AKARERE KA KIREHE v SAHAM ASSURANCE RWANDA LTD (SANLAM ASSURANCES GÉNÉRALES Plc) N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00002/2021/SC (Nyirinkwaya, P.J., Hitiyaremye na Karimunda J.) 31 Ukuboza 2021]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Guhamagarwa mu rubanza rusubirwamo ku mpamvu z'akarengane – Ababaye ababuranyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ariko batasabye ko rusubirwamo – Uwabaye umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ariko utigeze asaba ko rusubirwamo ku mpamvu z'akarengane ntabwo yakuririra ku kirego cyatanzwe n'uwasubirishijemo urubanza ngo nawe asabe Urukiko gusuzuma ibyo atishimiyemo.

Amategeko agenga imiburanishirize z'imanza mbonezamubano – Kugobokeshwa ku gahato mu bujurire – Uwagobokeshejwe bwa mbere mu bujurire afite uburenganzira bwo kujurira byibuze rimwe – Mu gusuzuma ububasha bw'ukwakira ubujurire bw'uwagobokeshejwe mu bujurire, ntiharebwa agaciro k'ikiburanwa.

Amategeko agenga imanza z'imbonezamubano – Amasezerano y'ubwishingizi bw'ikinyabiziga – uburyozwe – Ingaruka zo kuba nyir'imodoka atubahirije ibikubiye mu masezerano – Iyo nyir'imodoka ariwe wakoze amakosa yo kutubahiriza inshingano afite mu masezerano y'ubwishingizi abizi kandi abishaka, ayo makossa aba adashobora kurengerwa n'amasezerano y'ubwishingizi haba ku bimureba cyangwa abangirijwe n'ikinyabiziga cyishingiwe.

Incamake y'ikibazo : Uru rubanza rwatangiye Mbonyinshuti n'abandi barega Saham Assurance Rwanda Ltd (yahindutse Sanlam Assurances Générales Plc) mu Rukiko Rwisumbuye rwa Ngoma bayisaba kwishyura indishyi zikomoka ku mpanuka yakozwe n'imodoka yo mu bwoko bwa Fuso igahitana Sinzabakwira mu bantu 52 yari itwaye inyuma. Sanlam Assurances Générales Plc yireguye ivuga ko nta ndishyi igomba kuryozwa kuko imodoka yahitanye Sinzabakwira yari yafashwe n'Akarere ka Kirehe, ipakiye abantu barenga umubare w'abo yishingiye, ndetse itwawe n'umuntu udafite uruhushya rwo kuyitwara.

Urukiko rwemeje ko Sanlam Assurances Générales Plc igomba gutanga indishyi z'impozamarira ku bareze kuko ibyo ivuga ko imodoka yafashwe n'Akarere ka Kirehe yari ipakiye abantu barenga umubare yari yemerewe gutwara, ndetse ikaba yari inatwawe n'utabifitiye uruhushya rwo kuyitwara bitayikuraho inshingano yo kwishyura abangirijwe n'icyo kinyabiziga kuko itagaragaza ko umunsi Akarere ka Kirehe kakoresheje iyo modoka, yari yasheshe amasezerano y'ubwishingizi yari ifitanye n'uwishingiwe.

Sanlam Assurances Générales Plc yajuririye Urukiko Rukuru, inasaba ko hagobokeshwa ku gahato abazungura ba Gatashya n'Akarere ka Kirehe kugira ngo baryozwe indishyi yaciwe ziturutse ku makosa bakoze yo kuba imodoka yaratwawe n'umushoferi utabifitiye uruhushya, agatwara umubare urenze uw'abantu bishingiwe ahagenewe gutwarwa imizigo. Abaregeye indishyi bireguye bavuga ko ubujurire bwayo nta shingiro bufite. Urukiko, rwemeje ko ukugobokeshwa ku gahato kw'Akarere ka Kirehe n'Abazungura ba Gatashya gufite ishingiro. Rwemeje kandi ko Gatashya n'Akarere ka Kirehe bishe amasezerano y'ubwishingizi kuko batwaye abantu 52 ahatwarwa imizigo, bemera kandi ko imodoka itwarwa n'umuntu utabifitiye uruhushya, rutegeka ko indishyi Sanlam Assurances Générales yaciwe mu rubanza rwajuririwe zishyurwa na Succession Gatashya ifatanyije n'Akarere ka Kirehe ku buryo bungana.

Akarere ka Kirehe kajuririye Urukiko rw'Ubujurire kavuga ko kavukijwe amahirwe yo gutumirwa mu nama ntegurarubanza kandi kari kagobokeshejwe ku gahato bwa mbere mu Rukiko Rukuru, ko

kandi Urukiko rwirengagije ibiteganywa n'amasezerano y'ubwishingizi yakozwe hagati ya Sanlam Assurances Générales Plc n'uwishingiwe. Urukiko rw'Ubujurire rwasanze indishyi zagenwe mu rubanza rwajuririwe zitageze ku ziteganywa n'amategeko rwemeza ko ubujurire butakiriwe ko kuko butari mu bubasha bwarwo.

Akarere ka Kirehe kandikiye Perezida w'Urukiko rw'Ikirenga gasaba ko urubanza rwaciwe n'Urukiko rw'Ubujurire rusubirishwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe, yemeje ko urubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe. Akarere ka Kirehe kavuze ko umuburanyi ugobokeshejwe ku gahato mu bujurire akagira ibyo acibwa yemerewe kujurira inshuro imwe, kandi kakaba katarabaye umuburanyi mu Rukiko Rwisumbuye.

Urukiko rwafatiye icyemezo mu ntebe rwemeza ko kujurira inshuro imwe ari uburenganzira bw'umuburanyi utaranyuzwe n'umwanzuro wafashwe mu rubanza yagobokeshejwemo, rwemeza ko ubujurire bw'Akarere ka Kirehe bwagombaga kwakirwa n'Urukiko rw'Ubujurire kuko bwari ubwa mbere kajuriye.

Sanlam Assurances Générales Plc yazamuye ikibazo cyo kumenya niba abaregera indishyi hari icyo bakwiye gusaba muri uru rubanza kandi ataribo basubirishijemo urubanza ku mpamvu z'akarengane abaregera indishyi bavuga ko kuba batarasubirishijemo urubanza ku mpamvu z'akarengane, bitabavutsa uburenganzira bwo gusobanura ubujurire bari barashyikirije Urukiko rw'Ubujurire, isuzumwa ryabwo rikaburizwamo n'uko ikirego kitakiriwe. Bakaba bumva ko ubwo urubanza rusubiwemo mu mizi bundi bushya, hakwiye gusuzumwa ibibazo byose byarubayemo, buri muburanyi akagaragaza icyo atishimiye

Urukiko nyuma yo gusanga Akarere ka Kirehe ari ko konyine kasabye ko urubanza rwaciwe n'Urukiko rw'Ubujurire rusubirwamo ku mpamvu z'akarengane, rwavuze ko kuba hari ubujurire bwuririye ku bundi bwatanzwe n'abaregera indishyi mu Rukiko rw'Ubujurire ntibusuzumwe kubera ko ubujurire bw'iremezo butakiriwe, ntibagire icyo banenga icyo cyemezo, bigaragaza ko nta nyungu bari bagifite muri ubwo bujurire, bityo rwemeza ko no mu rubanza rusubirishwamo ku mpamvu z'akarengane badakwiye kugarura ingingo z'ubujurire bwuririye ku bundi bari batanze mu Rukiko rw'Ubujurire.

Ku bijyanye no Kumenya ukwiye kuryozwa indishyi zikomoka ku mpanuka y'imodoka ivugwa muri uru rubanza, Uburanira Akarere ka kirehe avuga ko Urukiko Rukuru, ntaho rwashingiye ruca Akarere ka Kirehe indishyi kuko rutagaragaje amakosa kaba karakoze, naho abaregera indishyi bavuga ko amategeko agenga ubwishingizi bw'ibinyabiziga bigenzwa na moteri ateganya ko impanuka yose, hatitawe ku cyayiteye, yishyurwa n'umwishingizi hanyuma akazikurikiranira uwamuteje igihombo. Asobanura ko Sanlam Assurances Générales Plc ariyo ikwiye kuryozwa indishyi. Uburanira Sanlam Assurances Générales Plc ko imodoka yakoze impanuka yari igenewe gutwara imizigo, kuba yarakoze impanuka itwaye abagenzi bikaba bivanaho inshingano z'umwishingizi kubera ko uwishingiwe atubahirije amasezerano. Urukiko rwemeje ko indishyi zigomba gucibwa abazungura ba Gatashya (nyiri modoka) bonyine kuko ari we utarubahirije inshingano yari afite mu masezerano y'ubwishingizi kandi abishaka bityo ntashobora kurengerwa n'amasezerano y'ubwishingizi haba ku bimureba cyangwa abangirijwe n'ikinyabiziga cyishingiwe kuko yapakiye abantu benshi mu modoka itwara imizigo kandi igatwarwa n'udafite uruhushya rwo gutwara ibinyabiziga.

Incamake y'icyemezo :1. Uwabaye umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ariko utigeze asaba ko rusubirwamo ku mpamvu z'akarengane ntabwo yakuririra ku kirego cyatanzwe n'uwasubirishijemo urubanza ngo nawe asabe Urukiko gusuzuma ibyo atishimiyemo. Bityo uwatanze ubujurire bwuririye ku bundi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rutakiriwe kubera iburabubasha ry'Urukiko ntiyasaba ko ubwo bujurire busuzumwa mu iburanisha ry'urwo rubanza rusubirwamo ku mpamvu z'akarengane byarasabwe n'undi muburanyi kuko bifatwa nkaho we yanyuzwe n'icyemezo cyarufashwemo.

2. Uwagobokeshejwe bwa mbere mu bujurire afite uburenganzira bwo kujurira byibuze rimwe. Bityo mu gusuzuma ubujurire bwa kabiri ntabwo Urukiko rwajuririwe rwavuga ko nta bubasha rufite rushingiye ku gaciro k'ikiburanwa mu gihe hari uwagobokeshejwe bwa mbere mu bujurire.

3. Iyo nyir'imodoka ariwe wakoze amakosa yo kutubahiriza inshingano afite mu masezerano y'ubwishingizi abizi kandi abishaka, ayo makossa aba adashobora kurengerwa n'amasezerano y'ubwishingizi haba ku bimureba cyangwa abangirijwe n'ikinyabiziga cyishingiwe. Bityo, iyo imodoka ikoze impanuka itwawe n'umushoferi udafite uruhushya rwo gutwara ikinyabiziga rwihariye (category) ndetse no gupakira abantu barenze kure abateganyijwe mu masezerano ahantu ubundi isanzwe ipakira imizigo, nyirimodoka niwe wenyine ugomba kubiryozwa.

Ikirego cy'ubujurire cyari cyaratanzwe mu Rukiko rw'Ubujurire cyagombaga kwakirwa

Amategeko yashingiweho:

Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 63,

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, Ingingo ya 64, 113

Iteka rya Perezida N° 85/01 ryo ku wa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo, Ingingo ya 66

Itegeko-Teka N° 20/75 ryo ku wa 20/06/1975 rigena ubwishingire, Ingingo ya 11

Ingingo rusange z'amasezerano y'ubwishingizi bw'ibinyabiziga bigenzwa na moteri ku butaka ya CORAR S.A. yaje kwihuza na SORAS AG Ltd ku wa 29/06/2010, Ingingo ya 22,23, 24

Imanza zifashishijwe:

Urubanza RS/INJUST/RAD 00001/2020/SC rwa AYALA CO Ltd v. APROETEC ASBL na EPTC Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 16/10/2020

Urubanza RS/INJUST/RCOM 00007/2020/SC rwa Whitefield Investment Company Ltd v. Thomas et Piron Grands Lacs rwaciwe n'Urukiko rw'Ikirenga ku wa 24/09/2021.

Urubanza rubanziriza urundi mu rubanza RS/INJUST/RC 00008/2020/SC KAMUGWIZA Phoebe aburana na Sakina Hashim na bagenzi be rwaciwe ku wa 29/10/2021

urubanza RCAA00045/2016/SC rwa Mukaruhanga Alexia v. Nyirahabimana Emertha na Kold Hansen Jesper rwaciwe n'Urukiko rw'Ikirenga ku wa 24/05/2019,

Urubanza RS/INJUST/RC00007/2020/SC rwa Twagirayezu Alice na bagenzi be v Twagirayezu Albert n'undi rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021.

Urubanza rwa City of Johnstown v Bankers Standars Insurance Co., 877 F 2d, at 1150 (2nd Cir.1989) rwaciwe na United States Court of Appeals, Second Circuit.

Inyandiko z'abahanga zifashishijwe:

Yvonne Lambert-Faivre et Laurent Leveneur, Droit des assurances, Paris, Dalloz, 2005, p. 201; p. 292

Barry Zelma, Insurance Law, Erlanger, The National Underwriter Company, 2015, p. 71.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Hatunguramye Prosper ahagarariye umwana we Tuyishimire Charles (wari utarageza ku myaka y'ubukure), Mbonyinshuti Jean Damascène na Ndagijimana Eugène barega SAHAM Assurance Rwanda Ltd (ubu yahindutse Sanlam Assurances Générales Plc), bayisaba ko yakwishyura indishyi zikomoka ku mpanuka yabaye

ku wa 14/11/2014, ubwo imodoka Mitsubishi Fuso ibaruye kuri RAA 089 W ya Gatashya Ezra yakoraga impanuka igahitana Sinzabakwira Prosper mu bantu 52 yari itwaye inyuma (muri carosserie). Sanlam Assurances Générales Plc yireguye ivuga ko nta ndishyi igomba kuryozwa kuko imodoka yahitanye Sinzabakwira Prosper yari yafashwe n'Akarere ka Kirehe, ipakiye abantu barenga umubare w'abo yishingiye, ndetse itwawe n'umuntu udafite uruhushya rwo kuyitwara kuko yari afite urwagenewe gutwara Moto, isaba guhabwa indishyi zo gushorwa mu manza n'igihembo cya Avoka.

[2] Mu rubanza RC00238/2018/TGI/NGOMA rwaciwe ku wa 11/10/2018, Urukiko rwasanze kuba Sanlam Assurances Générales Plc ivuga ko imodoka yafashwe n'Akarere ka Kirehe yari ipakiye abantu barenga umubare yari yemerewe gutwara, ndetse ikaba yari inatwawe n'utabifitiye uruhushya rwo kuyitwara bitayikuraho inshingano yo kwishyura abangirijwe n'icyo kinyabiziga kuko itagaragaza ko umunsi Akarere ka Kirehe kakoresheje iyo modoka, yari yasheshe amasezerano y'ubwishingizi yari ifitanye n'uwishingiwe; rwasanze kandi imodoka yarakoreshwaga na nyirayo ikaba yari itwawe n'umukozi we, rwanzura ko ikirego cyatanzwe na Hatunguramye Prosper ahagarariye Tuyishimire Charles, Mbonyinshuti Jean Damascène na Ndagijimana Eugène gifite ishingiro kuri bimwe, rutegeka Sanlam Assurances Générales Plc kubaha indishyi mpozamarira zingana na 540.000Frw kuri buri muntu, yose hamwe akaba 1.620.000Frw, runayitegeka kubishyura 500.000Frw y'igihembo cya Avoka.

[3] Sanlam Assurances Générales Plc yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, inasaba ko hagobokeshwa ku gahato abazungura ba Gatashya Ezra n'Akarere ka Kirehe kugira ngo baryozwe indishyi yaciwe ziturutse ku makosa bakoze yo kuba imodoka yaratwawe n'umushoferi utabifitiye uruhushya, agatwara umubare urenze uw'abantu bishingiwe ahagenewe gutwarwa imizigo. Yavuze kandi ko Urukiko rwabanje rwagize imyumvire itariyo ku masezerano y'ubwishingizi yakorewe iyo modoka ndetse no ku isesengura ry'amategeko ajyanye n'ubwishyu igihe habaye impanuka. Abaregeye indishyi bireguye bavuga ko ubujurire bwa Sanlam Assurances Générales Plc nta shingiro bufite, basaba ko hagumaho imikirize y'urubanza rwajuririwe.

[4] Urukiko Rukuru, Urugereko rwa Rwamagana, rwabanje kwemeza ko ukugobokeshwa ku gahato kw'Akarere ka Kirehe n'Abazungura ba Gatashya Ezra gufite ishingiro, hanyuma mu rubanza RCA00078/2018/HC/RWG rwaciwe ku wa 17/06/2019, rusanga Gatashya Ezra n'Akarere ka Kirehe barishe amasezerano y'ubwishingizi kuko batwaye abantu 52 ahatwarwa imizigo, imodoka bemera ko itwarwa n'umuntu utabifitiye uruhushya, ibyo bikaba bitaryozwa Sanlam Assurances Générales Plc, bityo ko ubujurire bwayo bufite ishingiro. Rushingiye ku biteganywa n'ingingo ya 258 n'iya 260 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, rwategetse ko indishyi Sanlam Assurances Générales yaciwe mu rubanza rwajuririwe zishyurwa na Succession Gatashya Ezra ifatanyije n'Akarere ka Kirehe ku buryo bungana, runategeka Hatunguramye Prosper, Mbonyinshuti Jean Damascène na Ndagijimana Eugène gufatanya kwishyura Sanlam Assurances Générales Plc 700.000Frw y'igihembo cya Avoka n'ay'ikurikiranarubanza.

[5] Akarere ka Kirehe kajuririye Urukiko rw'Ubujurire kavuga ko kavukijwe amahirwe yo gutumirwa mu nama ntegurarubanza kandi kari kagobokeshejwe ku gahato bwa mbere mu Rukiko Rukuru, Urugereko rwa Rwamagana, ko kandi urwo Rukiko rwirengagije ibiteganywa n'amasezerano y'ubwishingizi yakozwe hagati ya Sanlam Assurances Générales Plc n'uwishingiwe.

[6] Mu rubanza RCAA00025/2019/CA rwaciwe ku wa 24/07/2020, Urukiko rw'Ubujurire rwasanze indishyi zagenwe mu rubanza rwajuririwe zitageze kuri 75.000.000Frw ateganywa n'ingingo ya 52, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ndetse ko nta n'indi mpamvu iteganywa n'iyo ngingo Akarere ka Kirehe kagaragaje yatuma ubujurire bwa kabiri buba mu bubasha bwarwo, rwanzura ko butakiriwe kuko butari mu bubasha bwarwo, rutegeka Akarere ka Kirehe kwishyura Sanlam Assurances Générales Plc 500.000Frw y'igihembo cya Avoka

no kwishyura abazungura ba Gatashya Ezra, bahagarariwe n'umugore we Nyiramvuyekure Athanasie, 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[7] Akarere ka Kirehe kandikiye Perezida w'Urukiko rw'Ikirenga gasaba ko urubanza RCAA00025/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/07/2020, rusubirishwamo ku mpamvu z'akarengane. Mu cyemezo n° 168/CJ/2021 cyafashwe ku wa 21/05/2021, Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe, yemeje ko urubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[8] Mu myanzuro yako, Akarere ka Kirehe kavuze ko ingingo ya 116, igika cya kabiri, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko umuburanyi umuburanyi ugobokeshejwe ku gahato mu bujurire akagira ibyo acibwa yemerewe kujurira inshuro imwe. Kasobanuye ko iyo ngingo yihagije kandi isobanutse ku buryo Urukiko rw'Ubujurire rutari kwanga kwakira ubujurire bwako rwitwaje ko agaciro k'ikiburanwa katari mu bubasha bwarwo kuko ibijyanye n'ububasha ku bujurire bwa kabiri urwo Rukiko rwasuzumye bitakarebaga kuko katari karabaye umuburanyi mu Rukiko Rwisumbuye. Kasabye ko urubanza rwaciwe n'Urukiko rw'Ubujurire ruvanwaho kugira ngo kabone uko kagaragaza akarengane katewe n'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana rwagategetse kwishyura indishyi ngo kuko katubahirije amasezerano y'ubwishingizi nyamara ntaho ayo masezerano akareba.

[9] Ndagijimana Eugène, Tuyishimire Charles na Mbonyinshuti Jean Damascène bavuze ko basanga Urukiko rw'Ubujurire rwarakoze amakosa yo kutakira ubujurire bw'Akarere ka Kirehe, basaba uru Rukiko kubikosora, ariko mu mizi y'urubanza rukemeza ko indishyi ziryozwa Sanlam Assurances Générales Plc nk'uko babigaragaje mu nkiko zabanje.

[10] Iburanisha mu ruhame ryabaye ku wa 17/11/2021, Akarere ka Kirehe kaburanirwa na Me Kayitesi Petronille, Sanlam Assurances Générales Plc iburanirwa na Me Nduwamungu Jean Vianney, abazungura ba Gatashya Ezra bahagarariwe n'umugore we Nyiramvuyekure Athanasie aburanirwa na Me Habakurama Francois Xavier naho Ndagijimana Eugène, Tuyishimire Charles ndetse na Mbonyinshuti Jean Damascène baburanirwa na Me Banguwiha Vianney.

[11] Habanje gusuzumwa ikibazo cyo kumenya niba hari amakosa yaba yarakozwe n'Urukiko rw'Ubujurire mu kwemeza ko, nubwo Akarere ka Kirehe kari kagobokeshejwe ku gahato mu rwego rw'ubujurire, Urukiko rw'Ubujurire rutari kwakira ubujurire bwako harebwe agaciro k'ikiburanwa.

[12] Nyuma yo kumva icyo ababuranyi bose bavuga kuri iyi ngingo, aho bose bemeranywa ko ubujurire bw'Akarere ka Kirehe bwagombaga kwakirwa kuko bwari ubwa mbere kajuriye, Urukiko rwafatiye icyemezo mu ntebe rushingiye ku biteganywa n'ingingo ya 116, igika cya kabiri y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi no ku mirongo rwafashe mu manza zitandukanye harimo n'urwo Whitefield Investment Company Ltd yaregagamo Thomas et Piron Grands Lacs ndetse n'urwo AYALA CO Ltd yaburanaga na APROETEC ASBL na EPTC Ltd,[1] rusanga kujurira inshuro imwe ari uburenganzira Umushingamategeko yahaye umuburanyi utaranyuzwe n'umwanzuro wafashwe mu rubanza yagobokeshejwemo, rwemeza ko ubujurire bw'Akarere ka Kirehe bwagombaga kwakirwa kuko bwari ubwa mbere kajuriye, bityo urubanza rwaciwe n'Urukiko rw'Ubujurire, rukaba ruhindutse, hagasumwa ingingo z'ubujurire rwari rwashyikirijwe.

[1] Reba urubanza n° RS/INJUST/RAD 00001/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 16/10/2020 n'urubanza Nº RS/INJUST/RCOM 00007/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/09/2021

[13] Sanlam Assurances Générales Plc yazamuye ikibazo cyo kumenya niba abaregera indishyi hari icyo bakwiye gusaba muri uru rubanza kandi ataribo basubirishijemo urubanza ku mpamvu z'akarengane. Icyo kibazo nicyo cyabanje gusuzumwa mbere yo gusuzuma icyo kumenya ugomba kuryozwa indishyi zikomoka ku mpanuka yatewe n'imodoka ibaruye kuri RAA 089 A.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

1.Kumenya niba umuburanyi utarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, ashobora kuririra ku busabe bw'undi akagira ibyo asaba urukiko ku bimureba.

[14] Me Nduwamungu Jean Vianney, uburanira Sanlam Assuraces Générales Plc, avuga ko umuntu utarasubirishejemo urubanza ku mpamvu z'akarengane akwiye kumvwa nk'utanga amakuru gusa ariko atagize icyo asaba, akaba asanga ari uko abazungura ba Gatashya Ezra bakwiye gufatwa kuko no mu Rukiko Rukuru, Urugereko rwa Rwamagana, batigeze bajurira.

[15] Me Kayitesi Petronille, uburanira Akarere ka Kirehe, avuga ko umuburanyi ubangamiwe n'imikirize y'urubanza rwaciwe ku rwego rwa nyuma, arusubirishamo ku mpamvu z'akarengane, bityo ko kuba abazungura ba Gatashya Ezra, Ndagijimana Eugène, Tuyishimire Charles na Mbonyinshuti Jean Damascène batarabikoze ari uko bari banyuzwe n'icyemezo cy'Urukiko, icyakora ko ubu ntacyabuza ko hagira ibihinduka no ku ruhande rw'utarasabye ko urwo rubanza rusubirwamo.

[16] Me Banguwiha Vianney, uburanira Ndagijimana Eugène, Tuyishimire Charles na Mbonyinshuti Jean Damascène avuga ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, ntacyabuza Urukiko gusuzuma ikibazo umuburanyi uregwa arugaragarije, kuko bitagenze uko haba hasuzumwe ibibazo by'uruhande rumwe, bityo ko gusuzuma akarengane bidakwiye kugarukira ku muburanyi urega gusa.

[17] Me Habakurama Francois Xavier, uburanira Nyiramvuyekure Athanasie uhagarariye abazungura ba Gatashya Ezra, avuga ko nubwo ataribo basubirishijemo urubanza ku mpamvu z'akarengane, icyo Umushingamategeko yari agamije mu ngingo ya 63 y'Itegeko N° 30/2018 rigena ububasha bw'inkiko, ari uko urubanza rwongera kuburanishwa bundi bushya ababuranyi bose bahamagajwe, bityo ko ababuranyi bataza guhagarara mu Rukiko gusa. Asobanura ko nubwo Akarere ka Kirehe ari ko kajuriye mu Rukiko rw'Ubujurire; abazungura ba Gatashya Ezra nabo bari batanze ubujurire bwuririye ku bundi, ko kuba batarasubirishijemo urubanza ku mpamvu z'akarengane bitabavutsa uburenganzira bwo gusobanura ubujurire bari barashyikirije Urukiko rw'Ubujurire, isuzumwa ryabwo rikaburizwamo n'uko ikirego kitakiriwe kubera impamvu z'iburabubasha, ariyo mpamvu ubwo urubanza rusubiwemo mu mizi bundi bushya, hakwiye gusuzumwa ibibazo byose byarubayemo, buri muburanyi akagaragaza icyo atishimiye.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 63 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko "iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe".

[19] Ku bijyanye n'imbibi z'isuzuma rishya rivugwa mu ngingo ya 63 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, Urukiko rurasanga byarasobanuwe mu manza

zitandukanye harimo n'urwo Kamugwiza Phoebe aburana na Sakina Hashim na bagenzi be.[2] Uru Rukiko rwasanze "gusuzuma urubanza mu mizi bundi bushya bidakwiye kumvikana nko kwirengagiza izindi ngingo zikubiye muri iryo tegeko zigaragaza uburyo umuburanyi wumva yararenganyijwe mu rubanza asaba ko rusubirishwamo ku mpamvu y'akarengane, ibyo agomba kugaragaza mu busabe bwe, inzego zifite ububasha bwo kubusuzuma n'urwego rufite ububasha bwo kwemeza ko urubanza rusubirwamo." Urukiko rwasobanuye ko ingingo ya 56, igika cya mbere, n'iya 58 z'iryo Tegeko ziteganya ibihe byo gusaba gusubirishamo urubanza ku mpamvu z'akarengane n'inzego ubwo busabe bwohererezwa, umuburanyi utaranyuze muri iyo nzira akaba atakuririra ku kirego cyatanzwe n'uwasubirishijemo urubanza ngo nawe asabe Urukiko gusuzuma ibyo atishimiyemo.

[20] Ku birebana n'uru rubanza, Urukiko rurasanga Akarere ka Kirehe ari ko konyine kasabye ko urubanza n° RCAA00025/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/07/2020 rusubirwamo ku mpamvu z'akarengane, kuba hari ubujurire bwuririye ku bundi abaregwa bari baratanze mu Rukiko rw'Ubujurire ntibusuzumwe kubera ko ubujurire bw'iremezo butakiriwe bitewe n'uko Urukiko rwasanze butari mu bubasha bwarwo, ariko abari batanze ubujurire bwuririye ku bundi ntibagire icyo banenga icyo cyemezo basaba ko urubanza rusubirishwamo ku mpamvu z'akarengane, bigaragaza ko nta nyungu bari bagifite muri ubwo bujurire, bityo no muri uru rubanza bakaba badakwiye kugarura ingingo z'ubujurire bwuririye ku bundi bari batanze mu Rukiko rw'Ubujurire.

2.Kumenya ukwiye kuryozwa indishyi zikomoka ku mpanuka y'imodoka yari ibaruwe kuri RAA 089 W

[21] Me Kayitesi Petronille, uburanira Akarere ka Kirehe, avuga ko nta bantu Akarere ka Kirehe kapakiye muri Mitsubishi Fuso ibaruye kuri RAA 089 W, ko n'umushoferi wari utwaye iyo modoka atariko kamuhaye akazi, ko ahubwo Gatashya Ezra ku bushake bwe yagiye kwakira Umukuru w'Igihugu nk'abandi baturage, atwara abaturanyi be mu mudoka ye ku bushake bwe. Asobanura ko nta mpamvu n'imwe yari gutuma Akarere ka Kirehe gacibwa indishyi z'impanuka yahitanye Sinzabakwira Prosper, ahubwo ko Sanlam Assurances Générales Plc yageretse inshingano zayo ku Karere ka Kirehe igamije kwigobotora indishyi yari yaciwe ku rwego rwa mbere, yirengagiza ko yamaze kwishyura ababyeyi n'umwe mu bavandimwe ba Sinzabakwira Prosper waguye mu mpanuka.

[22] Avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana, ntaho rwashingiye ruca Akarere ka Kirehe indishyi kuko rutagaragaje amakosa kaba karakoze, ko amakosa aramutse yarabaye, abaregera indishyi aribo bafite inshingano zo kuyagaragaza kandi kugeza ubu bakaba baterekana uruhare rwako mu mpanuka y'imodoka Fuso ibaruye kuri RAA 089 W. Asobanura ko abakomerekeye mu mpanuka bahawe inka kuko bari bahungabanye, naho Gatashya Ezra akaba yarahawe 9.000.000Frw kuko yari yasabye kugobokwa, ko kuba Akarere karatanze iyo ngoboka bitavuze ko kemeraga amakosa cyangwa se ko buri gihe iyo ngoboka ishobora gutangwa, ahubwo ko byatewe n'uko byari ngombwa kugoboka abaturage bako bakoze impanuka bagiye mu gikorwa kateguye. Asaba uru Rukiko kubona ko katarebwa n'amasezerano y'ubwishingizi, rukemeza ko indishyi kaciwe zikuweho.

[23] Me Banguwiha Jean Vianney, uburanira Ndagijimana Eugène, Mbonyinshuti Jean Damascène na Tuyishimire Charles, avuga ko ingingo ya 22 mu ngingo rusange z'amasezerano y'ubwishingizi bw'ibinyabiziga bigenzwa na moteri, iteganya ko impanuka yose, hatitawe ku cyayiteye, yishyurwa n'umwishingizi hanyuma akazikurikiranira uwamuteje igihombo. Asobanura ko Sanlam Assurances Générales Plc ariyo ikwiye kuryozwa indishyi, kandi ko hari izindi manza zaciwe zijyanye n'impanuka iburanwa, Sanlam Assurances Générales Plc ikishyura, ariyo mpamvu asaba uru Rukiko kuyitegeka kwishyura 540.000Frw y'indishyi zahawe buri muvandimwe wa Nyakwigendera.

[2] Reba urubanza rubanziriza urundi mu rubanza n° RS/INJUST/RC 00008/2020/SC rwaciwe ku wa 29/10/2021.

[24] Me Habakurama Francois Xavier, uburanira Nyiramvuyekure Athanasie uhagarariye abazungura ba Gatashya Ezra, avuga ko Bamporiki wari utwaye imodoka nta ruhushya rwo kuyitwara yari afite, ko yari yashatswe n’Akarere ka Kirehe ari nako kari kumuha insimburamubyizi. Avuga ko Akerere ka Kirehe kiyambaje imodoka itwara imizigo kugira ngo ubwitabire muri gahunda kari kateganyije bwiyongere, gapakira abantu ahatwarwa imizigo aho gushaka imodoka zemerewe gutwara abagenzi, imodoka zose zitabiriye icyo gikorwa akaba ariko kazishyuriye amavuta kuri station ya Nyakarambi, ko naho impanuka ibereye, imodoka zako arizo zatabaye, ndetse ko hashingiwe kuri devis Gatashya Ezra yari yahawe na garage, kamwishyuye 9.000.000Frw, ariyo mpamvu asanga hashingiwe ku ngingo ya 104 n’iya 108 z’Itegeko ryerekeye ibimenyetso mu manza n’itangwa ryabyo, Sanlam Assurances Générales Plc yakwishyura abaregera indishyi nta mananiza hanyuma ikikurikiranira Akarere ka Kirehe.

[25] Me Nduwamungu Vianney uburanira Sanlam Assurances Générales Plc avuga ko ku rwego rwa mbere, Urukiko rutasobanukiwe neza n’uburyo amasezerano y’ubwishingizi asesengurwa, ko imodoka yakoze impanuka yari igenewe gutwara imizigo, kuba yarakoze impanuka itwaye abagenzi bikaba bivanaho inshingano z’umwishingizi kubera ko uwishingiwe atubahirije amasezerano. Asobanura ko ayo makosa ariyo yakosowe n’Urukiko Rukuru rwemeje ko uburyozwe ari ubwa nyir’imodoka n’Akarere ka Kirehe bumvikanye gutwara abagenzi mu modoka igenewe imizigo. Avuga ko kugeza ubu abazungura ba Gatashya Ezra batagaragaza ko yemeye gutanga imodoka ye ari ku ngoyi. Naho ku bijyanye n’izindi manza Sanlam Assurances Générales Plc yaba yaratsinzwe ikishyura, avuga ko bitatewe n’uko yemeraga umwanzuro w’Urukiko muri izo manza ahubwo ko ibihe byo kujurira byababaga byayirenganye. Asoza avuga ko uru Rukiko rubibonye ukundi, rukemeza ko Sanlam Assurances Générales Plc iryozwa indishyi rwaba rushyizeho umurongo watuma abantu bajya batwara abantu barenze abishingiwe mu modoka cyangwa bakumva ko imodoka zemerewe gukora ibyo zitafatiye ubwishingizi.

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[26] Ingingo ya 64 y’Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye, akaba yaseswa ari uko abayagiranye babyumvikanyeho cyangwa ku zindi mpamvu zemewe n’amategeko. Naho ingingo ya 113, igika cya mbere, y’iryo Tegeko igateganya ko amasezerano agira inkurikizi hagati y’abayagiranye gusa, akaba atabangamira undi cyangwa ngo amugirire akamarohejuru y’ibyayateganyijwemo bimufitiye akamaro.

[27] Ingingo ya 66, igika cya 4, y’Iteka rya Perezida N° 85/01 ryo ku wa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n’uburyo bwo kuyigendamo iteganya ko “umuyobozi w’ikinyabiziga, uw'ikinyamitende itatu cyangwa ine bifite moteri abujijwe gutwara abantu mu bice by'inyuma bya karisoro y'icyo kinyabiziga cyangwa ya romoruki yacyo”.

[28] Ingingo ya 11, igika cya 3, y’Itegeko-Teka N° 20/75 ryo ku wa 20/06/1975 rigena ubwishingire iteganya ko “Nubwo nta ngingo yaba ibivuguruza, uwishingira ntashobora kwishingira ibyaha byatewe n’ikosa rikozwe nkana n’uwishingiwe.”

[29] Ingingo ya 22 y’ingingo rusange z’amasezerano y’ubwishingizi bw’ibinyabiziga bigenzwa na moteri ku butaka ya CORAR S.A. yaje kwihuza na SORAS AG Ltd ku wa 29/06/2010,[3] ubu bikaba aribyo byabaye Sanlam Assurances Générales Plc, iteganya ko “igihe cyose uwishingiwe atubahirije amasezerano atakaza uburenganzira bwo kugobokwa. Ubwo ariko iyo CORAR S.A. igomba kwishyura abangirijwe uko byagenda kose kubera amategeko ariho, ifite uburenganzira bwo

[3]Reba Certificate of Amalgamation yatanzwe na Rwanda Development Board ku wa 29/06/2010;

kwishyuza uwishingiwe ibyo yamutangiye, bitayibujije ndetse n'ubundi burenganzira bwose yaba imufiteho."

[30] Ingingo ya 23 n'iya 24 z'ayo masezerano zivuga ko uwishingiwe afite inshingano zo gukumira impanuka, bityo kugira ngo agobokwe akaba agomba kugaragaza ko nta makosa afite cyangwa se ko aho bishobokeye yihutiye kubahiriza amasezerano. Impamvu zishobora gutuma uwishingiwe atagobokwa harimo n'iy'uko mu gihe cy'impanuka ikinyabiziga cyari gitwawe n'umuntu utabifitiye uruhushya rugenwa n'amategeko.

[31] Ku bijyanye n'isesengura ry'amasezerano y'ubwishingizi, abahanga mu mategeko y'ubwishingizi barimo Yvonne Lambert-Faivre na Laurent Leveneur, bavuga ko Urukiko arirwo rufite inshingano zo gusesengura amasezerano y'ubwishingizi, ko iyo ingingo zayo zisobanutse, zumvikana kandi zitarimo urujijo, zigomba kubahirizwa uko zanditswe kuko kubibona ukundi byaba ari uguhindurira ireme ry'ayo masezerano (dénaturation du contrat) bikaba byatuma mu bihugu bifite Inkiko zisesa imanza urwo rubanza ruseswa.[4] Naho Barry Zalma avuga ko mu gihe Urukiko rurimo gusesengura amasezerano y'ubwishingizi rugomba gushaka icyo abakoranye amasezerano bari bagamije. Asobanura ko nk'uko bisanzwe mu yandi masezerano, amagambo yakoreshejwe mu masezerano y'ubwishingizi agomba guhabwa ibisobanuro bisanzwe kubera ko intego nyamukuru ari uguha ishingiro icyo impande zombi zumvikanye mu nyandiko.[5]

[32] Urukiko rurasanga dosiye y'urubanza irimo amasezerano y'ubwishingizi bw'ikinyabiziga camion Fuso gifite plaque RAA 089 W yo ku wa 11/11/2014, yateganyaga ko ubwishingizi bw'icyo kinyabiziga bwari ubwo gutwara ibicuruzwa, ndetse hakishingirwa n'imyanya 3. Ababuranyi nta mpaka bafite kuri aya masezerano, haba ku kuba imodoka yari yishingiwe ari iyo gutwara imizigo ndetse no kuba hari hishingiwe abantu batatu. Ababuranyi kandi nta mpaka bafitanye ku kuba ubwo iyo modoka yakoraga impanuka yari itwawe n'umushoferi udafite uruhushya rwo kuyitwara kuko urwo yari afite ari urwa moto, ndetse no kuba yari ipakiye abantu 52 ahantu isanzwe ipakira imizigo nabyo ntibigibwaho impaka.

[33] Urukiko rurasanga dosiye y'urubanza igaragaza ko kuva ku gika cya 17 kugeza ku cya 21 by'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, urwo Rukiko rwasanze abantu barapakiwe mu modoka n'Ubuyobozi bw'Akarere ka Kirehe na nyir'imodoka, ndetse bashyiraho n'umushoferi udafite uruhushya rwo gutwara imodoka yo mu bwoko bwa Fuso ahubwo wemerewe gutwara moto, bityo ko habayeho kunyuranya n'amasezerano y'ubwishingizi ndetse no kutubahiriza ibiteganywa n'ingingo ya 66, igika cya 4, y'Iteka rya Perezida N° 85/01 ryo ku wa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo ibuza abatwaye imodoka gushyira abagenzi ahagenewe imizigo.

[34] Urukiko rurasanga nyuma yo kubona indishyi zaragombaga gushingira ku kuba Gatashya Ezra atarubahirije amasezerano y'ubwishingizi, ntiyari kuryozwa indishyi hashingiwe ku biteganywa n'ingingo ya 258 n'iya 260 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ryakoreshwaga icyo gihe kuko izo ngingo zitareba uburyozwe bushingiye ku kutubahiriza amasezerano (responsabilité contractuelle) ahubwo zirebana n'ubw'amakosa akozwe ku bushake n'ibisa nayo (responsabilité délictuelle et quasi- délictuelle). Kuba hataratandukanyijwe uburyozwe

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[4] "*Ce sont les juges du fond qui interprètent les clauses des polices d'assurance. Si celles-ci sont claires, précises et licites, elles doivent être appliquées, sinon la décision du juge encourt le risque de cassation pour dénaturation du contrat." Yvonne Lambert-Faivre na Laurent Leveneur, Droit des assurances, Paris, Dalloz, 2005, p. 201*

[5] *"Rules of insurance contract interpretation are applied by courts with the intent to fulfill the desires of all parties to the contract. The construction of insurance contract should be governed by the same rules of construction applicable to all contracts…Its terms are given their ordinary and generally accepted meaning and the primary goal of the court is to give effect to the written expression of the parties' intent." Barry Zelma, Insurance Law, Erlanger, The National Underwriter Company, 2015, p. 71.*

bushingiye ku masezerano n'ubushingiye ku makosa akozwe ku bushake n'ibisa nayo byatumye Urukiko Rukuru, Urugereko rwa Rwamagana rukora amakosa yo guhuriza hamwe Gatashya Ezra, wari warasinye ayo masezerano y'ubwishingize n'Akarere ka Kirehe katarebwaga nayo, bituma rwanzura ruvuga ko "nyir'imodoka n'Akarere ka Kirehe, aribo bagomba kuryozwa indishyi"

[35] Uru Rukiko, mu manza zitandukanye harimo n'urwo Mukaruhanga Alexia yaburanaga na Nyirahabimana Emertha na Kold Hansen Jesper,[6] ndetse n'urwo Twagirayezu Alice na bagenzi be baburanaga na Twagirayezu Albert n'undi, rwasanze ihame rusange riri mu ngingo ya 64 n'iya 113, igika cya mbere, z'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ari uko, uretse mu gihe ibyateganyijwemo bifitiye undi akamaro, amasezerano agira inkurikizi ku bayagiranye gusa,[7] bityo mu gihe Urukiko Rukuru, Urugereko rwa Rwamagana rutari rwabanje kugaragaza uburyo Akarere ka Kirehe kari kungukira mu masezerano y'ubwishingizi hagati ya Gatashya Ezra na Sanlam Assurances Générales Plc, ntaho rwari gukura umwanzuro w'uko kagomba kurebwa n'inkurikizi zayo.

[36] Urukiko rurasanga kuba Akerere ka Kirehe kaba karifuje imodoka ijyana abantu mu gikorwa cyo kwakira Umukuru w'Igihugu kagahabwa Camion Fuso, yakora impanuka kakohereza imodoka zako gutabara inkomere kugira ngo zigezwe kwa muganga, kuba nyuma yaho karahaye inka abari bahungabanyijwe n'iyo mpanuka cyangwa kuba karishyuriye Gatashya Ezra 9.000.000Frw yo gusana imodoka yakoze impanuka, ibyo nta sano bifitanye n'amasezerano y'ubwishingizi bw'imodoka yakoze impanuka kuko nta kigaragaza ko kabikoze mu rwego rwo kubahiriza inshingano runaka kari gafite zikomoka kuri ayo masezerano, bityo bikaba bitumvikana uburyo Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ako Karere kishe amasezerano y'ubwishingizi.

[37] Urukiko rurasanga Gatashya Ezra yaremeye gutwara abagenzi ahapakirwa imizigo, atwara abantu 52 kandi azi ko afite ubwishingizi bw'abantu batatu gusa, yemera kandi ko imodoka ye y'ikamyo itwarwa n'umushoferi udafite uruhushya rwo kuyitwara, ibi rero ntabwo ari uburangare busanzwe (négligence ordinaire) ubundi butaganisha ku guteganya cyangwa gushaka impanuka, nta n'ikigaragaza ko yari agambiriye indonke (risques calculés),[8] ahubwo ni amakosa yo kutubahiriza inshingano yari afite mu masezerano y'ubwishingizi, ayo makosa akaba yarayakoze abizi kandi abishaka kuko kugeza ubu abazungura be batabasha kugaragaza impamvu ikomeye yatumye ayakora.

[38] Urukiko rurasanga, nk'uko abahanga mu mategeko y'ubwishingizi babivuga, ingaruka zo kuba nyir'imodoka yarakoze amakosa yo kutubahiriza inshingano afite mu masezerano y'ubwishingizi abizi kandi abishaka ni uko ayo makosa adashobora kurengerwa n'amasezerano y'ubwishingizi[9] haba ku bimureba cyangwa abangirijwe n'ikinyabiziga cyishingiwe, ariyo mpamvu ku bijyanye n'uru rubanza indishyi zigomba gucibwa abazungura ba Gatashya Ezra bonyine kuko ari we utarubahirije inshingano yari afite mu masezerano y'ubwishingizi.

[39] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga indishyi zingana na 1.620.000Frw zategetswe n'Urukiko Rukuru, Urugereko rwa Rwamagana, kwishyurwa Ndagijimana

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[6] Reba urubanza n° RCAA 00045/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/05/2019, kuva ku bika bya 25 kugeza ku cya 34

[7] Reba urubanza RS/INJUST/RC 00007/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 10/12/2021

[8] *ordinary negligence does not constitute an intention to cause damage, and a calculated risk does not amount to an expectation of damage..." Reba City of Johnstown v Bankers Standars Insurance Co., 877 F 2d, at 1150 (2nd Cir.1989).*

[9] *Introduire la garantie du fait intentionnel dans l'opération d'assurance en fausserait donc radicalement les prémisses : la technique d'assurance exige que le risqué assure soit un événement aléatoire, dont la réalisation ne dépend pas de la volonté de l'assuré ou du bénéficiaire du contrat. La réalisation volontaire du risqué par l'assuré ou le bénéficiaire demeure donc hors du champ contractuel : c'est une exclusion légale de risque…" Yvonne Lambert- Faivre na Laurent Leveneur, Droit des assurances, Paris, Dalloz, 2005, p. 292*

Eugène, Mbonyinshuti Jean Damascène na Tuyishimire Charles zikomoka ku mpanuka baburiyemo umuvandimwe wabo, zigombwa kuryozwa abazungura ba Gatashya Ezra bonyine.

3.Ku birebana n'indishyi zasabwe muri uru rubanza.

[40] Akarere ka Kirehe kavuga ko kugeza ubu Sanlam Assurances Générales Plc itagaragaza amakosa kakoze yari gutuma gakururwa mu manza kugeza ubwo kabiryorejwe indishyi, ariyo mpamvu gasaba uru Rukiko kuyitegeka kukishyura 1.000.000Frw y'ikurikiranarubanza kuko yagashoye mu manza ku maherere.

[41] Ndagijimana Eugène, Mbonyinshuti Jean Damascène na Tuyishimire Charles bavuga ko Urukiko Rukuru, Urugereko rwa Rwamagana, rwabategetse kwishyura Sanlam Assurances Générales Plc 700.000Frw y'indishyi nyamara aribo bari bazikwiye, ariyo mpamvu basaba uru Rukiko kuzivanaho ahubwo rukayitegeka kubaha 2.000.000Frw y'ikurikiranarubanza kubera gusiragizwa mu nkiko, na 2.000.000Frw y'igihembo cya Avoka mu nzego zose.

[42] Abazungura ba Gatashya Ezra bavuga ko Akarere ka Kirehe na Sanlam Assurances Générales Plc babasiragije mu nkiko ariyo mpamvu bakwiye gufatanya kubaha 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka.

[43] Sanlam Assurances Générales Plc ivuga ko indishyi zisabwa n'Akarere ka Kirehe nta shingiro zifite, ko nta n'impamvu yatuma izaciwe Ndagijimana Eugène, Mbonyinshuti Jean Damascène na Tuyishimire Charles mu Rukiko Rukuru, Urugereko rwa Rwamagana, zikurwaho kuko badakwiye kuririra ku kirego cy'Akarengane cy'Akarere ka Kirehe mu gihe bo nta bujurire bigeze batanga cyangwa ngo basubirishemo urubanza.

UKO URUKIKO RUBIBONA

[44] Ingingo ya 111 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 "ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe."

[45] Urukiko rurasanga indishyi z'ikurikiranarubanza Akarere ka Kirehe gasaba zifite ishingiro, Abazungura ba Gatashya Ezra akaba aribo baziryozwa. Kubera ko bigaragarira Urukiko ko 1.000.000Frw asabwa ari umurengera kandi akaba nta bimenyetso yatangiwe bihamya ko ariyo yagiye kuri uru rubanza, mu bushishozi bwarwo, Akarere ka Kirehe kagenewe 300.000Frw y'ikurikiranarubanza.

[46] Ku bijyanye n'amafaranga yo gusiragizwa mu manza angana na 2.000.000Frw, ndetse n'ay'igihembo cya Avoka angana na 2.000.000Frw asabwa na Ndagijimana Eugène, Mbonyinshuti Jean Damascène ndetse na Tuyishimire Charles, Urukiko rurasanga kuba baraburanye bahagarariwe na Avoka ubihemberwa bakwiye guhabwa igihembo cya Avoka, icyakora kuko ayo basaba ari umurengera, mu bushishozi bw'Urukiko, bose hamwe bagenewe 500.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza, akaba 800.000Frw, agatangwa n'abazungura ba Gatashya Ezra.

[47] Ku bijyanye n'indishyi zingana na 700.000Frw Ndagijimana Eugène, Mbonyinshuti Jean Damascène na Tuyishimire Charles baciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, basaba ko zikurwaho, uru Rukiko rurasanga ntaho rwehera rusuzuma ishingiro ryabyo, kuko nk'uko

byasobanuwe haruguru, umumburanyi utarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane atakurira ku busabe bw'undi muburanyi ngo agire icyo asaba.

[48] Naho ku bijyanye n'indishyi za 1.000.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza abazungura ba Gatashya Ezra basaba Akarere ka Kirehe na Sanlam Assurances Générales Plc kubera kubasiragiza mu nkiko, Urukiko rurasanga nta shingiro zifite kuko batsinzwe urubanza.

III. ICYEMEZO CY'URUKIKO.

[49] Rwemeje ko ikirego cy'ubujurire cyari cyaratanzwe n'Akarere ka Kirehe mu Rukiko rw'Ubujurire gifite ishingiro;

[50] Rwemeje ko urubanza RCA00078/2018/HC/RWG, rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, ruhindutse ku bireba indishyi zaciwe Akarere ka Kirehe;

[51] Rutegetse abazungura ba Gatashya Ezra kwishyura Ndagijimana Eugène, Mbonyinshuti Jean Damascène na Tuyishimire Charles bose hamwe indishyi zingana na 1.620.000Frw zategetswe n'inkiko zabanje;

[52] Rutegetse abazungura ba Gatashya Ezra kwishyura Ndagijimana Eugène, Mbonyinshuti Jean Damascène na Tuyishimire Charles ibihumbi magana inani (800.000Frw) akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza;

[53] Rutegetse abazungura ba Gatashya Ezra kwishyura Akarere ka Kirehe 300.000Frw y'ikurikiranarubanza.