RADIANT INSURANCE COMPANY Ltd v. GAFARANGA

[Rwanda URUKIKO RW'UBUJURIRE – RCOM 00002/2024/CA (Mukandamage, P.J.,) 09 Kanama 2024]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ingwate – Gushinganisha umutungo uri mu bugwate kugirango uzavemo ubwishyu – Umutungo uri mu bugwate bwa banki ntiwashinganishwa n'undi muntu udafitanye ikibazo nayo kugirango uzavemo ubwishyu bwe kuko nayo iwufiteho uburenganzira.

Incamake y'ikibazo: Akarere ka Kamonyi katanze isoko ryo gukora umuhanda Mukunguri - Rugobagoba, ritsindirwa na Pyramide Minerals Supply Ltd, isabwa ingwate yo kurangiza neza imirimo *(garantie de bonne exécution)*, iyihabwa na Radiant Insurance Company Ltd, maze Gafaranga Ismaël nk'Umuyobozi mukuru wayo ayibera umwishingizi. Sosiyete Pyramide Minerals Supply Ltd yaje kunanirwa gukora iryo soko, Akarere ka Kamonyi kishyuza Radiant Insurance Company Ltd amafaranga y'ingwate yatanze.

Pyramide Minerals Supply Ltd n'Umuyobozi wayo banze kwishyura Radiant Insurance Company Ltd amafaranga yayishyuriye, hanyuma ibaregera Urukiko rw'Ubucuruzi basaba kwishyurwa. Urukiko rw'Ubucuruzi rutegeka Pyramide Minerals Supply Ltd kwishyura Radiant Insurance Company Ltd amafaranga yayishyuriye Akarere ka Kamonyi, n'inyungu z'ubukererwe.

Radiant Insurance Company Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rwabanje rwagombaga gutegeka ko sosiyete Pyramide Minerals Supply Ltd ifatanya na Gafaranga Ismaël kuyishyura, maze Urukiko Rukuru rw'Ubucuruzi rutegeka ko Pyramide Minerals Supply Ltd ifatanya na Gafaranga Ismaël kwishyura Radiant Insurance Company Ltd amafaranga yayishyuriye Akarere ka Kamonyi.

Pyramide Minerals Supply Ltd na Gafaranga Ismaël bajuririye mu Rukiko rw'Ubujurire, Radiant Insurance Company Ltd **nayo** yatanze ikirego kihutirwa ivuga ko umutungo umwe muyo bari baregeye ufite UPI:1/01/09/02/1167 wanditse kuri Gafaranga Ismaël ari wo washinganishwa n'urukiko, maze ntihabeho kuwugwatiriza no kuwuhererekanya n'abandi, kuko hari impungenge z'uko warigiswa ikazabura uko irangiza urubanza mu gihe yaba itsinze, avuga kandi ko n'ubwo uwo mutungo ari ingwate ya Banki ya Kigali, nta cyabuza ko abantu barenze umwe bawufataho ingwate, bityo agasaba urukiko ko rwabisuzuma, byaba ngombwa rugatumiza mu rubanza Banki ya Kigali yawuhaweho ingwate.

Gafaranga Ismaël yiregura avuga ko imwe mu mitungo Radiant Insurance Company Ltd yaregeye atayizi, ko umwanditseho ari umwe ufite UPI:1/01/09/02/1167, ukaba udashobora gutambamirwa, kuko ari ingwate ya Banki ya Kigali guhera mu mwaka wa 2020 kubera umwenda afite.

Incamake y'icyemezo: 1**.** Umutungo uri mu bugwate bwa banki ntiwashinganishwa n'undi muntu udafitanye ikibazo nayo kugirango uzavemo ubwishyu bwe kuko nayo iwufiteho uburenganzira.

2.Kugira ngo ikirego cyihutirwa cyakirwe, kigomba kuba cyujuje ibintu bitatu by'ingenzi aribyo ubwihutirwe kugira ngo bigire icyo biramira, ku buryo bitinze haba igihombo kitagira igaruriro, kuba icyemezo ari icy'agateganyo, kuba kitagomba kubangamira urubanza mu mizi.

Ikirego cyihutirwa nta shingiro gifite.
Amagarama y'urubanza ahwanye n'ibyarukozwemo.

Amategeko yashingiweho:
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 185.

Imanza zifashishijwe:
Urubanza RC 00002/2016/CS - RC 0003/16/CS rwa Kayitsinga Aléxis, Kanyamibwa Immaculée na Nsangineza Céléstin, rwaciwe n'Urukiko rw'Ikirenga ku wa 14/10/2016;
Urubanza RCOM 00001/2024/CA, rwa Nextgen Developers Ltd na NFCS Ltd na Gasirikare Evariste rwaciwe n'Urukiko rw'ubujurire ku wa 21/06/2024.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Akarere ka Kamonyi katanze isoko ryo gukora umuhanda Mukunguri - Rugobagoba, ritsindirwa na Pyramide Minerals Supply Ltd, isabwa ingwate yo kurangiza neza imirimo *(garantie de bonne exécution)* iyihabwa na Radiant Insurance Company Ltd, maze Gafaranga Ismaël nk'Umuyobozi mukuru wayo ayibera umwishingizi. Pyramide Minerals Supply Ltd yaje kunanirwa gukora iryo soko, Akarere ka Kamonyi kishyuza Radiant Insurance Company Ltd amafaranga y'ingwate yatanze, maze yishyura miliyoni ijana na mirongo inani n'icyenda n'ibihumbi magana ane na magana arindwi mirongo itanu n'umunani z'amafaranga y'u Rwanda (189.400.758 Frw).

[2] Pyramide Minerals Supply Ltd n'Umuyobozi wayo banze kwishyura Radiant Insurance Company Ltd amafaranga yayishyuriye, hanyuma ibaregera Urukiko rw'Ubucuruzi kugira ngo rubategeke kwishyura, maze mu rubanza RCOM 00556/2022/TC rwaciwe ku wa 16/12/2022, Urukiko rw'Ubucuruzi rutegeka Pyramide Minerals Supply Ltd kwishyura Radiant Insurance Company Ltd amafaranga yayishyuriye Akarere ka Kamonyi, angana na miliyoni ijana na mirongo inani n'icyenda n'ibihumbi magana ane na magana arindwi mirongo itanu n'umunani z'amafaranga y'u Rwanda (189.400.758 Frw), inyungu z'ubukererwe bw'ayo mafaranga zingana na miliyoni mirongo itatu n'icyenda n'ibihumbi magana arindwi mirongo irindwi na bine n'amafaranga ijana na mirongo itanu n'icyenda (39.774.159 Frw), n'amafaranga ibihumbi magana atanu(500 000 Frw) y'igihembo cy'Avoka.

[3] Radiant Insurance Company Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rwabanje rwagombaga gutegeka ko Pyramide Minerals Supply Ltd ifatanya na Gafaranga Ismaël kuyishyura, maze mu rubanza RCOMA 00015/2023/HCC, Urukiko Rukuru rw'Ubucuruzi rutegeka ko Pyramide Minerals Supply Ltd ifatanya na Gafaranga Ismaël kwishyura Radiant

Insurance Company Ltd amafaranga yayishyuriye Akarere ka Kamonyi, angana na miliyoni ijana na mirongo inani n'icyenda n'ibihumbi magana ane na magana arindwi mirongo itanu n'umunani (189.400.758FRW), miliyoni mirongo irindwi n'icyenda n'ibihumbi magana atatu na mirongo inani na bibiri na magana cyenda mirongo ine n'umunani (79.382.948Frw) y'inyungu z'ubukererwe, amafaranga ibihumbi magana atatu (500.000 Frw) y'igihembo cy'Avoka ku rwego rw'ubujurire, n'amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka ku rwego rwa mbere, kwishyura Akarere ka Kamonyi amafaranga y'ikurikirana rubanza angana n'ibihumbi magana abiri (200 000Frw) no kwishyura ibihumbi mirongo ine (40.000 Frw) y'igaragama yatanze ijuririra.

[4] Pyramide Minerals Supply Ltd na Gafaranga Ismaël bajuririye Urukiko rw'Ubujurire, urabanza ruhabwa RCOMAA 00018/2024/CA. Mu gihe urwo rubanza rutaraburanishwa, Radiant Insurance Company Ltd yatanze ikirego kihutirwa gihabwa RCOM 00002/2024/CA, urubanza ruburanishwa mu ruhame ku wa 05/08/2024, Radiant Insurance Company Ltd ihagarariwe na Me Habimana Joseph, naho Pyramide Minerals Supply Ltd na Gafaranga Ismaël bahagarariwe na Me Nkiranuye Gratien.

[5] Mu myanzuro no mu miburanire, uhagarariye Radiant Insurance Company Ltd avuga ko yahawe amakuru y'uko Pyramide Minerals Supply Ltd na Gafaranga Ismaël bajuriye bagamije kwikuraho umutungo wanditse kuri UPI:1/01/09/02/307, uherereye mu Mudugudu wa Gabiro, Akagari ka Biryogo, Umurenge wa Nyarugenge, Akarere ka Nyarugenge, uwanditse kuri UPI:1/01/09/02/2966, uherereye mu Mudugudu wa Nyarufunzo, Akagari ka Nyarufunzo, Umurenge wa Mageragere, Akarere ka Nyarugenge n'ufite UPI:1/01/09/02/1167, uherereye mu Mudugudu w'Inyarurembo, Akagari ka Kiyovu, Umurenge wa Nyarugenge, Akarere ka Nyarugenge, ari ko nyuma yo kubona imyanzuro y'abaregwa yasanze koko umutungo wanditse kuri Gafaranga Ismaël ari umwe ufite UPI:1/01/09/02/1167, indi itakimwanditseho, agasaba ko uwo mutungo washinganishwa. Ku byo Radiant Insurance Company Ltd yari yaregeye ko amafaranga ari kuri konti za Pyramide Minerals Supply Ltd muri banki yafatirwa mu rwego rwo kwirinda igihombo kitagira igaruriro *(perte irréparable)*, kugeza igihe urubanza RCOMAA 00018/2024/CA ruzacibwa mu mizi, uyihagarariye yavuze ko abiretse, kuko izo konti zitazwi, kimwe n'amafaranga aziriho.

[6] Pyramide Minerals Supply Ltd yiregura ivuga ko imyanzuro yari yakoze ku biyireba nta gaciro igifite, kuko Radiant Insurance Company Ltd ikuyeho ikirego cyo gufatira amafaranga yayo ku makonti muri banki. Naho Gafaranga Ismaël avuga ko imitungo itimukanwa Radiant Insurance Company Ltd ishaka gutambamira atari iye, kuko itanamwanditseho, uretse umutungo umwe ufite UPI:1/01/09/02/1167 udashobora gutambamirwa, kuko uri mu bugwate bwa Banki ya Kigali guhera mu mwaka wa 2020.

[7] Ikibazo kigomba gusuzumwa muri uru rubanza ni icyo kumenya niba umutungo utimukanwa wa Gafaranga Ismaël wanditse kuri UPI:1/01/09/02/1167 washinganishwa.

II.ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba umutungo utimukanwa wa Gafaranga Ismaël wanditse kuri UPI:1/01/09/02/1167 washinganishwa

[8] Me Habimana Joseph, uhagarariye Radiant Insurance Company Ltd avuga ko umutungo umwe muyo bari baregeye ufite UPI:1/01/09/02/1167 wanditse kuri Gafaranga Ismaël ari wo washinganishwa n'urukiko, maze ntihabeho kuwugwatiriza no kuwuhererekanya n'abandi, kuko hari impungenge z'uko warigiswa ikazabura uko irangiza urubanza mu gihe yaba itsinze. Avuga ko n'ubwo uwo mutungo ari ingwate ya Banki ya Kigali, nta cyabuza ko abantu barenze umwe bawufataho ingwate, agasaba urukiko ko rwabisuzuma, byaba ngombwa rugatumiza mu rubanza Banki ya Kigali yawuhaweho ingwate.

[9] Uhagarariye Gafaranga Ismaël avuga ko imwe mu mitungo Radiant Insurance Company Ltd yaregeye atayizi, ko umwanditseho ari umwe ufite UPI:1/01/09/02/1167, ukaba udashobora gutambamirwa, kuko ari ingwate ya Banki ya Kigali guhera mu mwaka wa 2020 kubera umwenda afite.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ibikurikira: "*Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara*".

[11] Mu rubanza RC 00002/2016/CS - RC 0003/16/CS rwaciwe ku wa 14/10/2016 haburana Kayitsinga Aléxis, Kanyamibwa Immaculée na Nsangineza Céléstin, Urukiko rw'Ikirenga rwasobanuye ko kugira ngo ibirego byihutirwa bihabwe ishingiro, bigomba kuba byujuje ibintu bitatu by'ingenzi aribyo: 1º) ubwihutirwe kugira ngo bigire icyo biramira, ku buryo bitinze haba igihombo kitagira igaruriro, 2º) kuba icyemezo ari icy'agateganyo, 3º) kuba kitagomba kubangamira urubanza mu mizi. Uyu murongo wakurikijwe mu manza zitandukanye zaciwe n'Urukiko rw'Ubujurire harimo n'urubanza RCOM 00001/2024/CA rwaciwe ku wa 21/06/2024, haburana Nextgen Developers Ltd na NFCS Ltd na Gasirikare Evariste.

[12] Urukiko rw'Ubujurire rurasanga ibisabwa na Radiant Insurance Company Ltd ko umutungo wa Gafaranga Ismaël wanditse kuri UPI:1/01/09/02/1167 washinganishwa kugira ngo uzavemo ubwishyu mu gihe yaba itsinze urubanza ruri mu bujurire mu Rukiko rw'Ubujurire itabyemererwa, kubera ko nayo yemera ko uwo mutungo ari ingwate ya Banki ya Kigali nayo iwufiteho uburenganzira, ikaba itarayireze muri uru rubanza.

[13] Urukiko rw'Ubujurire rurasanga kandi ibyo kandi Radiant Insurance Company Ltd iburanisha ivuga ko byihutirwa gushinganisha uwo mutungo wavuzwe haruguru kubera ko ushobora kurigiswa cyangwa guhererekanwa n'abandi mbere y'uko urubanza RCOMAA 00018/2024/CA rucibwa ntaho ibishingira, kuko nta kimenyetso itanga kigaragaza ubwo bwihutirwe, uretse kuvuga gusa ko yahawe amakuru ko nyirawo yaba ashaka kuwikuraho ikazabura ubwishyu mu gihe yatsinda urubanza, kandi izi neza ko ari ingwate ya Banki nk'uko bigaragara ku cyangombwa yashyikirije urukiko.

[14] Urukiko rw'Ubujurire rurasanga rero, rushingiye ku biteganywa n'ingingo ya 185 no kubimaze gusobanurwa, ikirego cyihutirwa cyatanzwe na Radiant Insurance Company Ltd nta shingiro gifite.

III.ICYEMEZO CY'URUKIKO

[15] Rwemeje ko ikirego kihutirwa cyatanzwe na Radiant Insurance Company Ltd isaba gushinganisha imitungo ya Gafaranga Ismaël n'iya Pyramide Minerals Supply Ltd nta shingiro gifite;

[16] Ruvuze ko amafaranga y'amagarama y'uru rubanza na Radiant Insurance Company Ltd yatanze ahwanye n'ibyakozwe mu rubanza.