BANKI Y'ABATURAGE Y'U RWANDA(BPR) v UKWIBISHAKA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RSOC 00001/2018/SC– (Cyanzayire, P.J., Hitiyaremye na Nyirinkwaya, J.) 02 Nyakanga 2021]

Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishamourubanza ku mpamvu z'akarengane – Umuburanyi utarasabye ko urubanza rusubirishwamo ku mpamvu z'akarengane – Umuburanyi utarasabye ko urubanza rusubirishwamo ku mpamvu z'akarengane, akurikije uburyo n'inzira biteganywan'itegeko, ntashobora kuririra ku kirego cyatanzwe n'uwasubirishijemo urubanza ngo na we asabe ko rwasuzuma ibyo yumva yarenganyijwemo.

Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishamourubanza ku mpamvu z'akarengane – Ibirego bitari mu byashingiweho hemezwa ko urubanza rukwiye gusubirwamo ku mpamvu z'akarengane – Uwareze yemerewe kugaragaza ingingo zose yarenganyijweho, kuko nk'uko rwabisobanuye mu manza zinyuranye icya ngombwa ari uko ikiregerwa mu rubanza rw'akarengane kitarenga imbibi z'icyaregewe mu ishingwa ry'urubanza ku rwego rwa mbere n'ibyaburanyweho mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane.

Amategeko agenga imanza z'umurimo – Gusezererwa ku kazi – Ibarwa ry'indishyi z'umushahara w'igihe cy'integuza – Gusezererwa mu kazi mu gihe cy'isubika ry'amasezerano y'akazi bitanga uburenganzira ku ndishyi zihwanye n'umushahara utahanwa (net salary) w'amezi abiri – Ibyo umukozi agenerwa (avantages) kugirango abyifashishe mu gihe ari mu kazi kandi mu nyungu z'akazi, bitari mu bigize umushahara, ntibiherwaho mu ibarwa ry'indishyi z'umushahara w'igihe cy'integuza kubera gusezererwa mu gihe cy'isubikwa ry'amasezerano y'akazi(suspension).

Incamake y'ikibazo: Ukwibishaka wari umukozi wa BPR Plc wakoraga ku mwanya w'Umuyobozi w'Agateganyo w'ishami rya Nyagatare yareze mu Rukiko Rwisumbuye rwa Nyagatare BPR Plc avuga ko yirukanywe mu buryo budakurikije amategeko.

Uregwa asobanura ko raporo y'ubugenzuzi bw'inguzanyo yagaragaje ko Urega yakoze amakosa yo gutanga inguzanyo hatubahirijwe amabwiriza abigenga bituma amuhagarika by'agateganyo ngo hasuzumwe n'iby'uburyozwe bw'abayagizemo uruhare nyuma afata icyemezo cyo gusesa amasezerano y'akazi bagiranye, amuha ibyo amategeko ateganya.

Urukiko rwemeje ko Uregwa yirukanye Urega mu buryo bunyuranyije n'amategeko kandi ko agomba kubimuhera indishyi z'itandukanye. Impande zombi zahise zijuririra Urukiko Rukuru, Urugereko rwa Rwamagana maze ibirego byabo bihurizwa hamwe biba ikirego kimwe.

Urukiko Rukuru rwemeje ko ubujurire bwabo bombi bufite ishingiro kuri bimwe, rwemeza ko Urega ahabwa indishyi zitandukanye ariko ntahabwe amafaranga yasigaye mu kumubarira iminsi y'ikiruhuko yari yahawe mu rubanza rujuririrwa.

Uregwa yajuririye Urukiko rw'Ikirenga ariko rwemeza ko ubujurire bwe butakiriwe kuko butari mu bubasha bwarwo. Ibi byatumye ashyikiriza ikibazo cye Urwego rw'Umuvunyi, asaba ko urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana rwasubirishwamo ku mpamvu z'akarengane. Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, maze ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yemeza ko rusubirwamo ku mpamvu z'akarengane.

Mbere y'iburanishwa mu mizi y'uru rubanza, impande zombie zatanze inzitizi zo kutakira ikirego kuri buri ruhande aho Urega asaba Urukiko kudasuzuma ingingo irebana n'impaka zishingiye kuri *independent verification report* n'izerekeye ingano y'indishyi ku mushahara yabariwe, kuko ibyo bibazo bitari mu mpamvu Uregwa yashingiyeho anenga imikirize y'urubanza rusubirishwamo ndetse bikaba bitari no mu byashingiweho n'Urwego rw'Umuvunyi mu kugaragaza akarengane kabayemo.

Naho Uregwa yatanze inzitizi yo kutakira ikirego cy'Urega kuko atigeze atanga ikirego cy'akarengane kigaragaza ko hari icyo urubanza rusabirwa gusubirishwamo rwamurenganyijeho, akaba rero adashobora kugitanga bwa mbere mu kwiregura.

Urukiko rwafashe icyemezo mu ntebe kuri izo nzitizi, aho rwemeje ko inzitizi yatanzwe n'Urega nta shingiro ifite naho iyatanzwe n'Uregwa ikaba ifite ishingiro ifite ishingiro kuko Urega atanyuze muri nzira zo gusubirishamo urubanza ku mpamvu z'akarengane ziteganywa n'itegeko, bityo ibirego yatanze muri uru rwego bikaba bidashobora kwakirwa.

Urubanza rwokomeje mu mizi habanza gusuzumwa ikibazo kijyanye no kumenya niba raporo yiswe "*independent verification*" yarakozwe bisabwe n'Uregwa kandi ikaba yabera Urega ikimenyetso ko yirukaniwe ubusa.

Uregwa avuga ko mu gusesa amasezerano yarafitanye n'Urega yashingiye kuri raporo isanzwe y'ubugenzuzi ku nguzanyo zatanzwe nyamara, mu guca urubanza, Urukiko Rukuru rubirengaho rushyigikira ko iyo raporo yavugurujwe na *independent verification report* Urega avuga ko nayo yakozwe mu gihe kimwe n'iyo y'ubugenzuzi ku nguzanyo, rugendeye ku mvugo ye gusa itagira ikimenyetso kiyishyigikira ahubwo rwirengagiza ibimenyetso rwari rwashyikirijwe bigaragaza ko itabayeho.

Urega avuga ko ibivugwa n'Uregwa ko raporo yiswe *independent verification* idashobora gusohokera rimwe na raporo y'igenzura ku itangwa ry'imyenda yagendeyeho asesa amasezerano, kandi iyo ya mbere yarakozwe igamije kugenzura ibyakozwe mu ya kabiri, nta gitangaje kirimo. Akomeza avuga ko iyo raporo yakozwe n'abagabo babiri bari ba *auditeurs* b'Uregwa, akaba abatangaho abatangabuhamya.

Abo batangabuhamya bombi babwiye Urukiko ko batazi raporo yiswe *independent verification*, ko raporo bakoze ari iyo kugenzura ishami rya Nyagatare *regular audit* y'igihe Urega yari ayoboye by'agateganyo iryo shami kandi bakaba ntacyo babwiwe kureba cy'umwihariko muri Nyagatare kuko nyine bari muri *regular audit*.

Urega avuga ko kuba mu ibazwa abatangabuhamya barajijinganyije byatewe n'igihe gishize; asaba Urukiko gusuzuma na *correspondances* zatangijwe na Jacqueline Bugunya, Marc De Jong na Murengerangoma Jean Baptiste zigaragaza ko raporo yo ku wa 21/06/2012 Uregwa yashyize muri dosiye ari umugereka wa raporo yo ku wa 05/08/2012, akaba asaba Urukiko gusesengura izo raporo zombi rukareba isano zifitanye.

Mu bisobanuro Uregwa yagejeje ku Rukiko mu nyandiko, n'ibikubiyemo bikaba aribyo bigaragara muri *credit audit report*, igasuzumwa n'Inama y'Ubutegetsi, igahita ishyikirizwa *disciplinary committee*, ikaba ariyo yashingiweho mu gusezerera ku kazi Urega, hagaragaramo ko nta *independent verification report* yabayeho, ko icyabayeho ari *regular credit audit report*. Asobanura ko bene izi raporo zitasinywaga, ko igihamya ko ari umwimerere ari *Credit audit working papers* zandikishwaga intoki zikanashyirwaho *paraphe* n'abagiye gukora *audit*.

Urega avuga ko amakosa avugwa muri raporo yasohotse ku wa 05/08/2012 amenshi ari amahimbano, kandi ko nta mabwiriza yari ahari ateganya ibigomba kwitabwaho mu gutanga inguzanyo. Avuga kandi ko muri *Disciplinary Committee* batagaragaje amakosa yagizemo uruhare ku giti cye nk'umuyobozi w'ishami.

Uregwa asobanura ko ibivugwa muri raporo bifitiwe ibimenyetso bigizwe n'amazina y'abagiye bahabwa inguzanyo mu buryo bunyuranye n'amabwiriza, kandi ko uburyo inguzanyo zitangwa bisobanuye muri *credit policy* yo ku wa 23/09/2011. Yongeraho ko n'iba hari ibyaba byarakozwe n'abakozi, Urega yari afite inshingano yo kubikurikirana akanabibazwa nk'umuyobozi wari ubakuriye.

Ku kibazo kijyanye no kumenya niba harabaye amakosa mu ibarwa ry'indishyi z'umushahara w'igihe cy'integuza zagombaga guhabwa Urega igihe yasezererwaga, Uregwa avuga ko Urukiko rwafashe amafaranga Urega yagahembwe nk'umukozi rwongeraho *avantages* yemererwa ari mu kazi (amavuta y'imodoka, amafaranga y'itumanaho n'ibindi) kandi icyo gihe yari ari muri *suspension*. Ni ukuvuga ko

Urega yari afite uburenganzira ku mushahara, hatabariwemo ibyo yemererwa ari uko ari mu kazi gusa, kuko bitari mu bigize umushahara.

Urega avuga ko abona Urukiko Rukuru rwarubahirije amategeko, cyane cyane biteganywa n'Itegeko rigenga umurimo ryakoreshwaga icyo gihe, aho riteganya indishyi uwasheshe amasezerano atubahirije amategeko aha umukozi, ko rero nta kosa Urukiko rwakoze.

Ku kibazo kijyanye no kumenya niba hari amafaranga ajyanye no kuzamurwa mu ntera yagenewe Urega atayakwiye, Uregwa avuga koUrukiko rwirengagije ibimenyetso rwagaragarijwe, maze hashingiwe ku igereranya rya *liste de paie* y'ukwezi k'Ukuboza 2010 na liste de paie y'ukwezi kwa Mutarama na Gashyantare 2011, rwemeza ko Urega atazamuwe mu ntera muri iyo myaka, ngo kuko amafaranga yahawe ari aya *régularisation* atari ayo kuzamurwa mu ntera.

Urega avuga ko yifuza ko uru Rukiko rwasesengura inyandiko yagengaga abakozi icyo gihe, hakitabwa ku kureba niba umushahara wariyongereye nk'uko biteganywa muri *staff protocol*, kuko impinduka zabaye ku mushahara zijyanye no guhindurirwa imirimo ashyirwa ku mwanya wisumbuye by'agateganyo bidakwiye kwitiranywa no kuzamurwa mu ntera, kandi ko imishahara yahembwe igaragaza ko nta nyongera y'umushahara yabayeho.

Incamake y'icyemezo: Gusezererwa mu kazi mu gihe cy'isubika ry'amasezerano y'akazi bitanga uburenganzira ku ndishyi zihwanye n'umushahara utahanwa w'amezi abiri. Ibyo umukozi agenerwa kugirango abyifashishe mu gihe ari mu kazi kandi mu nyungu z'akazi, bitari mu bigize umushahara, ntibiherwaho mu ibarwa ry'indishyi z'umushahara w'igihe cy'integuza kubera gusezererwa mu gihe cy'isubikwa ry'amasezerano y'akazi.

Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro.
Urubanza rwaciwe n'Urukiko Rukuru, ruhindutse kuri bimwe.

Amategeko yashingiweho:
Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55, 58 n'iya 63.
Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo, ingingo ya 31 n'iya 32.

Imanza zifashishijwe:
Nditiribambe Samuel na Gatera Jason, RS/INJUST/RC 00007/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020.
PRIME Insurance Ltd na Kansiime James, RS/INJUST/RCOM 00005/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 12/06/2020.

I. IMITERERE Y'URUBANZA

[1] Ukwibishaka Alexis yari umukozi (*Comptable*) wa Banki y'Abaturage y'u Rwanda(BPR Plc) mu ishami rya Nyagatare, agenda azamurwa mu ntera kugeza ubwo ku wa 19/01/2012 aba umuyobozi w'agateganyo w'iryo shami. Ku wa 08/08/2012 yaje guhagarikwa by'agateganyo ku mirimo ye, maze ku wa 10/09/2012 arirukanwa, amenyeshwa ko azize *violation of procedures related to credit management*, akavuga ko mbere hose atari yarigeze amenyeshwa ko hari ikibazo yateje cyangwa se ikosa rikomeye yakoze. Ibyo ni byo byatumye arega Banki y'Abaturage y'u Rwanda (BPR Plc) mu Rukiko Rwisumbuye rwa Nyagatare mu rubanza RSOC 0012/12/TGI/NYG, avuga ko yirukanywe mu buryo budakurikije amategeko.

[2] BPR Plc iburana ivuga ko raporo y'ubugenzuzi bw'inguzanyo (*Credit audit report*)yo ku wa 20/07/2012 yagaragaje ko Ukwibishaka Alexis yakoze amakosa yo gutanga inguzanyo hatubahirijwe

amabwiriza ya BPR Plc na BNR, bituma ku wa 08/08/2012 BPR Plc imuhagarika by'agateganyo ngo hasuzumwe n'iby'uburyozwe bw'abayagizemo uruhare; ku wa 10/09/2012, ifata icyemezo cyo gusesa amasezerano y'akazi bagiranye, inamuha amafaranga y'integuza n'ibindi amategeko ateganya.

[3] Ku wa 10/07/2013, Urukiko Rwisumbuye rwa Nyagatare, Urugereko rwihariye ruburanisha imanza z'umurimo, rwaciye urubanza RSOC 0012/12/TGI/NYG mu buryo bukurikira:

a. Rwemeje ko BPR Plc yasezereye Ukwibishaka Alexis mu buryo bunyuranyije n'amategeko kandi ko igomba kubimuhera indishyi

b. Rutegetse BPR Plc kwishyura Ukwibishaka Alexis indishyi zikurikira:

- 7.064.700 Frw yo gusezererwa ku murimo mu buryo bunyuranyije n'amategeko;
- 500.000 Frw yo kudahabwa icyemezo cy'imirimo yakoze gikurikije amategeko;
- 1.079.329 Frw yasigaye mu kumubarira iminsi y'ikiruhuko gihemberwa;
- 1.800.000 Frw atahawe yo kuzamurwa mu ntera;
- 2.768.599 Frw yakuwe ku mushahara n'inyungu zayo;
- 2.000.000 Frw y'indishyi.

[4] BPR Plc n'Ukwibishaka Alexis bombi bajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, imanza zabo zombi zihurizwa mu rubanza rumwe RSOCA 0010-0011/13/HC/RWG.

[5] Ku wa 15/05/2014, Urukiko Rukuru, Urugereko rwa Rwamagana, mu rubanza RSOCA 0010-0011/13/HC/RWG, rwafashe icyemezo gikurikira:

a. Rwemeje ko ubujurire bwa Ukwibishaka Alexis n'ubwa BPR Plc bufite ishingiro kuri bimwe;

b. Rwemeje ko Ukwibishaka Alexis ahawe indishyi zikurikira:

  - 3.949.974 Frw y'integuza atahawe;
  - 2.000.000 Frw y'indishyi zo kudahabwa icyemezo cy'imirimo yakoze gikurikije amategeko;
  - 10.000.000 Frw y'indishyi z'akababaro.

c. Rwemeje ko Ukwibishaka Alexis atagomba guhabwa 1.079.329 Frw yariyasigaye mu kumubarira iminsi y'ikiruhuko;

d. Rwemeje ko nta gihindutse ku ndishyi zingana na 2.768.599 FRW zijyanye n'amafaranga yakuwe ku mushahara;

e. Rwemeje ko nta gihindutse ku ndishyi zingana na 2.000.000 Frw z'igihembo cya Avoka n'ikurikiranarubanza.

[6] BPR Plc yajuririye Urukiko rw'Ikirenga, ariko mu cyemezo RSOC 0001/14/Pre-ex/CS cyo ku wa 02/12/2014, rwemeza ko ubujurire bwayo butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ikirenga.

[7] Ku wa 30/12/2014, BPR Plc yashyikirije ikibazo cyayo Urwego rw'Umuvunyi, isaba ko urubanza RSOCA 0010-0011/13/HC/RWG rwaciwe ku wa 15/05/2014 n'Urukiko Rukuru, Urugereko rwa Rwamagana rwasubirishwamo ku mpamvu z'akarengane.

[8] Ku wa 21/08/2017, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RSOCA 0010-0011/13/HC/RWG rwasubirwamo ku mpamvu z'akarengane, maze ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yemeza ko rusubirwamo ku mpamvu z'akarengane, ruhabwa RS/INJUST/RSOC 00001/2018/SC.

[9] Ku wa 20/05/2020, urubanza rwaburanishijwe mu ruhame, ababuranyi bombi bitabye, BPR Plc ihagarariwe na Me Mugemanyi Védaste, Ukwibishaka Alexis yunganiwe na Me Shyaka Mashami Emmanuel afatanyije na Me Mukabibi Fatuma; urubanza ruburanishwa hari n'abatangabuhamya Iyakaremye Emmanuel na Murengerangoma Jean Baptiste.

[10] Nyuma yo kugenzura imyirondoro y'ababuranyi no kuyemeza, Urukiko rwabanje kwemeranya na bo ku ngingo zigize urubanza n'ibitekerezo bizikubiyemo hashingiwe ku myanzuro impande zombi zatanze no kuri raporo y'inama ntegurarubanza. Izo ngingo ni izi zikurikira:

a. Impaka zishingiye ku cyiswe *independent verification report* Ukwibishaka Alexis avuga ko ivuguruza raporo y'igenzura risanzwe (*regular audit report*) Banki y'Abaturage yashingiyeho isesa amasezerano y'umurimo;

b. Ibyerekeye impaka zijyanye n'ibyagombaga gushingirwaho habarwa indishyi z'umushahara w'igihe cy'integuza zagombaga guhabwa Ukwibishaka Alexis ubwo yasezererwaga;

c. Ibyerekeye impaka zishingiye ku kuba Ukwibishaka Alexis yaba yarazamuwe mu ntera cyangwa atarazamuwe mu ntera n'ingaruka zabyo;

d. Ibyerekeye indishyi zisabwa n'impande zombi.

[11] Mu gutanga ibisobanuro by'inyongera ku ngingo zavuzwe, ababuranyi ku mpande zombi, babyukije inzitizi. Ukwibishaka Alexis yatanze inzitizi yo kudasuzuma ingingo irebana n'impaka zishingiye kuri *independent verification report* kimwe n'izerekeye ingano y'indishyi ku mushahara yabariwe, kuko ibyo bibazo bitari mu mpamvu BPR Plc yashingiyeho inenga imikirize y'urubanza RSOCA 0010-0011/13/HC/RWG, ndetse bikaba bitari no mu byashingiweho n'Urwego rw'Umuvunyi rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane. BPR Plc yo yatanze inzitizi yo kutakira ikirego cya Ukwibishaka Alexis kigaragaza indishyi akwiye kugenerwa zishingiye ku buryo yirukanywemo n'ingaruka byamugizeho, kuko atigeze atanga ikirego cy'akarengane kigaragaza ko hari icyo urubanza rusabirwa gusubirishwamo rwamurenganyijeho biciye mu nzira ziteganywa n'amategeko, akaba rero adashobora kugitanga bwa mbere mu kwiregura.

[12] Nyuma yo gusuzuma izo nzitizi, Urukiko rwazifasheho icyemezo mu ntebe, mu buryo bukurikira:

a. Ku nzitizi yatanzwe na Ukwibishaka Alexis yo kutakira ibirego bitari mu byashingiweho hemezwa ko urubanza rukwiye gusubirwamo ku mpamvu z'akarengane, Urukiko rwemeje ko nta shingiro ifite kuko ingingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya. Urukiko rw'Ikirenga rusanga igihe urubanza rwemewe gusubirwamo, uwareze yemerewe kugaragaza ingingo zose yarenganyijweho, kuko nk'uko rwabisobanuye mu manza zinyuranye[1] icya ngombwa ari uko ikiregerwa mu rubanza rw'akarengane kitarenga imbibi z'icyaregewe mu ishingwa ry'urubanza ku rwego rwa mbere n'ibyaburanyweho mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane.

[1] Reba urubanza RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel na Gatera Jason.

b. Ku bijyanye n'inzitizi yatanzwe na BPR Plc yo kutakira ikirego gitanzwe n'uregwa mu kwiregura mu rubanza rusabirwa gusubirishwamo ku mpamvuz'akarengane**,** Urukiko rwemeje ko nk'uko nabyo byatanzweho umurongo muri uru Rukiko[2], umuburanyi wese wumva yararenganyijwe mu rubanza yaciriwe ku rwego rwa nyuma ashobora gutanga ikirego gisaba ko rusubirwamo ku mpamvu z'akarengane iyo yujuje ibisabwa n'ingingo ya 55y'Itegeko rigena ububasha bw'inkiko; ariko akaba agomba no kubahiriza inzira iteganywa mu gutanga icyo kirego zirimo kubanza kwandikira Perezida w'urukiko rwisumbuye ku rwaciye urwo rubanza nk'uko biteganywa n'iryo tegeko cyane cyane mu ngingo yaryo ya 58 n'izikurikira. Urukiko rwasanze rero inzitizi ya BPR Plc ifite ishingiro kuko Ukwibishaka Alexis atanyuze muri izo nzira, bityo ibirego yatanze muri uru rwego bikaba bidashobora kwakirwa.

[13] Nyuma yo gusuzuma izo nzitizi, Urukiko rwakomeje iburanisha mu mizi y'urubanza, humvwa n'abatangabuhamya batanzwe na Ukwibishaka Alexis ngo bagire icyo bavuga kuri raporo ababuranyi bifashisha mu miburanire yabo: iyiswe *independent verification*; raporo ya *audit* yo ku wa 21/06/2012 n'iyo ku wa 20/07/2012, hagamijwe kumenya niba Ukwibishaka Alexis yarirukaniwe ubusa nk'uko Urukiko Rukuru, Urugereko rwa Rwamagana rwabyemeje.

[14] Mu byo abatangabuhamya bavuze, basobanuye ko bakoze raporo irebana n'igenzura (*audit*) ku byakozwe kuva ku wa 01/02/ 2012 kugeza ku wa 31/05/2012, ikorwa kuva ku wa 27/06/2012 kugeza ku wa 20/07/2012, ko nta yindi raporo bakoze kandi ko raporo bakoze bayisinye. Kubera ko muri dosiye hagaragaragamo raporo itariho imikono n'abayikoze, Urukiko rwafashe icyemezo cyo gusubika iburanisha kugira ngo BPR Plc izabanze irushyikirize raporo ya *audit* yavuzwe iriho imikono y'abayikoze, urubanza rwimurirwa ku wa 07/09/2020, kuri uwo munsi ntirwaburanishwa kuko wahuriranye n'umunsi w'itangiza ry'umwaka w'ubucamanza, bityo rwimurirwa ku wa 10/09/2020.

[15] Kuri uwo munsi, urubanza rwahamagawe ababuranyi bahagarariwe nk'ibisanzwe, Me Mugemanyi Védaste uhagarariye BPR Plc avuga ko badashobora kubona raporo za *audit* zisinyweho kuko mu myaka ya 2011 na 2012 hatangwaga raporo mu buryo bw'ikoranabuhanga, bityo ko raporo zitashoboraga gusinywa ari yo mpamvu nta raporo nshyashya bashyize muri dosiye. Me Shyaka Mashami na Me Mukabibi Fatuma bo bavuga ko raporo itangwa na BPR Plc itashingirwaho kuko raporo itariho imikono y'abayikoze iba itujuje ibisabwa. Ukwibishaka Alexis bunganira we avuga ko n'ubwo atemeranywa na BPR Plc, yifuza ko iyo raporo yashingirwaho ariko Urukiko rukazabona ko ibivugwa na BPR Plc atari byo.

[16] Nyuma yo gusoza impaka kuri iyo ngingo, iburanisha ryakomereje ku zindi ngingo z'urubanza, hasuzumwa ibyerekeye impaka zijyanye n'ibyagombaga gushingirwaho habarwa amafaranga y'indishyi z'umushahara w'igihe cy'integuza zagombaga guhabwa Ukwibishaka Alexis ubwo yasezererwaga; izerekeye kuba Ukwibishaka Alexis yaba yarazamuwe mu ntera cyangwa atarazamuwe mu ntera mu mwaka wa 2011 na 2012 n'ingaruka zabyo; n'ibyerekeye indishyi zisabwa n'impande zombi.

[17] Ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 25/09/2020, ariko mu mwiherero warwo, Urukiko rusanga hari ibyo rukeneye gusobanukirwa kurushaho mbere yo gufata umwanzuro, rutegeka BPR Plc kurushyikiriza *credit audit report* y'umwimerere yo ku wa 05/08/2012, raporo yashingiyeho isezerera ku kazi Ukwibishaka Alexis, na *dossier administratif/administrative file* ye mu mwaka wa 2011 na 2012. Urukiko rwategetse kandi ko Umuyobozi Mukuru wa BPR Plc cyangwa umuyobozi ufite abakozi mu nshingano ze yazitaba Urukiko ku giti cye. Rwavuze ko iburanisha rizapfundurwa ku wa 10/11/2020. Kuri uwo munsi urubanza ntirwaburanishijwe kuko uhagarariye BPR

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[2] Reba urubanza RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, haburana PRIME Insurance Ltd na Kansiime James.

Plc atabonetse, rugenda rwimurwa kubera impamvu zinyuranye kugeza ku 07/06/2021, ubwo rwongeraga kuburanishwa mu ruhame ababuranyi bose bahari, hari na Murangwa Donozio uhagarariye BPR Plc.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba raporo yiswe "*independent verification*" yarakozwe bisabwe na BPR Plc kandi ikaba yabera Ukwibishaka Alexis ikimenyetso ko yirukaniwe ubusa.

[18] Me Mugemanyi Védaste uhagarariye BPR Plc avuga ko Ubuyobozi bwa Banki bwafashe icyemezo cyo gusesa amasezerano y'umurimo yagiranye na Ukwibishaka Alexis bushingiye kuri raporo isanzwe y'ubugenzuzi ku nguzanyo zatanzwe (*regular credit audit report*) yakozwe kuva ku wa 27/06 kugeza ku wa 20/07/2012, igasohoka ku wa 05/08/2012; nyamara Urukiko Rukuru, Urugereko rwa Rwamagana rubirengaho rushyigikira ko iyo raporo yavugurujwe na *independent verification report* Ukwibishaka Alexis avuga ko nayo yakozwe ku wa 05/8/2012, rugendeye ku mvugo ye gusa itagira ikimenyetso kiyishyigikira kandi nyamara ahubwo rwirengagije ibimenyetso rwari rwashyikirijwe bigaragaza ko itabayeho.

[19] Me Mugemanyi Védaste avuga ko BPR Plc ibona iyo raporo yiswe *Independent verification* nk'impimbano, ku mpamvu zikurikira:

a. *Matériellemen*t ntibyashoboka ko raporo y'igenzura ryakozwe kuva ku wa 27/06/2012 rikarangira ku wa 20/07/2012 yaba yaratanzwe ku wa 05/08/2012, maze raporo iyivuguruza nayo igasohoka kuri uwo munsi;

b. Ntigaragaza amazina y'abayikoze, igihe yakorewe n'urwego ikorewe (yoherejweho);

c. Dosiye ziyivugwamo ntaho zihuriye n'izivugwa muri *rapport d'audit* yo ku wa 05/08/2012 ari nayo yagaragaje amakosa yakozwe na Ukwibishaka Alexis, maze agashingirwaho mu gusesa amasezerano ye y'umurimo.

[20] Ukwibishaka Alexis, Me Shyaka Mashami Emmanuel na Me Mukabibi Fatuma bamwunganira bavuga ko ibivugwa na BPR Plc ko raporo yiswe *independent verification* idashobora gusohokera rimwe na raporo y'igenzura ku itangwa ry'imyenda (*regular credit* audit report) yagendeyeho isesa amasezerano, kandi iyo ya mbere yarakozwe igamije kugenzura ibyakozwe mu ya kabiri, nta gitangaje kirimo kuko iyo raporo ya mbere (*rapport d'audit*) yakozwe ku wa 20/07/2012 naho indi (*independent verification report*) ikaba yarakozwe ku wa 05/08/2012.

[21] Ukwibishaka ahamya ko iyo *independent verification report* yakozwe na Bwana Murengerangoma Jean Baptiste afatanyije na Iyakaremye Emmanuel bombi bakaba bari *auditeurs* ba BPR Plc, akaba abatangaho abatangabuhamya.

[22] Mu bisobanuro yahaye Urukiko, Iyakaremye Emmanuel yavuze ko bagiye Nyagatare muri *regular audit* hagenzurwa ibyakozwe n'ishami rya BPR Plc Ukwibishaka Alexis yayoboraga kuva mu kwezi kwa 02/2012 kugeza mu kwezi kwa 05/2012, ari nabyo bikubiye muri raporo imwe y'impapuro zigera kuri 60 batanze mu kwezi kwa 7/2012. Yemeza ko *independent verification* atazi igihe yakorewe ndetse na raporo yo ku wa 21/06/2012 yaba yarasinyweho na Munyengango Sosthene wahoze ari *internal Control* ntayo azi.

[23] Murengerangoma Jean Baptiste nawe yabwiye Urukiko ko atazi raporo yiswe *independent verification*, ko raporo azi mu kugenzura ishami rya Nyagatare ari iya *regular audit* yagezaga ku wa 30/05/2012 kandi bakaba ntacyo babwiwe kureba cy'umwihariko muri Nyagatare kuko nyine bari muri *regular audit*. Murengerangoma Jean Baptiste yeretswe raporo yo ku wa 21/06/2012 avuga ko atari

iyabo. Naho ku byerekeye inyandiko yanditseho *list of customers suspected to have loans* avuga ko abona atari raporo ahubwo yaba umugereka kuri raporo atahamya ko ari umugereka wa raporo bakoze kuko ntaho ayibona. Murengerangoma Jean Baptiste yaneretswe *rapport d'audit* BPR Plc yemera ikanavuga ko ariyo bakoze, avuga ko atari yo ya nyuma kuko idasinye kandi ko byaba byiza BPR Plc igaragaje raporo ya nyuma basinye iriho n'imigereka igaragaza igisubizo kuri buri kibazo.

[24] Nyuma yo kubura raporo isinye yari yatumwe, Me Mugemanyi Védaste yakomeje gushimangira ko nta raporo isinye yabagaho kuko batasinyaga ku maraporo kuva na mbere ya 2012, ko rero hashingirwa kuri *rapport d'audit* yo ku wa 20/07/2012 kuko ariyo yonyine yakozwe kandi na Ukwibishaka Alexis akabaatayihakana.

[25] Ukwibishaka Alexis avuga ko kuba mu ibazwa abatangabuhamya barajijinganyije byatewe n'igihe gishize; asaba Urukiko gusuzuma na *correspondances* zo ku wa 09/07/2012 zatangijwe na Jacqueline Bugunya, Marc De Jong na Murengerangoma Jean Baptiste zigaragaza ko raporo yo ku wa 21/06/2012 BPRPlc yashyize muri dosiye ari umugereka wa raporo yo ku wa 05/08/2012, akaba asaba Urukiko gusesengura izo raporo zombi rukareba isano zifitanye.

[26] Mu bisobanuro BPR Plc yagejeje ku Rukiko mu nyandiko, ndetse no mu byo Murangwa Donozio wari uyihagarariye yavugiye mu Rukiko mu iburanisha ryo ku wa 07/06/2021, hagaragaramo ko nta *independent verification report* yabayeho, ko icyabayeho ari *regular credit audit report* yakozwe hagati ya 27/06/2012 na 20/07/2012, igasohoka ku wa 5/08 /2012. Murangwa Donozio yasobanuriye Urukiko ko bene izi raporo zitasinywaga, ko igihamya ko ari umwimerere ari *Credit audit working papers* zandikishwaga intoki zikanashyirwaho *paraphe* n'abagiye gukora *audit.* Yasobanuye kandi ko amatariki ari kuri izo nyandiko ahura neza na *period* yakorewe *audit*, ndetse n'ibikubiyemo bikaba aribyo bigaragara muri *credit audit report* yasohotse ku wa 05/08/2012, igasuzumwa n'Inama y'Ubutegetsi ku wa 07/08/2012, igahita ishyikirizwa *disciplinary committee*, ikaba ariyo yashingiweho mu gusezerera ku kazi Ukwibishaka Alexis.

[27] Ukwibishaka Alexis avuga ko amakosa avugwa muri raporo yasohotse ku wa 05/08/2012 amenshi ari amahimbano, kandi ko nta mabwiriza yari ahari ateganya ibigomba kwitabwaho mu gutanga inguzanyo. Avuga kandi ko muri *Disciplinary Committee* batagaragaje amakosa yagizemo uruhare ku giti cye nk'umuyobozi w'ishami, kuko ukurikije uko imitangire y'inguzanyo yari imeze, yashoboraga gutangwa umuyobozi w'ishami atabigizemo uruhare.

[28] Murangwa Donozio yasobanuye ko ibivugwa muri raporo bifitiwe ibimenyetso bigizwe n'amazina y'abagiye bahabwa inguzanyo mu buryo bunyuranye n'amabwiriza, kandi ko uburyo inguzanyo zitangwa bisobanuye muri *credit policy* yo ku wa 23/09/2011. Yongeraho ko n'ibyaba byarakozwe n'abakozi, Ukwibishaka Alexis yari afite inshingano yo kubikurikirana akanabibazwa nk'umuyobozi wari ubakuriye.

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[29] Mu gukemura impaka kuri iki kibazo, Urukiko rurabanza gusuzuma niba koko raporo yiswe *independent verification* yarakozwe bisabwe na BPR Plc, hanyma rusuzume niba yabera Ukwibishaka Alexis ikimenyetso ko yirukaniwe ubusa nk'uko Urukiko Rukuru, Urugereko rwa Rwamagana rwabyemeje.

a. Ese raporo yiswe *independent verification* yakozwe bisabwe na BPR Plc?

[30] Urukiko rusanga inyandiko Ukwibishaka Alexis yita *independent verification report* igaragara mu nyandiko yashyikirije Urukiko itangirwa n'amagambo akurikira *List of Customers suspected to have loans*, ari inyandiko bigaragara koari umugereka ku yindi raporo itaragaragarijwe Urukiko. Iyo

nyandiko ntigaragaza amazina y'abayikoze, igihe yakorewe n'urwego ikorewe (yoherejweho). N'ubwo Ukwibishaka Alexis avuga ko iyo raporo yasohotse ku wa 05/08/2012, ibyo nta kibihamya kuko yo ubwayo nta tariki isohokeyeho igaragaza. Byongeye kandi iyi nyandiko ntigaragaza ikirango na kimwe cya BPR Plc nk'uko bigaragara ku zindi nyandiko ziyitirirwa nka *regular audit report* yakozwe na Iyakaremye Emmanuel ari kumwe na Murengerangoma Jean Baptiste cyangwa *audit report* yo ku wa 21/06/2012 yakozwe na MunyengangoSosthene [3].

[31] Urukiko rusanga kandi abatangabuhamya Ukwibishaka Alexis yitangiye ubwe, ari bo Iyakaremye Emmanuel na Murengerangoma Jean Baptiste, bose barahamirije Urukiko ko iyo nyandiko batayizi ko ndetse nta *independent verification* yihariye basabwe gukora ubwo bagenzuraga ishami rya BPR Plc rya Nyagatare.

[32] Naho ku byerekeye ibiganiro byabaye hagati y'abayobozi bamwe muri BPR Plc bitangijwe na Jacqueline Bugunya na Marc De Jong kuri internet, Ukwibishaka Alexis avuga ko bigaragaza ko hari *independent verification* Murengerangoma Jean Baptiste na Iyakaremye Emmanuel basabwe gukora ubwo bari mu igenzura i Nyagatare, Urukiko rusanga ibyo biganiro atari icyo byari bigamije.

[33] Koko rero, nk'uko bigaragara kuri kopi z'ihererekanyabutumwa bwabyo Urukiko rwashyikirijwe, ku wa 09/07/2012, saa 5:19 nimugoroba, Jacqueline Bugunya yandikiye Marc De Jong ibi bikurikira:

> *Dear Marc,*
>
> *I have just had a discussion with CEO regarding credit issues in Nyagatare Branch.* ***There is a*** *team headed by Jean Baptiste that is currently looking into issues of granting multiple loans to same clients and the issues of granting loansto some people who already have non-performing loans. The report will be finalized this week and I will share it with you next week.*
>
> Marc De Jong yahise amusubiza saa 5:21, avuga ko uwitwa Pascal[4] nawe yateguye raporo kuri iki kibazo kandi akaba afite na kopi yayo (*Pascal has prepared a report on this as well; next to this he has the copy of the files).* Jacqueline Bugunya yongeye kumwandikira saa 17:48 amumenyesha ko we naJohn Baptiste[5] baganiriye kuri iki kibazo kandi ko Pascal yabasangije raporo yabikozeho (*Thanks Marc. John Baptist and I had a discussion with Pascal aboutthis, Pascal also shared his report*). Uwo munsi nyine saa 18:04, Jean Baptiste Murengerangoma yamenyesheje ibyo biganiro mugenzi we IyakaremyeEmmanuel.

[34] Urukiko rusanga inyandiko yavugwaga muri ibi biganiro, ari raporo yo ku wa 21/06/2012 yakozwe na Munyengango Sosthene, wari *Risk operational* ayikorera Karani Pascal wari *Head of Risk Management Department*. Muri ibyo biganiro kandi nk'uko bigaragara, nta kigaragaza ko bariya bagenzuzi, Murengerangoma Jean Baptiste na Iyakaremye Emmanuel, hari icyo basabwe kuyikoraho kihariye n'ubwo bayiganirijweho bakanayishyikirizwa; ibyo bikaba binahura n'ibyo nabo ubwabo bibwiriye Urukiko ko nta nshingano zihariye bahawe ubwo bari mu igenzura i Nyagatare.

[35] Kubera izo mpamvu, Urukiko rusanga ntaho rwahera rwemeza ko hari *independent verification* BPR Plc yakoresheje ku makosa yavugwaga ku buyobozi bw'ishami rya BPR Plc rya Nyagatare, bityo na raporo iyivugwaho, hakaba nta gihamya ko yakozwe bisabwe na BPR Plc.

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[3] Iyi raporo, nk'uko ibigaragaza, yateguwe na Munyengango Sosthene wari *operational risk manager* ayitegurira umuyobozi we Karani Pascal wari *Head of operational risk*.

[4] Aha havugwaga Pascal Karani, Operations Risk Project Manager

[5] John Baptist uvugwa aha ni Jean Baptiste Murengerangoma, credit audit manager&Symbiant Traker Project Coordinator

b. Ese raporo yiswe *independent verification* yabera Ukwibishaka Alexis ikimenyetso ko yirukaniwe ubusa?

[36] Urukiko rusanga raporo yiswe *independent verification* idashobora kubera Ukwibishaka Alexis ikimenyetso ko yirukaniwe ubusa nk'uko Urukiko Rukuru, Urugereko rwa Rwamagana rwabyemeje. Ibyo uru Rukiko rubishingira ku mpamvu zikurikira:

a) Nk'uko byasobanuwe mu bika bibanziriza iki, nta kigaragaza ko iyi raporo yiswe *independent verification* yakozwe bisabwe na BPR Plc, bityo ikaba itanashobora kuvuguruza *regular audit report* idashidikanywaho n'impande zombi yasohotse ku wa 05/08/2018[6], igasuzumwa n'inama y'ubuyobozi ku wa 07/08/2012, Ukwibishaka Alexis akayisobanuraho muri Komite ishinzwe imyitwarire ku wa 06/09/2012. Aha hakwibutswa ko n'ubwo *regular audit report* ari nayo BPR Plc ivuga ko yashingiyeho yirukana Ukwibishaka Alexis itagaragaza imikono y'abayikoze, Ukwibishaka Alexis yiyemereye imbere y'Urukiko ko yashingirwaho mu guca urubanza. Ikindi kandi, ibyujujwe n'intoki kuri amwe mu mafishi yifashishwaga n'abagenzuzi, bakanabishyiraho umukono (*paraphe*), nibyo bigaragara muri *regular audit report* yashyikirijwe Urukiko, ku buryo bivanaho gushidikanya ko ariyo irebana n'igenzura ryakozwe kuva ku wa 27/6 kugeza ku wa 20/07/2012.

b) Nk'uko bigaragara muri iyo nyandiko yiswe *independent verification report*,ibikubiyemo sibyo bivugwa muri *regular audit report* kuko n'abantu bahaweinguzanyo bavugwamo atari bamwe; bityo ikaba idashobora kuyivuguruza.

c) N'ubwo iyo nyandiko yaba yarabayeho, ntibyavanaho amakosa yamugaragayeho muri *regular audit report* atigeze ahakana kandi nayo ari mu byatumye yirukanwa. Koko rero, hakurikijwe ibisobanuro (*management comments*) Ukwibishaka Alexis nk'uwari ukuriye ishami (*Branch Manager*) yagiye akora ku byavuzwe muri raporo, bigaragara ko hari amakosa yagiye yemera ko yakozwe, akanemera ko azakosorwa. Urugero: "*From now debtors' total commitments will be analysed before* granting new loans"[7]. "*From now we will ensure that collateral documents are provided before a loan is disbursed*"[8].

[37] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta cyemeza koraporo yiswe *independent verification* yakozwe bisabwe na BPR Plc, ikaba itanabera Ukwibishaka Alexis ikimenyetso ko yirukaniwe ubusa. Uru Rukiko rusanga rero ibyo Urukiko Rukuru, Urugereko rwa Rwamagana rwemeje ko Ukwibishaka Alexis yirukaniwe ubusa nta shingiro bifite; bityo n'indishyi z'akababaro yahawe hagendewe kuri iyo mpamvu zingana na 10.000.000 Frw, zikaba nta shingiro zigifite.

2. Kumenya niba harabaye amakosa mu ibarwa ry'indishyi z'umushahara w'igihe cy'integuza zagombaga guhabwa Ukwibishaka Alexis igihe yasezererwaga

[38] Me Mugemanyi Védaste uhagarariye BPR Plc avuga ko mu gace ka 12 muri kopiy'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, Urukiko rwemeje ko amasezerano y'akazi ya Ukwibishaka Alexis yasheshwe mu minsi y'isubikwa ryayo kuko yari yarahagaritswe ku wa 08/08/2012, akirukanwa ku wa10/09/2012 ataremererwa gukora, bityo rutegeka ko amafaranga y'igihe cy'integuza akubwa inshuro ebyiri kandi umushahara ukabarwa hongewemo amafaranga y'ubukode bwishyurwaga AKAGERA Motors bw'imodoka BPR Plc yashyize ku Ishami rya Nyagatare, n'amafaranga y'amavuta y'iyo modoka ndetse n'amafaranga 60.000 y'itumanaho nk'uko bigaragara mu gace ka 13 muri kopi y'urubanza.

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[6] Igenzura ryarebanaga n'ibyakozwe(period) kuva ku wa 01/02 kugera ku wa 31/05/2012.

[7] Reba urupapuro rwa 8 rwa raporo, *point* 7.1.1

[8] Reba urupapuro rwa 10 rwa raporo, *point* 7.2.1

[39] Me Mugemanyi Védaste avuga ko asanga kubarira amafaranga y'ubukode bw'imodoka mu mafaranga yahawe Ukwibishaka Alexis ari ukwirengagiza ko imodoka iba yakodesherejwe ishami rya banki, ko atari *avantages* zigenerwa umuyobozi waryo nk'uko bigaragazwa n'inyandiko ya politiki y'ikoreshwa ry'imodoka Banki yakodesherezaga serivisi zayo (*BPR Plc leased vehicles use policy*) yo ku wa 16/5/2012, yaje kwemezwa n'Ubuyobozi Bukuru bwa Banki kuwa 19/6/2012. Iyo nyandiko igaragaza ko bene izo modoka za sosiyete AKAGERAMotors:

a. Zakodeshejwe na BPR Plc, kugira ngo zikoreshwe gusa mu mirimo ya Banki (*BPR Plc Business*);

b. *Gestion* rusange yazo (kuzijyana mu igaraji, kuzisimbuza, imfunguzo no gusimbura izatakaye) ishinzwe *chef* wa *charroi* uri ku cyicaro gikuru cya BPR Plc;

c. Zishobora gutwarwa na ba *Branch managers, Heads of Department and BPR Plc staff with valid driving permits* ku buryo n'iyo uyitwara agiye muri konji, imodoka isigara ku kazi igakoreshwa n'undi mukozi.

[40] Me Mugemanyi Védaste avuga ko urukiko rwafashe amafaranga Ukwibishaka Alexis yagahembwe nk'umukozi rwongeraho *avantages* yemererwa ari mu kazi (amavuta y'imodoka, amafaranga y'itumanaho n'ibindi) kandi icyo gihe yari ari muri *suspension.* Avuga ko Ukwibishaka Alexis yari afite uburenganzira ku mushahara, hatabariwemo ibyo yemererwa ari uko ari mu kazi gusa, kuko bitarimu bigize umushahara.

[41] Ukwibishaka Alexis afatanyije na Me Shyaka Mashami Emmanuel na Me Mukabibi Fatuma bamwunganira bavuga ko babona Urukiko Rukuru rwarubahirije amategeko, cyane cyane ingingo ya 32 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo ryakoreshwaga icyo gihe[9] ivuga indishyi uwasheshe amasezerano atubahirije amategeko aha umukozi, ndetse n'ingingoya 31 y'iryo Tegeko igira iti iyo amasezerano y'akazi y'igihe kitazwi asheshwe n'umukoresha mu minsi y'ikiruhuko gihemberwa cyangwa cy'isubikwa ry'amasezerano y'akazi, amafaranga y'igihe cy'integuza ahabwa uwo mukozi akubwa inshuro ebyiri (2), ko rero nta kosa Urukiko rwakoze.

[42] Bavuga ko umushahara na *avantages* yabonaga mu kazi bigizwe n'ibi bikurikira:

a. Umushahara: 1.412.940 Frw

b. Imodoka y'akazi: 908.517 Frw

c. Itumanaho: 60.000 Frw

d. *Carburant*: 300.000 Frw

e. Pension employer's contribution: (1.412.940 X 5%)=70.647 Frw

Yose hamwe akaba ari 2.752.104 Frw ku kwezi; bityo, hashingiwe ku ngingoz'amategeko yavuze haruguru, akikuba inshuro ebyiri: (2.752.104 Frw X 2) =5.504.208 Frw; mu gihe Urukiko rwo rwari rwamubariye 5.362.974 Frw,rugakuramo ayo yari yarahawe agasigarana 3.949.974 Frw.

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[9] Iyo ngingo igira iti: iseswa ryose ry'amasezerano y'akazi y'igihe kitazwi, nta nteguza cyangwa se igihe cy'integuza kitarubahirijwe cyose, bituma uyasheshe aha undi indishyi y'amafaranga angana n'umushahara n'andi mashimwe yagombaga kubona mu gihe cy'integuza kitubahirijwe.

[43] Ingingo ya 31 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo ryakoreshwaga ubwo Ukwibishaka Alexis yasezererwaga ku kazi, yagiraga iti iyo amasezerano y'akazi y'igihe kitazwi asheshwe n'umukoresha mu minsi y'ikiruhuko gihemberwa cyangwa cy'isubikwa ry'amasezerano y'akazi, amafaranga y'igihe cy'integuza ahabwa uwo mukozi akubwa inshuro ebyiri (2).

[44] Inyandiko BPR Plc yahemberagaho abakozi icyo gihe (*pay roll*), igaragaza ko umushaharambumbe wabaga ugizwe n'ibi bikurikira: *Basic salary* (umushaharafatizo), *housing* (amafaranga y'aho gutura), *function* (amafaranga ajyanye n'umurimo ukora) na *transport (*amafaranga afasha mu ngendo); nah oumushahara umuntu atahana (*net salary*) ukaba ugizwe n'umushaharambumbe ukuyemo TPR (umusoro) na *insurance* (ubwiteganyirize). Hashingiwe kuri ibi, Urukiko rukaba rusanga ku bireba Ukwibishaka Alexis, amafaranga yari afiteho uburenganzira ubwo yasezererwaga ari umushahara umuntu atahana (*salaire net*) ungana na 948.968 Frw ugizwe n'umushaharambumbe ukuyemo TPR (umusoro) na *insurance* (ubwiteganyirize).

[45] Nk'uko biboneka muri dosiye y'urubanza, ku bijyanye n'umushahara, bigaragara ko BPR Plc yishyuye Ukwibishaka Alexis umushahara w'ukwezi kumwe aho kuba amezi abiri nk'uko biteganywa n'ingingo ya 31 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo ryakoreshwaga icyo gihe, kandi yarasezerewe mu gihe cy'isubikwa ry'amasezerano y'akazi. Kubera izo mpamvu, Urukiko rukaba rusanga Ukwibishaka Alexis yemerewe kubona umushahara w'amezi abiri, ariko hakavanwamo uw'ukwezi kumwe yamaze kwishyurwa. Bityo akaba agomba kubona 948.968 Frw angana n'umushahara atahana nk'uko bigaragara ku nyandiko yahemberwagaho (payroll), aho kuba 1.412.940 Frw angana n'umushaharambumbe, ayo akiyongera ku yo yabonye mbere, aho kubona inshuro ebyiri zawo kuko icyo gihe waba ukubwe gatatu kandi atari byo itegeko riteganya.

[46] Ku bijyanye na 908.517 Frw y'imodoka y'akazi Urukiko Rukuru, Urugereko rwa Rwamagana rwageneye Ukwibishaka Alexis, uru Rukiko rurasanga atayakwiye kuko n'ubundi ayo mafaranga nk'uko nawe abyivugira ari ayahabwaga AKAGERA Motors ku modoka BPR Plc yakodesherezaga abakozi bayo bari mu kazi. Nk'uko byumvikana rero ayo mafaranga ntiyigeze ahabwa Ukwibishaka Alexis ubwe, ngo byitwe ko BPR Plc yayamwambuye. Icyo BPR Plc yamwambuyeni uburenganzira ku modoka y'akazi kuko nyine yari yarahagaritswe ku kazi kandi ubwo burenganzira bukaba bufitwe gusa n'umukozi uri mu kazi ka banki nk'uko *BPR Plc leased vehicles use policy* ibigaragaza. Muri iyo nyandiko bigaragara ko bene izo modoka zakoreshwaga gusa mu mirimo ya Banki, zigacungwa na *chef* wa *charroi* uri ku cyicaro gikuru, zigashobora gutwarwa n'abayobozi cyangwa abakozi bafite uruhushya rwo gutwara kandi bajya muri konji zigasigara ku kazi. Urukiko rukaba rusanga ibi byose ari igihamya y'uko imodoka atari uburenganzira bw'umukozi ku giti cye, ku buryo kutayigira bivuze ko hari uburenganzira yavukijwe; ibi kandi bikaba binasobanura ko ntaburenganzira kuri *carburant* cyangwa ikiguzi cyayo yavukijwe.

[47] Naho ku byerekeye amafaranga y'itumanaho, uru Rukiko rusanga nayo kimwe n'imodoka bidashobora kwitwa uburenganzira bw'umukozi ku giti cye, kuko nyir'ukuyahabwa ayagenerwa kugira ngo ayifashishe mu nyungu z'akazi. Byongeye kandi nk'uko bigaragara no kuri *payroll*, nta mafaranga nk'ayo arimo ku buryo yavuga ko yari mu burenganzira asanganywe hanyuma akaba yarayavukijwe.

[48] Urukiko rusanga 70.647 Frw y'Ubwiteganyirize bw'abakozi Ukwibishaka Alexis yari yabariwe agomba kuyagenerwa kuko ari mu bigize umushahara umugenewe nk'uko bigaragara ku nyandiko yahemberwagaho *(payroll*), ariko BPR Plc ikaba igomba kuyamushyirira mu Isanduku y'Ubwiteganyirize bw'Abakozi (RSSB) nk'uko yari isanzwe ibikora uko yamuhembaga.

[49] Urukiko rusanga, nk'uko bigaragara mu bika bibanziriza iki, Urukiko Rukuru, Urugereko rwa Rwamagana rwarabariye Ukwibishaka Alexis amafarangay'umurengera kuko ayo agomba guhabwa ari 948.968 Frw gusa na 70.647 Frw agomba gushyirirwa mu Isanduku y'ubwiteganyirize bw'abakozi, aho kuba 3.949.974 Frw.

3. Kumenya niba hari amafaranga ajyanye no kuzamurwa mu ntera yagenewe Ukwibishaka Alexis atayakwiye.

[50] Me Mugemanyi Védaste uhagarariye BPR Plc avuga ko Urukiko rwirengagije ibimenyetso rwagaragarijwe, maze hashingiwe ku igereranya rya *liste de paie* y'ukwezi k'Ukuboza 2010 na *liste de paie* y'ukwezi kwa Mutarama 2011, ndetsena Gashyantare 2011[10], rwemeza ko Ukwibishaka Alexis atazamuwe mu ntera muri 2011 no muri 2012, ngo kuko amafaranga yahawe ari aya *régularisation* atari ayo kuzamurwa mu ntera. Avuga ko ibyo atari ko bimeze, kuko nk'uko bigaragara kuva muri Mutarama 2011, Ukwibishaka Alexis yongerewe ku mushahara yari asanganywe amafaranga 23.801 ku kwezi aho kuba amafaranga 4.400 nk'uko umucamanza yabyemeje ntaho abivanye.

[51] Me Mugemanyi Védaste avuga kandi ko umucamanza wo mu Rukiko Rukuru, Urugereko rwa Rwamagana yageneye Ukwibishaka Alexis 1.800.000 Frw nk'ukoyari yemejwe ku rwego rwa mbere[11] agendeye ku kuba atarigeze azamurwa muntera, yirengagije ko yari ageze ku mushahara wa 1.412.000 Frw nk'uko BPR Plcyari yabigaragarije Urukiko. Avuga ko umushahara wo mu kwezi kwa mbere 2012 wanganaga na 700.000 Frw [12], uwo mu kwezi kwa 12/2011 ntabwo yashoboye kuwumenya ariko uwo mu kwezi kwa 10/2011 yahembwaga 500.000. Avuga ko ikindi kigaragaza ko yazamuwe mu ntera ari uko mu kwezi kwa 08/2012 yahembwe 900.000 Frw, bityo ko n'ubwo mu kwezi kwa 01/2012 atahembwe ayuzuye, yaje gukorerwa *régularisation*.

[52] Ukwibishaka Alexis yunganiwe na Me Shyaka Mashami Emmanuel na Me Mukabibi Fatuma bavuga ko bifuza ko Urukiko rw'Ikirenga rwasesengura inyandiko yagengaga abakozi icyo gihe muri BPR Plc (*staff protocol*), hakitabwaku kureba niba umushahara wariyongereye nk'uko biteganywa muri *staff protocol*, kuko impinduka zabaye ku mushahara zijyanye no guhindurirwa imirimo ashyirwa ku mwanya wisumbuye by'agateganyo bidakwiye kwitiranywa no kuzamurwa mu ntera, kandi ko imishahara yahembwe igaragaza ko nta nyongera y'umushahara yabayeho.

[53] Basobanura ko mu kwezi kwa 12/2011 yahembwe 705.995 Frw; mu kwa 01/2012 ahembwa 705.995 Frw, mu gihe byari biteganyijwe ko imishahara y'abakozi isubirwamo buri kwezi kwa mbere kwa buri mwaka nk'uko biteganywa mu gika 4.4[13] cy'iyo nyandiko (*staff protocol*) kivuga ibijyanye n'isubirwamo ry'imishahara, kandi ko iyo umukozi azamuwe mu nteran'umushahara we uzamurwa bikagaragarira kuri konti ye. Bavuga ko ibyo bigaragaza ko atigeze azamurwa mu ntera nk'uko amategeko abiteganya.

UKO URUKIKO RUBIBONA

[54] Rushingiye kuri lisiti abakozi ba BPR Plc bahemberwagaho (*payroll*) na *historique*ya konti ya Ukwibishaka Alexis, Urukiko rusanga bigaragara ko mu kwezi kwa 12/2011 kimwe no mu kwezi kwa 01/2012, ukwa kabiri n'ukwa gatatu 2012 yahembwe 705.995 Frw (*net salary*) buri kwezi. Iyo listi kandi igaragaza ko ukwezi kwa kane yahembwe 948.968 Frw (*net salary*), uwo mushahara akaba ari

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[10] Iryo gereranya ry'umushahara riteye ritya: *Salaire de base, Logement, Indemnité de fonction, Transport, Prime technique, Heures Suppl, Autres allocations* aribyo bigize *Salaire brut ya Décembre* 2010 ni 485.017; 30.000; 30.000; 30.000; 575.017; *Janvier* 2011 ni 508.018; 30.000; 30.000; 30.000; 598.018; *Février* 2011 ni 508.018; 30.000; 30.000; 30.000; 598.018.

[11] Reba igika cya 33 cy'urubanza rusubirishwamo.

[12] Kuri *payroll* ya Mutarama 2012 hagaragara umushahara utahanwa *(net salary*) ya 705.995 Frw.

[13] Icyo gice kivuga ibijyanye n'isubirwamo ry'imishahara, aho igira iti: imishahara isubirwamo buri mwaka ku italiki ya mbere y'ukwezi kwa mbere nk'uko bisobanurwa mu ngingo ya 6 y'amategeko agenga abakozi; mu gihe habayeho guhindurirwa imirimo, umushahara nawo usubirwamo hakurikijwe imiterere y'imishahara muri iyo mirimo mishya; umukozi ukora ku mwanya ku buryo bw'agateganyo mu gihe kirenze ukwezi, aba afite uburenganzira ku nyungu zose zigenerwa abakora muri uwo mwanya

nawo yakomeje guhembwa kugeza bamwirukanye mu kwezi kwa 8/2012 nk'uko *historique* ya konti ye ibigaragaza. Nk'uko kandi bigaragara kuri *historique*, ku itariki ya 14/05/2012, Ukwibishaka Alexis yahawe 968.477 Frw ya *régularisation* y'igice cy'umushahara atari yabonye muri Mutarama, Gashyantare na Werurwe 2012.

[55] Urukiko rusanga n'ubwo Ukwibishaka Alexis avuga ko iyo nyongera yatumye umushahara uba 948.968 Frw ikomoka ku mwanya w'ubusigire (*acting manager*) yabonye kuva aho abereye *Acting Manager* ku wa 19/01/2012[14], amafaranga yahawe nka *régularisation* yavuzwe mu gika kibanziriza iki iyo uyagabanyije gatatu ayo ubonye ukayongera ku mushara yari asanganywe (968.477 Frw:3)+ 705.995 Frw, usanga ayo ubona 1.028.821 Frw aruta ayo yariasigaye ahembwa 948.968 Frw, bivuze ko muri ayo mafaranga harimo aya *régularisation* ijyanye no kuzamurwa mu ntera, atari amafaranga ajyanye n'umwanya w'ubusigire gusa.

[56] Uru Rukiko rurasanga rero, 1.800.000 Frw yiswe aya *régularisation* Urukiko Rukuru, Urugereko rwa Rwamagana rwageneye Ukwibishaka Alexis, atayakwiye, kuko nk'uko byasobanuwe mu gika kibanziriza iki, hari amafaranga ya *régularisation* yabonye kandi akaba atagaragaza ko yabazwe nabi.

A. Ibyerekeye indishyi zisabwa n'impande zombi

[57] Me Mugemanyi Védaste yasabye ko BPR Plc yahabwa indishyi zingana na 500.000 Frw y'ikurikiranarubanza na 1.500.000 Frw y'igihembo cya Avoka, yosehamwe akaba 2.000.000 Frw.

[58] Ukwibishaka Alexis ntacyo yavuze ku ndishyi zasabwe na BPR Plc ahubwoyagaragaje ibibazo byinshi asabiraho indishyi, Urukiko rumwibutsa ko icyo kibazo rwagifasheho umwanzuro wo kutabyakira mu cyemezo cyafatiwe mu ntebe nk'uko bigaragara mu gika cya 12 cy'uru rubanza; hanyuma asaba indishyizo gusiragizwa mu nkiko, ikurikiranarubanza n'igihembo cya Avoka bingana na 3.000.000 Frw.

[59] Me Mugemanyi Védaste uhagarariye BPR Plc avuga ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Ukwibishaka Alexis asaba yagenwa mu bushishozi bw'Urukiko kuko ayo asaba ari umurengera.

UKO URUKIKO RUBIBONA

[60] Urukiko rusanga amafaranga Ukwibishaka Alexis asaba atagomba kuyahabwa kuko ariwe utsinzwe muri uru rubanza. Rusanga ahubwo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka BPR Plc isaba iyakwiye kuko ariyo itsinze uru rubanza, ariko kuko ayo isaba ari menshi kandi itayagaragariza ibimenyetso, ikaba igenewe mu bushishozi bw'Urukiko 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka, yose hamwe akabaari 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[61] Rwemeje ko ikirego rwashyikirijwe na BPR Plc cyo gusubirishamo ku mpamvu z'akarengane urubanza RSOCA 0010-0011/13/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 15/05/2014, gifite ishingiro.

[62] Rwemeje ko urubanza RSOCA 0010-0011/13/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 15/05/2014, ruhindutse kuri bimwe.

[14] Reba inyandiko imushyiraho yo ku wa 19/01/2012.

[63] Rwemeje ko Ukwibisha Alexis atirukaniwe ubusa, bityo akaba nta ndishyi zo kwirukanirwa ubusa BPR Plc igomba kumuha.

[64] Rwemeje ko nta mafaranga yo kuzamurwa mu ntera Ukwibishaka Alexis atahawe.

[65] Rwemeje ko ibindi BPR Plc yategetswe mu Rubanza RSOCA 0010- 0011/13/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 15/05/2014 bitagarutsweho muri uru rubanza bigumanye agaciro kabyo. Niukuvuga:

a) 2.000.000 Frw y’indishyi zo kudahabwa icyemezo cy’imirimo yakoze gikurikije amategeko.

b) 2.768.599 Frw y’indishyi zijyanye n’amafaranga yakuwe ku mushahara mu myaka ya 2005-2007.

[66] Rutegetse BPR Plc guha Ukwibishaka Alexis amafaranga y’indishyi z’umushahara w’igihe cy’integuza atahawe angana na 948.968 Frw, hamwe na 70.647 Frw agomba kumushyirirwa mu Isanduku y’ Ubwiteganyirize bw’Abakozi (RSSB).

[67] Rutegetse Ukwibishaka Alexis guha BPR Plc 800.000 Frw y’ikurikiranarubanza n’igihembo cya Avoka.