RUHIMBAZA v. BANKI YA KIGALI LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RSOC 00001/2017/SC (Kayitesi Z., P.J., Mugenzi, Kanyange, Nyirandabaruta na Ngagi, J.) 24 Ugushingo 2017]

Amategeko agenga umurimo – Gusesa amasezerano y'umurimo – Uburenganzira bw'umukozi iyo asezerewe mu kazi – Indishyi zikomoka ku kwirukanwa nta mpamvu – Indishyi zo kwirukanwa nta mpamvu zitandukanye n'amafaranga umukozi ahabwa nk'uburenganzira yemererwa n'amategeko iyo asezerewe mu kazi – Itegeko N°13/2009 ryo kuwa 27/05/2009 rigenga umurimo, ngingo ya 32, 33 niya 57.

Amategeko agenga umurimo – Umushahara – Amafaranga y'urwunguko na y' ishimwe – Umukoresha atanga amafaranga y'urwunguko nay' ishimwe abyibwirije kandi ku bushake, ariko iyo ayemeye aba ari itegeko kuri we kuko biba ari kimwe mu bigize umushahara w'umukozi.

Incamake y'ikibazo: Ruhimbaza yasezerewe ku kazi ku mpamvu yuko Umukoresha we Banki ya Kigali yavugaga ko atari yujuje ibisabwa n'imbonerahamwe y'imyanya nshya yemejwe n'Inama y'Ubutegetsi ya Banki. Yaregeye Urukiko Rwisumbuye rwa Nyarugenge asaba indishyi zinyuranye kubera kwirukana mu buryo bunyuranije n'amategeko. Urwo Rukiko rwemeje ko yirukanywe mu buryo bunyuranyije n'amategeko, rumugenera indishyi zikubiyemo izo kwirukanwa mu buryo bunyuranye n'amategeko, amafaranga y'integuza, ay'ikiruhuko atabonye, ay'imperekeza, indishyi zo kudahabwa icyemezo cy'umukoresha cyuzuye, amafaranga y'ishimwe, ay'urwunguko, ay'ikiruhuko atafashe hamwe nay' ikurikiranarubanza n'igihembo cy'Avoka.

Umukoresha yajuririye icyo cyemezo mu Rukiko Rukuru, narwo rwemeza ko urubanza rwajuririwe ruhindutse gusa ku bijyanye n'indishyi zigomba guhabwa uregwa. Yarongeye ajuririra Urukiko rw'Ikirenga arushyikiriza impamvu zari zatumye ijuririra Urukiko Rukuru, narwo rumaze kuzisuzuma, rwemeza ko uregwa yirukanwe mu buryo bunyuranye n'amategeko, maze rumugenera indishyi zihwanye n'umushahara we w'amezi icyenda, ariko rutegeka ko zikurwamo amafaranga yari yarahawe n'umukoresha we igihe cyo kumusezerera, akubiyemo ay'integuza, ay'imperekeza, n'ay'ikiruhuko atari yarafashe, runategeka umukoresha kumuha indishyi zo kuba yarahawe icyemezo cy'umukoresha we wa nyuma kituzuye, n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka.

Uregwa ntiyishimiye imikirize y'Urukiko rw'Ikirenga, bityo yiyambaza Urwego rw'Umuvunyi asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, kuko rwategetse ko mu ndishyi rwamugeneye zo kwirukanwa mu buryo budakurikije amategeko, hakurwamo amafaranga y'integuza, ay'imperekeza n'ayikiruhuko yahawe asezererwa kandi ntaho ahuriye nazo kandi rutamugeneye amafaranga y'urwunguko n'aya amashimwe umukoresha yamwimye kandi yari asanzwe ayahabwa.

Urwo rwego narwo rwasabye ko urwo rubanza rwasubirwamo, nyuma yo kubisuzuma, Perezida w'Urukiko rw'Ikirenga yemeje ko rwongera kuburanishwa. Mu iburanisha habanje gusuzumwa inzitizi y'ukutakira ikirego, aho Umukoresha yavugaga ko kitubahirije ibiteganywa n'amategeko kuko icyabayeho mu icibwa ry'urubanza atari akarengane ahubwo ari ukwitiranya indishyi zo kwirukanwa binyuranyije n'amategeko n'amafaranga yahawe ahagarikwa ku kazi, icyo kibazo rero, kikaba cyaramuhaga uburenganzira bwo gusubirishamo urubanza ingingo nshya, bityo kikaba kitagomba gushingira ku nzira yo gusubirishamo urubanza ku mpamvu z'akarengane, nk'uko biteganywa n'ingigo ya 81 y'Itegeko N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

Kubyerekeye iyo nzitizi, uwasabye gusubirishamo urubanza avuga ko ingingo ya 186 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 yerecyeye ugusubirishamo urubanza ingingo nshya ikoreshwa iyo mu ica ry'urubanza habaye amakosa akomeye yo kwitiranya uko ibintu byagenze bigatuma Urukiko rufata icyemezo kitari cyo, akaba atari ko bimeze muri uru rubanza, kuko Urukiko rutigeze rwitiranya uko ibintu byagenze, ahubwo ko rumaze gusobanura no gusesengura uko ibintu byagenze rwasanze yarirukanwe mu buryo budakurikije amategeko rumugenera indishyi, ikibazo kivuka ari uko rutegetse ko izo ndishyi zivanwamo amafaranga yari yarahawe yirukanwa ku kazi, ari naho hagaragarira akarengane yagiriwe.

Mu iburanisha mu mizi, uwasabye gusubirishamo urubanza avuga ko urubanza rwaciwe n'Urukiko rw'Ikirenga harimo akarengane kubera ko rwemeje ko indishyi rwamugeneye zo kwirukanwa nta mpamvu zikurwamo amafaranga y'ibyo yemererwa n'amategeko;akomeza avuga ko ayo mafaranga atari kwitiranywa n'indishyi zo kwirukanwa nta mpamvu. Yongeraho ko Urukiko rwavuze ko adafite uburenganzira ku mafaranga y'amashimwe rushingiye ku kuba atarakorewe isuzumabushobozi, runamwima n'amafaranga y'urwunguko rushingiye ku kuba yarahagaritswe "bilan" itarakorwa ngo hagaragare umusaruro umukoresha we yabonye, akaba asanga iyo atirukanwa yari gukorerwa iryo suzuma kandi ko mu mezi icumi yari amaze gukora yagize uruhare ku nyungu umukoresha yabonye. Asoza asaba ko yahabwa amafaranga y'igihembo cy'Avoka na y'ikurikiranarubanza.

Uregwa yiregura avuga ko nta karengane kari mu rubanza kuko Urukiko rutegeka ko ahabwa indishyi zo kwirukanwa mu buryo bunyuranye n'amategeko hakuwemo amafaranga yari yarahawe ahagarikwa mu kazi, ari uko rwabyumvise, kandi ko kutishimira imikirize y'urubanza bitafatwa nk'akarengane. Kubirebana na amafaranga y'ishimwenay'urwunguko yisobanura avuga ko itegeko rigenga banki ya Kigali Ltd, riteganya ko amafaranga y'ishimwe atangwa nyuma y'umwaka kandi ko umukoresha adategetswe kuyitanga, naho kubirebana n'amafaranga y'urwunguko rigateganya ko itangwa mu kwezi kwa gatatu hashingiwe ku musaruro Banki yabonye, bimaze kwemezwa n'inama y'ubuyobozi, ari nayo igena ingano yayo, kandi ko kuyitanga nayo atari itegeko. Kubirebana n'amafaranga y'igihembo cy'Avoka na y'ikurikiranarubanza avuga ko niwe ufite kuyagenerwa kuko indishyi yatsindiye yazihawe mu manza zabanje ariko akomeza kumushora mu manza zitari ngombwa.

Incamake y'icyemezo: 1. Kuba Urukiko rwarategetse ko indishyi zagenwe kubera kwirukanwa binyuranyije n'amategeko zigomba kuvanwamo amafaranga yahawe asezererwa ku kazi, ntibyakwitwa ko ari ukwitiranya uko ibintu byagenze, kuko byasobanuwe n'Urukiko runabishingiraho rufata icyemezo cy'uko yirukanwe mu buryo bunyuranyije n'amategeko.

2. Indishyi zigenwa mu gihe habayeho ikosa ryo kwirukana umukozi nta mpamvu ni izishingira ku kababaro katewe n'iryo sezererwa zitandukanye n'andi mafaranga umukozi ahabwa nk'uburenganzira yemererwa n'amategeko iyo asezerewe mu kazi. Bityo amafaranga y'integuza, ay'imperekeza zo gusezererwa ku kazi n'ay'ikiruhuko yari yari yarahawe ntabwo agomba gukurwa mu mafaranga y'indishyi zo kwirukanwa binyuranyije n'amategeko.

3. Umukoresha ntashobora kwanga guha umukozi amafaranga y' ishimwe n'ay'urwunguko yitwaje ko umukozi nta suzumabushobozi yakorewe cyangwa umusaruro w'umukoresha wari utaragaragazwa, mu gihe yirukanwe ku mpamvu itumvikana igihe cyo kubikora kitaragera, kuko iryo ikosa ry'umukoresha ryo kumwirukana nta mpamvu ari ryo ryatumye adakomeza akazi ngo arangize umwaka akorerwe isuzumwa, n'umusaruro w'umukoresha we ugaragazwe. Bityo izi mpamvu zikomoka ku ngaruka zo kwirukanwa nta mpamvu, ntizashingirwaho yimwa amafaranga y'ishimwe nay'urwunguko yari kubona iyo aguma mu kazi.

4. Amafaranga y'ishimwe nay'urwunguko atangwa n'umukoresha abyibwirije kandi ku bushake, ariko iyo ayemeye iba ari itegeko kuri we kuko iba ari kimwe mu bigize umushahara w'umukozi.

5. Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ugukora ikosa rigikomokaho kuriha ibyangiritse. Bityo urega agenewe amafaranga y'igihembo cy'Avoka na y'ikurikiranarubanza mu bushishozi bw'urukiko kuko ayo asaba ari menshi.

Inzitizi yo kutakira ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro ifite;
ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;
Amagarama y'urubanza aherereye ku uregwa.

Amategeko yashingiweho:
Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya78 niya 81(2).
Itegeko Nº13/2009 ryo kuwa 27/05/2009 rigenga umurimo, ngingo ya 29, 32, 33, 35 niya 57.
Itegeko – teka ryo kuwa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258.
Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo 186 (6).

Nta manza zifashishijwe.

Ibitekerezo by'abahanga byifashishijwe:
A. Cœuret, B. Gauriau et M. Miné, *Droit du* travail, Edition Dalloz, 2006, pp. 386-389.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ruhimbaza Modeste yabaye umukozi wa Banki ya Kigali kuva tariki ya 20/03/1995 kugeza asezerewe tariki ya 23/10/2009 ku mpamvu yuko umukoresha we yavugaga ko atari yujuje ibisabwa n'imbonerahamwe y'imyanya y'imirimo nshya yemejwe n'Inama y'Ubutegetsi nyuma y'ivugururwa ry'imiterere n'imikorere bya Banki ya Kigali.

[2] Ruhimbaza Modeste amaze kubona ibaruwa ya Banki ya Kigali imusezerera, yaregeye Urukiko Rwisumbuye rwa Nyarugenge, mu rubanza RSOC0243/10/TGI/NYGE rwaciwe kuwa 21/10/2011, Urukiko rwemeza ko Ruhimbaza yirukanwe mu buryo bunyuranyije n'amategeko, rutegeka Banki ya Kigali kumuha amafaranga angana na 8.252.102Frw akubiyemo indishyi zo kwirukanwa mu buryo bunyuranye n'amategeko, amafaranga y'integuza, ay'ikiruhuko atabonye, ay'imperekeza, indishyi zo kudahabwa icyemezo cy'umukoresha cyuzuye, amafaranga ya *gratification* na *prime de bilan*, aya *pécule de congé*, ay'ikurikiranarubanza n'igihembo cy'Avoka.

[3] Banki ya Kigali yajuririye Urukiko Rukuru icyo cyemezo, mu rubanza RSOCA0112/11/HC/KIG rwaciwe kuwa 18/04/2012, Urukiko rwemeza ko ubujurire bwa Banki ya Kigali nta shingiro bufite, ko

urubanza rwaciwe n'Urukiko Rwisumbuye ruhindutse gusa ku bijyanye n'indishyi zigomba guhabwa Ruhimbaza Modeste.

[4] Banki ya Kigali yajuririye Urukiko rw'Ikirenga, mu rubanza RSOCAA0011/11/CS rwaciwe ku wa 22/02/2013 rwemeza ko Ruhimbaza Modeste yirukanwe mu buryo bunyuranye n'amategeko, rushingiye ku ngingo ya 33, igika cya gatatu y'Itegeko N°13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, rumugenera indishyi zingana na 3.934.134Frw ahwanye n'umushahara we w'amezi icyenda, ariko rutegeka ko zikurwamo amafaranga angana na 3.139.359Frw yari yarahawe na Banki ya Kigali igihe cyo kumusezerera, akubiyemo ay'integuza, ay'imperekeza, n'ay'ikiruhuko atari yarafashe, runayitegeka guha Ruhimbaza Modeste indishyi zingana na 1.311.378Frw zo kuba yarahawe icyemezo cy'umukoresha we wa nyuma kituzuye, n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka angana na 1.400.000Frw.

[5] Ruhimbaza Modeste ntiyishimiye imikirize y'urwo rubanza RSOCAA0011/11/CS rwaciwe n'Urukiko rw'Ikirenga, yandikira Urwego rw'Umuvunyi asaba ko rusubirwamo ku mpamvu z'akarengane, avuga ko Urukiko rw'Ikirenga rwamurenganyije, kuko rwategetse ko mu ndishyi rwamugeneye zo kwirukanwa ku kazi ku mpamvu zidakurikije amategeko, hakurwamo amafaranga y'integuza, ay'imperekeza n'ayikiruhuko yahawe asezererwa kandi ntaho ahuriye nazo, ko kandi rutamugeneye amafaranga ya *prime de bilan* n'aya *gratification* Banki ya Kigali yamwimye kandi yari asanzwe ayahabwa.

[6] Urwego rw'Umuvunyi rumaze gusuzuma ikibazo cye no kugisesengura rwasanze gifite ishingiro, rwandikira Nyakubahwa Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RSOCAA0011/11/CS rwasubirwamo, nyuma yo kubisuzuma, Perezida w'Urukiko rw'Ikirenga mu cyemezo N°010/2017 cyo kuwa 23/01/2017, yemeza ko rwongera kuburanishwa.

[7] Urubanza rwaburanishijwe tariki ya 17/10/2017, Ruhimbaza Modeste aburanirwa na Me Munyeshema Napoléon, naho Banki ya Kigali Ltd iburanirwa na Me Rutembesa Phocas.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

[8] Mbere yo gusuzuma ingingo Ruhimbaza Modeste ashingiraho asaba ko urubanza RSOCAA0011/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 22/02/2013 rusubirwamo ku mpamvu z'akarengane, Urukiko rurabanza gusuzuma ikibazo cyatanzwe na Banki ya Kigali Ltd cyo kutakira ikirego cya Ruhimbaza Modeste kubera ko kitubahirije ibiteganywa n'amategeko.

Kumenya niba ikirego cya Ruhimbaza Modeste kitakwakirwa ngo gisuzumwe.

[9] Me Rutembesa Phocas uhagariye Banki ya Kigali Ltd avuga ko asanga ikirego cyo gusubirishamo urubanza RSOCAA0011/11/CS ku mpamvu z'akarengane cyatanzwe na Ruhimbaza Modeste kidakwiye kwakirwa kubera ko yagitanze mu buryo bunyuranyije n'amategeko. Avuga ko icyabayeho mu icibwa ry'urubanza RSOCAA0011/11/CS atari akarengane, ko ahubwo ari ukwitiranya indishyi zo kwirukanwa binyuranyije n'amategeko n'amafaranga Ruhimbaza Modeste yahawe ahagarikwa ku kazi, icyo kibazo kikaba cyaramuhaga uburenganzira bwo gusubirishamo urubanza ingingo nshya, ashingiye ku ngingo ya 186, agace ka 6, y'Itegeko N°21/2012 ryo ku wa 14/06/2012

ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko urubanza rushobora gusubirishwamo ingingo nshya iyo mu icibwa ryarwo hakozwe amakosa akabije yo kwitiranya uko ibintu byagenze cyangwa iyo hashingiwe ku itegeko ritariho; ko kitagomba gushingira ku nzira yo gusubirishamo urubanza ku mpamvu z'akarengane iteganywa n'ingingo ya 78 y' Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

[10] Avuga kandi ko inzira Ruhimbaza Modeste, yitabaje inyuranye n'ibiteganywa n'ingingo ya 81, igika cya kabiri, y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko, atemerewe gusaba ko urubanza yatsinzwe rusubirwamo ku mpamvu z'akarengane; bityo ikirego cye kikaba kidakwiye kwakirwa ngo gisuzumwe.

[11] Me Munyeshema Napoléon uhagarariye Ruhimbaza Modeste avuga ko ingingo ya 186, agace ka 6 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, isobanutse kandi ikoreshwa iyo mu ica ry'urubanza habaye amakosa akomeye yo kwitiranya uko ibintu byagenze bigatuma Urukiko rufata icyemezo kitari cyo, akaba atari ko bimeze mu rubanza RSOCAA0011/11/CS, kuko Urukiko rutigeze rwitiranya uko ibintu byagenze, ahubwo ko rumaze gusobanura no gusesengura uko ibintu byagenze kugira ngo Ruhimbaza Modeste yirukanwe ku kazi, rwasanze yarirukanwe mu buryo budakurikije amategeko rumugenera indishyi, ikibazo kivuka ari uko rutegetse ko izo ndishyi zivanwamo amafaranga yari yarahawe yirukanwa ku kazi, ari naho hagaragarira akarengane yagiriwe. Asobanura ko ibivugwa na Me Rutembesa byari kugira ishingiro iyo kwitiranya ibintu bigaragarira mu bikorwa (faits), ariko ko mu rubanza RSOCAA0011/11/CS bigaragarira mu cyemezo rwafashe, bityo ikirego cya Ruhimbaza Modeste kikaba gikwiye kwakirwa.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 81(2) y'Itegeko Ngenga N°03/2012 ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira, … iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese….]".

[13] Urukiko rurasanga mu rubanza RSOCAA0011/11/CS cyane cyane mu bika bya 15, 16 na 17, Urukiko rwarasesenguye bihagije uburyo Ruhimbaza Modeste yirukanwe n'umukoresha we Banki ya Kigali Ltd, rushingiye ku ngingo ya 29 y'Itegeko N°13/2009 ryo ku wa 27/05/2009 ryerekeye Umurimo mu Rwanda[1], rwanzura ko yirukanwe mu buryo bunyuranyije n'amategeko, kuko yirukanywe nta mpamvu zumvikana (motif légitime), aha akaba ari naho rwahereye rumugenera indishyi zijyanye nabyo zingana na 3.934.134Frw.

[14] Urukiko rurasanga kuba Urukiko rwarategetse ko indishyi zagenewe Ruhimbaza Modeste kubera kwirukanwa binyuranyije n'amategeko zigomba kuvanwamo amafaranga y'integuza, ay'imperekeza zo gusezererwa ku kazi n'ay'ikiruhuko yari yarafashe, bitakwitwa ko ari ukwitiranya uko

[1] Ingingo ya 29 N°13/2009 y'Itegeko ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda iteganya 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"

ibintu byagenze nk'uko biteganywa n'ingingo ya 186, agace ka 6, y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, kuko uko ibintu byagenze byasobanuwe n'Urukiko runabishingiraho rufata icyemezo cy'uko yirukanwe mu buryo bunyuranyije n'amategeko, ahubwo habayeho gukura mu ndishyi zijyanye no kwirukanywa mu buryo bunyuranyije n'amategeko, amafaranga asimbura integuza n'ikiruhuko umukozi atari yarafashe, n'ay'imperekeza zo gusezererwa ku kazi, ajyanye n'ubundi burenganzira Ruhimbaza Modeste yemererwa n'Itegeko ry'umurimo, cyane cyane mu ngingo zaryo za 32, igika cya kabiri, 35, igika cya mbere[2] na 57, igika cya mbere[3].

[15] Urukiko rurasanga rero mu rubanza RSOCAA0011/11/CS, ntakwitiranya uko ibintu byagenze bishingiye ku ngingo ya 186 (6) y'itegeko N°21/2012 ryo kuwa 14/06/2012 yavuzwe haruguru, nk'uko uhagarariye Banki ya Kigali Ltd abivuga, ahubwo, nk'uko byasobanuwe mu gika kibanza, harabayeho ukudakurikiza ingingo zimwe z'itegeko ry'umurimo, ku bw'izo mpamvu hakaba nta cyari kubuza Ruhimbaza Modeste gushingira ku ngingo ya 78 y' Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, asaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane.

[16] Urukiko rurasanga rero hashingiwe ku bisobanuro byatanzwe haruguru, no ku ngingo ya 81(2) y'Itegeko Ngenga N°03/2012 ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ikirego cya Ruhimbaza Modeste kigomba kwakirwa kigasuzumwa.

Kumenya umubare w'amafaranga Ruhimbaza Modeste agomba guhabwa akomoka ku kwirukanwa mu buryo bunyuranye n'amategeko.

Ku byerekeye indishyi zikomoka ku iyirukanywa rinyuranije n'amategeko.

[17] Me Munyeshema Napoléon uburanira Ruhimbaza Modeste avuga ko Urukiko rw'Ikirenga mu rubanza RSOCAA0011/11/CS rwarenganyije uwo aburanira, kubera ko rwemeje ko indishyi zingana na 3.934.134Frw rwamugeneye zo kwirukanwa nta mpamvu zikurwamo amafaranga y'integuza, ay'imperekeza n'ay'ikiruhuko angana na 3.139.359Frw yahawe igihe cyo kwirukanwa nka *décompte finale* y'ibyo yemererwa n'amategeko kandi ko mu kuyakuramo, Urukiko rwirengagije ibiteganywa n'ingingo ya 33 y'Itegeko rigenga umurimo mu Rwanda, n'ikimenyetso kigizwe n'inyandiko y'iyo *décompte finale* yagaragarije Urukiko. Yongeraho ko ayo mafaranga atari kwitiranywa n'indishyi zo kwirukanwa nta mpamvu, kuko mu gihe Banki ya Kigali Ltd yamusezereraga ndetse no mu maburanisha yose yabayeho itemeraga ko yirukanwe mu buryo bunyuranyije n'amategeko, ari nacyo kigaragaza ko ibisobanuro byatanzwe n'Urukiko rw'Ikirenga mu rubanza RSOCAA0011/11/CS rusabirwa gusubirwamo ku mpamvu z'akarengane binyuranye n'ukuri.

[18] Asoza asaba ko amakosa yakozwe n'Urukiko rw'Ikirenga mu rubanza RSOCAA0011/11/CS yakosorwa uwo aburanira agahabwa amafaranga yose y'indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko uko yagenwe, kandi ko ari nako byagenze mu manza za bagenzi be birukaniwe rimwe, zirimo urubanza RSOCAA0013/12/CS Mukamusonera Venantie v Banki ya Kigali rwaciwe ku wa 31/12/2013, urubanza RSOCAA0017/12/CS Cyuma Yvonne v Banki ya Kigali rwaciwe kuwa 14/06/2013, n'urubanza RSOCAA0021/12/CS Nyirinkindi Jean Marie Vianney v Banki ya Kigali rwaciwe kuwa 06/12/2013.

[2] Ingingo ya 35, igika cya mbere, ivuga ko: umukoresha agomba guha impererekeza zo gusezererwa ku kazi cyangwa gusesa amasezerano umukozi umaze nibura amezi cumi n'abiri (12) akora nta guhagarika".

[3] Ingingo ya 57, igika cya mbere iteganya amafaranga y'insimburakiruhuko mu gihe umukozi ahagaritswe ku kazi atarafata ikiruhuko yemererwa n'amategeko

[19] Me Rutembesa Phocas uburanira Banki ya Kigali Ltd avuga ko nta karengane kagaragara mu icibwa ry'urubanza RSOCAA0011/11/CS, kuko Urukiko rutegeka ko Ruhimbaza Modeste ahabwa indishyi zo kwirukanwa mu buryo bunyuranye n'amategeko hakuwemo amafaranga yari yarahawe ahagarikwa mu kazi, ari uko rwabyumvise, kandi ko kutishimira imikirize y'urubanza bitafatwa nk'akarengane.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 33 y'Itegeko N°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. Indishyi z'akababaro zihabwa umukozi wirukanwe binyuranyije n'amategeko ntizishobora kujya munsi y'umushahara w'amezi atatu (3), ariko kandi ntizishobora kurenza amezi atandatu (6). Ibi ntibibuza itangwa ry'imperekeza umukozi yari asanzwe afiteho uburenganzira. Iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi z'akababaro ntizishobora kurenga umushahara w'amezi icyenda (9)".

[21] Urukiko rurasanga mu rubanza RSOCAA0011/11/CS rusabirwa gusubirwamo mu gika cyarwo cya 15,16 n'icya 17 rugaragaza ko nyuma yo gusesengura uburyo Ruhimbaza Modeste yirukanwemo, Urukiko rw'Ikirenga rwasanze yarirukanwe ku mpamvu itumvikana (motif non légitime), maze rushingiye ku ngingo ya 33, igika cya gatatu (3), y'Itegeko N°13/2009 ryo kuwa 27/05/2009 ryavuzwe haruguru, rumugenera indishyi zingana n'umushahara mpuzandengo we ukubwe inshuro icyenda kubera ko yari afite uburambe mu kazi burenga imyaka cumi (10), izo ndishyi zikaba zingana na 3.934.134Frw nk'uko yari yemejwe n'Urukiko Rwisumbuye rwa Nyarugenge ndetse n' Urukiko Rukuru rushimangira icyo cyemezo.

[22] Urukiko rurasanga kandi mu bika bya 33 na 37 by'urubanza RSOCAA0011/11/CS, kimwe n'inyandiko yiswe *indémnité de départ* yakiriwe na Ruhimbaza Modeste kuwa 25/11/2009 iri muri dosiye, bigaragaza ko Ruhimbaza Modeste yirukanwa yahawe amafaranga y'integuza (indémnité compansatrice de préavis) angana na 337.126Frw ateganywa n'ingingo ya 32, igika cya mbere y'Itegeko ryavuzwe haruguru, amafaranga y'ikiruhuko atafashe (indémnité compansatrice de congé) angana na 79.477Frw ateganywa n'ingingo ya 57, igika cya kabiri, ry'iryo tegeko, n'amafaranga y'imperekeza angana n'umushahara we w'amezi atandatu angana na 2.622.755Frw ateganywa n'igika cya mbere cy'ingingo ya 35 yaryo, yose hamwe akaba angana na 3.139.359Frw.

[23] Urukiko rurasanga indishyi zigenwa mu gihe habayeho ikosa ryo kwirukana umukozi ku mpamvu zitumvikana, zigenwa hashingiwe ku ngingo ya 33 y'itegeko N°13/2009 ryo kuwa 27/05/2009 ryavuzwe haruguru, ari indishyi zishingira ku kababaro katewe n'iryo sezererwa, zikaba zigomba gutandukanywa n'andi mafaranga umukozi ahabwa nk'uburenganzira yemererwa n'amategeko iyo asezerewe mu kazi. Ugutandukanya amafaranga ahabwa umukozi igihe asezerewe ku kazi mu gihe gisanzwe n'indishyi ahabwa igihe habayeho ikosa ryo kumwirukana nta mpamvu, bigarukwaho n'abahanga mu mategeko aho bavuga ko « iyo integuza yarangiye buri wese agumana uburenganzira bwe, buri wese akubahiriza ibyo agomba….n'ubwo umukoresha ashobora kubisonera umukozi. Muri icyo gihe umukozi afite uburenganzira ku ndishyi zititiranywa n'indishyi zo kwirukanwa ku kazi...ndetse n'iz'akababaro[4]. Ko igihe umukozi yirukanwe mbere yuko ahabwa ikiruhuko cye

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[4] Alain Cœuret, Bernard Gauriau, Michel Miné, Droit du travail, Edition Dalloz, 2006, p. 386-387:

cy'umwaka cyose yari afitiye uburenganzira, agomba kubona amafaranga ayisimbura, akaba atandukanye n'indishyi zo kwirukanwa, kuko afatwa nk'umushahara[5].

[24] Urukiko rurasanga amafaranga 3.139.359Frw, Banki ya Kigali Ltd yahaye Ruhimbaza Modeste imusezerera ku kazi nka "décompte final", yari ayafiteho uburenganzira hashingiwe ku ngingo ya 32, igika cya 2, iya 35 igika cya mbere, n'iya 57, igika cya 2, z'itegeko N°13/2009 ryo kuwa 27/05/2009 ryavuzwe haruguru, ndetse n'ingingo ya 33, igika cya kabiri, y'iryo tegeko ivuga ko itangwa ry'indishyi z'akababaro ritabuza ko umukozi ahabwa imperekeza yari asanzwe afiteho uburenganzira, ku bw'izo mpamvu akaba ataragombaga gukurwa mu ndishyi zituruka ku ikosa ryo kwirukanwa ku buryo bunyuranye n'amategeko.

[25] Urukiko rurasanga rero, rushingiye kuri ibyo bisobanuro n'ingingo z'amategeko zavuzwe haruguru, indishyi zingana na 3.934.134Frw zituruka ku ikosa ryo kwirukanwa mu buryo bunyuranye n'amategeko Ruhimbaza Modeste yagenewe n'Urukiko mu rubanza RSOCAA0011/11/CS, zitaragombaga kuvanwamo amafaranga angana na 3.139.359Frw yahawe asezererwa ku kazi, kuko yayahawe nk'uburenganzira bwe yemererwa n'amategeko, bityo akaba agomba kuyahabwa yose uko ari 3.934.134Frw.

Kubyerekeye amafaranga ya "prime de bilan "n'aya " gratification ".

[26] Me Munyeshema Napoléon avuga ko mu rubanza RSOCAA0011/11/CS Urukiko rw'Ikirenga rwemeje ko Ruhimbaza Modeste adafite uburenganzira ku mafaranga ya gratification rushingiye ku kuba atarakorewe isuzuma (évaluation), runamwima amafaranga ya prime de bilan rushingiye ku kuba yarahagaritswe bilan itarakorwa ngo hagaragare umusaruro Banki ya Kigali Ltd yabonye, akaba asanga iyo atirukanwa yari gukorerwa iryo suzuma kandi ko mu mezi icumi yari amaze gukora yagize uruhare ku nyungu Banki ya Kigali Ltd yabonye, bityo akaba nta mpamvu uwo aburanira yavutswa uburenganzira kuri ayo mafaranga ahwanye n'igihe cy'amezi icumi yari amaze gukora.

[27] Asoza asaba ko yahabwa *prime de bilan* ingana na 437.126Frw x 10/12= 364.272Frw na *gratification* ingana na 437.126Frw x 10/12= 364.272Frw, kandi ko hari n'imanza za bagenzi be bari bahuje ikibazo zaciwe n'Urukiko rw'Ikirenga nyuma y'urubanza rwe, zirimo urubanza RSOCAA0013/12/CS Mukamusonera Venantie v Banki ya Kigali rwaciwe kuwa 31/12/2013, urubanza RSOCAA0017/12/CS Cyuma Yvonne v Banki ya Kigali rwaciwe kuwa 14/06/2013 zavuzwe haruguru, zemeje ko bayahabwa hashingiwe ku gihe bari bamaze gukora, kuba we atarayahawe akaba ari akarengane kagaragara mu rubanza RSOCAA0011/11/CS ariyo mpamvu asaba ko rusubirwamo akarenganurwa.

[28] Me Rutembesa Phocas, uhagarariye Banki ya Kigali Ltd, avuga ko urubanza RSOCAA0011/11/CS rusabirwa gusubirwamo mu bika byarwo bya 45,46 na 47, Urukiko rwagaragaje impamvu Ruhimbaza Modeste atagenewe ayo mafaranga, rusobanura ko izo mpamvu zishingiye ku ngingo ya 76 y'amategeko agenga Banki ya Kigali Ltd, iteganya ko gratification itangwa nyuma

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[…. Lorsque le préavis est exécuté, chacun conserve la maîtrise de ses droits ou pouvoir, chacun demeure tenu d'exécuter ses obligations…..Mais le salarié peut aussi en être dispensé par l'employeur. Dans cette hypothèse, il a droit à une indemnité compensatrice ne se confondant pas ni avec l'indemnité de licenciement….. ni avec la réparation….]

[5] Idem, p. 388-389 : ……Lorsque le contrat de travail est résilié avant que le salarié ait pu bénéficier de la totalité du congé auquel il avait droit, il doit recevoir pour la fraction de congé dont il n'a pas bénéficié, une indemnité compensatrice……à la différence de l'indemnité de licenciement, cette indemnité a une nature salariale…]

y'umwaka kandi ko Umukoresha adategetswe kuyitanga[6], no ku ngingo ya 77 y'ayo mategeko iteganya ko prime de bilan itangwa mu kwezi kwa gatatu hashingiwe ku musaruro Banki yabonye, bimaze kwemezwa n'Inama y'Ubuyobozi, ari nayo igena ingano yayo, kandi ko kuyitanga atari itegeko[7].

[29] Avuga ko ku bijyanye n'imanza zaciwe n'Urukiko rw'Ikirenga zatanze prime de bilan na gratification ko izo manza zitafatwaho icyitegererezo kuko zaciwe nyuma y'urubanza rwa Ruhimbaza Modeste, kandi ko buri nteko ica urubanza ikurikije uko irwumva, ari nayo mpamvu hari n'izindi manza zo muri urwo rwego nazo zaciwe n'Urukiko rw'Ikirenga arizo urubanza RSOCAA0010/12/CS, Mitimituje Gaëtan v Banki ya Kigali, rwaciwe kuwa 13/06/2014, n'urubanza RSOCAA0003/13/CS, Kanyandekwe Segatabazi Cisco v Banki ya Kigali rwaciwe kuwa 30/10/2015 zitatanze prime de bilan na gratification, bityo ko ibyo Me Munyeshema Napoléon avuga ko Urukiko rwashingira ku zindi manza zaciwe nta shingiro bikwiye guhabwa, kuko zose zitabivuzeho rumwe.

UKO URUKIKO RUBIBONA

[30] Urukiko rurasanga mu rubanza RSOCAA0003/13/CS rusabirwa gusubirwamo mu bika byarwo bya 45 – 47 rugaragaza ko Ruhimbaza Modeste atahawe *gratification* bitewe n'uko atakorewe isuzumwa riteganywa n'ingingo ya 76 y'amategeko agenga Banki ya Kigali Ltd, ivuga ko *gratification/bonus* itangwa n'Umukoresha hashingiwe ku manota umukozi yabonye nyuma y'iryo suzumwa ari nayo agaragaza ingano ya *gratification* ahabwa. Rugaragaza kandi ko atahawe *prime de bilan* hashigiwe ku ngingo ya 77 y'ayo mategeko iteganya ko itangwa hashingiwe ku musaruro wabonetse mu mwaka, Ruhimbaza Modeste akaba atari kuyihabwa uwo musaruro utaragaragara kuko yirukanwe umwaka utararangira.

[31] Urukiko rurasanga isuzumabushobozi ry'umukozi rishingira ku musaruro w'ibikorwa umukozi yagezeho n'imyitwarire uwo umukozi yagaragaje mu gihe cy'umwaka aba arangije mu kazi ashinzwe, kandi Urukiko mu rubanza RSOCAA0003/13/CS, rugaragaza ko Ruhimbaza Modeste yirukanwe ku mpamvu itumvikana uwo mwaka utarangira, byumvikanisha ko atashoboye kurangiza umwaka ari mu kazi, kubera ikosa ry'umukoresha we ryo kumwirukana nta mpamvu, kuko iyo atirukanwa yari gukomeza gukora akazakorerwa isuzumwa umwaka urangiye nk'uko abandi bakozi basigaye mu kazi barikorewe.

[32] Urukiko rurasanga kandi kuba yarirukanwe umwaka utararangira bidatesha agaciro ibikorwa yari yarakoze mu gihe cy'amezi icumi yari amaze gukora muri uwo mwaka, cyane cyane ko na Banki ya Kigali Ltd nta kimenyetso yagaragarije Urukiko cyari gutuma atabona amanota amuhesha *gratification*, usibye kuvuga gusa ko atari yujuje ibisabwa kuri uwo mwanya.

[33] Ku bijyanye na prime de bilan, Urukiko rurasanga koko itangwa nyuma y'umwaka hagendewe ku musaruro wabonetse, ariko Banki ya Kigali Ltd mu bisobanuro itanga ikaba itagaragaza ko nyuma yo kwirukana Ruhimbaza Modeste umwaka utararangira, nta musaruro ushimishije yabonye, bivuze ko

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[6] A bonus may be given to the Worker at the end of the Year. Nevertheless, the Employer is under no obligation to give bonus. The bonus is calculated on the net salary at 31st December and evaluation points obtained by the Worker.

[7] The giving of this allowance comes from the decision of the Board of Directors on the proposition of the Management Committee which fixes the amount and the date of payment. The Employer is under non legal obligation to give this appraisal allowance

umusaruro yabonye muri uwo mwaka Ruhimbaza Modeste nawe yawugizemo uruhare rungana n'igihe cy'amezi icumi yari amaze gukora.

[34] Urukiko rurasanga kandi kuvuga ko hashingiwe ku ngingo ya 76 n'iya 77 z'amategeko agenga Banki ya Kigali Ltd, ayo mafaranga atangwa ku bushake bw'umukoresha, na byo bitagenderwaho, kuko byari kugira agaciro iyo Banki ya Kigali Ltd ku mpamvu runaka igaragaza ko n'abandi bakozi basigaye mu kazi nabo batayahawe, mu gihe rero yiyemeje kuyatanga, bigomba gukorerwa abakozi bose bagize uruhare ku musaruro w'ikigo. Ibi bikaba byaranagarutsweho mu rubanza rwaciwe n'Urukiko rusesa imanza rw'Igihugu cy'Ubufaransa ku bijyanye na *prime de productivité* aho rwemeje ko itangwa n'umukoresha abyibwirije kandi ku bushake, ariko ko iyo ayemeye iba ari itegeko kuri we kuko iba ari kimwe mu bigize umushahara w'umukozi[8].

[35] Urukiko rurasanga rero, mu gihe Urukiko rwemeje ko Ruhimabaza Modeste yirukamwe mu buryo budakurikije amategeko, iri kosa akaba ari naryo ryatumye adakomeza akazi ngo arangize umwaka akorerwe isuzumwa, n'umusaruro wa Banki ugaragazwe, izi mpamvu zikomoka ku ngaruka zo kwirukanywa nta mpamvu, ntizashingirwaho yimwa *gratification* na *prime de bilan* yari kubona iyo aguma mu kazi, bityo akaba agomba kubihabwa nkuko biteganywa n'ingingo ya 76 n'iya 77 z'amategeko agenga Banki ya Kigali Ltd. Hashingiwe ku kigereranyo cy'amezi icumi yari amaze gukora no ku mushahara we mpuzandengo w'ukwezi ungana na 437.126Frw wagaragajwe n'urubanza RSOCAA0011/11/CS rusabirwa gusubirwamo, agomba guhabwa *prime de bilan* ingana na 437.126Frw x 10/12= 364.272Frw na *gratification* ingana na 437.126 Frw x 10/12 = 364.272Frw, yose hamwe akaba 728.544Frw.

Kumenya niba hari indishyi zatangwa muri uru rubanza.

[36] Me Munyeshema Napoléon, ashingiye ku ngingo ya 258 cy'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCLIII) asaba Urukiko ko Ruhimbaza Modeste yagenerwa indishyi z'igihembo cy'Avoka zingana na 1.000.000Frw n'iz'ikurikiranarubanza zingana na 500.000Frw bitewe n'uko yiyambaje Umunyamategeko wo kumuburanira kugira ngo ashobore kurenganurwa.

[37] Me Rutembesa Phocas, uburanira Banki ya Kigali Ltd, avuga ko indishyi Ruhimbaza Modeste asaba ntazo akwiye kuko ariwe ukomeza kwishora mu manza nta mpamvu. Avuga ko indishyi yatsindiye yazihawe mu manza zabanje ariko akomeza gushora Banki ya Kigali Ltd mu manza zitari ngombwa bituma yitabaza Abavoka, ko ahubwo ari Banki ya Kigali Ltd izikwiye, ariyo mpamvu asaba indishyi za 1.000.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cy'Avoka.

UKO URUKIKO RUBIBONA

[38] Ingingo ya 258 y'Igitabo cya Gatatu cy'Urwunge rw'Amategeko Mbonezamubano, iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ugukora ikosa rigikomokaho kuriha ibyangiritse".

[39] Urukiko rurasanga, Ruhimbaza Modeste nyuma yo kwirukanwa ku kazi nta mpamvu, yaritabaje inkiko kandi akaburanirwa n'Avoka, bityo akaba hari ibyo yatakaje, indishyi asaba z'igihembo

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[8] Cour de Cassation, Chambre Sociale, 5 Juin 1996: [….prime de productivité…lorsqu'elle est payée en exécution d'un engagement unilatéral de l'Employeur, une prime constitue un élément du salaire et est obligatoire pour l'employeur, dans les conditions fixées par cet engagement, peu importe son caractère variable].

cy’Avoka n’ikurikiranarubanza akaba azikwiye, ariko kubera ko izo asaba ari nyinshi, mu bushishozi bw’Urukiko akaba agenewe kuri uru rwego 500.000Frw y’igihembo cy’Avoka na 300.000Frw y’ikurikiranarubanza, yose hamwe akaba 800.000Frw.

[40] Ku bijyanye n’indishyi zisabwa na Banki ya Kigali Ltd, Urukiko rurasanga nta shingiro zifite, kuko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY’URUKIKO

[41] Rwemeje ko inzitizi yo kutakira ikirego cya Ruhimbaza Modeste cyo gusubirishamo urubanza RSOCAA0011/11/CS ku mpamvu z’akarengane yatanzwe na Banki ya Kigali Ltd nta shingiro ifite;

[42] Rwemeje ko indishyi zingana na 3.934.134Frw zituruka ku ikosa ryo kwirukanwa ku buryo bunyuranye n’amategeko zitagombaga kuvanwamo amafaranga angana 3.139.359 yahawe yirukanwa ku kazi;

[43] Rutegetse Banki ya Kigali Ltd guha Ruhimbaza Modeste indishyi zikomoka ku kwirukanywa ku kazi mu buryo bunyuranije n’amategeko zinganga na 3.934.134Frw ;

[44] Rutegetse Banki ya Kigali Ltd guha Ruhimbaza Modeste amafaranga ya *gratification* na *prime de bilan* angana na 728.544Frw ;

[45] Rutegetse Banki ya Kigali Ltd guha Ruhimbaza Modeste indishyi z’ikurikiranarubanza n’igihembo cy’Avoka bingana na 800.000Frw;

[46] Ruvuze ko urubanza RSOCAA0011/11/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 22/02/2013, ruhindutse kubirebana n’ingano z’indishyi zikomoka ku kwirukanywa ku kazi no ku mafaranga ya *gratification* na *prime de bilan*;

[47] Rutegetse ko amagarama ahwanye na 100.000Frw aherera kuri Banki ya Kigali Ltd.