RSC 149

AMAJAMBO MAKURU MAKURU

Gusambuza urubanza – kuba mundagano zitegekanywa n'amategeko – kunyuruza ibikoresho vy'akazi – guhagarikwa mu kazi – gukurwa mu kazi – kwitura Sentare y'akazi kugira ngo usabe indishi - insiguro za Sentare ntizikwiye – imvo itigeze ikorwako – gukoresha ibikoresho vy'akazi ku mvo zitazwi n'umukoresha – agahombo k'umukoresha - imvo z'ibinyoma – iyo atakosha ry'icaha ririho, ikosha ry'akazi rishobora gutuma iyirukanwa ry'umukozi riba – Sentare ntiyishuye imburano – umucamanza yashimye kwinumira – gutanga ibirengeye ivyo umuburanyi yasavye – ibirego bidashemeye – imburano nshasha zitakirwa muri gasamburamanza – ingingo yandikwa mu gitabo c'imanza za Sentare yaciye urubanza rwungurujwe iruhande y'urubanza rudasambuwe.

URUBANZA

- 1 -

RSC 149

SENTARE NTAHINYUZWA ISHASHE MU GISATA CA GASAMBURAMANZA YACIYE URUBANZA RUKURIKIRA
INTAHE Y'ICESE YO KU WA 31 NZERO 2005.

UWITWARA : E. iserukirwa n'Umushingwamanza S. Gérard

UWITWARIRWA : S. Joseph

Twihweje ikete ryo kw'igenekerezo rya 17/2/2003 uwusambuza yandikiye Umukuru wa Sentare Ntahinyuzwa irimwo Gasamburamanza ayisaba isambuka ry'urubanza RSA 4373 rwaciwe na Sentare Nkuru Isubiramwo imanza i Bujumbura ku wa 30/10/2002 narwo rukaba ruvuga ruti :

La Cour, statuant publiquement et contradictoirement après en avoir délibéré conformément à la loi :

- Reçoit l'appel mais le déclare non fondé ;
- Confirme le jugement RS. 5970 dans toutes ses dispositions ;
- Les frais de justice sont à charge de l'appelant.

Twihweje ko uwusambuza yamenyeshejwe urubanza italiki 20/12/2002 ;

Twihweje imburano S. Joseph yashikirije Sentare ;

Twihweje icegeranyo c'urubanza cagizwe n'umucamanza wa Sentare Ntahinyuzwa ku wa 20/5/2003 ;

Twihweje iciyumviro canditse cagizwe n'umushikirizamanza mukuru ku wa 8/ 9/ 2003 ;

Twihweje ko urubanza rwashizwe italiki 22/ 3/ 2004 ;

Twihweje ko rwagiye rurasubizwa ku magenekerezo ya 9/7/2004 na 30/ 9/ 2004 ;

Twihweje ko Sentare yahamagaye urubanza muri iyo ntahe y'icese yanyuma, ababuranyi bakitaba bakongera bakumvirizwa ;

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Sentare imaze gutohoza neza urubanza ikanyurwa yarahavuye irushira mu mwiherero w'abacamanza iraheza ishinga urukurikira :

Kubera ko E. isambuza urubanza RSA 4373 rwaciwe na Sentare Nkuru Isubiramwo imanza i Bujumbura, ku wa 30/10/2002 ; ko yarumenyeshejwe italiki 20/12/2002 agaca yandika imburano zo kurusambuza zashitse mw'iyandikiro ry'imanza kw'igenekerezo ryo ku wa 17/2/2003, ikongera igashinga uyo munsi nyene ;

Kubera ko E. ikwiye kwakirwa kuko yituye Sentare mu ndagano zategekanijwe n'amategeko ;

Kubera ko mw'ishirahamwe E. (yahora yitwa F.-Burundi) ; hibwe ama pompe ya « essence » ku wa 18/7/1997, ko S. Joseph yari asanzwe ari umutekinisiye w'ayo ma pompe yiketswe kuri ubwo busuma ;

Kubera ko sebuja yaciye amushengeza muri polisi, agafatwa, agapfungwa ; ko kw'igenekerezo ryo ku wa 21/7/1997 yahagaritswe mu kazi mu kworosha iperereza, ko bidatevye italiki 30/7/1997 yahavuye agakurwa mu kazi adatekerewe ;

Kubera ko umushingwamanza yitonze agatohoza ico kirego c'ubusuma bw'ayo ma pompe, agasanga zibiri zibwe n'umukozi wa E. yitwa T., uyu akaba yaremeye icaha, akemera no kuriha izo pompe ;

Kubera ko umushingwamanza yongeye agatohoza amamuko y'ipompe S. Joseph yiyitirira, ari nayo E. ivuga ko yakozwe n'ivyuma vy'ivyibano, agasanga nta cuma na kimwe ca E. kiriko aca arayishikiriza nyeneyo ;

Kubera ko uwusamburizwa amaze kubona ko yirukanywe bidaciye mu mategeko yahavuye yitura Sentare y'Akazi asaba indishi, ko Sentare imaze gutohoza urubanza yasanze S. Joseph atarira busema, ikaba yaciye imukomorera indishi ingana na 4.447.604 FBu igizwe n'indishi y'akababaro n'ivyo yahomvye, « indemnités de préavis et de licenciement » hamwe n'inguzanyo y'iminsi y'akaruhuko atafashe ;

Kubera ko E. itashimye urwo rubanza ikaba yararwungururije muri Sentare Nkuru Isubiramwo imanza i Bujumbura ; ko iyo Sentare yongeye igatohoza urubanza hanyuma ikaba yarakomeje urubanza RS 5970 rwa Sentare y'Akazi mu ngingo zarwo zose ;

Kubera ko mu gusambuza urubanza Ishirahamwe tumaze kuvuga aho haruguru rishimikira ku mvo nkuru nkuru zikurikira :

1°. Insiguro za Sentare Nkuru Isubiramwo ntizikwiye :

Kubera ko kuvyerekeye ico kirego, uwusambuza atangura kwibutsa ko uwitwariwe yirukanywe kubera imvo zibiri : ubusuma bw'ipompe hamwe no gukoresha ivyuma yahawe canke atahawe kuzindi mvo zitazwi n'umukoresha ;

Kubera ko uwusambuza aca avuga ko umucamanza yasubiyemwo urubanza yavuze ko uwusamburizwa yirukanywe kubera ko yivye umukoresha gusa, agaheza akibagira igituma kigira kabiri catumye S. Joseph yirukanwa ;

Ko ico gituma ca kabiri ataco umucamanza yasubiyemwo urubanza yakivuzeko, ko iyo mvo itigeze ikorwako kandi ari igituma cumvikana gishigikira iyirukanwa ry'uwusa-mburizwa ;

Ko mu gukoresha ivyuma vy'Ishirahamwe ku nyungu ziwe uwitwariwe yarenze ku mategeko yari yahawe n'uwitwaye, kandi yatumye umukoresha agira agahombo kumvikana, aho hose akaba yarenze ku ngingo ya 58 y'igitabu c'amategeko agenga akazi ;

2°. Imvo z'ibinyoma hamwe n'ukudakurikiza ingingo ya 39 agace ka 2 y'igitabu kigenga ingene imanza z'ivyaha ziburanishwa.

Kubera ko kuri iyo mvo ya kabiri uwusambuza arega umucamanza yasubiyemwo urubanza ngo mu kuba yavuze ko ikibazo c'ubusuma bw'ipompe cahereye aho (classement sans suite), ko iyo mvo iba itagishobora gusigura iyirukanwa ry'umukozi ;

Kubera ko uwusambuza we avuga ko yisunze ingene imanza zagiye ziracibwa, iyo ata kosha ry'icaha ririho, ikosha ry'akazi rishobora gutuma iyirukanwa ry'umukozi riba (urubanza RS 4870 rwemejwe na Sentare Isubiramwo imanza mu rubanza RSA 4094 rwo ku wa 29/3/2002) ;

Kubera ko uwusambuza yongera akavuga ko ingingo yo guharira ikibazo c'ubusuma bw'ipompe rya E. itigeze imenyeshwa iryo Shirahamwe, ivyo bikaba biteye kubiri n'ingene imanza ziburanishwa nk'uko ingingo ya 39 agace ka 2 tumaze kuvuga aho haruguru ibitegekanya « Umushikirizamanza wa Republika, iyo ashinze ko urubanza ruherera aho, aca abimenyesha mu rwandiko canke ku munwa uwitwaye…. » ;

Kubera ko uwusambuza aheraheza avuga ko iyo ngingo ata bubasha na bumwe ishobora kugira mu gihe yafashwe mu kinyegero kandi itisunze amategeko agenga guhagarika urubanza ;

Kubera ko ku kirego ca gatatu, uwusambuza avuga ko yamye asemerera

3°. Sentare ntiyishuye imburano yashikirijwe :

Kubera ko uwusamburizwa yamwivye ipompe arico gituma Polisi imaze kubimenyeshwa na nyene kwibwa yakoze uko ishoboye gushika aho ifata iyo pompe ;

Ko urubanza RSA 4373 ata nahamwe rwigera ruvuga ivyo bintu, ko vyongeye uwitwaye yamye avuga ko ibikoresho bimwe bimwe muvyo atunze vyagurishijwe na S. Joseph ku nyungu ziwe ;

Ko umucamanza yasubiyemwo urubanza yashimye kwinumira bigaca biboneka ko yari afise aho ahengamiye ;

4°. Kudakurikiza ingingo za 34 na 58 c'igitabo c'amategeko y'akazi :

Kubera ko kuvyerekeye ico kirego uwusambuza avuga ko mu kwiba ivyuma vy'Ishirahamwe E., uwitwariwe yakoze ikosha rihambaye, ko mu gukoresha ivyuma yari yahawe canke yari yasanze aho akorera, aho bitari bikenewe, uwitwariwe ku masezerano y'akazi ;

Ko mugukora ivyo, uwusamburizwa yarenze ku ngingo za 34 na 58 tumaze kuvuga aho haruguru ;

5°. Uwitwariwe yahawe ibirengeye ivyo yari yasavye :

Kubera ko kuri ico kirego ca gatanu arico canyuma, uwusambuza avuga ko uwitwariwe yari yasavye indishi y'akababaro ingana imiliyoni zitanu (5.000.000 FBu) kubera ko yafungiwe ubusa ;

Ko uravye ingene imanza zagiye ziracibwa muri iki gihugu, asanga ataho barenza umuliyoni (1.000.000 FBu) kuvyerekeye indishi y'akababaro ;

Ko abaciye urubanza badashobora gutanga n'indishi y'akababaro n'ivyo uwusamburizwa yatakaje atabisavye ;

Ko mugutanga indishi zitigeze zisabwa ari ukurengera akarimbi ingene imanza ziburanishwa ;

Kubera ko mu kwiregura S. Joseph abanza kwibutsa ido n'ido ry'ukugene aya matati ya be na Sebuja yatanguye n'ukugene inyamiramabi zatohoje zigahava zitora pompe E. imwagiriza hamwe n'uwazivye yitwa T. ; uyu nawe akaba yarazemeye agatako akaziriha ;

Ko ari naco gituma umushikirizamanza yahavuye amwambika izera akamukurako ico caha c'ubusuma E. iguma imwegekako ;

Kubera ko uwusamburizwa yongera akavuga ko ku bindi bikoresho vy'akazi E. imurega ko yoba yaragurishije mu mpisho, haba imbere y'umushikirizamanza, eka no muri Sentare z'itsitso, ivyo bintu atavyo bigeze bamwagiriza kuko ata gikoresho na kimwe cari kibuze muvyo bamuhaye ;

Kubera ko S. Joseph aca avuga ko atari muri Gasamburamanza baza kubimwagiriza ubwa mbere, kandi ata narimwe bigeze bamwandikira ngo bamwishuze ivyo bintu ;

Kubera ko uwusamburizwa aheraheza avuga ko kuvyerekeye indishi y'umurengera Sentare yamuciriye kuronswa asanga atari umurengera aravye abantu atunze mu rugo iwe uko bangana (bashika kuri munani) ;

Kubera ko kubwa Sentare Gasamburamanza ikirego ca mbere uwusambuza yatanze kivuga ko insiguro za Sentare Isubiramwo imanza zidakwiye kidashemeye na buhoro buhoro ;

Kubera ko nk'uko tumaze kubivuga, uwusambuza avuga ko kuvyerekeye ico kirego Sentare ataco yakivuzeko (ikirego ca kabiri) naco kikaba cavuga ko S. Joseph yakoresheje ivyuma yahawe canke atahawe ku zindi mvo zitazwi n'umukoresha ;

Kubera ko umushingamanza yatohoje ubusuma bw'ama pompe abiri uwusamburizwa yagirizwa agasanga ntibumwagira ;

Kubera ko uyo mushingamanza nyene yongeye akitonda neza agatohoza amamuko y'ipompo S. Joseph yiyitirira ari nayo umukoresha avuga ko yakozwe n'ivyuma vy'ivyibano agasanga ico caha ataco yakoze ;

Kubera ko kuri ivyo birego vyose S. Joseph yambitswe izera ; ko lero ivyo uwusambuza avuga ko S. Joseph yakoresheje ivyuma yahawe canke atahawe kuzindi mvo E. itazi ataho bihagaze ;

Kubera ko nimba hari ibindi vyuma S. Joseph yivye, izo zoba ari izindi mburano nshasha zitakirwa muri Gasamburamanza kuko twamaze kwerekana ko ivyaha S. Joseph yagirizwa atavyo yakoze ;

Kubera ko ikirego ca kabiri uwusambuza yatanze kivuga ko urubanza rusambuzwa ruhagaze ko mvo z'ibinyoma hamwe n'ukudakurikiza ingingo ya 39 agace ka kabiri y'igitabu kigenga ingene imanza z'ivyaha ziburanishwa kidashemeye ;

Kubera ko uwusambuza asigura ico kirego avuga ko yisunze ingene imanza zagiye ziracibwa, iyo ata kosa ry'icaha ririho, ikosa ry'akazi rishobora gutuma iyirukanwa ry'umukozi riba akongera akanegura umushikirizamanza ko atamumenyesheje urwo rubanza rw'icaha rwahereye aho ;

Kubera ko nkuko tumaze kubivuga umushingamanza yatohoje urubanza agasanga ubusuma bwose S. Joseph yagirizwa ntibumwagira ;

Kubera ko kandi imanza zivugwa ko zacitse ata makopi yazo uwusambuza yatanze ;

Kubera ko kuvuga naho ko umushingamanza ata mumenyesheje urubanza rw'icaha, aha tubona ko uwusambuza ashaka kwikurayo ngo ntatange indishi kuko nawe nyene yari afise uburenganzira bwo kuja kusaba ingene urubanza rwacitse hanyuma akarumenyeshwa ;

Kubera ko ico kirego ca kabiri naco nyene kidashemeye ;

Kubera ko ikirego ca gatatu uwusambuza yatanze kivuga ko Sentare itishuye imburano yashikirijwe naco nyene kidashemeye kuko ibikoresho bivugwa ko vyagurishijwe na Joseph S. ku nyungu ziwe, umushingamanza yatohoje urubanza agasanga ntavyagurishijwe, ikanamwambika izera, ko ivyo bindi vyuma avuga, izo zoba ari imburano nshasha zitihwezwa n'iyi Sentare ;

Kubera ko n'ikirego ca kane uwusambuza yatanze kivuga ko Sentare itakurikije ingingo za 34 na 58 z'igitabo c'amategeko y'akazi kidashemeye kuko nk'uko duhejeje kubivuga vyagaragaye ko S. Joseph atacuma ca E. yigeze yiba, ko ivyaha vyose yagirizwa atavyo yigeze akora ;

Kubera ko ikirego ca gatanu arica nyuma na conyene kidashemeye kuko twasuzumye idosiye ababuranyi baburaniyeko ubwa mbere tukabona ko uwusambuza yari yarasavye indishi y'akababaro n'ivyo yatakaje ;

Kubera ko ibirego E. yatanze isambuza urubanza bidashemeye none atacotuma urubanza rusambuka ;

KUBERA IZO MVO

Sentare Ntahinyuzwa igisata ca Gasamburamanza ;

Yihweje Ibwirizwa Nshingiro Mfatakibanza ;

Yihweje Ibwirizwa n° 1/004 ryo ku wa 14 Nzero 1987 ryerekeye iringanizwa ry'amaSentare n'ububasha bwazo ;

Yihweje Itegeko Bwirizwa n° 1/51 ryo ku wa 23 Mukakaro 1980 ryerekeye isambuzwa n'iburanishwa ry'imanza muri Sentare Ntahinyuzwa ;

Imaze kuja mu mwiherero w'abacamanza nkuko amategeko abivuga ,

Ishinze ko:

- Yakiriye isambuzwa ry'urubanza ariko ivuze ko ridashemeye ;
- Irahakanye gusambura urubanza RSA 4373 rwaciwe na Sentare Nkuru Isubiramwo Imanza i Bujumbura kw'igenekerezo rya 30/10/2002 ;
- Ivuze ko iyi ngingo yandikwa mu bitabo vy'imanza vy'iyo Sentare hambavu y'urubanza rudasambuwe ;
- Amagarama atangwa na E. 21.000 FBu.

Uko niko ruciwe kandi rusomwe i Bujumbura mu ntahe y'icese yo ku wa 31 Nzero 2005, hashashe umukuru w'intahe, abacamanza bafashijwe n' umushikirizamanza n' umwanditsi.

KWIHWEZA URUBANZA

Umukoresha yirukanye umukozi wiwe bidaciye mu mategeko. Umukozi abibonye yaciye yitura Sentare y'Akazi kugirango imusubizeko agateka yatswe na shebuja. Iyo Sentare yasanze umukoresha yiketse ko umukozi wiwe yoba yamwivye, akongera agakoresha ibikoresho vy'akazi kumvo yigombeye atabimenyesheje shebuja. Maze umukoresha aca arahagarika mukazi umukozi wiwe ; bidatevye aca aramwirukana mu kazi burundu. Ariko rero, itohoza ryahavuye ritora uwundi yivye vya bikoresho, umushikirizamanza aca yambika izera wa mukozi.

Sentare y'akazi yasanze umukoresha yirukanye umukozi wiwe bidaciye mu mategeko niko gutegeka umukoresha ko yotanga indishi y'ivyo umukozi yatakaje. Umukoresha abibonye ntiyabishimye, kuko yaciye yunguruza urubanza. Sentare yiyungururizo nayo nyene yakomeje urwaciwe na Sentare y'akazi.Umukoresha naho nyene ntiyanyuzwe kuko yagerageje gusambuza urubanza,ariko gasamburamanza ntiyakiriye ibirego vy'umukoresha kuko bitari bishemeye.

Abakoresha bari bakwiye kwisunga amategeko agenga akazi imbere yo kwitura Sentare basaba ko bobakurako ivyo baciriwe gutanga.Twovuga ko bifuza ko Sentare zo bashigikira mu makosha bagize, kandi Sentare zijejwe kuyakosora, zigatabara inzirakarengane.