EAR DIYOSEZE YA SHYIRA vs. UWINGABIYE

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RSOC00014/2023/CA (Munyangeri, J.P., Kamere na Rutazana, J.) 19 Nyakanga 2024]

Imanza agenga imanza z'umurimo – Amasezerano y'umurimo– Gusesa amasezerano y'umurimo – Guhindura amasezerano y'umurimo umukozi ntabyemere – Guhindurira umukozi umwanya yakoragaho kandi umushahara we ukagabanywa bifatwa nko guhindura amasezerano y'umurimo (modification du contrat) – Iyo bikozwe nta mpamvu umukozi amenyeshejwe, akanga gusinya amasezerano mashya, umukoresha akabishingiraho amusezerera ku kazi, bifatwa nko gusesa amasezerano y'umurimo mu buryo bunyuranyije n'amategeko.

Amategeko agenga imanza z'umurimo – Umushahara – Amafaranga akatwa ku mushahara w'umukozi – Ntibibujijwe ko ku mushahara w'umukozi hakurwaho amafaranga mu gihe biteganyijwe mu masezerano y'umurimo, kuko umukozi aba yabyemeye.

Incamake y'ikibazo: Uwingabiye yari umwarimu mu Kigo cy'ishuri cya Sonrise School, aza kugirwa "*Director of boarding School and Discipline*" kugeza ku wa 14/02/2017 yongera kugirwa umwarimu kugeza kuwa 04/03/2021, ubwo umukoresha we EAR Dioseze ya Shyira aseshe amasezerano. Nyuma y'uko ubwumvikane budakunze imbere y'umugenzuzi w'umurimo, yareze mu Rukiko Rwisumbuye rwa Musanze asaba gutegeka EAR Diyoseze ya Shyira kumwishyura indishyi zo kwirukanwa mu buryo budakurikije amategeko, kumuha amafaranga yagiye akatwa ndetse n'imishahara atahembwe. EAR yireguye ivuga ko kubera ikibazo cy'ubukungu yagize mu mwaka wa 2018, bumvikanye ko amasezerano bari bafitanye agomba guseswa.

Urukiko Rwisumbuye rwaciye urubanza rwemeza ko ikirego cy'Uwingabiye nta shingiro gifite kuko atarugaragarije amasezerano y'akazi ndetse n'ibaruwa isesa amasezerano y'akazi ashingiraho arega, kugira ngo rugire aho ruhera rwemeza ko yirukanwe ku kazi mu buryo bunyuranyije n'amategeko. Iki cyemezo yakijuririye mu Rukiko Rukuru, urugereko rwa Musanze, rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe, ko yirukanwe mu buryo budakurirkije amategeko maze rutegeka EAR kubimuhera indishyi.

Urwo rubanza rwaciwe n'Urukiko Rukuru, EAR Diyoseze ya Shyira yasabye ko rusubirwamo ku mpamvu z'akarengane arabyemererwa, rwoherezwa kuburanishwa n'uru Rukiko rw'ubujurire maze ruhabwa nimero RS/INJUST/RSOC00014/2023/CA. EAR ivuga ko akarengane yagiriwe mu rubanza rusubirwamo gashingiye ku kuba Urukiko Rukuru rwaremeje ko Uregwa yasezerewe ku kazi kubera impamvu y'ubukungu kandi ko byakozwe mu buryo bunyuranyije n'amategeko, nyamara yarasezerewe ku kazi kuko yanze gusinya amasezerano mashya y'umurimo. Bityo, ibi byari gutuma Urukiko Rukuru rubiha ishingiro cyane ko gusinya amasezerano ajyanye n'Itegeko rishya ryari risohotse nta burenganzira na bumwe byamuvutsaga kuko ayo masezerano atamuhinduriraga umurimo (inshingano) ndetse n'umushahara yari asanzwe ahembwa.

Kuri icyo kibazo, Uregwa yisobanuye avuga ko nta shingiro bifite kuko mu rubanza rusubirwamo Urukiko Rkuru rwashingiye ku mvugo Urega yivugiye ko masezerano yasheshwe bitewe n'ubukungu butari buhagaze neza no kuba umwanya yakoragamo wari waravuye kuri "*organigrame*" y'ikigo, bityo nta cyari kubuza umucamanza guha agaciro iyi mvugo. Akomeza avuga ko yasezerewe mu buryo bunyuranyije n'amategeko kuko Urega yari yaramuhaye amasezerano y'umurimo atujujuje ibisabwa, asaba ko yakuzuzwa noneho akabona gusinya ariko ntibyakorwa. Ikindi ni uko, kuba yarakomeje gukora akazi yari yashyizwemo bidakuraho ko yagombaga kugumya gukurikirana akarengane yatewe no kuba yarakuwe mu mwanya yari yahawe kandi ukiriho ndetse ugashyirwamo undi mukozi hadakurikijwe ibiteganywa mu ngingo ya 21 y'Itegeko N^{o} 66/2018 ryo kuwa 30/08/2018 rigenga umurimo mu Rwanda.

Akomeza avuga ko akarengane yagiriwe mu rubanza rusubirwamo gashingiye ku kuba, Uregwa yaragenewe indishyi zibariye ku mishahara avuga ko atahembwe, nyamara harabaye ubuzime kuri iyo mishahara. Ashingiye ku Itegeko rigenga umurimo mu Rwanda, iteganya ko ikirego gishingiye ku murimo kigira ubuzime mu gihe y'imyaka ibiri uhereye ku munsi ikibazo icyo kirego gishingiyeho cyabereyeho, avuga ko

izo ndishyi atagombaga kuzihabwa. Uregwa we avuga ko nta buzime bwabayeho kuko kuva yagabanyirizwa umushahara atahwemye gusaba ibyo yemererwa n'amategeko, ahubwo gukomeza kubisaba ari byo byabaye intandaro yo kumwirukana, Urega yitwaje ko yanze gusinya amasezerano ahuje n'Itegeko rishya ry'umurimo, kandi ayo masezerano atarigeze abaho.

Hasuzumwe kandi ikibazo cyo kumenya niba Urukiko rwarakoze amakosa mu gutegeka EAR Diyoseze ya Shyira gusubiza Uregwa amafaranga y'icya cyumi (1/10) yatanze, kuko EAR ivuga ko rwirengagije ibiteganywa mu ngingo ya 64 y'Itegeko Nº 45/2011 rigenga amasezerano ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Kuri iyi ngingo Urega avuga ko Urukiko Rukuru rwamurenganyije rwemeza ko kumukata amafaranga y'icya cumi byakozwe mu buryo bunyuranyije n'amategeko, nyamara mu masezerano bari bafitanye hateganyijwemo ko Uregwa azajya atanga buri kwezi ku bushake bwe kimwe cya cumi cy'umushahara we kikajya mu Itorero rya EAR Diyoseze ya Shyira nk'uko n'abandi bakozi bagenzi be babikora, ndetse no mu mwanzuro we utanga ikirego akaba yarivugiye ko ibikubiye muri ayo masezerano ntacyo bimubangamiyeho kandi ko bitanyuranyije n'amategeko.

Uregwa yireguye kuri iyo ngingo avuga ko Urega yagiye amukata ku mushahara we amafaranga y'icya cumi buri kwezi batabyumvikanyeho, ko no mu masezerano y'akazi bagiranye mu mwaka wa 2016 umukoresha yateganyijemo ko azajya akatwa ayo mafaranga kandi akaba nta kuntu yari kubyanga kuko yashoboraga kwirukanwa, dore ko nta bandi bakozi bigeze basinyira ko bazakurwaho amafaranga y'icya cumi.

Incamake y'icyemezo: 1. Umukoresha wiyemeje gusesa amasezerano y'umurimo afitanye n'umukozi aba agomba kugira impamvu isobanutse ibimuteye kandi akubahiriza icyo amategeko ateganya ku birebana n'inzira bikorwamo; ko iyo atabikoze muri ubwo buryo byitwa kwirukana umukozi nta mpamvu agategekwa kwishyura indishyi ziteganywa n'itegeko.

2. Guhindurira umukozi umwanya yakoragaho kandi umushahara we ukagabanywa bifatwa nko guhindura amasezerano y'umurimo (*modification du contrat*). Iyo bikozwe nta mpamvu umukozi amenyeshejwe, akanga gusinya amasezerano mashya, umukoresha akabishingiraho amusezerera ku kazi bifatwa nko gusesa amasezerano y'umurimo mu buryo bunyuranyije n'amategeko.

3. Kuba umuburanyi wumva ko urubanza yaburanye rwabayemo akarengane yarahawe inzira yo kuba yarusubirishamo rukaburanishwa bundi bushya, ntibivuze ko yakwitwaza iyo nzira kugira ngo abe yazana ibirego bishya bitari mu murongo w'ibyaregewe urubanza rugishingwa mu rwego rwa mbere cyangwa ingingo zitasuzumwe mu rubanza rusubirishwamo kuko yaba avuye mu mbibi z'urwo rubanza. Bityo, Umukoresha ari we EAR Diyoseze ya Shyira ntiyaburanisha bwa mbere ku rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane ibijyanye n'ubuzime bw'indishyi umukozi Uwingeneye Monique yagenewe hashingiwe ku mishahara avuga ko atahembwe, mu gihe bitigeze biburanwaho ngo binasuzumwe mu rubanza, rwaciwe n'Urukiko Rukuru, rusabirwa gusubirwamo ku mpamvu z'akarengane.

4. Ntibibujijwe ko ku mushahara w'umukozi hakurwaho amafaranga mu gihe biteganyijwe mu masezerano y'umurimo, kuko umukozi aba yabyemeye. Bityo EAR Diyoseze ya Shyira ikaba nta makosa yakoze mu gukata ku mushahara wa Uwingabiye Monique amafaranga y'icya cumi guhera mu kwezi kwa 06/2016 kugeza mu kwezi kwa 02/2021.

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 14, 17, 21, 27, 73, 114 n'iya 104.

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo 64.

Itegeko Nº13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda, ingingo ya 87.

Imanza zifashishijwe:

RS/INJUST/RC00001/2021/SC, Umulinga vs. Ngirinshuti na Muberuka, rwaciwe n'Urukiko rw'Ikirenga ku wa 17/12/2021.

RS/INJUST/RC00004/2019/SC, Havugimana n'abandi vs. Candali rwaciwe n'urukiko rw'Ikirenga ku wa 28/07/2020.

RS/INJUST/RC00007/2018/SC, Nditiribambe Samuel vs. Gatera Jason na Nyamaswa Faustin, rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020.

RS/INJUST/RSOC00004/2023/CA, Dusabe Richard na La Galette Ltd rwaciwe n'Urukiko rw'Ubujurire ku wa 22/03/2024.

Inyandiko z'abahanga zifashishijwe:

Paul Henri Antomattei, Droit du Travail, LGDJ, page 223.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwingabiye Monique yabaye umukozi w'Ikigo cy'amashuri cya Sonrise School guhera ku wa 12/01/2009 ari umwarimu, kuva kuwa 11/05/2016 agirwa "*Director of boarding School and Discipline*" kugeza ku wa 14/02/2017 ubwo yongeye kugirwa umwarimu kugeza kuwa 04/03/2021 ubwo EAR Diyoseze ya Shyira yamwandikiye imumenyesha ko isheshe amasezerano ye y'akazi yo ku wa 11/05/2016.

[2] Ayo masezerano y'umurimo yo ku wa 11/05/2016 agaragaza ko Uwingabiye Monique yahembwaga umushahara mbumbe ungana na 366.857Frw naho uwo yatahanaga ukangana na 254.500Frw. Avuga ko nyuma y'uko yongeye gusubizwa mu kazi k'ubwarimu, umushahara we wagabanyijweho 73.716Frw guhera mu kwezi kwa Gashyantare 2018 kugeza muri Werurwe 2021, asaba ko umushara yari asanzwe ahebwa wagumaho umukoresha ntiyabikora ahubwo ahitamo gusesa amasezerano.

[3] Uwingabiye Monique yagejeje ikibazo cye ku Mugenzuzi w'umurimo ariko ntiyashobora kubumvikanisha, bituma aregera Urukiko Rwisumbuye rwa Musanze arusaba gutegeka EAR Diyoseze ya Shyira kumwishyura indishyi zo kwirukanwa mu buryo budakurikije amategeko, amafaranga yagabanyijwe ku mushahara we hatabayeho ubwumvikane n'inyungu zayo, amafaranga yakaswe ku mushahara we guhera muri Mutarama 2011 kugeza Gashyantare 2021 angana na 1/10 cy'umushahara we n'inyungu zayo, indishyi z'uko atahawe icyemezo cy'umurimo gihuje n'uko itegeko ribiteganya no kuzuza imisanzu ya RSSB igahuzwa n'umushahara we.

[4] EAR Diyoseze ya Shyira yireguye ivuga ko mu kwezi kwa Gashyantare 2018 yagize ikibazo cy'ubukungu ibimenyesha Uwingabiye Monique bumvikana ko amasezerano ye y'umurimo agomba guseswa nk'uko bigaragazwa n'inyandiko mvugo y'inama yakozwe ku wa 29/11/2017, kandi ko ari muri urwo rwego guhera mu kwezi kwa Gashyantare/2018 kugeza mu kwezi kwa Werurwe/2021 yahembwaga umushahara ungana na 180.784Fw.

[5] Mu rubanza RSOC00013/2022/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze kuwa 13/10/2020, rwemeje ko ikirego cya Uwingabiye Monique nta shingiro gifite kuko atararugaragarije amasezerano y'akazi ndetse n'ibaruwa isesa amasezerano y'akazi ashingiraho arega EAR Diyoseze ya Shyira kugira ngo rugire aho ruhera rwemeza ko yirukanwe ku kazi mu buryo bunyuranyije n'amategeko, rumutegeka kwishyura EAR Diyoseze ya Shyira 500.000Frw y'igihembo cya Avoka.

[6] Uwingabiye Monique yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, anenga Urukiko Rwisumbuye rwa Musanze ko rwavuze ko atarugaragarije amasezerano y'umurimo nyamara EAR Diyoseze ya Shyira yemera ko yari umukozi wayo guhera mu mwaka wa 2009 ikanemera ko impamvu yatumye isesa amasezerano ye y'akazi ari uko yanze ko avugururwa, kandi ikibazo cye akaba yarakigaragarije

ku Mugenzuzi w'umurimo, ndetse ko iyo atagaragaza amasezerano y'umurimo Umwanditsi w'Urukiko atari kwandika ikirego cye mu manza z'umurimo.

[7] EAR Diyoseze ya Shyira yireguye ivuga ko impamvu z'ubujurire za Uwingabiye Monique nta shingiro zifite kuko mu gusobanura ikirego cye yavuze ko amasezerano y'umurimo atayashyikirije Urukiko kuko EAR Diyoseze ya Shyira yari yarayasubiranye, ko rero niba ubwe yariyemereye ko nta masezerano yahaye Urukiko kandi ariwe wagombaga kuyatanga Urukiko rukaba nta kosa rwakoze mu rubanza rwajuririwe. EAR Diocèse ya Shyira ivuga kandi ko ikindi giteye urujijo ari ukumenya amasezerano Uwingabiye Monique aregera ayo ariyo hagati y'amasezerano yo mu mwaka wa 2009 n'ayo ku wa 11/05/2016.

[8] Mu rubanza RSOCA00014/2022/HC/MUS rwaciwe kuwa 27/04/2023, Urukiko Rukuru, Urugereko rwa Musanze, rwemeje ko ubujurire bwa Uwingabiye Monique bufite ishingiro kuri bimwe, ko EAR Diyoseze ya Shyira yamwirukanye ku kazi mu buryo bunyuranyije n'amategeko, ruyitegeka kumwishyura indishyi zingana na 8.025.141Frw.

[9] Nyuma y'icibwa ry'urubanza RSOCA00014/2022/HC/MUS, EAR Diyoseze ya Shyira yasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, maze mu cyemezo nimero 154/CJ/2023 cyo ku wa 25/10/2023, Perezida w'Urukiko rw'Ikirenga yemeza ko rusubirwamo ku mpamvu z'akarengane, rwoherererezwa Urukiko rw'Ubujurire ngo ruruburanishe. Urubanza rwahawe RS/INJUST/RSOC00014/2023/CA.

[10] Iburanisha mu ruhame ryabaye ku wa 18/06/2024, EAR Diyoseze ya Shyira ihagarariwe na Me Nyungura Joséph naho Uwingabiye Monique yunganiwe na Me Uwamahoro Nyiranzayino Christine.

[11] Mu myanzuro ye uhagarariye EAR Diyoseze ya Shyira avuga ko akarengane kayo gashingiye ku mpamvu zikurikira:

- Kuba Urukiko rwaremeje ko Uwingabiye Monique yasezerewe ku kazi kubera impamvu y'ubukungu kandi ko byakozwe mu buryo bunyuranyije n'amategeko, nyamara yarasezerewe ku kazi kuko yanze gusinya amasezerano mashya y'umurimo yo muri 2018 yari ahuje n'umurimo w'ubwarimu yari amaze imyaka ine akora kandi ahemberwa, ahubwo agasaba gukomeza guhemberwa umurimo yari amaze imyaka ine atagikora;
- Kuba Uwingabiye Monique yaragenewe indishyi zibariye ku mishahara avuga ko atahembwe mu gihe cy'imyaka ine hirengagijwe ko nyuma y'imyaka ibiri kuva ikibazo kivutse habayeho ubuzime hashingiwe ku biteganywa mu ngingo ya 104 y'Itegeko rigenga umurimo mu Rwanda;
- Kuba Urukiko rwarahaye agaciro imvugo ya Uwingabiye Monique y'uko yagabanyirijwe umushahara rwirengagije ko yahembwaga ujyanye n'umurimo w'ubwarimu yakoraga kandi yashyizwemo nyuma y'ivugurura ryabayeho (*Restructuration*) kandi akaba yarabyemeye nk'uko bigaragazwa n'inyandikomvugo y'inama yo kuwa 29/11/2017;
- Kuba Urukiko rwaremeje ko Uwingabiye Monique asubizwa amafaranga angana na 1/10 yakaswe ku mushahara we guhera mu kwezi 01/2011 kugeza 02/2021 n'inyungu zayo, rwirengagije ko yabyemeye mu masezerano y'umurimo yagiranye na EAR Diyoseze ya Shyira kuwa 11/05/2016 mu ngingo yayo ya 5.1, rukanirengagiza ko hashingiwe ku biteganywa mu ngingo ya 104 yavuzwe haruguru, habayeho ubuzime nyuma y'imyaka ibiri kuva ikibazo kivutse;

[12] Uwingabiye Monique avuga ko nta karengane EAR Diyoseze ya Shyira yagize kuko Urukiko Rukuru rwasobanuye ku buryo buhagije aho rwashingiye rugira ibyo rumugenera.

[13] Hashingiwe ku mpaka zigaragajwe haruguru, Urukiko rugomba gusuzuma ibibazo bikurikira bigize urubanza:

- Kumenya niba mu rubanza rusabirwa gusubirwamo Urukiko rwarakoze amakosa mu kwemeza ko Uwingabiye Monique yasezerewe ku kazi mu buryo bunyuranyije n'amategeko;
- Kumenya niba harabayeho ubuzime ku bijyanye n'ikirego cya Uwingabiye Monique gishingiye ku mushahara avuga ko atahembwe;
- Kumenya niba Urukiko rwarakoze amakosa mu gutegeka EAR Diyoseze ya Shyira gusubiza Uwingabiye Monique amafaranga y'icya cumi yatanze;
- Kumenya niba indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa na EAR Diyoseze ya Shyira bifite ishingiro.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba mu rubanza rusabirwa gusubirwamo Urukiko rwarakoze amakosa mu kwemeza ko Uwingabiye Monique yasezerewe ku kazi mu buryo bunyuranyije n'amategeko hashingiwe ku mpamvu y'ubukungu

[14] Uhagarariye EAR Diyoseze ya Shyira avuga ko amasezerano y'umurimo yari ifitanye na Uwingabiye Monique atasheshwe kubera impamvu y'ubukungu nk'uko byemejwe mu rubanza rusabirwa gusubirwamo, ko ahubwo yasheshwe kuko Uwingabiye Monique yanze gushyira umukono (gusinya) ku masezerano y'umurimo mashya yo muri 2018 yari ahuje n'umurimo w'ubwarimu yari amaze imyaka ine (4) akora kandi ahemberwa; ko Urukiko Rukuru mu kwemeza ko amasezerano y'umurimo yasheshwe ku mpamvu y'ubukungu rwirengagije nkana ibimenyetso rwashyikirijwe na EAR Diyoseze ya Shyira byerekana ko nta na hamwe Uwingabiye Monique yigeze agaragaza ko yasezerewe mu kazi kubera impamvu z'ubukungu, birimo ibisobanuro yitangiye ubwe mu nyandiko zitandukanye yandikiye EAR Diyoseze ya Shyira (inyandiko yo ku wa 22/02/2020, inyandiko yo ku wa 28/02/2020), imyanzuro ye itanga ikirego mu Rukiko Rwisumbuye, n'inyandiko isesa amasezerano yo ku wa 04/03/2021.

[15] Akomeza asobanura ko Uwingabiye Monique yazamuwe mu ntera (promotion) nyuma akaza kongera kuyivanwaho, agakomeza gukora akazi yasabye k'ubwarimu kandi akaba ariko yakomeje guhemberwa kuva muri Gashyantare 2018 kugeza asezerewe muri Werurwe 2021, n'Urukiko Rukuru rukaba rwaremeje ko ako kazi ariko yakoze kandi akagahemberwa mu gihe cy'imyaka ine, bityo kuba yaranze gusinya amasezerano ajyanye n'ako kazi akaba ari yo mpamvu y'iseswa ry'amasezerano urukiko rwagombaga guha ishingiro cyane ko gusinya amasezerano ajyanye n'Itegeko rishya ryari risohotse nta burenganzira na bumwe byamuvutsaga kuko ayo masezerano atamuhinduriraga umurimo (inshingano) ndetse n'umushahara yari asanzwe ahembwa.

[16] Uhagarariye EAR Diyoseze ya Shyira avuga kandi ko ibyo Uwingabiye Monique avuga ko amasezerano yari asanzwe afite ntacyo amubangamiyeho kandi atanyuranyije n'amategeko nta shingiro bifite kuko umukozi ugengwa n'amasezerano y'akazi y'igihe kitazwi agomba kuba afite amasezerano yanditse nk'uko biteganywa n'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo, ko ibi ari byo EAR Diyoseze ya Shyira yashatse gukora nyuma y'uko iri tegeko risohotse ariko Uwingabiye Monique akabyanga ahubwo akavuga ko amasezerano y'akazi ya mbere ubwo yari Umuyobozi w'Ikigo ariyo agomba kugumaho.

[17] Uhagarariye EAR Diyoseze ya Shyira avuga kandi ko Urukiko Rukuru rwivuguruje kuko rwemeje ko Uwingabiye Monique yasubijwe mu kazi k'ubwarimu yasabye akemera kugakora ariko rukarenga rukavuga ko yirukanwe mu buryo bunyuranyije n'amategeko.

[18] Uwingabiye Monique n'umwunganira bavuga ko ibyo EAR Diyoseze ya Shyira ivuga nta shingiro bifite, kuko mu iburanisha mu Rukiko Rukuru (ku rupapuro rwa 2 rw'inyandikomvugo y'iburanisha) uwari uyihagarariye yivugiye ko amasezerano yasheshwe bitewe n'ubukungu bw'umukoresha butari buhagaze neza no kuba umwanya Uwingabiye Monique yakoragamo wari waravuye kuri organigrame y'ikigo; bakavuga ko rero hashingiwe ku biteganywa n'ingingo ya 110 y'Itegeko ry'ibimenyetso mu manza n'itangwa ryabyo, nta buryo iyo mvugo ye Urukiko rwari kuyirengagiza. Bakomeza basobanura ko cyakora EAR Diyoseze ya Shyira itashoboye kugaragariza Urukiko Rukuru ko bijyanye n'iyo mpamvu y'ubukungu cyane ko

n'amasezerano yasheshwe ari ayo kuwa 11/05/2016 kuko nyuma yayo nta yandi yigeze ayakurikira, bikaba rero byari bikwiye ko ayo masezerano asuzumwa, uburyo yasheshwemo n'ingaruka zose z'iryo seswa.

[19] Basobanura ko Uwingabiye Monique yatanze ikirego cy'uko yasezerewe ku murimo mu buryo bunyuranyije n'amategeko ashingiye ku kuba EAR Diyoseze ya Shyira yaramuhaye amasezerano y'umurimo atujujuje ibisabwa, asaba ko yakuzuzwa noneho akabona gusinya ariko ntibyakorwa; ku bijyanye no kugabanyirizwa umushahara, bavuga ko ibyo uhagarariye EAR Diyoseze ya Shyira avuga ko Uwingabiye Monique yavanwe ku mwanya w'ubuyobozi bw'ikigo ku wa 14/2/2017 kandi abyemeye bitigeze bibaho kuko atigeze yemera kuva kuri uwo mwanya kuko nta kosa yari yakoze, kandi ko uwo mwanya wari uhari kuko yanawusimbuweho n'undi.

[20] Bavuga ko kuba yarakomeje gukora akazi yari yashyizwemo bidakuraho ko yagombaga kugumya gukurikirana akarengane yatewe no kuba yarakuwe mu mwanya yari yahawe kandi ukiriho ndetse warashyizwemo undi mukozi hadakurikijwe ibiteganywa mu ngingo ya 21 y'Itegeko Nº 66/2018 ryo kuwa 30/08/2018 rigenga umurimo mu Rwanda.

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[21] Ipfundo ry'ikibazo kiri hagati y'ababuranyi kuri iyi ngingo rishingiye ku kumenya niba Uwingabiye Monique yarirukanwe mu kazi mu buryo bunyuranyije n'amategeko (nta mpamvu) nk'uko byemejwe mu rubanza rusabirwa gusubirwamo, cyangwa niba kuba yaranze gusinya amasezerano mashya yahabwaga n'umukoresha ari impamvu yumvikana yo gusesa amasezerano ya mbere yari asanzwe akoreraho.

[22] Ingingo ya 27 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda iteganya ko amasezerano y'umurimo y'igihe kitazwi ashobora guseswa n'umwe mu bayagiranye bitewe n'impamvu zifite ishingiro.

[23] Ingingo ya 14 nayo y'iryo tegeko iteganya ko amasezerano y'umurimo ashobora guhindurwa umurimo ugakomeza bisabwe na rumwe mu mpande zayagiranye kandi zombi zibyumvikanyeho; naho ingingo ya 17 nayo y'iryo tegeko ikagira iti: umukozi agomba gukora akazi ku mwanya yasabye. umukoresha ashingiye ku nyungu z'ikigo, ashobora kwimurira umukozi ku wundi mwanya utandukanye n'uwo yasabye uri ku rwego rumwe na wo atagabanyije umushahara we n'ibindi agenerwa. Umukoresha ntagomba gushyira umukozi ku rundi rwego rw'umurimo atabyemeye iyo bishobora kumushyira ku rwego ruri hasi y'urwo yari asanzweho no kumugabanyiriza umushahara.

[24] Ibijyanye no kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko nta mpamvu (licenciement abusif) byatanzweho umurongo mu rubanza RS/INJUST/RSOC00004/2023/CA rwaciwe n'uru Rukiko ku wa 22/03/2024 haburana Dusabe Richard na La Galette Ltd, aho urukiko rwasobanuye ko isesengura ry'iyo ngingo ya 27 yavuzwe haruguru ryumvikanisha ko umukoresha wiyemeje gusesa amasezerano y'umurimo afitanye n'umukozi aba agomba kugira impamvu isobanutse ibimuteye kandi akubahiriza icyo amategeko ateganya ku birebana n'inzira bikorwamo; ko iyo atabikoze muri ubwo buryo byitwa kwirukana umukozi nta mpamvu agategekwa kwishyura indishyi ziteganywa n'itegeko.

[25] Kubirebana n'uru rubanza, dosiye yarwo igaragaza ko Uwingabiye Monique yagiranye na EAR Diyoseze ya Shyira amasezerano y'igihe kitazwi (*open ended*) yo ku wa 11/05/2016 amugira "*Director of Boarding School and Discipline*" agomba guhembwa umushahara (*gross salary*) ungana na 366.857Frw ku kwezi (ingingo ya 4) kandi akaba ari amasezerano y'igihe kitazwi/open ended (ingingo ya 2).

[26] Dosiye kandi igaragaza ko bigeze ku wa 14/02/2017 Uwingabiye Monique yandikiwe n'umukoresha ibaruwa amumenyesha ko ahinduriwe umwanya, akava ku mwanya wa "*Director of Boarding and Discipline*" akajya ku mwanya w'umwarimu wa Entrepreneurship, ariko muri iyo baruwa nta mpamvu ivugwamo yatumye ahindurirwa umwanya. Muri dosiye kandi harimo indi baruwa Uwingabiye Monique yandikiwe n'umukoresha ku wa 25/01/2018 amumenyesha ko umushahara we mushya ungana na

288.994Frw hashingiwe ku nama yamuhuje n'Ubuyobozi bw'Ikigo ku wa 17/11/2017 akemera uwomushahara.

[27] Dosiye nanone igaragaza ko ku matariki atandukanye mu mwaka wa 2018, 2020 na 2021 Uwingabiye Monique yagiye agaragariza umukoresha ibyo atemera ku bijyanye n'amasezerano mashya, harimo n'umushahara aho yasabaga ko wagaragazwa mu masezerano kandi ugashingira ku burambe bw'umukozi (reba ibaruwa ye yo ku wa 24/02/2020). Dosiye igaragaza ko umukozi n'umukoresha batumvikanye ku masezerano mashya umukoresha yashakaga ko umukozi asinya, ndetse mu mwaka wa 2021 umukoresha ageza ikibazo ku Mugenzuzi w'Umurimo kugira ngo abafashe kumvikana ariko ntibyashoboka, bigeze mu kwezi kwa 02/2021 EAR Diyoseze ya Shyira yandikira Uwingabiye Monique imumeneysha ko ahawe integuza kugira ngo amasezerano bari bafitanye aseswe kuko yanze gusinya amasezerano mashya ajyanye n'Itegeko rishya ry'umurimo ; hanyuma ku wa 04/03/2021 EAR Diyoseze ya Shyira imwandikira imumenyesha ko amasezerano yo ku wa 11/05/2016 asheshwe hashingiwe ku ngingo ya 27 y'Itegeko ry'umurimo.

[28] Urukiko rushingiye ku buryo ibintu byagenze nk'uko byagaragajwe mu bika bibanza, rurasanga ubwo EAR Diyoseze ya Shyira yahinduriraga Uwingabiye Monique umwanya agakurwa ku mwanya wa "*Director of Boarding School and Discipline*" agashyirwa ku mwanya w'umwarimu, harabayeho guhindura amasezerano (*modification du contrat*) haba ku bijyanye n'umwanya umukozi ashyizweho haba no ku bijyanye n'umushahara yagombaga kujya ahembwa (waragabanyijwe), kandi nk'uko byagaragajwe haruguru Uwingabiye Monique akaba atarahwemye kugaragaza ko atabyemeye, bikanashimangirwa n'uko byageze ubwo mu mwaka wa 2021 umukoresha yasheshe amasezerano avuga ko umukozi yanze gusinya amasezerano mashya.

[29] Urukiko rurasanga ibi binyuranyije n'ingingo ya 14 n'iya 17 z'Itegeko rigenga umurimo zavuzwe haruguru, kuko uretse no kuba Uwingabiye Monique yarahinduriwe amasezerano agahindurirwa umwanya yakoragaho n'umushahara yagombaga guhembwa atabyemeye, byanamushyiraga ku rwego ruri hasi y'urwo yari asanzweho bikanamugabanyiriza umushahara.

[30] Urukiko rurasanga kuba Uwingabiye Monique ataremeye impinduka zakozwe mu masezerano ye y'akazi byaratumye adasinya amasezerano mashya, umukoresha nawe abishingiraho asesa amasezerao ya mbere. Ku bijyanye no kumenya niba EAR Diyoseze ya Shyira yarashehe amasezerano hashingiwe ku mpamvu yumvikana, Urukiko rurasanga n'ubwo umushingamategeko ntacyo yavuze ku bijyanye n'impamvu ishingirwaho mu gusezerera umukozi iyo habayeho guhindura amasezerano yari asanganywe akanga gusinya amashya, abahanga mu mategeko basobanura ko muri icyo gihe umukoresha aba afite uburenganzira bwo gusesa amasezerao yari asanzwe apfa gusa kubikora mu buryo bukurikije amategeko, kandi ko muri icyo gihe kwanga gusinya amasezerano mashya atari byo bireberwaho niba amasezerano yasheshwe hashingiwe ku mpamvu yumvikana, ahubwo impamvu yumvikana ireberwa ku mpamvu yatumye amasezerano yari asanzweho ahindurwa.[1] (reba Paul Henri Antomattei, Droit du Travail, LGDJ, page 223).

[31] Ku birebana n'uru rubanza, Urukiko rurasanga nk'uko byagaragajwe haruguru mu ibaruwa imenyesha Uwingabiye Monique ko ahinduriwe umwanya yakoragaho akagirwa umwarimu ndetse n'umushahara we ukagabanyuka nta mpamvu umukoresha yamumenyesheje, bikaba rero bifatwa ko amasezerano yahinduwe nta mpamvu, kandi bikaba binyuranyije n'ingingo ya 27 y'Itegeko rigenga umurimo mu Rwanda yavuzwe haruguru, bityo amasezerano ye y'akazi yari asanganywe akaba yarasheshwe nta mpamvu yumvikana; impamvu y'ubukungu ikaba atari yo yagombaga gushingirwaho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane kuko ntaho bigaragara, haba muri iyo baruwa haba no muri dosiye muri rusange, ko

[1] "*En présence du refus du salarié, l'employeur ne saurait imposer la modification proposée. Le salarié est fondé à exiger la poursuite du contrat aux conditions initiales. L'employeur ne peut que poursuivre le contrat de travail aux conditions initiales ou diligenter une procédure de licenciement. Le licenciement doit reposer sur une cause réelle et serieuse qui ne réside pas dans le refus du salarié qui est un droit. C'est le motif de la proposition de la modification qui constitue la cause réelle et serieuse du licenciement d'un salarié ayant refusé une proposition de modification de son contrat de travail.*"

yahinduriwe umwanya w'umurimo n'umshahara ku mpamvu y'ubukungu; kuba uhagarariye EAR Diyoseze ya Shyira yarabivuze mu iburanisha bikaba bidahagije ngo bishingirweho.

[32] Hashingiwe ku bisobanuro byose byatanzwe haruguru, uru Rukiko rurusanga EAR Diyoseze ya Shyira yarasheshe amasezerano y'umurimo yari ifitanye na Uwingabiye Monique mu buryo bunyuranyije n'amategeko, kuri iyi mpamvu EAR Diyoseze ya Shyira ikaba nta karengane yagiriwe.

2. Kumenya niba harabayeho ubuzime ku bijyanye n'indishyi Uwingabiye Monique yagenewe hashingiwe ku mishahara avuga ko atahembwe mu gihe cy'imyaka ine

[33] Uhagarariye EAR Diyoseze ya Shyira avuga ko mu kugenera Uwingabiye Monique indishyi zibaze hashingiwe ku mishahara avuga ko atahembwe mu gihe cy'imyaka ine Urukiko Rukuru rwanyuranyije n'ingingo ya 104 y'Itegeko rigenga umurimo mu Rwanda, iteganya ko ikirego gishingiye ku murimo kigira ubuzime mu gihe y'imyaka ibiri (2) uhereye ku munsi ikibazo icyo kirego gishingiyeho cyabereyeho, bityo akaba ataragombaga kubihabwa.

[34] Uwingabiye Monique n'umwunganira bavuga ko nta buzime bwabayeho. Basobanura ko kuva yagabanyirizwa umushahara Uwingabiye Monique atahwemye gusaba ibyo yemererwa n'amategeko, ahubwo gukomeza kubisaba ari byo byabaye intandaro yo kumwirukana, EAR Diyoseze ya Shyira yitwaje ko yanze gusinya amasezerano ahuje n'Itegeko rishya ry'umurimo, kandi ayo masezerano atarigeze abaho kuko n'igihe EAR Diyoseze ya Shyira yasabaga ubuhuza ku Mugenzuzi w'umurimo itashoboye kuyagaragaza, arinabwo yagirwaga inama yo kujya kuganira n'umukozi bakumvikana ikigomba gushyirwa mu masezerano y'umurimo, ariko izo nama EAR Diyoseze ya Shyira ntizihe agaciro.

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[35] Mu rubanza RS/INJUST/RC00007/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020 Nditiribanbe Samuel aburana na Gatera Jason na Nyamaswa Faustin, mu gika cya 66 Urukiko rwasobanuye ko kuba umuburanyi wumva ko urubanza yaburanye rwabayemo akarengane yarahawe inzira yo kuba yarusubirishamo rukaburanishwa bundi bushya bitavuga ko yakwitwaza iyo nzira kugira ngo abe yazana ibirego bishya bitari mu murongo w'ibyaregewe urubanza rugishingwa mu rwego rwa mbere cyangwa ingingo zitasuzumwe mu rubanza rusubirishwamo kuko yaba avuye mu mbibi z'urwo rubanza. Uwo murongo wanagarutsweho mu zindi manza nazo zaciwe n'Urukiko rw'Ikirenga, harimo urubanza RS/INJUST/RC00004/2019/SC rwaciwe ku wa 28/07/2020 Havugimana n'abandi baburana na Candali mu gika cya 23, n'urubanza RS/INJUST/RC00001/2021/SC rwaciwe ku wa 17/12/2021 Umulinga aburana na Ngirinshuti na Muberuka, mu gika cya 40, aho Urukiko rw'Ikirenga rwongeye gushimangira ko umuburanyi adashobora kuvuga ko yagize akarengane ku kibazo atigeze agaragariza Urukiko arusaba kugisuzuma.

[36] Ku bijyanye n'uru rubanza, dosiye yarwo igaragaza ko ikibazo cy'uko habaye ubuzime ku bijyanye n'indishyi Uwingabiye Monique yagenewe hashingiwe ku mishahara avuga ko atahembwe mu gihe cy'imyaka ine kitigeze kiburanwaho ngo kinasuzumwe mu rubanza RSOCA00014/2022/HC/MUS rwasabiwe gusubirwamo ku mpamvu z'akarengane, bityo rero hashingiwe ku murongo wagaragajwe haruguru watanzwe n'Urukiko rw'Ikirenga mu manza zinyuranye, EAR Diyoseze ya Shyira ikaba itasaba ko gisuzumwa bwa mbere kuri uru rwego; kuri iyi mpamvu nayo EAR Diyoseze ya Shyira ikaba nta karengane yagiriwe.

3. Kumenya niba Urukiko rwarakoze amakosa mu gutegeka EAR Diyoseze ya Shyira gusubiza Uwingabiye Monique amafaranga y'icya cyumi (1/10) yatanze

[37] Uhagarariye EAR Diyoseze ya Shyira avuga ko mu rubanza RSOCA00014/2022/HC/MUS, mu gace ka 22, Urukiko Rukuru rwemeje ko Uwingabiye Monique agomba gusubizwa amafaranga y'icya cumi yakaswe ku mushahara we guhera mu kwezi kwa 01/2011 kugeza mu kwezi kwa 02/2021, rwirengagije

ibiteganywa mu ngingo ya 64 y’Itegeko Nº 45/2011 rigenga amasezerano ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Asobanura ko EAR Diyoseze ya Shyira yagaragarije Urukiko Rukuru ko ingingo ya 5.1 y’amasezerano y’umurimo EAR yagiranye na Uwingabiye Monique ku wa 11/05/2016 iteganya ko azajya atanga buri kwezi ku bushake bwe kimwe cya cumi cy’umushahara we kikajya mu Itorero rya EAR Diyoseze ya Shyira nk’uko n’abandi bakozi bagenzi be babikora, ndetse no mu mwanzuro we utanga ikirego Uwingabiye Monique akaba yarivugiye ko ibikubiye muri ayo masezerano ntacyo bimubangamiyeho kandi ko bitanyuranyije n’amategeko; ariko Urukiko rurarenga ruvuga ko kumukata amafaranga y’icya cumi byakozwe mu buryo bunyuranyije n’amategeko rushingiye ku buryo rwasobanuyemo ingingo ya 73 y’Itegeko Nº 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda n’iya 87 y’Itegeko ryagenga umurimo mu Rwanda ryo muri 2009, uhagarariye EAR Diyoseze ya Shyira we avuga ko asanga izo ngingo zemera ko mu masezerano y’umurimo umukozi ashobora kwemera ko hari amafaranga akurwa ku mushahara we.

[38] Uhagarariye EAR Diyoseze ya Shyira avuga kandi ko Urukiko Rukuru rwanirengagije ko hashingiwe ku biteganywa mu ngingo ya 114 y’Itegeko Nº 66/2018 ryo ku wa 30/08/2018 rigenga umurimo, Uwingabiye Monique yaregeye ayo mafaranga harabaye ubuzime kuko hari hashize igihe kirenze imyaka ibiri ikibazo kivutse.

[39] Uwingabiye Monique n’umwunganira bavuga ko guhera mu mwaka wa 2011 EAR Diyoseze ya Shyira yagiye ikata ku mushahara we amafaranga y’icya cumi buri kwezi batabyumvikanyeho, ko no mu masezerano y’akazi yavuzwe haruguru yo mu mwaka wa 2016 umukoresha yateganyijemo ko azajya akatwa ayo mafaranga kandi akaba nta kuntu yari kubyanga kuko yashoboraga kwirukanwa, ariko ko nta bandi bakozi bigeze basinyira ko bazakurwaho amafaranga y’icya cumi. Ku bijyanye n’ubuzime, Uwingabiye Monique avuga ko nta bwabayeho kuko icyo kibazo yatangiye kugisobanuza umukoresha we guhera mu mwaka wa 2018 nk’uko bigaragazwa n’impushya avuga ko yasabaga agiye kugikurikriana, hanyuma hakaza icyorezo cya Covid-19 ntashobore gukomeza kubikurikriana, akaza kubisubukura icyorezo kirangiye.

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[40] Kuri iki kibazo, akarengane EAR Diyoseze ya Shyira ivuga ko yagiriwe igashingira ku mpamvu ebyiri: kuba Uwingabiye Monique ataragombaga gusubizwa amafaranga y’icya cumi yakaswe kuko habayeho ubuzime bwo kuyaregera ku ruhande rumwe, no kuba yari yaremeye ko azajya akatwa ku mushahara we, ku rundi ruhande.

- **Ku bijyanye n’ubuzime**

[41] Dosiye y’uru rubanza igaragaza ko ikibazo cy’uko habayeho ubuzime ku bijyanye no kuregera amafaranga y’icya cumi yagiye akatwa ku musahahara wa Uwingabiye Monique kitigeze kiburanwaho ngo kinasuzumwe mu rubanza RSOCA00014/2022/HC/MUS rwasabiwe gusubirwamo ku mpamvu z’akarengane, bityo rero hashingiwe ku murongo wagaragajwe haruguru mu gika cya 35 watanzwe n’Urukiko rw’Ikirenga mu manza zinyuranye rwaciye, EAR Diyoseze ya Shyira ikaba itasaba ko gisuzumwa bwa mbere kuri uru rwego.

- **Ku bijyanye no kuba Uwingabiye Monique yari yaremeye ko amafaranga y’icya cumi azajya akatwa ku mushahara we**

[42] Ingingo ya 87 y’Itegeko ryagengaga umurimo ryo mu mwaka wa 2009 yagiraga iti: uretse amafaranga ategetswe agomba gukatwa n'andi ashobora gukurwaho hakurikijwe ibyavuzwe mu masezerano rusange y'abakozi n'abakoresha cyangwa mu masezerano y’akazi, nta yandi mafaranga afatwa ku mushahara w'umukozi, keretse hakoreshejwe igwatiratambama cyangwa atanzwe ku bushake. Iyo atanzwe ku bushake bikorerwa imbere ya Perezida w'urukiko rubifitiye ububasha cyangwa imbere y'umugenzuzi w’umurimo mu karere, kandi bikaba byanditswe.

[43] Ingingo ya 73 y'Itegeko N°66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda yo igira iti: umukoresha ntashobora gufatira umushahara w'umukozi, keretse mu bihe biteganywa n'iri tegeko. Uretse amafaranga ategetswe agomba gukatwa n'andi ashobora gukurwaho hakurikijwe ibyavuzwe mu masezerano y'umurimo, umukoresha afatira umushahara w'umukozi iyo bishingiye ku gushyira mu bikorwa umwanzuro w'urukiko cyangwa iyo umukozi ayatanze ku bushake bwe {……}.

[44] Isesengura ry'izi ngingo zombi ryumvikanisha ko hakurikijwe ibyo impande zombi zateganyije mu masezerano y'umurimo, umukoresha ashobora gukata amafaranga ku mushahara w'umukozi.

[45] Dosiye y'urubanza igaragaza ko mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane Urukiko Rukuru rwategetse EAR Diyoseze ya Shyira gusubiza Uwingabiye Monique amafaranga y'ituro ry'ikicumi yakaswe yose hamwe angana na 3.809.438 Frw agizwe na:

- 1.810.368Frw yakaswe kuva mu kwezi kwa 01/2011 kugeza mu kwa 05/2016 (igihe cy'amezi 64) abazwe hashingiwe kuri 28.287Frw yakatwaga buri kwezi;
- 330.170 Frw yakaswe kuva mu kwezi 06/2016 kugeza mu kwa 02/2017 (igihe cy'amezi 9) ubwo yari Umuyobozi w'ikigo, abazwe hashingiwe kuri 36. 685Frw yakatwaga buri kwezi kuko icyo gihe umushahara we wari warazamutse;
- 1.668.900Frw yakaswe kuva mu kwezi kwa 03/2016 kugeza mu kwa 02/2021(igihe cy'amezi 59) abazwe hashingiwe kuri 28.287Frw yakatwaga buri kwezi.

Yagenewe kandi inyungu z'ayo mafaranga zingana na 304.757Frw, zibazwe guhera mu kwezi kwa 01/2011 kugeza mu kwa 02/2021, zibariye ku nyungu ya 8% ku mwaka itangwa na Banki Nkuru y'Igihugu.

[46] Dosiye y'urubanza kandi igaragaza ko mu masezerano y'umurimo y'igihe kitazwi yo ku wa 11/05/2016 yakozwe hagati ya Anglican Church of Rwanda (EAR) Diocese of Shyira (*Sonrise School*) na Uwingabiye Monique, mu ngingo yayo ya 5.1 hateganyijwemo ko umukozi yemeye kugendera ku mahame agenga abakozi ba Diyoseze ashyikirijwe, harimo no gukatwa icy'icumi cy'umushahara atahana ku kwezi.

[47] Mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, Urukiko Rukuru rwasanze kuba Uwingabiye Monique yarakaswe amafaranga y'icya cumi ku mushahara we binyuranyije n'ibikubiye mu ngingo ya 87 y'Itegeko ryagengaga umurimo mu Rwanda ryo muri 2009 yavuzwe haruguru, kuko amasezerano y'umurimo abiteganya atakorewe imbere y'Umugenzuzi w'umurimo cyangwa imbere ya Perezida w'urukiko rubifitiye ububasha.

[48] Uru Rukiko rurasanga hashingiwe ku biteganyijwe mu ngingo ya 87 y'Itegeko ryagengaga umurimo mu Rwanda ryo muri 2009 n'iya 73 y'Itegeko N°66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda zombi zavuzwe haruguru, bitabujijwe ko ku mushahara w'umukozi hakurwaho amafaranga mu gihe biteganyijwe mu masezerano y'umurimo bitabaye ngombwa ko aba yakorewe imbere y'Umugenzuzi w'umurimo cyangwa imbere ya Perezida w'urukiko, kuko umukozi aba yabyemeye. Bityo EAR Diyoseze ya Shyira ikaba nta makosa yakoze mu gukata ku mushahara wa Uwingabiye Monique amafaranga y'icya cumi guhera mu kwezi kwa 06/2016 kugeza mu kwezi kwa 02/2021 kuko nk'uko byasobanuwe haruguru mu gusuzuma ikibazo kijyanye no kumenya niba yarasezerewe ku kazi mu buryo bunyuranyije n'amategeko, muri icyo gihe cyose yagengwaga n'amasezerano y'umurimo yo ku wa 11/05/2016 yashyizeho umukono, kandi nk'uko byavuzwe haruguru, ingingo ya 5.1 y'ayo masezerano ikaba yarateganyaga ko umukozi yemeye gukatwa icya cumi cy'umushahara atahana ku kwezi.

[49] Urukiko rushingiye kuri ibyo bisobanuro rurasanga Uwingabiye Monique atagomba gusubizwa 2.158.995Frw agizwe n'amafaranga y'icya cumi yakaswe n'inyungu zayo, yabazwe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane mu buryo bukurikira:

- 330.170Frw yakaswe kuva mu kwezi 06/2016 kugeza mu kwa 02/2017 (igihe cy'amezi 9) ubwo yari Umuyobozi w'ikigo, abazwe hashingiwe kuri 36. 685 Frw yakatwaga buri kwezi, n'inyungu zayo zingana na 26.411Frw (36.685 Frw x 9 x 8%);
- 1.668.900 Frw yakaswe kuva mu kwezi kwa 03/2016 kugeza mu kwa 02/2021 (igihe cy'amezi 59) abazwe hashingiwe kuri 28.287 Frw yakatwaga buri kwezi, n'inyungu zayo zingana na 133.514 Frw (28.287 Frw x 59 x 8%).

[50] Ku bijyanye n'amafaranga y'icya cumi Uwingabiye Monique yakaswe kuva mu kwezi kwa 01/2011 kugeza mu kwezi kwa 05/2016 (igihe cy'amezi 64), Urukiko rurasanga muri dosiye harimo amasezerano ye y'umurimo ya ku wa 01/03/2012, muri ayo masezerano hakaba nta hateganyijwe ko Uwingabiye Monique yagombaga kujya akatwa icya cumi ku mushahara we wa buri kwezi, EAR Diyoseze ya Shyira ikaba nta n'ikimenyetso yatanze kigaragaza amasezerano y'umurimo yamugengaga mbere y'iyo tariki yabiteganyaga, bikaba rero byumvikana ko kumukata 1.810.368Frw y'icya cumi muri icyo gihe cy'amezi 64 cyavuzwe haruguru byakozwe mu buryo bunyuranyije n'amategeko, bityo akaba agomba kuyasubizwa hamwe n'inyungu zayo zingana na 144.832Frw nk'uko zabazwe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane.

3. Ku bijyanye no kumenya niba indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa na EAR Diyoseze ya Shyira bifite ishingiro

[51] Uhagarariye EAR Diyoseze ya Shyira asaba Urukiko rw'Ubujurire kuyigenera 2.000.000Frw y'indishyi z'akababaro kubera gushorwa mu manza, 500.000 Frw y'ikurikiranarubanza na 1.500.000Frw y'igihembo cy'Avoka kuri uru rwego.

[52] Uwingabiye Monique n'umwunganira bavuga ko EAR Diyoseze ya Shyira ariyo yishoye muri izi manza imukata amafaranga ku mushahara we batabyumvikanyeho ikanamwirukana ku kazi nta mpamvu, bityo ikaba ntacyo ikwiriye kumusaba.

UKO URUKIKO RUBIBONA

[53] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, kikaburanishirizwa rimwe n'ikirego cy'iremezo.

[54] Urukiko rurasanga EAR Diyoseze ya Shyira ari yo yasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, n'ubwo hari ibyo itsindiye kuri uru rwego ariko ikaba itsinzwe urubanza muri rusange kuko hemejwe ko yasheshe amasezerano y'akazi yari ifitanye na Uwingabiye Monique mu buryo bunyuranyije n'amategeko, ikaba rero ari yo yabaye intandaro y'imanza; bityo indishyi zo gushorwa mu manza isaba, zikaba nta shingiro zifite.

[55] Ku bijyanye n'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka, Urukiko rurasanga nta we ugomba kuyagenerwa kuko hari ibyo buri muburanyi atsindiwe mu rubanza.

III. ICYEMEZO CY'URUKIKO

[56] Rwemeje ko ikirego cyatazwe na EAR Diyoseze ya Shyira gisaba gusubirishamo ku mpamvu z'akarengane urubanza RSOCA00014/2022/HC/MUS gifite ishingiro kuri bimwe.

[57] Rwemeje ko EAR Diyoseze ya Shyira yasheshe amasezerano y'akazi yari ifitanye na Uwingabiye Monique mu buryo bunyuranyije n'amategeko.

[58] Rwemeje ko mu mafaranga y'icya cumi EAR Diyosezi ya Shyira igomba gusubiza Uwingabiye Monique hatabarirwamo amafaranga miliyoni ebyiri n'ibihumbi ijana na mirongo itanu n'umunani na magana cyenda na mirongo cyenda n'atanu (2.158.995Frw), agizwe na 1.999.070 Frw y'icya cumi yakaswe kuva mu kwezi kwa 06/2016 kugeza mu kwa 02/2021, na 159.925Frw y'inyungu zayo.

[59] Rwemeje ko amafaranga y'icya cumi EAR Diyosezi ya Shyira igomba gusubiza Uwingabiye Monique ari miliyoni imwe n'ibihumbi magana cyenda na mirongo itanu na bitanu na magana abiri (1.955.200Frw), agizwe na miliyoni imwe n'ibihumbi magana inani na cumi na magana atatu mirongo itandatu n'umunani (1.810.368Frw) y'icya cumi yakaswe kuva mu kwezi kwa 01/2011 kugeza mu kwa 05/2016, n'ibihumbi ijana na mirongo ine na bine na magana inani na mirongo itatu n'abiri (144.832Frw) y'inyungu zayo.

[60] Rutegetse EAR Diyoseze ya Shyira kwishyura Uwingabiye Monique amafaranga miliyoni ebyiri n' ibihumbi magana atandatu na magana cyenda na mirongo ine n'atandatu (2.600.946Frw) y'indishyi zo kwirukanwa ku kazi mu buryo bunyuranyije n'amategeko, miliyoni imwe n'ibihumbi magana cyenda na mirongo itanu na bitanu na magana abiri (1.955.200Frw), ibihumbi magana atanu (500.000Frw) y'indishyi z'akababaro n'ikurikiranarubanza, ibihumbi magana arindwi na mirongo itanu (750.000Frw) y'igihembo cya Avoka ku rwego rubanza no ku rwego rw'ubujurire n'ibihumbi mirongo itandatu (60.000Frw) y'ingwate y'igarama mu nkiko zose, akubiyemo agenwe kuri uru rwego n'ayagenwe mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane.