

RWANDA / JUDGMENT

CAISSE D'ENTRAIDE DE BUTARE (CEB) v NYINAWINGORO

RSOCA 00001/2022/HC/NYZ CBM RSOCA 00002/2022/HC/NYZ

COURT

High Court

DECIDED

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CAISSE D'ENTRAIDE DE BUTARE (CEB) v NYINAWINGORO

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CAISSE D'ENTRAIDE DE BUTARE (CEB) v NYINAWINGORO [Rwanda URUKIKO RUKURU, URUGEREKO RWA NYANZA – RSOCA 00001/2022/HC/NYZ CBM RSOCA 00002/2022/HC/NYZ – (Ndagijimana, J. P.) 03 Werurwe 2023] Amategeko agenga imanza z'umurimo – Gusesa amasezerano y'umurimo – Impamvu y'iseswa ry'amasezerano y'umurimo – Ntibihagije ko usesa amasezerano avuga gusa impamvu ashingiyeho, ni ngombwa ko iyo mpamvu iba yumvikana kandi ihuje n'amategeko – Biba kwirukanwa mu buryo budakurikije amategeko iyo izo mpamvu zidasobanutse kuko zifatwa nk'aho zitariho, zitagaragajwe cyangwa zitasobanuwe. Amategeko agenga imanza z'umurimo – Inshingano z'umukoresha – Inshingano yo gutanga ibimenyetso – Mu gihe umukozi avuze ko yirukanywe mu buryo bunyuranyije n'amategeko n'uko hari ibyo umukoresha amugomba atamuhaye, umukoresha afite inshingano zo gutanga ibimenyetso bivuguruza ibitangwa n'umukozi. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Huye Nyinawingoro arega Caisse d'Entraide de Butare (CEB) ko yasheshe amasezerano y'akazi bari bafitanye mu buryo bunyuranyije n'amategeko ku mpamvu zo kuba

yaragaragaje amakosa y'imikorere, ubuyobozi ntibwabyishimira buramwirukana bituma abisabira indishyi. Caisse d'Entraide de Butare yisobanuye ivuga ko Urega nta ndishyi akwiye kubera amasezerano yasheshwe mu buryo bukurikije amategeko, ko atigeze arengana ahubwo kubera imikorere ye mibi yo guhora ahanganye na bagenzi be ntakore uko bikwiyeakazi kagiye kadindira bagenda bamugoragoza kugeza asezerewe. Urukiko rwemeje ko Urega yirukanwe mu buryo bunyuranije n'amategeko maze rutegeka Uregwa kumuha indishyi zitandukanye zijyanye n'iryo yirukanwa. Impande zombi zajuririje uru Rukiko Rukuru maze ibirego byombi bihurizwa hamwe maze habanza gusuzumwa ikibazo cyo kumenya niba Urukiko rwaremeje ko Uregwa yirukanye Urega mu buryo bunyuranije n'amategeko nyamara rwirengagije ibimenyetso byatanzwe n'Uregwa. Kuri iki kibazo Uregwa avuga ko mu byirengagijwe hari amabaruwa atandukanye yagaragazaga impamvu zashingiweho yirukanwa zirimo imikorere idatanga umusaruro, gusuzugura, guhangana n'inzego zimukuriye mu kazi, guhanganyisha inzego ze z'ubuyobozi bituma ikigo gisubira inyuma mu iterambere. Urega asobanura ko yaje gukorera muri iki kigo atari "mutation disciplinaire" ahubwo akaba ari uko yagombaga kujya kuri siège guhuza imikorere y'iki kigo n'ya KSCCS nk'uwari usanzwe ayobora KSCCS. Ikindi ni uko guhindurirwa imyanya y'akazi ari ibisanzwe, kuva ku mwanya wa comptable, akaba agent de recouvrement akagera aho aba Umugenzuzi w'imikorere y'ikigo cyose, ari ukuzamurwa mu ntera. Akomeza avuga ko nta hantu na hamwe mu mabaruwa yo guhindurirwa imyanya y'akazi handitswemo ko ari igihano cy'ubushobozi bucye cyangwa intege nke, kuko icyo biba bityo yari kujya agabanyirizwa umushahara uko ahinduriwe akazi.

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Ku kibazo cyo kumenya niba Urukiko Rwisumbuye rwarirengagije amategeko nkana, Uwajuriye avuga ko Urega atakurikizaga inshingano ze mu kazi byerekana ko nta musaruro yatangaga nyamara itegeko rigenga umurimo riteganywa inshingano z'umukozi ku mukoresha we ndetse bikaba binateganyijwe mu masezerano bagiranye. Akomeza avuga ko mu kwemeza ko Urega yirukanwe binyuranije n'amategeko Urukiko rwirengagije ibiteganywa n'ingingo ya 27 y'Itegeko No 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda iteganywa ko amasezerano y'umurimo mu gihe kitazwi ashobora guseswa n'umwe mu bayagiranye bitewe n'impamvu ifite ishingiro, bikaba byaragaragarijwe ibimenyetso ko kumwirukana byari bifite ishingiro. Akomeza avuga ko, kuba Urega avuga ko yirukanywe binyuranije n'amategeko ari ukugenekereza kubera ko atagaragaje amategeko ashingiraho yishwe n'ibimenyetso bibishimangira nyamara ariwe ugomba kugaragaza ibimenyetso by'ibyo aregera yabibura uwarezwe agatsinda nkuko biteganywa n'amategeko. Uregwa muri uru rubanza asobanura ko ibyo bivugwa n'uruhande baburana nta shingiro bifite kubera nta bimenyetso bifatika kandi biteganywa n'amategeko yashyikirije Urukiko byagombaga gushingirwaho mu gufata icyemezo ngo bibe byarirengagijwe, ko ahubwo ibimenyetso bidashidikanywaho byatanzwe na we ari byo bitasuzumwe ngo bihabwe agaciro, kubera ko ku bijyanye n'iyirukanwa rye Uregwa atondagura urutonde rw'amabaruwa yamwandikiye igirango imwikize ariko atagaragaza gihamya y'impamvu ifatika. Ku kibazo kindi cyasuzumwe muri uru rubanza cyo kumenya niba Urukiko Rwisumbuye rwarategetse Uwajuriye gutanga indishyi nyamara nta kosa yakoze kuko ibyo yakoze yakurikije amategeko ndetse n'izo

rwatanze nta kimenyetso rwazishingiyeho, Urega asaba ko Urukiko Rukuru rwabikosora maze rukemeza ko Uregwa yirukanywe mu buryo no mu nzira zikurikije amategeko maze n'amafranga yagenewe yose agakurwaho. Mu bujuri bwe, Uregwa avuga ko ibivugwa n'Uwajuriye kuri iyi ngingo ko yategetswe gutanga indishyi ngo nyamara nta kosa yakoze nta shingiro bifite kubera ko Urukiko rwagaragaje ko yirukanywe mu buryo bunyuranije n'amategeko, ibyo ubwabyo bikaba ari ukwica nkana amategeko, kandi bikaba byaragombaga gutangirwa indishyi, ndetse akaba yaragombaga guhabwa ibyo yemererwa n'amategeko atahawe ubwo yirukanwaga mu kazi mu buryo bunyuranije n'amategeko, kubera ihohoterwa mu buryo bunyuranye yakorewe mu kazi, ariko ntiyazihabwa ndetse n'ibyo yasabye yemererwa n'amategeko ntabyo Urukiko rwamugeneye, bityo ibyo yari yasabye ku rwego rwa mbere byose akaba yabigenerwa kuri uru rwego, kuko yarenganye agakubitiraho no gutukwa n'uburanira Urega ku mugaragaro mu ruhamwe kandi ari icyaha gihanirwa. Incamake y'icyemezo: 1. Ntibihagije ko usesa amasezerano avuga gusa impamvu ashingiyeho, ni ngombwa ko iyo mpamvu iba yumvikana kandi ihuje n'amategeko. Biba kwirukanwa mu buryo budakurikije amategeko iyo izo mpamvu zidasobanutse kuko zifatwa nk'aho zitariho, zitagaragajwe cyangwa zitasobanuwe. Bityo, Nyinawingoro Aimée Sanzu yirukanwe mu buryo bunyuranyije n'amategeko kuko Caisse d'Entraide de Butare itabashije kubahiriza ibiteganywa n'amategeko mu kugaragaza impamvu zifite ishingiro mu ibaruwa imwirukana ku kazi.

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2. Mu gihe umukozi avuze ko yirukanywe mu buryo bunyuranyije n'amategeko n'uko hari ibyo umukoresha amugomba atamuhaye, umukoresha afite inshingano zo gutanga ibimenyetso bivuguruzwa ibitangwa n'umukozi. Ubujuri nta shingiro bufite. Ubujuri bwuririye ku bundi bufite ishingiro kuri bimwe. Amagarama aherera ku isanduku ya Leta. Amategeko yashingiyeho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 30. Itangazo Mpuzamahanga ryerekeye Uburenganzira bwa muntu ryo ku wa 10 Ukuboza 1948, ingingo ya 23. Amasezerano Nyafurika yerekeye Uburenganzira bwa Muntu n'ubw'Abaturage yo ku wa 27/06/1981 nk'uko yemejwe n'Itegeko N° 10/1983 ryo ku wa 01/07/1983, ingingo ya 15. Itegeko N°66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 9, 18, 24, 27, 30, 41, 42, 44, 73, 74 n'ya 92. Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, 111, 150, 152 n'ya 156. Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'ya 4. Imanza zifashishijwe: SONARWA Life Assurance Company Ltd na Rugina Jason, RS/INJUST/RSOC 00001/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 08/07/2022. Inyandiko z'abahanga zifashishijwe: Gatabazi, P. Cl, La portée juridique de l'obligation d'indiquer le motif de licenciement dans la lettre de préavis. Notes S/Cass. In R.J.R.1983/1, p.33. Kirsch, M., Le droit du travail africain, T.P.O.M, Paris, 1975, p.140.; Kirsch, M., Droit du travail en Afrique francophone au sud du Sahara, T.1.Ediena, Paris, 1987, p.201. Lyon -Caen, G.; Pelissier, J.et Supiot, A., Droit du travail, 17ème éd.; Dalloz, Paris, 1994, p.289.

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R.A n° 0900/13.03/85, 21 Mai 1986 in Recueil des arrêts de la cour de cassation, Imprimerie Nationale du Rwanda, Kigali, années 1983-1986, p.336. Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Huye, Nyinawingoro Aimée Sanzu arega Caisse d'Entraide de Butare (C E B) avuga ko yamwirukanye mu buryo bunyuranyije n'amategeko isesa amasezerano y' umurimo bagiranye ku wa 01/09//2014, ayo masezerano akaba yari ay'igihe kitazwi, akaba mu gutangira akazi yarabanje kugirwa Umucungamutungo (Comptable), nyuma aza kugenda ahindurirwa imirimo ashyirwa ku myanya inyuranye harimo uw' ubugenzuzi (auditeur interne) bigaragaza ko yazamurwaga mu ntera nyamara ayo masezerano aza guseswa ku wa 29/01/2020 mu buryo butunguranye kandi bunyuranyije n'amategeko arenganyijwe kubera impamvu zinyuranye zirimo kuba yaragaragaje amakosa y' imikorere ubuyobozi ntibwabyishimira kugeza yirukanywe bituma abisabira indishyi. [2] Caisse d'Entraide de Butare (CEB) yo yavugaga ko nta ndishyi Nyinawingoro Aimée Sanzu akwiye kubera ko amasezerano y'akazi hagati ya CEB na Nyinawingoro Aimée Sanzu yasheshwe mu buryo bukurikije amategeko yaba agenga umurimo, ibiteganywa n'amasezerano y' umurimo n'andi mategeko, ko nta karengane yakorewe kuko yabanje kuba Umucungamutungo (Comptable), kubera imyitwarire ye no guhora ahanganye na bagenzi be ntakore uko bikwiye bituma agenda ahindurirwa imirimo, aho yavuye ku bukungamutungo (Comptable) akajyanwa kujya muri serivisi yo gukurikirana inguzanyo (agent de recouvrement) agirwa Umugenzuzi (Auditeur interne) ari ukumugoragoza ariko imikorere ye ituma akazi kadindira kugeza asezerewe [3] Nyinawingoro Aimée Sanzu amaze gutanga ikirego mu Rukiko Rwisumbuye rwa Huye rwacye urubanza rwemeza ko yirukanywe mu buryo bunyuranyije n'amategeko, ko CEB igomba kumwishyura indishyi zijyanye nabyo zingana na miliyoni eshatu ibihumbi magana inani na mirongo ine na bibiri na magana arindwi na mirongo itatu (3.842.730 Frw) amafaranga y'igihembo cy'avoka n'ikurikiranarubanza angana n'ibihumbi magana atanu (500.000 Frws) n'ingwate y'amagarama yatanze ingana n'ibihumbi makumyabiri (20.000 Frws). Nyinawingoro Aimée Sanzu yajuririye urwo rubanza avuga ko hari ibyirengagijwe n'Urukiko Rwisumbuye bituma adahabwa indishyi yari yasabye, ikirego cye gihabwa RSOCA 00002/2022/HC/NYZ muri uru Rukiko, CEB nayo irajurira ikirego cyayo gihabwa RSOCA 00001/2022/HC/NYZ ivuga muri rusange ko hirengagijwe amategeko agenerwa indishyi kandi mu kwirukanwa amategeko yarubahirijwe, maze ibirego byombi by'ubujurire bihurizwa hamwe mu rubanza CMB RSOCA 00002/2022/HC/NYZ. [4] Ibibazo bigomba gusuzumwa muri uru rubanza ni ibijyanye no:

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- Kumenya niba Urukiko rwaremeje ko Caisse d'Entraide de Butare (CEB) yirukanye Nyinawingoro Aimée Sanzu mu buryo bunyuranyije n'amategeko nyamara rwirengagije ibimenyetso byatanze na CEB - Kumenya niba Urukiko Rwisumbuye rwa Huye rwarirengagije amategeko nkana. - Kumenya niba Urukiko Rwisumbuye rwa Huye rwarategetse Caisse d'Entraide de Butare gutanga indishyi nyamara nta kosa yakoze kuko ibyo yakoze yakurikije amategeko ndetse n'izo rwatanze nta kimenyetso rwazishingiyeho. - Ibijyanye n' indishyi z' ikurikiranarubanza. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Urukiko rwaremeje ko Caisse d'Entraide de Butare(CEB) yirukanye Nyinawingoro Aimée Sanzu mu buryo bunyuranije n'amategeko nyamara rwirengagije ibimenyetso byatanze na CEB [5] Me Mbarubukeye Samuel uburanira CEB avuga ko Urukiko Rwisumbuye rwa Huye mu guca urubanza rwirengagije ibimenyetso CEB yatanze bigaragaza ko Nyinawingoro Aimée Sanzu atirukanywe mu buryo bunyuranije n'amategeko, ko mu byirengagijwe hari ibaruwa yo ku wa 29/01/2020 harimo impamvu zashingiweho yirukanwa zirimo imikorere idatanga umusaruro, gusuzugura, guhangana n'inzego zimukuriye mu kazi, guhangana n'inzego z'ubuyobozi za CEB, kutikosora nyuma yo kwandikirwa, kwihanangirizwa no guhagarikwa ku kazi, kuba imikorere ye yaradindizaga akazi n' imyitwarire idahwitse ibangamira imikorere n'imikoranire y'inzego z'Ubuyobozi za CEB, ko izo mpamvu zashingiweho yirukanwa zigaragaza ko atatangaga umusaruro kuko ahubwo yirirwaga mu matiku asenya CEB bituma isubira inyuma mu iterambere, bigaragara ko yanyuranije n'inshingano z'Umukozi ntiyazubahiriza haseguriwe ibiteganywa n'ingingo ya 41 y'Itegeko N°66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda. [6] Akomeza avuga ko atari ibyo gusa kubera ko yanirukaniwe ukuuzuzwa inshingano ze nk' uko bigaragara mu masezerano y'umurimo yagiranye na CEB mu ngingo ya 4 kuko atanagaragaza ko ibyo yirukaniwe bitabayeho, Urukiko Rwisumbuye rwa Huye rwanirengagije kandi ibaruwa yo kuwa 04/10/2019 Nyinawingoro Aimée Sanzu yiyandikiye avuga ko Umuyobozi we ngo ari mubi kandi yari ategetswe kumwubaha, ko hanashingiwe ku ibaruwa yamwandikiye kuwa 08/10/2019 igaragaza ko yarenze ku cyemezo cyari cyafashwe n' Ubuyobozi bwa CEB ndetse no mu ibaruwa yo kuwa 03/10/2019 nayo yerekana ko yarenze ku cyemezo cy'Inama y'Ubutegetsi (CA) no ku mabwiriza y'Umucungamutungo bigaragaza ukutubaha abamukuriye no gusuzugura byerekana ko atanatangaga umusaruro ukwiye mu kazi ke nkuko byanashingiweho yirukanwa, ko ibyo byose Urukiko rutabyitayeho ngo rubone ko Nyinawingoro atirukanywe binyuranije n'amategeko nk'uko rwabitegetse, runirengagiza umuntu usanganywe imikorere itari myiza aho yanyuze hose n' uko yagiye yimurwa mu buryo bwo kumugoragoza (Mutation disciplinaire) aho yimuwe avanwa i Kigali akazanwa i Huye,

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bitigeze bimuha isomo ahubwo ahageze naho agasiba akazi nta mpamvu nk'uko bigaragazwa n'amabaruwa atandukanye cyane cyane iyo kuwa 04/09/2018 n'iyi ku wa 03/10/2019 yagiye yandikirwa asabwa ibisobanuro. [7] Anavuga ko Urukiko Rwisumbuye rwa Huye rwirengagije ko Nyinawingoro Aimée Sanzu yari umuntu wateranyaga inzego z'ubuyobozi bwa CEB kuko bigaragarira mu buryo yafatirwaga ibyemezo n'ababifitiye ububasha akagira abo yihererana akabajya mu matwi cyane cyane Komite ishinze imyitwarire igasa naho imubogamiraho hagendewe ku mabaruwa iyo komite yagiye yandika ivuga ku byemezo yabaga yafatiye, nko mu nyandiko yo ku wa 22/11/2019 aho komite ishinze imyitwarire yavugaga ko itemeranywa no kuba yarahagaritswe by'agateganyo mu gihe cy' amezi atatu (3) nubwo yaje kwisubiraho mu nama yo ku wa 24/12/2019 nayo ikemeza ko byari ngombwa, ko atari ibyo gusa kuko amaze kwirukanwa burundu yagiye mu matwi y' iyo komite ikandika ko itemeranywa n'uyu mwanzuro

nkuko bigaragarira mu ibaruwa yabo iri muri dosiye yo ku wa 29/12/2020, kimwe n' izindi nama zinyuranye n' ibyemezo ku myitwarire ye no guhangana na bagenzi be uko bigaragara mu myanzuro byagiye biba bigaragaza ko kwirukanwa ari byo byari igisubizo kubera ko yatumaga inzego zitumvikana kucyateza imbere ikigo cya CEB. [8] Avuga kandi ko Urukiko Rwisumbuye rwa Huye rwanirengagije ko Nyinawingoro Aimée Sanzu amaze guhagarikwa igihe cy'amezi atatu (3) nabwo atanyuzwe ndetse icyo gihano bigaragara ko ntacyo cyanamubwiye kuko atikosoye ahubwo agakomeza ibyo yari asanzwemo by'amatikuye atitaye ku kazi arenga ku mabwiriza yari yarahawe y'uko amakuru agomba gutangwa hagati y'abakozi n'inzego za CEB inyandiko yabonye anayishyiraho umukono ku wa 10/12/2018, nyamara ku wa 09/01/2020 inyandiko yageze muri CEB kuwa 20/01/2020 igaragaza ko yandikiye Komite Ngengamytwarire ayishimira ko ngo yakurikiranye ikibazo cye cy'uko yahagaritswe amezi atatu, ko icyo kintu yakoze ubwacyo bigaragaza neza ko yari yayiregeye yanayigiyemo mu matwi bishimangira ibyavuzwe ko mu kazi ke yagonganishaga inzego, ko ibyo rero yakoze yanyuranije n'amabwiriza yo ku wa 01/11/2018 cyane cyane ku birebana n'uburyo ihererekanya ry'amakuru hagati y' abakozi n'inzego za CEB rikorwa kuko yagombaga kubinyuza ku muyobozi we na we akabishyikiriza inzego bireba, ko iza nzego yabaga yazigonganishije hagafatwa igihe cyo kuzumvikanisha kumatiku yabaga yakuruwe na we, bigaragaza ko nta gushidikanya ko atatangaga umusaruro kuko ibyo yakoraga byabaga bigamiye gusenya CEB atari ukuyubaka, ko rero nta kindi gihano yari guhabwa uretse kwirukanwa dore ko na we atavugaga ko hari icyatarutswe kugirango bigere aho yirukanwa , bigaragara ko atarenganye ahubwo yirukanywe bikurikije amategeko, ko ku bw' ibyo sanga kuba Urukiko Rwisumbuye rwa Huye rwaravuze ko ngo impanvu zashyingiweho mu kwirukana Nyinawingoro zigaragara mu ibaruwa imwirukana ko zidasobanutse bityo ko zafatwa nkaho zitariho bigaragaza ko nta gaciro byahabwa kuko bimaze kugaragazwa mu bika bibanza ko ari impamvu zifatika kandi zifite ishingiro rwari gushingiraho nyamara rurarenga rubyirengagiza nkana. [9] Nyinawingoro Aimée Sanzu na Me Kagame Kimonyo Alexis umwunganira bavugaga ko ku bijyanye no gusuzuma niba Urukiko rwaremeje ko Caisse d'Entraide de Butare (CEB) yamwirukanye mu buryo bunyuranije n'amategeko nyamara rwirengagije ibimenyetso byatanze na CEB bigaragara

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ko uhagarariye CEB muri runo rubanza rw'Ubujurire hari byinshi atazi muri CEB no mu mikorere y'ibigo, cyangwa yirengagije abishaka; bimwe muri byo hakaba ko mbere y'uko Nyinawingoro Aimée Sanzu ajya gukorera i Butare muri CEB muri 2014, yari asanzwe ayobora KSCCS (KIST SAVINGS COOPERATIVE AND CREDIT SOCIETY) yakoreraga i Kigali mu nyubako za KIST, kuva muri 2004, ko ari muri urwo rwego CEB nayo yavanye na KSCCS kuko byose byari ibimina bya kaminuza, ko uko kwihuza bibayeho i Kigali muri KIST hasigaye agashami, icyicaro (siège) kiguma ari icyahoze ari CEB i Butare, ko ari bwo Nyinawingoro Aimée Sanzu yavuye i Kigali ajya gukorera kuri siège ya CEB i Butare, ko rero kujya gukorera i Butare kwe atari mutation disciplinaire nk'uko uhagarariye CEB abyumvikanisha, ahubwo akaba ari uko yagombaga kujya kuri siège guhuza imikorere ya CEB n'ya KSCCS nk'uwari usanzwe ayobora KSCCS, ko kandi guhindurirwa imyanya y'akazi ari ibisanzwe, kuva ku mwanya wa Comptable,

akaba agent de recouvrement akagera aho aba Auditeur Interne (Umugenzuzi w'imikorere y'ikigo cyose) ari ukuzamurwa mu ntera (promotion) . [10] Basobanura ko igitangaje ari uko uhagarariye CEB mu bujuriye atari ko abibona cyangwa atabizi, ko ikindi muri ayo mabaruwa yo guhindurirwa imirimo bavuga ko ari ukujya gutera inkunga y'akazi yisumbuye, nta hantu na hamwe mu mabaruwa yo guhindurirwa services handitswemo ko ari igihano cy'ubushobozi bucye cyangwa intege nke, kuko iyo biba ubushobozi bucye yari kujya agabanyirizwa umushahara uko ahinduriwe akazi, kandi atari yayagaragariye Urukiko , kandi nta na hamwe muri ayo ma baruwa handitse ko yahinduriwe umwanya nk'igihano cy'imyitwarire mu kazi (mutation disciplinaire), ahubwo yavanwaga mu mwanya agahabwa undi wisumbuyeho, kubera ko muri uwo mwanya mushyashya agiyemo habaga hacyenewe imbaraga zo mu kazi n'ubumenyi bwisumbuye bingana n'ibye , ko ndetse n'ikimenyimenyi ari uko nta baruwa n' imwe yigeze yandikirwa mbere y'uko atangira gukora nk'Umugenzuzi w'imbere mu kigo (Auditeur Interne), ko CEB yatangiye kumwandikira amabaruwa ari uko akoze za rapporo zigaragaza amakosa ya benshi, batangiye kumuhigira hasi no hejuru, habe no mu ibaruwa yo ku wa 28/08/2019 paragraphe ya 2, yo kuvanwa ku mwanya wa Auditeur Interne, naho yahavanwe agomba kujya gutanga support mu iyigwa ry'ama dossiers y'inguzanyo; ariko na none bamwigizayo kugirango ye gukomeza kubona amakosa y'abayobozi n'abakozi ngo abatangeho rapport mu nzego zatowe za CEB, baboneraho no gukuraho Service ya Audit Interne kuko yari ibabangamiye kubwo kubona amakosa yabo ikayagaragaza. [11] Bavuga kandi ko kuba CEB yarahaye Nyinawingoro Aimée Sanzu igihano cyo guhagarikwa iminsi mirongo cyenda (90) adahembwa, ari ikimenyetso cyo kudakurikiza amategeko kwa CEB, ko atari ishema kuri CEB ku buryo babyigamba kuko binyuranyije n'Itegeko rigenga umurimo No 66/2018 ryo ku wa 30/08/2018 mu ngingo yaryo ya 20 , ko ku bijyanye n'iyirukanwa rye uhagarariye CEB muri runo rubanza atondagura urutonde rw'amabaruwa CEB yamwandikiye igirango imwikize ariko atagaragaza gihamya y'impamvu ifatika kuko ntayo ihari akitabaza , kimwe n' uko atakwitabaza ingingo ya 41 y'Itegeko Rigenga Umurimo No 66/2018 ryo ku wa 30/08/2018 idashyigikiwe n' ibindi bimenyetso , ko mu nyandiko y'ikirego cy'ubujuriye RSOCA 00001/2022/HC/NYZ, kuri page 4, point a, yirengagiza ingingo ya 42 na 92 z'Itegeko rigenga Umurimo No 66/2018 ryo ku wa 30/08/2018 ivuga ko nta gihano cyo guhagarika umukozi iminsi irenga umunani (8) , ahubwo muri izo nyandiko zose CEB yanditse zishyira hanze amakosa yakozwe na CEB yo kurutisha Amategeko Ngengamikorere imbere y'Itegeko

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Rigenga Umurimo, ko n'aho uhagarariye CEB avuga ko binyuze kuri Président wa w' inama y' Ubutegetsi (CA) avuga ko yubahirije icyifuzo cy'Umucungamutungo w'Agateganyo ahagaritse Nyinawingoro Aimée Sanzu amezi atatu (3) adahembwa bivuze ko Uwamahoro Séraphina atanyuzwe n'ibisobanuro by'uko Nyinawingoro Aimée Sanzu yamazwe muri congé iminsi icyenda (9) ko yari gukora iminsi umunani (8), akuyibagiza ko we Uwamahoro Séraphina Manager w'Agateganyo na Président wa CA ya CEB ari bo bamusinyiye iyo minsi icyenda (9) nk' uko bigaragazwa na Lettre de demande de congé na la fiche de demande de congé yo ku wa 24/06/2019, ko kandi n'ibyo bita ikosa ryahaniwe incuro zirenze eshatu (3) bikagera n'aho

bamwirukana ku wa 29/01/2020 mu buryo bunyuranyije n'amategeko by'umwihariko ingingo ya 27 y'Itegeko rigenga Umurimo No 66/2018 ryo kuwa 30/08/2018 kandi hari ibimenyetso bigaragaza ko yarenganyijwe nk'imyanzuro y'inama ya komite ngengamyitwarire ya CEB yo ku wa 22/11/2019 n'ya 06/02/2020 hamwe n' iya komite ngenzuzi ya CEB yo ku wa 29/01/2020. [12] Bakomeza bavuga ko ingingo ya 17 y'Amategeko Ngengamikorere ya CEB uyiburanira ashingiraho iha Conseil d'Administration (A) uburenganzira bwo kuyobora ibikorwa bya CEB, ariko idaha CA yangwa uyikuriye uburenganzira bwo gukandagira uburenganzira bw'umukozi, kugeza aho bamwirukana mu buryo bunyuranije m'amategeko, barengera inyungu bwite zabo hanashingiwe ku nshingano za Perezida wayo ziteganywa mu ngingo ya 26 y'Amategeko Ngengamikorere ya CEB kuko nayo nta hantu igaragaza ko C.A. yari ifite urgency yo kwirukana umukozi nta makosa yakoze, ahubwo bagaragaje urgency yo kwikiza umukozi wari ushinze Ubugenzuzi bw'imbere muri CEB wakoraga rapports zigaragaza amakosa yabo; ndetse no mu gika cya 7, bivugwa neza CA ifite uburenganzira bwo gusinya ku inyandiko-mvugo z'imigendekere z'inama rusange za CEB, ariko nta burenganzira ifite bwo gusinya yonyine inyandiko-mvugo y'inama hagati yayo n'izindi nzego zatowe, ko ingingo ya 44 y'Amategeko Ngengamikorere igaragaza neza inshingano za Comité de Discipline , ko ari yo Komite Ngengamyitwarire, kandi muri izo nshingano ko ikaba igira inama inzego zose za CEB n'Abanyamuryango bayo ; ariko zimwe mu nzego za CEB zirimo CA cyangwa Inama y'Ubutegetsi ya CEB yanze kwemera inama yagiriwe n'urwego rubishinzwe ari rwo Komite Ngengamyitwarire ku bijyanye no guhagarika no gusesa amasezerano y'akazi ya Nyinawingoro mu buryo bunyuranyije n'amategeko. [13] Basobanura nanone ko ibivugwa na CEB irega Nyinawingoro Aimée ko yarigishije amadosiye y'akazi, nta kuri kuri mo bashingiye ku kuba kurigisa ama dossiers ari icyaha kirebana n'imanza nshinjabyaha kandi CEB ikaba nta Bushinjacyaha bamujanyemo cyangwa ngo bamukoreshe inyandiko ku byaha bavuga ko yakoze uretse kubivuga gusano gushaka kumusiga icyasha kandi nyirabayazana ari uko yashyiraga ahagaragara amakosa yaba CEB birengagije ko byari munshingano ze nk'uko bigaragazwa na raporo zinyuranye zigaragazwa muri dosiye yatanze, ko akimara gutanga zimwe muri izo raport yahise atangira congé ya 2017 kuko yari atarayihabwa kuko yayitangiye ku wa ku wa 03/07/2018 yagombaga kurangira ku wa 01/08/2018 ajya muri Canada kubera impamvu zitamuturutseho kandi yasobanuye abona atazashobora kugaruka mu kazi ku wa 02/08/2018, ku wa 28/07/2018 nandikira Manager wa CEB amusobanurira ko kubera impamvu zitamuturutseho bamufasha bakamuha iminsi irindwi (7) kuri congé ya 2018, kuko yari ikiri yose; barayifata bayikura mu minsi ye ya congé ya 2018,

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agaruka ku wa 13/08/2018 mu kazi; avuye mu kiruhuko yakoreye muri Canada ku wa 04/09/2018 bamwandikira bamusaba ibisobanuro kuri iyo minsi irindwi (7) ku wa 05/09/2018 asubiza gutanga ibisobanuro ku ibaruwa yahawe ku wa 04/09/2018, ko kubijyanye n'umunsi w'amatora y'abadepite yo ku wa 03/09/2018, ku wa 05/09/2018 nanone bamwandikiye ibaruwa imusaba ibisobanuro by'uko yatoreye i Kigali, akagera i Huye amasaha y'akazi arangiye, uwo munsi asubiza avuga ko ku wa 05/09/2018 amaze gutora yahise ajya Nyabugogo muri gare, ariko hari abantu benshi ku buryo amuhaye bus ya saa saba agera Huye amasaha y'akazi arangiye, uwo munsi CEB iwukura

ku minsi ye ya congé ya 2018 nk'igihano,ko ariko ibyo ari we wenyine byakorewe binyuranye n'ingingo ya 9 y'Itegeko rigenga Umurimo No 66/2018 ryo ku wa 30/08/2018, bikaba bitumvikana ukuntu ku munsu w'amatora y'abadebite hari abakozi batoreye i Huye ntibagere ku kazi, hahamurwa umukozi umwe, yaramaze gusubiza ayo ma baruwa yombi, n' ingaruka byagize nyamara yarisobanuye ku buryo buhagije anabitangira ibimenyetso uko babisobanura mu magambo arambuye mu myanzuro , ko ibyo byose ari akarengane n' itotenzwa yakomeje gukorera kubera akazi ka Audit Interne nakoraga hirengagijwe ibiteganywa n'ingingo ya 9 y'Itegeko rigenga umurimo mu Rwanda kuko agomba kurindwa ivangura mu kazi , umukoresha agaha abakozi amahirwe angana mu kazi, ko atagombaga kuzizwa gutora kuko ari inshingano kuri buri Munyarwanda wese wujuje ibisabwa biteganywa n'Itegeko. [14] Bavuga ko rero ,hashingiwe kuri ako karengane kose yagiye agirirwa uko babigaragaza mu magambo arambuye mu myanzuro, Nyobozi ariyo CA ya CEB Butare CEB yandikiye Nyinawingoro Aimée ibaruwa yo gusesa amasezerano mu buryo bunyuranyije n'amategeko , maze Ngenzuzi ariyo CS ya CEB Butare yandikira Nyobozi (CA) ya CEB ibamenyesha ko nka Ngenzuzi basanze nta makosa Madame Nyinawingoro Aimée yakozwe ahubwo ko azira akazi yarashinzwe ka audit akagaragaza ko bacunga nabi umutungo wa CEB, inasabwa kumugarura ku kazi bitaba ibyo bakazirengera ingaruka zizava kuri iryo yirukanwa ry'umukozi ridafite ishingiro nawe yandikira komite Ngengamyitwarire ya CEB (Comite de Discipline) ayisaba kureba mu mizi ibibazo bijyanye n'itotezwa mu kazi ka CEB bikageza aho basesa amasezerano y'akazi mu buryo bunyuranyije n'amategeko, kandi gucyemura ibibangamiye uruhande rumwe cyangwa urundi mu kazi ari cyo iyo komite de Discipline ibereyeho , ko Ngengamyitwarire ari yo CD ya CEB Butare, abagize Comite de Discipline (CD) uko ari batanu (5) mu ijwi rimwe bavuze ko amakosa Nyobozi CA ya CEB ivuga ko yakozwe bidafite gihamba, ko rero icyemezo cyo kumwirukana kigomba gukurwaho kuko nta shingiro gifite byose bigaragaza ko yirukanywe mu buryo bunyuranyije n' amategeko. UKO URUKIKO RUBIBONA [15] Ingingo ya 27 y'Itegeko No 66/2018 ryo kuwa 30/08/2018 rigenga umurimo iteganya ko amasezerano y'umurimo y'igihe kitazwi ashobora guseswa n'umwe mu bayagiranye bitewe n'impamvu zifite ishingiro. Ingingo ya 24 y'iryo Tegeko igateganya ko gutanga integuza bigomba gukorwa mu nyandiko kandi hakagaragazwa impamvu yo gusesa amasezerano y'umurimo. [16] Urukiko rushingiye ku biteganywa n' izi ngingo runazisesenguye , rugasanga bidahagije ko usesa amasezerano avuga gusa impamvu ashingiyeho, ni ngombwa nanone ko iyo mpamvu iba

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yumvikana kandi ihuje n' amategeko, bityo igihe icyo cyemezo gifashwe n' umukoresha bituma uko kwirukanwa biba bisaba gutangirwa impamvu yumvikana bikaba bigira intego ebyiri (2) z'ingenzi ari zo kuba icyemezo kigomba gufatwa nyuma yo kubitekerezaho bihagije nta guhubuka, kugirango n' umukozi abashe kwitegura uko aziregura niba atemeranywa n'umukoresha ko impamvu ishingiweho ari yo koko cyangwa ihuje n'amategeko; ibyo bikaba kandi binafasha mu gutuma akazi kadapfa guhungabanywa, uko bihura n'ibyangirirwe n'umuhanga mu mategeko Gatabazi aho abivuga mu rurimi rw' igifaransa: "... Faire du licenciement non un acte à prendre à la légère mais après mûre réflexion d'une part et permettre

au salarié de connaître dès le licenciement le motif ayant déterminé l'employeur à le licencier pour préparer ses moyens de défense dans l'hypothèse où il conteste soit la réalité ,soit la légitimité du motif .Il s'agit là de garanties concourant à protéger la stabilité de l'emploi".1 [17] Mu kwemeza ko CEB yirukanye Nyinawingoro Aimée Sanzu mu buryo bunyuranyije n'amategeko, Urukiko Rwisumbuye rwashingiye ku ibaruwa imwirukana rusobanura ko muri yo hagaragaramo ko yirukanywe hashingiwe ku kudatanga umusaruro wifuzwa, gusuzugura no guhangana n'inzego zimukuriye, guhangana inzego z'ubuyobozi bwa CEB, maze ruvuga ko rusanga nta busobanuro burambuye kuri izi mpamvu zashingiweho mu kumwirukana n'uko zidasobanutse mu buryo zanditse gusa kuko umusaruro wifuzwa utagaragazwaga ngo ugereranywe n'uwo umukozi yatanze, ko kandi hari ibihano yahawe ku yandi makosa yakoze harimo kugawa no guhagarikwa ku kazi, ko rero kuba CEB itagaragaza ayandi makosa yakoze ku buryo busobanutse ngo abe ari na yo ishingiraho imwirukana bigaragaza ko nta mpamvu ifite ishingiro yashingiweho Nyinawingoro Aimée Sanzu yirukanwa, ku bw' ibyo ruvuga ko kuba impamvu zashingiweho mu kumwirukana zigaragara mu ibaruwa imwirukana zidasobanutse bifatwa nk'aho izo mpamvu ntazihari. [18] Ibijyanye n' impamvu zidasobanutse cyangwa zitumvikana zifatwa nk' ako nta mpamvu zo kwirukanwa zatanze, byashingiweho n' urwo Rukiko, kandi rufite ukuri, bihura n'ibisobanurwa n'amahanga mu mategeko n' ibyemezo by' Inkiko nk' aho uwitwa Martin Kirsch avugako bene izo mpamvu zidasobanutse zifatwa nk'aho ari impamvu zitariho, zitagaragajwe cyangwa zitasobanuwe bituma ukwirukanwa biba bidakurikije amategeko uko abivugako mu rurimi rw'Igifaransa : "Le Licenciement sans motif légitime est par extension sans motif valable ou avec un faux motif ou un motif non établi, l'imprécision de motif qui équivaut à l'absence de motif."2 Umuhanga mu mategeko Lyon - Caen, G. na bagenzi na we akavugako impamvu zo kwirukanwa zifatwa nk'izidafite icyo zishingiyeho iyo zitagaragazwaga ku buryo bwumvikana nko kuvugako ko umukozi atumvikana na bagenzi be atagaragaje igikorwa gifatika cyateje ubwimvikane buke hagati ye na bagenzi be bikagira ingaruka ku migendekere myiza y'akazi uko abivugako mu rurimi rw'Igifaransa ko : " La cause de licenciement sera au contraire subjective lorsqu'elle ne se réfère à aucun fait précis,(...). Tel est le cas de la mésentente d'un salarié avec les autres membres du personnel qui sera une cause objective lorsque l'employeur fait état des faits précis ayant opposé ce salarié aux autres travailleurs et ayant entravé le fonctionnement 1 Gatabazi, P. Cl, La portée juridique de l'obligation d'indiquer le motif de licenciement dans la lettre de préavis. Notes S/ Cass. In R.J.R.1983/1, p.33. 2 Kirsch, M., Le droit du travail africain, T.P.O.M, Paris, 1975, p.140.; Kirsch, M., Droit du travail en Afrique francophone au Sud du Sahara, T.1.Ediena, Paris, 1987, p.201.

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normal de l'entreprise. Par contre elle sera subjective lorsque l'employeur invoque par exemple le fait que le salarié est de mauvais caractère sans donner des précisions sur les manifestations extérieures de ce mauvais caractère".3 Ibijyanye no kuba umukoresha wirukanye umukozi avugako gusa ko ari ukubera kudatanga umusaruro wifuzwa (Le salarié n' a pas été à la hauteur de sa tâche) nta kindi asobanuye byarafashwe nko kwirukanwa mu buryo bunyuranyije n'amategeko binahura n'ibyemejwe mu rubanza rwa Jobanputras na Malikidogo Nkongo.4 [19] Urukiko rero

rushingiye ku bimaze gusobanurwa rugasanga CEB n'ubwo mu iburanisha uyiburanira agaruka ku mikorere ya Nyinawingoro Aimée Sanzu n'imikoranire ye n'abandi bakozi, imokorere batumvikanaho ariko bigaragara ko CEB itabashije kubahiriza ibiteganywa n'amategeko mu kugaragaza impamvu zifite ishingiro mu ibaruwa imwirukana ku kazi, uko Urukiko Rwisumbuye rwabisobanuye, kuko ntaho uyiburanira yagaragaje ko muri iyo baruwa yo ku wa 29/01/2020 ifite Ref numero 0010/CEB/CA/2020 hari aho iyo baruwa yasobanuye ku buryo bwumvikana uko Nyinawingoro Aimée Sanzu atari agitanga umusaruro wifuzwa, uko asuzugura n'uko yahanganishije inzego zimukuriye, guhanganisha inzego z'ubuyobozi bwa CEB, kimwe n'ahavugwa ko hashingiwe ku mwanzuro w'inama y'Ubutegetsu ya CEB yateranye ku wa 28/01/2020 ikongera gusesengura iyo myitwarire n'uburyo idindiza akazi kandi ibangamira imikorere n'imikoranire n'inzego z'ubuyobozi za CEB kuko nayo ibi ivuga nta kundi ibyumvikanisha cyangwa ngo igaragaze uko ibikubiye muri uwo mwanzuro yabimenye ku buryo ubwo ari bwo bwose. [20] Ku bw'ibyo, kuva nta kimenyetso cyarugaragarijwe cy'uko ibivugwa muri iyo baruwa nk'impamvu zo kwirukana Nyinawingoro Aimée Sanzu byumvikana, uru Rukiko rugasanga mu kwemeza ko CEB igomba kumwishyura indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko rwari rufite ukuri kuko nta kosa rwakoze, bityo ibivugwa n'uburanira Caisse d'Entraide de Butare (CEB) ko Urukiko rutari kwemeza ko yirukanye Nyinawingoro Aimée Sanzu mu buryo butanyuranye n'amategeko nyamara rwirengagije ibimenyetso byatanze na CEB bikaba nta shingiro byahabwa, kuko rusanga Urukiko Rwisumbuye nta kosa rwakoze uko byasobanuwe.

2. Kumenya niba Urukiko Rwisumbuye rwa Huye rwirengagije amategeko nkana [21] Me Mbarubukeye Samuel uburanira CEB avuga ko Nyinawingoro atakurikizaga inshingano ze mu kazi byerekana ko nta musaruro yatangaga CEB ishingira ku ngingo ya 41 y'Itegeko N°66/2018 ryo ku wa 30/08/2018 ryavuzwe iteganya inshingano z'umukozi ku mukoresha we5 n'inshingano zinagaragara mu masezerano Nyinawingoro Aimée Sanzu yagiranye na CEB nko mu ngingo ya 4 na 6 3 Lyon –Caen, G. Pelissier, J.et Supiot, A., Droit du travail, 17ème éd.; Dalloz, Paris ,1994, p.289. 4 R.A n° 0900/13.03/85, 21 Mai 1986 in Recueil des arrêts de la cour de cassation, Imprimerie Nationale du Rwanda, Kigali, années 1983-1986, p.336. 5 Ingingo ya 41 y'Itegeko N°66/2018 ryo ku wa 30/08/2018 Itegeko rigenga umurimo mu Rwanda iteganya ko umukozi afite inshingano z'ingenzi zikurikira: 1° gukora ubwe akazi yahawe ku gihe no gutanga umusaruro; 2° kubahiriza amabwiriza y'umukoresha cyangwa umuhagarariye; 3° kwirinda icyahungabanya umutekano we n'uwa bagenzi be cyangwa uw'aho akorera; 4° gufata neza ibikoresho ahawe n'umukoresha; 5° kwitabira akazi ku gihe; 6° kurengera inyungu z'akazi.

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zayo , ko CEB inasanga mu kwemeza ko Nyinawingoro yirukanwe binyuranye n'amategeko Urukiko rwirengagije ibiteganywa n'ingingo ya 27 y'Itegeko No 66/2018 ryo ku wa 30/08/2018 rigenga Umurimo mu Rwanda iteganya ko amasezerano y'umurimo mu gihe kitazwi ashobora guseswa n'umwe mu bayagiranye bitewe n'impamvu ifite ishingiro, ko byagaragarijwe ibimenyetso ko kwirukana Nyinawingoro byari bifite ishingiro, ko rero CEB isanga ikirego

Nyinawingoro Aimée Sanzu yashyikirije Urukiko Rwisumbuye rwa Huye uretse kuvuga ko yirukanywe nta mpamvu ifatika ihari ko yirukanywe binyuranije n'amategeko nyamara ntacyo yavuze ku mpamvu zashingiweho yirukanwa cyangwa se ngo azivuguruze, ko ibyo byerekana ko na we rero yigizaga nkana azi neza ko impamvu zashingiweho yirukanwa ari iz'ukuri. [22] Asobanura ko atari ibyo gusa kuko kuba avuga ko yirukanywe binyuranije n'amategeko ari ukugenekereza kubera ko atagaragaje amategeko ashingiraho yishwe n'ibimenyetso bibishimangira, ko rero ibyo yakoze mu by'ukuri binyuranye n'ingingo ya 12 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko urega agomba kugaragaza ibimenyetso by'ibyo aregera yabibura uwarezwe agatsinda n'ibiteganywa n'ingingo ya 3 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo nayo ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana, ko n'Urukiko ruca urubanza rushingiye ku bimenyetso bihuje na kamere y'ikiburanwa nk'uko biteganywa n'ingingo ya 4 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ryavuzwe, ko kubera izo mpamvu rero ntaho Urukiko Rwisumbuye rwari guhera rwemeza ko Nyinawingoro Aimée yirukanywe mu buryo bunyuranyije n'amategeko. [23] Nyinawingoro Aimée Sanzu n'umwunganira bavuga ko ibivugwa na CEB kuri iyi ngingo nta shingiro bifite kubera nta bimenyetso bifatika kandi biteganywa n'amategeko CEB yashyikirije Urukiko byagombaga gushingirwaho mu gufata icyemezo ngo bibe byarirengagijwe, ko ahubwo ibimenyetso bidashidikanywaho byatanzwe na Nyinawingoro Aimée Sanzu ari byo bitasuzumwe ngo bihabwe agaciro, kubera ko ku bijyanye n'iyirukanwa rye muri CEB uyihagarariye uyiburanira atondagura urutonde rw'amabaruwa CEB yandikiye Madame Nyinawingoro Aimée Sanzu igirango imwikize ariko atagaragaza gihamya y'impamvu ifatika kuko ntayo ihari akitabaza ingingo ya 41 y'Itegeko rigenga Umurimo idashyigikiwe n' ibimenyetso, ko yirengagiza ingingo ya 42 na 92 z'Itegeko rigenga umurimo ivuga ko nta gihano cyo guhagarika umukozi iminsi irenga umunani (8), ko ahubwo muri izo nyandiko zose CEB yanditse zishyira hanze amakosa yakoze ubwayo yo kurutisha amategeko ngengamikorere Itegeko rigenga Umurimo nk'ingingo ya 42 yaryo iteganya ibihano byo mu rwego rw'akazi bishobora guhanishwa umukozi, ko icyo bita ikosa kandi ritari ryo ryahaniwe incuro zirenze eshatu (3) bikagera n'aho bamwirukana burundu kuwa 29/01/2020. UKO URUKIKO RUBIBONA [24] Rushingiye ku byasobanuwe haruguru ku bijyanye n' uko Caisse d'Entraide de Butare (CEB) yirukanye Nyinawingoro Aimée Sanzu mu buryo bunyuranije n'amategeko, rugasanga n' ikibazo kijyanye no kumenya niba Urukiko Rwisumbuye rwa Huye rwariirengagije amategeko nkana gihita

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kibona igisubizo kuva urwo Rukiko rwari rwasanze yarirukanywe mu buryo bunyuranyije n' amategeko, bityo uru Rukiko rukaba rutaha ishingiro ibivugwa n'uburanira CEB birimo kuvuga ko Nyinawingoro atakurikizaga inshingano ze mu kazi byerekana ko nta musaruro yatangaga CEB ivuga ishingiyeye ku ngingo ya 27 y'Itegeko N°66/2018 ryo kuwa 30/08/2018 ryavuzwe iteganya ko amasezerano y'umurimo mu gihe kitazwi ashobora guseswa n'umwe mu bayagiranye bitewe n'impamvu ifite ishingiro n'ya 41 yaryo iteganya inshingano z'umukozi kumukoresha we6 n'inshingano zinagaragara mu masezerano Nyinawingoro Aimee Sanzu yagiranye na CEB nko mu

ningingo ya 4 na 6 zayo. [25] Byongeye kandi uru Rukiko rukaba rusanga nta n'ishingiro rwaha ibivugwa n'uburanira CEB ko ikirego Nyinawingoro Aimée Sanzu yashyikirije Urukiko Rwisumbuye rwa Huye uretse kuvuga ko yirukanywe nta mpamvu ifatika ihari y' uko yirukanywe binyuranije n'amategeko , ko ntacyo yavuze ku mpamvu zashingiweho yirukanwa cyangwa se ngo azivuguruzwe, ko ibyo byerekana ko na we yigizaga nkana azi neza ko impamvu zashingiweho yirukanwa ari iz'ukuri , kimwe n' ibyo uburanira CEB avuga ko kuvuga ko yirukanywe binyuranije n'amategeko ari ukugenekereza kuko atagaragaje amategeko ashingiraho yishwe n'ibimenyetso bibishimangira, ko CEB isanga binyuranye n'ingingo ya 12 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko urega agomba kugaragaza ibimenyetso by'ibyo aregera yabibura uwarezwe agatsinda, binashimangirwa n'ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo nayo ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Uru Rukiko rero rukaba rusanga ibi bivugwa n' uburanira CEB nta shingiro byahabwa, kubera ko uretse n'uko rwasanze ukudasobanura impamvu zishingiweho mu kwirukanwa bifatwa nk'aho ntazihari, no muri rusange mu mategeko agenga umurimo ihame ry' ugomba gutanga ibimenyetso rirahindukira, kubera ko atari umukozi ahubwo noneho ari umukoresha ugomba kubahiriza iyo nshingano (une dérogation à la règle “actori incumbit probation”). [26] Ibi by'uko umukoresha ari we ugomba kubahiriza iyo nshingano bitandukanye n'amahame asanzwe agenga ibimenyetso muri zimwe mu manza nk'iz' imbonezamubano kuko ubusanzwe urega ari we ubigaragaza na byo bisobanurwa n' abahanga mu mategeko uko babivuga mu rurimi rw' icyongereza ko: “In a civil case the plaintiff shall prove the facts that support the action. If the defendant presents a fact in his or her favor, also he or she shall prove it. In Labour Law cases it is usually the employer who carries the burden of proof, for instance in the cases of termination of employment”⁷. Bityo mu gihe Umukozi avuze ko yirukanywe mu buryo bunyuranyije n' amategeko n' 6 Ingingo ya 41 y'Itegeko N°66/2018 ryo ku wa 30/08/2018 Itegeko rigenga umurimo mu Rwanda iteganya ko umukozi afite inshingano z'ingenzi zikurikira: 1° gukora ubwe akazi yahawe ku gihe no gutanga umusaruro; 2° kubahiriza amabwiriza y'umukoresha cyangwa umuhagarariye; 3° kwirinda icyahungabanya umutekano we n'uwa bagenzi be cyangwa uw' aho akorera; 4° gufata neza ibikoresho ahawe n'umukoresha; 5° kwitabira akazi ku gihe; 6° kurengera inyungu z'akazi. ⁷ Employment Judge Professor Alan C. Neal (London), Evidence in Labour Court Proceedings, National Reports,- Preparatory

Questionnaire

for

the

European

Labour

Court

Judges

Meeting at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/--dialogue/documents/meetingdocument/wcms_719949.pdf, byasomwe ku wa 27/02/ 2023.

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uko hari ibyo umukoresha amugomba atamuhaye, umukoresha akaba ari we ugomba kugaragaza ibimenyetso by' uko ibivugwa nta kuri kurimo. [27] Ibisobanuwe haruguru, uru Rukiko rugasanga ntaho binyuranya n' umurongo watanze n' Urukiko rw' Ikirenga mu rubanza RS/INJUST/RSOC 00001/2022/SC rwa SONARWA Life Assurance Company Ltd na Rugina Jason, rwaciwe ku wa 08/07/2022 aho mu bika byarwo bya 15-29 rwasobanuye ko abakozi bakora umurimo umwe bagomba guhembwa kimwe, inshingano y'umukozi akaba ari ukwerekana ko akora umurimo nk'uw'abandi bari ku rwego rumwe na we kandi ko umukoresha atamuhemba nk'uko ahemba abandi bakozi bari ku rwego rwe. icyo gihe, umukoresha afite inshingano zo gutanga ibimenyetso bivuguruzwa ibitangwa n'umukozi, kubera ko rusanga muri ibi bihe niba umukozi avuze ko adahembwa nka mugenzi we, inshingano yo gutanga ibimenyetso bifatika by'uko ahembwa nk'abandi, bikaba bigaragara ko ari iy'umukoresha kuko ari we ubigaragaza bwa nyuma anyomoza ibivugwa n'umukozi, ku bw'ibyo rugasanga ubujurire kuri iyi ngingo nta shingiro bwahabwa.

3. Kumenya niba Urukiko Rwisumbuye rwa Huye rwarategetse Caisse d'Entraide de Butare gutanga indishyi nyamara nta kosa yakoze kuko ibyo yakoze yakurikije amategeko ndetse n'izo rwatanze nta kimenyetso rwazishingiyeho [28] Me Mbarubukeye Samuel uburanira CEB avuga Nyinawingoro Aimée Sanzu atirukanywe binyuranye n'amategeko uko yagiye abisobanura, bityo Urukiko Rukuru, Urugereko rwa Nyanza rukaba rugomba kubikosora rukemeza ko yirukanywe mu buryo no mu nzira zikurikije amategeko, ku bw'izo mpamvu zose z'ubujurire CEB igasanga Urukiko Rukuru, Urugereko rwa Nyanza rwakosora amakosa yakozwe n'Urukiko Rwisumbuye rwa Huye rukemeza ko Nyinawingoro atirukanywe binyuranye n'amategeko maze n'amafranga yagenewe yose agakurwaho, ko Caisse d'Entraide de Butare muri uru rubanza rujurirwa yategetswe gutanga indishyi nyamara ibyo yakoze yarabikoze mu nzira ziciye mu mucyo zinakurikije amategeko, ko Nyinawingoro atari kwitwaza amakosa ye ngo abihewe indishyi, bityo ko iza yahawe zakurwaho. [29] Nyinawingoro Aimee Sanzu n'umwunganira bavugaga ko ibivugwa na CEB kuri iyi ngingo ko yategetswe gutanga indishyi ngo nyamara nta kosa yakoze nta shingiro bifite kubera ko nk'uko babisobanuye Urukiko rwagaragaje ko Nyinawingoro Aimée Sanzu yirukanywe mu buryo bunyuranije n'amategeko, ibyo ubwabyo bikaba ari ukwica nkana amategeko, kandi bikaba byaragombaga gutangirwa indishyi, ndetse Nyinawingoro Aimée Sanzu akaba yaragombaga guhabwa ibyo yemererwa n'amategeko atahawe ubwo yirukanwaga mu kazi mu buryo bunyuranije n'amategeko, nk'uko bigaragara mu kirego cye Nyinawingoro Aimée Sanzu yasabye ko yahabwa indishyi kubera ihohoterwa mu buryo bunyuranye yakorewe mu kazi, ariko ntiyazihabwa ndetse n'ibyo yasabye yemererwa n'amategeko ntabwo Urukiko rwamugeneye, bityo ibyo yari yasabye ku rwego rwa mbere byose akaba yabigenerwa kuri uru rwego, kuko yarenganye agakubitiraho no gutukwa n' uburanira CEB ku mugaragaro mu ruhame kandi ari icyaha gihanirwa nk' aho bigaragara mu rubanza rujurirwa ko hari aho

yavuze ko akabaye iwende katoga akongera kubisubiramo nyamara amuziza amakosa yagiye agaragaza muri audit, akomeza gutotezwa mu mabaruwa yatangiye kwisukiranya kubera iyo audit akisukiranya nyamara nta

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makosa yakoze uretse kuba yaragaragaje amakosa y'inyerezwa ry'umutungo wa CEB n'ababigiramo uruhare. [30] Bakomeza bavuga ko ku mpamvu bigaragara ko zitari iz'akazi CEB yabangamiye Madame Nyinawingoro Aimée imubuza gutunga umuryango we no kumubangamira muri gahunda ze z'iterambere, kumutakariza icyizere (crédibilité) no kumuhungabanya muri rusange, CEB ifatira ubwizigame bwe bungana na 7.472,819 frw yarasanzwe yizigamira akuwe kumushahara we wa buri kwezi, kandi ubwo bwizigame bwari busanzwe bubyara inyungu buri mwaka, ko ibyo byakozwe hirengagijwe Amategeko Ngengamikorere ya CEB, (ingingo yayo ya 76 igika cya 5) ateganya ko bafatira ubwizigame bw'umunyamuryango utishyuriye ku gihe ari uko impamvu zo kutishyura ari we ziturutseho gusa, kandi hano muri kino kibazo biragaragara ko CEB ariyo nyirabayazana, cyane cyane ko adahakana ko agomba kwishyura umwenda asigayemo CEB; ko ariko kuba CEB yarafatiriye umushahara w'iminsi cumi n'itanu (15) ungana n'amafranga: $640455/2=320.228$ Frw mu buryo bunyuranyije n'amategeko ari ukumuhohotera; kuba CEB yarongeye igafatira imishahara y'amezi atatu

- (3) ingana n'amafranga: $640455 \times 3 = 1.921.365$ Frw ya Nyinawingoro Amée Sanzu mu buryo bunyuranyije n'amategeko nabyo ari, bityo nawe agasaba Urukiko Rukuru, Urugereko rwa Nyanza guhabwa inyungu nk'uko biteganwa n'Itegeko rigenga Umurimo mu ingingo yaryo ya 74, ko kandi yanahabwa indishyi zose yasabye zingana na 20.000.000frw uko yazisobanuye ntazihabwe, indishyi z'akababaro zo gutukwa mu ruhamwe uko byavuzwe anitwa umukozi mubi n'ibindi. UKO URUKIKO RUBIBONA [31] Ingingo ya 30 y'Itegeko No 66/2018 ryo ku wa 30/08/2018 ryavuzwe iteganya ko iseswa ry'amasezerano y'umurimo rinyuranyije n'amategeko rituma hatangwa indishyi. Indishyi zihabwa umukozi wirukanywe binyuranyije n'amategeko ntizishobora kujya muni y'umushahara w'amezi atatu (3), ariko kandi ntizishobora kurenza umushahara ahabwa w'amezi atandatu (6). Icyakora, iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi ntizishobora kurenga umushahara ahabwa w'amezi icyenda (9). Indishyi zivugwa mu gika cya 3 cy'iyi ngingo zinahabwa abari intumwa z'abakozi, abagize komite z'ubuzima n'umutekano ku kazi n'abahagarariye sendika igihe birukanywe mu buryo bunyuranyije n'amategeko bazira gushyira mu bikorwa inshingano zabo zo guhagararira abakozi. Ibiteganywa mu gika cya 2 n'icya 3 by'iyi ngingo byubahirizwa no mu gihe indishyi zigomba gutangwa n'umukozi washeshe amasezerano mu buryo bunyuranyije n'amategeko. [32] Rushingiye ku biteganywa n'iyi ngingo, rugasanga kuba Urukiko Rwisumbuye rwarasanze Nyinawingoro Aimée Sanzu yarirukanywe mu buryo bunyuranyije n'amategeko, rukamugenera indishyi zijyanye na byo n'uru Rukiko rukaba rwasanze mu kubigena gutyo rwari rufite ukuri, rusanga impamvu z'ubujurire zigaragazwa n'uburanira CEB nta shingiro zahabwa, ahubwo uru Rukiko rukaba rugomba kugaruka ku ndishyi Nyinawingoro Aimée

Sanzu avuga ko atahawe n'urwo Rukiko nyamara yazisabye ku rwego rwa mbere bituma abijuririra uko byasobanuwe binagaragara mu myanzuro ye.

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- [33] Mu ndishyi zigarukwaho na Nyinawingoro Aimée Sanzu n' umwunganira harimo izo uru Rukiko rusanga ntacyashingirwaho zisuzumwa muri uru rubanza nk'izijyanye n'uko akora akazi k'ubugenzuzi atari agamije guharabika cyangwa kugira uwo abeshyera, ko kwari ukugirango arengere umutungo w'abanyamuryango ba CEB ku bw'ibyo akaba asaba indishyi nzingana na 20.000.000 Frw, kubera ko Urukiko rusanga adasobanura urwego azisaba mu mu gihe akora akazi k'ubugenzuzi yabaga yubahiriza inshingano ze nk' uko abivuga bihura n'ibiteganywa n' ingingo ya ngingo ya 41 y'Itegeko N°66/2018 ryo ku wa 30/08/2018 ryavuzwe, kuko mu byatumye yirukanwa ntaho urubanza ajuririra rwemeje ko yazize kuba yarakoraga ubugenzuzi, kuba we yaba abona ko mu byatumye yirukanwa haba harimo kuba yaragaragaje amakosa, bikaba ubwabyo bitashingirwaho mu kumugerera indishyi zidafite amategeko zishingiyeho, kubera ko indishyi zitangwa ari izishingira ku Itegeko rigenga umurimo ryavuzwe. [34] Urukiko rugasanga kandi n'indishyi z'akababaro Nyinawingoro Aimée Sanzu n'umwunganira bavuga ko zishingiye ku gutukwa mu ruhame bagaruka ku mvugo bavuga ko zakoreshezwaga nko kumwita umukozi mubi, ko akabaye icwende katoga nazo ntacyo rwazishingiraho muri uru rubanza kubera ko nk'uko abivuga birebana n'imanza nshinjabyaha zinyuranye n'uru rw'umurimo yaburanyemo ibijyanye no kwirukanwa ku kazi mu buryo budakurikije amategeko, ari yo mpamvu uru Rukiko rugomba gusuzumwa izindi ndishyi avuga ko atahawe, bigasuzumwa mu mbibi z'urubanza rw'umurimo hashingiwe ku biteganywa n'ingingo ya 156 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, iteganya ko urukiko rwajuririwe ruburanisha gusa ubujurire mu mbibi z'icyajuririwe. Urukiko rufata icyemezo ku ngingo zatumye uwatanze ubujurire ajurira cyangwa uwabwuriyeho na we akajurira. [35] Ku bijyanye n'indishyi yaciwe n'umukoresha igihe yahabwaga igihano cy'iminsi cumi n'itanu
- (15) yahagaritswemo mu buryo bunyuranije n'amategeko, guhabwa (13eme mois) ye yose atahawe, Urukiko Rwisumbuye rwavuze ko kuba Nyinawingoro yarahagaritswe amezi atatu (3) hashingiwe ku mategeko ngengamikorere ya CEB mu gace kayo ka (2.6.4) ivuga ko umukozi ashobora guhagarikwa ku kazi mu minsi mirongo cyenda ikurikirana kandi adahembwa, kandi ayo mategeko akaba areba urega nk'umukozi wa CEB, ko ayo mategeko agomba kubahirizwa hashingiwe ku biteganywa n'ingingo ya 18 igika cya 4 iteganya ko izindi mpamvu z'isubikwa ry'amasezerano y'umurimo zigenwa binyuze mu masezerano y'umurimo, amategeko ngengamikorere y'ikigo, cyangwa amasezerano , ko igihano cyo guhagarikwa Nyinawingoro yahawe kitanyuranyije n'amategeko. [36] Uru rukiko rugasanga ku bijyanye n'amafaranga yitwa 13eme mois, Nyinawingoro nawe yivugira ko hari ayo yahawe n' ubwo atuzuye ariko ayo yagenewe akaba yarabazwe hakurikije igihe yakoze (Prorata temporis) kubera ko nta kivuguruza ko muri uwo mwaka asabira ayo mafaranga Nyinawingoro hari igihe cy'amezi atatu (3) yahagaritswe adahembwa, bityo ibyo Urukiko

Rwisumbuye rwavuze ko kuba atarakoraga kubera igihano yahawe ntaho yahera asaba gusubizwa imishahara y'igihe yahagaritswe ari mu gihano, guhabwa amafaranga atahawe y'ukwezi kwa 13, no gutangirwa imisanzu ya RSSB hashingiwe no kubiteganywa n'ingingo ya 18 Itegeko N° 66/2018 ryo ku wa 30/08/2018 ryavuzwe iteganya ibijyanye n'isubika ry'amasezerano y'umurimo bikaba bifite ishingiro.

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[37] Rukanasanga n'ubwo ku wa 22/11/2019 mu nyandiko ifite ref. 0002/EC/CD/2019 ijyanye n'imyanzuro y'inama ya Komite ngengamytwarire ku kibazo yagejejweho na CA havugwamo habaye ikosa mu kutubahiriza amategeko ya CEB (Vice de procédure) mu guhagarika Nyinawingoro mu gihe cy'amezi atatu (3), ariko nta kigaragaza ko icyo gihano cyaje guteshwa agaciro ku buryo byasabirwa indishyi zijyanye n'imishahara atahembwe muri icyo gihe, kuko icyo gihano yaje kukirangiza nk'uko atabihakana, binashimangirwa n'inyandiko ziri muri dosiye nk'iyi ku wa 29/01/2020 yanditswe n'abagize komite ngenzuzi kabone n'ubwo bagaragaza ko iyirukanwa rye ryaba riterwa n'izindi mpamvu nko kuba igenzura (audit) yaragaragazaga amakosa mu mikoreshereze y'umutungo wa CEB nko gucuruza amafaranga yayo mu buryo butemewe, iyo komite ivuga ko itemeranywa ku iseswa ry'amasezerano ya Nyinawingoro na CEB, inavuga ko uyu yarangije igihano cyo guhagarikwa amezi atatu (3) agaruka mu kazi ku wa 17/01/2020. [38] Uru Rukiko rusanga icyakora n'ubwo indishyi zingana n'imishahara y'amezi atatu (3) zitatangwa ku mpamvu zisobanuwe haruguru, ariko nk'uko byavuzwe ntabwo uburanira CEB nk'umukoresha yagaragaje ibimenyetso bivuguruzwa imiburanire ya Nyinawingoro n'umwunganira ijyanye n'uko CEB yirengagije Amategeko Ngengamikorere yayo ku bijyanye no gutinda kwishyura⁸, kubijyanye n'uko iyo habaye gutinda kwishyura hafatirwa ubwizigame bw'umunyamuryango utishyuriye ku gihe ari uko impamvu zo kutishyura ari we ziturutseho gusa, n'uko Nyinawingoro Aimée avuga ko adahakana ko agomba kwishyura umwenda asigayemo CEB; no kuba CEB yarafatiriye umushahara w'iminsi cumi n'itanu (15) ungana n'amafranga: $640455/2=320.228$ Frw mu buryo bunyuranyije n'amategeko. [39] Rushingiye kandi ku biteganywa n'ingingo ya 73 y'Itegeko rigenga umurimo ryavuzwe ivuga ku ifatira n'itangwa ry'umushahara igira iti: umukoresha ntashobora gufatira umushahara w'umukozi, keretse mu bihe biteganywa n'iri tegeko. Uretse amafaranga ategetswe agomba gukatwa n'andi ashobora gukurwaho hakurikijwe ibyavuzwe mu masezerano y'umurimo, umukoresha afatira umushahara w'umukozi iyo bishingiye ku gushyira mu bikorwa umwanzuro w'Urukiko cyangwa iyo umukozi ayatanze ku bushake bwe Umukoresha ntashobora gukata amafaranga arenze kimwe cya kabiri (1/2) cy'umushahara w'umukozi kugira ngo yishyure amafaranga yari yaramuguriye, gufatira ku ngufu, gutanga ku bushake umusanzu w'ishyirahamwe umukozi abereye umunyamuryango kandi nta nyungu zigomba kongerwa ku mafaranga yishyurwa n'umukozi. Ihame rivugwa mu gika cya 3 cy'iyi ngingo rikoreshewa no ku mushahara wishyuwe mbere y'igihe gisanzwe umukozi ahemberwa, bityo umushahara wa Nyinawingoro Aimée ukaba utaragombaga gufatirwa uko umukoresha abyumva hatitawe ku biteganywa n'Itegeko ryashatse kuwurinda ku mpamvu zinyuranye

zirimo akamaro ka wo mu gutunga nyirawo n' umuryango we [Le caractère alimentaire du salaire (rémunération)].⁹ 8 Ingingo yayo ya 76 igika cya 5: “Le retard de remboursement de trios (3) mois par la faute de l'emprunteur entraîne automatiquement le remboursement par épargne du débiteur.”⁹ Me Edmond Mbokolo Elima, Avocat au Barreau de l'Equateur, Assistant à l'Université de Mbandaka / RDC., Analyse du regime ambivalent de la saisie des remunerations en droit de l'Ohada: entre l'autorisation et l'interdiction, <https://www.legavox.fr/blog/maitre-edmond-mbokolo-elima/saisie-remunerations-droit-ohada-entre-29646.htm>, byabonywe ku wa 28/02/2023.

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- [40] Ingingo ya 30 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015 ivuga ko abantu bakora umurimo umwe bagomba guhembwa kimwe nta vangura iryo ari ryo ryose, ibi binahura na none n'ibiteganywa n'ingingo ya 23 y'Itangazo Mpuzamahanga ryerekeye Uburenganzira bwa muntu ryo ku wa 10 Ukuboza 1948 , iya 15 y' Amasezerano Nyafurika yerekeye Uburenganzira bwa Muntu n'ubw'Abaturage yo ku wa 27/06/1981 nk'uko yemejwe n'Itegeko N° 10/1983 ryo ku wa 01/07/1983 n'iya 9 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 ryavuzwe nayo ivuga kubijyanye n' uko abakozi bose bagomba guhabwa amahirwe angana no guhembwa umushaha ungana ku murimo w'agaciro kamwe. [41] Ibiteganywa n'izo ngingo kandi binahura n'ibyemejwe mu rubanza RS/INJUST/RSOC 00001/2022/SC rwa SONARWA Life Assurance Company Ltd na Rugina Jason, rwaciwe kuwa 08/07/2022 mu bika byarwo bya 18-29 aho Urukiko rw'Ikirenga rwasobanuye ko abakozi bari ku ntera imwe y'akazi kandi bakora akazi kamwe bagomba guhembwa umushahara ungana, cyeretse umukoresha agaragaje impamvu zifatika zatumye abakozi bari ku ntera imwe kandi bakora akazi kamwe bahembwa mu buryo butandukanye, bityo rushingiye ku bimaze gusobanurwa rugasanga bitewe n'uko umukoresha wa Nyinawingoro yamukase ku mushahara we amafaranga y'iminsi cumi n'itanu (15) yamaze ahagaritswe mu kazi mu buryo budateganywa n'amategeko, akaba ari uburenganzira bwe bwo guhembwa kimwe n'abandi bakozi yavukijwe n'uwari umukoresha we, bityo Nyinawingoro Aimée akaba agomba kwishyurwa na CEB amafaranga yasobanuwe angana na (640.455 Frw: 30) X 15 = 320.227 Frw. [42] Ku bijyanye n'andi mafaranga Nyinawingoro Aimée Sanzu yasabye ntiyayagerwa ku rwego rwa mbere; amafaranga y'amasaha y'ikirenga yakoze guhera 09/2014 kugeza kuwa 29/02/2020, ntiyayahabwa kuko ntacyo anenga ibyemejwe ku rwego rwa mbere ko atumvikanye n'umukoresha we gukora amasaha y'ikirenga hashingiwe ku biteganywa n'ingingo ya 44 y'Itegeko rigenga umurimo mu Rwanda iteganywa ko amasaha ntarengwa y'akazi ari mirongo ine n'atanu (45) mu cyumweru. icyakora umukozi ashobora gukora amasaha y'ikirenga abyumvikanyeho n'umukoresha, akaba abigarukaho gusa kuko atagenewe izo ndishyi, akaba rero ntacyo yanenze kuri urwo rubanza nk'uko biteganywa n'ingingo ya 150 y'Itegeko No22/2018 ryo kuwa 29/04/2018 ryavuzwe iteganywa ko Ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza ibi bikurikira: ...6° ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa Urukiko... [43] Ibivuzwe

haruguru byo kutagira icyo anenga ku byemejwe ku rwego rwa mbere bikaba ari kimwe n'ibijyanye no kumenya niba umukoresha (CEB) yaragombaga gutegekwa guha Nyinawingoro Aimée Sanzu prime itangwa kuri cote ya buri mwaka ya 4% y'umushahara atahawe nyuma y'igihe kirenga imyaka itanu (5) yari amaze akorana na CEB na prime de fidélité ingana n'umushahara w'ukwezi ihabwa abakozi nyuma y'imyaka itanu (5), kubera ko avuga ko yagombaga kubona iyo prime ari uko yujuje imyaka itanu (5) y'akazi kuwa 05/12/2019, kuko atavugurujwe ko iki gihe cyageze prime de fidélité yaravanyweho kuko yavuyeho ku wa 04/01/2019 bityo akaba atavugaga ko atayihawe yujuje imyaka itanu (5) itagitangwa, kimwe n'ibijyanye no kumenya niba Nyinawingoro Aimée Sanzu agomba

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gusubizwa amafaranga 50,000frw yishyuye Umuhesha w'Inkiko w'Umwuga wamufashije gukora ihererekanya bubasha igihe yasubizaga ibikoresho bya C.E.B yari abitse, kuko ku bijyanye nabyo ntacyo anenga ku birebana n'uko hatagaragajwe ko uwo muhesha w'Inkiko yashatswe, na savings avuga zingana na 7,500,000 Frws kuko nta cyakuyeho igihano cy'amezi atatu (3) yahanishijwe uko cyasobanuwe. Rugasanga rero rushingiye ku bimaze gusobanurwa, indishyi zihawe ishingiro ku byo asaba mu bujurire ari izijyanye n'uko umukoresha we yamukase ku mushahara we amafaranga y'iminsi cumi n' itanu (15) uko zasobanuwe.

4. Kumenya niba Ikirego cy'ubujurire bwuririye ku bundi cyatanzwe na Nyinawingoro Aimée Sanzu agamije gusaba indishyi, amafaranga y'ikurikira rubanza n'igihembo cy'Avoka bifite ishingiro n' ibisabwa na CEB kuri iyi ngingo [44] Me Mbarubukeye Samuel uburanira CEB avuga ko kuba Nyinawingoro ari we nyirabayazana w'uru rubanza nkuko byasobanuwe kuko yazize amakosa ye akigiza nkana agakurura imanza zidafite ishingiro yategekwa gutanga ibyakoreshejwe muri uru rubanza byose harimo amafaranga y'ikurikirana rubanza ku rwego rwa mbere no mu bujurire angana na miliyoni imwe (1.000.000Frw) na million ebyiri (2.000.000 Frw) z'igihembo cy'Avoka amafaranga ibihumbi mirongo ine (40.000 Frw) CEB yatanzeho ingwate y'amagarama irega kuko igikorwa cyangirije undi gitegeka nyiri ugukora ikosa kuriha ibyangiritse. [45] Nyinawingoro Aimée Sanzu n' umwunganira bavuga ko indishyi zisabwa na CEB nta shingiro bifite, kubera ko CEB ari yo yishe nkana amategeko ubwo yirukanaga Nyinawingoro Aimée Sanzu mu kazi mu buryo bunyuranije n'amategeko ntahabwe n'ibyo yemererwa n'amategeko, ko rero CEB itakuririra ku makosa yakoze ngo igerekeho no kubisabira indishyi, ko ahubwo indishyi CEB isaba ariyo igomba kuzitanga ikaziha Nyinawingoro Aimée Sanzu kubera ko yamushoye mu manza ku maherere. [46] Bakavuga ko ku bw'ibyo Nyinawingoro Aimée Sanzu atanze ikirego cy'ubujurire bwuririye ku bundi agamije gusaba Urukiko gutegeka CEB kumuha indishyi z'akababaro, amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka zibazwe ku buryo bukurikira: •5.000.000 Frw kubera kuvutswa akazi ku maherere no gushorwa mu manza nta mpamvu; •5.000.000 Frw kubera gukorerwa itotezwa mu kazi hagamijwe kumwikiza bitewe n'uko yagaragaje amakosa yakorwaga muri CEB y'imicungire mibi y'umutungo w'ikigo. • 3.000.000 Frw kubera gusiragizwa mu nkiko nta mpamvu; • 3.000.000 Frw y'ikurikirana rubanza n'igihembo cy'avoka. UKO URUKIKO RUBIBONA [47] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa

29/04/2018 ryavuzwe, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'ayo ikirego cy'iremezo cyaba kitakiriwe, iya 152 y' iryo Tegeko yo igateganya ko uregwa mu Rukiko rujuririrwa ashobora na we

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kugira ibyo asaba yiregura, iya 12 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryavuzwe iha inshingano urega mu kugaragaza ibimenyetso by'ibyo aregera n'ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe ivuga ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. [48] Rushingiye ku biteganywa n'izi ngingo, rugasanga ku bijyanye n'indishyi zisabwa na CEB ntazo yahabwa kubera ko itsindwa urubanza, naho izisabwa na Nyinawingoro Aimée Sanzu rugasanga agomba guhabwa iz'ikurikiranarubanza no gusiragizwa mu nkiko zigenwe mu bushishizi bw'Urukiko akaba agenewe amafaranga y'u Rwanda ibihumbi magana atatu (300.000 Frws) agomba kwishyurwa na Caisse d'Entraide de Butare (CEB), kuko izindi asaba kubera kuvutswa akazi ku maherere n'iz'akababaro atazitandukanya n'indishyi zo kwirukanwa mu buryo budakurikije amategeko yagenewe. [49] Ku bijyanye n'igihembo cy'Avoka, rushingiye ku kubiteganywa n'ingingo ya 33 y'amabwiriza nimeru 01/2014 agenga ibihembo mbonera by'abavoka iteganya ko mu bujurire, avoka w'urega u'uwegwa bafite uburenganzira kuri ½ cy'igihembo cyumvikanyweho ku rwego rwa mbere, ku bw'ibyo, Caisse d'Entraide de Butare (CEB) ikaba igomba kwishyura na Nyinawingoro Aimée Sanzu amafaranga y'u Rwanda ibihumbi magana abiri na mirongo itanu (250.000 Frws), bityo indishyi zose hamwe ziyongereye mu bujurire zikangana n'amafaranga y'u Rwanda ibihumbi magana inani na mirongo irindwi na magana abiri na makumyabiri n'arindwi (870,227 Frws) = (320.227 Frw+300.000 Frws + 250.000 Frw) . Ku bw'ibyo urubanza RSOC 00018/2020/TGI/HYE rwaciwe ku wa 23/12/2021 n'Urukiko Rwisumbuye rwa Huye ikaba igomba guhinduka ku bijyanye n' indishyi zigenwe kuri uru rwego rw' ubujurire. III. ICYEMEZO CY'URUKIKO [50] Rwemeje ko ubujurire bwatanwe na Caisse d'Entraide de Butare (CEB) nta shingiro bufite. [51] Rwemeje ko ubujurire bwatanzwe na Nyinawingoro Aimée Sanzu bufite ishingiro kuri bimwe. [52] Rwemeje ko imikirize y'urubanza RSOC 00018/2020/TGI/HYE rwaciwe ku wa 23/12/2021 n'Urukiko Rwisumbuye rwa Huye ihindutse ku bijyanye n'indishyi zigenwe ku rwego rw'ubujurire. [53] Rutegetse Caisse D'Entraide de Butare (CEB) kwishyura Nyinawingoro Aimée Sanzu indishyi zingana n'amafaranga y'u Rwanda ibihumbi magana inani na mirongo irindwi na magana abiri na makumyabiri n'arindwi (870,227 Frws) ziyongereye kuzo yatsindiye ku rwego rwa mbere, ikayamwishyura kuva uru rubanza rubaye ndakuka bitaba ibyo agakurwa mu byayo ku ngufu za Leta. [54] Rutegetse Caisse D'Entraide de Butare (CEB) gusubiza Nyinawingoro Aimée Sanzu amafaranga ibihumbi mirongo ine y'igarama yatanze ijurira, kuva uru rubanza rubaye ndakuka bitaba ibyo agakurwa mu byayo ku ngufu za Leta. [55] Rutegetse ko amafaranga yatanzweho igarama mu kujurira ahwanye n'ibyakozwe muri uru rubanza, akaba aheze mu isanduku ya Leta.

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