

RWANDA / JUDGMENT

SONARWA v. KABANDA

RS/INJUST/RSOC00008/2024/SC

COURT

Supreme Court

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SONARWA v. KABANDA

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Text

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SONARWA v. KABANDA [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RSOC00008/2024/SC (Cyanzayire, P.J., Mukamulisa na Kalihangabo, J.) 21 Ugushyingo 2025] Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Indishyi zihabwa umukozi wirukanwe mu buryo bunyuranyije n'amategeko – Ibarwa ry'indishyi – Indishyi zihabwa umukozi wasezerewe mu kazi mu buryo bunyuranyije n'amategeko zibarwa hashingiye ku mushahara atahana mu ntoki (salaire net) aho kuba umushahara mbumbe (salaire brut). Incamake y'ikibazo: Kabanda wari umukozi wa Sonarwa General Insurance Company Ltd (Sonarwa) yayireze mu Rukiko Rwisumbuye rwa Nyarugenge, ko yamwirukanye mu buryo bunyuranyije n'amategeko ngo kuko yapiganwe agatsindwa, kandi yararikoze afite umwanya akoramo, ukaba wari ugihari, ndetse n'amasezerano yari asanganywe akaba yari ataraseswa. Sonarwa ivuga ko Uregwa yasezerewe ku kazi kubera ivugurura ryabaye, akaba yararimenyeshejwe n'abandi bakozi hamwe n'umugenzuzi w'umurimo. Urukiko Rwisumbuye rwaciye urubanza rutegeka Uregwa kwishyura Urega indishyi, kuko yamwirukanye mu buryo bunyuranyije n'amategeko. Uregwa ntiyishimiye iki cyemezo, akijuririra mu Rukiko Rukuru, ariko rwemeza ko ubujurire bwe nta shingiro bufite, ko agomba kwishyura indishyi Urega k'ubwo kumwirukana mu buryo bunyuranyije n'amategeko. Uregwa yasabye ko

urwo rubanza rwaciwe n'Urukiko Rukuru rwasubirwamo ku mpamvu z'akarengane, arabyemererwa, hemezwa ko rwongera kuburanishwa n'uru Rukiko rw'Ikirenga. Uregwa yaburanye avuga ko Urukiko Rukuru rwabariye indishyi ku mushahara mbumbe, aho kubarira ku mushahara umukozi atahana, nyamara rwari rwagaragarijwe "basic salary" y'Urega ndetse nayo asigarana hamaze gukurwamo umusoro hamwe n'ibindi bisabwa n'amategeko, kuko ariwo yabariweho imperekeza yahawe ubwo yasezererwaga. Avuga kandi ko n'ubwo Itegeko ry'umurimo ritigeze risobanura umushahara ushingirwaho mu kubara indishyi zihabwa umukozi wirukanwe mu kazi mu buryo bunyuranyije n'amategeko cg imperekeza, hari umurongo wafashwe n'uru Rukiko wemeza ko indishyi zihabwa uwo mukozi zibarirwa ku mushahara atahana. Bityo, akaba asaba kurenganurwa kuko abona ko ari akarengane. Incamake y'icyemero: Indishyi zihabwa umukozi wasezerewe mu kazi mu buryo bunyuranyije n'amategeko, zibarwa hashingiye ku mushahara atahana mu ntoki (salaire net) aho kuba umushahara mbumbe (salaire brut). Bityo, indishyi zo kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko Kabanda Agnès akwiye guhabwa zigomba kubarwa hashingiye k'umushahara yatahanaga ungana na 904.087Frw, wabonetse bafashe umushahara mbumbe bakuramo amafaranga ateganywa n'Itegeko. Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, gifite ishingiro kuri bimwe. Amategeko yashingiweho: Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 30. Imanza zifashishijwe: RS/INJUST/RSOC00010/2024/SC, Ruhamyandekwe v. Urwego Bank Plc yahindutse Urwego Finance CBC Ltd, rwaciwe ku wa 07/11/2025. RS/INJUST/RSOC00002/2022/SC, Mutware Jean de Dieu na Guaranty Trust Bank (Rwanda) Ltd rwaciwe ku wa 21/10/2022. RS/INJUST/RSOC00001/2019/SC, Niwemugeni Jeannette na KCB Bank Rwanda Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2020.

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Urubanza I. IMITERERE Y'URUBANZA [1] Kabanda Agnès yari umukozi wa Sonarwa General Insurance Company Ltd (yiswe SONARWA muri uru rubanza) kuva ku wa 01/09/1996, bakaba bari bafitanye amasezerano y'akazi y'igihe kitazwi yasheshwe na SONARWA ku wa 06/09/2019 nyuma y'ipiganwa yakoze agatsindwa. [2] Kabanda Agnès yareze SONARWA mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko yirukanywe mu buryo bunyuranyije n'amategeko kubera ko inyandiko imusezerera igaragaza ko yakoze ipiganwa agatsindwa kandi yararikoze afite umwanya akoramo, ukaba wari ugihari ndetse amasezerano yari asanganywe akaba yari ataraseswa. Yasabye indishyi zinyuranye n'imishahara avuga ko atahembwe kandi yari ayifiteho uburenganzira. [3] SONARWA yireguye ivuga ko ikirego nta shingiro gifite kuko Kabanda Agnès yasezerewe ku kazi kubera ivugurura ryabaye, kandi ko abakozi bari barabimenyeshejwe hamwe n'Umugenzuzi w'umurimo. [4] Mu rubanza RSOC00181/2021/TGI/NYGE rwaciwe ku wa 08/04/2022, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Kabanda Agnès gifite ishingiro, rumugenera indishyi zingana na 9.749.658Frw; rutegeka SONARWA kumuha 700.000Frw akubiyemo ay'ikurikiranarubanza n'igihembo cya Avoka. [5] Urukiko rwasobanuye ko kuba rwarasanze SONARWA yarasezereye urega mu buryo bunyuranyije n'amategeko igomba kubimuhera indishyi, ko ariko ubwo yashingiye ku mpamvu ifite ishingiro ariko bigakorwa mu buryo budakurikije amategeko, Kabanda Agnès agomba guhabwa indishyi zingana n'umushahara we w'amezi 6, ni ukuvuga

1.624.943Frw x 6 = 9.749.658Frw. [6] SONARWA ntiyishimiye imikirize y'urubanza, ijuririra Urukiko Rukuru irusaba gusuzuma niba Kabanda Agnès yaragombaga guhabwa indishyi zo gusezererwa ku kazi mu buryo bunyuranyije n'amategeko zikiyongera ku mperekeza yari yarahawe mbere, no gusuzuma niba umushahara mbumbe wa 1.624.943Frw ariwo wagombaga kubarirwaho indishyi. [7] Mu rubanza RSOCA00092/2022/HC/KIG rwaciwe ku wa 29/02/2024, Urukiko Rukuru rwemeje ko ubujurire bwa SONARWA nta shingiro bufite, ko igomba kwishyura Kabanda Agnès indishyi zihwanye na 8.949.792Frw na 500.000Frw y'igihembo cya Avoka n'ikurikiranarubanza, atayahabwa ku neza agakurwa mu byayo ku ngufu za Leta. [8] Urukiko rwasanze iyo umukozi yirukanywe ku buryo bunyuranyije n'amategeko abihirwa indishyi n'ibindi (réparation de préjudice). Ku bijyanye n'ingano y'umushahara ukwiye gushingirwaho habarwa indishyi, Urukiko rwashingiye ku mushahara wa 1.624.943Frw kuko SONARWA itashoboye kwerekana undi mushahara Kabanda Agnès yatahanaga (net salary). [9] Mu kubarira Kabanda Agnès indishyi, Urukiko rwasanze ubwo yakoze imyaka 22, adakwiye guhabwa indishyi z'amezi 6, ko ahubwo akwiye guhabwa iz'amezi 9, bivuga ko indishyi akwiye zingana na 1.624.943 Frw x 9 = 14.624.487Frw, ariko hakavamo 5.675.151Frw yahawe na SONARWA ubwo yamusezereraga, hagasigara 8.949.792Frw, ariyo SONARWA igomba kwishyura. [10] SONARWA yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RSOCA00092/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/02/2024, rusubirwamo ku mpamvu z'akarengane. Nyuma y'isesengura ry'urubanza, Perezida w'Urukiko rw'Ubujurire yakoze raporo

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ayohereza Perezida w'Urukiko rw'Ikirenga, na we yemeza ko rwongera kuburanishwa, rwandikwa kuri RS/INJUST/RSOC00008/2024/SC. [11] Iburanisha ryabereye mu ruhame ku wa 14/10/2025, SONARWA ihagarariwe na Me Muhisoni Stella Matutina naho Kabanda Agnès atitabye kandi adahagarariwe, n'ubwo yari yaramenyeshajwe itariki y'iburanisha mu buryo bukurikije amategeko. Urukiko rwemeje ko urubanza ruburanishwa Kabanda Agnès adahari kuko nta mpamvu yatanze yatumye atitaba Urukiko ntanitabire inama ntegurarubanza cyangwa ngo yiregure n'ubwo yari yaramenyeshajwe mu buryo bukurikije amategeko. SONARWA yaburanye ivuga ko Urukiko Rukuru rwabariye indishyi ku mushahara mbumbe, aho kubarira ku mushahara umukozi atahana. Ikibazo cyasuzumwe ni icyo kumenya indishyi zo gusezererwa ku kazi mu buryo bunyuranyije n'amategeko Kabanda Agnès agomba guhabwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya indishyi zo gusezererwa ku kazi mu buryo bunyuranyije n'amategeko Kabanda Agnès agomba guhabwa [12] Me Muhisoni Stella Matutina uhagarariye SONARWA avuga ko akarengane kayo kagaragazwa n'uko Urukiko Rukuru rwemeje ko indishyi zo gusezererwa ku kazi mu buryo bunyuranyije n'amategeko Kabanda Agnès yagenewe zibarwa hashingiwe ku mushahara mbumbe (salaire brut) ungana na 1.624.943Frw, wazikuba n'amezi 9 zikaba 14.624.487Frw, nyamara rwaragombaga kuzibarira ku mushahara umukozi yatahanaga (salaire net). [13] Yongeraho ko Urukiko Rukuru rwategetse ko indishyi Kabanda Agnès yagenewe zigomba gukurwamo imperekeza zingana na 5.675.151Frw yahawe na SONARWA igihe yasezererwaga, nyamara izo mperekeza zari zarabariwe kuri basic salary ingana na 1.034.079 Frw, hakurwamo umusoro hamwe n'ibindi bisabwa n'amategeko, hagasigara

781.087Frw. Asanga Urukiko Rukuru rwari rwamaze gusobanukirwa neza ko basic salary ya Kabanda Agnès yari 1.034.079Frw ariko rukaba rutarabyitayeho mu kubara indishyi. [14] Asaba Urukiko rw'Ikirenga gukosora akarengane SONARWA yagiriwe, bityo rukemeza ko indishyi Kabanda Agnès yari guhabwa zingana na $781.087\text{Frw} \times 9 = 7.029.783\text{Frw}$, ibyo bikaba bigaragaza ko indishyi z'umurengerahawe yahawe ari: $14.624.487\text{Frw} - 7.029.783\text{Frw} = 7.594.704\text{Frw}$. [15] Akomeza avuga ko nubwo Itegeko rigenga umurimo ritigeze risobanura niba indishyi zo kwirukanwa cyangwa gusezererwa ku kazi zibarwa hagendewe ku mushahara mbumbe cyangwa se uwo umukozi atahana mu ntoki, hari umurongo watanze n'Urukiko rw'Ikirenga mu rubanza No RS/INJUST/RSOC 00001/2019/SC rwaciwe ku wa 31/01/2020, haburana Niwemugeni Jeannette na KCB Bank Rwanda Ltd, mu gika cya 35, aho rwemeje ko mu kubara indishyi zo kwirukanwa ku kazi binyuranyije n'amategeko, hashingirwa ku mushahara umukozi atahana mu ntoki aho kuba umushahara mbumbe. [16] Asoza avuga ko kuba salaire net ya Kabanda Agnès nk'uko iboneka muri dosiye igenda ihinduka, biterwa n'uko amafaranga umukoresha aba yarakase ku kwezi kumwe atandukanye n'ayo yakase ku kundi. Yongeraho ko mu bimenyetso SONARWA itanga bigaragaza umushahara Kabanda Agnès yatahanaga, harimo historique bancaire na "bulletin de paie" ye. [17] Mu iburanisha muri uru Rukiko, bimaze kugaragara ko SONARWA itasobanuye neza uko ibara umushahara fatizo yifuza ko Urukiko rwaheraho rugena indishyi zikwiye gutangwa, yasabwe kuzashyikiriza Urukiko bulletins de paie na historiques bancaires by'amezi icyenda (9) yabanjirije isezzerwa ku kazi rya Kabanda Agnès, hamwe n'ibisobanuro bijyanye n'amafaranga ateganywa n'Itegeko yagiye akatwa ku mushahara. Nk'uko dosiye ibigaragaza ariko, SONARWA yashyikirije

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Urukiko bulletins de paie yasabwe na historiques bancaires zo muri 2018 zidafite ibisobanuro biziherekeza. UKO URUKIKO RUBIBONA [18] Ikibazo kiri muri uru rubanza nk'uko cyasobanuwe haruguru, ni icyo kumenya indishyi zo gusezererwa ku kazi mu buryo bunyuranyije n'amategeko Kabanda Agnès agomba guhabwa. [19] Mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga, zirimo urubanza RS/INJUST/RSOC00001/2019/SC rwaciwe ku wa 31/01/2020 haburana Niwemugeni Jeannette na KCB Bank Rwanda Plc (igika cya 35), ari narwo rwatanze umurongo izindi zagendeyeho¹, Urukiko rwasobanuye ko amafaranga umukozi wasezerewe mu buryo bunyuranyije n'amategeko ahabwa, ari ahwanye n'umushahara atahana mu ntoki (salaire net) aho kuba umushahara mbumbe (salaire brut). [20] Ku bijyanye n'uru rubanza, nk'uko byasobanuwe haruguru, Urukiko Rukuru rwabaze indishyi Kabanda Agnès akwiye ruherereye kuri 1.624.943Frw, rumugenera 14.624.487Frw ahwanye n'amezi icyenda (9) kubera ko yari yarakoreye SONARWA imyaka irenga makumyabiri (20)². [21] Urukiko rurasanga nk'uko SONARWA ibivuga, umushahara fatizo wa wa 1.624.943Frw Urukiko Rukuru rwabariyeho indishyi zagenewe Kabanda Agnès ntaho uboneka mu nyandiko zigize dosiye y'urubanza, bityo amakosa rwakoze akaba akwiye gukosorwa. Mu kubara indishyi zikwiye ariko nanone ntihaherwa kuri "basic salary" yonyine ingana na 1.034.079Frw nk'uko SONARWA ibyifuza, kubera ko inyandiko yahembeyeho Kabanda Agnès zigaragaza ko hari andi mafaranga yiyongeraga kuri uwo mushahara mbere y'uko habarwa ibigomba kuvamo (deductions). [22] Muri urwo rwego, inyandiko ziri muri dosiye

zatanzwe na SONARWA3 zigaragaza ko umushahara mbumbe (salaire brut/gross salary) wa Kabanda Agnès wari 1.354.119Frw4. Iyo uwo mushahara umaze gukurwaho amafaranga ateganywa n'Itegeko angana na 450.032Frw5, hasigara 904.087Frw. Uyu mubare niwo ugomba gufatwa nk'umushahara Kabanda Agnès yatahanaga (salaire net/net salary), ari nawo wagombaga guherwaho habarwa indishyi yagenewe. Kubera iyo mpamvu, indishyi zo kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko Kabanda Agnès akwiye guhabwa zigomba kubarwa mu buryo bukurikira: $904.087\text{Frw} \times 9 = 8.136.783\text{Frw}$. [23] Urukiko rurasanga nk'uko n'Urukiko Rukuru rwabyemeje kandi uregwa akaba atarabiregeye mu rwego rw'akarengane, muri izi ndishyi hagomba gukurwamo 5.675.151Frw SONARWA yishyuye Kabanda Agnès ubwo yamusezereraga ku kazi, bityo hagasigara 2.461.632Frw SONARWA igomba kumwishyura. [24] Hakurikijwe ibisobanuro bimaze gutangwa, indishyi zo kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko Kabanda Agnès akwiye guhabwa zingana na 2.461.632Frw.

1 urubanza RS/INJUST/RSOC00002/2022/SC rwaciwe ku wa 21/10/2022, haburana Mutware Jean de Dieu na Guaranty Trust Bank (Rwanda) Ltd, igika cya 34; urubanza RS/INJUST/RSOC00010/2024/SC rwaciwe ku wa 07/11/2025, haburana Urwego Bank Plc yahindutse Urwego Finance CBC Ltd, igika cya 36. 2Hashingiwe ku ngingo ya 30 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, iteganya ko iseswa ry'amasezerano y'umurimo rinyuranyije n'amategeko rituma hatangwa indishyi. [...] iyo umukozi afite uburambe ku kazi burenze imyaka icumi (10) ku mukoresha umwe, indishyi ntizishobora kurenga umushahara ahabwa w'amezi icyenda (9). 3"Monthly Payslips" zo kuva mu kwezi kwa 01/2019 kugeza mu kwa 07/2019. 4Ugizwe na: Monthly Salary cyangwa Basic Salary = 1.034.079Frw; Marketing allowances = 100.800Frw; Fuel Allowances = 63.000Frw; Airtime Allowances = 50.400Frw na Mileage Allowance = 105.840Frw. 5Monthly Payslips zigaragaza ko buri kwezi, k'umushahara havagaho amafaranga akurikira: Contribution to RSSB = 35.558Frw; Maternity Leave = 3.556Frw; Contribution to Medical Fees = 10.341Frw; Tax = 390.236Frw; Contribution to Agaciro = 10.341Frw.

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III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ikirego cyatanzwe na Sonarwa General Insurance Company Ltd gisaba gusubirishamo ku mpamvu z'akarengane urubanza RSOCA00092/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/02/2024, gifite ishingiro kuri bimwe. [26] Rwemeje ko urubanza RSOCA00092/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/02/2024 ruhindutse gusa ku bijyanye n'indishyi Kabanda Agnès yagenewe zo gusezererwa ku kazi mu buryo bunyuranyije n'amategeko. [27] Rutegetse Sonarwa General Insurance Company Ltd kwishyura Kabanda Agnès indishyi zo gusezererwa ku kazi mu buryo bunyuranyije n'amategeko zingana na 2.461.632Frw.

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