MITIMITUJE v. BANKI YA KIGALI Ltd

[Rwanda URUKIKO RW'IKIRENGA – RSOCAA 0010/12/CS (Mutashya, P.J., Rugabirwa na Gakwaya, J.) 13 Kamena 2014]

Amategeko agenga umurimo – Gusesa amasezerano y'umurimo – Kwirukanwa nta mpamvu – Iyo mu igabanya ry'abakozi mu kigo kubera ingorane z'ubukungu cyangwa guhindura ikoranabuhanga hatabaye urutonde rukurije ubushobozi, amashuri, uburambe muri icyo kigo n'umubare w'abo umukozi atunze ku buryo bwemewe n'amategeko kandi urwo rutonde rutamenyeshejwe umuyobozi w'umurimo mu nyandiko, bifatwa ko umukozi wasezerewe yirukanywe nta mpamvu – Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 1(21) n'iya 34.

Amategeko agenga umurimo – Umushahara mpuzandengo – Ibarwa ry'umushahara mpuzandengo w'ukwezi – Umushahara mpuzandengo w'ukwezi uboneka bagabanya na 12 igiteranyo cy'amafaranga yose umukozi yahembwe mu mezi 12 ya nyuma y'akazi hatabariwemo amafaranga ahabwa umukozi mu rwego rwo kumworohereza akazi, ku bw'ibyo amafaranga y'urwunguko, ay'amashimwe, ayo kujya mu kiruhuko ntabarirwa mu mushahara mpuzandengo kuko atari umushahara umukozi ahembwa buri kwezi – Amafaranga y'ubwiteganyirize bw'abakozi mu Rwanda hamwe nay'ubwiteganyirize bw'ingoboka ntabarirwa mu mushahara mpuzandengo kuko ari amafaranga umukozi aba yarazigamiwe – Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 35 n'iya 77.

Amategeko agenga umurimo – Indishyi zikomoka ku iseswa ry'amasezerano y'umurimo – Ibarwa ry'izo ndishyi – Iseswa ryose ry'amasezerano y'akazi rinyuranyije n'amategeko rishobora gutuma hatangwa indishyi z'akababaro – Iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi z'akababaro ntizishobora kurenga umushahara we w'amezi icyenda (9) – Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 33(3).

Amategeko agenga umurimo – Integuza – Ibarwa ry'imperekeza – Iyo bibaye ngombwa gusesa amasezerano y'akazi hatanzwe integuza, igihe cy'integuza kigomba kungana n'ukwezi kumwe iyo umukozi yakoze mu gihe cy'umwaka umwe cyangwa kirenze – Umukoresha agomba guha imperekeza zo gusezererwa ku kazi cyangwa gusesa amasezerano umukozi umaze nibura amezi cumi n'abiri (12) akora nta guhagarika – Umubare w'amafaranga y'imperekeza z'isezererwa, ntushobora kujya na rimwe munsi y'inshuro eshatu (3) z'umushahara mpuzandengo w'ukwezi ku mukozi ufite uburambe buri hejuru y'imyaka cumi (10) kugeza kuri cumi n'itanu (15) mu kigo – Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 27(2).

Amategeko agenga umurimo – Ikiruhuko cy'akazi – Amafaranga ahabwa umukozi ugiye mu kiruhuko – Iyo umukozi agiye mu kiruhuko, umukoresha agomba kumuha amafaranga angana n'umushahara mpuzandengo we ubarwa mu mezi cumi n'abiri (12) ashize n'ibindi afitiye uburenganzira hakurikijwe amasezerano yakoranye n'umukoresha we – Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 55.

Amategeko agenga umurimo – Icyemezo cy'imirimo yakozwe – Iyo igihe cy'amasezerano y'akazi kirangiye, umukoresha agomba guha umukozi umushahara we wa nyuma hamwe n'icyemezo ko yamukoreye – Icyo cyemezo kigaragaza ko yamukoreye, itariki yatangiriyeho akazi, itariki akazi karangiriyeho n'akazi yakoraga; iyo umukoresha yanze gutanga iki cyemezo cyangwa ntashyiremo kimwe mu bisabwa, ashobora gusabwa kwishyura indishyi

z'akababaro zagenwa n'urukiko rubifitiye ububasha – Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 38.

Amategeko agenga imiburanishirize y'imanza z'umurimo – Imbibi z'ikiburanwa – Amafaranga y'ikurikiranarbanza n'igihembo cy'avoka – Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragazwa n'inyandiko itangiza ikirego n'imyanzuro yo kwiregura – Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine – Kuba haribyo umuburanyi yatsindiye mu rubanza agenewe mu bushishozi bw'Urukiko amafaranga y'ikurikiranarubanza n'igihembo cy'avoka – Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 4 n'iya 7.

Incamake y'ikibazo: Mitimituje yagiranye na Banki ya Kigali Ltd amasezerano y'umurimo y'igihe kitazwi guhera kuwa 26/09/1995, hanyuma Banki ya Kigali Ltd iyasesa kuwa 23/10/2009 ivuga ko Mitimituje adafite ubumenyi n'ubushobozi ku kazi bijyanye n'imirimo mishya yemejwe mu gihe cy'ivugururwa ryayo.

Nyuma y'uko impande zombi zinaniwe kumvikana imbere y'umugenzuzi w'umurimo, Mitimituje yareze Banki ya Kigali Ltd mu Rukiko Rwisumbuye rwa Nyarugengeasaba guhabwa indishyi zinyuranye zigizwe n'izo kwirukanwa nta mpamvu, imperekeza, integuza, amashimwe y'umwaka wa 2009, ay'urwunguko rw'umwaka wa 2009, ayo kujya muri kiruhuko cy'umwaka wa 2009 hamwe n'ikinyuranyo cyayo cy'umwaka wa 2008, indishyi z'uko yahawe icyemezo cy'umukoresha kituzuye, ay'ikurikiranarubanza n'igihembo cy'avoka.

Urwo rukiko rwemeje ko Mitimituje yirukanwe mu buryo bunyuranyije n'amategeko kuko yamwirukanye itagaragaje impamyabushobozi yasabwaga igihe cy'ivugururwa ryayo, ko imbonerahamwe y'imirimo mishya yashingiyeho imwirukana yabonetse kuwa 27/10/2009, nyamara yararangije kumusezerera ku kazi kuwa 23/10/2009, ko kandi yamwirukanye itabanje gutondekanya abakozi bayo hashingiwe ku bushobozi, ku murimo, amashuri, uburambe ku kazi n'umubare w'abo atunze; ku bw'ibyo Banki ya Kigali ikaba igomba kubimuhera indishyi havuyemo amafaranga yamuhaye imwirukana kandi izo ndishyi zikabarirwa ku mushahara mpuzandengo ugizwe n'umushahara fatizo hiyongereyeho amafaranga y'icumbi, ingendo, gufasha umuryango, ayo gucunga agasanduku (indemnité de caisse), ay'ubwiteganyirize bw'abakozi, ubwiteganirize bw'ingoboka hamwe nayo kujya mu kiruhuko ariko ikamuha ayo mafaranga ibanje kuyavanamo umusoro ku nyungu.

Banki ya Kigali Ltd yajuririye Urukiko Rukuru, maze rwo rwemeza ko itirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko kuko itari kumushyira ku rutonde rw'abakozi mu gihe atari afite impamyabushobozi yasabwaga igihe cy'ivugururwa ryayo, kandi rutegeka kuvanaho indishyi yari yagenewe mbere uretse indishyi z'uko yamuhaye icyemezo cy'umukoresha kituzuye, hiyongereyeho amafaranga atarajuririwe agizwe n'amafaranga yo kujya mu kiruhuko, ikurikiranarubanza n'igihembo cy'Avoka.

Urwo rukiko rwasobanuye ko umushahara ugomba gushingirwaho ugizwe n'umushahara-fatizo, amafaranga y'icumbi, ay'ingendo, aya "indemnité de caisse", ayo gufasha umuryango, ko amafaranga y'ingendo atakagombye kubarirwa muri uwo mushahara, ariko ko agomba kuwubarirwamo kuko ari umukoresha we washatse ko abarirwamo, ariko ko amafaranga y'ubwiteganyirize bw'abakozi, ay'ubwiteganyirize bw'ingoboka n'ayo kujya mu kiruhuko atabarirwa mu mushahara mpuzandengo kuko ari ayorohereza umukozi mu kazi ke.

Mitimituje yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwagombaga kwemeza ko Banki ya Kigali Ltd yamwirukanye ku kazi mu buryo bunyuranyije n'amategeko,

rukayitegeka kumuha indishyi zinyuranye zibariwe ku mushahara mpuzandengo unakubiyemo amafaranga y'urwunguko, ay'amashimwe, ahabwa umukozi igihe agiye mu kiruhuko, ay'ubwiteganyirize bw'abakozi n'ay'ubwiteganyirize bw'ingoboka, ariko ko mu gihe ayo mafaranga atabariwe muri uwo mushahara, yayahabwa ukwayo nk'amafaranga afitiye uburenganzira.

Banki ya Kigali Ltd yo ikavuga ko itirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko, ko rero nta ndishyi ikwiye kumuha, ko kandi yamuhaye amafaranga y'imperekeza igihe yamusezereraga ku kazi, ariko ko mu gihe uru Rukiko rubibonye ukundi, rwamubarira indishyi rushingiye ku mushahara wemejwe n'Urukiko Rukuru.

Incamake y'icyemezo: 1. Bifatwa nko kwirukanwa nta mpamvu igihe umukoresha asezereye umukozi umwe cyangwa benshi bitewe no kuvugurura imikorere y'ikigo kubera ingorane z'ubukungu cyangwa guhindura ikoranabuhanga,iyo mu kugabanya abakozi mu kigo hatabaye itondeka rikurije ubushobozi, amashuri, uburambe muri icyo kigo n'umubare w'abo umukozi atunze ku buryo bwemewe n'amategeko kandi urwo rutonde ntirumenyeshwe umuyobozi w'umurimo mu nyandiko.

2. Umushahara mpuzandengo w'ukwezi uboneka bagabanya na 12 igiteranyo cy'amafaranga yose umukozi yahembwe mu mezi 12 ya nyuma y'akazi hatabariwemo amafaranga ahabwa umukozi mu rwego rwo kumworohereza akazi. Ku bw'ibyo amafaranga y'urwunguko, ay'amashimwe, ayo kujya mu kiruhuko ntabarirwa mu mushahara mpuzandengo kuko atari umushahara umukozi ahembwa buri kwezi ko ahubwo ayahembwa rimwe mu mwaka mu gihe yahawe amanota agaragaza ko yakoze neza no mu gihe Banki ya Kigali yungutse; ikindi kandi amafaranga y'ubwiteganyirize bw'abakozi mu Rwanda hamwe nay'ubwiteganyirize bw'ingoboka ntabarirwa mu mushahara mpuzandengo kuko ari amafaranga umukozi aba yarazigamiwe.

3. Iseswa ryose ry'amasezerano y'akazi rinyuranyije n'amategeko rishobora gutuma hatangwa indishyi z'akababaro. Iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi z'akababaro ntizishobora kurenga umushahara we w'amezi icyenda (9)" niyo mpamvu Mitimituje agenewe amezi atandatu (6).

4. Iyo bibaye ngombwa gusesa amasezerano y'akazi hatanzwe integuza, igihe cy'integuza kigomba kungana n'ukwezi kumwe iyo umukozi yakoze mu gihe cy'umwaka umwe cyangwa kirenze.nanone kandi Umukoresha agomba guha imperekeza zo gusezererwa ku kazi cyangwa gusesa amasezerano umukozi umaze nibura amezi cumi n'abiri (12) akora nta guhagarika. Umubare w'amafaranga y'imperekeza z'isezererwa ntushobora kujya na rimwe munsi y'inshuro eshatu (3) z'umushahara mpuzandengo w'ukwezi ku mukozi ufite uburambe buri hejuru y'imyaka cumi (10) kugeza kuri cumi n'itanu (15) mu kigo ariko rero ayo mafaranga Mitimituje ntiyayagenerwa kuko yayahawe igihe yasezererwaga ku kazi.

5. Iyo umukozi agiye mu kiruhuko, umukoresha agomba kumuha amafaranga angana n'umushahara mpuzandengo we ubarwa mu mezi cumi n'abiri (12) ashize n'ibindi afitiye uburenganzira hakurikijwe amasezerano yakoranye n'umukoresha we, bityo Banki ya Kigali Ltd ikaba igomba kwishyura Mitimituje ayo mafaranga ikuyemo ayo yamuhaye imusezerera naho kubijyanye n'amafaranga y'ikiruhuko ya 2009 Mitimituje ntakwiye kuyahabwa kuko yasezerewe uwo mwaka utararangira.

6. Amafaranga y'ishimwe (gratification) ashobora gutangwa rimwe mu mwaka, ariko umukoresha ntategetswe kuyatanga, naho amafaranga y'urwunguko (prime de bilan) ashobora gutangwa nibura mu kwezi kwa gatatu k'umwaka ukurikiyeho akabarwa

hashingiwe k'urwunguko Banki ya Kigali Ltd yagize mu mwaka ushize, kubwibyo rero Mitimituje akaba atagenerwa ayo mafaranga kuko atayafiteho uburenganzira ndakuka.

7. Iyo igihe cy'amasezerano y'akazi kirangiye, umukoresha agomba guha umukozi umushahara we wa nyuma hamwe n'icyemezo cyerekana ko yamukoreye. Icyo cyemezo kigaragaza ko yamukoreye, itariki yatangiriyeho akazi, itariki akazi karangiriyeho n'akazi yakoraga. Iyo umukoresha yanze gutanga iki cyemezo cyangwa ntashyiremo kimwe mu bisabwa, ashobora gusabwa kwishyura indishyi z'akababaro zagenwa n'urukiko.

8. Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragazwa n'inyandiko itangiza ikirego n'imyanzuro yo kwiregura kandi Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine ku icyemezo cyo kuvana umusoro ku nyungu ku ndishyi Mitimituje yagenewe n'Urukiko kigomba kuvaho cyane ko ayo mafaranga ataba ari umushahara, ahubwo ari indishyi zagenwe n'Urukiko.

9. Kuba haribyo umuburanyi yatsindiye mu rubanza, Urukiko rusanga akwiye kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cy'avoka agenwe mu bushishozi bwarwo.

Ubujurire bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye k'uregwa.

Amategeko yashingiweho:
Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 21, 27(2), 29, 33(3), 34, 35, 38, 55 n'iya 77.
Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 4 n'iya 7.

Nta manza zifashishijwe.

Ibitekerezo by'abahanga
Jean-Claude Javilier, Droit du Travail, 6ème édition, 1998, Paris, LDGJ, p.303.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 26/09/1995, Mitimituje Gaëtan yagiranye na Banki ya Kigali Ltd amasezerano y'umurimo y'igihe kitazwi. Kuwa 23/10/2009, iyo Banki yasheshe ayo masezerano kubera ko Mitimituje Gaëtan adafite ubumenyi n'ubushobozi ku kazi bijyanye n'imirimo mishya yemejwe igihe cy'ivugururwa ryayo.

[2] Nyuma y'uko ababuranyi b'impande zombi batumvikaniye imbere y'Umugenzuzi w'Umurimo, Mitimituje Gaëtan yareze Banki ya Kigali Ltd mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko yamuha indishyi zinyuranye zavuzwe mu kirego cyavuzwe haruguru, rutegeka Banki ya Kigali Ltd kumuha 3.043.458Frw y'indishyi z'uko yamwirukanye ku kazi nta mpamvu, 2.028.972Frw y'imperekeza, ariko ikavanamo 1.840.572Frw yamuhaye ubwo yamwirukanaga, agahabwa 188.400Frw, ikanamuha 338.162Frw y'integuza havanywemo 306.762 Frw yamuhaye agahabwa 31.400 Frw, ikanamuha 511.270 ya "gratification" ya 2009, 511.270Frw "prime de bilan" ya 2009, 533.585 Frw ya "pécule de congé" ya 2009 n'ikinyuranyo cya "pécule de congé" ya 2008, 2.028.972Frw y'indishyi z'uko yahawe

icyemezo cy'umukoresha kituzuye, 200.000 Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya Avoka, yose hamwe akaba 7.548.355Frw, ariko Banki ya Kigali Ltd ikamuha ayo mafaranga yabanje kuyavanamo umusoro ku nyungu (TPR).

[3] Urwo Rukiko rwasobanuye ko Banki ya Kigali Ltd yirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko kuko yamwirukanye itagaragaje impamyabushobozi yasabwaga igihe cy'ivugururwa ryayo, ko kandi imbonerahamwe y'imirimo mishya yashingiyeho imwirukana yabonetse kuwa 27/10/2009, nyamara yararangije kumusezerera ku kazi kuwa 23/10/2009, ko kandi yamwirukanye itabanje gutondekanya abakozi bayo hashingiwe ku bushobozi ku murimo, amashuri, uburambe ku kazi n'umubare w'abo atunze nk'uko biteganywa n'ingingo ya 34 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda hamwe n'ingingo ya 58 ya Sitati yo kuwa 30/12/2003 igenga abakozi b'iyo Banki.

[4] Urwo Rukiko rwasobanuye kandi ko Banki ya Kigali Ltd ikwiye guha Mitimituje Gaëtan indishyi zibariwe ku mushahara mpuzandengo (salaire moyen) ugizwe na 142.739Frw y'umushahara-fatizo (basic salary) + 94.578Frw y'icumbi + 30.845Frw y'ingendo (indemnité de transport) + 3.500Frw yo gufasha umuryango (allocation femme et enfants) + 35.100Frw ya "indemnité de caisse" + 8.173Frw ahwanye na 3% y'ubwiteganyirize bw'abakozi (SSF) + 11.332Frw y'ubwiteganyirize bw'ingoboka (pension complémentaire) ahwanye na 3% ya 226.647Frw, ko kandi uwo mushahara ugomba kwiyongeraho 11.895Frw ya "pécule de congé", yose hamwe akaba 338.162Frw.

[5] Banki ya Kigali Ltd yajuririye Urukiko Rukuru, rwemeza ko itirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko, ruvanaho indishyi yari yagenewe mbere zikurikira: 3.043.458Frw y'indishyi zo kwirukanwa nta mpamvu, 511.270 ya "gratification", 511.270Frw ya "prime de bilan" na 31.400Frw y'integuza, 188.400Frw y'imperekeza, rutegeka Banki ya Kigali Ltd kumuha 1.227.048Frw y'indishyi z'uko yamuhaye icyemezo cy'umukoresha kituzuye, hiyongereyeho amafaranga atarajuririwe ariyo: 533.585Frw ya "pécule de congé, 200.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya Avoka.

[6] Urukiko Rukuru rwasobanuye ko Banki ya Kigali Ltd itirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko kuko itari kumushyira ku rutonde rw'abakozi mu gihe atari afite impamyabushobozi yasabwaga igihe cy'ivugururwa ryayo, ariko ko indishyi afitiye uburenganzira zikwiye kubarirwa ku mushahara mpuzandengo (salaire moyen) ungana na 306.762Frw ugaragara kuri "payment slip" yakorewe n'umukoresha we, aho kuba 338.162Frw yagenewe n'Umucamanza wa mbere.

[7] Urwo Rukiko rwasobanuye ko umushahara mpuzandengo ugomba gushingirwaho ari 306.762Frw ugizwe n'umushahara-fatizo, amafaranga y'icumbi, ay'ingendo, aya "indemnité de caisse", ayo gufasha umuryango (allocation femme et enfants), ko amafaranga y'ingendo atakagombye kubarirwa muri uwo mushahara, ariko ko agomba kuwubarirwamo kuko ari umukoresha we washatse ko abarirwamo, ariko ko amafaranga y'ubwiteganyirize bw'abakozi, ay'ubwiteganyirize bw'ingoboka n'aya "pécule de congé" atabarirwa mushahara mpuzandengo kuko ari ayorohereza umukozi mu kazi ke hakurikijwe ibiteganywa n'ingingo ya 35 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda.

[8] Mitimituje Gaëtan yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwagombaga kwemeza ko Banki ya Kigali Ltd yamwirukanye ku kazi mu buryo bunyuranyije n'amategeko, rukayitegeka kumuha indishyi zinyuranye zibariwe ku mushahara mpuzandengo unakubiyemo amafaranga y'urwunguko (prime de bilan), ay'amashimwe

(gratification), ahabwa umukozi igihe agiye mu kiruhuko (pécule de congé) ay'ubwiteganyirize bw'abakozi (S.S.F) n'ay'ubwiteganyirize bw'ingoboka, ariko ko mu gihe ayo mafaranga atabariwe muri uwo mushahara, yayahabwa ukwayo nk'amafaranga afitiye uburenganzira.

[9] Banki ya Kigali Ltd yo ikavuga ko itirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko, ko rero nta ndishyi ikwiye kumuha, ko kandi yamuhaye amafaranga y'imperekeza abariwe ku mushahara mpuzandengo ungana na 307.762Frw igihe yamusezereraga ku kazi, ariko ko mu gihe uru Rukiko rubibonye ukundi, rwamubarira indishyi rushingiye kuri uwo mushahara.

[10] Urubanza rwaburanishijwe mu ruhame kuwa 13/05/2014, Mitimituje Gaëtan ahagarariwe na Me Karongozi André Martin, naho Banki ya Kigali Ltd ihagarariwe na Me Rutembesa Phocas.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

1. Kumenya niba Banki ya Kigali yarirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko.

[11] Uburanira Mitimituje Gaëtan avuga ko Urukiko Rukuru rwemeje ko Banki ya Kigali Ltd itamwirukanye ku kazi mu buryo bunyuranyije n'amategeko kuko itagombaga kumushyira ku rutonde rw'abakozi bayo mbere yo kumusezerera ku kazi ka "Caissier" yakoraga ngo kubera ko atari afite impamyabushobozi yasabwaga igihe cy'ivugururwa ryayo yashoboraga gutuma akomeza ako kazi, rwirengagije ko rutagaragaje ibyo rwashingiyeho rwemeza ko Mitimituje Gaëtan atari yujuje ibyasabwaga kuko imbonerahamwe y'imirimo mishya (New structure) n'itangazo ryamenyeshaga abakozi bayo ko hari ivugururwa ryayo riteganyijwe mu gihe cy'amezi abiri ari imbere (Communication to all staff) byasohotse kuwa 27/10/2009 yararangije kwirukanwa kuwa 23/10/2009, ko kandi atirukanwe kubera ko atari afite impamyabushobozi ihanitse kubera ko ibaruwa imwirukana ivuga ko impamvu yirukanwe ari uko adafite ubumenyi n'ubushobozi ku kazi (performances, qualifications and competencies), nyamara Banki yarahoraga imuha amanota meza n'ibihembo by'amashimwe (gratification), ikanamuzamura mu ntera kubera akazi keza yayikoreraga.

[12] Avuga kandi ko n'ubwo Mitimituje Gaëtan yari kuba atujuje ibisabwa kugira ngo akomeze akazi ke nk'uko urwo Rukiko rwabyemeje, rwagombaga kwemeza ko yirukanwe mu buryo bunyuranyije n'amategeko kubera ko Banki ya Kigali Ltd yamwirukanye itabanje gukora urutonde rw'abakozi bayo mbere y'uko imwirukana hashingiwe ku bushobozi ku murimo, amashuri, uburambe ku kazi n'umubare w'abo umukozi atunze mu rugo rwe ngo inabimenyeshe Umugenzuzi w'Umurimo nk'uko iyo Banki yabitegekwaga n'ingingo ya 34 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda hamwe n'ingingo ya 58 ya Sitati yo kuwa 30/12/2003 igenga abakozi bayo.

[13] Asobanura ko iyo Banki ya Kigali Ltd ijya gukora urwo rutonde, itari kwirukana Mitimituje Gaëtan kubera ko yari gusanga yujuje ibyasabwaga n'amategeko kugira ngo akomeze kuyikorera kuko atari yageza ku myaka yo kujya mu kiruhuko cy'izabukuru kuko yavutse mu mwaka wa 1966 yirukanwa muri 2009, atari mu igeragezwa, ko ahubwo yari amaze imyaka 14 ayikorera, nta gihano yahawe mu rwego rw'akazi, ko kandi yazamurwaga mu ntera akanahabwa amashimwe buri mwaka kubera ko yayikoreraga neza, ko kuba Banki

yarabirenzeho ikamwirukana, asanga yaramwirukanye ku kazi nta mpamvu, ko rero ikwiye kubimuhera indishyi zinyuranye zirimo izo kwirukanwa ku kazi nta mpamvu.

[14] Uburanira Banki ya Kigali Ltd avuga ko itirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko nk'uko n'Urukiko Rukuru rwabyemeje, ko ahubwo yamusezereye ku kazi kuwa 23/10/2009 kubera ko atari afite impamyabumenyi ya "Licence" yasabwaga ku mwanya wa "Cashier" yakoraga kubera ko yari afite impamyabumenyi y'amashuri y'ububaji itari ikijyanye n'uwo mwanya hakurikijwe imiterere mishya y'imirimo (New structure) yemejwe n'Inama y'Ubutegetsi y'iyo Banki yo kuwa 30/09/2009.

[15] Avuga kandi ko kuba Mitimituje Gaëtan atari afite impamyabumenyi ya "Licence" yasabwaga igihe cy'ivugururwa rya Banki ya Kigali Ltd byari bihagije kugira ngo imusezerere ku kazi itiriwe imushyira ku rutonde rw'abakozi bayo bazasigara ngo inarumenyeshe Umugenzuzi w'Umurimo kuko ibishingirwaho kugira ngo urwo rutonde rukorwe nk'ubushobozi ku kazi, amashuri n'uburambe ku kazi biteganywa n'ingingo ya 34 y'Itegeko nº 13/2009 ryavuzwe haruguru, bitafatirwa hamwe (conditions cummulatives) kugira ngo hamenyekane niba umukozi agomba kuguma cyangwa gusezererwa ku kazi, ko ahubwo kubura kimwe muri byo kiba gihagije (conditions alternatives) kugira ngo umukozi asezererwe ku kazi.

[16] Avuga na none ko kuba Banki ya Kigali Ltd itaramenyesheje Umugenzuzi w'Umurimo urwo rutonde mbere y'uko isezerera Mitimituje Gaëtan ku kazi bitafatwa nk'aho yamwirukanye ku kazi mu buryo bunyuranyije n'amategeko kuko kumumenyesha urwo rutonde biba bigamije gusa kumumenyesha impinduka zabaye mu kigo cyavuguruwe.

UKO URUKIKO RUBIBONA

[17] Ingingo ya mbere, agace ka 21 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko "Kwirukanwa nta mpamvu ari uguhagarika amasezerano y'akazi bikozwe n'umukoresha nta mpamvu igaragara cyangwa hadakurikijwe uburyo bwateganyijwe n'amategeko". Ingingo ya 29 y'iryo Tegeko, igateganya ko "Amasezerano y'akazi y'igihe kitazwi ashobora guseswa igihe cyose iyo umwe mu bayagiranye abishatse, ariko ku mpamvu zumvikana. Iryo seswa ribanzirizwa n'integuza itangwa n'urishaka". Naho ingingo ya 34 y'Itegeko rimaze kuvugwa, igateganya ko "Umukoresha ashobora gusezerera umukozi umwe cyangwa benshi bitewe no kuvugurura imikorere y'ikigo kubera ingorane z'ubukungu cyangwa guhindura ikoranabuhanga ryakoreshwaga hagamijwe kugira ngo ikigo kirusheho gukora neza. Abakozi bagabanywa mu kigo batondekwa hakurikijwe ubushobozi, amashuri, uburambe muri icyo kigo n'umubare w'abo atunze ku buryo bwemewe n'amategeko, bikitabwaho uko bikurikirana. Ibyo bimenyeshwa Umugenzuzi w'umurimo mu nyandiko".

[18] Umuhanga mu mategeko witwa Jean-Claude Javilier, mu gitabo cye cyitwa "Droit du Travail" avuga ko umukoresha ashobora gusezerera umukozi ku kazi mu gihe hari impamvu ifatika (cause réelle) kandi ikomeye (cause sérieuse). Asobanura ko impamvu ifatika akaba ari impamvu igaragara, idashingiye ku marangamutima, naho impamvu ikomeye ikaba ari impamvu ifite uburemere ituma umukozi adashobora gukomeza akazi yakoraga ku buryo ihesha umukoresha we uburenganzira bwo kumusezerera ku kazi bitagize ingaruka ku kigo yakoragamo[1].

[1]L'existence d'une cause réelle et sérieuse justifient le licenciement, une cause est réelle si elle présente un caractère d'objectivité, ce qui exclut les préjugés et les convenances personnelles. La cause est sérieuse quant

[19] Ku birebana n'uru rubanza, dosiye igaragaza ko Mitimituje Gaëtan yagiranye na Banki ya Kigali Ltd amasezerano y'akazi y'igihe kitazwi kuwa 26/09/1995. Kuwa 23/10/2009, iyo Banki yasheshe ayo masezerano kubera ko Mitimituje Gaëtan adafite ubumenyi n'ubushobozi ku kazi bijyanye n'imirimo mishya igaragara ku mbonerahamwe yemejwe igihe cy'ivugururwa ryayo (This is to inform you that your performance, your qualifications and competencies did not match the requirements of the job profiles given in the new structure. Therefore, you are hereby informed that Banque de Kigali Ltd would like to terminate your services with effect from Friday, 23rd October, 2009).

[20] Muri dosiye, hari kandi itangazo Banki ya Kigali Ltd yandikiye abakozi bayo bose (Communication to all staff) kuwa 27/10/2009, ibamenyesha ko Inama Nyobozi yayo yateranye kuwa 30/09/2009 yemeje imiterere mishya y'inzego z'imirimo yayo (new structure) kugira ngo izahe abakiriya bayo serivisi nziza, ko uretse Abayobozi b'Amashami (Chefs des Départements) n'Abacungamari (Gérants) bayo barangije gushyirwa mu myanya mishya n'iyo Nama, abandi bakozi bazagenda bayishyirwamo mu gihe cy'amezi abiri ari imbere, ko kandi abazayishyirwamo bazatangira guhembwa imishahara mishya guhera kuwa 01/01/2010.

[21] Muri dosiye, hari na none Sitati igenga abakozi ba Banki ya Kigali Ltd yo muri Mutarama 2004, ivuga ko mu mpera za buri mwaka, abakozi bayo bazajya bakorerwa isuzumamikorere (évaluation) hashingiwe kuri ibi bikurikira: ibihano by'akazi umukozi yahawe muri uwo mwaka, uko asanzwe yitwara muri rusange, ubumenyi n'ubushobozi bye ku kazi n'uko asanzwe agakora (aptitudes professionnelles: sens d'organisation et connaissances techniques), n'uburyo ashishikazwa no kugateza imbere (souci de perfectionnement).

[22] Hashingiwe ku mategeko n'ibisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga Banki ya Kigali Ltd yarirukanye Mitimituje Gaëtan ku kazi hadashingiwe ku mpamvu yumvikana kubera ko yamwirukanye itabanje kugaragaza ko adafite ubwoko bw'impamyabumenyi yasabwaga ku mwanya mushya wa "Caissier" yakoraga kugira ngo bigaragare ko atagifite ubumenyi n'ubushobozi byo gukomeza kuyikorera kuri uwo mwanya. Ikindi ni uko imbonerahamwe y'imirimo mishya (new structure) n'itangazo ryari rigenewe abakozi (Communication to all staff) byabonetse kuwa 27/10/2009, Banki ya Kigali Ltd yararangije kwirukana Mitimituje Gaëtan kuwa 23/10/2009.

[23] Byongeye kandi, Urukiko rurasanga ikindi kimenyetso kigaragaza ko Mitimituje Gaëtan yirukanywe hadashingiwe ku mpamvu yumvikana ni uko Banki ya Kigali Ltd yamwirukanye itagaragaje ko yigeze imwandikira inenga imikorere ye igihe yayikoreraga, no kuba yaramwirukanye itabanje gukora urutonde rw'abakozi bayo ngo inarumenyeshe Umugenzuzi w'Umurimo nk'uko biteganywa n'ingingo ya 34 y'Itegeko ryavuzwe haruguru, kugira ngo hamenyekane koko ko ariwe wagombaga gusezererwa icyo gihe bitewe n'uko atari yujuje ibyasabwaga, bityo Banki ya Kigali Ltd ikaba igomba kubimuhera indishyi, ariko Urukiko rukaba rugomba kubanza gusuzuma ikibazo cy'umushahara mpuzandengo ugomba gushingirwaho mu kumubarira izo ndishyi.

2. Kumenya ibigize umushahara mpuzandengo ukwiye gushingirwaho mu kubarira Mitimituje indishyi.

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elle revêt une certaine gravité qui rend impossible, sans dommage pour l'entreprise, la continuation du travail et rend nécessaire le licenciement", par Jean-Claude Javilier, Droit du Travail, 6ème édition, 1998, Paris, LDGJ, p.303.

[24] Uburanira Mitimituje Gaëtan avuga ko Urukiko Rukuru rwemeje ko akwiye kubarirwa indishyi hashingiwe ku mushahara mpuzandengo ungana na 306.762Frw, rwirengagiza ko uwo mushahara wagombaga kwiyongeraho amafaranga y'urwunguko (prime de bilan), ay'amashimwe (gratification), ahabwa umukozi igihe agiye mu kiruhuko (pécule de congé) n'ay'ubwiteganyirize bw'abakozi mu Rwanda (S.S.F) n'ay'ubwiteganyirize bw'ingoboka (pension complémentaire) yatangirwaga n'umukoresha we.

[25] Asobanura ko amafaranga y'urwunguko (prime de bilan) n'ay'amashimwe (gratification) akwiye kubarirwa mu mushahara mpuzandengo kubera ko ari amafaranga ateganyijwe mu ngingo ya 76 na 77 za Sitati igenga abakozi ba Banki ya Kigali Ltd, umukoresha yahaga abakozi bayo buri mwaka igihe Banki ya Kigali Ltd yungutse (prime de bilan), ko kandi yabahaga amafaranga y'ishimwe (gratification) kubera akazi keza bayikoreraga.

[26] Akomeza avuga ko ikindi kigaragaza ko amafaranga y'urwunguko (prime de bilan) n'ay'amashimwe (gratification) yahembwaga akwiye kubarirwa mu mushahara mpuzandengo ari uko Umuhanga mu mategeko witwa Nsengiyumva Métusera, mu gitabo cye cyitwa *Droit Social, Manuels de Droit Rwandais*, pp.81-82, yasobanuye ko amafaranga y'amashimwe (gratification) afatwa nk'ari mu bigize umushahara mu gihe umukoresha yemeje ko azajya atangwa mu buryo bwa rusange, akanatangirwa igihe kimwe, no mu buryo buhoraho (généralité, constance et fixité), ko Raymond Guillien et Jean Vincent, mu gitabo cyabo cyitwa "Lexique des termes juridiques", Dalloz, 12ème édition, 1999, p.476, basobanuye ko umushahara-fatizo (salaire de base) ukunze kwiyongeraho amafaranga y'amashimwe (Souvent s'ajoutent au salaire de base des compléments tels que les primes et les gratifications).

[27] Asaba kandi ko amafaranga yahembwaga igihe agiye mu kiruhuko (pécule de congé) yabarirwa mu mushahara mpuzandengo hashingiwe kuri 142.739Frw y'umwaka wa 2008 yahembwe mu mwaka wa 2009. Asaba kandi ko uwo mushahara wabarirwamo 5%, y'amafaranga y'ubwiteganyirize bw'abakozi (S.S.F) n'ay'ubwiteganyirize bw'ingoboka (pension complémentaire) yishyurirwa buri kwezi n'umukoresha we, aho kuba 3 % umucamanza wa mbere yari yawubariyeho.

[28] Uburanira Banki ya Kigali Ltd avuga ko nta zindi ndishyi ikwiye guha Mitimituje Gaëtan kubera ko igihe yamusezereraga ku kazi, yamuhaye amafaranga y'imperekeza abariwe ku mushahara mpuzandengo ungana na 307.762Frw nk'uko wemejwe n'Urukiko Rukuru.

[29] Asobanura ko amafaranga y'urwunguko (prime de bilan) n'ay'amashimwe (gratification) atabarirwa mu mushahara mpuzandengo kubera ko hakurikijwe ibiteganywa n'ingingo ya 76 na 77 za Sitati igenga abakozi ba Banki ya Kigali Ltd, Mitimituje Gaëtan atayafiteho uburenganzira ndakuka kuko yashoboraga kuyahembwa cyangwa kutayahembwa mu mpera z'umwaka bitewe n'uko yakoze neza cyangwa atakoze neza, no kuba Banki ya Kigali yabaga yungutse cyangwa itungutse.

[30] Ku birebana n'amafaranga ya "pécule de congé", avuga ko nayo atabarirwa mu mushahara mpuzandengo kubera ko atari umushahara yahembwaga buri kwezi, ko ahubwo ari amafaranga yahabwaga gusa igihe agiye mu kiruhuko.

[31] Avuga na none ko amafaranga y'ubwiteganyirize Mitimituje Gaëtan yitangiraga angana na 3 % ya 272.417Frw, naho umukoresha we akamutangira 5 % yayo mu Isanduku

y'Ubwiteganyirize bw'Abakozi y'u Rwanda (S.S.F) no muri SONARWA atabarirwa mu mushahara mpuzandengo kuko ari amafaranga y'ubwiteganyirize umukozi afata igihe kigeze, atahabwa nk'indishyi, ko kandi itamuha ay'ubwiteganyirize bw'ingoboka kuko yayamuhaye.

UKO URUKIKO RUBIBONA

[32] Ingingo ya 35 igika cyayo cya nyuma y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko "Umushahara mpuzandengo w'ukwezi uboneka bagabanya na 12 igiteranyo cy'amafaranga yose umukozi yahembwe mu mezi cumi n'abiri (12) ya nyuma y'akazi hatabariwemo amafaranga ahabwa umukozi mu rwego rwo kumworohereza akazi". Naho ingingo ya 77 y'iryo Tegeko, igateganya ko "Kugira ngo haboneke umushahara ushingirwaho habarwa amafaranga y'ikiruhuko, ay'integuza, n'ay'indishyi, hakorwa impuzandengo y'imishahara y'amezi cumi n'abiri (12) ya nyuma umukozi yakoze".

[33] Muri uru rubanza, Mitimituje Gaëtan asaba ko amafaranga y'urwunguko (prime de bilan), ay'amashimwe (gratification), amafaranga ahabwa umukozi igihe agiye mu kiruhuko (pécule de congé) na 5% yatangirwaga n'umukoresha we mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda (S.S.F) n'ay'ubwiteganyirize bw'ingoboka yabarirwa mu mushahara mpuzandengo ugomba gushingirwaho mu kumubarira indishyi.

[34] Hashingiwe ku mategeko yavuzwe haruguru, Urukiko rurasanga amafaranga y'urwunguko (prime de bilan) n'ay'amashimwe (gratification) atabarirwa mu mushahara mpuzandengo kuko atari umushahara yahembwaga buri kwezi, ko ahubwo yayahembwaga rimwe mu mwaka mu gihe Mitimituje Gaëtan yahawe amanota agaragaza ko yakoze neza, no mu gihe Banki ya Kigali yabaga yungutse.

[35] Urukiko rurasanga kandi amafaranga ya "pécule de congé" atabarirwa mu mushahara mpuzandengo kubera ko ari ahabwa umukozi rimwe mu mwaka igihe yagiye mu kiruhuko.

[36] Urukiko rurasanga na none amafaranga y'Ubwiteganyirize Mitimituje Gaëtan yatangirwa mu Isanduku y'Ubwiteganyirize bw'Abakozi mu Rwanda (S.S.F) n'ay'ubwiteganyirize bw'ingoboka atabarirwa mu mushahara mpuzandengo kuko atari mu bigize umushahara, ko ahubwo aba ari amafaranga umukozi yazigamiwe.

[37] Hakurikijwe ibyo bisobanuro, Urukiko rurasanga rero umushahara mpuzandengo ukwiye gushingirwaho mu kubarira Mitimituje Gaëtan amafaranga y'ikiruhuko, ay'integuza n'ay'indishyi, ugizwe n'amafaranga abazwe mu buryo bukurikira: 142.739Frw y'umushahara-fatizo (basic salary) + 94.578Frw y'icumbi + 35.100Frw ya "indemnité de caisse" + 3.500Frw yo gufasha umuryango we (allocation femme et enfants), naho 30.845Frw y'ingendo (indemnité de transport) atakagombye kubarirwa muri uwo mushahara kuko ari ayorohereza umukozi mu kazi ke, agomba kubarirwa muri uwo mushaha, kuko ari umukoresha we wabishatse gutyo, yose hamwe akaba 306.762Frw nk'uko n'Urukiko Rukuru rwabyemeje nk'uko na Banki ya Kigali Ltd ibyiyemerera.

3. Ku birebana n'indishyi zisabwa muri uru rubanza

3.1. Ku birebana n'indishyi zo kwirukanwa nta mpamvu

[38] Uburanira Mitimituje Gaëtan avuga ko Banki ya Kigali Ltd ikwiye kumuha 3.859.398Frw y'indishyi z'uko yamwirukanye ku kazi mu buryo bunyuranyije n'amategeko nk'uko byasobanuwe haruguru, zabariwe ku mushahara mpuzandengo ukubiyemo

n'amafaranga y'urwunguko (prime de bilan), ay'amashimwe (gratification), amafaranga ahabwa umukozi igihe agiye mu kiruhuko (pécule de congé) na 5% yatangirwaga n'umukoresha we mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda n'ay'ubwiteganyirize bw'ingoboka kuko Urukiko Rukuru rutagaragaje amategeko rwashingiyeho ruvanaho 3.043.458Frw y'indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko yari yaragenewe ku rwego rwa mbere n'ubwo zari zarabariwe ku mushahara mpuzandengo utari wo.

[39] Uburanira Banki ya Kigali Ltd avuga ko Mitimituje Gaëtan atahabwa izo ndishyi kuko nta kosa yamukoreye igihe yamusezereraga ku kazi, ko kandi atahabwa izo ndishyi kuko yazibariye ku mushahara mpuzandengo utari wo.

UKO URUKIKO RUBIBONA

[40] Ku birebana n'indishyi zo kwirukanwa nta mpamvu, ingingo ya 33, igika cya mbere n'icya 3 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko *"Iseswa ryose ry'amasezerano y'akazi rinyuranyije n'amategeko rishobora gutuma hatangwa indishyi z'akababaro. Iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi z'akababaro ntizishobora kurenga umushahara we w'amezi icyenda (9)"*.

[41] Ku birebana n'uru rubanza, inyandiko ziri muri dosiye zigaragaza ko Mitimituje Gaëtan yakoreye Banki ya Kigali Ltd mu gihe kingana n'imyaka 14, ni ukuvuga kuva kuwa 26/09/1995 kugera kuwa 23/10/2009, igihe yamusezereraga ku kazi hadashingiwe ku mpamvu yumvikana nk'uko byasobanuwe haruguru.

[42] Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga kuba Banki ya Kigali yarirukanye Mitimituje Gaëtan mu buryo bunyuranyije n'amategeko igomba kubimuhera indishyi z'akababaro zingana n'umushahara mpuzandengo w'amezi atandatu (6) ubazwe mu buryo bukurikira: 306.762 Frw x 6 = 1.840.572Frw.

3.2. Ku birebana n'amafaranga y'integuza n'ay'imperekeza.

[43] Ku bijyanye n'integuza, uburanira Mitimituje Gaëtan avuga ko Urukiko Rukuru rwavanyeho 31.400Frw y'integuza yari yaragenewe n'Urukiko rubanza nta mpamvu ifatika rushingiyeho, rwirengagiza ko yagombaga guhabwa amafaranga y'integuza abariwe ku mushahara mpuzandengo unabariwemo amafaranga y'urwunguko, ay'amashimwe, amafaranga ahabwa umukozi igihe agiye mu kiruhuko na 5% y'ubwiteganyirize yishyurirwaga n'umukoresha we, agahabwa amafaranga y'integuza abazwe mu buryo bukurikira: 31.400Frw y'integuza yagenewe ku rwego rwa mbere + 90.660Frw yasabye mu Rukiko Rukuru, yose hamwe akaba 122.060Frw.

[44] Ku bijyanye n'imperekeza, uburanira Mitimituje Gaëtan avuga ko Urukiko Rukuru rwavanyeho 188.572Frw y'imperekeza yagenewe n'umucamanza wa mbere nta mpamvu rutanze, rwirengagiza ko yagombaga guhabwa amafaranga y'imperekeza abariwe ku mushahara mpuzandengo yifuza wasobanuwe haruguru. Asaba ko yahabwa amafaranga y'imperekeza abazwe mu buryo bukurikira: 188.572Frw y'imperekeza yagenewe ku rwego rwa mbere + 543.960Frw yasabye mu Rukiko Rukuru, yose hamwe akaba 732.523Frw.

[45] Uburanira Banki ya Kigali Ltd avuga ko Mitimituje Gaëtan atahabwa amafaranga y'integuza n'ay'imperekeza asaba muri uru rubanza kubera ko yayabaze ashingiye ku

mushahara mpuzandengo utari wo, ko ahubwo yamuhaye 1.542.176Frw y'integuza n'imperekeza igihe yamusezereraga ku kazi abariwe ku mushahara mpuzandengo ungana na 307.762Frw wemejwe n'Urukiko Rukuru.

UKO URUKIKO RUBIBONA

[46] Ku birebana n'integuza, ingingo ya 27, 2º y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko "Iyo bibaye ngombwa gusesa amasezerano y'akazi hatanzwe integuza, igihe cy'integuza kigomba kungana n'ukwezi kumwe iyo umukozi yakoze mu gihe cy'umwaka umwe cyangwa kirenze".

[47] Ku birebana n'uru rubanza, dosiye igaragaza ko Mitimituje Gaëtan yakoreye Banki ya Kigali Ltd mu gihe cy'imyaka 14, bityo Urukiko rurasanga Banki ya Kigali Ltd yari ikwiye kumuha 306.762Frw y'integuza ahwanye n'umushahara mpuzandengo we w'ukwezi kumwe, ariko Mitimituje Gaëtan akaba atahabwa ayo mafaranga kuko yayahawe igihe yasezererwaga ku kazi nk'uko bigaragazwa n'inyandiko yiswe "indemnité de départ" hamwe na "historique bancaire" ya konti ye nº 0031593-01 iri muri Banki ya Kigali Ltd, Ishami rya Cyangugu.

[48] Ku bijyanye n'imperekeza, ingingo ya 35, igika cya mbere n'icya 2 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko "Umukoresha agomba guha imperekeza zo gusezererwa ku kazi cyangwa gusesa amasezerano umukozi umaze nibura amezi cumi n'abiri (12) akora nta guhagarika. Umubare w'amafaranga y'imperekeza z'isezererwa, ntushobora kujya na rimwe munsi y'inshuro eshatu (3) z'umushahara mpuzandengo w'ukwezi ku mukozi ufite uburambe buri hejuru y'imyaka cumi (10) kugeza kuri cumi n'itanu (15) mu kigo".

[49] Ku birebana n'uru rubanza, Urukiko rurasanga kuba Mitimituje Gaëtan afite uburambe ku kazi buhwanye n'imyaka 14 nk'uko byasobanuwe haruguru, bigaragara ko Banki ya Kigali Ltd yari ikwiye kumuha amafaranga y'imperekeza ahwanye n'inshuro esheshatu (6) z'umushahara mpuzandengo w'ukwezi abazwe mu buryo bukurikira: 306.762Frw x 6 = 1.840.572Frw y'imperekeza, ariko Mitimituje Gaëtan akaba atahabwa ayo mafaranga kuko yayahawe igihe yahabwaga amafaranga y'imperekeza nk'uko bigaragazwa n'inyandiko yiswe "indemnité de départ" hamwe na "historique bancaire" ya konti ye nº 0031593-01 iri muri Banki ya Kigali Ltd.

3.3. Ku birebana n'amafaranga ya "pécule de congé".

[50] Uburanira Mitimituje Gaëtan avuga ko Urukiko Rukuru rwemeje ko agomba guhabwa 533.585Frw ya "pécule de congé" yagenewe n'umucamanza wa mbere, rwirengagiza ko ayo mafaranga yagombaga kwiyongeraho 181.320Frw yabariye ku mushahara mpuzandengo yasabye wavuzwe haruguru, yose hamwe akaba 714.905Frw.

[51] Uburanira Banki ya Kigali Ltd avuga ko Mitimituje Gaëtan atahabwa ayo mafaranga kuko yabazwe nabi hashingiwe ku mushahara mpuzandengo utari wo, ko ahubwo yahabwa 533.585Frw yagenewe ku rwego rwa mbere.

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[52] Ingingo ya 55 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko "Iyo umukozi agiye mu kiruhuko, umukoresha agomba kumuha amafaranga angana n'umushahara mpuzandengo we ubarwa mu mezi cumi n'abiri (12) ashize n'ibindi afitiye uburenganzira hakurikijwe amasezerano yakoranye n'umukoresha we".

[53] Ku birebana n'uru rubanza, "Bulletin de paie" n'inyandiko yiswe "Indemnité de départ" ziri muri dosiye zigaragaza ko Banki ya Kigali Ltd yahaye Mitimituje Gaëtan 142.739Frw ya "pécule de congé" y'umwaka wa 2008 yahembwe muri Mutarama 2009 na 55.775Frw y'ikiruhuko yamuhaye igihe yamusezereraga ku kazi, yose hamwe akaba 198.514Frw.

[54] Hashingiwe ku biteganywa n'ingingo ya 55 y'Itegeko rimaze kuvugwa haruguru, Urukiko rurasanga Banki ya Kigali Ltd yari ikwiye guha Mitimituje Gaëtan 306.762Frw ahwanye n'umushahara mpuzandengo we w'ukwezi kumwe ya "pécule de congé" y'umwaka wa 2008, ariko akaba agomba guhabwa 533.585Frw yemerewe n'umukoresha we, ariko aya mafaranga akaba agomba kuvanwamo 198.514Frw yamuhaye nk'uko byasobanuwe haruguru, ikamuha 335.071Frw.

[55] Urukiko rurasanga Banki ya Kigali Ltd itagomba guha Mitimituje Gaëtan amafaranga ya "pécule de congé" y'umwaka wa 2009 kuko yamwirukanye atari yawurangiza.

3.4. Ku birebana n'amafaranga y'urwunguko (prime de bilan) n'ay'amashimwe (gratification) y'umwaka wa 2009.

[56] Uburanira Mitimituje Gaëtan avuga ko Urukiko Rukuru rwavanyeho 511.270Frw ya "prime de bilan" ya 2009 na 511.270Frw ya "gratification" ya 2009 yari yaragenewe n'umucamanza wa mbere nta mpamvu ifatika rushingiyeho, rwirengagiza ko yagombaga kuyahabwa kuko mu mpera z'umwaka wa 2009 yirukanwemo, Banki ya Kigali Ltd yungutse ku buryo yihariye 82 % y'inyungu zavuye mu ma Banki yose akorera mu Rwanda nk'uko yabyiyemereye mu Kinyamakuru Umuvugizi, Vol 65 yo kuwa 28/11-12/2009, bikanagaragazwa kandi n'uko kuwa 31/03/2010, yahaye Uwamariya Sekaziga Vestine amafaranga y'urwunguko (prime de bilan) y'umwaka wa 2009.

[57] Uburanira Banki ya Kigali Ltd avuga ko itaha Mitimituje Gaëtan ayo mafaranga kuko atagaragarije uru Rukiko ko mu mpera z'umwaka wa 2009 Banki ya Kigali Ltd yungutse cyangwa ko yari kubona amanota meza yari kumuhesha amafaranga y'ishimwe (gratification) kubera ko yirukanwe uwo mwaka utari warangira.

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[58] Ku birebana n'amafaranga y'urwunguko (prime de bilan) n'ay'amashimwe (gratification), ingingo ya 76 n'iya 77 za Sitati igenga abakozi ba Banki ya Kigali ziteganya ko amafaranga y'ishimwe (gratification) ashobora gutangwa rimwe mu mwaka, ariko ko umukoresha adategetswe kuyatanga, ko amafaranga y'urwunguko (prime de bilan) ashobora gutangwa nibura mu kwezi kwa gatatu k'umwaka ukurikiyeho akabarwa hashingiwe k'urwunguko Banki ya Kigali Ltd yagize mu mwaka ushize, ko kandi umukoresha adategetswe gutanga ayo mafaranga.

[59] Hashingiwe ku ngingo ya 76 n'iya 77 za Sitati imaze kuvugwa haruguru, Urukiko rurasanga Mitimituje Gaëtan atahabwa amafaranga y'ishimwe (gratification) n'ay'urwunguko (prime de bilan) y'umwaka wa 2009 kuko atari ayafiteho uburenganzira ndakuka kuko yayahabwaga igihe Banki ya Kigali Ltd yungutse, no kuba Mitimituje Gaëtan yarahawe amanota meza kubera akazi keza yabaga yayikoreye mu gihe cy'umwaka wose, kuba rero Mitimituje Gaëtan yarirukanywe ku kazi umwaka wa 2009 utari warangira, bigaragara ko atari yujuje ibisabwa bimaze kuvugwa muri iki gika kugira ngo ayahabwe nk'uko n'Urukiko Rukuru rwabyemeje.

3.5. Ku birebana n'indishyi z'icyemezo cy'umurimo kituzuye.

[60] Uburanira Mitimituje Gaëtan avuga ko Urukiko Rukuru rwamugeneye 1.227.048Frw y'indishyi zigenwe mu bushishozi bwarwo zijyanye ni uko Banki ya Kigali Ltd yamuhaye icyemezo cy'umurimo kituzuye kuko kitagaragaza imirimo yayikoreye mu gihe cy'imyaka 14. Asaba ko yahabwa 2.572.572Frw y'indishyi kuko yazibariye ku mushahara mpuzandengo yifuza wavuzwe haruguru.

[61] Uburanira Banki ya Kigali Ltd avuga ko itaha Mitimituje indishyi asaba kuko yazibaze ashingiye ku mushahara mpuzandengo utari wo, ko ahubwo yahabwa 1.227.048Frw yagenewe n'Urukiko Rukuru mu bushishozi bwarwo.

UKO URUKIKO RUBIBONA

[62] Ingingo ya 38 y'Itegeko nº 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, iteganya ko "Iyo igihe cy'amasezerano y'akazi kirangiye, umukoresha agomba guha umukozi umushahara we wa nyuma hamwe n'icyemezo ko yamukoreye. Icyo cyemezo kigaragaza ko yamukoreye, itariki yatangiriyeho akazi, itariki akazi karangiriyeho n'akazi yakoraga. Iyo umukoresha yanze gutanga iki cyemezo cyangwa ntashyiremo kimwe mu bisabwa (...), ashobora gusabwa kwishyura indishyi z'akababaro zagenwa n'urukiko rubifitiye ububasha".

[63] Ku birebana n'uru rubanza, dosiye igaragaza ko Banki ya Kigali Ltd yahaye Mitimituje Gaëtan icyemezo cy'imirimo kitagaragaza imirimo yayikoreye, Urukiko rurasanga rero Banki ya Kigali Ltd yarakoze ikosa rituma igomba kubimuhera indishyi z'akababaro hashingiwe ku ngingo ya 38 y'Itegeko ryavuzwe haruguru, izo ndishyi zagombye kubarirwa kuri 306.762Frw y'umushahara mpuzandengo we w'ukwezi, ariko akaba agomba guhabwa 1.227.048Frw y'indishyi z'uko yahawe icyemezo cy'imirimo kituzuye yagenewe n'Urukiko Rukuru mu bushishozi bwarwo nk'uko na Banki ya Kigali Ltd yabyiyemereye.

4. Kumenya niba indishyi Mitimituje Gaëtan agenewe muri uru rubanza zigomba kuvanwamo amafaranga y'umusoro ku nyungu (TPR).

[64] Uburanira Mitimituje Gaëtan avuga ko umucamanza wa mbere yategetse Banki ya Kigali Ltd ko izamwishyura indishyi atsindiye muri uru rubanza ibanje kuzivanamo amafaranga y'umusoro ku nyungu (TPR), ariko ko Urukiko Rukuru rutavanyeho icyo cyemezo ngo kuko nta kirego cy'umusoro rwashyikirijwe, rwirengagiza ko icyo cyemezo cyagombaga kuvanwaho kuko cyafashwe mu buryo bunyuranyije n'amategeko kubera ko nta muburanyi wari wabisabye, ko kandi bitari byaburanyweho ku rwego rwa mbere. Asaba ko uru Rukiko ko ruvanaho ibyo byemezo byombi kugira ngo indishyi agenerwa muri uru rubanza zitazavanwaho amafaranga y'umusoro ku nyungu.

[65] Uburanira Banki ya Kigali Ltd avuga ko Urukiko Rukuru rwasuzumye iyo ngingo ruyiha agaciro nk'uko bigaragarira mu gace ka 20 k'urubanza rwajuririwe muri uru Rukiko, ko rero iyi mpamvu y'ubujurire nta shingiro ifite.

UKO URUKIKO RUBIBONA

[66] Ingingo ya 4 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragazwa n'inyandiko itangiza ikirego n'imyanzuro yo kwiregura". Naho ingingo ya 7 y'iryo Tegeko, igateganya ko "Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine".

[67] Ku birebana n'uru rubanza, dosiye igaragaza ko Urukiko Rwisumbuye rwa Nyarugenge rwategetse Banki ya Kigali Ltd guha Mitimituje Gaëtan 7.548.355Frw y'indishyi yatsindiye muri urwo Rukiko ibanje kuzivanamo umusoro ku nyungu (TPR). Icyo cyemezo cyatumye Banki ya Kigali Ltd ivana 660.933Frw y'umusoro ku nyungu kuri 2.203.109Frw y'imperekeza yari yageneye Mitimituje Gaëtan igihe yamwirukanaga ku kazi, imuha 1.542.176Frw y'imperekeza nk'uko bigaragazwa n'inyandiko yiswe "indemnité de départ" na "historique bancaire" ya konti ye nº 0031593-01 iri muri iyo Banki.

[68] Dosiye igaragaza kandi ko haba mu nyandiko yo kuwa 30/07/2010 n'iyo kuwa 19/08/2010 Mitimituje Gaëtan yatangiyeho ikirego mu Rukiko Rwisumbuye rwa Nyarugenge cyangwa haba mu mwanzuro wo kwiregura watanzwe na Banki ya Kigali Ltd muri urwo Rukiko, nta muburanyi wigeze asaba ko amafaranga Mitimituje Gaëtan azatsindira muri urwo rubanza azavanwamo amafaranga y'umusoro ku nyungu, ariko Urukiko Rukuru rwashyikirijwe icyo kibazo, rwasobanuye ko ntacyo rwakivugaho kuko nta kirego cy'umusoro rwaregewe, bityo Urukiko rw'Ikirenga rukaba rugomba kugira icyo rukivugaho.

[69] Urukiko rurasanga icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Nyarugenge cyo kuvana umusoro ku nyungu ku ndishyi Mitimituje Gaëtan yagenewe n'Urukiko kigomba kuvaho kuko cyafashwe mu buryo bunyuranyije n'ingingo ya 4 n'iya 7 z'Itegeko rimaze kuvugwa haruguru, kuko nta muburanyi wigeza asaba ko gifatwa nk'uko byasobanuwe haruguru.

[70] Urukiko rurasanga ikindi gituma amafaranga Mitimituje Gaëtan agenewe muri uru rubanza atagomba kuvanwamo amafaranga y'umusoro ku nyungu, ari uko atari umushahara, ko ahubwo ari indishyi agenewe n'uru Rukiko.

5. Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya avoka.

[71] Uburanira Mitimituje Gaëtan avuga ko Banki ya Kigali Ltd ikwiye kumuha 2.707.199Frw y'ikurikiranarubanza n'igihembo cya avoka.

[72] Uburanira Banki ya Kigali Ltd avuga ko itaha Mitimituje ayo mafaranga kuko ariwe wakomeje kuyishora mu manza nta mpamvu.

UKO URUKIKO RUBIBONA

[73] Urukiko rurasanga Banki ya Kigali Ltd igomba guha Mitimituje Gaëtan 300.000Frw y'ikurikiranarubanza na 400.000Frw y'igihembo cya avoka agenewe mu bushishozi bwawo kuko ayo asaba ari ikirenga, yiyongera kuri 200.000Frw y'ikurikiranarubanza na 500.000Frw

y'igihembo cya avoka yagenewe ku rwego rwa mbere, yose hamwe akaba 1.400.000Frw kubera ko yiyambaje avoka wo kumuburanira, kandi hari ibyo yatsindiye muri uru rubanza.

[74] Urukiko rurasanga rero igiteranyo cy'amafaranga Banki ya Kigali Ltd igomba guha Mitimituje Gaëtan ari: 1.840.572Frw y'indishyi z'uko yamwirukanye ku kazi nta mpamvu, 335.071Frw ya "pécule de congé" y'umwaka wa 2008, 1.227.048Frw y'indishyi z'uko yamuhaye icyemezo cy'imirimo kituzuye, 660.933Frw yari yarafatiriye ku mafaranga y'imperekeza nk'umusoro ku nyungu, 1.400.000Frw y'ikurikiranarubanza n'igihembo cya avoka, yose hamwe akaba 5.463.624Frw.

III. ICYEMEZO CY'URUKIKO

[75] Rwemeje ko ubujurire bwa Mitimituje Gaëtan bufite ishingiro kuri bimwe;

[76] Rutegetse Banki ya Kigali Ltd guha Mitimituje Gaëtan 5.463.624Frw;

[77] Ruvuze ko imikirize y'urubanza RSOCA 0001/12/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 09/04/2011 ihindutse kuri bimwe;

[78] Rutegetse Banki ya Kigali Ltd gutanga amagarama y'uru rubanza angana na 24.800Frw, itayatanga mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu byayo ku ngufu za Leta.