

RWANDA / JUDGMENT

DUSHIMIMANA v ASA MICROFINANCE Plc

RS/INJUST/RSOC 00001/2024/CA

COURT

Court of Appeal

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30 January 2025

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DUSHIMIMANA v ASA MICROFINANCE Plc

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Text

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DUSHIMIMANA v ASA MICROFINANCE Plc [Rwanda URUKIKO RW'UBUJURIRE - RS/INJUST/RSOC 00001/2024/CA (Munyangeri, P.J., Ngagi, Kamere, J.) 30 Mutarama 2025] Amategeko agenga imanza z'umurimo – Gusezerera umukozi nta nteguza - Umukoresha n'umukozi buri wese afite inshingano zo guha urundi ruhande integuza mu gihe asanga hari impamvu zigomba gutuma amasezerano y'akazi bari bafitanye aseswa, kandi akanamugaragariza impamvu zituma ayo masezerano aseswa, yaba atabikoze kandi nta kosa rikomeye ryakozwe, amasezerano y'akazi bari bafitanye akaba aseshwe mu buryo budakurikije ibyo amategeko ateganya Incamake y'ikibazo: Dushimimana yahawe akazi na ASA MICROFINANCE Plc aho yakoraga nka loan officer nyuma aza no kugirwa Team Leader uhagarariye ishami rya Mahoko. Nyuma y'igihe yaje gusezerwa ku kazi ntiyanahabwa ibigenerwa umukozi usezerewe mu kazi ngo kuko atari abikwiye. Yaje kwandikira umugenzuzi w'umurimo ariko ikibazo nticyakemuka, atanga ikirego mu Rukiko Rwisumbuye rwa Gasabo avuga ko icyo kigo cyamwirukanye mu buryo budakurikije amategeko, maze asaba indishyi zinyuranye. Uregwa we yavugaga ko Dushimiyimana yasezerewe kubera ko atari yujuje ibisabwa na BNR kugira ngo akore ku mwanya wa loan officer. Urukiko rushingiye ku kuba urega yarirukanwe nta nteguza kandi nta kosa rikomeye yakoze, rwemeje ko Dushimimana

Jonathan yirukanwe nta mpamvu, rutegeka ASA MICROFINANCE Plc kumuha amafaranga y'indishyi zose hamwe zingana na 2.652.272 Frw, no kumusubiza 50,000 Frw y'igarama yatanze arega. Uregwa yajuririyeye mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwavuze ko Dushimiyimana yrukunawe nta mpamvu kandi mu ibaruwa imusezerera iyo mpamvu yaragaragijwe kuko atari yujuje ibisabwa na Banki Nkuru y'u Rwanda. Urukiko Rukuru rushingiye ku ibaruwa yo ku wa 24/05/2018, BNR yandikiye ASA ivuga ko Dushimimana adakwiye muri uwo mwanya wo gutanga inguzanyo keretse hari akandi kazi yamubonera kajyanye n'ibyo yize, rwasanze hari impamvu ifatika yatumye asezererwa mu kazi. Urega yagiye mu nzira z'akarengane, urwo rubanza ruburanishwa n'Urukiko rw'Ubujurire hasuzumwa ikibazo cyo kumenya niba yarirukanywe ku kazi mu buryo bunyuranyije n'amategeko. Dushimiyimana asobanura ko mbere yo gutangira akazi yashikorije umukoresha impamyabumenyi ye igaragaza ibyo yize hanyuma ahabwa akazi ariko aza kuza kwirukanwa nta nteguza y'uburyo bwose ahawe abwirwa ko atujuje ibisabwa bityo akaba agomba guhabwa indishyi ziteganywa n'amategeko. Uregwa asobanura ko amasezerano ASA MICROFINANCE plc yagiranye na Dushimiyimana yasheshwe hashingiwe ku mpamvu yumvikana kuko yagombaga kwemezwa na BNR ariko ikaza kumenyesha ko uwo mukozi atari afite impamyabumenyi isabwa kuri uwo mwanya bityo akaba ataragombaga guhabwa integuza ngo akomeze gukora ariko integuza akaba yarayihawe mu mafaranga.

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Incamake y'icyemezo: Iyo umukoresha asezeraye umukozi atamuhaye integuza kandi yagombaga kuyimuha kandi akaba nta kosa rikomeye yakoze, aba aseshe amasezerano mu buryo bunyuranyije n'amategeko. Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, gifite ishingiro kuri bimwe. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12. Amategeko yifashishijwe atagikoresheho: Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda, ingingo ya 21, 28, 30, 35, 53 Imanza zifashishijwe: RS/INJUST/RSOC 00001/2019/SC, NIWEMUGENI Jeannette na KCB BANK Plc, rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2020; RS/INJUST/RSOC 00004/2024/SC, Karangwa John na ADEPR, rwaciwe ku wa 04/10/2024. Urubanza IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku kirego Dushimimana Jonathan yatanze mu Rukiko Rwisumbuye rwa Gasabo avuga ko ku wa 16/08/2017 yahawe akazi na ASA MICROFINANCE (Rwanda) Ltd yahindutse ASA MICROFINANCE Plc, ku mwanya w'ushinzwe inguzanyo (Loan officer), ku wa 01/02/2018, aza kugirwa Team leader uhagarariye ishami rya Mahoko, ariko ku wa 26/04/2018, ASA MICROFINANCE Plc imwirukana itamuhaye ibigenerwa umukozi usezerewe, abajije impamvu itabimuhaye, imubwira ko atabikwiye. Ko yayandikiye ibaruwa ayisaba kurenganurwa no kumuha ibigenerwa umukozi usezerewe ariko ntiyagira icyo ikora, ashyikiriza ikirego Umugenzuzi w'umurimo kugira ngo abahuze barangize ikibazo mu bwumvikane ariko na byo ntibyagira icyo bitanga. Ibyo byatumye ayirega muri urwo Rukiko avuga ko yamwirukanye mu buryo budakurikije amategeko, maze asaba indishyi zinyuranye. [2] ASA MICROFINANCE Plc yireguye ivuga ko Dushimimana Jonathan yayikoreye akora nka Loan officer nk'uko amabwiriza

agenga ibigo by'imari abiteganya umwanya yakoraga ho byagombaga gusuzumwa bikemezwa na BNR nk'uko amategeko abiteganya, ko ari muri urwo rwego ASA MICROFINANCE Plc yohereje urutonde rw'abakozi muri BNR hanyuma iyi isanga Dushimimana Jonathan ari bihemu mu kigo kimwe cy'imari ari bwo BNR yohereje ibaruwa yo ku wa 03/05/2018 ivuga ko itamwemeza kuko ari bihemu bituma ahagarikwa kugira ngo abanze akemure ikibazo afite. Ku wa 24/5/2018, BNR yandika imuhakanira burundu ko atakora kumwanya wa Loan officer kuko bitagendanye n'ibyo yize; ku wa 26/4/2018, ASA MICROFINANCE Plc imwandikira ibaruwa imusezerera nyuma y'uko regulator BNR itemera ko

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yakora nka Loan officer kuko ubwumvikane bw'umukoresha budahagije kuko hari ibyo BNR igomba kwemera kandi bigira ingaruka ku kigo, ko nyuma yasabwe gukora ihererekanyabubasha (remise et reprise) no kuza gutwara ibyo yemerewe ntiyaza kubifata yanga na décompte final yari yakozwe akagwa muri négatif. [3] Mu rubanza No RSOC 000169/2018/TGI/GSBO rwaciwe ku wa 14/05/2019, Urukiko Rwisumbuye rwa Gasabo rushingiye ku kuba Dushimimana Jonathan yarirukanwe nta nteguza kandi nta kosa rikomeye bagaragaje yakoze, no ku ngingo ya mbere agace ka 21 y'Itegeko ryari ririho icyo gihe No 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda ivuga ko kwirukanwa nta mpamvu bivuga guhagarika amasezerano y'akazi bikozwe n'umukoresha nta mpamvu igaragara cyangwa hadakurikijwe uburyo bwateganyijwe n'amategeko, rwemeje ko Dushimimana Jonathan yirukanywe nta mpamvu, rutegeka ASA MICROFINANCE Plc kumuha amafaranga y'indishyi zose hamwe zingana na 2.652.272 Frw, no kumusubiza 50,000 Frw y'igarama yatanze arega. [4] ASA MICROFINANCE Plc yajuririye Urukiko Rukuru ivuga ko Urukiko Rwisumbuye rwa Gasabo rwemeje ko Dushimimana Jonathan yirukanywe mu kazi nta mpamvu, rwirengagije impamvu yatumye asezererwa igaragara mu ibaruwa imusezerera, aho BNR nka regulator w'ibigo by'imari mu ibaruwa yo ku wa 18/04/2018, yafashe umwanzuro ivuga ko atujuje ibisabwa, bityo akaba atakwemezwa ku mwanya wa Loan officer. Isaba guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yo ku rwego rwa mbere n'ayo mu bujurire. [5] Dushimimana Jonathan yireguye ku mpamvu z'ubujurire za ASA MICROFINANCE Plc avuga ko nta shingiro zifite, atanga ubujurire bwuririye ku bundi asaba indishyi zo kwirukanywa mu buryo bunyuranije n'amategeko zingana na 1.290.000 Frw ahwanye n'umushahara we mu gihe cy'amezi atandatu (6), aho ku kwezi yahembwaga 216.000 Frw ngo kuko yaziregeye Urukiko ntirugire icyo ruzivugaho, amafaranga y'umutekano ASA MICROFINANCE Plc yafatiriye nk'uko agaragara kuri décompte final angana na 178.8000 Frw, no kumwishyura amasaha y'ikirenga 464, ahwanye na 566.776 Frw, ku isaha imwe akaba ari 121.5 Frw, no kumuha 1.000.000 Frw y'ikurikiranarubanza kuko ayo yagenewe ku rwego rubanza ari make, na 1,000,000 Frw y'igihembo cya Avoka. [6] Mu rubanza No RSOCA 00120/2019/HC/KIG rwaciwe ku wa 30/01/2020, Urukiko Rukuru rushingiye ku ibaruwa yo ku wa 24/05/2018, BNR yandikiye ASA ivuga ko Dushimimana Jonathan adakwiye (to fit) muri uwo mwanya wo gutanga inguzanyo keretse hari akandi kazi yamubonera kajyanye n'ibyo yize (your education is not relevant to perform duties of loan officer unless he finds another job for him), rwasanze umukoresha atari afite ububasha bwo kwanga ngo agumishe Dushimimana Jonathan mu kazi, ko

rero bidakwiye gufatwa nk'uwamwirukaniye ubusa. Rwemeza ko ubujurire rwashyikirijwe na ASA MICROFINANCE Plc, bufite ishingiro, ko Dushimimana Jonathan agomba kwishyura ASA MICROFINANCE Plc indishyi zingana na 790.000 Frw, kandi ko 40.000 Frw y'ingwate y'amagarama yatanze ijurira ahwanye n'ibyakozwe. [7] Dushimimana Joanathan yasabye ko urubanza No RSOCA 00120/2019/HC/KIG rusubirishwamo ku mpamvu z'akarengane, maze mu cyemezo No 011/CJ/2024, Perezida w'Urukiko rw'Ikirenga ashingiye kuri raporo yakozwe n'Urwego rw'Umuvunyi yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, arwohereza mu Rukiko rw'Ubujurire kugira ngo abe ari rwo ruzaruburanisha; ikirego cyandikwa kuri No RS/INJUST/RSOC 00001/2024/CA.

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[8] Urubanza rwaburanishijwe mu ruhamwe ku wa 10/01/2025 no ku wa 27/01/2025, Dushimimana Jonathan yunganiwe na Me Nsengiyumva Eugène, naho ASA MICROFINANCE RWANDA Ltd ihagarariwe na Me Intwazayamugabo Armand. [9] Mu myanzuro no mu miburanire ya Dushimimana Jonathan avuga ko yarenganyijwe n'urubanza No RSOCA 00120/2019/HC/KIG kuko rwemeje ko yasezerewe ku mpamvu zumvikana kandi yarirukanwe mu buryo bunyuranyije n'amategeko cyane ingingo ya 1, agace ka 21, y'itegeko N°13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda, kuko yirukanwe nta nteguza ahawe kandi nta kosa yakoze, ndetse ko ASA MICROFINANCE Plc yashoboraga kumuha undi mwanya ujyanye n'ibyo yize aho kumwirukana cyane ko nta kibazo yari afite mu kazi, akaba ari nabyo yari yasabye mu ibaruwa yandikiye ASA MICROFINANCE Plc. Bityo ko kuba yaramwirukanye mu buryo bunyuranyije n'amategeko ntinamuhe ibyo amategeko ateganya igomba gutegekwa kumuha indishyi yari yagenewe n'Urukiko Rwisumbuye rwa Gasabo hiyongereye indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, indishyi z'amasaha y'ikirenga, indishyi zo gushorwa mu manza, hamwe n'amafaranga y'ibyagiye ku rubanza. ASA MICROFINANCE Plc yiregura ivuga ko amasezerano y'umurimo Dushimimana Jonathan yagiranye na ASA MICROFINANCE Plc yaseshwe hashingiwe ku mpamvu yumvikana, kuko yagombaga kwemezwa na BNR ariko mu cyemezo cyayo ikaza kugaragaza ko atari yujuje ibisabwa kugira ngo akore ku mwanya w'ushinzwe inguzanyo (Loan officer), ku buryo nyuma yo kutamwemeza atagombaga guhabwa integuza ngo akomeze gukora, cyane ko icyemezo cya BNR kiba kigomba kubahirizwa ako kanya (with immediate effect), ko kandi yari afite iminsi 15 y'integuza, ariko yayishyuwe nk'uko bigaragazwa na décompte final. Bityo ko indishyi zose Dushimimana Jonathan asaba ntazo akwiye guhabwa, kuko nta shingiro zifite, ko n'amafaranga y'ibyagiye ku rubanza asaba nta shingiro afite. [10] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki, Urukiko rurasanga hagomba gusuzumwa ikibazo cyo kumenya niba Dushimimana Jonathan yarirukanywe ku kazi mu buryo bunyuranyije n'amategeko, kumenya niba yagenerwa indishyi asaba, no kumenya niba indishyi zo gusiragizwa mu rubanza, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro. II.ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Dushimimana Jonathan yarirukanywe ku kazi mu buryo bunyuranyije n'amategeko [11] Dushimimana Jonathan n'umwunganira bavuga ko yahagaritswe ku murimo hashingiwe ku ibaruwa yo ku wa 18/04/2018 ya BNR, igaragaza ko atari yujuje ibisabwa ku mwanya yariho, aho ku wa 26/04/2018, ASA MICROFINANCE Plc yahise imwirukana kandi atari ko amategeko yabiteganyaga, ngo kuko yari afitanye na yo amasezerano, kandi nta kosa ry'akazi yakozwe, ko yagombaga guhabwa integuza hashingiwe ku ngingo ya 32, igika cya mbere, y'Itegeko N°13/2009 ryo ku wa 27/05/2009 ryagenga umurimo mu Rwanda, ikamuha ibyo amategeko amuteganyiriza. Byongeye kandi ko mbere yo gutangira akazi yayishyikirije impamyabumenyi ye, ikaba yaragombaga kubwitaho, ko ariko yirukanwe mu buryo budakurikije amategeko hashingiwe ku ngingo ya 1, agace ka 21, y'Itegeko N°13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda, igira iti: "Kwirukanwa nta mpamvu bivuga guhagarika amasezerano y'akazi bikozwe n'umukoresha nta mpamvu igaragara cyangwa bidakurikije uburyo bwateganyijwe n'amategeko."

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- [12] Bavuga kandi ko akarengane yagiriwe mu rubanza No RSOCA 00120/2019/HC/KIG gashingiye ku kuba ataragenewe ibyo amategeko ateganyiriza umukozi usezerewe mu kazi, ko mu ibaruwa yo ku wa 18/04/2018, ASA MICROFINANCE Plc yamuhaye iminsi 15 yo gukora ihererekanyabubasha ryagombaga kurangira ku wa 04/05/2018, ariko ko mu gihe haburaga iminsi irindwi (7) ku wa 26/04/2018 yahawe ibaruwa imusezerera mu kazi nta nteguza, ibyo akaba abifata nk'amananza yo gutuma atazabona ibyo amategeko amugenera kuko mu kubimuka hari gushingirwa kuri iyo raporo y'iherekanyabubasha. Ko ibyo ASA MICROFINANCE Plc ivuga ko mu gihe BNR nk'Umuyobozi w'Ibigo by'imari isabye ko umukozi asezererwa bihita bikorwa ako kanya, atari byo, ko n'ibyo ivuga ko yamwishyuye integuza y'iminsi 15 mu mafaranga atari byo, cyane ko nta kimenyetso ibitangira. [13] Uhagarariye ASA MICROFINANCE Plc avugaga ko amasezerano y'umurimo Dushimimana Jonathan yagiranye na ASA MICROFINANCE Plc yaseshwe hashingiwe ku mpamvu yumvikana, kuko yagombaga kwemezwa na BNR ariko mu cyemezo cyayo ikaza kugaragaza ko atari yujuje ibisabwa kugira ngo akore muri kigo cya microfinance, ku buryo nyuma yo kutamwemeza atagombaga guhabwa integuza ngo akomeze gukora, ariko ko yahawe integuza mu mafaranga nk'uko bigaragazwa na décompte final. Kandi ko ASA MICROFINANCE Plc itari guhitamo gukoresha umuntu utemewe na BNR, ari na yo mpamvu hashyizweho Amabwiriza yo gusaba icyemezo cya BNR cyemerera MICROFINANCE gukoresha uwo mukozi, ko rero nk'umukoresha itari kurenga kuri icyo cyemezo cya BNR, akaba ari nako Ururukiko rwabibonye mu gika cya 7 cy'urubanza No RSOCA 00120/2019/HC/KIG rusabirwa gusubirishwamo ku mpamvu z'akarengane, nk'uko na raporo y'Umuvunyi yo ku wa 30/10/2023 ibigaragaza, ariko muri iyo raporo akanenga ko Ururukiko rutamugeneye indishyi zo kudahabwa integuza nk'uko zateganywaga mu ngingo ya 32 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo ryakurikizwaga icyo gihe. [14] Asobanura ko kuba Dushimimana Jonathan atarahawe integuza bitafatwa nko gusesa amasezerano mu buryo bunyuranyije n'amategeko, ngo kuko integuza itangwa mu gihe umukozi ashobora kuguma

mu kazi ategereje ko itariki amasezerano agomba kurangiriraho igeri. Ko iyo hari icyemezo cya BNR kibuzi umukozi gukora umukoresha atabirengaho ngo amuhe integuza ituma aguma mu kazi, kuko icyemezo cya BNR cyubahirizwa ako kanya (with immediate effect), ko iyo bitagenze bityo ifatira umukoresha ibihano birimo guhagarikirwa uruhushya rwemerera Microfinance gukora. Bityo ko kuba ASA MICROFINANCE Plc itaratanze integuza nta kosa yakoze, ku buryo yaritangira indishyi. [15] Akomeza avuga ko nta karengane Dushimimana Jonathan yagiriwe mu rubanza No RSOCA 00120/2019/HC/KIG asubirishamo ku mpamvu z'akarengane, ngo kuko Umuvunyi mu isesengura yakoze, yavuze ko ASA MICROFINANCE RWANDA Ltd itamuhaye integuza, mu gihe we agaragaza ibaruwa yo ku wa 18/04/2018, aho iyi yamusabaga kumara iminsi cumi n'itanu

- (15) akora ihererekanyabubasha, bikaba bigaragara ko Umuvunyi atabonye iyo baruwa, ngo abone ko integuza yatanze, kuko we ubwe yivugira ko yahawe iminsi umunani (8) mu minsi cumi n'itanu (15) yagombaga gukoreramo ihererekanyabusha. Bityo ko integuza yatanze, uretse ko atari cyo cyaburanweho mu rubanza rusubirishwamo ku mpamvu z'akarengane. UKO URUKIKO RUBIBONA

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- [16] Ingingo ya 1, agace ka 21, y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda mu gihe Dushimimana Jonathan yasezererwaga ku kazi, iteganya ko kwirukanwa nta mpamvu bisobanura guhagarika amasezerano y'akazi bikozwe n'umukoresha nta mpamvu igaragara cyangwa hadakurikijwe uburyo bwateganyijwe n'amategeko. Ingingo ya 27, igika cya 1, y'iryo Tegeko, iteganya ko iyo bibaye ngombwa gusesa amasezerano y'akazi hatanzwe integuza, igihe cy'integuza kigomba kungana n'iminsi cumi n'itanu (15) iyo umukozi yakoze igihe kiri muni y'umwaka cyangwa ukwezi kumwe iyo umukozi yakoze mu gihe cy'umwaka cyangwa kirenze. [17] Ingingo ya 30, igika cya 1, y'iryo Tegeko, iteganya ibikurikira: "Integuza igomba kumenyeshwa mu nyandiko uruhande ireba hagaragazwa n'impamvu zituma amasezerano aseswa." Ingingo ya 28, igika cya 2 y'iryo Tegeko iteganya ibikurikira: "Amasezerano y'akazi y'igihe kizwi cyangwa ku murimo uzwi neza ashobora kurangizwa mbere y'igihe cyateganyijwe iyo habayeho ikosa rikomeye cyangwa kumvikana hagati y'impande zombi. Mu gihe iseswa ry'amasezerano ritewe n'ikosa rikomeye, uyasheshe amenyesha undi mu gihe cy'amasaha mirongo ine n'umunani (48)." [18] Izi ngingo zisomewe hamwe, zumvikanisha ko umukoresha n'umukozi buri wese afite inshingano zo guha urundi ruhande integuza mu gihe asanga hari impamvu zigomba gutuma amasezerano y'akazi bari bafitanye aseswa, kandi akanamugaragariza impamvu zituma ayo masezerano aseswa, yaba atabikoze kandi nta kosa rikomeye ryakozwe, amasezerano y'akazi bari bafitanye akaba aseshwe mu buryo budakurikije ibyo amategeko ateganya. Mu yandi magambo, iyo umukoresha asereye umukozi atamuhaye integuza kandi yagombaga kuyimuha kandi akaba nta kosa rikomeye yakoze, aba aseshe amasezerano mu buryo bunyuranyije n'amategeko. [19] Ku birebana n'uru rubanza, dosiye igaragaramo ibaruwa ASA MICROFINANCE Plc yandikiye Dushimimana Jonathan ku wa 26/04/2018, isesha amasezerano ye y'akazi nta integuza "Termination of employment contract

without notice”. Muri icyo baruwa, ASA MICROFINANCE Plc yasobanuye ko ishingiyeye ku ibaruwa ya BNR yo ku wa 18/04/2018, aho yasobanuye ko bitewe nuko Dushimimana Jonathan afite impamyabumenyi mu burezi, ikaba idahuye n’imirimo ikorwa n’ibigo by’Imari kandi akaba adafite uburambe mu bigo by’Imari biciriritse, BNR isanga adakwiye kwemererwa kuba umukozi ushinze inguzanyo muri ASA MICROFINANCE, Dushimimana Jonathan amenyeshejwe ko amasezererana y’akazi yari afitanye na ASA MICROFINANCE (Rwanda) Plc aseshwe nta nteguza guhera ku wa 27/04/2018; imusaba gushyikiriza umuyobozi w’ishami rya Mahoko ibikoreshe byose yari afite, hanyuma akazazana iherekanyabubasha yakoranye nawe risinyweho n’uwo umuyobozi ndetse ryemejwe n’umuyobozi w’icyo Kigo muri ako Karere (Region) kugira ngo bifashe mu gutegura icyemezo cy’imirimo yakoze no kubarirwa amafaranga yemererwa n’amategeko (Final payment)¹.

1 Based on BNR Letter our/Ref: 2200/2018-00820/00020 BNR (802.2.2) dated 18th April 2018 stipulate that due to your qualification in education which mismatching with financial sector and also the lack of experience in Microfinance Business compared to actual job descriptions, reason why the National Bank of Rwanda cannot approve you as Loan officer of ASA Microfinance (Rwanda) Plc. Therefore, we regret to inform you the termination of your employment contract you signed with ASA Microfinance Rwanda Ltd on February 9th, 2018 without notice effect from 27th April 2018. We Request you to handover company’s property at your disposal to Mr. IYAKAREMYE Gilbert, Team leader of Mahoko Branch after that, you will be requested to bring handover and release order duly signed by the Team leader and approved by Regional Manager to facilitate preparation of your certificate of service rendered and Final payment.

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[20] Dosiye igaragaramo ibaruwa ASA MICROFINANCE Plc yandikiye Dushimimana Jonathan ku wa 18/04/2018, imumenyesha ibyo agomba gukora “Your duties”. Imusobanurira ko hakurikijwe amasezerano yagiranye nayo ku wa 16/08/2018, cyane cyane mu ingingo ya 4 ivuga ko ashobora kwimurirwa ahandi hantu ubuyobozi bwumva bumukeneye, afite inshingano zo gukorera iherekanyabubasha (handover) umuyobozi mushya w’ishami rya Mahoko, kandi ko mu cyumweru cy’ukwezi kwa Gicurasi, ni ukuvuga ku wa 04/05/2018, azamenyeshwa inshingano zindi azaba yahawe². [21] Dosiye igaragaramo kandi ibaruwa Banki Nkuru y’u Rwanda (BNR) yandikiye ASA MICROFINANCE ku wa 18/04/2018, ivuga ko imaze gusesengura impamyabumenyi ya Dushimimana Jonathan, uburambe bwe ndetse n’inshingano z’umukozi ushinze gutanga inguzanyo (), zirimo gusesengura imishinga isabirwa inguzanyo, no kuba afite impamyabumenyi mu burezi kandi akaba adafite uburambe mu bigo by’imari biciriritse, Banki Nkuru y’u Rwanda isanga Bwana Dushimimana Jonathan adakwiye kuba umukozi ushinze gutanga inguzanyo muri ASA MICROFINANCE Plc³. [22] Dosiye igaragaramo na none inyandiko igaragaza ibyo Dushimimana Jonathan yahawe asezererwa mu kazi yiswe: Final Payment Sheet for Employee (décompte final) yo ku wa 27/04/2018. Muri icyo nyandiko ahanditse Notice pay (integuzwa) y’iminsi 15 imbere yaho hariho akarongo gatambitse (-), bivuze ko nta mafaranga

y'integuza yatanzwe y'iminsi 15, Dushimimana Jonathan yagombaga guhabwa. [23] Urukiko rurasanga, nk'uko byasobanuwe haruguru, iyo umukoresha asanze hari impamvu zigomba gutuma amasezerano yari afitanye n'umukozi aseswa, afite inshingano zo kumuha integuza kandi akamumenyesha mu nyandiko impamvu zigomba gutuma ayo masezerano aseswa, yaba atabikoze kandi nta kosa rikomeye umukozi yakoze, akaba aseshe amasezerano mu buryo bunyuranyije n'ibyo amategeko ateganya. Kuba rero ASA MICROFINANCE Plc yaraseshe amasezerano yari ifitanye na Dushimimana Jonathan ishingiyeye ku kuba BNR itaramwemeje nk'umukozi ushinze inguzanyo, ariko ntimuhe integuza kandi yaragombaga kuyihabwa, kuko nta kosa yakoze, birumvikana ko amasezerano yaseshwe mu buryo bunyuranyije n'amategeko nk'uko bitanywa n'ingingo ya 1, agace ka 21, y'Itegeko N° 13/2009 yibukijwe haruguru. [24] Urukiko rurasanga ibyo uhagarariye ASA MICROFINANCE Plc avuga ko nyuma y'uko BNR itemeje Dushimimana Jonathan atagombaga guhabwa integuza ngo akomeze gukora kuko icyemezo cya BNR cyubahirizwa ako kanya (with immediate effect), nta shingiro bifite, kuko

2Based on contract you signed with ASA MICROFINANCE RWANDA Ltd on 16th August 2018 especially in it article 4 stipulated that you may be transferred to any other place where management feel necessary. This is to inform you that your duties as Team leader remain the same once you are still handing over to the new Team leader. Thus, you are requested to handover changes either groups, clients, assets etc... of Mahoko Branch to the new Team leader and once everything is property done and understood by new team leader up to 1st week of may meaning 4th May 2018, we will issue to you a letter for next assignment. We would like also to request you to execute it in the very good smooth running of the Branch meaning without any complication in the Branch. Management expects your usual cooperation. 3 However, by analyzing his qualification, professional experience and job description, it is clear that as the Loan officer, he will be analyzing loan projects from clients including their cash flows and financial performance. In this regard, given that he has a qualification in education and has no experience in microfinance business, it will be hard for him to perform this job. It is with the above perspective that the national Bank of Rwanda regrets to inform you that Mr. Dushimimana Jonathan is not approved as the loan officer of microfinance Rwanda Ltd.

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usibye kubivuga gusa nta kimenyetso na kimwe abitangira gihamya ko ibyo avuga ari ukuri. Uretse n'ibyo, nk'uko byasobanuwe haruguru, impamvu ituma umukozi asezererwa nta nteguza ni mu gihe yakoze ikosa rikomeye, kandi Dushimimana Jonathan nta kosa yigeze akora, byumvikana ko nta mpamvu yari gutuma adahabwa integuza. [25] Ku byo uhagarariye ASA MICROFINANCE Plc avuga ko Dushimimana Jonathan yahawe integuza mu mafaranga, Urukiko rurasanga nta shingiro bifite, kuko nta kimenyetso abitangira kandi Final Payment Sheet for Employee (décompte final) yo ku wa 27/04/2018, igaragaza ko nta mafaranga y'integuza y'iminsi 15 yatanzwe. Naho ibyo avuga ko yahawe integuza y'iminsi cumi n'itanu, akora iminsi umunani gusa, bityo ko yahawe integuza kuko décompte final igaragaza ko yishyuye iminsi 6, Urukiko rurasanga atari ukuri, kuko nk'uko byagaragajwe haruguru, ku wa 18/04/2018, nyuma y'uko BNR

itemeje Dushimimana Jonathan, kuko atujuje ibisabwa ku mwanya w'ushinzwe gutanga inguzanyo, kuri iyo tariki ASA MICROFINANCE Plc yandikiye Dushimimana Jonathan ibaruwa imusaba gukorera ihererakanyabubasha (handover) umuyobozi mushya w'ishami rya Mahoko, ariko muri iyo baruwa ntiyigeze imumenyesha ko imuhaye integuza, ahubwo yamubwiye ko ku wa 04/05/2018, izamumenyesha inshingano zindi azaba yahawe; bityo ntabwo iyo baruwa yafatwa nk'integuza, kuko itigeze imumenyesha ko imuhaye integuza, ngo inamumenyeshe impamvu zigomba gutuma amasezerano bari bafitanye aseswa nk'uko biteganywa n'ingingo z'amategeko zibukijwe haruguru. Ikindi gishimangira ko nta nteguza Dushimimana Jonathan yahawe ni uko ku wa 26/04/2018, ASA MICROFINANCE Plc yamwandikiye imumenyesha ko amasezerano yari afitanye nayo aseshwe nta nteguza; bivuze ko nayo ubwayo yemeje ko nta nteguza yigeza itanga. Ibyo binashimangirwa kandi no kuba muri décompte final yakozwe na ASA MICROFINANCE Plc handitse ko amafaranga y'integuza y'iminsi 15 ntayo ahawe, kuko nk'uko byasobanuwe haruguru imbere y'ahanditse Notice pay (15 days) hari akarongo gatambitse (-), bivuze ko ntayo yahawe.

1. 2. Kumenya niba Dushimimana Jonathan yagenerwa indishyi asaba [26] Dushimimana Jonathan n'umwunganira bavuga ko basaba Urukiko rw'Ubujurire gutegeka ASA MICROFINANCE Plc kumuha indishyi zingana na 2,702,272 Frw zategetswe mu rubanza No RSOC 000169/2018/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 14/05/2019, hiyongereyeho indishyi zo kwirukanwa binyuranyije n'amategeko zingana n'umushahara we w'amezi 6 zihwanye na 1,290,000 Frw, ndetse n'indishyi z'amasaha y'ikirenga zingana na 566,000 Frw. Bavuga kandi ko nta nteguza yahawe, ko hari n'amafaranga ye ya cash security yakatwaga ku mushahara we ASA MICROFINANCE Plc yafatiriye akaba asaba kuyahabwa. [27] Uhagarariye ASA MICROFINANCE Plc yiregura ku ndishyi Dushimimana Jonathan asaba, avuga ko nta shingiro zahabwa, kuko ikirego cye nta shingiro gifite, kandi ko nta bimenyetso azitangira. Ku birebana n'indishyi z'amasaha y'ikirenga zingana na 566.000 Frw, Dushimimana Jonathan asaba, avuga ko nta shingiro ryazo kuko ntaho ASA MICROFINANCE Plc nk'umukoresha we yamusinyiye kuyakora. Asoza avuga ko indishyi zose Dushimimana Jonathan yasabye muri uru rubanza ASA MICROFINANCE Plc yazireguyeho, ko asaba Urukiko kuzareba uburyo bazireguyeho mu manza zabanje. UKO URUKIKO RUBIBONA

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- [28] Urukiko rurasanga kuri iyi ngingo Dushimimana Jonathan asaba guhabwa indishyi yagenewe n'Urukiko Rwisumbuye rwa Gasabo, hiyongereyeho indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, indishyi z'amasaha y'ikirenga, integuza atahawe, ndetse n'amafaranga ya cash security yakatwaga ku mushahara we yafatiriwe na ASA MICROFINANCE Plc. Bityo uru Rukiko rurasuzuma indishyi Dushimimana Jonathan yaregeye kuva urubanza rutangiye mu Rukiko Rwisumbuye rwa Gasabo, harebwe ko izo yagenewe zifite ishingiro, ndetse hanasuzumwe ko n'izo atagenewe muri urwo Rukiko akazijuririra mu Rukiko Rukuru mu bujurire bwuririye ku bundi zifite ishingiro.

2. a. Ibyerekeye indishyi zo kwirukanwa mu buryo budakurikije amategeko [29] Ingingo ya 28, igika cya 1, y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda mu gihe Dushimimana Jonathan yasezererwaga ku kazi, iteganya ibikurikira: "Amasezerano y'akazi y'igihe kizwi ahita arangira iyo icyo gihe cyateganyijwe kirangiye. Kwirukanwa bidashingiye ku mpamvu ziteganywa n'amategeko cyangwa kwegura mbere y'uko amasezerano y'akazi y'igihe kizwi arangira bituma uruhande rusheshe amasezerano rutanga indishyi zingana n'umushahara w'igihe cy'amasezerano cyari gisigaye, hatirengagijwe izindi ndishyi zakwishyurwa." [30] Ku birebana n'uru rubanza dosiye igaragaramo amasezerano y'akazi yabaye hagati ya Dushimimana Jonathan na ASA MICROFINANCE Plc ku wa 16/08/2017. Ingingo ya 2 y'ayo masezerano igaragaza ko azamara igihe cy'umwaka umwe ushobora kongerwa hashingiwe ku musaruro azatanga mu kazi, ko kandi mu gihe Dushimimana Jonathan azaba yemeye kuyikorera azahabwa amezi atandatu y'igeragezwa mbere yo kwemezwa⁴. Igaragaramo kandi ibaruwa ASA MICROFINANCE Plc yandikiye Dushimimana Jonathan ku wa 26/04/2018, isesa amasezerano ye y'akazi nta nteguza "Termination of employment contract without notice". Inagaragaramo na none ibaruwa UMWALIMU SACCO yandikiye Dushimimana Jonathan ku wa 10/07/2018, igaragaza ko umushahara yatahanaga ungana na 160,720 Frw. [31] Urukiko rurasanga, nk'uko byasobanuwe haruguru, itegeko ryateganyaga ko uruhande ruseshe amasezerano y'akazi y'igihe kizwi mu buryo bunyuranyije n'amategeko, rutanga indishyi zingana n'umushahara w'igihe cy'amasezerano cyari gisigaye. Kuba rero amasezerano y'akazi yari hagari ya Dushimimana Jonathan na ASA MICROFINANCE Plc yari ay'igihe kizwi kandi ASA MICROFINANCE Plc ikaba yarayaseshe hasigaye amezi ane ngo arangire, birumvikana ko igomba kubatangira indishyi zihwanye n'umushahara we w'amezi ane yari asigaye. [32] Urukiko rurasanga izo ndishyi zigomba kubarirwa ku mushahara yatahanaga aho kuba ku mushahara mbumbe nk'uko byemejwe mu rubanza rwa Niwemugeni Jeannette na KCB Bank Rwanda Ltd, aho Urukiko rw'Ikirenga rwasobanuye ko amafaranga umukozi ahabwa igihe asezerewe mu kazi, atari amafaranga mbumbe (brut) nk'uko Niwemugeni Jeannette n'abamwunganira babivugaga, ahubwo ari amafaranga atahana mu ntoki (net) hamaze kuvanwamo imisoro ku musaruro⁵. Bityo Dushimimana Jonathan agomba guhabwa 160,720 Frw

⁴ This appointment is on contractual basis which is for one year from the date of joining and it is renewable depending on your performance. When you accept this offer you will have probation of 6 Months before confirmation. ⁵ Reba igika cya 36 cy'urubanza No RS/INJUST/RSOC 00001/2019/SC rwaciwe ku wa 31/01/2020, haburana Niwemugeni Jeannette na KCB Bank Rwanda Ltd.

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X 4 = 642,880 Frw aho guhabwa 860,000 Frw yemejwe n'Urukiko Rwisumbuye rwa Gasabo rubariye ku mushahara mbumbe. [33] Urukiko rurasanga nubwo Dushimimana Jonathan asaba indishyi zo kwirukanwa mu buryo budakurikije amategeko agasaba n'indishyi z'igihe cyari gisigaye ngo amasezerano arangire, ariko izo ndishyi zombi ntabwo zibangikanwa, ahubwo

nk'uko byasobanuwe haruguru, hakurikijwe ingingo ya 28 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda mu gihe Dushimimana Jonathan yasezererwaga ku kazi, iyo umukozi yirukanwe mu buryo budakurikije amategeko afite amasezerano y'igihe kizwi ahabwa indishyi zingana n'umushahara w'igihe cy'amasezerano cyari gisigaye, yaba afite amasezerano y'igihe kitazwi, agahabwa indishyi z'akababaro zibazwe mu buryo buteganywa n'ingingo ya 33 y'iryo Tegeko. Kuba rero Dushimimana Jonathan yari afite amasezerano y'igihe kizwi, birumvikana ko agomba guhabwa indishyi zingana n'umushahara w'igihe cy'amasezerano cyari gisigaye nk'uko zabazwe haruguru.

3. b. Integuza [34] Ingingo ya 27, igika cya 1, y'Itegeko N° 13/2009 ryibukijwe haruguru, iteganya ibikurikira: "Iyo bibaye ngombwa gusesa amasezerano y'akazi hatanzwe integuza, igihe cy'integuza kigomba kungana na: 1. iminsi cumi n'itanu (15) iyo umukozi yakoze igihe kiri muni y'umwaka; 2. ukwezi kumwe iyo umukozi yakoze mu gihe cy'umwaka cyangwa kirenze." [35] Mu rubanza N° RS/INJUST/RSOC 00001/2019/SC rwaciye ku wa 31/01/2020, haburana NIWEMUGENI Jeannette na KCB BANK Plc rwibukijwe haruguru, Urukiko rw'Ikirenga rukurikije ibivugwa n'abahanga mu mategeko François Gaudu na Raymonde Vatinet, kimwe na Gilles Auzero na Emmanuel Dockes⁶, rwasobanuye ko mu gihe cy'integuza umukozi aba ari mu kazi, ariko ko umukoresha ashobora gusaba umukozi kutaza mu kazi mu gihe cy'integuza, ahubwo akamugenera ingurane mu mafaranga. [36] Dosiye igaragaramo inyandiko igaragaza ibyo Dushimimana Jonathan yahawe asezererwa mu kazi yiswe: Final Payment Sheet for Employee (décompte final) yo ku wa 27/04/2018. Muri iyo nyandiko ahanditse Notice pay (integuza) y'iminsi 15 imbere yaho hariho akarongo gatambitse (-), bivuze ko nta mafaranga y'integuza yatanze y'iminsi 15, Dushimimana Jonathan yagombaga guhabwa. Ikindi, muri iyo décompte final) ahanditse Dues on salary (if any): $216.000 \times 6/30 = 43,200$ Frw, nubwo uhagarariye ASA MICROFINANCE Plc ayita ko ari mafaranga y'iminsi itandatu yari isigaye mu minsi 15 y'integuza yahawe, nta kigaragaza ko ibyo avuga ari ukuri, kuko nk'uko byavuzwe haruguru, Dushimimana Jonathan yasezerewe nta nteguza ahawe. [37] Urukiko rurasanga, nk'uko bimaze kwibutswa, Dushimimana Jonathan ntabwo yahawe integuza, kandi yari ataruzuzwa umwaka akora, akaba rero agomba guhabwa integuza ihwanye n'iminsi cumi n'itanu (15), zihwanye n'umushahara yatahanaga ukubye iminsi 15, ukabaganya

6 Le préavis est en principe une période de travail, le salarié devant rester à la disposition de l'employeur. L'employeur peut cependant dispenser le salarié de l'exécution du préavis, en lui versant alors l'équivalent du salaire sous forme d'une indemnité de préavis; François GAUDU et Raymonde VATINET, Droit du travail, 5e édition, Dalloz, 2013, p. 213-214.

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iminsi 30 y'akazi ($160,720 \text{ Frw} \times 15/30 = 80,360$ Frw (ibihumbi mirongo inani na magana atatu mirongo itandatu).

4. c. Ibyerekeye indishyi zo kudahabwa icyemezo cy'imirimo yakoze [38] Ingingo ya 38 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryakoreshwaga mu gihe Dushimimana Jonathan yasezererwaga ku kazi, iteganya ibikurikira: "Iyo igihe cy'amasezerano y'akazi kirangiye, umukoresha agomba guha umukozi umushahara wa nyuma hamwe n'icyemezo ko yamukoreye. Icyo cyemezo kigaragaza ko yamukoreye, itariki yatangiriyeho akazi, itariki akazi karangiriyeho n'akazi yakoraga. Iyo umukoresha yanze gutanga iki cyemezo cyangwa ntashyiremo kimwe mu bisabwa nk'uko bigaragazwa mu gika kibanziriza iki cyangwa se akagitanga atinze, ashobora gusabwa kwishyura indishyi z'akababaro zagenwa n'urukiko rubifitiye ububasha." [39] Dosiye igaragaza ko mu rubanza No RSOC 000169/2018/TGI/GSBO, Urukiko Rwisumbuye rwa Gasabo rwageneye Dushimimana Jonathan indishyi z'uko atahawe icyemezo cy'umurimo zihwanye na 215,000x4=860,000 Frw, ni ukuvuga umushahara mbumbe gukuba inshuro enye. [40] Nk'uko byasobanuwe haruguru, mu rubanza rwa Niwemugeni Jeannette na KCB Bank Rwanda Ltd, Urukiko rw'Ikirenga rwasobanuye ko amafaranga umukozi ahabwa igihe asezerewe mu kazi, ari ayo atahana mu ntoki (net) hamaze kuvanwamo imisoro ku musaruro; bityo Dushimimana Jonathan agomba guhabwa indishyi zihwanye n'umushaha we w'ukwezi kumwe, ni ukuvuga 160,720 Frw, aho kuba 860,000 Frw yemejwe n'Urukiko Rwisumbuye rwa Gasabo. Ibyo kuba yahabwa indishyi zihwanye n'umushaha w'ukwezi kumwe ni nabyo byemejwe n'Urukiko rw'Ikirenga mu rubanza Karangwa John yaburanaga na ADEPR mu izina ry'uyihagarariye7.
5. d. Ibyerekeye indishyi zo kudahabwa konji [41] Ingingo ya 53 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda, ryakoreshwaga mu gihe Dushimimana Jonathan yasezererwaga ku kazi, iteganya ibikurikira: "Uretse ibiteganywa n'amasezerano rusange y'abakozi n'abakoresha cyangwa se n'amasezerano y'umuntu ku giti cye, umukozi ahabwa n'umukoresha ikiruhuko cy'umunsi umwe n'igice byo ku mibizi buri kwezi kw'akazi. (...). [42] Dosiye y'urubanza igaragaza inyandiko yiswe: Final Payment Sheet for Employee (décompte final) yo ku wa 27/04/2018. Iyo nyandiko igaragaza ko Dushimimana Jonathan yishyuye 75,600 Frw y'iminsi icumi n'igice (10.5) ya konji atahawe. Kuba décompte final igaragaza ko Dushimimana Jonathan yayahawe, nta yandi mafaranga ya konji agomba guhabwa muri uru rubanza. Bityo indishyi za konji yari yagenewe n'Urukiko Rwisumbuye rwa Gasabo, ntaho zishingiye.
6. e. Ibyerekeye indishyi z'amasaha y'ikirenga
- 7 Reba igika cya 26 cy'urubanza No RS/INJUST/RSOC 00004/2024/SC rwaciwe ku wa 04/10/2024, haburana Karangwa John na ADEPR mu izina ry'uyihagarariye.

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- [43] Ingingo ya 12, igika cya 1, y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda." [44] Ingingo ya 4 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso iteganya ko urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo

aregera cyangwa asaba (...). [45] Urukiko rurasanga, ikimenyetso Dushimimana Jonathan ashingiraho avuga ko yakoraga amasaha y'ikirenga ari inyandiko abakozi basinyagaho bageze ku kazi ndetse banatashye, ikaba itagaragaza aho umukoresha we yamusinyiye ko yakoze amasaha y'ikirenga kandi ko agomba kuyahemberwa; bityo indishyi z'amasaha y'ikirenga Dushimimana Jonathan asaba ntazo agomba guhabwa kuko nta bimenyetso azitangira.

7. f. Ibyerekeye imperekeza [46] Ingingo ya 35, igika cya 1 y'Itegeko N° 13/2009 ryibukijwe haruguru, ryakoreshwaga mu gihe Dushimimana Jonathan yasezererwaga ku kazi, iteganya ibikurikira: "Umukoresha agomba guha impererekeza zo gusezererwa ku kazi cyangwa gusesa amasezerano umukozi umaze nibura amezi cumi n'abiri (12) akora nta guhagarika." [47] Urukiko rurasanga, kuba Dushimimana Jonathan yari ataramara umwaka akorera ASA MICROFINANCE Plc nta guhagarika, birumvikana ko nta mperekeza agomba guhabwa.
8. g. Ibyerekeye cash security [48] Ku bijyanye n'ibyo Dushimimana Jonathan avuga ko asaba gusubizwa amafaranga ya cash security yagiye akatwa ku mushahara we, Urukiko rurasanga ayo mafaranga atarigeze ayaregera mu gihe urubanza rwatangiraga kuburanishwa mu Rukiko Rwisumbuye rwa Gasabo, ahubwo yayasabye bwa mbere mu Rukiko Rukuru, mu rubanza rusubirishwamo ku mpamvu z'akarengane, ariko urwo Rukiko ntabwo rwayasuzumye kuko rwasanze atarirukanwe mu buryo bunyuranyije n'amategeko. Bityo ntabwo aya mafaranga yasuzumwa mu rubanza rw'akarengane mu gihe ataregewe urubanza rutangira. [49] Urukiko rurasanga, nk'uko byagaragajwe haruguru, hari amafaranga yiswe Dues on salary (if any) angana na 43,200 Frw uhagarariye ASA MICROFINANCE Plc, Dushimimana Jonathan yita integuza y'iminsi 6 nubwo atari yo nk'uko byagaragajwe haruguru, ikidashidikanywaho nuko ayo mafaranga yayahawe, akaba rero agomba gukurwa mu yo yagenewe muri uru rubanza; bityo agomba guhabwa 642,880 Frw + 80,360 Frw + 160,720 Frw - 43,200 Frw = Ibihumbi magana inani na mirongo ine na magana arindwi mirongo itandatu (840,760 Frw).
9. 3. Kumenya niba indishyi zo gusiragizwa mu rubanza, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro [50] Dushimimana Jonathan n'umwunganira basaba Urukiko rw'Ubujurire gutegeka ASA MICROFINANCE Plc kumwishyura: - indishyi zingana na 1.000.000 Frw kubera gusiragizwa mu rubanza rusubirishwamo;

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- amafaranga y'ikurikiranarubanza angana na 2.000.000 Frw kubera ko atuye kure ku buryo kuza kuburana bimusaba kwigaba agacumbi muri Kigali; - amafaranga yishyuwe abavoka angana na miliyoni imwe (1.000.000 Frw) mu rubanza rusubirishwamo ku mpamvu z'akarengane kuko ASA MICROFINANCE Plc yajuriye nkana; - 800.000 Frw yishyuye Abavoka mu gutangira inzira z'akarengane bandikira Perezida w'Urukiko rw'Ubujurire bamusaba ko urubanza No RSOCA 00120/2019/HC/KIG rusubirishwamo ku mpamvu z'akarengane, ndetse

na 800,000 Frw yishyuye Avoka mu gihe yandikiraga Urwego rw'Umuvunyi ngo rusuzume akarengane ke. [51] Bavuga kandi ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ASA MICROFINANCE Plc isaba, nta shingiro afite, kuko ari yo yatumye uru rubanza rubaho, isesa amasezerano y'akazi yari ifitanye na Dushimimana Jonathan itamuhaye integuza, nk'uko bigaragazwa n'ibaruwa imusezerera yo ku wa 26/04/2018. [52] Uhagarariye ASA MICROFINANCE Plc avuga indishyi zo gusiragizwa mu rubanza zingana na miliyoni imwe (1.000.000 Frw), Dushimimana Jonathan asaba zo kuri uru rwego, nta shingiro zifite kuko Itegeko rigenga umurimo ritaziteganya, ko kandi atazitangira ibimenyetso. Ku birebana n'amafaranga y'ikurikiranarubanza angana 2.000.000 Frw asaba, ayireguraho avuga ko nta shingiro ryayo, kuko ari we wakoze ikosa ryo kurega nta mpamvu, kandi akaba atagaragaza ibimenyetso cyangwa itegeko azishingiraho. [53] Avuga kandi ko ku birebana n'amafaranga angana na miliyoni imwe (1.000.000 Frw) yishyuye Abavoka Dushimimana Jonathan asaba, ko adakwiye kuyahabwa kuko atayagaragariza ibimenyetso cyangwa itegeko ayashingiraho. Ku birebana na 800.000 Frw asaba avuga ko yayishyuye Avoka mu gutangira inzira z'akarengane yandikira Perezida w'Urukiko rw'Ubujurire, na 800.000 Frw yishyuye Avoka wandikiye Urwego rw'Umuvunyi, ayireguraho avuga ko Dushimimana Jonathan agomba kuyirengera, kuko yabikoze nta mpamvu, akaba kandi nta n'ikimenyetso ayagaragariza. [54] Akomeza avuga ko ASA MICROFINANCE Plc ari yo ikwiye guhabwa amafaranga y'ibyagiye ku rubanza, asaba Urukiko rw'Ubujurire gutegeka Dushimimana Jonathan kwishyura ASA MICROFINANCE Plc amafaranga y'igihembo cya Avoka angana na 1,000,000 Frw n'ay'ikurikiranarubanza angana na 1,000,000 Frw, yiyongera ku yatanzwe mu rubanza No RSOCA 00120/2019/HC/KIG rusabirwa gusubirishwamo ku mpamvu z'akarengane. UKO URUKIKO RUBIBONA [55] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru iteganya ibikurikira: "Ikirego cy'amafaranga y'ikurikirana rubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo, gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

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- [56] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Dushimimana Jonathan asaba agomba kuyahabwa kubera ko byagaragaye ko hari akarengane yagize mu rubanza No RSOCA 00120/2019/HC/KIG rwasabiwe gusubirwamo ku mpamvu z'akarengane, kandi bikaba bigaragara ko byabaye ngombwa ko ashaka Avoka umwunganira kuva mu nkiko zabanje kugeza kuri uru rwego. Urukiko rurasanga ariko ayo asaba ari menshi kandi nta n'ibimenyetso ayatangira, bityo mu bushishozi bwawo rukaba rumugeneye ku nzego zose miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka n'ibihumbi magana ane (400.000 Frw) yo gukurikirana urubanza, akubiyemo n'amagarama yatanze, akaba agomba gutangwa na ASA MICROFINANCE Plc. Naho indishyi zo gusiragizwa mu rubanza Dushimimana Jonathan asaba ntazo agomba guhabwa, kuko nta shingiro zifite, cyane ko ariwe watangije uru rubanza akaba ari nawe watanze ikirego cy'akarengane. III.

ICYEMEZO CY'URUKIKO [57] Rwemeje ko ikirego cyatanzwe na Dushimimana Jonathan gisaba gusubirishamo ku mpamvu z'akarengane urubanza No RSOCA 00120/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 30/01/2020, gifite ishingiro kuri bimwe. [58] Rutegetse ASA MICROFINANCE Plc kwishyura Dushimimana Jonathan indishyi zihwanye n'ibihumbi magana inani na mirongo ine na magana arindwi mirongo itandatu (840,760 Frw) nk'uko zasobanuwe haruguru. [59] Rutegetse ASA MICROFINANCE Plc kwishyura Dushimimana Jonathan, amafaranga y'u Rwanda miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka n'ibihumbi magana ane (400.000 Frw) y'ikurikiranarubanza, ku nzego zose.

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