RADIANT INSURANCE COMPANY LTD v NIYONAGIZE

[Rwanda URUKIKO RUKURU - RCA 00055/2023/HC/RSZ (Bandora, P.J.) 18 Mata 2024]

Amategeko agenga imanza z'imbonezamubano – Indishyi zikomoka ku mpanuka zikozwe n'ibinyabiziga – Indishyi zo gutakaza akazi – Uwahohotewe usanzwe adafite akazi - Umuntu utagaragaza ko hari akazi yari afite ubwo yakoraga impanuka, nta ndishyi zo gutakaza akazi ashobora guhabwa kubera ko nyine ntacyo yatakaje.

Incamake y'ikibazo: Uru rubanza rukomoka ku mpanuka yabaye ikozwe na moto yari ifite ubwishingizi bwa RADIATN INSURANCE COMPANY LTD (Radiant) hanyuma iza gukomeretsa uwitwa Niyonagize imusigira ubumuga. Uyu yaje gusaba umwishingizi indishyi ariko ntibababasha kumvikana bituma atanga ikirego mu Rukiko Rwisumbuye rwa Karongi asaba ko yahabwa indishyi zitandukanye. Urwo rukiko rwaje kumugenera indishyi zinyuranye zirimo n'indishyi z'ibangimira ry'uburambe mu kazi (indishyi zo gutakaza akazi) ariko Radiant ntiyishimira icyo cyemezo ikijuririra mu Rukiko Rukuru.

Urukiko Rukuru rwakiriye ubujurire maze rusuzuma ikibazo cyo kumenya niba haratanzwe indishyi z'ibangamiraburambe mu kazi kandi zitari zikwiye. Radiant ivuga ko Urukiko Rwisumbuye rwategetse ko yatanga indishyi zo gutakaza akazi kandi uzisaba nta kazi yari afite, rushingiye gusa ku mpamyabushobozi kandi atariko bimeze kuko icyerekana ko umuntu afite umurimo ni umukoresha, ndetse n'aho amuhembera ntabwo rero iriya mpamyabushobozi ariyo yashingirwaho ahabwa indishyi. Niyonagize we asobanura ko nta kosa urukiko rwakoze mu kumugenera indishyi mbangamiraburambe mu kazi kuko afite impamyabumenyi kandi nkuko bigaragazwa n'icyemezo cy'umwirondoro we, akaba yarakoraga akazi k'ubwubatsi.

Incamake y'icyemezo: Umuntu utagaragaza ko hari akazi yari afite ubwo yakoraga impanuka, nta ndishyi zo gutakaza akazi ashobora guhabwa kubera ko nyine ntacyo yatakaje bityo nta ndishyi mbangamiraburambe mu kazi zagombaga gutangwa kuko uzisaba nta kazi yatakaje.

Ubujurire bufite ishingiro kuri bimwe

Nta mategeko yashingiweho.

Imanza zifashishijwe:
RS/INJUST/RC 00010/2021/SC, PRIME INSURANCE COMPANY Ltd na Uwimanimpaye Jean Claude, rwaciwe n'Urukiko rw'Ikirenga ku wa 02/12/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 18/09/2020 mu gihe cya saa 21h00' mu mudugudu wa Nyegabo Akagari ka Kiniha umurenge wa Bwishyura akarere ka Karongi intara y'iburengerazuba habereye impanuka ya Moto

TVS Victor GLX RE 976D yaritwawe n'uwitwa Twayigize Pascal yaturukaga mu mugi wa Kibuye yerekeza Mubuga atwaye umugenzi witwa Niyonagize James w'imyaka 28 y'amavuko, yageze muri Rond Point ihari imbere y'ibitaro bya Kibuye ntiyazenguruka iyo Rond Point, anyura ahatemewe (Sans unique), agonga umunyamagauru witwa Nzeyimana Samuel wambukiranyaga umuhanda mu mirongo abanyamaguru bambukiramo (Zebra Crossing) abari kuri moto nabo baragwa hakomereka bikomeye umugenzi wari kuri moto n'umunyamaguru.

[2] Niyonagize James yageze ku bitaro bya Kibuye yoherezwa CHUK akaba yarasigiwe ubumuga bwa burundu bungana na 45 nk'uko byaje kwemezwa na Muganga wa RADIANT INSURANCE COMPANY LTD ndetse n'ibangamira ry'uburabga riri kukigero cya 3/6.

[3] Niyonagize James yandikiye Radiant Insurance Company Ltd ayisaba indishyi mu bwumvikane birananirana.

[4] Niyonagize James yatanze ikirego mu rukiko rwisumbuye rwa Karongi arusaba ko rwamugenera indishyi zitandukanye zirimo mbangamirabukungu, Ububabare bw'umubiri (pretium doloris), ubusembwa ku mubiri (prejudice esthetique), Gutakaza amahirwe yo gushaka, gutakaza uburambe mu kazi (prejudice de carriere), amafranga yakoreshe yivuza ndetse n'ay'ingendo zimujyana kwivuza, igihembo cya avoka ndetse n'igarama n'amafaranga y'ikurikiranarubanza.

[5] Mu rubanza RC 00008/2023/TGI/KNG rwaciwe kuwa 10/10/2023 n'Urukiko rwisumbuye rwa Karongi urukiko rwsanze ikirego cya Niyonagize James gifite ishingiro, Rwemeje ko ikirego cya Niyonagize James gifite ishingiro, Rwategetse RADIANT INSURANCE COMPANY kwishyura Niyonagize James amafaranga 3,992,540 Frw y'indishyi z'ibangamirabukungu, 1,080,000 Frw y'indishyi z'ububabare bw'umuburi; 216,000 Frw y'indishyi z'Ibangamira ry'uburanga na 271,955 Frw y'amafaranga yo kwivuza, ingendo, kurya no kugura dossier n'ibyemezo. Rwategetse RADIANT INSURANCE COMPANY kwishyura Niyonagize James amafaranga y'u Rwanda ibihumbi magana atanu (500,000 Frw) y'igihembo cy'Avoka n'ibihumbi ijana (100,000 Frw) y'ikurikiranarubanza. Rwategetse RADIANT INSURANCE COMPANY gusubiza Niyonagize James amafaranga y'u Rwanda ibihumbi makumyabiri (20,000 Frw), yatanzeho ingwate y'amagarama arega.

[6] RADIANT INSURANCE COMPANY LTD mu izina ry'uyihagarariye ntabwo yishimiye uwo mwanzuro, aribwo yatanze ubujurire muri uru rukiko,urubanza rwe ruhabwa nomero RCA 00055/2023/HC/RSZ, ruburanishwa mu ruhamwe ku wa 19/03/2024, RADIANT INSURANCE COMPANY LTD iburanirwa na Me Irimubahanga Jean de Dieu mu gihe Niyonagize James yaburanirwaga na Me Manirakiza Claude.

[7] Mu myanzuro y'ubujurire no mumiburanire Me Irimubahanga Jean de Dieu avuga ko Indishyi z'ibangamiraburambe ku kazi zitagombaga gutangwa kuko uwazihawe nta kazi yakoraga kazwi ndetse zikaba zaranabazwe nabi, ku mafaranga yo kwivuza, ingendo no kugura dosseir asanga nubwo bemera ko hari ayatangwa ariko ayatanzwe nta kimenyetso cyashingiweho, Ku ndishyi z'ibangamira ry'uburanga nazo ngo zabazwe nabi kuko hari gushingirwa 2/6 nk'uko impande zombi zabyumvikanagaho. Ku ndishyi z'Akababaro ngo nta mpaka impande zombi zari zifite kuko zemeranyagaho 486,000 Frw ariko hatangwa izirenze.

[8] Me Manirakiza Claude uburanira Niyonagize James yavuze ko izo mpamvu nta shingiro kuko urukiko rutanga indishyi mbangamirabukungu rwashingiye ku mpamyabushobozi ya Niyonagize James kandi ko akora akazi ku'ubwubatsi'kubijyanye n'amafaranga yakoreshejwe nabwo asanga impamvu yatanzwe nta shingiro kuko harimo rapport medical igaragaza ko yagize mu bitaro ari muri coma ndetse aza no guca muri scanner igaragaza ko yakomeretse bikomeye mu bwonko nyuma Muganga wa leta yaje kumuha ubumuga bwa burndu Bungana na 60% naho uwa assurance amuha 45%. Ku ngingo ijyanye n'ndishyi z'ibangamira ry'uburanga asanga nta bwumvikane bwabayeho ariyo mpamvu habariwe kuri 3/6.

[9] Muri uru rubanza harasuzumwa ikibazo cyo kumenya niba hari indishyi Niyonagize James yahawe mu rubanza rujuririrwa kandi atazikwiye.

II. IKIBAZO KIGARAGARA MURI URU RUBANZA N'ISESENGURWA RYACYO

 Kubijyanye no kumenya niba hari indishyi Niyonagize James yahawe mu rubanza rujuririrwa kandi atazikwiye.

a) Indishyi z'ibangamiraburambe ku kazi.

[10] Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD avuga ko Niyonagize yasabaga urukiko ko rumugenra izo ndishyi, ariko Radiant ikagaragaza ko atazikwiriye hashingiwe ko ntacyo agaragaza akora, ibyo bigahuzwa n'ibyo ingingo ya 19 ya Ap de 2003 itegenya ko izo ndishyi zihabwa gusa umunyeshuri cyangwa umuntu usanzwe ukora, kandi mu iburanisha urega yananiwe kugaragaza ko asanzwe akora cyangwa ari umunyeshuri, kuba rero Urukiko rwaramugeneye izi ndishyi mu gika cya 17 cy'urubanza runengwa ruvuga ko afite impamyabumenyi rwise Advanced Diploma in Electrical and Electronics Engineering yatanzwe na Rwanda Plytechinic,asanga rwarakoresheje amategeko nabi, kuko ayo mafranga atagenerwa ufite impamyabumenyi, ahubwo zihabwa gusa umunyeshuri cyangwa ufite icyo akora kigaragazwa n'ibimenyetso, bityo asaba urukiko rujuririwe kuzakosora iyi nenge, rwemeze ko atayakwiye, dore ko niyo yari kuba ayakwiye, yari kuba abazwe nabi kuko bakuba 6 aho kuba 12 yakoresheje.

[11] Me Manirakiza Claude uburanira Niyonagize James yavuze ko kuba urukiko rwarageneye Niyonagize James indishyi 'ibangamiraburambe ku kazi kandi ngo nta murimo yakoraga,asanga nta shingiro bifite kuko Urukiko rwashingiye ku mpamyabushobozi uwahohotewe yagaragaje kandi banayihuje n'icyemezo cy'umwirondoro wuzuye cyatanzwe n'ubuyobozi bw'umurenge wa Gishyita, cyemeza ko Niyonagize akora akazi ku'ubwubatsi, asanga nta mpamvu atagenerwa indishyi z'ibangamiraburambe ku kazi kuko ibyo bimenyetso byombi byemeza ko yarashoboye gukora ko kandi yakoraga.

[12] Avuga ko ingingo ya 13 y'itegeko rigenga ibimenyetso n'itangwa ryabyo mu manza, ivuga ko inyandikomvaho ikemura impaka kuri bose mu byerekeye ibiyivugwamo umukozi wa Leta ubigenewe yabereye umuhamya cyangwa yakoze ariko atarengeje ibyo yari ashinzwe gukora. Ibivuzwe muri iyo nyandikomvaho ntawe ushobora kubihakana, keretse biramutse bikurikiranywe mu rubanza rushinja icyaha cyo kubeshya mu nyandikomvaho cyangwa umuburanyi aregeye ko iyo nyandikomvaho ari impimbano. Bityo asanga niba umukozi wa Leta yarahamije ko Niyonagize

James yubaka ntabwo RADIANT yabikuzaho ikindi kimenyetso uretse biciye mu buryo no munzira zivugwa mu ngingo yavuze haruguru.

UKO URUKIKO RUBIBONA

[13] Impaka ziri muri iyi ngingo irimo gusuzumwa zishingiye kumenya niba umuntu ufite impamyabushobozi ariko udafite akazi kazwi, ashobora guhabwa indishyi z'ibangamiraburambe ku kazi.

[14] Ikibazo nk'iki cyafashweho umurongo mu rubanza RS/INJUST/RC 00010/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/12/2022 haburana PRIME INSURANCE COMPANY Ltd na Uwimanimpaye Jean Claude, muri urwo rubanza Urukiko rwasobanuye ko umuntu utagaragaza ko hari akazi yari afite ubwo yakoraga impanuka, nta ndishyi zo gutakaza akazi ashobora guhabwa kubera ko nyine ntacyo yatakaje. Urwo rukiko rwanatanze umucyo ku ngingo ya ya 19, igika cya 4, y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri biturutse ku mpanuka zitewe n'ibinyabiziga rumaze kuyisesengura rwanzuye ko nubwo mu ndishyi zivugwa mu ngingo imaze kuvugwa, hari izo mu kinyarwanda bise ko ari iz'ibangamira ry'uburambe mu kazi, Urukiko rurasanga ari izo gutakaza akazi nk'uko biri mu rurimi rw'igifaranga, hakaba harabayeho guhindura nabi ururimi hakurikijwe imiterere y'izo ndishyi, kuko iz'ibangamira ry'uburambe mu kazi zitabaho.

[15] Nk'uko bigaragara mu gika cya 17 cy'urubanza rujuririrwa rwasobanuye ko Niyonagize James akwiye kuyahabwa kuko nubwo nta cyemezo cy'umukoresha kigaragaza ko akora, ariko hari Advanced Diploma in Electrical and Electronics Engineering yatanzwe na Rwanda Plytechinic; Bityo indishyi z'ibangamira ry'uburambe mu kazi zigomba kuba 3000 Frw x 30x12 = 1,080,000 Frw.

[16] Urukiko Rukuru Urugereko rwa Rusizi rukorera Karongi, rusanga urukiko rwisumbuye rwa Karongi rwaraciwe urubanza rujuririwa nyuma yurwaciwe n'urukiko rw'Ikirenga nk'uko byagaragajwe urukiko rwisumbuye rwaruciye ku wa ku wa 10/10/2023 mu gihe urukiko rw'Ikirenga rwari rwaramaze gutanga umurongo kuri icyo kibazo ku wa 02/12/2022.

[17] Urukiko rusanga muri urwo rubanza rujuririrwa urukiko rwisumbuye rwa Karongi mu kwemeza ko Niyonagize James yari afite akazi rwashingiye ku mpamyabushobozi kandi atariko bimeze kuko icyerekana ko umuntu afite umurimo ni umukoresha, ndetse naho amuhembera ntabwo rero iriya mpamyabushobozi ariyo yashingirwaho ahabwa ziriya ndishyi na cyane ko urukiko rw'ikirenga rwamaze kwemeza ko ziriya ndishyi zitabaho ahubwo izibaho ari izo gutakaza akazi, bityo ko umuntu atatakazi akazi atari afite. Bityo indishyi z'amafaranga 1,080,000 Frw zatanzwe zigomba kuvaho.

b) Kubijyanye no kumenya niba amafaranga yo kwivuza, ingendo no kugura dosseir yatanzwe ari ikirenga.

[18] Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD avuga ko Urukiko mu gika cya 18 rwategetse ko Niyonagize James ahabwa ariya mafaranga mu gihe Radiant yari yagaragaje ko yemera ko yayahabwa ari uko agaragaje inyemezabwishyu zayo, kuba rero urukiko rwamugeneye 271,955 Frw nta kintu na kimwe rushingiyeho, asanga

rwatandukiriye rukirengagiza ibiteganywa mu ngingo ya 3 y'itegeko ry'ibimenyetso, bityo asaba urukiko rujuririwe gutegeka ko atari akwiye kuyahabwa igihe atayatangira ibimenyetso, dore ko Radiant nk'Umwunshingizi mwiza yasabaga ko yahabwa 50,000 Frw gusa, nayo ahawe kubera good faith igira kuko nta bimenyetso abigaragariza.

[19] Me Manirakiza Claude uburanira Niyonagize James yavuze ko impamvu RADIANT ishingiraho ubujurire bwayo nta shingiro ifite kuko mu bimenyetso Niyonagize yatanze, harimo rapport medical igaragaza ko yageze mu bitaro ari muri coma ndetse aza no guca muri scanner igaragaza ko yakomeretse bikomeye mu bwonko, nyuma Muganga wa leta yaje kumuha ubumuga bwa burndu Bungana na 60% naho uwa assurance amuha 45%, ahuje ibyo amaze kuvuga n’ingingo ya 108 y’itegeko yavuze haruguru ivuga ko ibimenyetso bicukumbuwe no gusesengura urubanza ni ibimenyetso bitacukumbuwe n’amategeko, bicukumburwa n’ubwenge n’ubushishozi bw’abacamanza. Abacamanza bagomba kwemera gusa ibyo bimenyetso iyo bikomeye, bisobanuye kandi bihuje. Asanga Niyonagize mu bifatika yarivuje nyuma yo gukora impanuka ndetse agatanga amafaranga menshi bityo kuba mu bushishozi bw’umucamanza yaramugeneye ½ cyayo yasabaga asanga nta nenge ibirimo yatuma bikurwaho.

UKO URUKIKO RUBIBONA

[20] Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD yemera ko hari amafaranga Niyonagize James mu kwivuza n’ibindi bijyanye nabyo, ndetse mu bushishozi bwe akavuga ko ayatangwa ari 6,900Frw + 50,000Frw = 59.000frs.

[21] Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD amafaranga nawe yemera gutanga ntabwo yerekana aho ashingira ayemera ahubwo avuga ko abitewe n’umutima mwiza/good faith birumvikana ko nawe ashingira kubushishozi bwe.

[22] Urukiko rusanga uwaburaniraga Niyonagize James yarasabaga gusubizwa amafaranga 487,009Frw nawe aterekana neza uko yayabaze, birumvikana ko nawe yashingiye kubushishozi, kuba rero urukiko rwisumbuye rwa Karongi rwarafashe ibyasabwaga n’ibyo umwishingizi yemeraga kwishyura akabiteranya akabaganya kabiri nta kosa ririmo kuko nawe afite uburenganzira bwo gukoresha ubusesenguzi bwe agamije gutanga ubutabera bityo nk’uko byemejwe ku rwego rwa mbere indishyi zigomba gutangwa ni 487,009 Frw + 6,900 Frw + 50,000 Frw : 2 = 271,955 Frw.

c) Indishyi z’ibangamira ry’uburanga

[23] Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD yavuze ko mu gika cya 14 urukiko rwavuze ko James yagize uburanga bwa 3/6 kandi atariko biri kuko yagize 2/6 nk'uko impande zombi zabyumvikanagaho, bityo kuba rwamugeneye indishyi kuri iki kiciro zingana na 216,000 Frw kandi impande zombi mu nama ntegurarubanza zarumvikanye 108,000 Frw ari nazo zasabwe n'urega, asanga ari ari inenge ikwiye gukosorwa agahabwa kuri iki kiciro angana na 108,000 Frw abariwe ku bumuga bemeranyaho bwa 2/6 dore ko byari inshingano z'urega kugaragaza ibimenyetso ashingiraho.

[24] Me Manirakiza Claude uburanira Niyonagize James yavuze ko ku ngingo ijyanye n’ndishyi z’ibangamira ry’uburanga asanga uko Umucamanza yazibaze aribyo kuko Niyonagize atigeze

yumvikana na RADIANT INSURANCE ibijyanye n'igipimo cyagenderwaho mu kuzibara, ariyo mpamvu Umucamanza yazibaze ahereye kuri *certificat medical de consolidation* yatanzwe na Niyonagize James, ikaba yaragaragaza ko yatakaje uburanga ku kigero cya 3/6.

UKO URUKIKO RUBIBONA

[25] Urukiko nta nahamwe rubona ko Niyonagize James na RADIANT INSURANCE COMPANY LTD baba barumvikanye kuri iyi ngingo cyangwa se niba Muganga w'Umuwishingizi yaba yaremeje ko Niyonagize James yatakaje uburanga bwa 2/6, bityo yirengagije ko buri muburanyi agomba kugaragaka ukuri kwibyo aburana ariyo mpamvu nta kosa ryakozwe ryo gukosora.

d) Ku ndishyi z'Akababaro

[26] Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD yavuze ko Niyonagize James yasaba kuri iyi ngingo 486,000 Frw ndetse na Radiant ikemera ko iyi ngingo itari mu zijyibwaho impaka ko yemera kuzitanga uko zasabwe, kuba rero urukiko mu gika cya 13 rwaramugeneye indishyi zitagiweho impaka n'impande zose ndetse zitanasabwe, asanga rwararenze kubw'umvikane bw'impande zombi kandi buba ari itegeko nk'uko ingingo ya 64 y'itegeko ry'amateserano ibiteganya, asaba urukiko rujuririwe kubona ko James akwiye guhabwa indishyi yasabye ndetse na Radiant yemereraga guhera mu nama ntegura rubanza no mu iburanisha. Bityo asaba ko iyi nenge yakosorwa.

[27] Me Manirakiza Claude uburanira Niyonagize James kuri iyi ngingo ntacyo yayivuzeho.

UKO URUKIKO RUBIBONA

[28] Nk'uko bivugwa na Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD birashoboka ko impande zombi zari zumvikanye kuri iki kibazo ariko urukiko rufata umwanzuro utandukanye n'ubwo bwumvikane, ibyo urukiko rubyemeza rushingiye ko iyi ngingo y'ubujurire uruhande ruregwa ntabwo bwigeze buyibeshyuza, bityo ntaho uru rukiko rwahera rubeshyuza ibyavuzwe na Me Irimubahanga Jean de Dieu uburanira RADIANT INSURANCE COMPANY LTD ariyo mpamvu amafaranga 486,000 Frw yumvikanyweho ariyo agomba gutangwa asimbuye 1,080,000 Frw.

[29] Urukiko rusanga kubijyanye n'amafaranga y'igihembo cy'avoka kuri uru rwego ntayatanzwe kuko buri ruhende rufite ibyo rutsindira n'ibyo rutsindirwa.

III. ICYEMEZO CY'URUKIKO

[30] Rwemeje ko ubujurire bwa RADIANT INSURANCE COMPANY LTD bufite ishingiro kuri bimwe;

[31] Rwemeje ko urubanza RC 00008/2023/TGI/KNG rwaciwe kuwa 10/10/2023 n'Urukiko rwisumbuye rwa Karongi ruhindutse kuri bimwe;

[32] Rwemeje ko indishyi zatanzwe zihindutse muri ubu buryo: indishyi z'Akababaro zigomba gutangwa: 486,000 Frw; indishyi z'ibangamiraburambe ku kazi za 1,080,000Frw zatanzwe ku rwego rwa mbere zivanyweho.

[33] Rwemeje ko amafaranga ibihumbi mirongo ine (40,000) yatanzwe hagwatiriza uru rubanza ahwanye n'ibikorwa byarukozwemo.

[34] Rwemeje ko nta mafaranga y'igihembo cy'avocat n'ikurikiranarubanza atanzwe.