

RWANDA / JUDGMENT

SANLAM ASSURANCES GENERALES Plc v NDAYISABA

RS/INJUST/RC 00006/2024/SC

COURT

Supreme Court

DECIDED

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SANLAM ASSURANCES GENERALES Plc v NDAYISABA

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Text

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SANLAM ASSURANCES GENERALES Plc vs NDAYISABA [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00006/2024/SC (Hitiyaremye P.J., Muhumuza na Kalihangabo J.) 14 Werurwe 2025]

Amategeko agenga imanza z'imbonezamubano – Indishyi zikomoka ku mpanuka – Impanuka z'ibinyabiziga byo mu muhanda – Indishyi z'ibangamira ry'uburambe mu kazi – Indishyi z'ibangamira ry'uburambe mu kazi zigenerwa umuntu wari ufite umurimo, yaba yarawuvuyeho cyangwa se atagishoboye kugira ibyo yinjiza kubera ingaruka z'impanuka, yaba yarawuhinduye ngo akore uwo ashoboye, yaba akiwurimo ariko awukora mu buryo buvunanye kubera ingaruka z'impanuka, cyangwa se yaba akiwurimo ariko atagishobora kuzamurwa mu ntera kubera ko atagitanga umusaruro nka mbere – Udafite akazi ntashobora guhabwa indishyi indishyi z'ibangamira ry'uburambe mu kazi. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Ndayisaba arega asaba ko Urukiko rwamugenera indishyi zitandukanye zikomoka ku mpanuka yabaye ku wa 07/10/2017, ubwo Moto TVS Victor ifite Plaque RB 479 V yari itwawe na Bagaragaza yamugongaga agendaga n'amaguru himuviramo

gukomereka, nyuma yuko asabye SANLAM AG Plc nk'umwishingizi wa moto yateje impanuka ko bakemura ikibazo mu bwumvikane, akagenerwa indishyi zikomoka ku mpanuka yari yabaye, ariko ubwumvikane ntibwagerwaho bituma atanga ikirego mu Rukiko. Urwo Rukiko rwaciye urubanza rwemeza ko ikirego cya Ndayisaba gifite ishingiro, rutegeka ko SANLAM AG Plc igomba kumwishyura 9,443,814 Frw akubiyemo: 4,933,580 Frw y'indishyi z'ibangamirabukungu, 1,080,000 Frw y'indishyi z'akababaro, 1,080,000 Frw y'indishyi z'ibangamiraburanga, 540,000 Frw y'indishyi z'ibangamira ry'uburambe mu kazi, 540,000 Frw y'indishyi z'ubumuga bw'igihe gito, 550,234 Frw yishyuwe ku bikorwa by'ubuvuzi no gukurikirana dosiye, 200,000 Frw y'indishyi zo gushorwa mu manza nta mpamvu, 500,000 Frw y'igihembo cya Avoka na 20,000 Frw y'ingwate y'amagarama. SANLAM AG Plc yajuririye mu Rukiko Rukuru ivuga ko indishyi z'ibangamirabukungu zabazwe mu buryo butari bwo, iz'ibangamira ry'uburambe mu kazi (préjudice de carrière) zitangwa hashingiwe ku marangamutima, naho iz'ubumuga bw'igihe gito, Urukiko ruzitanga rutabanje gusesengura amategeko zishingiyeho. Urwo Rukiko narwo rwaciye urubanza rwemeza ko ubujurire bufite ishingiro kuri bimwe; rwemeza ko indishyi z'ibangamirabukungu ndetse n'iz'ibangamira ry'uburambe mu kazi zaciwe SANLAM AG Plc zigumye nk'uko zemejwe mu rubanza rwajuririwe, ruvuga ko indishyi z'ubumuga bw'igihe gito zaciwe SANLAM AG Plc zivanyweho, rutegeka SANLAM AG Plc guha Ndayisaba 8,903,814 Frw akubiyemo 4,933,580 Frw y'indishyi z'ibangamirabukungu, 1,080,000 Frw y'indishyi z'akababaro, 1,080,000 Frw y'indishyi z'ibangamiraburanga, 540,000 Frw y'indishyi iz'ibangamira ry'uburambe mu kazi, 550,234 Frw yishyuwe ku bikorwa by'ubuvuzi no gukurikirana dosiye, 200,000 Frw y'indishyi zo gushorwa mu manza nta mpamvu, 500,000 Frw y'igihembo cya Avoka na 20,000 Frw y'ingwate y'amagarama. SANLAM AG Plc yaje kwandikira Perezida w'Urukiko rw'Ubujujire isaba ko urwo rubanza rwaciye n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujujire amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo, maze mu cyemezo No 069/CJ/2024 cyo ku wa 15/05/2024, yemeza ko rwongera kuburanishwa n'Urukiko Rw'Ikirenga. Mu Rukiko rw'Ikirenga, SANLAM AG Plc ivuga ko akarengane kari mu rubanza basabye ko rwasubirwamo, aruko urukiko rwagenyemo indishyi z'ibangamira ry'uburambe mu kazi mu buryo bunyuranyije n'amategeko kuko Ndayisaba akora impanuka nta kazi yagiraga, ivuga ko ingigo ya 19 y' Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, yateganyije ko umunyeshuri ndetse n'umuntu wari usanzwe afite akazi ariko akagatakaza, ari bo bonyine bagenerwa indishyi z'ibangamira ry'uburambe mu kazi, bityo ko kuba Ndayisaba atari muri ibyo byiciro bibiri (2) birebwa n'izo ndishyi, hatari

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gushingirwa ku mahirwe y'ahazaza. Yongeraho ko kuba hari ubumuga Ndayisaba yasigiwe n'impanuka ndetse akaba ntacyo agishoboye gukora, ibyo yabihereye indishyi. Ndayisaba we aburana avuga ko impamvu SANLAM AG Plc yatanze isubirishamo urubanza ku mpamvu z'akarengane nta shingiro zahabwa kuko mu bisobanuro Urukiko Rukuru rwatanze rwashakaga kumvikanisha ko, n'ubwo umuntu nta kazi kazwi aba afite bidakuraho ko ntacyo aba yimariye

cyangwa amariye abandi. Avuga kandi ko yabanje gukora akazi k'ubuyede, nyuma aza gukora n'ak'ubufundi, ko rero ntaho uburanira SANLAM AG Plc yahera avuga ko nta kazi yagiraga kandi icyo gihe cyose yari akimaze atunze umugore n'abana. Akomeza avuga ko atabona ibimenyetso bihamya akazi yakoraga bitewe n'imiterere yako kuko bahembwaga mu ntoki. Incamake y'icyemezo: Ibangamira ry'uburambe mu kazi "préjudice de carrière" cyangwa "préjudice professionnel" risobanurwa nk'ibura ry'ibyo umuntu yinjizaga (perte de revenus) biturutse ku murimo yakoraga mbere y'impanuka kandi ko rigamije kuriha indishyi zijyanye n'ingaruka z'impanuka uwahohotewe yagize zikamutera guhindura umwuga cyangwa gukora umurimo yari asanganywe mu buryo buvunanye (pénibilité), cyangwa se guhindura umurimo yakoraga. Ndayisaba akaba yaragombaga gutanga ikimenyetso icyo aricyo cyose cyagombaga kugaragaza ko hari akazi yari afite akora impanuka. Bityo, nta ndishyi z'ibangamira ry'uburambe mu kazi yagombaga kugenerwa, akaba agomba gusubiza SANLAM AG Plc 540,000 Frw y'izo ndishyi yahawe mu buryo bunyuranyije n'amategeko. Amategeko yashingiweho: Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, Ingingo ya 4. Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, Ingingo ya 19. Imanza zifashishijwe: Radiant Insurance Company Ltd vs Mukaneza Clarisse, RS/INJUST/RC 00007/2023/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 05/04/2024. RADIANT Insurance Company vs. Murekatete Denyse, RS/INJUST/RC 00004/2023/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 2/04/2024. Prime Insurance Company Ltd vs Uwimanimpaye Jean Claude, RS/INJUST/RC 00010/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/12/2022. Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku mpanuka yabaye ku wa 07/10/2017, ubwo Moto TVS Victor ifite Plaque RB 479 V yari itwawe na Bagaragaza Emmanuel yageraga mu Mudugudu wa Giporoso, Akagari ka Kabeza, Umurenge wa Kanombe, Akarere ka Kicukiro, mu Mujyi wa Kigali; agonga Ndayisaba Mathieu wagenzaga n'amaguru bimuviramo gukomereka, inyandiko mvugo yakozwe n'Umugenzacyaha, yerekanye ko impanuka yatewe n'uko Bagaragaza Emmanuel atubahirije amategeko y'umuhanda, ananirwa kuringaniza umuvuduko yagenderagaho. [2] Nyuma y'aho impanuka ibereye, Ndayisaba Mathieu yagiye kwipimisha ngo arebe ubumuga impanuka yamusigiye, asanga afite ubumuga buhoraho buri ku kigero cya 48%, mu gihe SANLAM AG Plc yo yagaragaje ko ubumuga bukomoka kuri iyo mpanuka buri ku kigero cya 45%.

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[3] Ku wa 14/01/2021, Ndayisaba Mathieu yasabye SANLAM AG Plc nk'umwishingizi wa moto yateje impanuka ko bakemura ikibazo mu bwumvikane, akagenerwa indishyi zikomoka ku mpanuka yari yabaye, ariko ubwumvikane ntibwagerwaho bituma atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arusaba ko rwamugenera indishyi zitandukanye yasabaga. SANLAM AG Plc yireguye ivuga ko indishyi zisabwa na Ndayisaba Mathieu nta shingiro zifite kuko mu zo asaba harimo izo atemerewe n'amategeko. [4] Urukiko rwanzuye ko ikirego cya Ndayisaba Mathieu gifite ishingiro, rutegaka ko SANLAM AG Plc igomba kumwishyura 9,443,814 Frw akubiyemo: 4,933,580 Frw y'indishyi z'ibangamirabukungu, 1,080,000 Frw

y'indishyi z'akababaro, 1,080,000 Frw y'indishyi z'ibangamiraburanga, 540,000 Frw y'indishyi z'ibangamira ry'uburambe mu kazi, 540,000 Frw y'indishyi z'ubumuga bw'igihe gito, 550,234 Frw yishyuwe ku bikorwa by'ubuvuzi no gukurikirana dosiye, 200,000 Frw y'indishyi zo gushorwa mu manza nta mpamvu, 500,000 Frw y'igihembo cya Avoka na 20,000 Frw y'ingwate y'amagarama. [5] SANLAM AG Plc yajuririye mu Rukiko Rukuru ivuga ko indishyi z'ibangamirabukungu zabazwe mu buryo butari bwo, iz'ibangamira ry'uburambe ku kazi (préjudice de carrière) zitangwa hashingiwe ku marangamutima, naho iz'ubumuga bw'igihe gito, Urukiko ruzitanga rutabanje gusesengura amategako zishingiyeho. [6] Mu rubanza no RCA 00207/2022/HC/KIG rwaciwe ku wa 05/06/2023, Urukiko Rukuru rwasanze: i. Rwemeranya n'uburyo Urukiko Rwisumbuye rwa Nyarugenge rwabaze indishyi z'ibangamirabukungu; ii. ii. Kuba ingingo ya 18 na 19 z'Iteka rya Perezida no 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ntaho ziteganyako udafite akazi akuwe mu bagenerwa indishyi z'ibangamira ry'uburambe ku murimo ari igihamba ko agomba kuzigenerwa, kuko izo ndishyi zitahabwa umunyeshuri udafite icyo yinjiza na mba, ngo noneho zimwe uwarangije kwiga; iii. iii. Rutakurikiza umurongo watanze mu rubanza no RS/INJUST/RC 00010/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/12/2022, haburana Prime Insurance Company Ltd na Uwimanimpaye Jean Claude kuko ibisobanuro birukubiyemo bitagaragaza impamvu zishingirwaho kugira ngo udafite akazi yimwe indishyi, mu gihe umunyeshuri we azihabwa; iv. Ndayisaba Mathieu atagenerwa indishyi z'ubumuga bw'igihe gito kuko muri uru rubanza yagenewe indishyi z'ibangamirabukungu. [7] Urukiko rwanzuye ko ubujurire bwa SANLAM AG Plc bufite ishingiro kuri bimwe; rwemeza ko indishyi z'ibangamirabukungu ndetse n'iz'ibangamira ry'uburambe mu kazi zaciwe SANLAM AG Plc zigumye nk'uko zemejwe mu rubanza no RC 00239/2021/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 20/04/2022, ruvuga ko indishyi z'ubumuga bw'igihe gito zaciwe SANLAM AG Plc zivanyweho, rutegeka SANLAM AG Plc guha Ndayisaba Mathieu 8,903,814 Frw akubiyemo 4,933,580 Frw y'indishyi z'ibangamirabukungu, 1,080,000 Frw y'indishyi z'akababaro, 1,080,000 Frw y'indishyi z'ibangamiraburanga, 540,000 Frw y'indishyi iz'ibangamira ry'uburambe mu kazi, 550,234 Frw yishyuwe ku bikorwa by'ubuvuzi no gukurikirana dosiye, 200,000 Frw y'indishyi zo gushorwa mu manza nta mpamvu, 500,000 Frw y'igihembo cya Avoka na 20,000 Frw y'ingwate y'amagarama. [8] Ku wa 14/06/2023, SANLAM AG Plc yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza n° RCA 00207/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 05/06/2023 rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo, maze mu cyemezo no 069/CJ/2024

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cyo ku wa 15/05/2024, yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe. [9] Mu myanzuro ya SANLAM AG Plc ivuga ko akarengane kari mu rubanza basabye ko rwasubirwamo aruko urukiko rwagennye indishyi z'ibangamira

ry'uburambe mu kazi mu buryo bunyuranyije n'amategeko kuko Ndayisaba Mathieu akora impanuka nta kazi yagiraga, uyu ariko we akavuga ko nta mategeko yishwe kuko akazi yari agafite n'ubwo nta bimenyetso byako afite kuko yahembwaga mu ntoki. [10] Iburanisha mu ruhame ryabaye ku wa 13/02/2025, SANLAM AG Plc ihagarariwe na Me Nkeza Sempundu Clément, naho Ndayisaba Mathieu ahagarariwe na Me Abasa Fazili, maze ababuranyi bajya impaka ku bijyanye no kumenya niba Ndayisaba Mathieu agomba guhabwa indishyi z'ibangamira ry'uburambe mu kazi ndetse no kumenya ishingiro ry'indishyi zisabwa muri uru rubanza. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

- 1) Kumenya niba Ndayisaba Mathieu agomba guhabwa indishyi z'ibangamira ry'uburambe mu kazi [11] Me Nkeza Sempundu Clément uhagarariye SANLAM AG Plc avuga ko nta ndishyi z'ibangamira ry'uburambe mu kazi Ndayisaba Mathieu yagombaga guhabwa kuko mu nkiko zabanje yaburanaga avuga ko nta kazi kazwi yakoraga igihe impanuka yabaga, ari nayo mpamvu indishyi zose yagenewe zabariwe kuri SMIG ya 3,000 Frw. Agaragaza ko icyatunguranye ari ukubona Urukiko Rukuru ruvuga ko ingingo ya 18 n'ya 19 z'Iteka rya Perezida no 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ntaho zigaragaza ko udafite akazi gahemberwa yakuwe mu bahabwa indishyi z'ibangamira ry'uburambe mu kazi, mu gihe nyamara umunyeshuri udahembwa we azigenerwa. [12] Avuga ko kuba Urukiko Rukuru rwarasesenguye ingingo ya 19 y'Iteka rya Perezida ryagarutseweho, rukavugaga ko n'ubwo uwakomerekejwe n'impanuka aba atarabona akazi kamuhemba ku kwezi ariko bidakuraho ko hari indi mirimo aba asanzwe akora nka nyakabyizi mu gihe agitegereje gushaka akandi kazi kazwi, bityo ko iyo mpanuka ishobora kumuvutsa amahirwe yo kubona ako kazi ugereranyije n'ayo yari kuba afite iyo mpanuka itaraba; asanga Urukiko ntacyo rwabishingiyeho kuko n'ubusanzwe mbere y'uho impanuka iba ntako yagiraga. [13] Akomeza avuga ko ingingo ya 19 y'Iteka rya Perezida ryavuzwe, yateganyije ko umunyeshuri ndetse n'umuntu wari usanzwe afite akazi ariko akagatakaza, ari bo bonyine bagenerwa indishyi z'ibangamira ry'uburambe mu kazi, bityo ko kuba Ndayisaba Mathieu atari muri ibyo byiciro bibiri (2) birebwa n'izo ndishyi, hatari gushingirwa ku mahirwe y'ahazaza. Yongeraho ko kuba hari ubumuga Ndayisaba Mathieu yasigiwe n'impanuka ndetse akaba ntacyo agishoboye gukora, ibyo yabihereye indishyi. Asanga rero kuba Urukiko Rukuru rwaremeraga ko Ndayisaba Mathieu nta kazi kazwi yari afite ndetse akaba atari n'umunyeshuri igihe impanuka yabaga, asanga nta kindi Urukiko rwari gushingiraho rumugenera izo ndishyi kuko ntacyo itegeko ryateganyije kuko rireba abantu bakorera umushahara. [14] Avuga ko kuba Urukiko Rukuru rwaravuze ko Ndayisaba Mathieu yashoboraga kubura akazi mu gihe kizaza binyuranyije n'Iteka rya Perezida ndetse n'umurongo watanzwe n'Urukiko rw'Ikirenga mu kibazo gisa nk'iki, aho mu rubanza no RS/INJUST/RC 00010/2021/SC1 rwasobanuye ko umuntu utagaragaza ko hari akazi yari afite ubwo yakoraga impanuka nta n'indishyi ashobora guhabwa kuko ntacyo

1 Reba urubanza no RS/INJUST/RC 00010/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/12/2022 haburana Prime Insurance Company Ltd na Uwimanimpaye Jean Claude, igika cya 27

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aba yatakaje, ndetse n'urubanza RS/INJUST/RC 00007/2023/SC2 , aho rwasobanuye ko ingaruka ubumuga buhoraho bugira ku burambe ku kazi k'uware usanzwe akora harimo gutakaza amahirwe yo kuzamurwa mu ntera mu kazi, bityo ko kuba Ndayisaba Mathieu nta kazi kazwi gakorera ibihembo (salarie) yari afite igihe impanuka yabaga, atagombaga guhabwa izo ndishyi. [15] Akomeza avuga ko Urukiko Rukuru rwitiranyije indishyi zo gutakaza amahirwe (perte de chance) ndetse n'indishyi z'ibangamira ry'uburambe mu kazi (prejudice de carriere). Avuga ko uburanira Ndayisaba Mathieu ataburana avuga ko akazi yakoraga katazwi kuko nta kazi katazwi kabaho. [16] Asoza kuri iyi ngingo avuga ko hashingiwe ku mirongo yatanze n'Urukiko rw'Ikirenga yagaragaje Ndayisaba Mathieu atari guhabwa indishyi z'ibangamira ry'uburambe mu kazi kuko atujuje ibisabwa n'ingingo ya 19 y'Iteka rya Perezida ryavuzwe haruguru; asaba Urukiko rw'Ikirenga kumutegeka gusubiza SANLAM AG Plc 540,000 Frw y'izo ndishyi yahawe bitari ngombwa. [17] Me Abasa Fazili uhagarariye Ndayisaba Mathieu avuga ko impamvu SANLAM AG Plc yatanze isubirishamo urubanza ku mpamvu z'akarengane nta shingiro zahabwa kuko mu bisobanuro Urukiko Rukuru rwatanze rwashakaga kumvikanisha ko, n'ubwo umuntu nta kazi kazwi aba afite bidakuraho ko ntacyo aba yimariye cyangwa amariye abandi. Rwerekanye kandi ko igihe cyose umuntu atamugaye, yakora akazi ako ariko kose; ko kuba rero igihe agize ubumuga, ubwo bumuga bumuzitira gukora akazi yari asanzwe akora ataramugara. [18] Akomeza avuga ko mu buzima bwa buri muni, Ndayisaba Mathieu yabanje gukora akazi k'ubuyede, nyuma aza gukora n'ak'ubufundi, ko rero ntaho uburanira SANLAM AG Plc yahera avuga ko nta kazi yagiraga kandi icyo gihe cyose yari akimaze atunze umugore n'abana. Akomeza avuga ko atabona ibimenyetso bihamya akazi Ndayisaba Mathieu yakoraga bitewe n'imiterere yako kuko bahembwaga mu ntoki. Yongeraho kandi ko kuba uwo aburanira yarahawe indishyi z'ibangamirabukungu ari igihamba ko hari imirimo yakoraga, agasanga rero bihura n'ibiteganywa n'ingingo ya 19 y'Iteka rya Perezida ryagarutseweho, by'uko uwemerewe indishyi z'ibangamira ry'uburambe mu kazi aba ari umuntu ukora kandi ufite icyo yinjiza hatitawe ku kazi aba akora. [19] Avuga nanone ko bitumvikana ukuntu SANLAM AG Plc yemeranya n'indishyi z'ibangamirabukungu zahawe Ndayisaba Mathieu, hanyuma ikavuga ko adakwiye guhabwa indishyi z'ibangamira ry'uburambe mu kazi kandi yaragize ubumuga buhoraho bwemejwe na muganga. Asanga rero ubwo bumuga bwaramugizeho ingaruka zikomeye cyane ku buryo atakibasha kugira icyo yikorera nka mbere kuko bumubera inzitizi zo kuba yahabwa akazi ako ariko kose, ibi bikaba byaratumye asubira iwabo mu Ntara y'Iburengerazuba kuko atakibashije gukora, cyane cyane ko n'ubu acyivuze. [20] Arangiza avuga ko Urukiko Rukuru rutanze gukurikiza umurongo watanze mu rubanza n o RS/INJUST/RC 00010/2021/SC kuko mu gufata icyemezo rutanyuranyije na wo, ahubwo rwavuze ko ibisobanuro bikubiye muri urwo rubanza bidahagije ngo hemezwe ko udafite akazi kazwi igihe yakoraga impanuka adakwiriye guhabwa indishyi z'ibangamira ry'uburambe mu kazi kuko aba avukijwe amahirwe yo kuzabona akazi no kukarambaho; ruvuga kandi ko urwo rubanza rudatanga ibisobanuro bihagije kuri iki kibazo, nk'uko byasobanuwe mu rundi rubanza n o RS/INJUST/RC 00007/2023/SC rwavuzwe haruguru. UKO URUKIKO RUBIBONA [21] Ikibazo kigomba gusuzumwa ababuranyi batumvikanaho muri uru rubanza ni ukumenya niba umuntu udafite akazi cyangwa udafite akazi kazwi (a well

determined job/un emploi bien déterminé)

2 Reba n o RS/INJUST/RC 00007/2023/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 05/04/2024
haburana Radiant Insurance Company Ltd na Mukaneza Clarisse, igika cya 53

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agomba kugenerwa indishyi z'ibagamira ry'ububurambe mu kazi. Mu gusubiza iki kibazo, ni ngombwa gusobanura ibijyanye n'izi ndishyi n'abagomba kuzigenerwa ndetse no kumenya niba hari akazi Ndayisaba Mathieu yari afite igihe yakoraga impanuka.

- a. Ibijyanye n'indishyi z'ibagamira ry'ububurambe mu kazi n'abagomba kuzigenerwa [22] Ingingo ya 19 y'Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga iteganya ko ibangamira ry'uburambe mukazi ari (i) ugutakaza amahirwe y'akazi ku munyeshuri wo mu mashuri abanza, ayisumbuye, ay'imyuga, aya kaminuza cyangwa andi angana nayo umuntu ashobora kwizera (ii) no gutakaza uburambe mu kazi ku muntu wari usanzwe akora. Iyo ingingo ivuga mu gika cyayo cya nyuma ko amafaranga agomba gutangwa ku watakaje uburambe mu kazi agarukira gusa ku mezi atandatu y'umusaruro abazwe kandi atarengeje inshuro 30 umushahara w'umwaka muto ntarengwa wemewe n'amategeko. [23] Mu rubanza RS/INJUST/RC 00004/2023/SC, Urukiko rwifashishije umuhanga mu mategeko Joëlle Marteau-Péretié rwasobanuye ko ibangamira ry'uburambe mu kazi “préjudice de carrière” cyangwa “préjudice professionnel” risobanurwa nk'ibura ry'ibyo umuntu yinjizaga (perte de revenus) biturutse ku murimo yakoraga mbere y'impanuka kandi ko rigamije kuriha indishyi zijyanye n'ingaruka z'impanuka uwahohotewe yagize zikamutera guhindura umwuga cyangwa gukora umurimo yari asanganywe mu buryo buvunanye (pénibilité), cyangwa se guhindura umurimo yakoraga³. Uwo muhanga asobanura ko indishyi zitangwa zishingiye ku ngaruka ku mwuga “Incidence professionnelle” zigamije kuriha ingaruka z'impanuka umuntu yagize zishobora kumugabanyiriza agaciro ku isoko ry'umurimo, zikanariha imvune asigaye agira mu gukora umurimo yari asanganywe cyangwa undi azakora mu gihe kizaza (pénibilité), kuba byarabaye ngombwa ko ahindura akazi cyangwa kuba yabura amahirwe yo kuzamurwa mu ntera kubera impanuka yagize⁴. [24] Hashingiwe kuri uyu murongo rero, biragaragara ko indishyi z'ibangamira ry'uburambe mu kazi zigenerwa umuntu wari ufite umurimo, yaba yarawuvuyeho cyangwa se atagishoboye kugira ibyo yinjiza kubera ingaruka z'impanuka, yaba yarawuhinduye ngo akore uwo ashoboye, yaba akiwurimo ariko awukora mu buryo buvunanye kubera ingaruka z'impanuka, cyangwa se yaba akiwurimo ariko atagishobora kuzamurwa mu ntera kubera ko atagitanga umusaruro nka mbere, ibi bikaba byumvikanisha ko udafite akazi atarebwa n'izi ndishyi. Birumvikana kandi ko kugira ngo usaba indishyi z'ibangamira ry'uburambe mu kazi ashobore kuzigenerwa, agomba kugaragaza ko koko hari akazi yari afite ako ari ko kose, ndetse n'ingaruka impanuka yamugizeho yatumye agatakaza, agahindura, agakora mu buryo buvunanye cyangwa ko yaba atagishoboye kuzamurwa mu ntera. Iby'uko usaba izo ndishyi ari we ugomba kugaragaza ko

yari afite akazi byagarutsweho mu rubanza no RS/INJUST/RC 00010/2021/SC5, aho Urukiko rwasanze Uwimanimpaye Jean Claude ataragombaga kugenerwa indishyi z'ibangamira ry'uburambe mu kazi kuko atagaragariye Urukiko ibimenyetso by'akazi avuga ko yari afite6 .

- b. Kumenya niba hari akazi Ndayisaba Mathieu yari afite igihe yakoraga impanuka [25] 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 kandi ko uwiregura

3Urubanza RS/INJUST/RC 00004/2023/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 2/04/2024 haburana RADIANT Insurance Company na Murekatete Denyse, igika cya 36. 4 Ibi biboneka mu gika cya 37 cy'urwo rubanza. 5Reba urubanza no RS/INJUST/RC 00010/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/12/2022 haburana Prime Insurance Company Ltd na Uwimanimpaye Jean Claude, igika cya 27 6Umurongo watanze muri uru rubanza wakosowe mu buryo bwo kuwuzura mu rubanza RS/INJUST/RC 00007/2023/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 05/04/2024 haburana Radiant Insurance Company Ltd na Mukaneza Clarisse, igika cya 53, aho Urukiko rwemeje ko indishyi z'ibangamira ry'uburambe mu kazi zitagomba kumvikana nk'izo gutakaza akazi.

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agaragaza ikimenyetso gishyigikira ukwiregura kwe. Naho ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, ikavuga ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, yabibura uwarezwe agatsinda. [26] Muri uru rubanza, Ndayisaba Mathieu uvuga ko yari afite akazi kari kamutunze akaba yarabisabiraga indishyi z'ibangamira ry'uburambe mu kazi, ni we ugomba kubitangira ibimenyetso, atabibona agatsindwa. Umuburanira avuga ko yari afite akazi k'ubufundi avuye ku k'ubuyede, ariko akavuga ko atabona ibimenyetso bihamya akazi Ndayisaba Mathieu yakoraga bitewe n'imiterere yako, kuko yahembwaga mu ntoki. [27] Urukiko rurasanga uhagarariye Ndayisaba Mathieu yaragombaga gutanga ikimenyetso icyo ari cyo cyose cyashoboraga kugaragaza ko yakoraga ako kazi, urugero nk'ubuhamya bw'uyobozi bw'inzego z'ibanzebw'aho yari atuye bwakwemeza ko yari afite akazi, ubw'abo yaba yarakoreye cyangwa yarakoranye nabo, igipande yahemberwagaho cyangwa momo yakiriragaho ibihembo cyangwa ikindi kimenyetso cyose yabona cyabyemeza. Kubera ko icyo kimenyetso kitagaragajwe, Ndayisaba Mathieu ntiyagombaga guhabwa indishyi z'ibangamira ry'uburambe mu kazi kubera ko atagaragaje ko hari akazi yari afite akora impanuka. [28] Hashingiwe ku ngingo z'amategako no ku bisobanuro byatanze haruguru, Urukiko rurasanga nta ndishyi z'ibangamira ry'uburambe mu kazi Ndayisaba Mathieu yagombaga kugenerwa, akaba agomba gusubiza SANLAM AG Plc 540,000 Frw y'izo ndishyi yahawemu buryo bunyuranyije n'amategako. II.2. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza [29] Me Nkeza Sempundu Clément uhagarariye SANLAM AG Plc avuga ko kuba Ndayisaba Mathieu yarahawe indishyi z'ibangamira ry'uburambe mu kazi, byateye sosiyete aburanira gusiragira mu manza, bityo akaba asaba uru Rukiko gutegeka Ndayisaba Mathieu kwishyura SANLAM AG Plc

2,000,000Frw akubiyemo 700,000 Frw y'igihembo cya Avoka ku rubanza rwaciwe n'Urukiko Rukuru, 800,000 Frw y'igihembo cya Avoka kuri uru rwego na 500,000 Frw y'ikurikiranarubanza kuri buri rwego kuko yiyambaje abanyamategeko bayiburanira. [30] Me Abasa Fazili uhagarariye Ndayisaba Mathieu yireguye avuga ko indishyi zisabwa na SANLAM AG Plc nta shingiro zahabwa kuko ibyo uwo aburanira yagenewe byose yari abifitiye uburenganzira. Avuga kandi ko atasubiza 540,000 Frw yahawe nk'indishyi z'ibangamira ry'uburambe mu kazi kuko yemejwe n'Urukiko. Asoza asaba ko Urukiko rwategeka SANLAM AG Plc kumwishyura indishyi zo gushorwa mu manza zingana 2,000,000 Frw y'igihembo cya Avoka ndetse na 1,000,000 Frw y'ikurikiranarubanza. [31] Uburanira SANLAM AG Plc avuga ko indishyi zisabwa na Ndayisaba Mathieu nta shingiro zifite kuko atabasha guhinyuza imanza z'icyitegererezo SANLAM AG Plc yaburanishije ishyigikira ikirego yatanze. UKO URUKIKO RUBIBONA [32] Urukiko rurasanga indishyi Ndayisaba Mathieu asaba atazihabwa kuko atsindwa muri uru rubanza. Ku birebana n'indishyi zisabwa na SANLAM AG Plc, Urukiko rurasanga hari izo igomba guhawa kubera ko itsinze urubanza. Ku birebana n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza isaba mu Rukiko Rukuru, Urukiko rurasanga ntayo igomba guhabwa kubera ko kuri urwo rwego hari ibyo yatsindiwe, naho ayo isaba kuri uru rwego yo ikaba igomba kuyahabwa. Rurasanga ariko ayo isaba ari umurengera kandi itayatangira ibimenyetso, mu bushishozi bwawo rukaba ruyigeneye 500,000 Frw y'igihembo cya Avoka na 300,000 Frw y'ikurikiranarubanza.

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III. ICYEMEZO CY'URUKIKO [33] Rwemeje ko ikirego cyatanzwe na SANLAM AG Plc cyo gusubirishamo ku mpamvu z'akarengane urubanza n° RCA 00207/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 05/06/2023 gifite ishingiro; [34] Rutegetse Ndayisaba Mathieu gusubiza SANLAM AG Plc 540,000 Frw yahawe nk'indishyi z'ibangamira ry'uburambe mu kazi; [35] Rutegetse Ndayisaba Mathieu guha SANLAM AG Plc 800,000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.

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