

SACCO IFUMBA Y'UBUKIRE v. UWIMANA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/ RCOM 00009/2022/SC (Ntezilyayo, P.J., Kalihangabo na Muhumuza, J.) 15 Werurwe 2024]

Amategeko agenga imiburanishirize y'imanza – Gusubirishamo urubanza ku mpamvu z'akarengane - imanza z'ubucuruzi – Gusiba urubanza mu bitabo by'urukiko – Kubyutsa urubanza – Impamvu idasanzwe kandi ikomeye yabujije umuburanyi kuburana – Urukiko ni rwo rufite ububasha bwo kwemeza ko impamvu yatanzwe idasanzwe kandi ikomeye.

Amategeko agenga imiburanishirize y'imanza – icyemezo gitangwa na Muganga (Repos medical/Certificat médical d'arrêt de travail, medical certificate) – Ikiyeho cy'uburwayi – Agaciro ka repos médical – Gutanga repos médical ubwabyo ntibihagije kugira ngo ifatwe nk'ukuri – Repos médical idashimangiwe n'ikindi kimenyetso - Urukiko rufite ububasha bwo gusuzuma repos médical itanzwe mu rukiko.

Incamake y'ikibazo: Sacco Ifumba y'ubukire yagiranye amasezeranyo y'inguzanyo n'Itsinda ryitwa Inzira y'ubukire rihagarariwe n'Uwimana Aljun iriha inguzanyo ya 2.488.500 Frw yagomba kwishyurwa mu gihe cy'amezi 24 ndetse ikaba yari yishingiwe n'abagize iryo tsinda.

Itsinda Inzira y'Ubukire ntiriyashoboye kwishyura iyo nguzanyo bituma SACCO itanga ikirego mu Rukiko rw'Ubucuruzi ivuga ko ku nguzanyo yatanzwe hishyuwe 554.390 Frw gusa.

Urwo Rukiko rwemeje ko Uwimana Aljun agomba kwishyura SACCO 1.934.110 Frw y'umwenda remezo, 407.316 Frw y'inyungu zisanzwe, 425.504 Frw y'inyungu z'ubukerererwe, 200.000 Frw y'ikurikiranarubanza, 500.000 Frw y'igihembo cy' Avoka na 20.000 Frw y'ingwate y'amagarama.

Sacco yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi ivugako Uwimana n'abishingiye uwo mwenda bagomba gufatanya kwishyura uwo mwenda ndetse n'inyungu ziwukomokaho. Uwimana nawe yajuririye avugako Urukiko rw'Ubucuruzi rwirengagije ibyemezo byafatiwe mu rubanza RP00197/2018/TB/MKA rwaciye n'Urukiko rw'Ibanze rwa Mukamira ku wa 06/12/2018, kuko rwasanze nta nguzanyo SACCO IFUMBA Y'UBUKIRE yigeze iha Uwimana Aljun nk'uhagarariye ITSINDA INZIRA Y'UMURIMO, runategeka ko ari umwere.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko, nta nyungu Sacco na Uwimana bafite yo gukomeza gukurikirana urubanza kuko batitabye Urukiko mu iburanisha ndetse no mu nama ntegururubanza kandi baramenyeshajwe mu buryo bukurikije amategeko, rwemeza ko urubanza rusibwe.

Sacco yatanze ikirego kigamije kubyutsa urubanza ivugako ko umunsi urubanza rwaburanishirijweho, Me Nambajimana Jean Baptiste wagombaga kuyihagararira, yagize ikibazo cy'uburwayi. Urwo Rukiko rwemeza ko ikirego kitakiriwe, ko n'indishyi zisabwa nta shingiro zifite, rushingiye kukuba ibyemezo repos medical na ordonnance medicale bitagaragaza igihe byatangiye ngo bigaragare koko ko uwagombaga guhagararira Sacco atari kwitabira urubanza.

Sacco yasabye ko urubanza rusubirwamo ku mpamvu z'akarengane ndetse irabyemererwa, urubanza ruburanishwa n'Urukiko rw'Ikirenga.

Mu miburanire yayo mu rubanza rusubirwamo ku mpamvu z'akarengane Sacco ariko nayo yitabye yonyine kuko abaregwa batitabiriye iburanisha, ivuga ko akarengane kayo gashingiye mu kuba yaragarariye Urukiko impamvu ifatika kandi yumvikana yatumye atitabira iburanisha ry'urwo rubanza ryari ritaganyijwe ku wa 10/08/2020, ndetse n' icyemezo cya muganga (*repos médical*) cyerekana ko igihe cyo kuva ku wa 10/08/2020 kugeza ku wa 13/08/2020 cyose yakimaze arwaye kandi atabasha gukora.

Incamake y'icyemezo : Umuburanyi utari bushobore kwitabira iburanisha ku mpamvu iyo ari yo yose ashobora kubimenyesha Urukiko mu buryo butandukanye harimo kuba yakwandika ubutumwa muri IECMS abimenyesha Urukiko mbere urubanza rutaraba anatanga ikimenyetso kibigaragaza ; Kuba uwo ahagarariye cyangwa yunganira yakwitabira iburanisha akamenyesha Urukiko ko umwunganira cyangwa umuburanira yarwaye cyangwa yagize indi mpamvu ikomeye yamubujije kwitabira iburanisha ; Kuba yakwihutira (*as soon as possible*) kubimenyesha Urukiko aho abishoboreye binyuze muri IECMS akanatanga ikimenyetso kibigaragaza.

Ikirego nta shingiro gifite.

Amategeko yifashishijwe:

Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 55.

Imanza zifashishijwe:

Mgobhozi v Naidoo NO & others [2006] 3 BLLR 242 (LAC)

Inyandiko z'abahanga zifashishijwe:

Société Suisse des médecins-conseils et médecins d'assurances. Manuel Incapacité de travail, certificat médical et expertise Update, 3ème édition, mai 09 <https://www.medecins-conseils.ch/manual/chapter11.html>.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku masezerano y'inguzanyo ya 2.488.500 Frw SACCO Ifumba y'Ubukire yahaye itsinda ryitwa Inzira y'Umurimo rihagarariwe na Uwimana Aljun, ku wa 09/02/2017. Iyo nguzanyo yagombaga kwishyurwa mu gihe cy'amezi 24¹ kandi yari yishingiye na Mutimutuje Clémentine, Dusabimana Marie Louise, Nyiramajyambere, Nyirashyirambere Pélagie ndetse na Nambukirehe Jean Pierre.

[2] Itsinda, Inzira Y'umurimo ntiryashoboye kwishyura iyo nguzanyo bituma SACCO IFUMBA Y'UBUKIRE itanga ikirego mu Rukiko rw'Ubucuruzi ivuga ko ku nguzanyo

¹ Umwenda wagombaga gutangira kwishyurwa ku wa 09/06/2017, ukarangira kwishyurwa ku wa 07/05/2019.

yatanzwe hishyuwe 554.390 Frw gusa, bityo ko ishingiyeye ku kuba itsinda ryahawe inguzanyo nta buzima gatozi rifite, Urukiko rw'Ubucuruzi rwategeka Umuyobozi waryo kwishyura 3.416.930 Frw akubiyemo 1.934.110 Frw y'umwenda remezo, 407.316 Frw y'inyungu zisanzwe, 425.504 Frw y'inyungu z'ubukererwe, 500.000 Frw y' igihembo cya Avoka na 150.000 Frw y'ikurikiranarubanza. Yongeraho ko mu gihe Umuyobozi w'iryo tsinda atabasha kwishyura uwo mwenda, Urukiko rwategeka ko wishyurwa n'abishingizi.

[3] Uwimana Aljun yireguye avuga ko mu masezerano yabaye, SACCO IFUMBA Y'UBUKIRE yari yiyemeje gutanga inguzanyo mu bikoreho bifite agaciro ka 2.488.500 Frw ariko nyuma ntibumvikana bituma aseswa. Avuga ko kuba mu rubanza RP 00197/2018/TB/MKA rwaciwe ku wa 06/12/2018, Urukiko rw'Ibanze rwa Mukamira rwaremeje ko nta nguzanyo yigeze afata, byumvikanisha ko atanaryozwa umwenda uburanwa, cyane ko amasezerano awushamikiyeho yasheshwe ndetse n'ingwate yari yatanze igasubizwa ; agasanga n'izindi nyungu ziwushamikiyeho nta shingiro zahabwa. Avuga kandi ko mu gihe Urukiko rwasanga ayo masezerano agifite agaciro, hakubahirizwa ibikubiye mu ngingo ya 8² y'amasezerano y'inguzanyo yo ku wa 09/02/2017.

[4] Nyiramajyambere na Nyirashyirambere Pélagie bireguye bavuga ko kuba abo bishingiyeye nta bikoreho bahawe, nta n'icyo bakwiye kubazwa.

[5] Mu rubanza RCOM 01486/2019/TC rwaciwe ku wa 23/01/2020, Urukiko rw'Ubucuruzi rwasanze :

i. Amasezerano y'inguzanyo yabaye ku wa 09/02/2017, hagati ya SACCO Ifumba Y'Ubukire n'Itsinda Inzira Y'Umurimo yarabaye itegeko hagati y'izo mpande zombi nk'uko biteganywa n'ingingo ya 64³ y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano;

ii. Kuba mu masezerano y'inguzanyo, ITSINDA INZIRA Y'UMURIMO ryari riyemeje ko rizaba ryarangije kwishyura ku itariki ya 09/05/2019, ariko bikagera ku itariki ya 27/11/2017 rimaze kwishyura 554.390 Frw gusa, bigaragaza ko iryo tsinda rysishe amasezerano nk'uko biteganywa n'ingingo ya 80⁴ y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, bityo iryo tsinda rikaba rigomba kwishyura 1.934.110 Frw y'umwenda remezo, 407.316 Frw y'inyungu zisanzwe na 425.504 y'inyungu z'ubukererwe; icyakora rusanga na none kuba ku wa 09/11/2018 Inteko y'Abunzi b'Akagari ka Birembo yaremeje ko Uwimana Aljun yatwaye ibikoreho by'Itsinda yari abereye umuyobozi, ariwe wenyine ugomba kwishyura uwo mwenda;

² Iyo ngingo iteganya ko *“buri wese mu bagize itsinda ahaye abarigize uburenganzira bwo kuziyishyurira bakoresheje ingwate yatanze igihe azananiwa kurangiza kwishyura inguzanyo yose, bitagombye kujya mu rubanza (mu nkiko).” Gufatira umutungo we wimukanwa cyangwa utimukanwa k'uwaniwe kubahiriza amasezerano y'ubwishyu yagiranye na Sacco Ifumba y'Ubukire ibifatirirwe bibikwa n'itsinda bitarenze iminsi 15, nyuma y'iyi minsi iyo uwagurijwe abaye atarakemura ikibazo afitanye n'itsinda ndetse na Sacco Ifumba y'Ubukire, bitezwa cyamunara kugira ngo ubwishyu buboneke, ibyo byose bigakorwa hari nibura umwe mu bagize ubuyobozi bw'inzego z'ibanze.”*

³ Iyo ngingo iteganya ko *“Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya.”*

⁴ Iyo ngingo iteganya ko *“Gukora ibisabwa byose mu masezerano bikuraho inshingano zo kubikora. Iyo igihe cyo gukora ibisabwa mu masezerano kigeze, kutabikora bifatwa nko kwica amasezerano.”*

iii. Kuba Uwimana Aljun uhagarariye Itsinda avuga ko nta mafaranga ryahawe nta shingiro byahabwa kuko hari ibimenyetso bigaragaza ko habayeho amasezerano y'inguzanyo, aribyo ifishi y'umwenda, urubanza rwaciwe ndetse n'icyemezo cy'Inteko y'Abunzi b'Akagari ka Birembo ;

iv. Mutimutuje Clémentine, Dusabimana Marie Louise, Nyiramajyambere, Nyirashyirambere Pélagie na Nambukirehe Jean Pierre bagomba gukurwa mu bishingizi kuko bitumvikana ukuntu bari kujya kwishingira Itsinda batabarizwamo mu gihe abo bishingiye basinye nk'abanyamuryango gusa.

[6] Urukiko rwanzuye ko ikirego cyatanzwe na SACCO Ifumba Y'ubukire gifite ishingiro, rwemeza ko Uwimana Aljun agomba kwishyura SACCO IFUMBA Y'UBUKIRE 1.934.110 Frw y'umwenda remezo, 407.316 Frw y'inyungu zisanzwe, 425.504 Frw y'inyungu z'ubukerererwe, 200.000 Frw y'ikurikiranarubanza, 500.000 Frw y'igihembo cy' Avoka na 20.000 Frw y'ingwate y'amagarama.

[7] SACCO IFUMBA Y'UBUKIRE yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rutari kwemeza ko Uwimana Aljun ari we ugomba kwishyura umwenda wenyine kuko mu bari barezwe harimo n'abishingiye uwo mwenda, isaba Urukiko ko rwakwemeza ko uwo mwenda ndetse n'inyungu ziwukomokaho byakwishyurwa na Uwimana Aljun nk'umuyobozi w'Itsinda afatanyije n'abishingiye uwo mwenda.

[8] Uwimana Aljun nawe yatanze ubujurire bwe asaba Urukiko Rukuru rw'Ubucuruzi gutesha agaciro urubanza RCOM01486/2019/TC kuko Urukiko rw'Ubucuruzi rwirengagije ibyemezo byafatiwe mu rubanza RP00197/2018/TB/MKA rwaciwe n'Urukiko rw'Ibanze rwa Mukamira ku wa 06/12/2018, kuko rwasanze nta nguzanyo SACCO IFUMBA Y'UBUKIRE yigeze iha Uwimana Aljun nk'uhagarariye ITSINDA INZIRA Y'UMURIMO, runategeka ko ari umwere.

[9] Ku munsu iburanisha ryagombaga kuberaho, ababuranyi bose nta n'umwe witabye urukiko cyangwa ngo arumenyeshe impamvu yamuteye kutitaba, maze Urukiko rusuzuma ikibazo kijyanye no kumenya ingaruka y'ibura ry'ababuranyi ku munsu w'iburanisha.

[10] Mu rubanza RCOMA00163/2020/HCC rwaciwe ku wa 10/08/2020, Urukiko Rukuru rw'Ubucuruzi rwasanze :

i. Kuba SACCO IFUMBA Y'UBUKIRE ndetse na Uwimana Aljun bari barahujwe n'urubanza bajuririye, byarabahaga inshingano zo gukurikirana ibyarukozweho byose, harimo no kumenya umunsu wagombaga gukorerwaho inama ntegurarubanza ndetse n'uw'iburanisha ;

ii. Kuba SACCO IFUMBA Y'UBUKIRE ndetse na Uwimana Aljun bataritabiriye inama ntegurarubanza ndetse n'iburanisha mu mizi, byerekana ko nta nyungu zo kurukurikirana bafite ;

iii. Kuba abajuriye nta nyungu bafite, byumvikana ko nta n'inyungu abarezwe (Mutimutuje Clémentine, Dusabimana Marie Louise, Nyiramajyambere,

Nyirashyirambere Pélagie na Nambukirehe Jean Pierre) bagomba kugira mu rubanza rujuririrwa.

- [11] Urukiko rwanzuye ko SACCO IFUMBA Y'UBUKIRE na Uwimana Aljun bajuriye ndetse n'abaregwa, nta nyungu bafite yo gukomeza gukurikirana urubanza, rwemeza ko urubanza RCOMA00163/2020/HCC rusibwe mu bitabo by'Urukiko, rutegeka ko 40.000 Frw y'ingwate y'amagarama y'urubanza yatanzwe ihwanye n'ibyarukozwemo.
- [12] Ku wa 22/08/2020, SACCO IFUMBA Y'UBUKIRE yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi kigamije kubyutsa urubanza RCOMA00163/2020/HCC rwasibwe ku wa 10/08/2020. Mu mpamvu SACCO IFUMBA Y'UBUKIRE yatanze, yavuze ko umunsi urubanza rwaburanishirijweho, Me Nambajimana Jean Baptiste wagombaga kuyihagararira, yagize ikibazo cy'uburwayi.
- [13] Uwimana Aljun avuga ko ikirego cyatanzwe na SACCO Ifumba y'ubukire kidakwiye kwakirwa kuko itigeze igaragariza Urukiko impamvu ititabiriye inama ntegurarubanza ndetse n'iburanisha mu mizi kandi ari yo yari yajuriye. Yasabye kandi ko Urukiko rwategeka SACCO IFUMBA Y'UBUKIRE gutanga indishyi kuko akomeje gushorwa mu manza.
- [14] Nyiramajyambere avuga ko ibivugwa n'uhagarariye SACCO IFUMBA Y'UBUKIRE nta shingiro bifite kuko mu rubanza RP00197/2018/TB/MKA rwaciwe n'Urukiko rw'Ibanze rwa Mukamira ku wa 06/12/2018, rwemeje ko nta nguzanyo SACCO IFUMBA Y'UBUKIRE yahaye Uwimana Aljun, bityo ko nta n'ideni ayibereyemo. Yongeraho ko kuba uhagarariye SACCO IFUMBA Y'UBUKIRE ataragarariye Urukiko impamvu yamuteye kutitabira umuhango w'inama ntegurarubanza ndetse n'iburanisha mu mizi, bigaragaza ko icyo agamije ari ukumusiragiza mu nkiko.
- [15] Mu rubanza RCOM00027/2020/HCC rwaciwe ku wa 31/01/2022, Urukiko Rukuru rw'Ubucuruzi rwasanze *repos médical* ndetse na *ordonnance médicale* byatanzwe ku wa 10/08/2020, bidakwiye gushingirwaho nk'impamvu idasanzwe kandi ikomeye yabujije Me Nambajimana Jean Baptiste kuburana urubanza RCOMA00163/2020/HCC rwari ruteganyijwe kuburanishwa ku isaha ya 10h00', cyane ko ibyo byemezo bitagaragaza isaha yabonaniyeho na Muganga kugira ngo bishimangire ko atashoboraga kugera ku Rukiko; rwanzura ko ikirego cyatanzwe na SACCO IFUMBA Y'UBUKIRE cyo kubyutsa urubanza RCOMA00163/2020/HCC kitakiriwe, kandi ko n'indishyi isaba nta shingiro zifite.
- [16] Ku wa 26/02/2022, SACCO IFUMBA Y'UBUKIRE yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RCOM00027/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/01/2022, 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 n° 137/CJ/2022 cyo ku wa 24/08/2022, yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.
- [17] Urukiko rwahamagaje ababuranyi ku wa 22/11/2023 rusanga nta muburanyi n'umwe witabye, iburanisha ryimurirwa ku wa 07/02/2024. Uwo munsi urubanza

rwaburanishirijwe mu ruhame, SACCO IFUMBA Y'UBUKIRE ihagarariwe na Me Nambajimana Jean Baptise naho abaregwa nta n'umwe witabye, ariko bigaragara ko bahamagajwe mu buryo bwemewe n'amategeko, Urukiko rwemeza ko iburanisha rikomeza badahari, impaka zigibwa ku bibazo bikurikira :

- a. Kumenya niba ikirego cyo kubyutsa urubanza cya SACCO IFUMBA Y'UBUKIRE cyaragombaga kwakirwa n'Urukiko Rukuru rw'Ubucuruzi ;
- b. Gusuzuma niba abishingizi bavugwa mu masezerano y'umwenda yabaye hagati ya SACCO IFUMBA Y'UBUKIRE n'ITSINDA INZIRA Y'UMURIMO bategekwa kwishyura 3.486.930 Frw ;
- c. Kumenya niba hari indishyi zatangwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba ikirego cyo kubyutsa urubanza cya Sacco Ifumba y'ubukire cyaragombaga kwakirwa n'Urukiko Rukuru rw'Ubucuruzi

[18] Me Nambajimana Jean Baptiste uburanira Sacco Ifumba y'ubukire, avuga ko akarengane kari mu rubanza RCOM00027/2020/HCC gashingiye ku kuba iyo SACCO yarangiye kubyutsa urubanza RCOMA00163/2020/HCC kandi yaragararije Urukiko impamvu ifatika kandi yumvikana yatumye atitabira iburanisha ry'urwo rubanza ryari riteganyijwe ku wa 10/08/2020.

[19] Avuga ko kuba icyemezo cya muganga (*repos médical*) cyerekana ko igihe cyo kuva ku wa 10/08/2020 kugeza ku wa 13/08/2020 cyose yakimaze arwaye kandi atabasha gukora, Urukiko rwari kubiharaho rukemeza ko ikirego SACCO IFUMBA Y'UBUKIRE yari yatanze cyakirwa kigasuzumwa mu mizi.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 55 y'Itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko : "Iyo urubanza rwasibwe mu bitabo by'urukiko, mu rwego urwo ari rwo rwose, ku mpamvu z'ushaka kurubyutsa, icyo kibazo cye nticyakirwa atabanje kugaragaza impamvu idasanzwe kandi ikomeye yamubujije kuza kuruburana mbere".

[21] Urukiko Rukuru rw'Ubucuruzi rwanze kwakira ikirego cyo kubyutsa urubanza cya SACCO IFUMBA Y'UBUKIKIRE ku mpamvu z'uko *repos médical* na *ordonnance médicale* byashyizweho umukono ku wa 10/08/2020, bidakwiye gushingirwaho nk'impamvu idasanzwe kandi ikomeye yabujije Me Nambajimana Jean Baptiste kuburana urubanza RCOMA00163/2020/HCC rwari ruteganyijwe kuburanishwa uwo muni ku isaha ya 10h00', kuko ibyo byemezo bitagaragaza isaha yabonaniyeho na Muganga kugira ngo bishimangire ko atashoboraga kugera ku Rukiko.

[22] Ibyemezo *repos médical* na *ordonnance médicale* byagaragaye bwa mbere mu Rukiko ku wa 22/08/2020, 20h35' ubwo Me Nambajimana Jean Baptiste uburanira Sacco

Ifumba y'ubukire yatangaga ikirego cyo kubyutsa urubanza, ni ukuvuga nyuma y'iminsi 12 atitabiriye iburanisha yari yamenyeshejwe mu buryo buteganywa n'amategeko. Ikibazo kigomba gusuzumwa ni ukumenya niba haba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze rudaha agaciro izo mpapuro zatanze n'Avoka nk'impamvu yo gusaba ko urubanza rubyutswa.

[23] Ku byerekeye *Repos médical* cyangwa *Certificat médical d'arrêt de travail*, abahanga⁵ bavuga ko ari icyemezo gitangwa na muganga kigaragaza ko umurwayi adashobora cyangwa atagomba gukora kubera impamvu z'uburwayi cyangwa impanuka. Bavuga ko iba yishingiwe n'umuganga wayishyizeho umukono, kandi ishobora kugibwaho impaka n'uwo igenewe (*l'employeur*) cyangwa abandi baganga⁶.

[24] Aba bahanga kandi bagaragaza ko igomba gutangwa guhera ku munsu wa mbere w'ikiruhuko n'ubwo hari abenshi bayitanga mu minsi 3 cyangwa 4⁶. Mu rubanza *Mgobhozi v Naidoo NO & others [2006] 3 BLLR 242 (LAC)* Urukiko rw'Ubujurire rw'Umurimo muri Afurika y'Epfo rwemeje ko *repos médical (medical certificate)* ari nk'imvugo gusa (*hearsay*) igihe cyose idashyigikiwe n'ikindi kimenyetso kibishimangira, inkiko zikaba zigomba kuzitondera kugira ngo zirinde ikoreshwa nabi ryazo⁷. Ni nako Urukiko rwabivuze mu rubanza rwa *Sipho Emmanuel Mgobhozi na Rajah Naidoo Arbitrator, Durban Metropolitan Bargaining Council na Durban Metropolitan Council (Housing)*⁹. Ibyo izi nkiko zemeje n'ibyo abahanga bavuga bigaragaza ko gutanga *repos médical* nk'ikimenyetso bigomba gukorwa vuba bishoboka (*as soon as possible*), kandi ko ubwabyo bidahagije kugira ngo ifatwe nk'ukuri cyangwa idakoreshejwe mu buryo butari bwo.

[25] Hashingiwe ku bimaze kuvugwa, nta kibuzwa Urukiko gusuzuma niba *repos médical* itanzwe mu rukiko ikwiye kwemerwa nk'impamvu idasanzwe kandi ikomeye ibuza umuburanyi kwitabira iburanisha yatumiye mu buryo bwubahirije amategeko, kugira ngo yemeze ko koko iyo mpamvu ari yo, idasanzwe kandi ikomeye, nk'uko biteganywa n'ingingo ya 55 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ibi bivuze rero ko Umucamanza aramutse asanze iyo *repos médical* ishobora gukemangwa afite ububasha bwo kutayihira agaciro igihe idashimangiwe n'ikindi kimenyetso.

[26] Urukiko rurasanga umuburanyi utari bushobore kwitabira iburanisha ku mpamvu iyo ari yo yose ashobora kubimenyesha Urukiko mu buryo butandukanye harimo ubu bukurikira kugira ngo ruyisuzume :

⁵ Société Suisse des médecins-conseils et médecins d'assurances. Manuel Incapacité de travail, certificat médical et expertise Update, 3ème édition, mai 09 <https://www.medecins-conseils.ch/manual/chapter11.html>. ⁶ “Le certificat médical n'a pas une valeur absolue, c'est pourquoi, il peut faire l'objet de contrôles (examen médical, expertise) de la part de l'employeur ou de l'assureur par un autre médecin”.

⁶ “ *Le CMAT peut être exigé par l'employeur dès le premier jour d'arrêt de travail pour cause de maladie.* ⁵ Toutefois, la majorité des entreprises ne l'exigent qu'à partir du 3^e ou 4^e jour d'absence”. idem

⁷ *Mgobhozi v Naidoo NO & others [2006] 3 BLLR 242 (LAC)*, the Labour Appeal Court confirmed that medical certificates without supporting evidence from doctors might amount to hearsay and courts should be especially vigilant to prevent abuse. In <https://ceosa.org.za/how-to-deal-with-suspected-fraudulent-medical-certificates/>. ⁹ <https://www.saflii.org/za/cases/ZALAC/2005/17.pdf> Para 23 - 28.

- a. Kuba yakwandika ubutumwa muri IECMS abimenyesha Urukiko mbere urubanza rutaraba anatanga ikimenyetso kibigaragaza ;
- b. Kuba uwo ahagarariye cyangwa yunganira yakwitabira iburanisha akamenyesha Urukiko ko umwunganira cyangwa umuburanira yarwaye cyangwa yagize indi mpamvu ikomeye yamubujije kwitabira iburanisha ;
- c. Kuba yakwihutira (*as soon as possible*) kubimenyesha Urukiko aho abishoboreye binyuze muri IECMS akanatanga ikimenyetso kibigaragaza.

[27] Urukiko rurasanga kudatangira igihe *repos médical* cyangwa ikindi kimenyetso kigaragaza impamvu umuburanyi atari bwitabire cyangwa atitabiriye iburanisha yahamagajwemo mu buryo bwubahirije amategeko bigaragaza umwete mucye, kudaha agaciro urubanza cyangwa kutubaha Urukiko, kandi bigaha icyuho ikoreshwa ry'inyandiko zitavuga ukuri, ibi bikaba bigira ingaruka zikomeye mu mitangire y'ubutabera, ndetse binakurura ibyaha byo gukoresha nyandiko mpimbano, hatangwa inyandiko zitavuga ukuri (nka *certificat de complaisance*⁸). Ni ngombwa rero ko umuburanyi yihutira kumenyesha urukiko muri bumwe mu buryo bwagaragajwe haruguru, kugira ngo Umucamanza ashobore kubisuzuma no kubifataho umwanzuro ukwiye.

[28] Mu gusuzuma icyatumye Nambajimana Jean Baptiste atitabira iburanisha ndetse ntabimenyeshe urukiko hagaragaye ibi bikurikira :

- a. Ku wa 10/08/2020 guhera 16h48' kugeza 17h05' Me Nambajimana Jean Baptiste yagize ibikorwa akora muri IECMS mu rubanza RCA00059/2020/TGI/RBV haburana Nsengiyumva Julien arega Nyarugabo Mukiza Jacques na Sekaneza Etienne rwari mu Rukiko Rwisumbuye rwa Rubavu, Me Nambajimana Jean Baptiste akaba yarabikoze mu izina rya Nyarugabo Mukiza Jacques⁹;
- b. Ntabwo yigeze yitabira inama ntegururubanza yari yatumiwemo kuri uru rubanza cyangwa ngo amenyeshe urukiko icyamubujije kuyitabira, kandi yo yabaye mbere y'uko "arwara", kuko yabaye ku wa 24/07/2020.

[29] Urukiko rurasanga kuba Me Nambajimana Jean Baptiste yarashoboye kugira ibyo akora mu zindi manza mu gihe avuga ko yari mu kiruhuko cy'uburwayi, bigaragaza ko yashoboraga no koherereza Urukiko Rukuru rw'Ubucuruzi *repos médical* na *ordonnance*, akarumenyesha impamvu atashoboye kwitabira iburanisha, kandi akabikora nibura igihe yatangiye kwita ku zindi manza nk'uko byagaragajwe, kuko biboneka ko yari afite imbaraga zo kwandika muri IECMS.

[30] Urukiko rurasanga kuba Me Nambajimana Jean Baptiste ataramenyesheje Urukiko ku gihe ko atari bushobore cyangwa atashoboye kwitabira iburanisha ngo anatange ikibyerekanwa, akaba atarashoboye gusobanura impamvu hari ibikorwa yakoze ku wa 10/08/2020 kandi avuga ko atashoboraga kugira icyo akora kuko yari arembye afite *repos médical* nk'uko yabivuze mu iburanisha, bigaragaza ko atakoresheje umwete (*diligence*)

⁸ idem

⁹ Yashyize muri dosiye copie y'urubanza rwajuririwe, Yatanze inzitizi yo kutakira ikirego, Yashyize muri dosiye amatangazo ya cyamunara, Yanashyize muri dosiye inyandiko y'uwatsindiye cyamunara.

wagombaga kumuranga nk'uwahamagajwe n'Urukiko mu buryo bwubahirije amategeko; Bigaragaza kandi ko atitaye ku miburanishirize y'urwo rubanza, akaba ataritwaye kinyamwuga nka Avoka ufite inshingano yo kunganira ubutabera.

[31] Hakurikijwe ibimaze gusobanurwa, Urukiko rurasanga ikirego cyo kubyutsa urubanza RCOMA00163/2020/HCC cyatanzwe na Sacco Ifumba y'ubukire kitaragombaga kwakirwa n'Urukiko Rukuru rw'Ubucuruzi.

[32] Nyuma yo gusanga ikirego kitaragombaga kwakirwa, Urukiko rurasanga ingingo ya 2 ijyanye no kumenya niba abishingizi bavugwa mu masezerano y'umwenda yabaye hagati ya Sacco Ifumba y'ubukire n'itsinda Inzira y'umurimo bategekwa kwishyura 3.486.930 Frw, bitakiri ngombwa ko isuzumwa.

II.3. Kumenya niba hari indishyi zatangwa muri uru rubanza.

[33] Uhagarariye SACCO IFUMBA Y'UBUKIRE avuga ko Uwimana Aljun na bagenzi be aribo bashoye mu manza SACCO aburanira kuko batubahirije ibyari bikubiye mu masezerano bagiranye, ndetse n'ubu bikaba bikomeje kuyikururira igihombo, agasaba Urukiko ko rwashingira ku ngingo 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, maze rugategeka ko Uwimana Aljun afatanyaga na bagenzi be bareganwa kwishyura SACCO IFUMBA Y'UBUKIRE 1.500.000 Frw akubiyemo 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[34] 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 iteganyaga ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza.

[35] Urukiko rurasanga kuba SACCO IFUMBA Y'UBUKIRE itsindwaga uru rubanza nta mafaranga y'ikurikiranarubanza cyangwa y'igihembo cya Avoka ikwiye guhabwa.

III. ICYEMEZO CY'URUKIKO.

[36] Rwemeje ko ikirego cyatanzwe na Sacco Ifumba y'ubukire cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOM00027/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/01/2022 nta shingiro gifite.

[37] Rutegetse ko urubanza RCOM00027/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/01/2022 rugumyeho.

