivangamutungo rusange apfuye, usigaye yegukana umutungo wose akubahiriza inshingano yo kurera abana babo n'ab'uwapfuye bemewe n'amategeko;

c. Hashingiwe ku cyemezo cyo kuba warashyingiwe cyatanzwe ku wa 15/01/2021 n'Umurenge wa RUHARAMBUGA kigaragaza ko Nyirabwimana Ildegard yari yarasezeranye na Ndishutse Samuel mu mwaka wa 1970;

d. Hashingiwe ku Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igitabo cya gatanu cyerekeye imicungirey'umutungow'abashyingiranywe, impano n'izungura akaba ari ryo tegeko rya mbere rigena ibijyanye n'imicungire y'umutungo w'abashyingiranywe ryashyizweho mu Rwanda aho mu gika cya kabiri cy'ingingo ya 2 ryateganyaga ko igihe abashyingiranywe batahisemo uburyo bw'icungamutungo bafatwa nk'abasezeranye uburyo bw'ivangamutungo rusange;

e. Urukiko rumaze kubona ko Ndishutse Samuel na Nyirabwimana Ildegard basezeanye mu mwaka wa 1970, mbere y'uko itegeko rigenga imicungire y'umutungo w'abashyingiranywe rijyaho, ku bw'itegeko Nyirabwimana Ildegard ahita azungurwa n'umugabo we Ndishutse Samuel;

f. Bitewe n'uko Ndishutse Samuel ari umuburanyi muri uru rubanza nawe, Urukiko rwemeje ko agomba gukomeza urubanzarwasizwen'umugorewe.

[14] Urukiko rwasomeye ababuranyi icyemezo maze iburanisha rirakomeza hagibwa impaka ku bibazo bikurikira:

a. Kumenya niba ababyeyi ba Muhirwa Jean Paul (Nyakwigendera) baragombaga kugenerwa indishyi z'ibangamirabukungu;

b. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba ababyeyi ba Muhirwa Jean Paul (Nyakwigendera) baragombaga kugenerwa indishyi z'ibangamirabukungu

[15] Me Niyondora Nsengiyumva uhagarariye SANLAM AG Plc avuga ko Urukiko Rukuru, Urugereko rwa Rusizi rwemeje ko ababyeyi ba Muhirwa Jean Paul bagomba guhabwa indishyi z'ibangamirabukungu rushingiye gusa ku nyandiko yo ku wa 21/01/2021, yakozwe n'Umukuru w'Umudugudu wa Save witwa KARANGWA Théoneste, ikemezwa n'Ubuyobozi bw'Akagari ka Save. Avuga ko n'ubwo muri iyo nyandiko Ubuyobozi bw'Akagari ka Save bwemeje ko mbere y'urupfu rwa Muhirwa Jean Paul ari we wari utunze ababyeyi be bushingiye ku kuba bari bageze mu zabukuru ibi batabyemera, akaba ari yo mpamvu basabye ko urubanza rwasubirwamo ku mpamvu z'akarengane.

[16] Me Niyondora Nsengiyumva asobanura ko impamvu batemera ikimenyetso cy'inyandiko yatanzwe n'Umukuru w'Umudugudu ari uko ari nta kimenyetso na kimwe Umukuru w'Umudugudu ndetse n'uw'Akagari bashingiyeho bemeza ko Nyakwigendera yari asanzwe atunze ababyeyi be, kuko nta mpamvu n'imwe idasanzwe yari gutuma abatunga kandi bari bagifite imyaka yo gukora, ko ubwabo bitangiye ibyangombwa byerekana ko ari abahinzi. Avuga ko Umuyobozi w'Umudugudu yafashe icyemezo kitari mu bubasha bwe kandi kitunganiwe n'ibindi bimenyetso, cyane cyane ko ari we ndetse n'Umuyobozi w'Akagari badashobora kumenya uko buri muturage abayeho.

[17] Asobanura ko kuva ku rwego rwa mbere ababyeyi ba Nyakwigendera batigeze bagaragaza ko bari bakeneye ibibatunga cyangwa ngo bagaragaze ko Nyakwigendera yabibahaga nk'uko biteganywa n'ingingo ya 255 y'Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango mu gika cya 2[1], bityo ko kuba Urukiko Rukuru, Urugereko rwa Rusizi rwarafashe icyemezo rushingiye ku nyandiko yatanzwe n'Akagari ka Save asanga icyo kimenyetso kitaragombaga guhabwa agaciro.

[18] Asobanura ko ibi bihabanye n'umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza Soras AG Ltd yaburanagamo na Umuhoza Pacifique n'abandi[2], ndetse n'urwo Mukagatare Régine n'abandi baburanagamo na SANLAM AG Plc[3], aho rwavuze ko kugira ngo ibimenyetso bitangwa n'inzego z'ibanze bishingirweho mu kugena indishyi z'ibangamirabukungu, bigomba kuba biherekejwe n'ibindi bimenyetso byerekana ko nyakwigendera yari asanzwe atunze abasaba indishyi; urugero nka bordereaux za Banki z'aho yabahereye amafaranga, ubutumwa bwa Mobile Money bwerekana ko hari amafaranga yaboherereje, kwishyura ubukode n'ibindi.

[19] Asoza kuri iyi ngingo asaba ko nta ndishyi z'ibangamirabukungu zagombaga guhabwa ababyeyi ba Nyakwigendera kuko batujuje ibiteganywa n'ingingo ya 22[4] y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, bityo ko Ndishutse Samuel agomba gutegekwa gusubiza SANLAM AG Plc 11.711.770 Frw y'indishyi z'ibangamirabukungu we n'umugore we Nyirabwimana Ildegarde bahawe harangizwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane.

[20] Me Ndikumana Elisée uburanira Ndishutse Samuel na bagenzi be yireguye avuga ko ibyemezo byafatiwe mu manza zagaragajwe na SANLAM AG Plc bitakemuye ikibazo nyirizina mu mizi ku buryo izindi nkiko zabyifashisha, agasanga kugendera ku murongo wafashwe mu rubanza runaka ubwabyo binyuranya n'ihame ry'ubwigenge bw'umucamanza. Avuga ko izo manza zitagaragaza ubwoko bw'ikimenyetso kiba gikenewe ku buryo ari cyo cyatangwa mu manza ziburanwamo ikibazo gisa nk'ikiri muri uru rubanza; urugero niba icyo kimenyetso ari ikaye izajya yandikwamo buri munsi ibyo ugize umuryango yahaye undi bose bakabisinyira

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[1] Iyo ngingo iteganya ko "umwana agomba guha agaciro ababyeyi be, kububaha no kubaha ibibatunga igihe babikeneye".
[2] Reba urubanza N° RCAA 0049/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016, haburana Soras AG Ltd na Umuhoza Pacifique n'abandi, igika cya 19.
[3] Reba urubanza N° RS/INJUST/RC 00021/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 17/03/2023, haburana Mukagatare Régine n'abandi yaburanaga na Sanlam AG Plc, igika cya 29 na 35.
[4] Iyo ngingo iteganya ko: "Abafite uburenganzira ku buryo byumvikana ko bari batunzwen'uwahohotewe ari bo bonyine bashoboraguhabwa indishyi."

cyangwa niba ari amasezerano runaka agomba kuba hagati y'izo mpande zombi. Agaragaza ko igitekerezo nyamukuru kiri muri izo manza ari uko n'umwana wujuje imyaka y'ubukure ubana n'ababyeyi be bidakwiye kwemerwa ko aribo bamutunze.

[21] Avuga ko n'ubwo yemera ko abagenerwa indishyi z'ibangamirabukungu bagomba kubanza kugaragaza ko bari batunzwe na Nyakwigendera, asanga atari ngombwa kubanza kugaragaza isano y'amaraso cyangwa y'ugushyingiranwa wari ufitanye na Nyakwigendera; ahubwo ko icy'ibanze ari ukumenya ikimenyetso cyatangwa cyerekana ko Nyakwigendera yari atunze abaregera indishyi kuko haba mu mategeko ndetse no mu mateka agenga ibijyanye no kwishyura ibyangijwe n'impanuka ntaho icyo kimenyetso giteganyijwe.

[22] Avuga kandi ko ubusanzwe mu muco nyarwanda nk'imwe mu isoko (source) y'amategeko, iyo uha umuntu amafunguro nta gitabo cy'umuryango byandikwamo, ahubwo bifatwa gutyo ko umutunze mu gihe mubana mu nzu imwe kandi bigaragarira buri wese ko ari wowe ufite ubushobozi kurusha abo ufasha. Yatanze urugero ko ari kimwe nk'uko hagati y'umugore n'umugabo ntaho babanza kujya kwandikisha ko umwe muri bo agenera undi amafunguro ya buri munsi, ko ahubwo bifatwa gutyo, kabone n'ubwo uwitwa ko afashwa yaba arusha ubushobozi umufasha.

[23] Avuga ko ku bijyanye n'iki kibazo, Muhirwa Jean Paul yabanaga n'ababyeyi be mu nzu imwe kandi nta kazi ka buri munsi bari bafite kabaha ibibatunga, ahubwo ko umwana wabo ari we wari ubatunze kuko yakoraga akazi ko gutwara abantu kuri moto, bityo amafaranga yakoreraga akaba ari yo yamutungaga ubwe ndetse n'ababyeyi be.

[24] Me Ndikumana Elisée asoza kuri iyi ngingo avuga ko ikimenyetso cy'inzego z'ibanze cyakoreshejwe mu manza gishimangira ko ababyeyi ba Muhirwa Jean Paul batari bafite ubushobozi bwo kwitunga kuko basangiriraga hamwe; ibyo kandi bikaba byari bizwi n'ubuyobozi, bityo ko kuba ababyeyi be nta kazi cyangwa indi mitungo bafite ku buryo yabatunga ubwabo, asanga bihagije ngo uru Rukiko rwemeze ko Muhirwa Jean Paul ari we wari utunze ababyeyi be.

[25] Yasabye kandi ko Urukiko rw'Ikirenga rukwiye gutera intambwe rugatanga ingero zifatika z'ibimenyetso byakwemerwa mu nkiko mu kugaragaza ko umuntu ari we utunze undi mu gihe babana mu nzu imwe, maze ibyo bimenyetso Urukiko rwaba rwemeje rwasanga nta biri muri uru rubanza ruburanishwa, rukabaha umwanya maze bakazabishyikiriza Urukiko mu gihe bashoboye kubibona.

[26] Ku birebana n'amafaranga y'indishyi z'ibangamirabukungu SANLAM AG Plc isaba gusubizwa, Me Ndikumana Elisée avuga ko ntazo igomba guhabwa kubera ko zatanzwe hashingiwe ku cyemezo cy'urukiko, bityo Ndishutse Samuel akaba nta kosa yakoze ku buryo yategekwa kuzisubiza.

UKO URUKIKO RUBIBONA

[27] Ingingo ya 22, igika cya mbere, y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, iteganya ko: "Ibangamirabukungu rikorewe abafite uburenganzira bitewe n'urupfu rw'umuntu ritangirwa indishyi hakurikijwe umusaruro uva ku murimo umuntu atahana nk'uko

ugenwa n'ingingo ya 4[5] y'Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye itangwary'indishyi ku bahohotewebiturutse ku mpanuka zo ku mubiri zitewe n'ibinyabiziga. Abafite uburenganzira ku buryo byumvikana ko bari batunzwe n'uwahohotewe ni bo bonyine bashobora guhabwa indishyi".

[28] Ingingo ya 9 y'Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka yo iteganya ko: "mbere yo gutangira kuregera indishyi mu nkiko, uwangirijwe cyangwa abamuhagarariye bemewe n'amategeko, cyangwa iyo yapfuye, abafite uburenganzira ku bintu bye, bishyuza indishyi uwishingiye uwateje impanuka, cyangwa byaba ngombwa Ikigega cy'ingoboka ku binyabiziga bigenzwa na moteri bigendera ku butaka, binyuze ku bwumvikane, bakamwerekainyandikozose zemezaishingiro ry'ibyo basaba (…)

[29] Izi ngingo zimaze kuvugwa ziragaragaza ko kugira ngo usaba indishyi z'ibangamirabukungu azihabwe agomba kuba yari atunzwe n'uwahohotewe (nyakwigendera) ku buryo bwumvikana kandi bakabitangira ibimenyetso bigizwe n'inyandiko zibigaragaza. Ikibazo kigomba gusuzumwa muri uru rubanza kijyanye n'ikimenyetso kigomba kugaragaza ko Ndishutse Samuel na Nyirabwimana Ildegard waje gupfa bari batunzwe n'uwahohotewe. Muri uru rubanza, ikimenyetso cyashingiweho akaba ari cyo kigibwaho impaka ni icyemezo cyatanzwe n'Umukuru w'Umudugudu wa Save ku wa 26/01/2021 kikemezwa n'Umukuru w'Akagari ka Save, SANLAM AG Plc ivuga ko kidahagije ngo gishingirweho igihe kidashyigikiwe n'ibindi bimenyetso.

[30] Nubwo amategeko yavuzwe haruguru abigena gutyo, ntabwo agaragaza uburyo ndetse n'inyandiko zigomba gutangwa nk'ikimenyetso gishimangira ibisabwa. Gusa mu manza zitandukanye, Urukiko rw'Ikirenga rwagiye rubitangaho umurongo mu buryo bukurikira:

a. Ku bijyanye no kuba umuntu yari atunzwe na nyakwigendera: inshingano yo guhana ibibatunga ibaho gusa iyo usaba ibimutunga abikeneye, akaba agomba gutanga ibimenyetso by'uko akeneye ibimutunga k[6]andi akagaragaza impamvu idasanzwe[7].

b. Ku bijyanye n'ubwoko bw'ibimenyetso bigomba gutangwa: icyemezo cyatanzwe n'Ubuyobozi bw'ibanze nk'Umurenge si cyo kimenyetso gihamya ko abaregwa bahabwaga mu buryo buhoraho (régulièrement) ibibatunga na nyakwigendera, igihe kidaherekejwe n'ibimenyetso bigizwe n'inyandiko zose zemeza ishingiro ry'ibyo abaregwa basaba[8].

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[5] Iyi ngingo ya 4 y'Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye itangwa ry'indishyi ku bahohotewe biturutse ku mpanuka zo ku mubiri zitewe n'ibinyabiziga igena uburyo bwo kubara indishyi zigenerwa uwangirijwe iyo impanuka yamuteye ubumuga bumutesha akazi ku buryo budahoraho bikamutesha gufata umushahara we wose cyangwa igice cyawo.

[6] Urubanza RS/INJUST/RC00018/2022/SC rwaburanwagamo Niyonzima Leonidas na bagenzi be baburana na SANLAM AG Plc rwaciwe ku wa 27/01/2022 igika cya 20.

[7] Urubanza RS/INJUST/RC00021/2022/SC rwaburanwagamo Mukagatare Regine na bagenzi be baburana na SANLAM AG Plc rwaciwe ku wa 17/03/2023 igika cya 28.

[8] Urubaza RCAA0049/14/CS rwaburanwagamo Umuhoza Pacifique na bagenzi be baburana na SANLAM AG Plc rwaciwe ku wa 25/11/2016 igika cya 19 na 20.

c. Bimwe mu bimenyetso bifatika ni nk'impapuro zo kwa muganga zerekana niba umuntu afite ubumuga, bordereaux za banki zatangirwagaho amafaranga, messages za mobile money[9] cyangwa ikindi kibazo kidasanzwe cyatuma atibeshaho[10].

[31] Ikimenyetso kigaragara muri uru rubanza ni icyemezo cyatanzwe n'Umukuru w'Umudugudu cyashimangiwe n'Umukuru w'Akagari kitagira ibindi bimenyetso bigaragaza impamvu ikomeye yatumaga Muhirwa Jean Paul atunga ababyeyi be Ndishutse Samuel na Nyirabwimana Ildegard, bikaba bigoye kwemeza ko koko yari abatunze n'impamvu ari we wari ubatunze. Urukiko rurasanga Umucamanza w'Urukiko Rukuru yarageneye Ndishutse Samuel na Nyirabwimana Ildegard indishyi z'ibangamirabukungu nta nyandiko zibigaragaza nk'uko biteganywa n'amategeko mu ngingo ya 9 y'Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri, ndetse nta n'icyemeza ko koko bari batunzwe na nyakwigendera nk'uko biteganywa n'ingingo ya 22 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[32] Ku bivugwa na Me Ndikumana Elisée ko Urukiko rwatera intambwe rukerekana ibimenyetso bikenewe kugira ngo hagaragazwe ko usaba ndishyi yari atunzwe koko n'uwahohotewe, Urukiko rusanga mu manza zavuzwe haruguru haratanzwemo ingero zihagije kandi zifatika zafasha ubikeneye kumenya ubwoko bw'ibimenyetso yashaka, ku buryo nabo bari kubiheraho bamenya ibyo bagombaga kuzanira urukiko bashingiye ku mpamvu zidasanzwe zari gutuma Muhirwa Jean Paul aba ari we utunze ababyeyi be.

[33] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga ababyeyi ba Muhirwa Jean Paul (Nyakwigendera) ari bo Ndishutse Samuel na Nyirabwimana Ildegard bataragombaga kugenerwa indishyi z'ibangamirabukungu, bityo Ndishutse Samuel akaba agomba gusubiza SANLAM AG Plc 11.711.770 Frw y'indishyi z'ibangamirabukungu we n'umugore we Nyirabwimana Ildegarde bahawe harangizwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane.

[34] Ku bivugwa na Me Ndikumana Elisée ko Ndishutse Samuel adakwiye gusubiza indishyi z'ibangamirabukungu yahawe we n'umugore we Nyirabwimana Ildegarde ngo kuko zatanzwe hashingiwe ku cyemezo cy'urukiko, Urukiko rurasanga nta shingiro bifite kuko icyo SANLAM isaba si indishyi nk'uko uhagarariye Ndishutse Samuel ashaka kubyumvikanisha, ahubwo ni ugusubizwa amafaranga arebana n'indishyi z'ibangamirabukungu bahawe batagombaga kuyahabwa nk'uko byemejwe n'uru Rukiko.

II. 2. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza

[35] Me Niyondora Nsengiyumva uhagarariye SANLAM AG Plc avuga ko Ndishutse Samuel na Nyirabwimana Ildegard batagaragarije inkiko zabanje ibimenyetso bashingiraho basaba indishyi z'ibangamirabukungu, bikaba ari ugushora sosiyete aburanira mu manza, babaka babisabira amafaranga y'ikurikiranarubanza ndetse n'ay'igihembo cya Avoka ku rwego rw'ubujurire angana na 1.000.000 Frw na 1.000.000 Frw kuri uru rwego.

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[9] Ibid
[10] Ibidem

[36] Me Ndikumana Elisée avuga ko nta ndishyi Ndishutse Samuel aburanira yacibwa kuko urega yagaragaje ko akarengane yagatewe n'Urukiko rwahaye agaciro ikimenyetso rwashyikirijwe, bityo ko kuba SANLAM AG Plc itaragaragaje ikosa abaregera indishyi bakoze n'indishyi isaba muri uru rubanza ntizikwiye guhabwa ishingiro. Avuga ahubwo ko aribo bakwiye kuzigenerwa, bagahabwa 2.000.000 Frw y'igihembo cya Avoka.

[37] Asoza avuga ko SANLAM AG Plc yategekwa kwishyura Nyirarukundo Seraphine, Nduwamungu Emmanuel, Nyirahabimana Jacqueline, Twagiramariya Consolée, Nkundwanabake Francine na Mukashyaka Judith 200.000 Frw y'ikurikiranarubanza kuri buri wese na 500.000 Frw y'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[38] 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 nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[39] Ku bijyanye n'indishyi zisabwa muri uru rubanza, Urukiko rurasanga ibivugwa muri iyi ngingo, bigaragaza ko umuburanyi watsinzwe urubanza agomba kwishyura uruhande rwatsinze indishyi z'ikurikiranarubanza kuko hari ibyo ruba rwaratakaje rukurikirana urubanza birimo igihembo cy'Avoka, n'andi mafaranga y'ikurikiranarubanza.

[40] Urukiko rurasanga Ndishutse Samuel na bagenzi be batsindwa uru rubanza bakaba nta n'indishyi bakwiye guhabwa. Rurasanga ahubwo indishyi zikwiye kugenerwa SANLAM AG Plc kubera ko ariyo itsinze urubanza kandi bikaba bigaragara ko yagombye gushaka Avoka wo kuyiburanira no gukurikirana urubanza. Kubera ko ariko 1.000.000 Frw isaba mu bujurire na 1.000.000 Frw isaba kuri uru rwego ari menshi kandi ikaba itagaragaza ko ari yo yakoresheje, mu bushishozi bw'Urukiko igenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza kuri buri rwego, yose hamwe akaba 1,600,000 Frw.

ICYEMEZO CY'URUKIKO.

[41] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 00027/2022/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 22/02/2023, gifite ishingiro.

[42] Rwemeje ko urubanza RCA 00027/2022/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 22/02/2023 ruhindutse ku bijyanye n'indishyi z'ibangamirabukungu zahawe Ndishutse Samuel na Nyirabwimana Ildegard.

[43] Rutegetse Ndishutse Samuel gusubiza amafaranga angana na 11.711.770 Frw y'indishyi z'imbangamirabukungu we na Nyirabwimana Ildegard bahawe na SANLAM AG Plc.

[44] Rutegetse Ndishutse Samuel guha SANLAM AG Plc 1,000.000 Frw y'igihembo cya Avoka na 600.000 y'ikurikiranarubanza, yose hamwe akaba 1.600.000 Frw.