SANLAM ASSURANCE GÉNÉRALES Plc v IMPANOYIMANA N'ABANDI

[Rwanda URUKUKO RW'IKIRENGA - RS/INJUST/RC 00022/2022/SC (Cyanzayire, P.J., Hitiyaremye, Kazungu, J.) 01 Werurwe 2024]

Amategeko agenga imiburanishirize y'imanza – Imanza z'akarengane – Ibibazo bishya - Ibibazo bitaburanyweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntibishobora gusuzumwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba urukiko gusuzuma

Incamake y'ikibazo: Uru rubanza rukomoka ku mpanuka yabaye itewe n'imodoka yari ifite ubwishingizi bwa SANLAM Assurance Générales Plc (SANLAM) igahitana uwitwa Irihafi. Abana be n'abandi bavandimwe be barimo Impanoyimana n'abandi basabye umwishingizi ko yabaha indishyi ariko ntibumvikana bituma batanga ikirego mu Rukiko Rwisumbuye rwa Musanze basaba indishyi ariko SANLAM yo ikavuga ko yemera gutanga indishyi zitarenga 3.000.000 Frw. Urwo Rukiko rwasabye uregwa gutanga indishyi zinyuranye ariko SANLAM ntiyanyurwa ijuririra mu Rukiko Rukuru ivuga ko Urukiko Rwisumbuye rwabariye indishyi ku itegeko ritari ryo no kuba rwarategetse amafaranga agomba gusubizwa n'umwishingizi ku byakoreshejwe atubahirije amategeko. Urwo Rukiko rwemeje ko ubujurire nta shingiro bufite rugumishaho urubanza rwajuririwe.

SANLAM yaje kujya mu nzira z'akarengane maze urubanza ruhabwa Urukiko rw'Ikirenga rwongera kuruburanisha hasuzumwa ibibazo birimo icyo kumenya kumenya niba Urukiko Rukuru rwaragombaga kubarira indishyi ku mushahara 58.130 Frw ugaragara kuri attestation de salaire ya Irihafi.

SANLAM ivuga ko akarengane kari mu rubanza Nº RCA 00062/2021/HC/MUS gashingiye ku kuba Urukiko Rukuru rwarirengagije icyemezo cy'umushahara (attestation de salaire) cyari muri dosiye, igaragaza ko Irihafi yahembwaga umushahara ungana na 58.130 Frw ku kwezi hanyuma rukamubarira indishyi rushingiye kuri SMIG, igasaba ko indishyi zagenwe zakurwaho ahubwo hatangwa izigenwe hashingiwe kuri icyo cyemezo cy'umushahara. Abaregwa kuri uru rwego, bo biregura bavuga ko ari ubwa mbere SANLAM iburanishije iyi ngingo, ahubwo ko mbere yaburanishaga amasezerano yihariye yagiranye na nyir'imodoka kandi isaba ko hashingirwa kuri SMIG ya 2.500 Frw, bityo rero Urukiko rw'Ikirenga rukaba rudakwiye kuyisuzuma kuko ari wo murongo rwatanze.

Incamake y'icyemezo: Ibibazo bitaburanyweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntibishobora gusuzumwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba urukiko gusuzuma bityo Urukiko ntirwari gushingira icyemezo cyarwo ku kimenyetso kitigeze kiburanishwa.

Ikirego cyatanzwe cyo gusubirishamo urubanza ku mpamvu z'akarengane, nta shingiro gifite.

Amategeko yashingiweho:
Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55.

Imanza zifashishijwe:
RS/INJUST/RC 00024/2018/CS, Ngizweninshuti Albert na Muhima Giovanni, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020;
RS/INJUST/RC 00007/2018/SC, Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin, rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020;
RS/ INJUST/RC 00004/2019/SC, Mukamana Mamique n'abandi na Candali Vérène, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020;
RS/INJUST/RC 00009/2022/SC, SANLAM AG Plc na Uwihanganye Jean, rwaciwe n'Urukiko rw'Ikirenga, ku wa 18/05/2023.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku mpanuka yabaye ku wa 08/09/2020, itewe n'imodoka Mitsubishi Fuso RAB239J yishingiwe na SANLAM, ihitana Irihafi Jean de la Paix.

[2] Nyakwigendera yasize umugore, abana batatu (3), umubyeyi umwe (1) n'abavandimwe batatu (3); aba bose nk'uko amategeko abibemerera basabye SANLAM indishyi zikomoka kuri iyi mpanuka mu bwumvikane, ariko ntibwashoboka, maze batanga ikirego mu Rukiko Rwisumbuye rwa Musanze, cyandikwa kuri N° RC 000136/2020/TGI/MUS.

[3] SANLAM yireguye ivuga ko indishyi zatangwa ariko ntizirenze 3.000.000 Frw ari mu masezerano yagiranye na nyir'imodoka yateje impanuka.

[4] Tariki ya 14/10/2021, Urukiko Rwisumbuye rwa Musanze rwaciye urubanza, abarega batsindira indishyi zingana na 14.912.009 Frw zikubiyemo izerekeye ibangamirabukungu n'ibangamiramuco.

[5] Urukiko Rwisumbuye rwa Musanze rwasobanuye ko rwashingiye ku mategeko[1] agenga imyishyurire y'indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, aho gushingira ku masezerano[2] yihariye nyir'imodoka yagiranye n'umwishingizi we ateganya indishyi zitarenze miliyoni eshatu (3.000.000 Frw).

[6] SANLAM yajuririye urubanza mu Rukiko Rukuru, Urugereko rwa Musanze, ivuga ko Urukiko Rwisumbuye rwabariye indishyi ku itegeko ritari ryo no kuba rwarategetse amafaranga agomba gusubizwa n'umwishingizi ku byakoreshejwe atubahirije amategeko.

[1]Itegeko-teka N° 32/75 ryo ku wa 07 Kanama 1975 ryahinduwe n'Itegeko N° 02/2002 ryo ku wa 17/01/2002, ingingo 2, igika cya 3 y'iri tegeko; hamwe n'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga (Iteka rya Perezida).
[2]Transport de marchandises (Trucks) hagati ya Mugabukuze Fiacre na SANLAM Assurances Générales Plc yasinywe ku wa 17/05/2020.

[7] Mu rubanza Nº RCA 00062/2021/HC/MUS rwaciwe ku wa 22/02/2022, Urukiko Rukuru, Urugereko rwa Musanze rwemeje ko hagumyeho imikirize y'urubanza No RC 00136/2020/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 14/10/2021, runategeka SANLAM Kwishyura abaregwa indishyi zingana na 300.000 Frw y'igihembo cy'Avoka mu rwego rw'ubujurire.

[8] Urukiko Rukuru, Urugereko rwa Musanze rwasobanuye ko hashingiwe ku ngingo ya 113, igika cya mbere, y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano[3], amasezerano SANLAM yagiranye na Mugabukuze Fiacre adashobora gukoreshwa muri iyi dosiye, ko ahubwo hagomba gukoreshwa Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, nk'uko biteganywa n'ingingo ya 1, igika cya mbere[4], cyaryo.

[9] Ku bijyanye n'amafaranga y'ibyakoreshejwe kubera impanuka, rwasobanuye ko ayo Urukiko Rwisumbuye rwageneye abaregera indishyi ari ayo batangiye ibimenyetso, ko ibyo SANLAM ivuga ko bagombaga guhabwa ayateganyijwe mu masezerano yagiranye na nyir'imodoka, nta shingiro bifite kuko ntaho bahuriye nayo.

[10] Ku wa 16/03/2022, SANLAM yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza Nº RCA 00062/2021/HC/MUS rusubirwamo ku mpamvu z'akarengane. Amaze gusuzuma ubwo busabe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga avuga ko asanga urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

[11] Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo yarukorewe, yemeje ko rwongera kuburanishwa, rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga rwandikwa kuri N° RS/INJUST/RC00022/2022/SC.

[12] SANLAM ivuga ko akarengane kari mu rubanza Nº RCA 00062/2021/HC/MUS gashingiye ku kuba Urukiko Rukuru, Urugereko rwa Musanze rwarirengagije attestation de salaire yari muri dosiye, igaragaza ko Irihafi Jean de la Paix yahembwaga umushahara ungana na 58.130 Frw ku kwezi. Abaregwa bo biregura bavuga ko ari ubwa mbere SANLAM iburanishije iyi ngingo, ahubwo ko mbere yaburanishaga amasezerano yihariye yagiranye na nyir'imodoka ndetse ikanasaba ko hashingirwa kuri SMIG.

[13] Urubanza rwaburanishijwe mu ruhame ku wa 06/02/2024, SANLAM ihagarariwe na Me Nzabihimana Jean Claude; Niragire Delphine, Impanoyimana Epaphrace, Musabe Irihafi Rémy na Niyobyose Ange Gabin bahagarariwe na Me Mfurankunda Epiphanie; Bizimungu, Mbarushimana Dancille, Turyahambwa Jean d'Amour na Tushemererwe Marie Grâce bahagarariwe na Me Turikumwenimana Emmanuel.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

[3] Ingingo 113, igika cya 1: « Amasezerano agira inkurikizi ku bayagiranye gusa, ntabangamira undi wese kandi amugirira akamaro mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro ».

[4] Ingingo 1, igika cya 1: « Iri teka rishyiraho uburyo Itegeko N° 41/2001 ryo ku wa 19/9/2001 ryerekeye itangwa ry'indishyi ku bahohotewe n'impanuka zo ku mubiri zitewe n'imodoka, rigomba gukoreshwa ».

1) Kumenya niba Urukiko Rukuru rwaragombaga kubarira indishyi ku mushahara 58.130 Frw ugaragara kuri attestation de salaire ya Irihafi Jean de la Paix

[14] Me Nzabihimana Jean Claude uhagarariye SANLAM avuga ko akarengane kayo gashingiye ku kimenyetso cyirengagijwe kigizwe na attestation de salaire ya nyakwigendera yashyizwe muri dosiye n'abaregwa ubwabo ariko Urukiko Rukuru, Urugereko rwa Musanze ntirwayishingiraho mu kubara indishyi, ahubwo rushingira kuri SMIG.

[15] Asobanura ko icyifuzo cyayo ari uko indishyi z'ibangamirabukungu zingana na 6.840.855 Frw zatanzwe n'Urukiko Rwisumbuye rwa Musanze zikaza kwemezwa n'Urukiko Rukuru, Urugereko rwa Musanze zivanwaho, hakagenwa izishingiye ku kimenyetso abarega bitangiye kigaragaza ko Nyakwigendera Irihafi Jean de la Paix yari umwarimu, ahembwa 58.130 Frw ku kwezi. Ko izo ndishyi z'ibangamirabukungu zagombaga kubarwa mu buryo bukurikira: (58.130 x 12 x 32 x 2/3÷1+ (7.4% x 32) = 4.418.432 Frw.

[16] Avuga kandi ko ikimenyetso kigaragaza umushahara wa Irihafi Jean de la Paix cyavuzweho n'Urukiko Rukuru, Urugereko rwa Musanze, mu gika cya 9 cy'urubanza rusubirishwamo ntirwagira icyo rukinenga, ariko ntirwagishingiraho.

[17] Asoza avuga ko abaregwa badakwiye kuvuga ko icyo kimenyetso kitaburanishijweho kandi icyaburanwaga ari indishyi mbonezamusaruro bagombaga kugenerwa n'uburyo zagombaga kubarwamo, ko rero kugendera kuri SIMG kandi ubwabo bari bagaragaje umushahara nyawo wa nyakwigendera, bisobanura ko habayeho kwirengagiza ikimenyetso kidashidikanywaho no kwirengagiza amategeko.

[18] Me Mfurankunda Epiphanie kimwe na Me Turikumwenimana Emmanuel bahagarariye abaregwa, bavuga ko iyi ngingo ari ubwa mbere SANLAM iyiburanishije, bityo ko Urukiko rw'Ikirenga rudakwiye kuyisuzuma kuko ari wo murongo rwatanze ugira uti: « ibibazo bitaburanyweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntibishobora gusuzumwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba urukiko gusuzuma ».

[19] Ababuranira abaregwa basobanura ko mu myanzuro no mu miburanire ya SANLAM kuva mu Rukiko Rwisumbuye kugeza mu Rukiko Rukuru ntaho yigeze iburanisha icyo kimenyetso, ko no mu muhango w'ubwumvikane yasabaga ko hashingirwa kuri SMIG ya 2.500 Frw, naho mu nkiko igasaba ko hashingirwa ku masezerano yagiranye na nyir'imodoka MUGABUKUZE Fiacre. Ko kuba ubwayo ntaho yigeze isaba ko hashingirwa ku kimenyetso igaragaza ubu, ntaho yahera ivuga ko yarenganyijwe.

Uko Urukiko rubibona

[20] Ingingo ya 55, 2° y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ivuga ko "Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane iyo mu icibwa [ryarwo] hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese".

[21] Urukiko rusanga ingingo SANLAM ishingiraho akarengane kayo ari uko mu kugena indishyi, hashingiwe kuri SMIG kandi nyakwigendera Irihafi Jean de la Paix yari afite umushahara ugaragazwa na attestation de salaire yanditseho ko yahembwaga 58.130 Frw ku kwezi; ikavuga ko uyu mushahara ariwo wagombaga kugenderwaho mu kubara indishyi z'ibangamirabukungu aho gushingira kuri SMIG ya 3.000 Frw, ndetse igasaba ko uru Rukiko ariwo rwashingiraho.

[22] Dosiye y'urubanza igaragaza ko mu muhango w'ubwumvikane, SANLAM yasabaga ko indishyi z'ibangamirabukungu zabarirwa kuri SMIG ya 2.500 Frw ndetse inagaragariza abaregeraga indishyi amafaranga bahabwa baramutse bemeye ubwo bwumvikane, ariko ntibwagerwaho.

[23] Dosiye igaragaza kandi ko ikibazo kirebana n'umushahara wa nyakwigendera uri kuri iyo attestation de salaire, kitari mu byajuririwe mu Rukiko Rukuru, Urugereko rwa Musanze, kuko kitari no mu byari byaburanyweho mu Rukiko Rwisumbuye. SANLAM yashingiye ubujurire bwayo gusa ku kuba harashingiwe ku iteka rya Perezida rigena indishyi zikomoka ku mpanuka aho gushingira ku masezerano yagiranye na nyir'imodoka, ndetse no kuba indishyi z'ibyakoreshejwe zarabazwe nabi, ibyo akaba aribyo bibazo byari byagiweho impaka ku rwego rwa mbere.

[24] Urukiko rusanga ibimaze gusobanurwa haruguru byumvikanisha ko umushahara ungana na 58.130 Frw ugaragara kuri attestation de salaire ivugwa, ntaho SANLAM yayiburanishije, uyu munsi ikaba itavuga ko yarenganyijwe kuri icyo kimenyetso itigeze iburanisha na rimwe, bityo ikaba idashobora gusaba ko gisuzumwa ku nshuro ya mbere mu rwego rw'akarengane.

[25] Ibi byatanzweho umurongo n'uru Rukiko mu manza zitandukanye, harimo No RS/INJUST/RC 00024/2018/SC rwa Ngizweninshuti Albert na Muhima Giovani; urubanza Nº RS/INJUST/RC 00004/2019/SC rwa Mukamana Mamique & crts na Candali Vérène n'izindi; aho muri izo manza Urukiko rw'Ikirenga rwasobanuye ko '"ibibazo bitaburanyweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane bidashobora gusuzumwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba urukiko gusuzuma"[5].

[26] Hashingiwe ku bisobanuro bimaze gutangwa, uru Rukiko rurasanga Urukiko Rukuru rutari kubarira indishyi ku mushahara wa 58.130 Frw ugaragara kuri attestation de salaire ya Irihafi Jean de la Paix mu gihe SANLAM itigeze iyiburanisha, bityo hakaba nta karengane kabaye mu rubanza Nº RCA 00062/2021/HC/MUS.

2) Kumenya ishingiro ry'indishyi zisabwa

[27] Me Mfurankunda Epiphanie uhagarariye Niragire Delphine, Impanoyimana Epaphrace, Musabe Irihafi Rémy na Niyobyose Ange Gabin avuga ko kubera gushorwa mu manza abakiliya be basaba indishyi z'akababaro zingana na 1.000.000 Frw na 500.000 Frw y'igihembo cy'Avoka.

[5] Reba Urubanza Nº RS/INJUST/RC 00024/2018/CS rwaciwe ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni, igika cya 21 ; Urubanza Nº RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin, igika cya 66 ; Urubanza Nº RS/ INJUST/RC 00004/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020 haburana MukamanA Mamique n'abandi na Candali Vérène, igika cya 23.C.; Urubanza Nº RS/INJUST/RC 00009/2022/SC haburana SANLAM AG Plc na Uwihanganye Jean, igika cya 35.

[28] Me Turikumwenimana Emmanuel uhagarariye Bizimungu, Mbarushimana Dancille, Turyahambwa Jean d'Amour na Marie Grâce Tushemererwe avuga ko basaba Urukiko gutegeka SANLAM kwishyura 1.000.000 Frw y'igihembo cy'Avoka kuri buri muntu ahagarariye, bityo igihembo kikaba 5.000.000 Frw kuri bose.

[29] Avuga ko izi ndishyi zishingiye ku ngingo 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 n'iya 32 y'Amabwiriza N° 01/2014 yo ku wa 18/07/2014 y'Urugaga rw'Abavoka mu Rwanda agenga ibihembo mbonera by'Abavoka.

[30] Ku ndishyi zisabwa na Me Turikumwenimana Emmanuel, Me Nzabihimana Jean Claude uhagarariye SANLAM avuga ko nta shingiro zifite kuko SANLAM ariyo yarenganyijwe. Asobanura ko ziramutse zikwiriye gutangwa, kuba abazisaba basangiye inyungu, baratanze igarama rimwe igihe baregaga, nta mpamvu yo gutanga igihembo cy'Avoka kuri buri muntu batagaragaje amasezerano bagiranye abiteganya atyo n'aho buri wese yamwishyuriye igihembo amugomba.

[31] Ku byerekeye indishyi Me Mfurankunda Epiphanie asabira abakiliya be, uhagarariye SANLAM avuga ko nta shingiro zifite kuko hashingiwe ku gisobanuro cyazo gitangwa n'itegeko bagombye kugaragaza icyemezo cya muganga gihamya ko bahungabanye mu mutwe no mu byiyumviro; bakaba ntacyo batanze. Asoza avuga ko nta zindi ndishyi z'akababaro bahabwa zirenze izo bahawe mu rubanza rusabirwa gusubirishwamo ziteganywa n'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru.

Uko Urukiko rubibona

[32] Urukiko rurasanga indishyi zijyanye n'igihembo cy'Avoka abaregwa muri uru rubanza basaba bagomba kuzihabwa kubera ko ari bo batsinze urubanza. Ku birebana na Niragire Delphine, Impanoyimana Epaphrace, Musabe Irihafi Rémy na Niyobyose Ange Gabin bahagarariwe na Me Mfurankunda Epiphanie, 500.000 Frw bose hamwe basaba bayahabwa kuko ari mu rugero rukwiye.

[33] Ku birebana na Bizimungu, Mbarushimana Dancille, Turyahambwa Jean d'Amour na Tushemererwe Marie Grâce bahagarariwe na Me Turikumwenimana Emmanuel basaba 1.000.000 Frw kuri buri buntu, Urukiko rurasanga bose hamwe bagomba guhabwa 500.000 Frw agenwe mu bushishozi bw'Urukiko kubera ko ayo basaba ari menshi kandi bakaba bataragaragarije Urukiko ko ariyo bakoresheje, byongeye kandi Avoka wababuraniye ni umwe kuri dosiye imwe.

[34] Ku birebana n'indishyi z'akababaro zisabwa na Niragire Delphine, Impanoyimana Epaphrace, Musabe Irihafi Rémy na Niyobyose Ange Gabin kubera gushorwa mu manza, Urukiko rurasanga ntazo bagomba guhabwa kubera ko SANLAM yareze igirango ikurikirane ibyo yabonaga ko ari uburenganzira bwayo, abasaba indishyi bakaba batagaragaza ko yabareze igamije kubasiragiza mu nkiko.

III. ICYEMEZO CY'URUKIKO

[35] Rwemeje ko ikirego cya SANLAM AG Plc cyo gusubirishamo ku mpamvu z'akarengane urubanza Nº RCA 00062/2021/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 22/02/2022, nta shingiro gifite;

[36] Rwemeje ko nta gihindutse ku mikirize y'urubanza no RCA 00062/2021/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 22/02/2022;

[37] Rutegetse SANLAM AG Plc kwishyura abaregwa indishyi ziteye zitya: 1) Niragire Delphine, Impanoyimana Epaphrace, Musabe Irihafi Rémy na Niyobyose Ange Gabin bose hamwe 500.000 Frw y'igihembo cy'Avoka; 2) Bizimungu, Mbarushimana Dancille, Turyahambwa Jean d'Amour na Tushemererwe Marie Grâce bose hamwe 500.000 Frw y'igihembo cy'Avoka.