

RWANDA / JUDGMENT

NIWEMFURA v COOPERATIVE UMWALIMU SACCO GASABO

RSOC00011/2024/TGI/GSBO

COURT

Intermediate Court

DECIDED

7 May 2025

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NIWEMFURA v COOPERATIVE UMWALIMU SACCO GASABO

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Text

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NIWEMFURA v COOPERATIVE UMWALIMU SACCO GASABO [Rwanda URUKIKO RWISUMBUYE – RSOC00011/2024/TGI/GSBO (Dusabimana, P.J.) 07 Gicurasi 2025] Amategeko agenga imanza z’umurimo – Amasezerano y’umurimo – Kwirukanwa binyuranyije n’amategeko – Umukoresha usheshe amasezerano y’umurimo afitanye n’umukozi agomba kuba afite impamvu yumvikana, akubahiriza icyo amategeko ateganya ku birebana n’uburyo bikorwamo, iyo atabyubahirije aba yirukanye umukozi mu buryo budakurikije amategeko. Incamake y’ikibazo: Niwemfura yareze Cooperative Umwalimu Sacco Gasabo mu Rukiko Rwisumbuye rwa Gasabo ko yamwirukanye mu buryo bunyuranyije n’amategeko maze abisabira indishyi. Asobanura ko ubwo yari umukozi ushinzwe “Central Operations Manager” hari umukiriya witwa Niyitegeka wahawe inguzanyo, maze nyuma y’igihe gito asaba ko yakongererwa inguzanyo yo gusosa inzu ye yubakaga. Iyo nguzanyo y’inyongera yayisabye Cooperative Umwalimu Sacco (Kamonyi Branch) ibanza kuyimwima. Ngo ariko nyuma azakuyihabwa ku mabwiriza yatanze n’Umuyobozi Mukuru wayatanze kuri “loan department” nay o iyatanga k’ubuyobozi bwa “credit department” na bwo

buha amabwiriza “branch manager” wa Cooperative Umwalimu Sacco Branch. Urega akomeza avuga ko nyuma y’imyaka 7 iyo nguzanyo itanzwe umuyobozi mukuru wa cooperative Umwalimu Sacco yamusabye gutanga ibisobanuro by’uburyo iyo nguzanyo yatanzwemo, arabitanga ariko ntibyamunyura maze avuga ko iyo dosiye yakozwemo amakosa menshi yemeza ko ikibazo kigiye gushyikirizwa komite ya discipline kugira ngo isuzume niba nta mategeko yirengagijwe cyangwa niba nta n’igihombo byateje Ikigo. Urega avuga ko iyo komite yasanze ikibazo cyabaye mu gihe Ikigo cyarimo kiyubaka kuko ibintu byakorwaga mu kagari ndetse isanga imikorere mibi igizwe ahanini na “direct and indirect influences” z’abayobozi. Iyo komite ya “discipline” yemeje ko abakozi nawe arimo bakwiye guhanishwa igihano cyo guhagarikwa ku kazi by’agateganyo mu gihe cy’iminsi umunani idahemberwa. Avuga ko nyuma y’isesengura ryakozwe, ubuyobozi ngo bwasanze yarakoze amakosa akomeye, arabimenyeshwa, hanyuma mu gihe kitarenze amasaha 48 amasezerano ye y’akazi araseswa kubera ayo makosa. Uregwa avuga ko Niwemfura yirukaniwe impamvu yumvikana, yo kuba yarakoze amakosa akomeye, aho abakozi b’ishami yari ayoboye birengagije “policies” ubwo batangaga inguzanyo nta nyandiko n’imwe cyangwa amasezerano agaragaza ibyo impande zombi zemeranyijweho mu gutanga inguzanyo y’inyongera. Akomeza avuga ko mu isesengura ry’inguzanyo batabanje gusuzuma ko ibisabwa byose byuzuye, no kuba byitwa ko inguzanyo yahawe umukiriya witwa Niyitegeka yari iyo kugura inzu kandi n’ubundi yari yarahawe inguzanyo yo kugura iyo nzu mbere, bagombye kumubaza amafaranga yatse icyo yayakoresheje. Ku kibazo kijyanye n’ibyo Urega avuga ko hatubahirijwe “procedure”, nta shingiro bifite, kuko ibihe byose byubahirijwe. Incamake y’icyemezo:1. Ikosa rikomeye ni ikosa ritihanganirwa (faute inéxcusable), rifite uburemere bwihariye, rikomoka ku gukora cyangwa kwanga gukora ku bushake, ugikora cyangwa uwanga kugikora azi neza ingaruka zabyo kandi nta gisobanuro abifitiye.

2. Umukoresha usheshe amasezerano y’umurimo afitanye n’umukozi agomba kuba afite impamvu yumvikana, akubahiriza icyo amategeko ateganya ku birebana n’uburyo bikorwamo, iyo atabyubahirije aba yirukanye umukozi mu buryo budakurikije amategeko. Ikirego gifite ishingiro kuri bimwe. Ikirego kiregera kwiregura nta shingiro gifite. Amagarama aherera ku Uregwa.

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Amategeko yashingiweho: Itegeko N° 66/2018 ryo ku wa 30/8/2018 rigenga umurimo mu Rwanda, ingingo ya 26, 42, 30 n’iya 38. Itegeko No 22/2018 ryo ku wa 29/04/2018 ryereye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruza, iz’umurimo n’iz’ubutegetsi, ingingo ya 111. Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 32. Iteka rya Minisitiri N°17/MOJ/AG/20 ryo ku wa 30/10/2020 rigenga amafaranga atangwa mu manza z’imbenezamubano, iz’ubucuruza, iz’umurimo n’iz’ubutegetsi, ingingo ya 4. Iteka N° 002/19.20 ryo ku wa 17/3/2020 rya Minisitiri rishyiraho urutonde rw’amakosa akomeye, ingingo ya 2. Imanza zifashishijwe: RADA 00003/2019/CA, Leta y’u Rwanda / Minisitiri y’Ubucuruza n’Inganda v. Ndahayo Pascal, rwaciwe n’Urukiko rw’Ikirenga ku wa 12/06/2020. RS/INJUST/RSOC00001/2019/SC, Niwemugeni v. KCB Rwanda Ltd, rwaciwe n’Urukiko rw’Ikirenga ku wa 31/01/2020. RS/INJUST/RSOC00001/2017/SC, Ruhimbaza v. Banki ya Kigali Ltd, rwaciwe n’Urukiko rw’Ikirenga ku wa

24/11/2017. RSOC00007/16/CS - RSOC00004/16/CS, Alain Assamoi Niangoran v. Engen Petroleum Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 14/07/2017. RS/INJUST/RSOC 00003/2022/CA, Kayitaba Mukunde Eugénie v. Women for Women International, rwaciwe n'Urukiko rw'Ubujurire ku wa 21/12/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 02/02/2024, Niwemfura Laurent yatanze ikirego muri uru rukiko arega Cooperative Umwalimu SACCO Gasabo mu izina ry umuyobozi wayo, avuga ko yatangiye akazi ku wa 12/01/2009 ashinzwe Central Operations Manager, mu mwaka wa 2012 umukiliya witwa Niyitegeka Drocelle yasabye inguzanyo yo kugura inzu muri Cooperative Umwalimu SACCO Gasabo arayihabwa; mu mwaka wa 2014, yasabye inguzanyo y'inyongera Cooperative Umwalimu SACCO (Kamonyi Branch), ubuyobozi bw'ayo bumaze gusuzuma ubusabe bwe bubona ko adakwiye umwenda w'inyongera yasabaga ngo kuko yari ataramarana umwenda yahawe kimwe cya kabiri cy'igihe yagombaga kuwumarana. Niyitegeka Drocelle ntianyuzwe n'igisubizo yahawe n'ishami rya Kamonyi mu ibaruwa ye yo muri mutarama 2014, yandikiye ubuyobozi bukuru bwa Cooperative Umwalimu SACCO asaba kwishyurirwa amafaranga yasigaye ku nzu yaguriwe na Cooperative. Mu rwego rwo gukemura ikibazo cyari kivutse, ku wa 14 Mutarama 2014, Umuyobozi mukuru wa Cooperative yahaye amabwiriza "loan department" yo gushingira ku bushobozi (salaire) bwa Niyitegeka Drocelle agahabwa inguzanyo y'igihe kirekire gishoboka, ubuyobozi bwa credit department nabwo buha amabwiriza branch manager wa Cooperative Umwalimu SACCO Gasabo yo kwisubiraho igakorera Niyitegeka Drocelle ibyo yifuzaga (give her forms for top up loan) "branch" iza kumwemerera miliyoni zirindwi (7.000.000Frw). Mu ibaruwa numero 649/USC.10/2021 yo ku wa 29 Kamena 2021, nyuma y'imyaka 7 inguzanyo itanzwe, umuyobozi mukuru wa cooperative Umwalimu SACCO yamusabye gutanga ibisobanuro by'uburyo iyo nguzanyo yatanzwemo, ku wa 10 Nyakanga 2021 atanga ibisobanuro by'uko yahawe amabwiriza n'ubuyobozi bukuru bwa Cooperative Umwalimu SACCO kandi ko nta ngingo n'imwe ya «credit policy and procedure manuel» yakoreshwaga muri icyo gihe itarubahirijwe; Mu ibaruwa numero 672/USC.02/2022 yo ku wa 21 Nyakanga 2021, umuyobozi yamumenyesheje ko atanyuzwe n'ibisobanuro byatanzwe, yemeza ko bigaragara ko inguzanyo yatanganywe ubushishozi buke bituma ikorwamo amakosa menshi, hemezwa ko ikibazo kigiye gushyikirizwa komite ya discipline kugira ngo isuzume niba nta mategeko y'Umwalimu SACCO yirengagijwe cyangwa niba nta n'igihombo byateje ikigo.

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- [2] Niwemfura Laurent avuga ko Komite ishinze imyitwarire y'abakozi (comité de discipline), arirwo rwego rwagombaga gusuzuma amakosa yakozwe n'ingaruka zayo ikanasabira ibihano abakozi babigizemo uruhare, imaze gusuzuma uko ikibazo giteye, yasanze ikibazo cyarabaye mu gihe Umwalimu SACCO yari ikiri muri phase yo kwiubakira ibintu byinshi bikorwa mu kagari, babona ko inguzanyo ivugwa yishyurwe yose bityo nta gihombo itangwa ryayo ryateje. Abagize komite ishinze imyitwarire y'abakozi babonye kandi imikorere mibi igizwe ahanini na direct and indirect influences z'abayobozi, bityo basanga abakozi nawe arimo bakwiye guhanishwa igihano cyo guhagarikwa ku kazi by'agateganyo mu gihe cy'iminsi umunani idahemberwa. Ku wa 05/01/2022, mu ibaruwa numero 005/

USC.02/2022, umuyobozi mukuru wa Cooperative Umwalimu SACCO yamenyesheje Niwemfura Laurent amakosa y'uburiganya (fraud and forgery) yakoze arirukanwa, bikaba rero binyuranyije na "Internal rules and regulations" kuko ivuga ko umuyobozi mukuru yemeza igihano cyatanzwe na komite ishinze imyitwarire. Avuga ko yirukanywe mu buryo bunyuranyije n'amategeko, bityo akaba abisabira indishyi. [3] Me Safari Jean Bosco uburanira Cooperative Umwalimu SACCO Gasabo, avuga ko ku mwaka wa 2014 Madamu Niyitegeka Drocelle yasabye inguzanyo ya 8.000.000Frws mu ishami ry'Umwalimu SACCO rya Kamonyi Niwemfura Laurent yari abereye umuyobozi, iyo nguzanyo ikaba yari icyo gihe kugura inzu kandi bigaragara ko iyo nzu yari yarayiguze mbere mu mwaka wa 2012 icyo gihe ahabwa 7.000.000Frws habanje gukurwamo amafaranga yari asigaye mu nguzanyo ya mbere yahawe agura iyo nzu, ahabwa asigaye. Avuga ko byaje kugaragara ko iyo nguzanyo ya mbere yari yatanze nabi, Niwemfura Laurent na bagenzi be bakoraga mu ishami rya Kamonyi aho kugira ngo bakosore amakosa yakozwe mu mitangire y'inguzanyo ya mbere, ayo makosa nabo bayasubiyemo, bakaba bakurikiranwe ku makosa akurikira: - Kuba baremeye gutanga inguzanyo yo kugura inzu kandi bazi neza ko Madamu Niyitegeka Drocelle yahawe indi nguzanyo na none yo kugura iyo nzu batabanje kumenya niba koko inguzanyo yahawe mbere yakoreshejwe icyo yasabiwe; - Mu masezerano y'inguzanyo Niyitegeka yagiranye n'Umwalimu SACCO yitwa ayo kugurirwa inzu, Madamu Josiane n'umugabo we Mutezintare bivugwa ko bagurishije, basinye nka ba nyir'umutungo aho gusinya nk'abagurishije; - Mu gutanga inguzanyo, abagurishije sibo bishyuye, ahubwo amafaranga yose yashyizwe kuri konti ya Madamu Niyitegeka Drocelle aranayabikuzwa; - Mu ibaruwa yo ku wa 05/03/2014 yakiriwe na Madamu Niyitegeka Drocelle ku wa 14/03/2014 imumenyesha ko yemerewe inguzanyo ya 7.000.000Frws ariko ko hari ibyo agomba kubanza kuzuzwa, muri ibyo harimo ko 500.000Frws yagombaga guhabwa amaze gukora mutation, hibazwa impamvu batanze inguzanyo yo kugura inzu nta masezerano y'ubugure yaba ay'agateganyo cyangwa aya burundu yabayeho ahamya ko habayeho ubugure; - Muri dosiye hagaragaraye inyandiko y'ubugure bw'agateganyo, ndetse n'inyandiko yakozwe ku munsu wakurikiyeho ivuga ko Mutezintare na Josiane abatije ingwate, izi nyandiko ubwazo ziravuguruzanya, ariko igitangaje ari uko bazemeye zombi. Avuga ko kuba baratanze inguzanyo yo kugura inzu kandi babona ko yaguzwe mbere, bakabona ko nta "mutation" yabayeho, ntibabaze impamvu, na none ntibasabe ko ikorwa mbere yo gutanga indi inguzanyo, ari uburiganya bakoze kubera ko iyo inguzanyo ititwa iyo kugura inzu, ko rero Niyitegeka atari kubona amafaranga menshi. Avuga ko Niwemfura Laurent nk'umuyobozi w'ishami, yari afite inshingano zo kuyobora abandi, akareba ko amabwiriza yo gutanga inguzanyo yubahirizwa n'abakozi ayoboye, kandi agasesengura risks zose kugira ngo hirindwe igihombo ariko akaba atari ko byagenze ahubwo kunanirwa gushyira mu bikorwa inshingano ze byatumye agwisha bagenzi be mu makosa. Avuga ko Niwemfura Laurent kimwe na bagenzi be yahawe umwanya wo kwisobanura mu nyandiko, ndetse agaragarizwa ko ibisobanuro atanze bitanyuze ubuyobozi, amenyeshwa ko ikibazo

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kizashyikirizwa inzego zibishinzwe kugira ngo amakosa yakoze ayahanirwe. Avuga ko nyuma y'isesengura ryakozwe, ubuyobozi bwasanze yarakoze amakosa akomeye, arabimenyeshwa, hanyuma mu gihe kitarenze amasaha 48 amasezerano ye y'akazi araseswa kubera amakosa akomeye. [4] Mu kirego kiregera kwiregura, Cooperative Umwalimu SACCO Gasabo yasabye ko Niwemfura Laurent yategukwa kuyiha indishyi z'ikurikiranarubanza n'igihembo cya Avoka. [5] Uru rubanza rwaburanishirijwe mu ruhamye ku wa 05/03/2025, NIWEMFURA Laurent ahagarariwe na Me Rukundo Emile, naho Cooperative Umwalimu SACCO Gasabo ihagarariwe na Me Safari Jean Bosco. [6] Muri uru rubanza, Urukiko rurasuzuma ibibazo bikurikira: - Kumenya niba NIWEMFURA Laurent yaba yarasezerewe mu kazi binyuranyije n'amateguko ku buryo yabyishyurirwa indishyi. - Kumenya niba izindi ndishyi zasabwe n'Urega muri uru rubanza ashobora kuzihabwa. - Kumenya niba ikirego kiregera kwiregura cyatanzwe Cooperative Umwalimu SACCO Gasabo gifite ishingiro. II. ISESENGURWA RY'IBIBAZO BIGIZE URUBANZA A. Ku byerekeye kumenya niba Niwemfura Laurent yaba yarasezerewe mu kazi binyuranyije n'amateguko ku buryo yabyishyurirwa indishyi [7] Me Rukundo Emile uhagarariye Niwemfura Laurent, avuga ko amasezerano y'umurimo ya Niwemfura Laurent yasheshwe nta mpamvu ngo kuko inguzanyo Cooperative Umwalimu SACCO Gasabo ivuga yatanze ku mabwiriza y'ubuyobozi bukuru, byongeye kandi itangwa ryayo rikaba ritaranyuranyije na "credit policy and procedure manuel", Umuyobozi Mukuru asesa amasezerano ashingiye ku makosa ataragaragajwe n'urwego rubifitiye ububasha. Avuga ko mu gihe kandi iseswa ry'amasezerano rishingiye ku makosa akomeye, iteguko N° 66/2018 ryo kuwa 30/08/2018 mu ngingo yaryo ya 26 ryateganyije ibihe bigomba kubahirizwa nyamara ntibytaweho na Cooperative Umwalimu SACCO ngo kuko amakosa akomeye yagaragaye ku wa 21 Nyakanga 2021, ubwo Umuyobozi Mukuru yamenyeshaga Niwemfura Laurent ko atanyuzwe n'ibisobanuro bye, akemeza ko inguzanyo yatanganywe ubushishozi buke bigatuma ikorwamo amakosa menshi, akamenyesha umukozi kuwa 05 Mutarama 2022, amasezerano agaseswa ku wa 10 Mutarama 2022, bityo rero bakaba basanga yarirukanywe mu buryo bunyuranyije n'amateguko ngo kuko ikosa rikomeye ari ikosa riba ryangirije ku buryo bukomaye umukoresha atagumana uwo mukozi byibuze no mu gihe cy'integuza, akaba rero ariyo mpamvu umushingamategeko yagennye ibihe bigufi cyane, ko uwo mukozi aba atakiri uwo kwihanganirwa nyamara bamaranye imyaka irindwi yitwa umukozi w'intangarugero. [8] Me Safari Jean Bosco Cooperative Umwalimu SACCO Gasabo, avuga ko ku bijyanye no kuba Niwemfura Laurent yarirukaniwe impamvu yumvikana, basanga yarirukaniwe ukuri kuko yakoze amakosa akomeye yo kuba abakozi b'ishami yari ayoboye barirengagije policies ubwo batangaga inguzanyo nta nyandiko n'imwe cyangwa amasezerano agaragaza ibyo impande zombi zemeranyijweho mu gutanga inguzanyo y'inyongera yo kwishyura amafaranga yari yasigaye kuri iyo nzu kandi ntibanasuzume niba koko iyo nzu yaraguzwe mu mafaranga y'inguzanyo yari yarahawe mbere. Avuga ko mbere yo gutanga amafaranga y'inyongera kugira ngo Niyitegeka Drocelle abashe guzosa kwishyura inzu, yagombaga kubanza kumenya niba koko inzu yaraguzwe aho gushingira ku masezerano yo gutizwa ingwate. Avuga ko mu isesengura ry'inguzanyo batabanje gusuzuma ko ibisabwa byose byuzuye, no kuba

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byitwa ko inguzanyo yahawe Niyitegeka Drocelle yari iyo kugura inzu kandi n'ubundi yari yarahawe inguzanyo yo kugura iyo nzu mbere, ukibaza niba iyo nzu yarayiguze inshuro 2 bagombye kumubaza amafaranga yatse icyo yayakoresheje. Naho ku bijyanye no kuvuga ko hatubahirijwe procedure, avuga ko nta shingiro bifite ngo kuko ibihe byose byubahirijwe ngo kuko bibarwa ari uko inama za ngombwa zemewe n'amategeko zibanje kubyemeza. Avuga ko Niwemfura Laurent yahawe umwanya wo kwisobanura mu nyandiko, amenyeshwa ko ibisobanuro bye nta shingiro bifite, ko ikibazo cye kigiye gushyikirizwa inzego zibifitiye ububasha kugira ngo zikore isesengura ryimbitse. Avuga ko nyuma y'isesengura, Niwemfura Laurent yamenyeshejwe ko yakoze amakosa akomeye, nyuma yo kuyamenyeshwa, nibwo amasezerano ye yasheshwe, ko rero atari kwirukanwa inzego zibifitiye ububasha zitabyemeje. [9] Me Safari Jean Bosco atanga ingero ku manza zitandukanye, aho avuga ko mu rubanza RSOC0007/16/CS - RSOC0004/16/CS rwaciye ku wa 14/07/2017, Urukiko rw'Ikirenga rwatanze umurongo ko ibyo Alain Assamoi Niangoran aburanisha by'uko atakoze ikosa rikomeye kuko atarimenyeshejwe ngo anirukanwe mu gihe cy'amasaha 48 nta shingiro bifite, kuko habanje kubaho procédure iteganyijwe muri "Delegation authorities", no kuri "Disciplinary procedure" bya Engen Petroleum Ltd, yo kureba niba iryo kosa ryarabayeho koko, kandi Akanama gashinzwe imyitwarire y'abakozi bayo kasanze yararikoze, iryo kosa ribanza kumenyeshwa abayobozi bakuru ba Engen Petroleum Ltd, abona kwirukanwa ku kazi. Avuga ko ibyabaye muri uru rubanza ntaho bitaniye nibyo Umwalimu SACCO yakoze kuri Niwemfura Laurent. Mu rubanza RSOC0003/13/HC/RSZ rwaciye ku wa 30/01/2014 rwatangajwe n'urukiko rw'ikirenga nk'urubanza rw'ikitegererezo rutanga umurongo aho urwo rubanza rwagaragaje ko gusesa amasezerano y'akazi ku mpamvu z'ikosa rikomeye biteganywa mu ngingo ya 32 igika cya 2° y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ntibivuga ko umukoresha ariyozwa indishyi ku mpamvu zo kutamenyesha umukozi iri kosa mu masaha 48 nk'uko biri ku nteguza iteganywa mu gika cya mbere cy'iyi ngingo, Urukiko rw'Ikirenga mu gusesengura rwagaragaje ko Itegeko ry'umurimo ridadeganywa ko umukoresha ariyozwa indishyi ku mpamvu zo kutamenyesha umukozi iryo kosa mu gihe cy'amasaha 48. Avuga ko uretse ko amasaha 48 ateganyijwe n'amategeko yubahirijwe, urega atagaragaza icyo kutubahiriza amasaha 48 byamwangirije ngo wenda abe aricyo Umwalimu SACCO yaciribwa indishyi, ngo ahubwo Niwemfura Laurent yabyungukiyemo ngo kuko yakomeje gukora akanahembwa kandi yarakoze amakosa akomeye. UKO URUKIKO RUBIBONA [10] Ingingo ya 26 y'Itegeko N° 66/2018 ryo ku wa 30/8/2018 rigenga umurimo mu Rwanda iteganya ko Umukoresha asesa amasezerano y'umurimo hadatanze integuza mu gihe umukozi akoze ikosa rikomeye. Mu gihe iseswa ry'amasezerano y'umurimo ritewe n'ikosa rikomeye, umukoresha agomba kumenyesha umukozi mu nyandiko mu gihe kitarenze amasaha mirongo ine n'umunani (48) uhareye igihe ibimenyetso by'ikosa rikomeye bigaragariye kandi akagaragaza impamvu z'iseswa. [11] Ingingo ya 2 y'Iteka N° 002/19.20 ryo ku wa 17/3/2020 rya Minisitiri rishyiraho urutonde rw'amakosa akomeye iteganya Ibikorwa bikurikira bifatwa nk'amakosa akomeye: 1° ubujura; 2° uburiganya; 3° kurwanira ku kazi; 4° kunywera ibinyobwa bisindisha mu kazi; 5° kuba uri ku kazi wasinze cyangwa wanyoye ibiyobyabwenge; 6° gukora inyandiko mpimbano; 7° ivangura iryo ari ryo ryose ku kazi; 8° guhoza undi ku nkeke bifitanye isano n'imibonano

mpuzabitsina; 9° gusaba, gutanga cyangwa kwakira ruswa cyangwa indonke; 10° kunyereza umutungo; 11° kubona cyangwa gutanga mu buryo butemewe amakuru y'akazi y'ibanga; 12° imyitwarire ishobora gushyira mu kaga ubuzima n'umutekano by'abandi ku kazi; 13° ihohotera rishingiye ku gitsina mu kazi; 14° guhagarika imirimo mu buryo budakurikije amategeko; 15° kwangiza ibikoresho by'akazi ku bushake. Umukozi ukoze igikorwa icyo ari cyo cyose mu bikorwa bivugwa mu gika cya mbere cy'iyi ngingo aba akoze ikosa rikomeye rituma habaho iseswa ry'amasezerano y'umurimo nta nteguza.

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[12] Izi ngingo zifatiwe hamwe, zumvikanisha impamvu umukoresha ashobora gusesa amasezerano y'umurimo yari afitanye n'umukozi adatanze integuza n'igihe ntarengwa bikorerwa, Iteka rya Minisitiri rigashyiraho amakosa akomeye yatuma umukoresha asesa amasezerano y'umurimo yari afitanye n'umukozi nta nteguza. [13] Mu rubanza RS/INJUST/RSOC00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31 Mutarama 2020, haburana Niwemugeni v. KCB Rwanda Ltd, Urukiko rw'Ikirenga rwasobanuye ko amakosa umukozi yakora mu rwego rw'akazi ashingiyeye ku myitwarire ari impamvu yumvikana ashobora gutuma amasezerano y'akazi aseswa kandi ko umukoresha washeshe amasezerano ari we utanga ibimenyetso bigaragaza ko umukozi yakoze ikosa. [14] Mu rubanza RS/INJUST/RSOC00003/2022/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 21/12/2023, Kayitaba Mukunde Eugénie iburana na Women for Women International (igika cya 28), no mu rubanza RADA00003/2019/CA, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/06/2020 haburana Leta y'u Rwanda / Minisitiri y'Ubucuruzi n'Inganda na Ndahayo Pascal (igika cya 29), hasobanuye ko ikosa rikomeye ari ikosa ritihanganirwa (faute inéxcusable), rifite uburemere bwihariye, rikomoka ku gukora cyangwa kwanga gukora ku bushake, ugikora cyangwa uwanga kugikora azi neza ingaruka zabyo kandi nta gisobanuro abifitiye. [15] Dosiye y'urubanza igaragaza amasezerano y'umurimo Niwemfura Laurent yagiranye na Cooperative Umwalimu SACCO. [16] Dosiye y'urubanza igaragaza historique ya Banki (Umwali mu SACCO) Niwemfura Laurent yahemberwagaho, igaragaza ko umushahara wageraga kuri konti ye ari 917.409Frws. [17] Dosiye y'urubanza igaragaza amasezerano y'inguzanyo ya miliyoni zirindwi (7.000.000Frw) hagati ya Cooperative Umwalimu SACCO Gasabo na Niyitegeka Drocelle yo ku wa 05/03/2014. [18] Dosiye y'urubanza igaragaza amasezerano y'ubugure bw'agateganyo bw'inzu yo ku wa 21/08/2012 hagati y'abagurishije Mutezintare Pierre Célestin na Uwiringiyimana Josiane, n'abaguze Kacu Edgard na Niyitegeka Drocelle. [19] Dosiye y'urubanza igaragaza inyandiko Niyitegeka Drocelle yishyuriraho inguzanyo yafashe, igaragaza ko azarangiza kwishyura ku wa 31/03/2024. [20] Dosiye y'urubanza igaragaza inyandikomvugo y'inama ya komite ishinze imyitwarire y'abakozi mu Umwalimu SACCO yo ku wa 27/08/2021, mu mwanzuro abagize komite bamaze gusuzuma imitangire y'inguzanyo, basanze abakozi barimo Niwemfura Laurent barakoze amakosa agizwe cyane cyane no kwirengagiza nkana amategeko y'Umwali mu SACCO yagengaga imitangire y'inguzanyo. Abagize komite nanone bamaze gusuzuma dosiye y'inguzanyo neza basanze hari impamvu nyoroshyagihano zigaragara kandi nazo zikwiriye guhabwa agaciro arizo: Iki

kibazo kimaze igihe kinini kandi cyabaye mu gihe Umwalimu SACCO yari muri phase yo kwiubaka ibintu byinshi bikorwa mu kajagari; Iyi nguzanyo yarishyuwe yose, bityo Ikigo kikaba nta gihombo cyagize biturutse ku mitangire mibi ya yo; Imikorere mibi ahanini yari igizwe na direct and indirect influences z'abayobozi, aho wasangaga bivanga mu mitangire y'inguzanyo ndetse bagatanga amabwiriza yeruye n'ateruye yo gutanga inguzanyo. Abagize komite bashingiye ku itegeko N° 66/2018 ryo ku wa 30/8/2018 rigenga umurimo mu Rwanda, mu ngingo ya 42, aho rigaragaza ibihano byo mu rwego rw'akazi bishobora guhanishwa umukozi, bakaba basanze bakwiriye guhanishwa igihano cyo guhagarikwa ku kazi by'agateganyo mu gihe cy'iminsi umunani (8 days) idahemberwa¹.

¹Reba inyandikomvugo y'inama ya komite ishinze imyitwarire y'abakozi mu Umwalimu SACCO yo ku wa 27/08/2021, p.8.

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[21] Dosiye y'urubanza igaragaza ibaruwa ya Cooperative Umwalimu SACCO Gasabo yo ku wa 29/06/2021, aho basabaga Niwemfura Laurent gutanga ibisobanuro y'uburyo bahaye uwitwa Niyitegeka Drocelle inguzanyo. [22] Dosiye y'urubanza igaragaza ibaruwa ya Niwemfura Laurent yo ku wa 10/07/2021, ubwo yatangaga ibisobanuro ku ibaruwa yari yandikiwe na Cooperative Umwalimu SACCO Gasabo yo ku wa 29/06/2021. [23] Dosiye y'urubanza igaragaza inyandiko ya Cooperative Umwalimu SACCO Gasabo yo ku wa 05/01/2022, yamenyeshaga Niwemfura Laurent ikosa rikomeye yakoze mu gutanga inguzanyo y'inyongera kuri Niyitegeka Drocelle. [24] Dosiye y'urubanza igaragaza ibaruwa ya Niyitegeka Drocelle yandikiye Umuyobozi Mukuru wa Cooperative Umwalimu SACCO, asaba kwishyurirwa amafaranga yasigaye ku inzu yaguriwe na Cooperative Umwalimu SACCO, kuri iyo baruwa ku itariki 14/01/2014, Umuyobozi Mukuru yahaye amabwiriza Umuyobozi wa Branch Kamonyi (Branch Manager) yo guha Niyitegeka Drocelle "forms" zo kuzuzanya kugira ngo ahabwe top up loan (Branch Manager give her form for top up loan). [25] Dosiye y'urubanza igaragaza inyandiko isesa amasezerano yo ku wa 11/01/2022, aho Cooperative Umwalimu SACCO Gasabo yasheshe amasezerano yari ifitanye na Niwemfura Laurent kubera ikosa rikomeye ry'uburiganya (fraud and forgery), aho yananiwe gutanga inguzanyo kinyamwaga (failure to apply sound professional judgement). [26] Mu gusesengura iyi dosiye no kuyihuza n'ingingo z'itegeko zavuzwe haruguru, Urukiko rurasanga nta kigaragaza uburiganya Niwemfura Laurent yakoze bwari gutuma Cooperative Umwalimu SACCO Gasabo isesa amasezerano y'umurimo nta nteguza itanzwe, kuko ku itariki 14/01/2014 Umuyobozi Mukuru wa Cooperative Umwalimu SACCO yahaye amabwiriza Umuyobozi wa Branch Kamonyi, yo guha Niyitegeka Drocelle top up loan, ari naho Niwemfura Laurent ari kumwe n'abandi bakozi bahereye batanga iyo nguzanyo, ndetse ni naho abari mu nama ya komite ishinze imyitwarire y'abakozi muri Umwalimu SACCO yateranye ku wa 27/08/2021, bashingiye mu guhanisha Niwemfura Laurent guhagarikwa mu kazi by'agateganyo mu gihe cy'iminsi 8 idahemberwa, kuko basanze mu gihe hatanzwe iyo nguzanyo hari imikorere mibi yari igizwe n'amabwiriza yatangwaga n'abayobozi (Direct and indirect influences z'abayobozi), aho bivangaga mu mitangire y'inguzanyo ndetse bagatanga amabwiriza yeruye

n'ateruye yo gutanga inguzanyo, banagaragaza ko ubusanzwe inguzanyo yasabirwaga ku Ishami (Branch) ariko igasabirwa ku cyicaro gikuru, akaba ariho hava amabwiriza yo kuyitanga kandi akazanwa n'usaba inguzanyo, ibi rero bigaragaza ko n'abari bitabiriye iyo nama nabo basanze amabwiriza yaratanzwe ariyo mpamvu batanze inama ko umukozi yahabwa igihano cyo guhagarikwa by'agateganyo mu gihe cy'iminsi 8 idahemberwa. [27] Urukiko rurasanga ikindi kigaragaza ko Cooperative Umwalimu SACCO Gasabo yasheshe amasezerano y'umurimo yari ifitanye na Niwemfura Laurent mu buryo budakurikije amategeko, ari uko nyuma y'iperereza, ku itariki 05/01/2022 aribwo Niwemfura Laurent yamenyeshejwe ko yakoze ikosa rikomeye, byumvikana ko icyo gihe Cooperative Umwalimu SACCO Gasabo yari imaze kubona ibimenyetso by'ikosa bavuga ko rikomeye, nyamara inyandiko isesa amasezerano y'umurimo kubera ikosa rikomeye yatanze ku wa 11/01/2022 nyuma y'iminsi itandatu (6) Cooperative Umwalimu SACCO Gasabo imenyesheje umukozi ko yakoze ikosa rikomeye, bigaragaza ko ibihe by'amasaha 48 biteganywa n'ingingo ya 26 y'itegeko ry'umurimo ryavuzwe haruguru bitubahirijwe n'umukoresha, ibyo rero bigaragaza ko uburyo (procédure) amasezerano y'akazi bari bafitanye yasheshwemo binyuranyije n'ibiteganywa n'ingingo ya 26 y'Itegeko N° 66/2018 ryo ku wa 30/8/2018 rigenga umurimo mu Rwanda. B. Gusuzuma niba izindi ndishyi Niwemfura Laurent yasabye muri uru rubanza zifite ishingiro Ku byerekeye indishyi zo kwirukanwa mu kazi binyuranyije n'amategeko

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- [28] Uburanira Niwemfura Laurent avuga ko umukozi yirukanywe mu buryo budakurikije amategeko, akaba asaba gutegeka umukoresha gutanga indishyi zinyuranye zibazwe mu buryo bukurikira: Indishyi zo gusesa amasezerano mu buryo budakurikije amategeko: $1.970.402\text{Frws} \times 9 \text{ mois} = 17.733.618\text{Frws}$. [29] Me Safari Jean Bosco uburanira Cooperative Umwalimu SACCO Gasabo bavuga ko amasezerano yasheshwe mu buryo bukurikije amategeko kubera amakosa akomeye Niwemfura Laurent yakoze. UKO URUKIKO RUBIBONA [30] Ingingo ya 30 igika cya mbere n'icya kabiri y'Itegeko N° 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 uburamba ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi ntizishobora kurenga umushahara ahabwa w'amezi icyenda (9). [31] Iyi ngingo yumvikanisha ko iseswa ry'amasezerano rinyuranyije n'amategeko rituma hatangwa indishyi ziri hagati y'inshuro 3 na 6 z'umushahara umukozi yahembwaga. [32] Urukiko rushingiye ku ngingo ya 30 yavuzwe haruguru, rurasanga Niwemfura Laurent agomba guhabwa indishyi zo kwirukanwa binyuranyije n'amategeko zingana n'umushahara we w'amezi atandatu (6 months) hashingiwe ku mushahara yatahanaga mu ntoki (Net salary), ni ukuvuga: $917.409\text{Frws} \times 6 = 5.504.454\text{Frws}$. [33] Kuba Niwemfura Laurent asaba indishyi zo kwirukanwa binyuranyije n'amategeko, akaba yarashingiye ku mushahara mbumbe mu kuzibara ungana na 1.970.402Frws, Urukiko rurasanga rutabishingiraho kuko mu rubanza RS/INJUST/

RSOC/2019/SC rwaciwe n'urukiko rw'Ikirenga, hagati ya Niwemugeni Jeannette na KCB Bank Ltd, Urukiko rw'Ikirenga rwaratanze umurungo kuri iki kibazo, aho rwasobanuye ko umukozi usezerewe mu kazi atabarirwa indishyi hashingiwe ku mushahara mbumbe (salaire brut), ahubwo zibarirwa ku mushahara atahana mu ntoki (net) hamaze kuvanwamo imisoro ku musaruro n'umusanzu w'ubwiteganyirize². Ku byerekeye Bonus [34] Uburanira Niwemfura Laurent asaba urukiko gutegeka umukoresha gutanga bonus ingana na 1.970.402Frws. [35] Me Safari Jean Bosco uburanira Cooperative Umwalimu SACCO Gasabo avuga ko indishyi zose Niwemfura Laurent asaba atazihabwa. UKO URUKIKO RUBIBONA [36] Ingingo ya 38 y'itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda iteganya ko Umukoresha afite uburenganzira bukurikira: (...) 3^o gukora isuzumabushobozi ry'umukozi, kuzamura mu ntera, kwimura umukozi, guhana umukozi no gusesa amasezerano y'umurimo y'umukozi. [37] Iyi ngingo yumvikanisha ko umukoresha ariwe ukorera umukozi isuzumabushobozi (evaluer les performances).

2Reba urubanza RS/INJUST/RSOC00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2020, haburana Niwemugeni na KCB Rwanda Ltd.

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[38] Mu rubanza RS/INJUST/RSOC00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/11/2017 haburana Ruhimbaza v. Banki ya Kigali Ltd, Urukiko rwasobanuye ko Umukoresha atanga amafaranga y'ishimwe abyibwirije kandi ku bushake, iyo ayemeye aba ari itegeko kuri we kuko biba ari kimwe mu bigize umushahara w'umukozi³. [39] Urukiko rurasanga Niwemfura Laurent yirukanwe ku itariki 10/01/2022, umwaka wa 2021 asabira bonus, ukaba wari urangiye, umukoresha we akaba ariwe wari ufite inshingano zo kumukorera isuzumabushobozi, kuba atararikoze ntibyarozwa Niwemfura Laurent, bityo Cooperative Umwalimu SACCO Gasabo igomba guha Niwemfura Laurent amafaranga 917.409Frws y'agahimbazamusyi (bonus) k'umwaka wa 2021. Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka [40] Uburanira Niwemfura Laurent avuga ko Urega yarashowe mu manza ku karengane kandi bigaragara ko nta kosa cyangwa itegeko yishe mu kazi ke, bikaba byaratumye ashyiraho avoka wo kumuburanira; bityo akaba asaba amafaranga y'ikurikiranarubanza angana na 522.500Frws; Amafaranga y'igihembo cy'avoka angana na 500.000Frws, no gusubizwa igarama ringana na 20.000Frws. [41] Me Safari Jean Bosco uburanira Cooperative Umwalimu SACCO Gasabo, avuga ko indishyi z'ikurikiranarubanza n'igihembo cy'avoka urega asaba, nta shingiro zifite ahubwo niwe ugomba kwishyura Umwalimu SACCO igihembo cya Avoka kingana na 1.000.000Frws n'indishyi z'ikurikiranarubanza zingana na 800.000Frws. UKO URUKIKO RUBIBONA [42] Ingingo ya 111 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryereye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ko Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza (...). Naho ingingo ya 26 mu gika cyayo cya 1 y'amabwiriza N°1/2014 agena ibihembo mbonera by'Abavoka iteganya ko Avoka ashobora gusaba igihembo fatizo kiri hagati ya 500.000Frw na 5.000.000Frw. [43] Izi ngingo zifatiwe

hamwe, zumvikanisha ko ikirego kibyatakajwe mu gukurikirana urubanza ni kirego gishamikira ku kirego cy'iremezo, icyo kirego gisuzumirwa hamwe n'ikirego cy'iremezo. Amabwiriza agena ibihembo by'abavoka akagaragaza uko ibyo bihembo bitangwa mu rubanza. [44] Ingingo ya 4 y'Iteka rya Minisitiri N°17/MOJ/AG/20 ryo ku wa 30/10/2020 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Iyo umuburanyi watanze amafaranga y'ingwate y'amagarama atsinze urubanza, umucamanza ateguka, mu cyemezo cy'urukiko, uwatsinzwe kuyamwishyura, akagenda n'igihe azishyurwamo. Ibijyanye n'iyishyuzwa ry'ingwate y'amagarama bikurikiza ibiteganywa n'amategeko yerekeranye n'irangizwa ry'ibyemezo by'inkiko. [45] Iyi ngingo yumvikanisha ko umucamanza ateguka mu cyemezo cy'urukiko ko uwatsinze urubanza asubizwa amagarama y'urubanza iyo yayatanze n'igihe azishyurwamo. [46] Urukiko rurasanga ikirego cya Niwemfura Laurent gifite ishingiro kuri bimwe, bityo Cooperative Umwalimu SACCO Gasabo igomba kumuha igihembo cya Avoka kingana na 500.000Frws. Naho

3 Reba Urubanza RS/INJUST/RSOC00001/2017/SC rwaciwe n'urukiko rw'Ikirenga ku wa 24/11/2017, haburana Ruhimbaza

v. Banki yaKigali Ltd p.9, Igika cya 32.

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amafaranga y'ikurikiranarubanza akaba adakwiye gutangwa kuko urubanza rwakurikiranywe na Avoka wari umuhagarariye. [47] Urukiko rurasanga kuba Niwemfura Laurent asaba gusubizwa igarama yatanze, bifite ishingiro kuko atsinze urubanza, kandi muri dosiye bigaragara ko yatanze amafaranga 20.000Frws, bityo ayo mafaranga agomba kuyasubizwa na Cooperative Umwalimu SACCO Gasabo [48] Kubijyanye n'ikirego kiregera kwiregura cyatanzwe na Cooperative Umwalimu SACCO Gasabo, Urukiko rurasanga nta shingiro gifite kuko itsindwa urubanza. III. ICYEMEZO CY'URUKIKO [49] Rwemeje ko ikirego cya Niwemfura Laurent gifite ishingiro kuri bimwe. [50] Rwemeje ko Niwemfura Laurent yasezerewe mu kazi ku buryo bunyuranije n'amategeko. [51] Rwemeje ko ikirego kiregera kwiregura cyatanzwe na Cooperative Umwalimu SACCO Gasabo nta shingiro gifite. [52] Rutegetse Cooperative Umwalimu SACCO Gasabo guha Niwemfura Laurent indishyi zo kwirukanwa binyuranyije n'amategeko zingana n'amafaranga y'u Rwanda 5.504.454Frws. [53] Rutegetse Cooperative Umwalimu SACCO Gasabo guha Niwemfura Laurent amafaranga y'u Rwanda 917.409Frws y'agahimbazamusyi (bonus) k'umwaka wa 2021. [54] Rutegetse Cooperative Umwalimu SACCO Gasabo kwishyura Niwemfura Laurent amafaranga y'u Rwanda ibihumbi magana atanu (500.000Frw) y'igihembo cya Avoka. [55] Rutegetse Cooperative Umwalimu SACCO Gasabo gusubiza Niwemfura Laurent amafaranga y'u Rwanda 20.000Frws yatanzeho ingwate y'amagarama y'urubanza arega.

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