SONARWA v SHIKAMA

[Rwanda URUKIKO RUKURU - RCA 00034/2023/HC/NYZ (Badara, P.J.) 14 Gicurasi 2024]

Amategeko agenga imanza z'imbonezamubano – Impanuka zikozwe n'ibinyabiziga – Indishyi z'ibangamira ry'uburambe ku kazi – Uwahohotewe wagize ubumuga buhoraho ahabwa indishyi z'ibangamira ry'uburambe mu kazi kubera ubwo bumuga butuma atabasha gukomeza gukora akazi ke mu buryo bumworoheye nkuko yagakoraga mbere atarakora impanuka.

Incamake y'ikibazo: Uru rubanza rukomoka ku mpanuka yabaye igakomerekeramo Shikama ubwo yari mu modoka yavaga mu mujyi wa Huye yerekeza ku Gateme mu karere ka Huye igezeyo imugusha hasi arakomereka agira ubumuga bwemejwe n'abaganga bungana na 80%. Shikama yatanze ikirego mu Rukiko Rwisumbuye rwa Huye arega SONARWA GENERAL INSURANCE COMPANY Ltd (SONARWA) asaba indishyi zitandukanye. Urukiko rwamugeneye indishyi zikubiyemo indishyi mbangamiraburambe mu kazi, indishyi z'ibangamirabukungu n'izindi. SONARWA ntiyanyuzwe n'icyo cyemezo ikijuririra mu Rukiko Rukuru ivuga ko hatanzwe indishyi z'ibangamira burambe ku kazi kandi uwahohotewe nta kazi yagiraga kandi ko indishyi mbangamirabukungu nazo zikaba zarabariwe ku gipimo cy'ibitsa kitari cyo.

Urukiko rwasuzumye ikibazo cyo kumenya niba Shikama yaragombaga kubona indishyi z'ibangamira ry'uburambe ku kazi no kumenya niba indishyi z'ibangamirabukungu zarabazwe neza.

SONARWA ivuga ko indishyi z'ibangamirabukungu zabariwe ku gipimo cy'ibitsa kitari cyo bituma itegekwa kiwshyura indishyi nyinshi. Ikomeza ivuga ko Shikama nta kazi yagiraga bityo tari akwiye guhabwa indishyi z'ibangamira burambe ku kazi. Uregwa asobanura ko indishyi z'ibangamira bukungu zabazwe neza kuko igipimo cy'ibitsa gihindagurika. Akomeza avuga ko yari afite akazi kuko yakoraga muri Koperative abahuje umurimo ba Huye bapakira bakanapakurura imodoka no gutwaza abantu ariko ubumuga yagize ntabwo bumwemerera kuba yakongera gukora aka kazi kuko umugongo wacitse akaba agendera mu igare. Urukiko rwasanze indishyi mbangamirabukungu zarabariwe ku gipimo cy'ibitsa kitari cyo hanyuma ziza guhunduka.

Inshamake y'icyemezo: Uwahohotewe wagize ubumuga buhoraho ahabwa indishyi z'ibangamira ry'uburambe mu kazi kubera ubwo bumuga butuma atabasha gukomeza gukora akazi ke mu buryo bumworoheye nkuko yagakoraga mbere atarakora impanuka.

Ubujurire bufite ishingiro kuri bimwe.

Amategeko yashingiweho:

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, ingingo ya 2, 13, 19

Imanza zifashishijwe:

RS/INJUST/RC 00004/2023/SC, Radiant Insurance Company Ltd na Murekatete, rwaciwe n'Urukiko rw'Ikirenga ku wa 12 Mata 2024.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tariki ya 25/01/2022 mu gihe cya saa 18h00 z'umugoroba, mu mudugudu wa Mukoni, akagali ka Cyarwa, Umurenge wa Tumba, akarere ka Huye habereye impanuka ya Truck Mitsubishi fuso ifite plaque RAD 479G ikaba yari itwawe na MUVUNYI Jean de Dieu w'imyaka 39 yavaga mu mujyi wa Huye yerekeza ku Gateme atwaye mu modoka inyuma uwitwa Shikama Kidamage w'imyaka 35 ageze aho havuze nibwo yagushaga uwo yari atwaye mu modoka inyuma arakomereka.

[2] Shikama Kidamage yatanze ikirego mu rukiko rwisumbuye rwa Huye asaba indishyi zitandukanye zirimo indishyi mbangamirabukungu, indishyi z'akababaro, indishyi zo gutakaza amahirwe yo gushaka, indishyi z'ibangamiraburanga, indishyi z'ibangamira ry'uburambe mu kazi, gusubiza amafaranga yakoresheje ajya anava kwa muganga, gusubiza amafaranga yaguzwe ibyangombwa bitandukanye, gusubiza amafaranga yatanzwe kwa muganga no gusubiza amafaranga y'igihembo cy'avoka n'ikurikiranarubanza.

[3] Me Bimenyimana Binego Emmanuel uhagarariye SONARWA GENERAL INSURANCE COMPANY avuga ko indishyi mbangabukungu zidakwiye gutangwa kuko zitaba zikurikije amategeko kuko zitangwa iyo uwahohotewe yitabye imana.

[4] Mu rubanza RC 00085/2022/TGI/HYE rwaciwe ku wa 22/06/2023 n'urukiko rwisumbuye rwa Huye rwategetse ko SONARWA GENERAL INSURANCE COMPANY LTD kwishyura Shikama Kidamage indishyi zikurikira : Indishyi z'akababaro 1.620.000 FRW, indishyi z'ibangamirabukungu 8.361,290 Frw, indishyi z'ibyakoreshejwe 542.900 frw, indishyi z'ibangamiraburanga: 1.080,000 Frw, indishyi z'ibangamira ry'uburambe mu kazi 540,000 Frw, amafaranga y'ibyakoreshejwe 1.056.513 frw, indishyi zose hamwe ziteranyijwe zikaba 12,657,513 Frw.

[5] Mu gufata icyo cyemezo, urukiko rwashingiye ku 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.

[6] Uhagarariye SONARWA GENERAL INSURANCE LTD yajuririye urukiko rukuru, urugereko rwa Nyanza, urubanza ruhabwa N0 RCA 00034/2023/HC/NYZ, ruburanishwa mu ruhame ku wa 15/04/2024, SONARWA GENERAL INSURANCE LTD iburanirwa na Me BIMENYIMANA Emmanuel naho Shikama Kidamage aburanirwa na Me UWIMPAYE Jean de Dieu.

[7] Mu myanzuro y'ubujurire no mu miburanire, Uhagarariye SONARWA GENERAL INSURANCE LTD avuga ko umucamanza yashingiye ku gipimo cy'ibitsa cya BNR iheraho imyenda amabanki aho gukoresha igipimo cy'ibitsa kiriho kuri depots zashyizwe muri bank. Iyo umucamanza abara indishyi yari kubona 893.617 FRW. Ku bijyanye n'indishyi z'uburambe ku kazi, nta kintu na kimwe kigaragara ko yakoraga akaba ari nayo mpamvu yabariwe kuri SMG. Ibi rero basanga ari nako byari kugenda kuri izi ndishyi kuko udashobora kubura uburambe ku kazi ntako ugira. Izi ndishyi z'ibangamira ry'uburambe ku kazi zikaba zitaragombaga gutangwa. Ikindi

hari amafaranga 405.000 FRW umucamanza yageneye Shikama ngo yakoreshejwe ku ngendo nyamara nk'uko babisobanuye Taxis Voiture zose zitanga Facture IBM. Kuvuga rero kuyakoresheje Taxis ntagaragaze Facture yemewe n'amategeko barasanga aya mafaranga atari gutangwa.

[8] Shikama Kidamage n'umwunganira bavuga ko igipimo cy'ibitsa gihinduka umunsi ku munsi, kuba rero harabariwe kuri 7 niko umucamanza yabibonye kandi nawe azi amategeko. Shikama Kidamage asobanura ko yari afite akazi nk'uko babigaragarije urukiko ko yakoraga muri Koperative abahuje Umurimo ba Huye bapakira bakanapakurura imodoka no gutwaza abantu ariko ubumuga yagize ntabwo bumwemerera kuba yakongera gukora aka kazi kuko umugongo wacitse akaba agendera mu igare.

[9] Ku bijyanye n'amafaranga y'ingendo atatangiwe IBM, Shikama Kidamage asobanura ko Facture kuba atari iza EBM bidakuraho ko ari facture, ntabwo bikuraho kandi ko ayo mafaranga yakoreshejwe ibyo rero ntabwo bikwiye kuba urwitwazo kuko ntaho amategeko avuga ko facture zitari iza EBM zitemewe kuko na RRA yemera ko 27% ya facture zose iyo atari EBM nta kibazo kuko abantu bose n'ibicuruzwa bose ntibishobora kubona facture ya EBM.

[10] Shikama Kidamage n'umwunganira barasaba urukiko rwasuzuma kandi rugategeka SONARWA G.I guha uregwa indishyi zo gutakaza amahirwe yo gushaka zingana 1.080.000 Frw. Nk'uko biteganywa n'ingingo ya 19 y'iteka rya Perezida N^{o} 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi iteganya ko umuntu uhabwa izi ndishyi ari ufite ubumuga buhoraho bungana cg burengeje 50%. Uyu Shikama we akaba afite 80% izi ndishyi kandi Sonarwa yemeye ko zitangwa no muri system harimo Attestation de Celibat. Barasaba urukiko gutegeka SONARWA G.I gutanga amafaranga y'igihembo cya avoka ku rwego rw'ubujurire kingana na 500,000Frw kuko SONARWA G.I ikomeje gushora Shikama Kidamage mu manza bigatuma ashaka avoka wo kumuburanira, bityo rero basaba ko bahabwa igihembo cy'avoka kingana na 500.000 FRW.

[11] Ibibazo bigiye gusuzumwa muri uru rubanza ni ibi bikurikira:

- Kumenya niba indishyi mbangamirabukunguzarabazwe mu buryo budakurikije amategeko kuko zabariwe ku gipimo cy'ibitsa kitaricyo.
- Kumenya niba Shikama Kidamage ataragombaga guhabwa indishyi z'ibangamira ry'uburambe ku kazi.
- Kumenya niba amafaranga y'ingendo atatangiwe facture ya IBM atari gutangwa.
- Kumenya niba Shikama Kidamage yaragombaga guhabwa indishyi zo gutakaza amahirwe yo gushaka.
- Kumenya niba hari izindi ndishyi zatangwa muri uru rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kumenya niba indishyi mbangamirabukungu zarabazwe mu buryo budakurikije amategeko kuko zabariwe ku gipimo cy'ibitsa kitaricyo.

[12] Uhagarariye SONARWA GENERAL INSURANCE LTD avuga ko umucamanza yashingiye ku gipimo cy'ibitsa cya BNR iheraho imyenda amabanki aho gukoresha igipimo cy'ibitsa kiriho kuri depots zashyizwe muri bank. Iyo umucamanza abara indishyi yari kubona 893.617 FRW.

[13] SHAKIMA Kidamage avuga ko Taux de placement ihinduka umunsi ku munsi, kuba rero harabariwe kuri 7 niko umucamanza yabibonye kandi nawe azi amategeko.

UKO URUKIKO RUBIBONA.

[14] Impaka ziri muri uru rubanza zishingiye kumenya niba indishyi mbangamirabukungu zarabazwe mu buryo budakurikije amategeko kuko zabariwe ku gipimo cy'ibitsa kitaricyo.

[15] Kuri iki kibazo, ingingo ya 2 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 isobanuraa ko ipipimo cy'ibitsa ari igipimo cy'inyungu gikoreshwa mu gushyira ku gihe inyungu zigomba kuzishyurwa uwahohotewe cyangwa abafite uburenganzira ku munsi wo gutanga indishyi y'ibangamirabukungu. Icyo gipimo kingana nibura n'igipimo cy'inyungu y'ibitsa ikoreshwa n 'amabanki.

[16] Urukiko rurasanga ubwo urubanza rwacibwa igipimo cy'ibitsa cyatangajwe na BNR cyari 9.638 % bityo indishyi mbambirabukungu zari kubarwa mu buryo bukurikira: (3000 frw x 30 x12x30 x 80%)/1+(9.638 % x 30) = 6.660.842 FRW.

Kumenya niba Shikama Kidamage ataragombaga guhabwa indishyi z'ibangamira ry'uburambe ku kazi.

[17] Uhagarariye SONARWA GENERAL INSURANCE LTD avuga ko nta kintu na kimwe kigaragara ko Shikama Kidamage yakoraga akaba ari nayo mpamvu yabariwe kuri SMG. Ibi rero basanga ari nako byari kugenda kuri izi ndishyi kuko udashobora kubura uburambe ku kazi ntako ugira. Izi ndishyi zikaba zitaragombaga gutangwa.

[18] Shikama Kidamage n'umwunganira basobanura ko yari afite akazi nkuko babigaragarije urukiko ko yakoraga muri Koperative abahuje umurimo ba Huye bapakira bakanapakurura imodoka no gutwaza abantu ariko ubumuga yagize ntabwo bumwemerera kuba yakongera gukora aka kazi kuko umugongo wacitse akaba agendera mu igare.

UKO URUKIKO RUBIBONA

[19] Impaka ziri muri uru rubanza zishingiye kumenya niba Shikama Kidamage ataragombaga guhabwa indishyi z'ibangamira ry'uburambe ku kazi bitewe nuko nta kazi yagiraga.

[20] Kuri iki kibazo, umurongo ugomba kugenderwaho ari uwatanzwe mu rubanza RS/INJUST/RC 00004/2023/SC rwaciwe n'urukiko rw'Ikirenga. Muri urwo rubanza Urukiko rwasobanuye ibijyanye n'indishyi z'ibangamira ry'uburambe mu kazi aho rwavuze ko: "Hakurikijwe ibi abahanga basobanura, usanga indishyi z'ibangamira ry'uburambe mu kazi ziri mu byiciro bibiri bikurikira kandi zigatangwa mu bihe bikurikira:

a) Gutakaza amahirwe y’akazi ku munyeshyuri wo mu mashuri yisumbuye, ay’imyuga, aya kaminuza cyangwa andi angana na yo;

b) Ingaruka z’impanuka ku mwuga ku muntu usanzwe uwufite (incidence professionnelle), harimo:

i. kugabanyirizwa agaciro ku isoko ry’umurimo;

ii. imvune (pénibilité) mu gukora umurimo yari asanganywe;

iii. kubura amahirwe yo kuzamurwa mu ntera.

Ku bijyanye na Murekatete Denyse, biragaragara ko yagize ubumuga buhoraho bwa 43% nk’uko bwemejwe n’abaganga kandi RADIANT INSURANCECOMPANY Ltd ikaba itabihakana. Nta gushidikanya ko ubwo bumuga bufite ingaruka zituma atakomeza gukora akazi ke mu buryo bumworoheye nk’uko yagakoraga mbere atarakora impanuka, akaba yaragombaga kubiherwa indishyi.”

[21] Urukiko rurasanga muri uru rubanza Shikama Kidamage nawe yaragombaga guhabwa indishyi z’ibangamira ry’uburanga mu kazi kubera ko yagize ubumuga bwa 80% kandi bwatumye agendera mu kagare bityo iyi mpanuka yagize ingaruka zituma atakomeza gukora akazi ke mu buryo bumworoheye nk’uko yagakoraga mbere atarakora impanuka, akaba yaragombaga kubiherwa indishyi.

Kumenya niba amafaranga y’ingendo atatangiwe facture ya IBM atari gutangwa.

[22] Uhagarariye SONARWA GENERAL INSURANCE LTD avuga ko hari amafaranga 405.000 FRW umucamanza yageneye Shikama ngo yakoreshejwe ku ngendo nyamara nk’uko babisobanuye Taxis Voiture zose zitanga Facture IBM. Kuvuga rero kuyakoresheje Taxis ntagaragaze Facture yemewe n'amategeko barasanga aya mafaranga atari gutangwa.

[23] Shikama Kidamage n’umwunganira basobanura ko kuba Facture atari iza EBM bidakuraho ko ari facture, ntabwo bikuraho kandi ko ayo mafaranga yakoreshejwe ibyo rero ntabwo bikwiye kuba urwitwazo kuko ntaho amategeko avuga ko facture zitari iza EBM zitemewe kuko na RRA yemera ko 27% ya facture zose iyo atari EBM nta kibazo kuko abantu bose n'ibicuruzwa bose ntibishobora kubona facture ya EBM.

UKO URUKIKO RUBIBONA

[24] Impaka ziri muri uru rubanza zishingiye kumenya niba mafaranga y’ingendo atatangiwe facture ya IBM atari gutangwa.

[25] Kuri iki kibazo, ingingo ya 13 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 ivuga ko 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 bikoreshwa, 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 mu kwezi kw'iyakirwa ry’ izo nyandiko. Iyo harimo ukwivuriza ahandi hatari mu Rwanda uwahohotewe agenda bimaze

kwemezwa n'akanama k'ubuvuzi kagizwe n'umuganga w'uwahohotewe, n'umuganga w'urnwishingizi hamwe n'impuguke yasabwe n'abo bombi.

[26] Urukiko rurasanga kuba urukiko rutarashingiye kuri factures za IBM atari impamvu yatuma izo ndishyi zivanwaho cyane ko bigaragara ko yakoze ingendo ajya kwivuza kandi kuba impanuka yaramwangije umugongo ikamutera ubumuga buhoraho bwa 80 bigaragara ko yakoreshaga imodoka imutwara bityo kuba uwamutwaye ataramuhaye factures ya IBM ntabwo ariwe byabazwa.

Kumenya niba Shikama Kidamage yaragombaga guhabwa indishyi zo gutakaza amahirwe yo gushaka.

[27] Uhagarariye SONARWA GENERAL INSURANCE LTD avuga ko urukiko rwasuzuma kandi rugategeka Sonarwa G.I guha uregwa indishyi zo gutakaza amahirwe yo gushaka zinga na 1,080,000Frw. Nk'uko biteganywa n'ingingo ya 19 y'iteka rya Perezida N° 3 1/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi iteganya ko umuntu uhabwa izi ndishyi ari ufite ubumuga buhoraho bungana cg burengeje 50%, uyu Shikama we akaba afite 80% izi ndishyi kandi Sonarwa yemeye ko zitangwa no muri system harimo Attestation de Celibat.

[28] Ingingo ya 19 y'iteka rya Perezida ryavuzwe haruguru ivuga ko iri bangamira rishobora gusa gutangirwa indishyi ku muntu w'ingaragu kandi bitewe n'uko nyuma y'impanuka yagize: (a) ubumuga buhoraho bungana cyangwa burengeje 50%, (b) ibangamira ry'uburanga ringana cyangwa rirengeje urwego rwa 5 rwavuzwe haruguru. Iyo rishobora kwemerwa, iryo bangamira ritangirwa indishyi ku buryo bukurikira: (a) 2 X umushahara w'umwaka muto ntarengwa wemewe n'amategekoiyo uwahohotewe atagejeje ku myaka 25, (b) 1 X umushahara w'umwaka muto ntarengwa wemewe n'amategeko iyo uwahohotewe arengeje imyaka 25.

[29] Urukiko rurasanga Shikama Kidamage atujuje ibisabwa kugirango umuntu ahabwe indishyi zo gutakaza amahirwe yo gushaka kuko nubwo ari ingaragu kandi akaba yaragize ubumuga buri hejuru ya 50% yagombaga no kuba afite ibangamira ry'uburanga ringana cyangwa rirengeje urwego rwa 5 nyamara yagize urwego rwa 4. Ibi rero bituma atahabwa izo ndishyi.

Kumenya niba hari izindi ndishyi zatangwa muri uru rubanza.

[30] Shikama Kidamage n'umwunganira bavuga ko urukiko rwategeka SONARWA G.I gutanga amafaranga y'igihembo cya avoka ku rwego rw'ubujurire kingana na 500,000Frw.

[31] Urukiko rurasanga Shikama Kidamage nta ndishyi yahabwa ku rwego rw'ubujurire kubera ko ubujurire bwa SONARWA bufite ishingiro kuri bimwe kandi n'ubujure bwuririye ku bundi bwatanzwe na Shikama Kidamage nta shingiro bufite.

[32] Urukiko rurasanga indishyi zigomba gutangwa na SONARWA ziteye ku buryo bukurikira : Indishyi z'akababaro: 1.620.000 frw, indishyi z'ibangamirabukungu: 6.660.842 FRW, indishyi z'ibyakoreshejwe 542.900 frw, indishyi z'ibangamiraburanga: 1.080,000 Frw, indishyi z'ibangamira ry'uburambe mu kazi: 540,000 Frw, Amafaranga y'ibyakoreshejwe: 1.056.513 frw, yose akaba angana na 11.500.255 FRW.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ubujurire bwatanzwe na SONARWA GENERAL INSURANCE LTD bufite ishingiro kuri bimwe;

[34] Rwemeje ko imikirize y'urubanza RC 00085/2022/TGI/HYE rwaciwe n'urukiko rwisumbuye rwa Huye ihindutse gusa ku ndishyi z'ibangamirabukungu;

[35] Rutegetse SONARWA GENERAL INSURANCE LTD guha Shikama Kidamage indishyi zose hamwe zingana na 11.500.255 FRW.

[36] Rutegetse ko ingwate y'amagarama yatanzwe na SONARWA GENERAL INSURANCE LTD ihwanye n'ibyakozwe muri uru rubanza.