PRIME INSURANCE LTD v KANSIIME

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM00005/2018/SC (Mukamulisa, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Rukundakuvuga, J.) 12 Kamena 2020]

Amategeko agenga ibimenyetso – Agaciro ka fotokopi y'inyandiko nk'ikimenyetso – Fotokopi y'inyandiko ishobora gukoreshwa nk'ikimenyetso iyo ishoboye gusuzumwa bikagaragara ko ifitiwe icyizere cyangwa uyikoresha akagaragariza Urukiko ko umwimerere wayo wazimiye mu bihe bidasanzwe.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ikirego kiregera kwiregura mu karengane – Kuririra ku kirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane cyatanzwe n'uwo muburana ugira ibyo unenga urubanza – Umuburanyi wese ufite icyo anenga urubanza rwaciwe ku rwego rwa nyuma akabona harimo akarengane, yandikira Perezida w'Urukiko rukuriye urwaruciye, akaba ariwe usuzuma ako karengane, mu gihe ibi bitubahirijwe ikirego nticyakirwa ngo gisuzumwe kuko kiba kinyuranyije n'itegeko.

Incamake y'Ikibazo: Kansiime James yaregeye Urukiko rw'Ubucuruzi rwa Nyarugenge asaba ko rwategeka Prime Insurance Ltd kubahiriza amasezerano y'ubwishingizi bagiranye aho avuga ko Prime Insurance Ltd yishingiye imodoka ye bemeranya ko mu gihe yaba igize ikibazo yahabwa amafaranga miliyoni cumi n'umunani (18.000.000 Frw) cyangwa akagurirwa imodoka nshya, ibi bikaba atariko byagenze ngo kuko nyuma yo kwangirika kw'Imodoka yishingiwe Prime Insurance Ltd yayijyanye kuyikoresha mu garaje ibintu avuga ko binyuranyije n'amasezerano bagiranye. Mu guca urubanza Urukiko rw'Ubucuruzi rwemeje ko Prime Insurance Ltd itsinzwe ruyitegeka kwishyura Kansiime James miliyoni cumi n'umunani (18.000.000 Frw) zihwanye n'agaciro k'imodoka ndetse n'indishyi zitandukanye.

Prime Insurance Ltd ntiyishimiye imikirize ijuririra urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi aho yavugaga ko Urukiko rw'Ubucuruzi rwirengagije ibimenyetso bifatika rwashyikirijwe, Kansiime James na we yatanze ubujurire bwuririye ku bundi avuga ko indishyi yagenewe ari nke. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwa Prime Insurance Ltd nta shingiro bufite, naho ubujurire bwuririye ku bundi bwa Kansiime James bufite ishingiro kuri bimwe, ko nta gihindutse ku mikirize y'urubanza rwajuririwe uretse indishyi ziyongereye.

Prime Insurance Ltd yatanze ikirego mu rwego rw'akarengane, ivuga ko impamvu ishingiraho yemeza ko yagiriwe akarengane ari uko Inkiko zabanje zirengagije ikimenyetso yazishyikirije cy'inyandiko yiswe *Quittance de règlement* Kansiime James yasinyeho avana imodoka ye mu igaraji yemeza ko ntacyo agikurikiranye, ikomeza ivuga ko nubwo iyo nyandiko bayiburiye umwimerere ko Urukiko rwagombaga gushingira ku zindi nyandiko bafite KANSIIME James yasinyeho kandi adahakana hakagereranywa imikono izigaragaraho n'umukono uri ku nyandiko atemera.Kuri uru rwego, Kansiime James nawe yatanze ikirego kiregera kwiregura avuga ko Urukiko rwamugeneye indishyi nkeya.

Mu kwisobanura, Kansiime yavuze ko Urukiko rutagomba gushingira kuri fotokopi Prime Insurane Ltd yerekana ngo kuko kubwe iriya nyandiko ari impimbano biyandikiye bagamije kumuhuguza ibyo amasezerano bagiranye avuga. Ibi abishingira ko iriya nyandiko bagaragaza bananiwe kuyibonera umwimerere wayo, ikaba itaranabashije gupimwa n'abahanga ngo ukuri kwayo kumenyekane kandi ko Prime Insurance Ltd itanerekana uko byagenze ngo umwimerere wayo uzimire burundu.

Prime Insurance Ltd yiregura ku kirego kiregera kwiregura cyatanzwe na Kansiime uvuga ko yagenewe indishyi nkeya, ivuga ko iki kirego kidakwiye no kwakira ngo kuko cyatanzwe mu buryo bunyuranyije n'amategeko ngo kuko yagombaga kwandikira Perezida w'Urukiko rw'Ubujurire amugaragariza akarengane avuga yagiriwe n'Urukiko Rukuru rw'Ubucuruzi, aho kubikora gutyo rero akaba yarashisemo kuririra ku kirego cyabo kandi ibi bikaba bitandukanye n'ibyo amategeko ateganya ku birego bimeze nk'ibi.

Incamake y'Icyemezo: 1**.** Fotokopi y'inyandiko ishobora gukoreshwa nk'ikimenyetso iyo ishoboye gusuzumwa bikagaragara ko ifitiwe icyizere cyangwa uyikoresha akagaragariza Urukiko ko umwimerere wayo wazimiye mu bihe bidasanzwe.

2. Umuburanyi wese ufite icyo anenga urubanza rwaciwe ku rwego rwa nyuma akabona harimo akarengane, yandikira Perezida w'Urukiko rukuriye urwaruciye, akaba ariwe usuzuma ako karengane, mu gihe ibi bitubahirijwe ikirego nticyakirwa ngo gisuzumwe kuko kiba kinyuranyije n'itegeko.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite
Ikirego kiregera kwiregura ntigisuzumwe kuko cyatanzwe mu buryo bunyuranyije n'amategeko.

Amategeko yashingiweho:
Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 58
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 12, igika cya mbere.
Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 na 65

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe
Etienne Vergès, Géraldine Vial, Olivier Leclerc, *Droit de la preuve,* 1ère édition, octobre 2015, para. 511, p. 504

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi, Kansiime James arega Prime Insurance Ltd ko itubahirije amasezerano y'ubwishingizi bw'imodoka (assurance omnium) bagiranye ku itariki ya 08/07/2015, yanga kumwishyura agaciro k'iyo modoka nyuma y'aho igiriye impanuka ikangirika bikomeye ku buryo idashobora gukorwa. Prime Insurance Ltd yo yavugaga ko nyuma y'aho impanuka ibereye, impande zombi zumvikanye ko imodoka igomba gukoreshwa mu igaraji (HC GARAGE Ltd), irangiye Kansiime James yanga kuyitwara, ko rero nta masezerano yishe.

[2] Ku itariki ya 08/12/2016, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 01079/2016/TC/Nyge, rwemeza ko Prime Insurance Ltd itsinzwe no kubura ibimenyetso byerekana

ko Kansiime James yemeye ko imodoka ye ijya gukoreshwa mu igaraji, ruyitegeka kumwishyura miliyoni cumi n'umunani (18.000.000 Frw) zihwanye n'agaciro k'imodoka, miliyoni zirindwi n'ibihumbi magana atatu na makumyabiri (7.320.000 Frw) yakoresheje akodesha imodoka yo kugendamo, miliyoni eshatu (3.000.000 Frw) y'indishyi z'akababaro, ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka, no gusubiza Kansiime James ibihumbi mirongo itanu (50.000 Frw) yatanze arega.

[3] Prime Insurance Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, Kansiime James na we atanga ubujurire bwuririye ku bundi avuga ko indishyi yagenewe ari nke. Ku itariki ya 02/10/2018, urwo Rukiko rwaciye urubanza RCOMA 00008/2017/CHC/HCC rwemeza ko ubujurire bwa Prime Insurance Ltd nta shingiro bufite, naho ubujurire bwuririye ku bundi bwa Kansiime James bufite ishingiro kuri bimwe, ko nta gihindutse ku mikirize y'urubanza rwajuririwe uretse indishyi ziyongereye, rutegeka Prime Insurance Ltd kwishyura Kansiime James indishyi zose hamwe zingana na miliyoni mirongo itatu n'eshatu n'ibihumbi magana cyenda (33.900.000 Frw).

[4] Ku birebana n'inyandiko yiswe "Quittance de règlement", ikimenyetso Prime Insurance Ltd iburanisha ubu, Urukiko Rukuru rw'Ubucuruzi rwavuze ko rutayishingiraho kuko ari fotokopi, Prime Insurance Ltd yayiburanishije ikaba itarabashije gutanga umwimerere wayo kugira ngo isuzumwe kubera ko Kansiime James uyitirirwa yayihakanye. Urwo Rukiko rwanze no gushingira ku buhamya bwa nyir'igaraji ruvuga ko nta kimenyetso na kimwe cyagaragajwe cyerekana ko ari Kansiime James wamuhaye imodoka cyangwa ko hari ikindi kintu icyo ari cyo cyose bakoranye, rwanga no gushingira ku buhamya bw'Umuhesha w'Inkiko kubera ko ibyari mu nyandiko ye ari ibyo yari yabwiwe, atari ibyo yari yiboneye mu rwego rw'akazi ke.

[5] Prime Insurance Ltd yandikiye Perezida w'Urukiko rw'Ubujurire imusaba ko yasuzuma akarengane yagiriwe muri urwo rubanza kugira ngo ruzasubirwemo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza RCOMA 00008/2017/CHC/HCC rwasubirwamo ku mpamvu z'akarengane.

[6] Ku itariki ya 18/12/2018, ashingiye kuri raporo yakozwe na Perezida w'Urukiko rw'Ubujurire, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo ko urwo rubanza rwoherezwa mu Bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe, ruhabwa Nº RS/INJUST/RCOM 00005/2018/SC.

[7] Mu myanzuro yayo, Prime Insurance Ltd ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso yarushyikirije birimo inyandiko Kansiime James yasinyeho asaba ko Akagera Motors Ltd gutanga imodoka ye ikajya gukorwa na HC GARAGE Ltd ndetse n'inyandiko yiswe "Quittance de règlement" yasinyeho yemeza ko imodoka ye yakozwe neza ko ntacyo azabaza Prime Insurance Ltd.

[8] Kansiime James we ariko avuga ko ibimenyetso Prime Insurance Ltd ishingiraho byose ari ibihimbano, kuko inyandiko zose yerekana ariyo yazikoreye igamije kuzazikoresha mu Rukiko. Avuga ko ahubwo nawe asaba Urukiko kuzasuzuma indishyi zigendanye n'amafaranga yakoresheje akodesha imodoka yo kumufasha mu kazi rukazongera kubera ko izo yagenewe n'Urukiko Rukuru rw'Ubucuruzi ari nkeya. Ibi binareba indishyi zo gusiragira mu manza kimwe n'amafaranga y'igihembo cya Avoka.

[9] Uru rubanza rwaburanishijwe mu ruhame ku itariki ya 07/01/2020, Prime Insurance Ltd ihagarariwe na Me Masumbuko NDE Emile, Kansiime James yunganiwe na Me Bandora Alfred.

Aba bahise baregera ko inyandiko Prime Insurance Ltd ikoresha mu rubanza nk'ibimenyetso ari impimbano, basaba Urukiko ko zasuzumwa hakarebwa niba umukono uziriho ari uwa Kansiime James koko kuko yemezaga ko atari we wazisinye. Izo nyandiko ni iyo ku itariki ya 10/02/2016 yandikiwe Umuyobozi w'Akagera Motors n'iyo ku itariki ya 06/06/2016 yiswe "Quittance de règlement".

[10] Prime Insurance Ltd yavuze ko inyandiko yo ku itariki ya 10/02/2016 itazayiburanisha mu rubanza, ko iyo izaburanisha ari "Quittance de règlement" yo ku itariki ya 06/06/2016 yonyine, ko ariko bafite ikibazo cyo kuba barabuze umwimerere wayo. Yavuze ariko ko hari izindi nyandiko bafite Kansiime James yasinyeho kandi adahakana, ko bazitanga hakagereranywa imikono izigaragaraho n'umukono uri ku nyandiko atemera. Izo nyandiko ni izi zikurikira:

Amasezerano y'ubwishingizi (contrat d'assurance);

Imenyekanisha ry'impanuka (déclaration d'accident);

"Contre-expertise" yasinyweho na Kansiime James yemera ko imodoka ye ishobora gukorwa;

Inyandiko Kansiime James yandikiye Prime Insurance Ltd ayisaba gushyira mu bikorwa icyemezo cy'urukiko.

[11] Urukiko rwemeje ko Kansiime James aregera inyandiko mpimbano, rutegeka Prime Insurance Ltd kugeza mu Bwanditsi bw'Urukiko inyandiko yiswe impimbano, kimwe n'izindi nyandiko yavuze ikabimenyesha n'uruhande baburana, kugira ngo hazagereranywe imikono iziriho mu rwego rwo kureba ko iyo nyandiko yakwizerwa.

[12] Ku itariki ya 09/01/2020, Me Masumbuko Nde Emile yashyikirije Ubwanditsi bw'Urukiko inyandiko zikurikira:

Fotokopi y'inyandiko yiswe "Quittance de règlement"

Ibaruwa yo ku itariki ya 19/12/2018, Prime Insurance Ltd yandikiye Me Musoni Godfrey, Umuhesha w'Inkiko w'Umwuga, iyo baruwa ikaba igaragaraho umukono wa Kansiime James ayakira kuko yari yayimenyeshejwe[1] ;

Ibaruwa yo ku itariki ya 14/02/2019, Me Masumbuko Nde Emile yandikiye Me Bandora Alfred, iyo baruwa ikaba igaragaraho umukono wa Kansiime James ayakira mu mwanya wa Avoka we[2].

[13] Izo nyandiko zose zashyikirijwe Rwanda Forensic Laboratory (RFL) kugira ngo zikorerwe isuzuma, ku itariki ya 22/01/2020, ivuga ko idashobora gukora isuzuma ry'inyandiko yahawe kubera ko inyandiko igibwaho impaka ari fotokopi ku buryo bitashoboka kuyisuzuma, n'imikono itagibwaho impaka ikaba idahagije (the questioned document is scanned copy which is not required in document examination, for comparison purpose; insufficiency of unquestionned signatures).

[14] Ku ruhande rwa Kansiime James bavuze ko bemeranya n'ibyatangajwe na Rwanda Forensic Laboratory ko bitashoboka gusuzuma inyandiko itari umwimerere, basaba Urukiko gutegeka Prime Insurance Ltd kuzana umwimerere w'inyandiko zose yasabwe kuko ariyo yazizanye mu Rukiko izimuregesha, bitaba ibyo iburanisha ry'urubanza rigakomeza nta suzumwa ry'inyandiko rikozwe, hakazashingirwa ku masezerano y'ubwishingizi impande zombi zakoranye kuko ziyemeranyaho,

[1] Iyo nyandiko ntayo yari yatumwe

[1 2] Idem. Inyandiko zindi yari yasabwe gutanga ntazo yazanye.

izindi nyandiko zigaragazwa muri iki kirego zigatakaza agaciro kuko impande zombi zitazemeranyaho.

[15] Iburanisha ry'urubanza ryongeye gusubukurwa ku itariki ya 18/05/2020, ababuranyi bombi bahari, Prime Insurance Ltd ihagarariwe na Me Masumbuko Nde Emile, Kansiime James yunganiwe na Me Bandora Alfred, ku ruhande rwa Prime Insurance Ltd bakomeza kuvuga ko inyandiko y'umwimerere yo ku itariki ya 06/06/2016 yiswe "Quittance de règlement" idashobora kuboneka.

[16] Hakurikijwe imiterere y'uru rubanza, ibibazo by'ingenzi byasuzumwe ni ukumenya niba Prime Insurance Ltd yarubahirije amasezerano y'ubwishingizi bw'imodoka (assurance omnium) yagiranye na Kansiime James, no kumenya niba indishyi Kansiime James yagenewe n'Urukiko Rukuru rw'Ubucuruzi ari nkeya.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

a. Kumenya niba Prime Insurance Ltd yarubahirije amasezerano y'ubwishingizi bw'imodoka yagiranye na Kansiime James.

[17] Mu myanzuro ye, Me Masumbuko Nde Emile uhagarariye Prime Insurance Ltd, avuga ko akarengane kari mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi basaba ko rwasubirwamo, ni uko urwo Rukiko rwirengagije ibimenyetso barushyikirije bagaragaza ko amasezerano y'ubwishingizi bagiranye na Kansiime James bayubahirije. Avuga kandi ko berekanye ko HC. GARAGE Ltd ariyo yatsindiye isoko ryo gukora imodoka yishingiwe, Prime Insurance Ltd imaze kubyumvikanaho na nyirayo ariwe Kansiime James. Anavuga ko imodoka irangije gukorwa, ku itariki ya 06/06/2016, Kansiime James yagiye kuyifata mu igaraji agasinya inyandiko yabigenewe yitwa "Quittance de règlement", muri iyo nyandiko akaba yaremeje ko nta kindi kibazo afitanye na Prime Insurance Ltd, iyo nyandiko akaba ari yo Prime Insurance Ltd yahereyeho yishyura nyir'igaraji ku kazi kakozwe.

[18] Me Masumbuko Nde Emile avuga ko ikibazo kiri muri uru rubanza ari uko Kansiime James ahakana inyandiko yasinye avana imodoka mu igaraji (Quittance de règlement) yitwaza ko ari fotokopi, n'Urukiko Rukuru rw'Ubucuruzi akaba ari byo rwagendeyeho, nyamara bakirengagiza ibiteganywa n'amategeko. Avuga ko ingingo ya 35, igika cya 3, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko kopi y'inyandiko idateyeho icyemezo cy'uko ihuye n'inyandiko y'umwimerere igira agaciro igihe yunganiwe n'ikindi kimenyetso kitabujijwe n'amategeko, iyo inyandiko y'umwimerere idashobora kuboneka, ingingo ya 41 y'iryo Tegeko igateganya ko iyo umuburanyi ahakanye ko ariwe wanditse inyandiko, cyangwa ko atari we wayishyizeho umukono, Urukiko rushobora kubicaho rugaca urubanza, iyo rufite ibimenyetso bigaragaza ko iyo mvugo ari amayeri yo gutinza urubanza, bitaba ibyo rugategeka isuzumwa ry'inyandiko mu buryo buteganywa n'amategeko.

[19] Avuga ko muri uru rubanza, Urukiko Rukuru rw'Ubucuruzi rwari rwemeje isuzuma ry'umukono wa Kansiime James ugaragara ku nyandiko baburanishaga harimo na "Quittance de règlement", bikaba bitarakozwe bitewe ni uko nta mwimerere w'izo nyandiko wabonetse. Avuga ko Urukiko rwirengagije ibiteganywa n'ingingo ya 35, igika cya 3, y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ryavuzwe haruguru, ko niba inyandiko y'umwimerere ya "Quittance de règlement" baburanisha uyu munsi itarashoboraga kuboneka, Urukiko rwashoboraga gushingira kuri fotokopi yayo kubera ko yari yunganiwe n'ibindi bimenyetso bishingiye ku nyandiko z'umwimerere zavuzwe haruguru zigaragaza umukono wa Kansiime James kandi adahakana,

ndetse no ku buhamya bwa nyir'igaraji ryakorewemo imodoka ye n'ubw'umuhesha w'inkiko w'umwuga wemeje ko iyo modoka yakorewe muri iryo garaji koko.

[20] Akomeza avuga ko uretse n'izo nyandiko, Urukiko Rukuru rw'Ubucuruzi rwirengagije ubuhamya bwatanzwe na nyir'igaraji ryakorewemo imodoka n'ibivugwa mu nyandiko y'Umuhesha w'Inkiko w'Umwuga, aba bombi bakaba bemeza ko imodoka ijya gukorerwa muri HC GARAGE Ltd, Kansiime James yari abizi. Avuga ko iyo iriya fotokopi ya "Quittance de règlement" iza gusuzumwa, Urukiko rukabona ko yunganiwe n'ibindi bimenyetso, rwagombaga kwifashisha ingingo ya 28[3] y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, bakayimutsindisha uko amategeko abiteganya.

[21] Arangiza avuga ko nyuma yo kwanga gukora isuzuma ry'inyandiko yagibwagaho impaka, Umucamanza yashingiye ku ngingo ya 12 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, yemeza ko Prime Insurance Ltd itsinzwe kubera ko itagaragaje ibimenyetso by'umwimerere, ko mu myumvire ye, udafite inyandiko y'umwimerere aba adafite ibimenyetso, ko rero yirengagije ibiteganywa n'ingingo ya 35, igika cya 3, y'Itegeko ryerekeye ibimenyetso bakomeje kugarukaho.

[22] Mu myanzuro ye, Me Bandora Alfred wunganira Kansiime James, avuga ko nta karengane kagaragara mu rubanza rusabirwa gusubirwamo rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ko inyandiko zose Prime Insurance Ltd iburanisha ishaka kumvikanisha ko imodoka ya Kansiime James ijya gukorerwa muri HC GARAGE Ltd yari abizi ari impimbano yikoreye kugira ngo izazikoreshe mu rukiko, cyane cyane ko izo nyandiko yitirirwa zanditse mu rurimi rw'igifaransa atazi, ibyo ikaba yarabikoze ishaka kwanga kubahiriza amasezerano y'ubwishingizi bw'imodoka bagiranye.

[23] Avuga ko nta mpamvu Kansiime James yari kwemera ko imodoka ye ikorwa kandi afite "Assurance Omnium", mu gihe *garage* Akagera Motors yari yamaze kumubwira ko yangiritse cyane ku buryo idashobora gukorwa, akaba nta nyungu yari afite yo kwemera ko bajyana imodoka ye kuyikoresha mu rindi garaji kandi amasezerano yari afitanye na Prime Insurance Ltd yaramwemereraga guhabwa imodoka nshya. Avuga ko ahubwo yategereje ko Prime Insurance Ltd imwishyura amafaranga ayiguze nk'uko byari mu masezerano cyangwa se ikamugurira indi modoka nshya agaheba.

[24] Arangiza avuga ko yemeranya n'icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi, ko hashingiwe ku ngingo ya 12 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nta kimenyetso na kimwe Prime Insurance Ltd igaragariza Urukiko cyerekana ko ijya gukoresha imodoka ya Kansiime James muri HC GARAGE Ltd bari babyumvikanyeho, bityo ngo ibe yarubahirije amasezerano y'ubwishingizi bagiranye nk'uko ibivuga.

UKO URUKIKO RUBIBONA

[25] Impande zombi zemeranya ko zagiranye amasezerano y'ubwishingizi bw'imodoka, ko kandi agaciro kishingiwe ari miliyoni cumi n'umunani (18.000.000 Frw) mu gihe imodoka yaba yangiritse (material damage), zikanemeranya ko iyo modoka yishingiwe yakoze impanuka

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[3] Iyo ngingo iteganya ko ibaruwa umuntu yandikiye undi itsindisha uwayanditse, n'aho yaba atarashyizeho umukono cyangwa igikumwe, bapfa kugaragaza gusa ko ari we ikomokaho. Iyo baruwa iyo yemera ikiburanwa, iba igaragaje ko uwayanditse yiyemerera ubwe icyo ashinjwa n'ubwo aba atabivugiye mu rukiko bwose

ikangirika bikomeye. Icyo ababuranyi batemeranyaho, ni ukuba ayo masezerano yarubahirijwe cyangwa se atarubahirijwe. Prime Insurance Ltd ivuga ko yayubahirije ikoreshereza Kansiime James muri HC GARAGE Ltd nyuma yo kubyumvikanaho, mu gihe uyu we avuga ko ntacyo bigeze bumvikana, ko icyo yari ategereje ahubwo ari ukugurirwa imodoka nshya cyangwa se guhabwa miliyoni cumi n'umunani (18.000.000 Frw) nk'uko biri mu masezerano.

[26] Ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana, umucamanza akaba ashobora nyamara kumutegeka gutanga gihamya y'ibimenyetso afite. Igitekerezo kiri muri iyi ngingo, ni nacyo dusanga mu ngingo ya 12, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, yabibura uwarezwe agatsinda.

[27] Ikimenyetso nyamukuru Prime Insurance Ltd iburanisha, ni inyandiko yo ku itariki ya 06/06/2016 yiswe "Quittance de règlement" ivuga ko Kansiime James yayisinyeho avana imodoka ye mu igaraji nyuma yo gukorwa, ariko uyu we no muri uru rubanza akaba yarakomeje guhakana iyo nyandiko avuga ko ari iyo bamwitirira, bikaba byaratumye ayiregera ko ari impimbano. Fotokopi y'iyo nyandiko yohererejwe umuhanga (Rwanda Forensic Laboratory) kugira ngo ayisuzume harebwe niba yakwizerwa, ariko avuga ko bidashoboka gusuzuma umukono uyiriho kuko ari fotokopi kandi ari yo igibwaho impaka, n'imikono itagibwaho impaka ikaba idahagije.

[28] Ku birebana n'ikoreshwa ry'inyandiko igibwaho impaka mu rubanza, abahanga mu mategeko bavuga ko iyo nyandiko iba ihagaritswe gukoreshwa umucamanza akabanza agakemura impaka ziyigibwaho. Iyo nyuma yo kuyigenzura umucamanza asanze nta kigaragaza ko ivugisha ukuri, uruhande rwayishingiragaho nk'ikemenyetso ruba rutsinzwe (L'efficacité probatoire de l'écrit contesté est suspendue jusqu'à ce que la contestation soit tranchée par le juge. Si la vérification ne permet pas de conclure à la sincérité de l'écrit papier, la partie qui fonde ses prétentions sur ce dernier doit être déboutée)[4].

[29] Ku birebana n'inyandiko zitari iz'umwimerere, abahanga mu matageko nabo bashingiye ku manza zaciwe, bavuga ko iyo hari umuburanyi ukemanze ubuziranenge bw'inyandiko, Urukiko rutegeka ko hatangwa umwimerere wayo, utaboneka iyo nyandiko igasuzumwa kugira ngo harebwe niba iyo fotokopi yarakozwe mu buryo budatatira umwimerere wayo, cyangwa se uyiburanisha akerekana ko umwimerere wayo wazimiye mu bihe bidasanzwe (Il appartient aux juges de fonds d'ordonner la production de l'original et, à défaut de celui-ci, de rechercher si la copie était une reproduction fidèle et durable de l'original ou si celui-ci avait disparu par suite d'un cas fortuit ou d'une force majeure)[5].

[30] Muri uru rubanza, Prime Insurance Ltd yategetswe kuzana inyandiko y'umwimerere yo ku itariki ya 06/06/2016 yiswe « Quittance de règlement » nk'ikimenyetso iburanisha ntiyayizana ivuga ko itashoboye kuyibona. Mu rwego rwo kugira ngo harebwe niba fotokopi yayo yari yatanzwe yakwizerwa, Urukiko rwiyambaje umuhanga mu bijyanye no gusuzuma inyandiko (Rwanda Forensic Laboratory) nk'uko byavuzwe haruguru, avuga ko uburyo iyo nyandiko iteye bitashoboka kuyisuzuma, ibi bigasobanura ko nta cyizere yagirirwa. Kubera izo mpamvu, Urukiko rukaba rusanga ntaho rwahera rwemeza ko iyo nyandiko yo ku itariki ya 06/06/2016 yiswe « Quittance de règlement » ari Kansiime James wayisinye mu gihe ayihakana, na Prime Insurance Ltd

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[4] Etienne Vergès, Géraldine Vial, Olivier Leclerc, Droit de la preuve, 1ère édition, octobre 2015, para. 511, p. 504

[5] Art. 1348 du Code Civil français, édition 2009, note 12. Voir aussi Civ. 1ère, 6 oct. 1998, n° de pourvoi: 96-21962.

iyiburanisha ikaba idashobora kugaragaza inyandiko y'umwimerere kugira ngo isuzumwe ntinasobanure irengero ryayo.

[31] Ku bivugwa na Prime Insurance Ltd ko Urukiko Rukuru rwirengagije ingingo ya 35, igika cya 3, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, uretse no kuba iyi ngingo ireba inyandiko zibitswe n'umukozi wa Leta ubishinzwe iyo urebye igika cyayo cya mbere6 Urukiko rurasanga nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze, kubera ko rutari gushingira ku buhamya bw'abantu kandi hari inyandiko yagombaga gushingirwaho Prime Insurance Ltd yaburanishaga, ariko ikaba itarashoboye gutanga umwimerere wayo ntinasobanure uko yazimiye ku buryo idashobora kuboneka. Uretse n'ibyo kandi, Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikirubanwa7 Ku birebana n'izindi nyandiko zitagibwaho impaka Prime Insurance Ltd ivuga mu gika cya 10 cy'uru rubanza, Urukiko rurasanga ntacyo zayimarira, iyashoboraga kugira icyo iyimarira hakurikijwe imiburanire yayo, ni "contre-expertise" yavugaga ko yasinyweho na Kansiime James yemera ko imodoka ye ishobora gukorwa, nyamara yasabwe kuyitanga kugira ngo isuzumwe kuko yavugaga ko ifite umwimerere wayo ntiyayitanga nk'uko byagaragajwe mu gika cya 12 cy'uru rubanza.

[32] Hashingiwe ku ngingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru ndetse no ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta kimenyetso kigaragaza ko Prime Insurance Ltd yubahirije amasezerano y'ubwishingizi bw'imodoka yagiranye na Kansiime James, bityo ikirego cyayo gisaba gusubirishamo urubanza ku mpamvu z'akarengane kikaba nta shingiro gifite.

b. Kumenya niba indishyi Kansiime James yagenewe n'Urukiko Rukuru rw'Ubucuruzi ari nkeya, kimwe n'izindi ndishyi zisabwa muri uru rubanza.

[33] Kansiime James na Me Bandora Alfred umwunganira, bavuga ko batanze ikirego kiregera kwiregura banenga ko, ku birebana n'indishyi zerekeranye no kuba yaravukijwe imodoka ye bigatuma akodesha indi yo kumufasha mu kazi no mu bundi buzima busanzwe, Urukiko Rukuru rw'Ubucuruzi rwashingiye ku bushishozi rukazibarira ku bihumbi cumi na bitanu (15.000 Frw) ku munsi kandi nyamara hari amasezerano y'ubukode agaragaza neza ko yishyuraga ibihumbi mirongo itatu na bitanu (35.000 Frw) kubera ko yakoreraga mu misozi. Akaba asaba ko ayo mafaranga ari yo yabarwa kuva ku itariki ya 25/12/2015, umunsi yatangiye gukodesha, kugeza ku itariki ya 17/07/2018, umunsi yahagarikiye akazi katumaga akodesha imodoka ihenze, guhera kuri iyo tariki kugeza urubanza ruciwe indishyi zikabarirwa ku bihumbi cumi na bitanu (15.000 Frw) ku munsi kuko ubu ari yo atanga ku bukode bw'imodoka akoresha.

[34] Bavuga kandi ko Urukiko rwamugeneye amafaranga y'igihembo cya Avoka make ugereranyije n'ayo basabaga, akaba asaba ko yakongera agasuzumwa noneho akaba miliyoni zirindwi (7.000.000 Frw) nk'uko bigaragazwa n'amasezerano Kansiime James yagiranye na Avoka ndetse na sheki iri muri dosiye yerekana ko ariyo yamwishyuye. Barasaba kandi indishyi zo gusiragizwa mu manza zihwanye na miliyoni eshanu (5.000.000 Frw), ayo yose akiyongera kuri miliyoni cumi n'umunani (18.000.000 Frw) y'agaciro k'imodoka ye yangirikiye mu mpanuka Prime Insurance Ltd igomba kumwishyura.

[35] Me Masumbuko Nde Emile uburanira Prime Insurance Ltd, avuga ko nta ndishyi zerekeranye n'ubukode bw'imodoka Kansiime James agomba guhabwa kubera ko igihe imodoka ye

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[6]Kopi y'inyandiko y'umwimerere umukozi wa Leta ubishinzwe abitse igira agaciro aho ari ho hose bitabaye ngombwa gutanga gihamya y'ububasha cyangwa y'umukono cyangwa igikumwe by'uwo mukozi

[7] Ingingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

yari iri mu igaraji, nyiraryo yamutije imodoka yo kugendamo. Avuga kandi ko mu nyandiko yemereraga HC GARAGE Ltd gukora imodoka ya Kansiime James (Accord définitif de réparation), hagaragaramo ingingo (clause) yamenyeshaga Kansiime James na HC GARAGE Ltd ko Prime Insurance Ltd itazaryozwa indishyi zishingiye ku kutarangiza gukora imodoka mu minsi yumvikanyweho cyangwa ku mpamvu iyo ariyo yose Prime Insurance Ltd idafitemo uruhare, nk'ibura ry'ibyuma byo gusimbura ibindi (Pièces de rechange). Avuga kandi ko uretse n'ibyo nta modoka ikodeshwa ibihumbi mirongo itatu na bitanu (35.000 Frw) ku munsi ibaho.

[36] Ku birebana n'amafaranga y'igihembo cya Avoka, Me Masumbuko NDE Emile avuga ko miliyoni zirindwi (7.000.000 Frw) basaba ari menshi cyane mu gihe hari amafaranga ntarengwa y'igihembo cya Avoka yashyizweho na Perezida w'Urukiko rw'Ikirenga. Arangiza avuga ko nta ndishyi izo ari zo zose Prime Insurance Ltd igomba guha Kansiime James, ko ahubwo ari yo igomba guhabwa indishyi zo gukurikirana urubanza zingana na miliyoni eshatu (3.000.000 Frw) hamwe n'igihembo cya Avoka na cyo kingana na miliyoni eshatu (3.000.000 Frw).

[37] Kansiime James ntacyo yavuze ku ndishyi zasabwe na Prime Insurance Ltd.

UKO URUKIKO RUBIBONA

[38] Amasezerano y'ubwishingizi bw'imodoka yo ku itariki ya 08/07/2015 Prime Insurance Ltd yagiranye na Kansiime James, agaragaza ko iyo modoka yishingiwe (material damage) ku gaciro ka miliyoni cumi n'umunani (18.000.000 Frw) kandi impande zombi zemeranya ko ku itaki ya 24/12/2015 iyo modoka yakoze impanuka ikangirika bikomeye.

[39] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, 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. Ingingo ya 86 y'iryo Tegeko, iteganya ko iyo amasezerano yishwe mu buryo bukabije biturutse ku kudakora ibisabwa mu masezerano, bitanga uburenganzira bwo gusaba indishyi ku bitakozwe byose mu gihe izo ndishyi zikuraho inshingano zisigaye z'uruhande rwarenganye.

[40] Hashingiwe kuri izo ngingo, Urukiko rurasanga, nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye, Prime Insurance Ltd igomba kubahiriza amasezerano yagiranye na Kansiime James ikamuha miliyoni cumi n'umunani (18.000.000 Frw) ahwanye n'agaciro k'imodoka ye kishingiwe nk'uko biri mu masezerano y'ubwishingizi yo ku itariki ya 07/08/2015.

[41] Ku birebana n'ikirego kiregera kwiregura cyatanzwe na Kansiime James asaba kongererwa indishyi zerekeranye no kuba yaravukijwe imodoka ye bigatuma akodesha indi yo kumufasha mu kazi ke no mu buzima busanzwe, kimwe n'amafaranga y'igembo cya Avoka avuga ko ayo yagenewe ari make, ndetse n'indishyi zo gusiragizwa mu manza, Urukiko rurasanga iki kirego kidakwiye gusuzumwa kubera ko iyo abona hari akarengane yagiriwe mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, yari kunyura mu nzira isanzwe iteganywa n'itegeko agasaba ko rusubirwamo[8].

[8] Ingo ya 58 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko iyo umuburanyi abonye hari akarengane kagaragara mu rubanza rwe, yandikira Perezida w'Urukiko rukuriye urwaciye urubanza ku rwego rwa nyuma, akaba ariwe usuzuma ako karengane.

Iyo urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ari urubanza rwaciwe n'urukiko rw'ubujurire, ubusabe bushyikirizwa Perezida w'Urukiko rw'Ikirenga. Icyemezo afashe ku isuzuma ry'akarengane kiba ari ndakuka, nta rundi rwego rugisuzuma

[42] Urukiko rurasanga ariko, kubera ko na n'ubu urubanza rutarangijwe, kandi Prime Insurance Ltd yatumye rutarangizwa nyuma yo gusaba ko rusubirwamo ku mpamvu z'akarengane ikaba itsinzwe, indishyi zerekeranye no kuba Kansiime James yaravukijwe imodoka ye bigatuma akodesha indi yo kumufasha mu kazi ke no mu bundi buzima busanzwe yagenewe n'Urukiko Rukuru rw'Ubucuruzi, zigomba gukomeza kubarwa kugeza umunsi urubanza rusomeweho nk'uko abisaba. Ku ndishyi yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi, hakaba hagomba kwiyongeraho izihwanye n'iminsi ishize kuva urwo rubanza ruciwe ku itariki ya 02/10/2018, ni ukuvuga 620 x 15.000 Frw = 9.300.000 Frw.

[43] Ku birebana n'amafaranga y'igihembo cya Avoka Kansiime James asaba, Urukiko rurasanga akwiye kuyahabwa kubera ko bigaragara ko yagombye kwiyambaza Avoka wo kumwunganira, akaba agenewe ibihumbi magana atanu (500.000 Frw) kuri uru rwego agenwe mu bushishozi bw'Urukiko, kubera ko miliyoni zirindwi (7.000.000 Frw) avuga ko yatanze ku rubanza rwose akabije kuba menshi, amasezerano ashingiraho ayasaba akaba amureba we n'uwo bayagiranye.

[44] Urukiko rurasanga ku ndishyi zose hamwe zihwanye na miliyoni mirongo itatu n'eshatu n'ibihumbi magana cyenda (33.900.000 Frw) Kansiime James yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi, hagomba kwiyongeraho miliyoni icyenda n'ibihumbi magana atatu (9.300.000 Frw), hamwe n'ibihumbi magana atanu (500.000 Frw), yose hamwe akaba miliyoni mirongo ine n'eshatu n'ibihumbi magana arindwi (43.700.000 Frw).

[45] Ku birebana n'indishyi zisabwa na Prime Insurance Ltd, Urukiko rurasanga ntazo igomba guhabwa kubera ko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[46] Rwemeje ko ikirego cyatanzwe na Prime Insurance Ltd gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00008/2017/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 02/10/2018 nta shingiro gifite;

[47] Rwemeje ko ikirego kiregera kwiregura cyatanzwe na Kansiime James ku birebana n'ibyo atagenewe n'Urukiko Rukuru rw'Ubucuruzi kidakwiye gusuzumwa, naho ibirebana n'amafaranga y'Avoka, kimwe n'uburyo indishyi zerekeranye no kuba yaravukijwe imodoka ye zikomeza kubarwa byo bikaba bifite ishingiro;

[48] Rwemeje ko urubanza RCOMA 00008/2017/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 02/10/2018 ruhindutse ku birebana n'ingano y'indishyi Prime Insurance Ltd igomba guha Kansiime James;

[49] Rutegetse Prime Insurance Ltd kwishyura Kansiime James miliyoni mirongo itatu n'eshatu n'ibihumbi magana cyenda (33.900.000 Frw) yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi;

[50] Rutegetse Prime Insurance Ltd kwishyura Kansiime James miliyoni icyenda n'ibihumbi magana atatu (9.300.000 Frw) yiyongera ku yo yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi;

[51] Rutegetse Prime Insurance Ltd kwishyura Kansiime James ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka kuri uru rwego;

[52] Rutegetse Prime Insurance Ltd kwishyura Kansiime James indishyi zose hamwe zingana na miliyoni mirongo ine n’eshatu n’ibihumbi magana arindwi (43.700.000 Frw)