

NZAGIBWAMI N'ABANDI v SANLAM AG PLC

[Rwanda URUKIKO RUKURU - RSOC.A 00111/2023/HC/KIG (Ndinda, P.J.) 31 Mutarama 2024]

Amategeko agenga imanza z'imbonezamubano – Indishyi z'ikomoka ku mpanuka zo mu muhanda – Indishyi mbangamirabukungu - Ababyeyi cyangwa abavandimwe b'uwakorewe impanuka bagenerwa indishyi mbangamirabukungu iyo batanze ibimenyetso ko ari we wari ubatanze, ko yabakodesherezaga, yabagaburiraga, yabambikaka, yabavuzaga n'ibindi akaba yarabikoraga akoreshe banki cyangwa kohererezanya amafaranga kuri telefoni n'ubundi buryo bwakwizerwa ko yari abatanze.

Incamake y'ikibazo: Uru rubanza rukomoka ku mpanuka yabaye ikozwe n'ikinyabiziga gifite ubwishingizi bwa SANLAM AG PLC (Sanlam) hanyuma igahitana uwitwa Nshimyumuremyi. Ababyeyi be Nzagibwami na Mukamabano ndetse n'umuvandimwe we Uwimbabazi bandikiye umwishingizi basaba indishyi ariko ntibazumvikanaho bituma batanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge. Urwo rukiko rwemeje ko bagenerwa indishyi ariko ntibahabwa indishyi mbangamirabukungu kuko batabshije kugarahaza ibimenyetso by'uko bari batanzwe na nyakwigendera.

Abaregera indishyi batanze ubujurire bwabo mu Rukiko Rukuru basaba ko bahabwa indishyi mbangamirabukungu kuko batanze ikimenyetso kigaragaza ko bari batanzwe na nyakwigendera, ubujurire bwabo burakirwa maze Urukiko Rukuru rusuzuma ikibazo cyo kumenya niba koko nta kimenyetso cyatanzwe kigaragaza ko nyakwigendera Nshimyumuremyi ariwe wari utanze ababyeyi be. Abarega basobanura ko urukiko rwisumbuye rwirengagije ikimenyetso batanze cyerekana ko bari batanzwe na nyakwigendera kuko batanze icyemezo cy'inzeho z'ibanze cyemeza ko ari we wari ubatanze ndetse hakaba hari n'icyemezo cyatanzwe na koperative y'abatwara abagenzi kuri moto nyakwigendera yabagamo kigaragaza amafaranga yinjizaga ku muni.

Sanlam isobanura ko nta kigaragaza ko abarega bese bari batanzwe na Nshimyumuremyi kuko atari we nyiri urugo kandi nta kigaragaza ko ababyeyi be batari bashoboye kwihahira, kuko abana bese atari ko baba batanze imiryango bavukamo bityo ibisabwa n'abarega bikaba nta shingiro bifite.

Incamake y'icyemezo: Ababyeyi cyangwa abavandimwe b'uwakorewe impanuka bagenerwa indishyi mbangamirabukungu iyo batanze ibimenyetso ko ariwe wari ubatanze, ko yabakodesherezaga, yabagaburiraga, yabambikaka, yabavuzaga n'ibindi akaba yarabikoraga akoreshe banki cyangwa kohererezanya amafaranga kuri telefoni n'ubundi buryo bwakwizerwa ko yari abatanze.

Ubujurire bwatanzwe, nta shingiro bufite.

Nta mategeko yashingiweho

Imanza zifashishijwe:

RS/INJUST/RC 00018/2022/SC, Niyonzima na SANLAM AG PLC, rwaciwe n’Urukiko rw’Ikirenga ku wa 27/01/2023;

RS/INJUST/RC 00021/2022/SC, Mukagatare na SANLAM AG PLC, rwaciwe n’Urukiko rw’Ikirenga ku wa 17/03/2023.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Nzagibwami Valens, Mukamabano Floride ni ababyeyi ba nyakwigendera Nshyimyumuremyi Vincent wazize impanuka y’ikinyabiziga gifite icyapa RAC 917M, naho Immaculée, akaba ari umuvandimwe wa nyakwigendera.

[2] Nzagibwami Valens, Mukamabano Floride na Uwimbabazi Immaculée uko ari 3 baregeye indishyi muri uru rubanza, bashingira ku rupfu rwa nyakwigendera bahujwe n’isano yagaragajwe haruguru. Mu kirego cyabo kandi, aba bavuga ko indishyi baregera zari zanagenwe mu rundi rubanza rwaciwe n’Urukiko rwisumbuye rwa Nyarugenge mu rubanza RC 001123/2020/TGI/NYGE, aho Immaculee yari yahawe uruhare rwe nk’umuvandimwe wa nyakwigendera rungana na 540,000 Frw naho Nzagibwami Valens, Mukamabano Floride bagenerwa 5.084.913 frw.

[3] Mu rubanza rw’ubujurire kuri izi ndishyi zari zatanzwe, bwakorewe mu Rukiko Rukuru-Kigali, hemejwe ko izo ndishyi zivanwaho, kuko byari bigaragaye ko bazihawe ariko bataraziregeye, kandi ari nta nuwo bahaye ubutumwa bwo kuzibaburanira.

[4] Aba barega ubu bamaze kubona indishyi zabo zivanyweho, maze bongera kwandikira SANLAM AG PLC basaba guhabwa indishyi bari bagenewe muri urwo rubanza rwavuzwe ngo bakazihabwa ku neza batongeye kujya mu Nkiko, ariko ngo iminsi 30 irashira umwishingizi atagize icyo abasubiza.

[5] SANLAM AG PLC itanga inzitzi y’uko iki kirego kitagomba kwakirwa, ngo kuko Nzagibwami Valens, Mukamabano Floride na Uwimbabazi Immaculée ngo bihuriye kurega iminsi 30 bagombaga guhabwamo igisubizo itaragera, kuko ngo bagombaga kutabariramo iminsi y’imperera z’icyumweru ndetse n’amakonji.

[6] Kuri iyi nzitizi ariko, abarega bo bavuga ko ngo batagombaga kuvanamo iyi minsi, kuko havanwamo gusa iyi minsi mu gihe umunsi wa nyuma ariwo uhuriranye n’imperera z’icyumweru cyangwa konji, ikindi kandi ngo no muri icyo gihe bavuga nacyo nticyubahirijwe kuko umwishingizi yanditse hashize amezi atatu (3) n’iminsi icumi (10) yose; ikindi kandi ngo kuba iminsi ibarwa umunsi ku munsi, ngo binavugwa mu rubanza RCAA 0049/14/CS rwaciwe n’Urukiko rw’Ikirenga mu Rwanda.

[7] Ku munsi w’iburanishwa ry’urubanza mu mizi, abarega baburanirwaga na Me Gabiro David, naho SANLAM AG PLC iburanirwa na Me Niyondora Nsengiyumva, kandi urubanza rubera mu ruhamwe rwa benshi, nk’uko amategeko abiteganyaga;

[8] Urukiko Rwisumbuye Rwemeje ko ikirego cya Nzagibwami Valens, Mukamabano Floride na Uwibabazi Immaculée basaba indishyi zikomoka ku mpanuka yateje urupfu rwa Nshimyumuremyi Vincent gifite ishingiro; Rwemeje kandi rutegeka Sosiyete y'Ubwishingizi ya SANLAM AG PLC kwishyura abarega bose, indishyi zose hamwe zingana na miriyoni eshatu n'ibihumbi ijana na mirongo itanu na bibiri na magana abiri (3,152,200Frw); kandi uruhare rwabo rukaba rwagaragajwe mu bika bibanza.

[9] Nzagibwami Valens, Mukamabano Floride na Uwimbabazi Immaculée ntibishimiye imikirize y' uru rubanza barajurira bavuga ko urukiko rwanzuye ko impamvu rudatanze indishyi z'ibangamirabungu ari uko nta kimenyetso cyatanzwe n'abarega kigaragaza ko nyakwigendera Nshimyumuremyi Vincent ariwe wari utunze ababyeyi be; Urukiko rukaba rwarirengagije icyemezo cy'inzego zibanze kigaragaza ko nyakwigendera ari we wari utunze ababyeyi be.

Ikigomba gusuzumwa:

-Ireme ry'indishyi (ibimenyetso) zijyanye no kwishyura abo uwakoze impanuka akomokaho

- Gusuzuma umuburanyi wakwegukana indishyi

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Gusuzuma niba koko nta kimenyetso cyatanzwe kigaragaza ko nyakwigendera Nshimyumuremyi Vincent ariwe wari utunze ababyeyi be.

[10] Me Umurerwa Huguette uhagarariye Nzagibwami Valens, Mukamabano Floride na Uwimbabazi Immaculée bavuga ko mu gika cya 23 cy'imikirize y'urubanza urukiko rwanzuye ko impamvu rudatanze indishyi z'ibangamirabungu ari uko nta kimenyetso cyatanzwe n'abarega kigaragaza ko nyakwigendera Nshimyumuremyi Vincent ariwe wari utunze ababyeyi be. Aha barasanga urukiko rwarirengagije ikimenyetso cyari cyatanzwe ku rwego rwa mbere nkuko bigaragara kuri attachement ya 19 aho batanze icyemezo cy'inzego zibanze cyo kuwa 10/11/2020 cyemeza ko Nshimyumuremyi Vincent ariwe wari utunze ababyeyi be bityo bakaba basanga abarega bararenganijwe kubijyanye no guhabwa indishyi z'ibangamirabungu kuko bari babitangiye ikimenyetso. Ndetse kuri attachement ya 4 bari batanze ikimenyetso cyatanzwe n'ishiramwe ry'abamotari kigaragaza amafaranga Nshimyumuremyi Vincent yinjizaga ku muni angana na 18,000frw. Bityo bakaba basaba ko abarega barenganurwa maze bakagenerwa indishyi z'ibangamirabungu batahawe ku rwego rwa mbere zibazwe mu buryo bukurikira: $(18,000\text{frw} \times 30 \times 12 \times 42 \times 2/3) \div 100 + (7 \times 42) \div 100 = 46,050,761 \text{ frw}$.

[11] SANLAM AG PLC mu izina ry' umuyobozi wayo bavuga ko mu gika cya 23 cy'urubanza rujuririrwa, urukiko rwisumbuye rwasobanuye neza ko nta kigaragaza ko abarega bose bari batanzwe na Nshimyumuremyi Vincent (nyakwigendera), kuko atari we nyiri urugo kandi nta kigaragaza ko ababyeyi be batari bashoboye kwihahira, kuko abana bose atari ko baba batunze imiryango bavukamo, Ibi kandi ni byo bihura n'ingingo ya 22 yiteka rya Perezida no 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri biturutse ku mpanuka zitewe n'ibinyabiziga, aho isobanura ko indishyi z'ibangamirabungu zitangwa gusa ku bantu bari basanzwe batanzwe ku buryo bwumvikana na nyakwigendera.

[12] Abajuriye banenga iyo motivation bavuga ko urukiko rwirengagije icyemezo cy'inze zibanze ngo kuko ari cyo kigaragaza ko nyakwigendera ari we wari utunze ababyeyi be. Ibivugwa n'abarega ntashingiro bifite kubera imiburanire yabo idahuje n'ibimenyetso bitangiye ndetse bikaba bidashimangiwe n'amategeko n'umurongo watanzwe n'Urukiko rw'Ikirenga. icyemezo abarega bashingiraho ni icyatanzwe kuwa 10/11/2020 na Komite Nyobozi y'Umudugudu wa Remera, Akagali ka Mpanga, Umurenge wa Mukingo, Akarere ka Nyanza. icyo cyemezo gisobanura ko nyakwigendera Nshimyumuremyi Vincent ari we wari utunze umuryango ariko mu buryo rusange. icyo kimenyetso nta gaciro gikwiye guhabwa kuko mu gihe cy'impanuka, ni ukuvuga kuwa kuwa 29/5/2019 Nshimyumuremyi Vincent yitabye Imana afite imyaka 23 kuko yavutse muri 1996 kandi ari ingaragu. Ni mu gihe umubyeyi wa nyakwigendera witwa Nzajyibwami Valens yari afite imyaka 58 kuko yavutse muri 1961, byumvikane ko yari akiri mu gihe cyo gukora no kwitunga. Naho undi mubyeyi wa nyakwigendera witwa Mukamabano Floride bigaragara ko yari afite imyaka 54 igihe cy'impanuka, byumvikane ko nawe yari akiri mu gihe cyo gukora no kwitunga. Byongeye kandi, ibyemezo by'umwirondoro wuzuye w'ababyeyi ba nyakwigendera (Attestation d'identité complète) bigaragaza ko umwuga bakora ari uw'ubuhinzi (farmers).

[13] Hashingiwe ku bimaze gusobanurwa haruguru, ntibyumvikana na busa ukuntu abantu bari mu myaka yo gukora no kwibeshaho, batungwa na nyakwigendera Nshimyumuremyi Vincent kandi nawe abarega batagaragaza icyo yakoraga kizwi cyangwa indi nkomoko yemewe n'amategeko y'ubushobozi yatungishaga ababyeyi be. Uretse kuba icyemezo cy'inze zibanze kidakwiye guhabwa ishingiro nk'uko babisobanuye haruguru, ariko iyo usuzumye imiterere yacyo usanga kivuga ko nyakwigendera yari atunze umuryango mu buryo rusange, ariko ntigisobanura mu buryo bwihariye, impamvu idasanzwe yatuma Nshimyumuremyi Vincent atunga ababyeyi be. Ikindi ni uko nta n'itegeko na rimwe riha Umudugudu ububasha bwo gutanga icyo cyemezo, nk'uko bimeze ku bindi byemezo by'irangamimerere bitangwa n'umwanditsi w'irangamimerere, uretse kuba byigaragaza ko bwari uburyo bwo gufasha abarega kubona indishyi batemerewe. icya kabiri, kuba umunyamabanga nshingwa w'Akagali ashingira kuri icyo cyemezo akemeza ibigukubiyemo, ni ikimenyetso cy'uko nawe atabibonye. Nta n'ubwo Umudugudu cyangwa Akagali gashobora kumenya uko umuntu wese ugatuyemo abayeho ndetse n'ibimutunze, ahubwo ikigaragara ni uko icyo cyemezo cyatanzwe muri 2020 ku mpanuka yabaye muri 2019, kigamije gufasha abarega kugisabisha indishyi, ariko abacyanditse ntabwo bagaragaza uko nyakwigendera yari atunze ababyeyi be naho yakuraga ibyo abatungisha.

[14] Mu gihe ababyeyi ba nyakwigendera bari abahinzi kandi bakiri mu myaka yo gukora, nta mpamvu n'imwe yatuma uyu muni bavuga ko bari batanzwe na nyakwigendera. Ingingo ya 255 al 2 y'itegeko N° 32/2016 ryo kuwa 28/08/2016 rigenga abantu n'umuryango iteganya ko: umwana agomba guha agaciro ababyeyi be, kububaha no kubaha ibibatunga igihe babikeneye". Kuva kurwego rwa mbere, ntabwo ababyeyi ba nyakwigendera bigeze bagaragaza ko bari bakeneye ibibatunga maze ngo bagaragaze uko nyakwigendera yabibahaga. icyemezo cyatanzwe n'Umudugudu kikemezwa n'Akagali ntabwo kibasha gukemura impaka kur'ibyo bibazo byombi. Ni mu gihe ababyeyi ba nyakwigendera bitangiye ikimenyetso cy'uko bari batanzwe n'ubuhinzi kandi bari bakiri mu kigero cy'imyaka yo gukora hashingiwe ku bimenyetso abarega ubwabo bitangiye.

[15] Isesengura ry'iyi ngingo yavuzwe haruguru rigaragaza ko ishingano z'abana ku birebana no guha ababyeyi babo ibibatunga zigarukira gusa ku mubyeyi ubikeneye, ni ukuvuga ko uwo

mubyeyi aba afite impamvu idasanzwe ituma akenera gutungwa n'umwana we. Ntabwo abarega bagaragaza impamvu idasanzwe yerekana ko ababyeyi bari bakeneye gutungwa n'umwana wabo ufite imyaka 23 maze ngo batange ibimenyetso byuko ibyo byakorwaga. Byongeye kandi nyakwigendera Nshimyumuremyi Vincent asanzwe afite abavandimwe be babiri aribo Mwimbabazi immaculée na Mukeshimana Vestine, bityo abarega bakaba batagaragaza impamvu ki ababyeyi abandi bavandimwe batagombaga kugira uruhare mu kubatunga. Niba abarega bemera ko ntacyo abavandimwe ba nyakwigendera bakoraga kubijyanye no kubatunga, bikwiye kumvikana ko batari bakeneye ibibatunga no kuri nyakwigendera, bityo hakaba nta yindi mpamvu yatuma bavuga ko iyo nshingano yari ifitwe na nyakwigendera Nshimyumuremyi Vincent wenyine, cyane cyane ko batagaragaza uko yabatungaga nko kubakodeshereza inzu, kubahahira, kubambika, etc.

[16] Kubera izo mpamvu nta ndishyi mbangamirabukungu zigomba gutangwa kuko abarega batagaragaza ko ababyeyi ba nyakwigendera bari batanzwe na Nshimyumuremyi Vincent nk'uko biteganyijwe n'ingingo ya 22 y'Iteka rya Perezida N° 31/01 ryo kuwa 25/08/2003 rigena indishyi zikomoka ku mpanuka zatewe n'ibinyabiziga. Iyo ngingo iteganya ko: "Abafite uburenganzira ku buryo byumvikana ko bari batanzwe n'uwahohotewe ni bo bonyine bashobora guhabwa indishyi mbangamirabukungu. Kuba abarega batabasha kugaragaza impamvu idasanzwe bashingiraho bemeza ko ababyeyi ba nyakwigendera bari basanzwe batanzwe na nyakwigendera, ngo babitangire n'ibimenyetso bihamya ko nyakwigendera yari afite ubwo bushobozi bwo kubitanga n'uburyo yabitangamo, izo ndishyi basaba guhabwa ntacyo zaba zishingiyeho. Uyu akaba ariwo murongo watanze n'Urukiko rw'Ikirenga mu rubanza RS/INJUST/RC 00018/2022/SC.

[17] Urukiko rw'Ikirenga rwasobanuye neza ingingo ya 22 y'iteka rya Perezida ryavuzwe haruguru mu rubanza RS/INJUST/RC 00018/2022/SC (reba igika cya 16-23). Mu gika cya 20 cy'urwo rubanza, urukiko rwasobanuye ko "hagati y'ababyeyi n'abana barengeje imyaka y'ubukure, inshingano yo guhana ibibatunga ibaho gusa iyo usaba ibimutunga abikeneye, byumvikanisha ko kugira ngo abihabwe agomba gutanga ibimenyetso by'uko akeneye ibimutunga, ndetse ko ubisabwa abifitiye ubushobozi. Kubera iyo mpamvu urukiko rwemeje ko indishyi mbangamirabukungu zitagomba gutangwa.

[18] Naho m'urubanza RCAA 00049/14/CS, Urukiko rw'Ikirenga rwasobanuye ko iyo nyandiko y'inzego z'ibanze yemeza ko abafite uburenganzira kuri nyakwigendera bari basanzwe batanzwe nawe, nta gaciro yahabwa kuko itagaragaza impamvu idasanzwe igaragaza ko nyakwigendera yari asanzwe atunze abasaba indishyi mbangamirabukungu. Nk'uko Urukiko rw'Ikirenga rwabisobanuye mugika cya 19 cy'urwo rubanza, icyo kimenyetso gitangwa n'inzego zibanze cyagira agaciro ari uko giherekejwe n'ibindi bimenyetso byerekana uko nyakwigendera yari asanzwe atunze abasaba indishyi mbangamirabukungu: bordereaux za Bank, mobile money, kwishyura ubukode, et crts. Umurongo watanze n'Urukiko rw'Ikirenga ku gaciro gahabwa iyo nyandiko y'inzego z'ibanze yemeza ko abafite uburenganzira kuri nyakwigenderabari basanzwe batanzwe nawe, ni nawo wakomeje no mu manza RS/INJUST/RC 00021/2021/SC rwaciwe kuwa 17/03/2023.

[19] N'Urukiko Rukuru narwo mu RCA 00192/2018/HC/KIG rwasubirishijwemo ku mpamvu z'akarengane kuri N° RS/INJUST/RC 00021/2021/SC, rwari rwanze gushingira indishyi mbangamirabukungu kuri iyo nyandiko y'inzego z'ibanze gusa, rwemeza ko uwaregaga atabashije gutanga ikimenyetso cyemeza ko yari asanzwe atanzwe na nyakwigendera. Mu gika cya 8,

Urukiko Rukuru na rwo rwemeje ko “abari batunzwe na nyakwigendera wazize impanuka bafite uburenganzira bwo guhabwa indishyi hashingiwe ku ngingo ya 22 y’iteka rya Perezida No 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga. Rusanga ariko kugira ngo izo ndishyi bazihabwe ari uko haba hari ibimenyetso bigaragaza ko bari batunzwe na nyakwigendera.” Naho mu gika cya 9, Urukiko Rukuru ruvuga ko “Abafite uburenganzira ku buryo byumvikana ko bari batunzwe n’uwahohotewe ari bo bonyine bashobora guhabwa indishyi”.

[20] Ibi bisobanuye ko ubu burenganzira butahabwa umuntu bitewe gusa n’isano afitanye na nyakwigendera ahubwo aba agomba kugaragaza mu buryo bwumvikana ko, uretse n’isano afitanye na nyakwigendera ko izo ndishyi azikwiriye koko kandi nta bundi buryo yabigaragaza uretse gutanga ibimenyetso by’uko uzisaba yari akeneye ibimutunga, kandi ko nyakwigendera yari amufitiye iyo nshingano, akaba yaranayikoraga. Bashingiye ku bisobanuro byatanzwe haruguru, ku manza bibukije haruguru ndetse no ku ngingo ya 255 al. 2 y’itegeko N° 32/2016 ryo kuwa 28/08/2016 rigenga abantu n’umuryango itegeka umwana guha umubyeyi we ibimutunga mu gihe abikeneye, urega agomba kugaragaza koko ko yari akeneye ibimutunga kandi akagaragaza koko yabihabwaga na nyakwigendera mu buryo budashidikanywaho, ariko kugeza ubu ntabyo abarega bagaragaza. Ni mu gihe ingingo ya 4 y’ Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo itegeko no 15/2004 iteganya ko urukiko ruca urubanza rushingiye kubimenyetso bihujwe na kamere y’ikiburanwa. Iyo urega atagaragaje ikimenyetso, agomba gutsindwa n’urubanza hashingiwe ku ngingo ya 12 CPCCSA, bityo bagasanga indishyi z’ibangamirabukungu zisabwa ntacyo zishingiyeho.

UKO URUKIKO RUBIBONA

[21] Urukiko rusanga RS/INJUST/RC 00018/2022/SC ndetse na RS/INJUST/RC 00021/2022/SC zose zaciwe mu mwaka wa 2023, aho Urukiko Rwikirenga rwasobanuye ko ababyeyi cyangwa abavandimwe b’uwakorewe impanuka zishyurwa gusa iyo atanze ibimenyetso ko ariwe wari ubutanze, aho agaragaza ko abakodeshereza, abagaburira, abambika, abavuze n’ibindi akoreshe banke cyangwa momo n’ubundi buryo bwakwizerwa ko yari abatanze. Yagombye kwerekana ko yitunze mbere yo gufasha abandi. icyerekeye ko abayobozi b’ibanze ko yari abatanze ntibihagije kubivuga bidashyigikiwe n’ibindi. Kubera ko haterekanywe ko ari Nshimyumuremyi Vincent wabatunga havuye amafaranga y’impozamarira nkuko zasabwe zikaba zibazwe muri ubu buryo bukurikira: -Kuri Mukamabano Floride (nyina) yahabwa 810,000frw, ndetse na Nzagibwami Valens (ise) nawe agahabwa impozamarira ya 810,000frw, na Uwimbaza Immaculee (umuvandimwe) nawe agahabwa impozamarira ya 540,000frw, kuko uburyo bazibazemo aribwo (yose hamwe ni 2.160.000frw). Andi mafaranga yo gushyingura, ayo kwa muganga n’ibindi yo yatangwa kuko aribo bishingiye iby’imodoka yakoze amakosa yo gukora impanuka akangiriza. Urukiko rusanga rero babona 3,152,200Frw - 2.160.000 (avuyemo ayo abavandimwe n’umubyeyi bari bahawe kuko nta bimenyetso bayatangiye) na – 800,000frw (havuyemo 800.000frw ya avoka n’ikurikiranana bagomba kwishyura SANLAM AG PLC) =192,200Frw asigaye, akaba ariyo SANLAM AG PLC, igomba kubishyura.

2. Igihembo cya Avoka n'amafaranga y'ikurikiranarubanza

[22] Me Nkeza Sempundu Clement na Me Niyondora Nsengiyumva Uhagarariye SANLAM AG PLC isanga iyo abarega batajya kwifuza indishyi mbangamirabukungu kandi babona neza ko amategeko atazibemerera, uru rubanza ntabwo rwari kubaho. Kuba abarega barabirenzeho bakayirega mu Rukiko Rukuru, bigomba kumvikana neza ko SANLAM AG PLC yarezwe ikirego kitari ngombwa. Niyo mpamvu SANLAM AG PLC isanga uru ari urubanza rw'amaherere (action téméraire et véxatoire) bityo Urukiko Rukuru ruzategeke abarega bafatanije kwishyura SANLAM 1.500.000frw akubiyemo amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka.

[23] Me Umurerwa Huguette uhagarariye Nzagibwami Valens, Mukamabano Floride na Uwimbabazi Immaculée avuga ko izi ndishyi nta shingiro zahabwa kuko Sanlam niyo igomba kwirengera ibyo yemeye kwishingira ntabwo rero yajya ishaka uburyo bwo guhunga ishingano zayo.

3. Gusuzuma igihembo cya Avocat, ikurikirana rubanza ndetse no gusubizwa ingwate y'igarama.

[24] Me Umurerwa Huguette uhagarariye Nzagibwami Valens, Mukamabano Floride na Uwimbabazi Immaculée avuga ko hashingiwe kubiteganywa n'ingingo ya 111 ya CPCCSA ndetse n'ingingo ya 34 y'amabwiriza rusange ashiraho ibihembo mbonera bya Avocat, barasaba urukiko gutegeka Sanlam AG kwishyura igihembo cya Avocat, kingana na 650,000frw, ikurikirana rubanza rya 100,000frw ndetse no gusubiza ingwate y'igarama ya 40,000frw.

[25] Me Nkeza Sempundu Clement na Me Niyondora Nsengiyumva uhagarariye Sanlam AG Plc mu izina ry' umuyobozi wayo bavuga ko nta faranga na rimwe abarega bakwiye kugenerwa kuko bishoye mu rubanza rutari ngombwa, cyane cyane bagamije kwifuza indishyi mbangamirabukungu kandi bazi neza ko batazikwiye. Urukiko ruzabone ko umuntu adakwiye gusaba ibyo amategeko atamuteganyiriza ngo abirengeho aje mu rukiko ku buryo bw'amaherere. Iyo abarega bataza gusaba indishyi mbangamirabukungu zidafite ishingiro, nta rubanza ruba rwarabayeho, cyane ko nabo bemeye uko indishyi mbangamiramuco zabazwe. Kuba uru rubanza ruriho, ni ukubera abarega bifuje ibyo batemererwa n'amategeko bityo indishyi basaba kuri iyi ngingo nta shingiro zifite.

[26] SANLAM AG PLC isanga iyo abarega batajya kwifuza indishyi mbangamirabukungu kandi babona neza ko amategeko atazibemerera, uru rubanza ntabwo rwari kubaho. Kuba abarega barabirenzeho bakarega Sanlam mu Rukiko Rukuru, bigomba kumvikana neza ko SANLAM AG PLC yarezwe ikirego kitari ngombwa. Niyo mpamvu SANLAM AG PLC isanga uru ari urubanza rw'amaherere (action téméraire et véxatoire) bityo Urukiko Rukuru ruzategeke abarega bafatanije kwishyura SANLAM 1.500.000frw akubiyemo amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka. Abajuriye bavuga ko batayatangira ahubwo ko Sanlam yabaha 650.000frw na 40.000frw y'amagarama.

[27] Urukiko rusanga abajuriye nta ndishyi bahabwa ahubwo nibo bafatanyaga kwishyura SANLAM amafaranga ya avoka n'ikurikiranarubanza ahwanyeye na 800.000frw, kuko bamuzanyeye mu bujirire bakayitangisha amafaranga atari ngombwa banze no kumvikana.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeye kwakira ubujurire rwashyikirijwe n`abajuriye bose rubusuzumye rusanga nta shingiro bufite.

[29] Rwemeje ko urubanza rwajuririwe ruhindutse ku bijyanye n`amafaranga ajyanye no kwishyura abo yari atunze, ni ukuvuga ayo yari yabonye ku rwego rwa mbere ahwanye na 3,152,200Frw - 2.160.000 – 800,000frw (havuyemo 800.000frw ya avoka n`ikurikirana bagomba kwishyura SANLAM AG PLC) =192,200Frw asigaye, akaba ariyo SANLAM AG PLC, igomba kubishyura itayatanga ku neza igakurwa mu byayo ku ngufu.

[30] Rutegetse ko ingwate y`amagarama yatanzwe mu ijurira muri uru rubanza, angana na 40,000frw ihwanye ni ibyakozwe.