SONARWA LIFE ASSURANCE COMPANY LTD v RUGINA

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RSOC 00001/2022/SC (Cyanzayire, P. J., Nyirinkwaya na Kalimunda, J.) 08 Nyakanga 2022]

Amategeko agenga imanza z'umurimo – Umushahara w'umukozi – Kureshyeshya abakozi mu bijyanye n'umushahara – Abakozi bakora imirimo imwe, banganya ubumenyi, uburambe n'ubushobozi bagomba guhembwa kimwe, iyo bitabaye ibyo haba habayeho ivangura. – Umukozi unganya na bagenzi be ubumenyi, uburambe n'ubushobozi, udahembwa kimwe n'abo bari ku rwego rumwe afite uburenganzira bwo guharanira guhembwa kimwe na bagenzi be cyangwa bwo gusaba ko ahembwa umushahara ukwiye

Amategeko agenga imanza z'umurimo – Umushahara w'umukozi – Kureshyeshya abakozi mu bijyanye n'umushahara – – Icyatuma imishahara y'abakozi bari ku rwego rumwe itandukana ni igihe umukoresha abashije kugaragariza Urukiko mu buryo bufatika (objectivement/ objectively) ko abakozi bahembwaga umushara uri hejuru bafite ubumenyi budasanzwe kandi bwihariye bufitiye akamaro umurimo bakora, ibyo kandi byemezwa n'Urukiko mu bushishozi bwarwo.

Amategeko agenga imanza z'umurimo – Umushahara w'umukozi – Kureshyeshya abakozi mu bijyanye n'umushahara – Ishimwe – Nubwo nta kibuza umukoresha kuba yagenera bamwe mu bakozi ishimwe, iyo iryo shimwe rishyizwe ku mushahara rihabwa abakozi bose. 3. Igihe cy'ubusaze gitangira kubarwa guhera igihe umukozi yagombaga guhemberwaho, kigahagarikwa n'uko umukoresha yakoze umubaruro w'amafaranga, umukoresha n'umukozi bemeranijwe ko hari umwenda, urubanza rw'umukozi rwaregewe urukiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo.

Amategeko agenga imanza z'umurimo – Umushahara w'umukozi – Ubusaze bw'imishahara – Ubusaze bw'imishahara bubarwa nk'ubusaze bw'ubundi burenganzira bwite cyangwa ubundi burenganzira ku mutungo. Ibarwa ryabwo rihera igihe ufite uburenganzira yamenye cyangwa yashoboraga kumenya impamvu zatuma abukurikirana.

Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Ingingo zagaruwe mu karengane zitarajuririwe – Umuburanyi utarajuririye ingingo atanyuzwe nazo hakurikijwe inzira zisanzwe kandi yari abyemerewe n'amategeko, aba yivukije inzira y'ubujurire yari gutuma ibyo yanengaga bikosorerwa mu bujurire – Ntabwo ashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane.

Incamake y'ikibazo: Rugina yakoreraga SONARWA Assurance Company Ltd ku mwanya wa Data management officer nyuma aza kugirwa Umuyobozi ukuriye ishami ariko ntiyahabwa umushahara w'uwo mwanya. Yaje gusaba umukoresha we kumuha umushahara w'uwo mwanya mushya yashyizwemo aho kuwuhabwa aza guhabwa ibaruwa yo kumusezerera ku kazi. Yaje kwiyambaza Umugenzuzi w'umurimo aza guhuza impande zombie hemezwa ko basezerewe ku bw'impamvu z'ubukungu bityo ko iryo sezererwa rikurikije amategeko. Nyuma yaje gutanga ikiregpo mu rukiko rwisumbuye rwa Nyarugenge rusuzumye icyo kibazo rusanga yarirukanwe mu buryo bunyuranije n'amategeko rumugenera indishyi. SONARWA Life Assurance Company Ltd yajuririye Urukiko Rukuru ivuga ko ubwo Rugina yagirwaga Umuyobozi ukuriye ishami, urwego yariho n'umushahara yahembwaga bitahindutse kandi ko urukiko rwabanje rwamugeneye indishyi nta bimenyetso rushingiyeho. Urukiko Rukuru rwasanze Rugina yarirukanywe mu buryo

bunyuranyije n'amategeko kuko Umugenzuzi w'Umurimo yamenyeshejwe iby'isezererwa rye yaramaze kwirukanwa maze rumugenera indishyi zinyuranye. SONARWA Life Assurance Company Ltd yajuriye mu Rukiko rw'Ubujurire ivuga ko ibirego bya Rugina bitabanje kugezwa ku ntumwa z'abakozi kandi ko hari ingingo zimwe na zimwe Rugina yatanze nk'ibirego kandi bitari mu byo yatantanze ku mugenzi w'umurimo. Urukiko rwasanze ubwo bujurire nta shingiro bufite kuko mu manza zabanje iyo nzitizi ntiyigeze itangwa bityo rugenera Rugina indishyi. Ibi byatumye SONARWA Life Assurance Company Ltd isaba ko uru rubanza rwasubirishwamo ku mpamvu z'akarengane maze Urukiko rw'ikirenga rurusubiramo.

Muri uru rubanza, hasuzumwe umushahara fatizo ukwiye kubarirwaho indishyi zisabwa ndetse no kumenya igihe ubuzime bw'umushahara butangirira. SONARWA, ivuga ko kuba umukozi yarazamuwe mu ntera bitavuze ko byanze bikunze yagombaga no kuzamurirwa umushahara ndetse ko atari ihame ko abakozi bari ku rwego rumwe bahembwa kimwe cyane cyane ko yari yamenyeshejwe ko umushahara we utazahinduka, akemera kongererwa gusa amafaranga y'ingendo.

Uregwa avuga ko kuba yarazamuwe mu ntera akagirwa Branch Manager agahabwa n'inshingano zo gukurikirana ayandi mashami ariko agakomeza guhembwa umushahara yahembwaga atarazamurwa mu ntera binyuranyije n'amategeko.

Uwasabye gusubirishamo urubanza nanone avuga ko rwanze kwemeza nta mpamvu rubitangiye ko imishahara ya mbere yo ku wa 11/04/2015 byageze ku wa 12/04/2017, ubwo Rugina Jason yasezererwaga, yarashaje kuko yarengeje igihe cy'imyaka ibiri giteganywa n'itegeko.

Ku kibazo cy'ubusaze bw'imishahara, uregwa avuga ko guhera ku wa 02/12/2013, we n'abandi ba Branch Managers bandikiye umukoresha, basaba guhemberwa intera bashyizweho, bongera kwibutsa ku wa 26/06/2014 no ku wa 20/09/2015, babonye nta gisubizo, ikibazo bagishyikiriza Umugenzuzi w'Umurimo, akaba asanga nta na rimwe imyaka ibiri yigeze ishira atarishyuza umushahara we, ariyo mpamvu asaba uru Rukiko kwemeza ko iyi ngingo nta shingiro ifite.

Incamake y'icyemezo: 1. Abakozi bakora imirimo imwe, banganya ubumenyi, uburambe n'ubushobozi bagomba guhembwa kimwe, iyo bitabaye ibyo haba habayeho ivangura. Umukozi unganya na bagenzi be ubumenyi, uburambe n'ubushobozi, udahembwa kimwe n'abo bari ku rwego rumwe afite uburenganzira bwo guharanira guhembwa kimwe na bagenzi be cyangwa bwo gusaba ko ahembwa umushahara ukwiye.

2. Nubwo nta kibuza umukoresha kuba yagenera bamwe mu bakozi ishimwe, iyo iryo shimwe rishyizwe ku mushahara rihabwa abakozi bose. Icyatuma imishahara y'abakozi bari ku rwego rumwe itandukana ni igihe umukoresha abashije kugaragariza Urukiko mu buryo bufatika (objectivement/ objectively) ko abakozi bahembwaga umushara uri hejuru bafite ubumenyi budasanzwe kandi bwihariye bufitiye akamaro umurimo bakora, ibyo kandi byemezwa n'Urukiko mu bushishozi bwarwo.

3. Igihe cy'ubusaze gitangira kubarwa guhera igihe umukozi yagombaga guhemberwaho, kigahagarikwa n'uko umukoresha yakoze umubaruro w'amafaranga, umukoresha n'umukozi bemeranijwe ko hari umwenda, urubanza rw'umukozi rwaregewe urukiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo.

4. Ubusaze bw’imishahara bubarwa nk’ubusaze bw’ubundi burenganzira bwite cyangwa ubundi burenganzira ku mutungo. Ibarwa ryabwo rihera igihe ufite uburenganzira yamenye cyangwa yashoboraga kumenya impamvu zatuma abukurikirana.

5. Iyo ingingo ya 55, igika cya nyuma, n’iya 63 z’Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko zisomewe hamwe, zumvikanisha ko umuburanyi utarajuririye ingingo atanyuzwe nazo hakurikijwe inzira zisanzwe kandi yari abyemerewe n’amategeko, aba yivukije inzira y’ubujurire yari gutuma ibyo yanengaga bikosorerwa mu bujurire, bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z’akarengane, yirengagije ko hari izindi manza zabaye, ngo ingingo yanze kujuririra ku bushake asabe ko zisuzumwa mu karengane kuko byaba binyuranyije n’ibiteganywa n’amategeko..

Ikirego gisaba gusubirishamo urubanza nta shingiro gifite.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y’u Rwanda ryo muri 2003 ryavuguruwe mu 2015, ingingo ya 30

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 111.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko, ingingo ya 55, 63.

Amategeko yifashishijwe atagikoreshwa:

Itegeko N° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 83

Imanza zifashishijwe:

Ngizweninshuti na Muhima, RS/INJUST/RC 00024/2018/SC rwaciwe n’Urukiko rw’Ikirenga ku wa 21/02/2020

Nditiribambe n’undi na Nyamwasa Faustin, RS/INJUST/RC 00007/2018/SC rwaciwe n’Urukiko rw’ikirenga ku wa 13/03/2020, Mukamana n’abandi n’Umuhoza, RCOM RS/ INJUST/ RC 00004/2019/SC rwaciwe n’Urukiko rw’Ikirenga ku wa 28/07/2020.

Cour de Cassation, Chambre sociale, N° 07-42-107, 16 décembre 2008, Bull Civ, V. N° 250

Inyandiko z’abahanga zifashishijwe:

Fanie Van Jaarsveld na Stefan Van Eck, Principles of Labour Law, Durban, Butterworths, 2002, p. 78.

Nsengiyuma Métusera, Droit social, Manuel de droit Rwandais, 1993, p. 79.

Françoise Favennec-Hery et Pierre-Yves Verkindt, Droit du Travail, Paris, LDGJ, 2020, p.661.

Urubanza

I. IMITERERE Y’URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Rugina Jason avuga ko mbere y’uko SONARWA S.A igabanywamo SONARWA Holdings Ltd, SONARWA General

Insurance Company Ltd na SONARWA Life Assurance Company Ltd yayikoreraga kuva ku wa 01/08/2008. Avuga ko bitewe n'izo mpinduka, abakozi ba SONARWA S.A bashyizwe muri sosiyete nshya zari zimaze kuvuka, maze ku itariki ya 15/11/2011, ahabwa amasezerano y'igihe kitazwi, agirwa Data Management Officer muri SONARWA Life Assurance Company Ltd, naho ku wa 14/11/2013, agirwa umuyobozi ukuriye ishami rya Huye (Branch Manager), ashingwa no gukurikirana ishami rya Rusizi, amenyeshwa kandi ko umushahara n'urwego ariho bidahindutse, icyakora ko ahawe 200.000 Frw y'ingendo buri kwezi. Rugina Jason yavuze ko we na bagenzi be bazamuwe mu ntera ntibahabwe umushahara ujyanye n'urwego bariho, bandikiye umukoresha bishyuza ibirarane by'imishahara, bamenyeshwa ko icyo kibazo kizigwaho, bigeze ku wa 12/04/2017 aho guhabwa igisubizo, basezererwa mu kazi.

[2] Rugina Jason yagejeje icyo kibazo ku mugenzuzi w'umurimo, SONARWA Life Assurance Company Ltd ivuga ko Rugina Jason yasezerewe kubera impamvu z'ubukungu bwatumye ikigo gikora amavugurura mu myanya y'imirimo kandi ko nta mwenda w'imishahara imufitiye. Nyuma yo kutumvikana, Rugina Jason yaregeye Urukiko Rwisumbuye rwa Nyarugenge avuga ko yirukanywe mu kazi mu buryo bunyuranyije n'amategeko, asaba guhabwa amafaranga avuga ko atagenewe mu gihe yari umukozi ndetse akanahabwa indishyi z'ikurikiranarubanza.

[3] Mu rubanza N° RSOC 00331/2018/TGI/NYGE rwaciwe ku wa 20/09/2019, Urukiko Rwisumbuye rwa Nyarugenge rwasanze ikirego cya Rugina Jason gifite ishingiro kuri bimwe, rwemeza ko Rugina Jason yasezerewe ku kazi mu buryo bunyuranyije n'amategeko, rutegeka SONARWA Life Assurance Company Ltd kumuha 80.431.900 Frw y'indishyi zitandukanye, ndetse no kumwishyurira imisanzu y'ubwiteganyirize hagendewe ku mushahara nyawo wa Branch Manager. Urukiko rwashingiye ibyo byemezo ku kuba:

- Nyuma yo gusezerera Rugina Jason mu kazi ari bwo umukoresha yabimenyesheje Umugenzuzi w'Umurimo, bivuze ko yasezerewe ibiteganywa n'ingingo ya 34 y' Itegeko no 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo bitubahirijwe;[1]
- Rugina Jason yarasezerewe ari ku mwanya wa Branch Manager, akaba yari akwiye kujya ahembwa 1.999.252 Frw, ari nayo akwiye kubarirwaho ikinyuranyo cy'imishahara y'amezi 42 atahawe ndetse akanabarirwaho integuza, imperekeza, insimburakiruhuko n'umusanzu w'ubwiteganyirize nabyo atahawe;
- Amafaranga y'ifunguro n'aya caisse d'entraide Rugina Jason adakwiye kuyahabwa kuko nta kimenyetso ayatangira.

[4] SONARWA Life Assurance Company Ltd yajuririye Urukiko Rukuru ivuga ko ubwo Rugina Jason yagirwaga Branch Manager, urwego yariho n'umushahara yahembwaga bitahindutse, ko Urukiko rwabanje rwemeje ko yagombaga kujya ahembwa 1.999.252 Frw, akaba ari nayo abarirwaho ikinyuranyo cy'umushahara atahawe, integuza n'imperekeza nta kimenyetso rushingiyeho ndetse rumugenera indishyi z'akababaro atasabye kandi zidateganywa n'itegeko.

[5] Mu rubanza no RSOCA 00257/2019/HC/KIG rwaciwe ku wa 28/05/2020, Urukiko Rukuru rwasanze Rugina Jason yarirukanywe mu buryo bunyuranyije n'amategeko kuko Umugenzuzi

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[1] Iyo ngingo yateganyaga ko "Umukoresha ashobora gusezerera umukozi umwe cyangwa benshi bitewe no kuvugurura imikorere y'ikigo bikorwa kubera ingorane z'ubukungu cyangwa guhindura ikoranabuhanga ryakoreshwaga hagamijwe kugira ngo ikigo kirusheho gukora neza. Abakozi bagabanywa mu kigo batondekwa hakurikijwe ubushobozi ku murimo, 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".

w'Umurimo yamenyeshejwe iby'isezererwa rye yaramaze kwirukanwa. Rwasanze kandi amafaranga y'ingendo, icumbi, ifunguro n'aya caisse d'entraide Rugina Jason yasabaga mu bujurire bwuririye ku bundi atayahabwa kuko atayatangira ibimenyetso naho ayo yakoresheje yivuza mu Bitaro byitirwe Umwami Faisal, ayo kwimuka n'ikinyuranyo cy'umushahara mu gihe cy'amazi 16 yaba atarahawe bitasuzumwa bwa mbere mu bujurire, rusanga na none Rugina Jason atahabwa inyungu zingana na 18% ku ndishyi zose zemejwe n'Urukiko nk'uko yabisabaga kuko atari umucuruzi kandi akaba atagaragaza amategeko ashingiraho azisaba, rwanzura ko ubujurire bwa SONARWA Life Assurance Company Ltd bufite ishingiro kuri bimwe, rwemeza ko uretse 1.000.000 Frw y'indishyi z'akababaro yatanzwe hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano agomba kuvanwa mu ndishyi, nta gihindutse ku mikirize y'urubanza rwajuririwe.

[6] SONARWA Life Assurance Company Ltd yajuririye mu Rukiko rw'Ubujurire ivuga ko ibirego bya Rugina Jason bitabanje kugezwa ku ntumwa z'abakozi mu Kigo nk'uko biteganywa n'ingingo ya 140 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda,[2] ko Rugina Jason yari yaratanze ibirego umunani ku Mugenzuzi w'Umurimo, ageze mu Rukiko Rwisumbuye yongeraho ibirego 11, ibyo bishya bikaba bitaragombaga kwakirwa, ko Urukiko Rwisumbuye rutari gushingira icyemezo cyarwo ku myanzuro Rugina Jason yatanze ku wa 08/05/2019, nyuma y'inama ntegurarubanza atabanje gusabwa gutanga irindi garama, ko ingingo zijyanye n'ikinyuranyo ku mperekeza, ku nteguza no ku mafaranga y'ubwiteganyirize atatangiwe zitagombaga kwakirwa kuko zitigeze zishyikirizwa Umugenzuzi w'Umurimo, ko muri rusange SONARWA Life Assurance Company Ltd nta ndishyi yagombaga gucibwa kuko ibirego byashingiweho zitangwa byari byarashaje, isaba ko ku bw'izo nenge, urubanza N° RSOC 00331/2018/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge n'urubanza N° RSOCA 00257/2019/HC/KIG rwaciwe n'Urukiko Rukuru zivanwaho.

[7] Rugina Jason yireguye avuga ko yagannye inkiko nyuma yo kugerageza gukemura ikibazo ku bwumvikane. Yasobanuye ko ku wa 16/09/2016, yandikiye Umukuru w'Inama y'Ubutegetsi yishyuza umushahara ujyanye n'urwego ariho, uyu nawe asaba Umuyobozi wa SONARWA Life Assurance Company Ltd gukemura icyo kibazo, abonye nta gikozwe yiyambaza intumwa z'abakozi mu Kigo, nabyo ntibyagira icyo bitanga, abona kugana Umugenzuzi w'Umurimo ari nawe wamugiriye inama yo kuregera inkiko. Yavuze ko ntaho mu nkiko zabanje hiregangijwe ibiteganywa n'ingingo ya 140, y'Itegeko n° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ndetse ko nta myanzuro batanze nyuma y'inama ntegurarubanza mu Rukiko Rwisumbuye rwa Nyarugenge ahubwo ko basobanuye mu buryo bwimbitse umwanzuro bari batanze barega, akaba asanga inenge SONARWA Life Assurance Company Ltd itagaragaje mu nkiko zabanje itakwemererwa kuzitanga bwa mbere mu bujurire cyane cyane ko atari impamvu ndemyagihugu.

[8] Mu rubanza no RSOCAA 00007/2020/CA rwaciwe ku wa 29/10/2021, Urukiko rw'Ubujurire rwasanze ubujurire bwa SONARWA Life Assurance Company Ltd n'ubwa Rugina

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[2] Iyo ngingo yateganyaga ko "Iyo havutse impaka zihariye ku kazi hagati y'umukozi n'umukoresha, uruhande bireba rubanza gusaba uhagarariye abakozi iyo ahari, gukemura ayo makimbirane ku bwumvikane. Iyo intumwa z'abakozi zidashoboye gukemura ayo makimbirane, uruhande bireba rubimenyesha Umugenzuzi w'Umurimo rusaba ko yakemurwa ku bwumvikane. Iyo kumvikana bidashobotse, ikirego gishobora gushyikirizwa urukiko rubifitiye ububasha. Iyo kunyura mu nzego zivugwa muri iyi ngingo bitubahirijwe, urukiko rushobora gufata icyemezo cyo kutakira ikirego."

Jason bwuririye ku bundi nta shingiro bufite, rutegeka SONARWA Life Assurance Company Ltd kwishyura Rugina Jason 41.777.748 Frw y'indishyi, 3.000.000 Frw y'igihembo cya Avoka na 50.000 Frw y'ingwate y'amagarama mu Rukiko Rukuru, no kumutangira ikinyuranyo cy'imisanzu y'ubwiteganyirize ishingiye ku mushahara mbumbe (salaire brut) ungana na 1.999.252 Frw ku kwezi. Urukiko rwashingiye ibyo byemezo ku mpamvu zikurikira:

i. Kuba mu nkiko zabanje SONARWA Life Assurance Company Ltd itarabyukije inzitizi ku ngingo ijyanye n'uko Rugina Jason atabanje gushyikiriza ikibazo cye uhagarariye abakozi mu Kigo kandi ikaba itagaragaza ko iyo nzitizi ari ndemyagihugu ku buryo n'Urukiko rwashoboraga kuyibyutsa rubyibwirije, bituma itakwakirwa ngo isuzumwe bwa mbere mu bujurire bwa kabiri;

ii. Kuba SONARWA Life Assurance Company Ltd yarireguye ku birego byose yari yarezwe byumvikanisha ko mu bujurire bwa kabiri atariho yavuga ko ibyo birego bitagombaga kwakirwa cyangwa ngo isabe ko ibyemezo byafashwe ku birego yireguyeho biteshwa agaciro kandi ntaho yagaragaje ko inzitizi itanga ari ndemyagihugu ku buryo yashoboraga no kubyutswa n'Urukiko rubyibwirije;

iii. Kuba SONARWA Life Assurance Company Ltd yaremeye kwiregura ku myanzuro yatanzwe nyuma y'inama ntegurarubanza ndetse no ku birego ivuga ko byatanzwe bwa mbere muri iyo myanzuro, ntiyasaba ko nyuma y'icibwa ry'urubanza ari bwo iyo myanzuro itakirwa cyangwa ngo isabe ko urubanza ruteshwa agaciro;

iv. Kuba ikibazo cy'iyirukanwa rinyuranyije n'amategeko kidakwiye gusuzumwa mu bujurire kuko SONARWA Life Assurance Company Ltd itakijuririye, ibyo bikaba byumvikanisha ko yari yanyuzwe n'umwanzuro wafashwe n'inkiko kuri iyo ngingo;

v. Kuba nta busaze bw'imishahara bwabayeho kuko Rugina Jason atigeze arenza imyaka ibiri atarishyuza imishahara ye, bityo ibyo SONARWA Life Assurance Company Ltd isaba ko umushahara wa Branch Manager wari kubarirwa ku mezi 24 aho kuba 42 bikaba nta shingiro bifite;

vi. Kuba "Employee's Handbook" yo mu mwaka wa 2015 atariyo mategeko ngengamikorere akwiye gushingirwaho hasuzumwa intera Rugina Jason yariho kuko yashyizwe ku mwanya wa Branch Manager ku wa 14/11/2013 iyo Employee's Handbook itarajyaho;

vii. 1.999.252 Frw yabariweho indishyi zinyuranye mu rubanza rujuririrwa ari umushahara mbumbe (salaire brut), bityo ukaba utashingirwaho kuko binyuranyije n'umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza no RS/INJUST/RSOC/2019/SC haburana Niwemugeni Jeannette na KCB Bank Rwanda Ltd, uvuga ko umukozi usezerewe mu kazi atabarirwa indishyi hashingiwe ku mushahara mbumbe (brut), ahubwo zibarirwa ku mushahara atahana mu ntoki (net) hamaze kuvanwamo umisoro ku musaruro n'umusanzu w'ubwiteganyirize;

viii. Kuba SONARWA Life Assurance Company Ltd igomba gutangira RUGINA Jason ikinyuranyo cy'imisanzu y'ubwiteganyirize itamutangiye ibariwe ku mushahara mbumbe ungana na 1.999.252 Frw ku kwezi, aho kuba 514.581 Frw ku kwezi;

ix. Kuba Rugina Jason atagaragaza ibimenyetso bihamya ko yagombaga kwishyurirwa 100% y'amafaranga yo kwivuza, bityo akaba ntayo agomba guhabwa; naho ku

bijyanye n'amafaranga y'icumbi, ingendo n'itumanaho akaba atayakwiye kuko ntaho yagaragaje ko yayishyuje ntayahabwe.

x. Kuba SONARWA Life Assurance Company Ltd idakwiye kubazwa ibirebana n'imisanzu yatanzwe muri caisse d'entraide, kuko urwo ari urwego rugengwa n'amategeko kandi rufite ubuyobozi byihariye.

[9] SONARWA Life Assurance Company Ltd yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza N° RSOCAA 00007/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021, rusubirwamo ku mpamvu z'akarengane. Mu cyemezo N° 008/CJ/2022 cyo ku wa 06/01/2022 yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[10] Iburanisha mu ruhame ryabaye ku wa 24/05/2022, SONARWA Life Assurance Company Ltd ihagarariwe na Me Abijuru Emmanuel afatanyije na Me Basomingera Alberto naho Rugina Jason ahagarariwe na Me Rwagitare Fred Fiston.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

II.1. Kumenya umushahara fatizo ukwiye kubarirwaho indishyi zisabwa

[11] Me Abijuru Emmanuel na Me Basomingera Alberto, baburanira SONARWA Life Assurance Company Ltd, bavuga ko iyo sosiyete yashinzwe mu mwaka wa 2012, abakozi bakomeza guhembwa imishahara yo ku rwego bariho muri SONARWA S.A. kugeza mu mwaka wa 2016 hashingiwe ku ihame ry'uko umwanya n'umushahara w'umukozi bidakwiye kugabanywa. Bavuga ko nubwo inyandiko igaragaza imyanya muri icyo kigo idasinye, ariyo ikurikizwa. Basanga ku bijyanye n'imishahara hadakwiye gushingirwa ku mategeko ngengamikorere yo mu mwaka wa 2005 ahubwo hakwiye kugenderwa ku nyandiko zishyira abakozi mu myanya n'ibindi byemezo bitandukanye byafashwe n'umukoresha. Bavuga ko kuba Employee's Handbook yo mu mwaka wa 2015 ivuga ko ikomeza ibyariho muri Règlement d'ordre intérieur ya 2005 ari ukwibeshya ndetse ko Urukiko rw'Ubujurire rutagombaga gushingira icyemezo cyarwo kuri Règlement d'ordre intérieur yo mu mwaka wa 2005 kuko byatumye rugenera Rugina Jason umushahara ushingiye ku byifuzo bye, rwivanga no mu mikorere y'ibigo byigenga ku buryo icyemezo rwafashe kigumyeho cyabangamira abakoresha n'iterambere rusange.

[12] Basobanura ko nk'uko bigaragazwa n'ibaruwa yo ku wa 14/05/2013 yandikiwe Kanyamahoro Kazungu Deus wari ku mwanya umwe n'uwa Rugina Jason, mu mwaka wa 2013, Branch Manager yahembwaga umushahara mbumbe (gross salary) ungana na 1.035.590 Frw, naho umushahara fatizo (basic salary) ari 715.550 Frw. Bavuga kandi ko Urukiko rw'Ubujurire rwitiranyije ibintu, aho rwavuze ko Ntwari Alphonse yari umukozi wa SONARWA S.A. kuko yabanje kuba Chef de Service muri iyo sosiyete, hanyuma yoherezwa muri SONARWA Life Assurance Company Ltd nka Head of Unit, hanyuma aza kuzamurwa mu ntera agirwa Head of Department, akaba rero atarigeze aba Branch Manager muri SONARWA Life Assurance Company Ltd, bivuze ko bidakwiye ko umushara ungana na 1.999.252 Frw Ntwari Alphonse yahembwe nka Head of Department ariwo ufatwa nk'uwo Rugina Jason yagombaga guhembwa kandi uyu yari ku mwanya wa Officer I, wari hasi cyane, ku ntera ya gatatu uvuye ku mwanya Ntwari Alphonse yariho.

[13] Bavuga ko kuba Rugina Jason yarazamuwe mu ntera bitavuze ko byanze bikunze yagombaga no kuzamurirwa umushahara ndetse ko atari ihame ko abakozi bari ku rwego rumwe bahembwa kimwe cyane cyane ko Rugina Jason yari yamenyeshejwe ko umushahara we utazahinduka, akemera kongererwa gusa amafaranga y'ingendo. Basobanura ko SONARWA Life Assurance Company Ltd nta mashami yagiraga mu ntara kugeza mu mwaka wa 2013, ko abayobozi bose b'amashami batigeze bishyuza imishahara bavuga ko batahawe ahubwo basabaga kongezwa umushahara, bityo kuba ibyo byose byarirengagijwe akaba aribyo byateye akarengane.

[14] Rugina Jason na Me Rwagitare Fred umuburanira bavuga ko nta karengane kari mu rubanza rwaciwe n'Urukiko rw'Ubujurire. Basobanura ko Règlement d'ordre intérieur yo mu mwaka wa 2005 ariyo yakomeje gukoreshwa kugeza mu mwaka wa 2015, kuko no mu irangashingiro rya Employee's Handbook havugwa ko "Iki Gitabo cya Politiki n'Amabwiriza Bigenga Abakozi kivanaho kikanasimbura igitabo cy'amabwiriza agenga abakozi cyari gisanzwe cyaremejwe muri Mutarama 2005." Bavuga ko SONARWA Life Assurance Company Ltd itabasha kugaragaza andi mategeko yaba yarakoreshwaga hagati ya 2011 na 2015, Employee's HandBook yemezwa n'Inama y'Ubutegetsi, ndetse ko Urukiko rutari gushingira ku mategeko yemejwe mu mwaka wa 2015 kandi ikibazo cyaravutse mu mwaka wa 2013.

[15] Bavuga ko kuba Rugina Jason yarazamuwe mu ntera akagirwa Branch Manager w'Ishami rya Huye, agahabwa n'inshingano zo gukurikirana amashami ya Nyamagabe, Rusizi na Nyamasheke ariko agakomeza guhembwa umushahara yahembwaga atarazamurwa mu ntera binyuranyije n'ingingo ya 10.10 y'amategeko ngengamikorere yo muri 2015 ateganya ko "Abakozi bahembwa hakurikijwe urwego rw'umushahara rugendanye n'akazi bakora." Basobanura ko ntaho Urukiko rw'Ubujurire rwitiranyije ibintu kuko SONARWA S.A. yavuyemo ibigo bitatu harimo na SONARWA Life Assurance Company Ltd, ibyo bigo byose bikomeza kugengwa n'amategeko ngengamikorere yo mu mwaka wa 2005, abakozi b'ibyo bigo bakomeza kugendera ku ntera bariho mbere y'amavugurura, bityo bakaba baragombaga no gukomeza gufatwa kimwe. Bavuga ko Urukiko rw'Ubujurire rwagennye indishyi rushingiye ku biteganywa n'ingingo ya 21 y'Amategeko Ngengamikorere ivuga ko Chef de Service ari ku ntera imwe na Branch Manager, bityo ko icyakozwe atari ugushimangira ibyifuzo bya Rugina Jason ahubwo ari ugukosora imokorere ya SONARWA Life Assurance Company Ltd yari inyuranyije n'amategeko.

[16] Bavuga ko kuba Urukiko rwaremeje ko Rugina Jason ahemberwa umwanya SONARWA Life Assurance Company Ltd yemera ko yamushyizeho atari ukwivanga mu nshingano z'abakoresha, ahubwo ari ugukosora ibyari bifutamye kugira hatazagira abandi bakoresha babikorera abakozi babo. Basobanura ko uburenganzira bwo kuba abakozi bakora akazi kamwe bagomba guhembwa kimwe buteganywa n'ingingo ya 30 y'Itegeko Nshinga, kandi ko ibyo bihura n'umurongo watanzwe n'Urukiko rw'Ubujurire mu rubanza Muberangabo Titien yaburanaga na SONARWA Holdings Ltd, aho rwemeje ko umukozi wazamuwe mu ntera agomba guhembwa kimwe na bagenzi be bari kuri iyo ntera.[3] Kuri iyi ngingo, bavuga ko umushahara ungana na 715.550 Frw SONARWA Life Assurance Company Ltd ivuga ko ari wo Branch Manager yahembwaga atari ukuri kuko uwo wari umushahara fatizo (salaire de base), naho umushara wose wa Branch Manager ukaba waranganaga na 1.999.252 Frw nk'uko bigaragazwa na fiche de paie ya Ntwari Alphonse.

[3] Reba urubanza n° RSOCAA 00005/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 08/3/2019.

[17] Basoza bavuga ko imbonerahamwe y'imirimo (cadre organique) SONARWA Life Assurance Company Ltd iburanisha ishaka kugaragaza ko Rugina Jason yari ku ntera itandukanye n'iya Ntwari Alphonse ari ikimenyetso cya nyuma ya 2015, kidasinye, cyacuzwe n'umukoresha ku mpamvu z'urubanza kandi kitaburanyweho kuva urubanza rutangiye kubera ko cyashyizwe muri dosiye mu Rukiko rw'Ubujurire, bityo iyo nyandiko ikaba nta gaciro ikwiye guhabwa. Bavuga na none ko ikibazo cya Rugina Jason atari umwihariko we nk'uko SONARWA Life Assurance Company Ltd ishaka kubigaragaza, ahubwo ko agisangiye n'abandi bakozi nabo bari Branch Managers, bareze umukoresha bakamutsinda, imanza zikabuzwa gukomeza n'uko indishyi zatanzwe zatumaga izo manza zitaba mu bubasha bw'Urukiko rw'Ubujurire.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 30 y'Itegeko Nshinga Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 ivuga ko abantu bakora umurimo umwe bagomba guhembwa kimwe nta vangura iryo ari ryo ryose.

[19] Ku bijyanye no kumenya uburyo iri hame rigomba gushyirwa mu bikorwa, abahanga Fanie Van Jaarsveld na Stefan Van Eck bavuga ko abakozi bakora imirimo imwe, banganya ubumenyi, uburambe n'ubushobozi bagomba guhembwa kimwe, iyo bitabaye ibyo haba habayeho ivangura.[4] Naho Nsengiyumva Métusera avuga ko umukozi unganya na bagenzi be ubumenyi, uburambe n'ubushobozi, udahembwa kimwe n'abo bari ku rwego rumwe afite uburenganzira bwo guharanira guhembwa kimwe na bagenzi be cyangwa bwo gusaba ko ahembwa umushahara ukwiye, ko nubwo nta kibuza umukoresha kuba yagenera bamwe mu bakozi ishimwe, iyo iryo shimwe rishyizwe ku mushahara rihabwa abakozi bose.[5]

[20] Uyu murongo kandi niwo ushimangirwa n'inkiko z'ibindi bihugu, nk'Urukiko Rusesa Imanza mu Bufaransa rwasanze umukozi wahawe akazi na sosiyete yitwa Fauchon ku mwanya wa Assistante Commerciale ku wa 01/02/2000, hanyuma ku wa 01/10/2000, akazamurwa mu ntera akagirwa Chef de Zone Export, byagera ku wa 25/05/2004 agasezererwa mu kazi ku bw'amakosa akomeye, ariko kuva yazamurwa mu ntera akaba atarahembwe umushahara ungana n'uwo bagenzi be bari ku mwanya nk'uwe bahembwaga akwiye guhabwa ikinyuranyo cy'imishahara yose atahembwe. Urwo Rukiko rwasanze kandi icyatuma imishahara y'abakozi bari ku rwego rumwe itandukana ari igihe umukoresha abashije kugaragariza Urukiko mu buryo bufatika (objectivement/ objectively) ko abakozi bahembwaga umushara uri hejuru bafite ubumenyi budasanzwe kandi bwihariye bufitiye akamaro umurimo bakora, ibyo kandi byemezwa n'Urukiko mu bushishozi bwarwo.[6]

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[4] "The fact that an employer pays an employee more than other employees does not amount to discrimination. Pay differentials may be justified in law and in practice by the fact that employees have different levels of qualifications, experience, skills, competence, expertise and so on. I will only be regarded as discrimination when two similarly circumstanced employees are treated differently." Reba Fanie Van Jaarsveld na Stefan Van Eck, Principles of Labour Law, Durban, Butterworths, 2002, p. 78.

[5] "Rien n'empêche à l'employeur d'accorder discrétionnairement des avantages matériels à titre de libéralités à certains travailleurs et de les refuser à d'autres. Néanmoins, dès que ces avantages ont acquis le caractère de salaire, ils deviennent obligatoires pour tous les travailleurs se trouvant dans la même situation." Reba Nsengiyuma Métusera, Droit social, Manuel de droit Rwandais, 1993, p. 79.

[6] " Attendu que Mme X … a été engagée par la société Fauchon le 1er février 2000 … en qualité d'assistante commerciale, qu'elle a été promue le 1er octobre 2000 au poste de chef de zone export; qu'elle a été licenciée pour

[21] Urukiko rurasanga dosiye y'urubanza irimo ibaruwa SONARWA Life Assurance Company Ltd yandikiye Rugina Jason ku wa 14/11/2013, imumenyesha ko agizwe umuyobozi w'Ishami rya Huye akanakurikirana ibijyanye no kwamamaza ubucuri bw'iyo sosiyete mu Ishami rya Rusizi. Iyo baruwa ivuga kandi ko umushara we ndetse n'urwego ariho bidahindutse, icyakora ko azajya ahabwa 200.000 Frw y'ingendo. Harimo kandi inyandiko y'isuzumamikorere y'umwaka wa 2014 n'iy'umwaka wa 2016 nazo zihamya ko Rugina Jason yari akuriye SONARWA Life Assurance Company Ltd, Ishami rya Huye (Head, Huye Branch). Ibi bimenyetso bigaragaza ko nta gushidikanya guhari ko Rugina Jason yari Umuyobozi w'Ishami rya Huye guhera ku wa 14/11/2013 kugeza igihe yasezerewe.

[22] Urukiko rurasanga mu iburanisha ryabaye ku wa 24/05/2022, imbere y'uru Rukiko, SONARWA Life Assurance Company Ltd yaravuze ko ubwo yajyagaho, abakozi bayo bakomeje guhembwa imishahara bahembwaga bakiri muri SONARWA S.A., naho ubwo yitabaga Umugenzuzi w'Umurimo mu Karere ka Nyarugenge, SONARWA Life Assurance Company Ltd yari yavuze ko ubusabe bw'abakozi bari ku mwanya wa Branch Manager bwo guhembwa imishahara ijyanye n'uwo mwanya yabubonye, kandi ko buzahabwa ishingiro igihe nikigera, basabwa gutegereza, ibi akaba aribyo Urukiko rw'Ubujurire rwavanyemo ko SONARWA Life Assurance Company Ltd itubahirije ibiteganywa n'Amategeko Ngengamikorere yayo yo mu mwaka wa 2005 yakurikizwaga mu mwaka wa 2013, Rugina Jason agirwa Branch Manager.

[23] Urukiko rurasanga irangashingiro rya Employee's HandBook yo mu mwaka wa 2015 igira iti: "Iki Gitabo cya Politiki n'Amabwiriza Bigenga Abakozi kivanaho kikanasimbura igitabo cy'amabwiriza agenga abakozi cyari gisanzwe cyaremejwe muri Mutarama 2005. Iri simbuzwa ry'igitabo cy'amabwiriza agenga abakozi ryatewe n'uko atari akigendanye n'igihe kubera impinduka zabaye mu mategeko y'umurimo mu mwaka wa 2009 n'izindi mpinduka nyinshi zagiye ziba mu kigo uko imyaka yasimburanaga." Ibi bigaragaza ko koko ku bijyanye n'imicungire y'abakozi, SONARWA Life Assurance Company Ltd yakomeje kugengwa n'Amategeko Ngengamikorere y'Abakozi (Règlement d'Ordre Intérieur du Presonnel) ya SONARWA S.A. yo muri Mutarama 2005 kugeza igihe Employee's Handbook yemerejwe.

[24] Urukiko rurasanga ingingo ya 20 n'iya 21 z'Amategeko Ngengamikorere y'Abakozi yo muri Mutarama 2005 zishyiraho zikanasobanura imbonerahamwe y'imyanya muri SONARWA S.A., hakaba harimo n'umwanya uri ku rwego rwa E, urimo intera enye zirutanwa mu buryo bukurikira: Umukuru w'Ishami (Chef de Service), Umukuru w'Ishami Mukuru (Chef de Service Principal), "Fondé de Pouvoir" na "Fondé de Pouvoir Principal". Urwandiko rwo ku wa 14/11/2013 rushyira Rugina Jason mu mwanya ruvuga ko agizwe "Head of Huye Branch", ndetse

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faute grave le 25 mai 2004; qu'elle a saisi la juridiction prud'homale de demandes tendant à faire juger le licenciement sans cause réelle et sérieuse et à obtenir la payment d'un rappel d'heures supplémentaires et de dommages-intérêts au titre d'une inégalité de traitement subie en matière salariale; …Vu le principe "à travail égal salaire égal"; Attendu qu'au regard de ce principe, la seule différence de dilpômes, alors qu'ils sont d'un niveau équivalent, ne permet pas de fonder une différence de rémunération entre des salariés qui exercent les mêmes fonctions, sauf s'il est démontré par des justifications, dont il appartient au juge de contrôler la réalité et la pertinence, que la possession d'un diplôme spécifique atteste de connaissances particulières utiles à l'exercice de la fonction occupée; …Qu'en statuant comme elle l'a fait (la cour d'appel), alors que Mme X … qui occupait la même fonction de chef de zone export que Mme Y ..., possedait des diplômes de niveau équivalent,
…sans préciser en quoi les diplômes de Mme Y … attestaient de connaissances particulières utiles à l'exercice de la fonction occupée, de sorte qu'ils justifiaient une différence de rémunération, la cour d'appel a violé le principe susvisé; …" Reba Cour de Cassation, Chambre sociale, N° 07-42-107, 16 décembre 2008, Bull Civ, V. N° 250.

n'inyandiko z'isuzumamikorere (performance appraisal) zo mu mwaka wa 2014 n'iz'umwaka wa 2016 zigaragaza ko Rugina Jason yari "Head, Huye Branch", ibi bikaba bigaragaza ko umwanya Rugina Jason yariho ari uw'Umuyozi w'Ishami usanzwe uteganywa n'Amategeko Ngengamikorere yavuzwe haruguru.

[25] Urukiko rurasanga ibyo SONARWA Life Assurance Company Ltd iburanisha ko nubwo Rugina Jason yari Umuyobozi w'Ishami yari ku ntera ya Officer I, ndetse ko mu kugereranya imishahara hakwiye gushingirwa ku mushahara wa Kanyamahoro Kazungu Deus wari Umuyobozi w'Ishami rya Rubavu nta shingiro bikwiye guhabwa kubera impamvu zikurikira:

i. Intera ya Officer I ntaho igaragara mu Mategeko Ngengamikorere yo mu mwaka wa 2005, iboneka gusa ku nyandiko yitwa Approved Salary Structure for Sonarwa Life Staff yo mu kwezi k'Ukwakira 2012. Iyo nyandiko nta kirango, kashe cyangwa umukono w'abayobozi ba Sonarwa Life Assurance Company Ltd biyiriho, kandi Officer I ari ku rwego rwa "K" rw'Ukuriye abashoferi mu Kigo, bikaba bitumvikana uburyo Umuyobozi w'Ishami ry'Akarere yaba ku rwego rumwe n'Ukuriye abashoferi muri icyo Kigo;

ii. Inyandiko yo ku wa 14/05/2013 ishyira Kanyamahoro Kazungu Deus ku mwanya w'Umuyobozi w'Ishami rya Rubavu ivuga ko ashyizwe ku rwego rwa "Assistant Manager", kandi ko azajya ahembwa 1.035.590 Frw, uyu mwanya wa "Assistant Manager" niwo Ntwari Alphonse yariho kandi we ahembwa 1.999.252 Frw, ni nawo Habakubana Egide yariho ahembwa 1.980.520 Frw, bikaba bitumvikana uburyo Rugina Jason nawe wari Umuyobozi w'Ishami atari ku mwanya wa Assitant Manager nka bagenzi be agashyirwa ku mwanya wa Officer I.

iii. Iby'uko umwanya wa Officer I wagenzurwaga na Head, Commercial, uyu nawe akagenzurwa na Branch Coordinateur ntaho bigaragara mu Mategeko Ngengamikorere ya SONARWA S.A. yo mu mwaka wa 2005.

[26] Hashingiwe ku bisonanuro byatanzwe haruguru no ku biteganywa n'ingingo ya 84, igika cya kabiri, y'Amategeko Ngengamikorere ya SONARWA S.A. yo mu mwaka wa 2005 yakoreshwaga ubwo Rugina Jason yazamurwaga mu ntera ku wa 14/11/2013 ivuga ko "Ku bakozi bazamuwe mu kazi, kwongera umushahara bigomba kungana n'ikinyuranyo hagati y'imbonerahamwe y'imishahara y'ingazi cyangwa y'intera bagezeho n'iy'ingazi cyangwa intera bashyizweho", Urukiko rurasanga nk'uko Urukiko rw'Ubujurire rwabibonye, umwanya wa Branch Manager uhura n'uw'Umuyobozi w'Ishami (Chef de Service), bityo akaba ari nawo guhera kuwa 14/11/2013, Rugina Jason yagombaga guhemberwa.

[27] Kubijyanye n'umushahara, Urukiko rurasanga Urukiko rw'Ubujurire rwarasanze SONARWA Life Assurance Company Ltd itarabashije kugaragaza ko Umuyobozi w'Ishami atahembwaga umushahara mbumbe ungana na 1.999.252 Frw, ndetse ko itanabashije kugaragaza uburyo Ntwari Alphonse yari guhembwa umushahara uri hejuru y'uwa Rugina Jason kuko gusa umwe ari muri SONARWA General Insurance Ltd undi ari muri SONARWA Life Assurance Company Ltd kandi bari ku ntera imwe ndetse bose bagengwa n'Amategeko Ngengamikorere ya SONARWA S.A. yo mu mwaka wa 2005. Nubu SONARWA Life Assurance Company Ltd yivugira ko Kanyamahoro Kazungu Deus yari Umuyobozi w'Ishami rya Rubavu ari ku ntera ya "Assistant Manager", isuzumabushobozi ryakorewe Ntwari Alphonse mu mwaka wa 2014 nk'Umuyobozi wa Head, Claims and Benefits Unit ndetse n'ibaruwa uyu yandikiwe ku wa

11/06/2016 imumenyesha ibigize umushahara nk'uko byemejwe n'Inama y'Ubutegetsi mu Ukwakira 2012, nabyo bivuga ko ari ku ntera ya "Assistant Manager", byumvikanisha ko "Assistant Manager" ariyo ntera yari iy'Umuyobozi w'Ishami muri SONARWA Life Assurances Company Ltd, ikaba ari nayo Rugina Jason yazamuweho mu mwaka wa 2013.

[28] Urukiko rurasanga dosiye irimo inyandiko zitandukanye zishyuriweho umushahara mbumbe wa Ntwari Alphonse ungana na 1.999.252 Frw, uwa Kanyamahoro Kazungu Deus ungana na 1.035.590 Frw, uwa Rugina Jason ungana na 514.581 Frw, nyamara bose bari ku ntera imwe ya "Assistant Manager". Kugeza ubu kandi SONARWA Life Assurance Company Ltd ntigaragaza impamvu zifatika zatuma abakozi bari ku ntera imwe, bakora akazi kamwe, bahembwa ku buryo butandukanye. Mu gihe rero SONARWA Life Assurance Company Ltd idahakana ko Ntwari Alphonse nawe yari "Assistant Manager", uru Rukiko rukaba rwemeranya n'ibyemejwe n'Urukiko rw'Ubujurire ko urugero rw'umushahara wa "Assitant Manager" rukwiye gufatirwa kuri Ntwari Alphonse.

[29] Urukiko rurasanga na none Urukiko rw'Ubujurire rwari rufite ishingiro ryo gukosora icyemezo cyafashwe n'Urukiko Rukuru cy'uko indishyi n'ikinyuranyo by'imishahara Rugina Jason agomba guhabwa bikwiye kubarirwa ku mushahara Ntwari Alphonse yatahanaga aho kuba umushahara mbumbe. Icyakora mu kubyemeza rutyo rwavuze ko uwo mushahara ungana na "1.134.317 Frw ugaragara kuri pay roll ya Ntwari Alphonse". Nubwo ariko iyo pay roll igaragaza ko ahubwo umushara Ntwari Alphonse yatahanaga ungana na 1.184.317,00 Frw, ari nawo wagombaga kubarirwaho indishyi n'ikinyuranyo cy'imishahara cyasabwe, uru Rukiko ntaho rwahera rubigarukaho kuko ntabyo Rugina Jason yasabye ko bikosorwa.

II.2. Kumenya niba hari imishahara y'ikirenga yishyuwe cyangwa niba hari iyatanzwe yaramaze gusaza (prescription)

[30] Me Abijuru Emmanuel na Me Basomingera Alberto, baburanira SONARWA Life Assurance Company Ltd, bavuga ko Rugina Jason yabaye Umuyobozi w'Ishami rya Huye amezi 40 n'iminsi 28, bityo ko Urukiko rw'Ubujurire rutagaragaje aho rwakuye amezi 42, ndetse ko rwanze kwemeza nta mpamvu rubitangiye ko imishahara ya mbere yo ku wa 11/04/2015 byageze ku wa 12/04/2017, ubwo Rugina Jason yasezererwaga, yarashaje kuko yarengeje igihe cy'imyaka ibiri giteganywa n'itegeko.[7] Basobanura ko inzandiko Rugina Jason yanditse ku wa 14/11/2013, ku wa 02/12/2013, ku wa 26/04/2014 no ku wa 20/09/2015 zitari mu mpamvu zihagarika ubuzime ziteganywa n'itegeko, ko Urukiko rw'Ubujurire ahubwo rwari gufata ko impamvu imwe yashoboraga guhagarika ubuzime ari ikirego cyagejejwe ku Mugenzuzi w'umurimo ku wa 23/01/2017.

[31] Rugina Jason avuga ko iyi ngingo yari yajuririwe mu Rukiko rw'Ubujurire ntiyakirwa, akaba asanga idakwiye gusuzumwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane. Asobanura ko niba SONARWA Life Assurance Company Ltd ishidikanya ko yamaze amezi 42 ari Branch Manager ikwiye kubitangira ibimenyetso, ikagaragaza uburyo yakoze

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[7] Ingingo ya 83 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo yateganyaga ko "Umushahara umaze imyaka ibiri (2) utarishyuzwa ntuba ukishyujwe. Icyo gihe gitangira kubarwa guhera umunsi umukozi yagombaga guhemberwaho. Icyo gihe gihagarikwa n'uko umukoresha yakoze umubaruro w'amafaranga, umukoresha n'umukozi bemeranijwe ko ari umwenda, urubanza rw'umukozi rukiri mu rukiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo."

imibare. Ku kibazo cy'ubusaze bw'imishahara, avuga ko guhera ku wa 02/12/2013, we n'abandi ba Branch Managers bandikiye umukoresha, basaba guhemberwa intera bashyizweho, bongera kwibutsa ku wa 26/06/2014 no ku wa 20/09/2015, babonye nta gisubizo, ikibazo bagishyikiriza Umugenzuzi w'Umurimo, akaba asanga nta na rimwe imyaka ibiri yigeze ishira atarishyuza umushahara we, ariyo mpamvu asaba uru Rukiko kwemeza ko iyi ngingo nta shingiro ifite.

UKO URUKIKO RUBIBONA

[32] Ingingo ya 83 y'Itegeko N° 13/2009 ryo kuwa 27/05/2009 rigenga umurimo mu Rwanda ryakoreshwaga ubwo Rugina Jason yari Umuyobozi w'Ishami rya Huye muri SONARWA Life Assurance Company Ltd ivuga ko umushahara umaze imyaka ibiri (2) utarishyuzwa uba utakishyujwe. Icyo gihe gitangira kubarwa guhera umunsi umukozi yagombaga guhemberwaho kigahagarikwa n'uko umukoresha yakoze umubaruro w'amafaranga, umukoresha n'umukozi bemeranijwe ko ari umwenda, urubanza rw'umukozi rukiri mu rukiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo.

[33] Ku bijyanye no kumenya niba ikibazo cy'ubusaze gikwiye kwakirwa ngo gisuzumwe kuri uru rwego, Urukiko rurasanga iyo ngingo yarajuririwe mu Rukiko rw'Ubujurire, isuzumwa kuva mu bika bya 82 kugeza ku gika cya 86, bityo ibyo Rugina Jason avuga ko icyo kirego kitakiriwe ngo gisuzumwe mu bujurire ku buryo kidakwiye no kuzanwa mu karengane bikaba nta shingiro bifite.

[34] Ku bijyanye n'ubusaze bw'imishahara, Urukiko rurasanga ingingo ya 83 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ryakoreshwaga RUGINA Jason agirwa Branch Manager yarateganyaga ko igihe cy'ubusaze gitangira kubarwa guhera igihe umukozi yagombaga guhemberwaho, kigahagarikwa n'uko umukoresha yakoze umubaruro w'amafaranga, umukoresha n'umukozi bemeranijwe ko hari umwenda, urubanza rw'umukozi rwaregewe urukiko cyangwa se n'uko ibiro bigenzura umurimo byasabwe kubakiranura bitaratanga umwanzuro wabyo. Mu gusobanura ibijyanye n'ubusaze bw'imishahara, Françoise Favennec-Hery na Pierre-Yves Verkindt bavuga ko ubusaze bw'imishahara bubarwa nk'ubusaze bw'ubundi burenganzira bwite cyangwa ubundi burenganzira ku mutungo, ko ibarwa ryabwo rihera igihe ufite uburenganzira yamenye cyangwa yashoboraga kumenya impamvu zatuma abukurikirana.[8]

[35] Ku bijyanye n'uru rubanza, Urukiko rurasanga Rugina Jason na bagenzi be baratangiye kwishyuza umushahara ku wa 02/12/2013, bongera kwibutsa ku wa 26/06/2014 no ku wa 20/09/2015, asezererwa mu kazi ku wa 12/04/2017. Kuba Rugina Jason yarishyuje umushahara ndetse akagenda yibutsa ko umushahara akwiye guhembwa atari wo ahembwa kugeza ubwo asezerewe, bivuze ko yari yatangije igikorwa cyo guharanira uburenganzira bwe. Nta na rimwe higeze harenga igihe kigeze ku myaka ibiri ataributsa umukoresha ko amafaranga ahembwa ari munsi y'ayo umukozi uri mu mwanya nk'uwe akwiye guhembwa kandi umukoresha yemeranyije nawe kuko yamusabye kwihangana icyo kibazo kikazasuzumwa kugeza ubwo yirukanywe atarahabwa igisubizo cy'uko ibyo asaba bidakwiye cyangwa bidashoboka.

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[8] L'action en paiement ou en répétition du salaire se prescript à compter du jour où le titulaire d'un droit a connu ou aurait du connaitre les faits lui permettant de l'exercer. Il s'agit donc en la matière de la prescription de droit commun. Reba Françoise Favennec-Hery et Pierre-Yves Verkindt, Droit du Travail, Paris, LDGJ, 2020, p.661.

[36] Uru Rukiko ruremeranya rero n'isesengura ryakozwe n'Urukiko rw'Ubujurire kuri iyi ngingo ry'uko umukoresha atavuga ko ubuzime bw'umushahara bugomba gutangira kubarwa guhera igihe umukozi yatangiye ikirego ku Mugenzuzi w'Umurimo kandi umukozi yaramwandikiye yishyuza umushahara, umukoresha ntahakane ubwo burenganzira umukozi yishyuza kugeza ubwo amusezereye mu buryo bunyuranyije n'amategeko.

[37] Ku bijyanye no kumenya niba hari imishahara y'ikirenga yishyuwe, Urukiko rurasanga dosiye y'urubanza igaragaza ko RUGINA Jason yagizwe Branch Manager ku wa 14/11/2013, asezererwa ku wa 12/04/2017, bihwanye n'amezi 41, bikaba bigaragarira uru Rukiko ko Urukiko rw'Ubujuririre rutagaragaje uburyo rwageze ku mezi 42, ariyo mpamvu ku bijyanye n'ikinyuranyo cy'umushahara RUGINA Jason atahembwe, gikwiye kubarwa mu buryo bukurikira: 1.184.317 Frw-361.366 Frw x 41= 33.740.991 Frw.

[38] Urukiko rurasanga icyakora mu gika cya 95 cy'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, Urukiko rw'Ubujurire rwari rwarasanze Rugina Jason akwiye guhabwa 32.463.942 Frw (1.134.317 Frw -361.366 Frw) x amezi 42, ibyo kandi Rugina Jason akaba yaranyuzwe nabyo kuko nta kirego cy'akarengane yigeze atanga, bityo ikinyuranyo cy'amafaranga atahembwe cyemejwe n'Urukiko rw'Ubujurire akaba aricyo gikwiye kugumaho.

II. 3. Kumenya niba indishyi zari kubarirwa ku mushahara w'amezi atatu (3) aho kuba ku mezi atandatu (6) nk'uko inkiko zabikoze

[39] Me Abijuru Emmanuel na Me Basomingera Alberto, baburanira SONARWA Life Assurance Company Ltd, bavuga ko Rugina Jason yasezerewe kubera impamvu z'ubukungu zumvikana kandi ko ntawabivuguruje. Basobanura ko mu Mwiherero w'Abacamanza wabereye i Rubavu hagati yo ku wa 30/11/2016 no ku wa 03/12/2016, hemejwe ko abakozi birukunwe ku bw'impamvu zumvikana ariko hari umuhango utubahirijwe (vice de procédure), bajya bagenerwa indishyi zihwanye n'umushahara w'amezi atatu. Bavuga ko kuba Urukiko rw'Ubujurire rutarubahirije uwo murongo bishobora gutera urujijo inkiko zo hasi, bigatuma ku kibazo kimwe imanza zicibwa mu buryo butandukanye.

[40] Rugina Jason na Me Rwagatare Fred umwunganira bavuga ko Urukiko Rwisumbuye rwa Nyarugenge rwasanze yarasezerewe mu buryo bunyuranyije n'amategeko, SONARWA Life Assurance Company Ltd ntiyabijuririra mu Rukiko Rukuru, ishatse kubigarura mu Rukiko rw'Ubujurire, rufata icyemezo ko iyo ngingo itakiriwe ngo isuzumwe kuko itigeze ijuririrwa mu Rukiko Rukuru. Kuribo, nubu iyi ngingo ntikwiye kugarurwa mu ngingo SONARWA Life Assurance Company Ltd ishingiraho akarengane kayo.

[41] Bavuga ko mu gihe iyi ngingo yaba yakiriwe igasuzumwa, basaba uru Rukiko kubona ko indishyi z'akababaro zagenwe n'inkiko ziteganywa n'ingingo ya 33 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ryakoreshwaga Rugina Jason ashyirwa mu mwanya wa Branch Manager,[9] ndetse byongera kugarukwaho n'Itegeko N° 66/2018 ryo ku wa 30/08/2018

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[9] Ingingo ya 33 yateganyaga ko "Iseswa ryose ry'amasezerano y'akazi rinyuranyije n'amategeko rishobora gutuma hatangwa indishyi z'akababaro. Indishyi z'akababaro zihabwa umukozi wirukanwe binyuranije 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). Ibi kandi ni ko bigenda ku bakozi bari intumwa z'abakozi n'abahagarariye sendika. Iyi ngingo

rigenga umurimo ryasohotse nyuma y'Umwiherero w'Abacamanza i Rubavu. Basobanura kandi ko SONARWA Life Assurance Company Ltd ivugisha imyanzuro y'Umwiherero wa Rubavu ibyo itavuga kuko icyemejwe ari uko umukozi wirukanywe ku bw'impamvu zikomeye ariko ntahabwe integuza, agenerwa indishyi z'akababaro zitarenze amezi atatu y'imishahara hiyongereyeho amafaranga y'integuza, naho uwasezerewe nta mpamvu kandi nta n'integuza, akagenerwa indishyi z'akababaro zihwanye n'imishahara ye y'amezi atatu kugeza kuri atandatu hiyongereyeho integuza. Ku bireba Rugina Jason, akaba yarasezerewe nta mpamvu kandi atahawe integuza, bityo bakaba basanga nta makosa inkiko zakoze zimugenera indishyi zihwanye n'imishahara ye y'amezi atandatu.

UKO URUKIKO RUBIBONA

[42] Urukiko rurasanga dosiye y'urubanza ntaho igaragaza ko mu Rukiko rw'Ubujurire, SONARWA Life Assurance Company Ltd yajuririye ingano y'indishyi z'akababaro zari zagenwe n'inkiko zabanje. Kuba zaragarutsweho mu gika cya 95 cy'urubanza rusubirishwamo ku mpamvu z'akarengane ntibyatewe n'uko hari ubujurire, ahubwo ni uko Urukiko rw'Ubujurire rwasanze imibare yashingiweho (base de calcul) izo ndishyi zitangwa ikwiye guhinduka, aho kuzibarira ku mushahara mbumbe zikabarirwa ku mushahara utahanwa nk'uko byasobanuwe haruguru.

[43] Ikibazo cyo kumenya niba ingingo zafashweho icyemezo ntizijuririrwe zishobora kugarurwa mu gihe cyo gusubirishamo urubanza ku mpamvu z'akarengane, cyasuzumwe n'uru Rukiko mu manza zitandukanye harimo n'urwo Ngizweninshuti Albert yaburanaga na Muhima Giovani,[10] rusanga iyo ingingo ya 55, igika cya nyuma,[11] n'iya 63[12] z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko zisomewe hamwe, zumvikanisha ko umuburanyi utarajuririye ingingo atanyuzwe nazo hakurikijwe inzira zisanzwe kandi yari abyemerewe n'amategeko, aba yivukije inzira y'ubujurire yari gutuma ibyo yanengaga bikosorerwa mu bujurire, bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, yirengagije ko hari izindi manza zabaye, ngo ingingo yanze kujuririra ku bushake asabe ko zisuzumwa mu karengane kuko byaba binyuranyije n'ibiteganywa n'amategeko.

[44] Urukiko rurasanga rero kuba SONARWA Life Assurance Company Ltd itarajuririye ingingo ijyanye n'ingano y'indishyi z'akababaro zagenwe n'Urukiko Rukuru ngo bisuzumwe n'Urukiko rw'Ubujurire, uru Rukiko ntaho rwahera rusuzuma iyo ngingo mu rubanza rusubirishwamo ku mpamvu z'akarengane.

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yubahirizwa no mu gihe indishyi z'akababaro zigomba gutangwa n'umukozi washeshe amasezerano mu buryo bunyuranyije n'amategeko.

[10] Reba urubanza N° RS/INJUST/RC 00024/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020, ibika bya 18-22. Reba kandi urubanza n° RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin n'urubanza N° RCOM RS/ INJUST/ RC 00004/2019/SC rwaciwe ku wa 28/07/2020, haburana Mukamana, Havugimana, Umuhoza na Candali.

[11] "…umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane …"

[12] « 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 abarubayemo ababuranyi bose bahamagajwe. »

II. 4. Kumenya niba SONARWA Life Assurance Company Ltd yari gucibwa indishyi kandi yaratsinze urubanza kuri bimwe no kumenya niba ikwiye gusubizwa ibyo yishyuye irangiza urubanza

[45] Me Abijuru Emmanuel na Me Basomingera Alberto, baburanira SONARWA Life Assurance Company Ltd, bavuga ko mu rubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko rw'Ubujurire rwasanze ubujurire bwabo nta shingiro bufite, ariko indishyi zivanwa kuri 79.431.900 Frw zishyirwa kuri 41.777.748 Frw, bivuze ko mu by'ukuri SONARWA Life Assurance Company Ltd yatsinze kuri bimwe. Bavuga ko ukwo kwivuguruza kw'Urukiko kwatumye rubaca 1.000.000 Frw y'igihembo cya Avoka kuri buri rwego nyamara aribo bari bayakwiye kuko bari batsinze kuri bimwe ndetse hakiyongeraho n'ingwate y'amagarama batanze mu Rukiko Rukuru no mu Rukiko rw'Ubujurire.

[46] Rugina Jason na Me Rwagitare Fred umuburanira bavuga ko indishyi Rugina Jason yagenewe zitagabanyijwe n'uko ubujurire bwa SONARWA Life Assurance Company Ltd bwari bufite ishingiro kuri bimwe ahubwo byatewe n'uko icibwa ry'urubanza mu Rukiko rw'Ubujurire ryahuriranye n'umurongo mushya watanzwe n'Urukiko rw'Ikirenga w'uko indishyi zigomba kubarirwa ku mushahara utahanwa. Bavuga kandi ko amafaranga y'igihembo cya Avoka SONARWA Life Assurance Company Ltd yaciwe mu Rukiko Rukuru itigeze iyajuririra, bityo ikaba itagarura icyo kibazo mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane.

UKO URUKIKO RUBIBONA

[47] Dosiye y'urubanza igaragaza ko mu gika cya 94 cy'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, Urukiko rw'Ubujurire rwasanze indishyi Rugina Jason yagenewe zarabazwe hashingiwe ku mushahara mbumbe wa Ntwari Alphonse, nyamara umurongo watanzwe mu rubanza Niwemugeni Jeannette yaburanaga na KCB Bank Rwanda Ltd, Urukiko rw'Ikirenga rwaremeje ko amafaranga umukozi ahabwa mu gihe asezerewe mu kazi atari amafaranga mbumbe ahubwo ari ayo atahana mu ntoki, hamaze kuvamo umusoro ku musaruro n'umusanzu w'ubwiteganyirize.

[48] Urukiko rurasanga ibyo SONARWA Life Assurance Company Ltd iburanisha ko yatsinze urubanza mu Rukiko rw'Ubujurire kuko indishyi zari zagenewe Rugina Jason zagabanyijwe kugeza kuri 41.777.748 Frw nta shingiro bikwiye guhabwa kuko kuba Urukiko rwarageze kuri uwo mwanzuro wo kugabanya indishyi bitaturutse ku kuba ubujurire bwari bufite ishingiro ahubwo byatewe n'uko Urukiko, rubyibwirije, rwasanze mu kubara indishyi inkiko zabanje zarashingiye ku itegeko ritari ryo, zizishingira ku mushahara mbumbe kandi Urukiko rw'Ikirenga rwaratanze umurongo w'uko zigomba kubarirwa ku mushahara utahanwa. Ibi bigaragaza rero ko ku bijyanye n'ingingo zari zayijurije, ntacyo SONARWA Life Assurance Company Ltd yatsindiye ku buryo Urukiko rwari kwanzura ko yatsinze kuri bimwe ku buryo byari gutuma ivanirwaho cyangwa igenerwa igihembo cya Avoka no gusubizwa amagarama y'urubanza.

II.5. Kumenya niba SONARWA Life Assurance Company Ltd yasubizwa amafaranga yari yishyuye irangiza urubanza Nº RSOCAA 00007/2020/CA ku neza.

[49] Me Abijuru Emmanuel na Me Basomingera Alberto, baburanira SONARWA Life Assurance Company Ltd, bavuga ko yari yaratangiye kurangiza ku bushake urubanza rwaciwe

n'Urukiko rw'Ubujurire kuko yari imaze kwishyura 10.000.000 Frw, ikaba isaba uru Rukiko ko mu gihe rwakwemeza ko urubanza rusubirishwamo rwarimo koko akarengane, Rugina Jason yategekwa gusubiza ayo mafaranga.

[50] Rugina Jason na Me Rwagitare Fred umwunganira bavuga ko SONARWA Life Assurance Company Ltd itari gutangira kurangiza urubanza itemera ko hari ibyo imugomba, ndetse ko itasaba gusubizwa amafaranga yishyuye mu irangiza ry'urubanza kandi itaratsinda ikirego yasubirishijemo ku mpamvu z'akarengane.

UKO URUKIKO RUBIBONA

[51] Urukiko rurasanga mu gihe ingingo z'ingenzi SONARWA Life Assurance Company Ltd ishingiraho akarengane kayo nta shingiro zifite, nta mpamvu yo kwemeza ko isubizwa 10.000.000 Frw ivuga ko yishyuye Rugina Jason mu rwego rwo kurangiza urubanza rwaciwe n'Urukiko rw'Ubujurire.

II. 6. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza.

[52] Me Abijuru Emmanuel na Me Basomingera Alberto baburanira SONARWA Life Assurance Company Ltd bavuga ko Rugina Jason yashoye iyo sosiyete mu manza z'amaherere, bityo ko basaba uru Rukiko kumutegeka kuyishyura 1.000.000 Frw y'ikurikiranarubanza na 1.500.000 Frw y'igihembo cya Avoka kuri uru rwego.

[53] Me Rwagitare Fred wunganira Rugina Jason avuga nta karengane kabaye mu rubanza rwaciwe n'Urukiko rw'Ubujurire, akaba asaba uru Rukiko kwemeza ko indishyi zose zisabwa na SONARWA Life Assurance Company Ltd nta shingiro zifite. Avuga na none ko iyo sosiyete ikomeje gukurura Rugina Jason mu manza nta mpamvu, aricyo gituma asaba uru Rukiko kuyitegeka guha Rugina Jason 1.500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza kuri uru rwego.

[54] Me Abijuru Emmanuel na Me Basomingera Alberto, baburanira SONARWA Life Assurance Company Ltd, bavuga ko Rugina Jason ari we watangije imanza zitari ngombwa, SONARWA Life Assurance Company Ltd igenda izijuririra uko yagendaga izirenganiramo kugeza ubwo isubirishijemo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko rw'Ubujurire, bityo indishyi asaba zikaba nta shingiro zifite.

UKO URUKIKO RUBIBONA

[55] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igira iti: "ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe."

[56] Urukiko rurasanga indishyi zose zisabwa na SONARWA Life Assurance Company Ltd ntazo ikwiye kuko ntacyo atsindiye muri uru rubanza.

[57] Urukiko rurasanga 200.000 Frw y'ikurikiranarubanza Rugina Jason asaba ayakwiriye kandi ari mu rugero, naho 1.500.000 Frw y'igihembo cya Avoka asaba kuri uru rwego akaba ari menshi kandi atayatangira ibimenyetso, bityo, mu bushishozi bw'Urukiko, akaba agenewe 500.000 Frw.

III. ICYEMEZO CY'URUKIKO

[58] Rwemeje ko ikirego cya SONARWA Life Assurance Company Ltd gisubirishamo urubanza no RSOCAA 00007/2020/CA rwaciwe n'Urukiko rw'Ubujurire nta shingiro gifite;

[59] Rwemeje ko nta gihindutse ku mikirize y'urubanza N^{o} RSOCAA 00007/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021, hakaba hagomba gushyirwa mu bikorwa icyemezo cyarwo giteye gitya:

> "125. Rutegetse SONARWA LIFE ASSURANCE COMPANY Ltd kwishyura Rugina Jason 41.777.748 Frw nk'uko yasobanuwe haruguru, hiyongereyeho 3.000.000 Frw y'igihembo cya Avoka na 50.000 Frw y'ingwate yatanze arega yagenwe n'Urukiko Rukuru, yose hamwe akaba 44.827.748 Frw;
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> 126. Rutegetse SONARWA LIFE ASSURANCE COMPANY LTD kwishyurira Rugina Jason ikinyuranyo cy'imisanzu itamutangiye muri RSSB ishingiye ku mushahara mbumbe (salaire brut) ungana na 1.999.252 Frw ku kwezi, aho kuba 514.581 Frw ku kwezi;"

[60] Rutegetse SONARWA Life Assurance Company Ltd guha Rugina Jason 200.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka kuri uru rwego, yose hamwe akaba 700.000 Frw.