

RWANDA / JUDGMENT

NYIRAMINANI v SINLAM

RC 00182/2019/TGI/NGOMA

COURT

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NYIRAMINANI v SINLAM

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Text

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NYIRAMINANI V. SANLAM PLC [Rwanda URUKIKO RWISUMBUYE RWA NGOMA – RC 00182/2019/TGI/NGOMA (MBARUSHIMANA, P.J.) 16 Ugushyingo 2020] Amategeko agenga ubwishingizi – indishyi zikomoka ku mpanuka y’ikinyabiziga bifite ubwishingizi – Indishyi z’ibanganira ry’uburambe mu kazi – Indishyi z’ibangamira ry’uburambe mu kazi zihabwa umuntu ufite umurimo akora uzwi igihe hagaragajwe ko impanuka yagize yamuteye kutawukora na busa cyangwa se kutawukora uko bikwiye. Incamake y’ikibazo: Imodoka ifite ubwishingizi bwa SINLAM yakoze impanuka, ikomerekamo Nyiraminani, imusigira n’ubumuga bwa 30%. Nyuma yo kutumvikana na SANLAM ku bijyanye n’indishyi agomba guhabwa, yaregeye Urukiko Rwisumbuye rwa Ngoma asaba indishyi z’ibangamirabukungu, indishyi z’ububabare, iz’ibangamiraburanga, izo gutakaza amahirwe y’uburambe mu kazi, amafaranga yatanzwe mu kwivuza, ayatanzwe mu kuzuza dosiye no ku rubanza. Abarebwa n’ikibazo ntibumvikanye ku buryo indishyi Nyiraminani agomba guhabwa zigomba kubarwa kuko asaba ko zibarirwa ku mushahara muto ntarengwa wemewe n’amategeko (SMIG) wa 3,000 Frw ashingiye ku manza zagiye zicibwa n’inkiko, mu minsi 30 ku kwezi; mu gihe SANLAM PLC yo isanga indishyi zigomba kubarwa hashingiwe kuri SMIG ya 2,000 Frw, mu minsi 26, ngo kuko ku minsi y’ukwezi hagomba

kuvamo iyitari iy'akazi; naho indishyi z'ibangamira ry'uburambe mu kazi ikavuga ko nta cyo zishingiyeho naho izindi zikabarwa hakurikijwe uko amategeko aziteganywa. Incamake y'icyemezo: 1. Indishyi zikomoka ku mpanuka zibarwa hashingiwe ku mushahara muto ntarengwa wemewe n'amategeko uhwanywe na 3,000 Frw hashingiwe ku byemezo bifatwa kenshin'Inkiko, mu minsi 30 y'akazi ku kwezi.

2. Indishyi z'ibangamira ry'uburambe mu kazi zihabwa umuntu ufite umurimo akora uzwi, igihe hagaragajwe ko impanuka yagize yamuteye kutawukora na busa cyangwa se kutawukora uko bikwiye. Ikirego gifite ishingiro ku ngingo zimwe. Amategeko yashingiyeho: Itegeko N°22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111; Iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 9, igika cya 1, iya 13 n'iya 19, Imanza zifashishijwe: Umuhoya P. n'abandi na SORAS AG Ltd, Urubanza RCAA 0049/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016;

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Nyetera JB na CORAR Ltd, urubanza RCAA 0202/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/04/2009. Nta nyandiko z'abahanga zakoreshejwe: Urubanza I. IMITERERE Y'URUBANZA [1] Urega avuga ko aregera indishyi zikomoka ku mpanuka yo ku wa 19/10/2018 yabereye mu Ntara y'I Burasirazuba itejwe n'ikinyabiziga cyari kishingiye na SANLAM PLC ikaba yaramusigiye ubumuga buhoraho n'ibangamiraburanga nk'uko Muganga wa SANLAM yabigaragaje. Ubwumvikane n'umwishingizi ntibwashobotse. Akaba aregera indishyi z'ibangamirabukungu; indishyi z'ububabare; indishyi z'ibangamiraburanga; indishyi zo gutakaza amahirwe y'uburambe mu kazi; amafaranga yerekeye kwivuza kwa Muganga; n'ayatanzwe ku kuzuza dosiye no ku rubanza. Asaba ko indishyi zibarirwa kuri SMIG yaba 3 000 frw, izibarirwa ku minsi y'akazi ikaba 30 mu kwezi. [2] SANLAM PLC yiregura ivuga ko indishyi z'ibangamira ry'uburambe mu kazi nta cyo zishingiyeho. Izindi ndishyi, hatangwa izikurikije amategeko n'ibimenyetso bikwiye kwemerwa. Indishyi zibairwa kuri SMIG n'iminsi y'akazi mu kwezi, SMIG yaba 2 000 frw na ho iminsi y'akazi ikaba 26 mu kwezi. [3] Ibibazo by'amategeko bisesengurwa mu rubanza ni ibi bikurikira: Kumenya SMIG n'iminsi y'akazi bikwiye kubarirwaho indishyi mu gihe impande zombi zitabyemeranywaho; Kumenya indishyi zikwiye kugenwa n'ibyashyingirwaho mu kuzibara, no kureba niba indishyi z'ibangamira ry'uburambe mu kazi impande zombi zitemeranywaho zagenwa II.ISESENGURA RY'IBIBAZO BY'AMATEGEKO BIRI MU RUBANZA [4] Me Habyarimana Jean Baptiste ahagarariye Nyiraminani Clementine arega avuga ko ku wa 19/10/2019 saa 15h00 mu Ntara y'I Burasirazuba; mu Karere ka Ngoma; mu Murenge wa Rukumberi mu Kagari ka Gituza mu Mudugudu wa Mfune, habereye impanuka yatejwe n'imodoka Minibus TOYOTA Hiace plaque RAB 289C yavaga Sake yerekeza mu Bugesera, umushoferi wayo yaje kurenga umuhanda agonga inzu y'umuturage irasenyuka, mu bari bayirimo hakomerekamo Nyiraminani Clementine. Yarivuye ariko asigarana ubumuga buhoraho bungana na 30% n'ibangamiraburanga riri ku rwego rwa 2 nk'uko contre-expertise ibyerekanwa. Iyo moto yari ifite ubwishingizi muri SANLAM PLC. Nyiraminani yaje kuyishyikiriza dossier ngo bumvikane ariko ntibashoboye kumvikana. Akaba

rero yiyambaje uru rukiko kugirango rumurenganure abone indishyi zikwiriye. Akaba aregera indishyi z'ibangamirabukungu; indishyi z'ububabare; indishyi z'ibangamiraburanga; SANLAM PLC indishyi z'ibangamira ry'uburambe

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mu kazi, amafaranga yerekeye kwivuza kwa Muganga n'ayagiye mu kuzuza dosiye no ku rubanza. Asaba ko indishyi zibarirwa kuri SMIG yaba 3 000 frw n'iminsi y'akazi 30. [5] Uhagarariye SANLAM PLC yiregura avuga ko hatangwa indishyi ariko hagakurikizwa amategeko n'ibimenyetso bikwiye kwemerwa. SMIG yashingirwaho ni 2 000 frw ku munsu. Na ho iminsi y'akazi mu kwezi yabarirwaho indishyi ni 26. Indishyi z'ibangamira ry'uburambe mu kazi nta shingiro zifite kuko nta ryabayeho mu gihe nta murimo urega agaragaza yakoraga ku buryo kuwurambamo bizabangamirwa n'iyi mpanuka. UKO URUKIKO RUBIBONA Kumenya SMIG n'iminsi y'akazi bikwiye kubarirwaho indishyi mu gihe impande zombie zitabyemeranywaho [6] Ku byerekeye SMIG ikwiye kugenderwaho, aho umwishingizi avuga ko SMIG yaba 2 000 frw ntiyagenderwaho. Ingingo ya 9 a11 y'Itegeko n°22/2019 ryo ku wa 29/4/2019 ryerekeye imiburanishirize y'imanza z'imbonezamubano; iz'ubucuruzi; iz'umurimo; n'iz'ubutegetsi igira iti: "umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko." Urukiko rw'Ikirenga rwemeje ko SMIG ikwiye ihwanye na 3 000 frw mu rubanza RCAA 0049/14/CS P. Umuhozo & crts c/SORAS AG Ltd rwo ku wa 25/11/2016, para 28. Akaba rero ari yo ikwiye gushingirwaho. [7] Ku byerekeye iminsi y'akazi mu kwezi, na yo ni 30 nk'uko bigaragara muri uru rubanza rumaze kuvugwa kuri para 29. Nubwo iyi minsi 30 Urukiko rw'Ikirenga rwayikoresheje muri uru rubanza atari cyo kibazo cyarimo kiburanwaho, ariko ntibyabuza ko tuyigenderaho nk'uko na rwo rwayigendeyeho, dore ko ari na ko byari byakozwe mu rundi rubanza rwaciwe n'Urukiko rw'Ikirenga RC 0202/07/CS J-B Nyetera v CORAR rwo ku wa 09/04/2009 para 79. Kumenya indishyi zikwiye kugenwa n'ibyashingirwaho mu kuzibara, no kureba niba indishyi z'ibangamira ry'uburambe mu kazi impande zombi zitemeranywaho zagenwa [8] Urega yasabye kugenerwa indishyi z'ibangamirabukungu (a); iz'ibangamira ry'uburambe mu kazi (b); iz'ububabare (c); iz'ibangamiraburanga (d); amafaranga ajyanye no kwivuza, (e), ayagiye ku rubanza nyirizina ariyo yo gushaka inyandiko zo kuzuza dosiye; igihembo cy'Avoka; ikurikiranarubanza n'igarama (f).

- a) Indishyi z'ibangamirabukungu [9] Ku mpamvu y'uko ubumuga buhoraho butarengeje 30%, izi ndishyi ziragenwa hitawe ku ngingo ya 17 y'Iteka rya Perezida n°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga igira iti: "Iyo ari ubumuga butarengeje 30%, indishyi y'ibangamirabukungu igenwa hakurikijwe agaciro kagereraniye, ijanisha ry'ubumuga n'imyaka y'uwahohotewe ku itariki byemerejweho. Agaciro kagereraniye kangana na: 1 x umushahara w'umwaka muto ntarengwa wemewe n'amategeko, iyo ari umuntu udafite impamyabushobozi ku mwuga cyangwa impamyabumenyi y'amashuri yisumbuye; 2 x umushahara w'umwaka muto ntarengwa wemewe n'amategeko, iyo ari umuntu

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ufite impamyabumenyi y'amashuri yisumbuye cyangwa angana nayo ku rwego rwa tekini; 3 x umushahara w'umwaka muto ntarengwa wemewe n'amategeko, iyo ari umuntu ufite impamyabumenyi y'amashuri makuru. Agaciro kagereraniye bagakuba n'ijanisha ry'ubumuga. Umubare w'amafaranga babonye bakawukuba na: 7 iyo uwahohotewe afite imyaka iri hagati ya 16 na 19; 6 iyo uwahohotewe afite imyaka iri hagati ya 20 na 29; 5 iyo uwahohotewe afite imyaka iri hagati ya 30 na 34; 4 iyo uwahohotewe afite imyaka iri hagati ya 35 na 39; 3 iyo uwahohotewe afite imyaka 40 cyangwa ayirengeje." Ahangaha tukabona ko urega yavutse mu mwaka wa 1987 nk'uko bigaragara ku cyemezo urukiko rwashyikirijwe; impanuka yabaye mu 2018 afite imyaka 2018-1987 ikaba 31. Yahabwa rero indishyi z'ibangamirabukungu zibazwe mu buryo bukurikira: $(1 \times 3\,000 \text{ frw} \times 30 \text{ jrs} \times 12 \text{ ms} \times 30\% \times 5) = 1\,620\,000 \text{ frw}$.

- b) Indishyi z'ibangamira ry'uburambe ku kazi [10] Hashingiye ku ngingo ya 19 y'Iteka rya Perezida n°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga igira iti : "Ibangamira ry'uburambe mu kazi : (...) gutakaza uburambe mu kazi ku muntu wari usanzwe akora. (...) amafaranga agomba gutangwa (...) agarukira gusa ku mezi atandatu y'umusaruro abazwe kandi atarengeje inshuro 30 umushahara w'umwaka muto ntarengwa wemewe n'amategeko" Ikigaragara ni uko iyi ngingo iteganya ko bene izi ndishyi zihabwa umuntu ufite umurimo akora uzwi kandi afite uko awubayemo igihe (carrière). Mu gihe hagaragajwe ingaruka z'impanuka ziteye kubona ko uwo murimo utazakorwa na gato, cyangwa uzakorwa ariko ntukorwe nk'uko bikwiye. Hano rero Uhagarariye urega yasobanuye ko urega asanzwe ari umushahatsi, akaba asanzwe acuruza Caguwa nk'uko bigaragazwa na kitansi yishyuriyeho ipatante ryo mu mwaka wa 2018, ndetse hari n'indi yishyuriyeho amahoro mu mwaka wa 2017 wari wabanjirije uwa 2018. Muganga yagaragaje ko yavuye ariko akaba asigaranye ibisigisigi by'imvune mu kuguru no mu itako by'ibumoso, bityo bikaba byumvikana ko atazabasha kwinyakura nka mbere muri uwo murimo we w'ubucuruzi, ngo abugiremo umwete uba ukenewe mu bucuruzi kuko mu busanzwe busaba gukora umuntu agira bwangu. Bityo rero yagenerwa izi ndishyi, zikaba $3\,000 \text{ frw} \times 30 \times 6 = 540\,000 \text{ frw}$.
- c) Indishyi z'ububabare [11] Ingingo ya 19 y'Iteka rya Perezida n°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga igira iti: "Ibangamira ryonyine riterekeye umutungo ritangirwa indishyi ni : Pretium doloris cyangwa indishyi z'akababaro. Iri bangamira kwa muganga bazarigereranya hakurikijwe ikigereranyo cy'inzego 4. Iryoroshye : iyo ari ubumuga buhoraho kuva kuri 0 kugera kuri 20%; iriciriritse : iyo ari ubumuga buhoraho kuva kuri 21 kugera kuri 40%; irikomeye : iyo ari ubumuga buhoraho kuva kuri 41 kugera kuri 75%; irikomeye cyane : iyo ari ubumuga buhoraho burengeje 75%. Indishyi ibarwa ku buryo bukurikira : urwego rwa 1 (iriyoroshye) : 10% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko; urwego rwa 2 (iriciriritse) : 40% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko; urwego rwa 3 (irikomeye): 100% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko; urwego rwa 4 (irikomeye cyane): 150%

by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko (...)" Twabonye ko urega yagize ijanisha ry'ubumuga buhora bungana na 30%, ubwo ni hagati ya 21% na 40% akaba ari ibangamira riciriritse, bityo ni 40% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Bityo zikaba : 3 000 frw x 30 jrs x 12 ms x 40

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- d. Indishyi z'ibangamiraburanga [12] Ku byerekeye indishyi z'ibangamiraburanga, zirabarwa hashingiwe ku rwego rwa 2, nk'uko contre-expertise urega yashingiyeho ibigaragaza, hagakurikizwa ingingo ya 19 y'Iteka rya Perezida n°31/01/ ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'Ibinyabiziga ibiteganywa, aho igira iti : "(...)Ibangamira ry'uburanga : Iri bangamira kwa muganga bazarigereranya bakurikije ikigereranyo cy'inzego 6 kandi ritangirwe indishyi ku buryo bukurikira: urwego rwa 1 (iriyoroshye cyane): 5% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Urwego rwa 2 (iriyoroshye):10% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Urwego rwa 3 (iricishije bugufi):20% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Urwego rwa 4 (iriciriritse):40% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Urwego rwa 5 (irikomeye):100% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Urwego rwa 6 (irikomeye cyane): 150% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko (...)" Izi ndishyi zereye ni 3 000 frw x 30 x 12 x 10% = 108 000 frw.
- e) Gusubizwa amafaranga ajyanye no kwivuza [13] Uru rukiko rubona ko ingingo ya 13 y'Iteka rya Perezida n°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga igira iti : "Amafaranga yo kwivuza, yo gushyirwa mu bitaro, yo kugura imiti, yo gutwarwa mu modoka itwara abarwayi, yo kongera kumenyereza umubiri, yo kugorora ingingo, y'ibyuma bikoreshe, y'insimburangingo n'ay'ingendo zo kujya kwivuza arihwa n'uwateje impanuka cyangwa umwishingizi we, hakurikijwe ibiciro biriho mu Rwanda. Agomba kwishyurwa n'abo bombi, bamaze kubona inzandiko zibihamya, (...)" Uru rukiko rusanga urega asaba gusubizwa amafaranga y'ingendo zo kujya no kuva kwa Muganga, angana na 200 000 frw, akaba yayahabwa kuko ari yo iyi nteko isanzwe itanga nk'uko biboneka mu zindi manza nka RC 00247/2018/TGI/NYGE A.K. Rudasingwa c/SONARWA para 11; RC 00547/2018/TGI/NYGE F. Nsanzumuhire c/ SORAS para 30; RC 00466/2018/TGI/NYGE F. Nyiransengimana c/ SORAS para 16; RC 00973/2018/TGI/NYGE E. Sibomana c/ RADIANT para 12; RC 00268/2018/TGI/NYGE J. Micomyiza c/ RADIANT para 12, n'izindi. Nubwo Avoka umuhagarariye asobanura ko factures zo kwivuza batazifite kubera ibibazo byabayeho byo kutabasha kuzibika, ariko niba impanuka yarabaye nk'uko nta we ubijyaho impaka, hakaba hari inyandiko zigaragaza ko hari ibyo abaganga basuzumye, birumvikana no kwivuza byakozwe, bikanumvikanisha ko hakozwe ingendo zo kujya no kuva kwa Muganga.

- f) Gusubizwa amafaranga yakoreshejwe mu gushaka ibyangombwa byo kuzuza dosiye no ku rubanza [14] Ku byerekeye amafaranga yagiye ku rubanza, urega asaba guhabwa igihembo cya Avoka, ikurikiranarubanza n'igarama, uru rukiko rusanga ku mpamvu y'uko itegeko ryemerera urega kwitabaza inkiko iyo abona ko ubwumvikane n'umwishingizi butashobotse, bifite ingaruka ko n'ibizagenda ku rubanza ari umwishingizi uzabiriha, ibyo hashingiwe ku ngingo ya 111 a11 y'Itegeko n°22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, aho igira iti: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza." Urega rero byabaye ngombwa ko yiyambaza urukiko, none arabisabira indishyi zo kuba byarabaye

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ngombwa ko ategura dosiye agura inyandiko zikenerwa, ayaguze dosiye ni pages 6 hiyongeraho pages 2 za raporo Muganga akora ibitaro bikimara kwakira uwakomeretse, zikaba pages 8, imwe igura 1 200 frw bikaba 9 600 frw, hamwe n'ay'IREMBO 500 frw akaba 10 100 frw ni yo yahabwa. Hari ayaguze icyemezo 500 frw hamwe na 500 frw y'IREMBO akaba 1 000 frw ni yo yahabwa. Hari ugusubizwa igihembo cy'Avoka, yahabwa 500 000 frw nk'uko bisanzwe. Amafaramba y'ikurikiranarubanza yahabwa 100 000 frw ni yo forfait iyi nteko isanzwe itanga. Ingwate y'amagarama y'urukiko angana na 20,000 frw yayasubizwa. Yose hamwe akaba 10 100 frw + 1 000 frw + 500 000 frw + 100 000 frw + 20 000 frw akaba 631 100 frw. [15] Indishyi zose hamwe zikaba 1 620 000 frw + 540 000 frw + 432 000 frw + 108 000 frw + 200 000 frw + 631 100 frw zikaba 3 531 100 frw. III.ICYEMEZO CY'URUKIKO [16] Rwemeje ko ikirego cya Nyiraminani Clémentine gisuzumwe, kikaba gifite ishingiro kuri bimwe. [17] Rwemeje ko SANLAM PLC yishyura urega indishyi zingana na 3 531 100 frw, nk'uko zasobanuwe

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