

# PRIME INSURANCE COMPANY Ltd v UWIMANIMPAYE

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00010/2021/SC (Cyanzayire, P.J., Karimunda, Hitiyaremye, J.) 02 Ukuboza 2022]

*Amategeko y'imanza z'imbonezamubano – Indishyi zikomoka ku mpanuka - Gutakaza akazi - Umuntu utagaragaza ibimenyetso by'uko hari akazi yari afite igihe yakoraga impanuka, nta ndishyi zo kugatakaza agomba guhabwa.*

*Amategeko y'imanza z'imbonezamubano – Indishyi zikomoka ku mpanuka – Kugira igihombo kubera impanuka - Ku bantu badafite akazi bakoze impanuka, nta gihombo cy'ako kanya kigaturukaho gishobora kubaho, igishobora kwitabwaho ni amahirwe yo kuzabona akazi yavukijwe kubera iyo mpanuka.*

*Amategeko y'imanza z'imbonezamubano – Imiburansihirize y'imanza – Kugira uburenganzira bwo gusubirishamo urubanza ku mpamvu z'akarengane – Ntabwo ari ngombwa ko umuburanyi abanza kwiyambaza inzira yo gusubirishamo urubanza ingingo nshya kugira ngo agire uburenganzira bwo gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane mu gihe we abona ko nta mpamvu n'imwe yujuje mu zo itegeko riteganywa kugira ngo ikirego cyo gusubirishamo urubanza ingingo nshya cyakirwe.*

**Incamateko y'ikibazo:** Uru rubanza rukomoka ku mpanuka yakorewe Uwimanimpaye wagonzwe n'ikinyabiziga gifite ubwishingizi bwa Prime Insurance Company Ltd. Iyo mpanuka umuganga wa Leta yemeje ko yamusigiye ubumuga buhoraho bungana na 78% n'ubusembwa bwa 65%. Yaje kwandikira Umwishingizi asaba ko yahabwa indishyi ku bwumvikane maze abaganga ba Prime Insurance Company Ltd bamukorera irindi suzuma bemeza ko yagize ubumuga buhoraho bwa 28%. Haje kubaho kugerageza kumvikana ariko birananirana kuko batumvikanye ku gipimo cy'ubumuga, umushahara muto ku muni n'iminsi y'akazi.

Uwimanimpaye yatanze ikirego mu rukiko rwisumbuye rwa Karongi uru rukiko rwemeza ko akwiye guhabwa indishyi zinyuranye. Uregwa yajuririje mu rukiko rukuru urugereko rwa Rusizi avuga ko Urukiko rwisumbuye rwagennye indishyi rutabanje gushyiraho umuganga wa gatatu wo kwemeza ingano y'ubumuga itarumvikanweho. Urukiko Rukuru rwemeje ko ubwo bujuriye nta shingiro bufite rushingiye ko ntacyo uwajuriye yakoze nyuma yo kumenyeshwa n'Uwimanimpaye ko atemeye igipimo cy'ubumuga cyakozwe n'umuganga wa Prime Insurance Copmany Ltd kugeza aho aregeye mu rukiko bityo rwemeza ko nta gihindutse ku rubanza rwajuririwe.

Uru rubanza rwaje kongera kuburanishwa n'Urukiko rw'Ikirenga ku mpamvu z'akarengane. Mbere y'iburanisha mu mizi, Uregwa yatanze inzitizi avuga ko urega yagombaga gutanga ikirego cyo gusubirishamo urubanza ingingo nshya mbere y'uko yiyambaza inzira yo gusubirishamo urubanza ku mpamvu z'akarengane. Urukiko rwemeje ko iyo nzitizi nta shingiro ifite rusaba ko iburanisha rikomeza.

Urega avuga ko akarengane yagiriwe gashingiye ku kuba Urukiko Rukuru rwaravuze ko atagaragaje icyo yakoze ngo yumvikane n' Uwimanimpaye ku ishyirwaho ry'umuganga nyuma y'uko ayigaragarije ko atemera raporo y'umuganga wo ku ruhande rw'umwishingizi kandi yarabigaragaje mu ibaruwa yamwandikiye abinyujije kuri Avoka we amusaba kugena umuganga wakorana n'uwayo kugira ngo bagene ingano y'ubumuga yagombaga gushingirwaho mu

kumugenera indishyi, nyamara aho kubikora aregera urukiko. Uregwa we asobanura ko icyo itegeko rivuga ari uko we na Prime Insurance Company Ltd bashoboraga gushyiraho umuganga cyangwa itsinda ry'abaganga mu gihe babyumvikanyeho, ko ariko ibyo batigeze babyumvikanaho. Urukiko rwemeje ko hashyirwaho itsinda ry'abaganga rihuriweho n'impande zombi hanyuma iburanisha rikazakomeza nyuma hasuzumwa ingano y'indishyi zigomba gutangwa nyuma yo kubona raporo.

Iryo tsinda ry'abaganga ryatanze raporo igaragza ko Uwimanimpaye afite ubumuga buhoraho bungana na 49% n'ubusembwa bw'umubiri buri ku kigero cya 4/6. Iburanisha ryakomeje mu mizi hasuzumwa ingano y'indishyi zikwiye gutangwa. Urega avuga ko indishyi zigomba kubarwa hagenewe kuri raporo ihuriweho izi ndishyi zikaba zikubiyemo indishyi z'ubukungu, ububabare n'ibangamira ry'uburanga. Naho indishyi z'itakaza amahirwe yo gushaka, igihembo cy'avoka n'amagarama agasaba ko byakurwaho. Ku kijyanye n'igipimo cy'ibitsa cyatumye badahuza ku ndishyi z'ibangamirabukungu, avuga ko mu gihe uwo baburana yazagaragaza ko igipimo yabariyeho aricyo cyashyizweho na Banki Nkuru y'Igihugu nta kibazo yabyemera. Naho ku birebana n'indishyi z'ibangamira ry'uburambe mu kazi, avuga ko ntazo Uwimanimpaye agomba guhabwa kubera ko nta kimenyetso yagaragaje cyerekana ko hari akazi kazwi yagiraga.

Uregwa asobanura ko ku birebana n'igipimo cy'ibitsa impande zombi zidahurizaho mu kubara indishyi z'ibangamirabukungu, ko bo babariye kuri 5% kubera ko aricyo gipimo cyashyizweho n'amabwiriza ya Banki Nkuru y'Igihugu. Naho ku birebana n'indishyi z'ibangamira ry'uburambe mu kazi (gutakaza akazi) avuga ko, n'ubwo adafite akazi kamuhemba ku kwezi, ariko hari icyo impanuka yamubangamiyeho nk'umuntu ufite akazi asanzwe akora gatuma atahana 3.000 Frw ku munsu kuko ari nyakabyizi. Agasanga nawe agomba kubarirwa izo ndishyi hakurikijwe umushahara muto umuntu atahana ku munsu (SMIG) wa 3.000 Frw, kuko ubumuga yagize bwatumye atagishobora ako kazi yari asanzwe akora kubera ko ingufu yari afite atarizo agifite ubu.

**Incamake y'icyemezo:** 1. Umuntu utagaragaza ibimenyetso ko hari akazi yari afite igihe yakoraga impanuka, nta ndishyi zo kugatakaza agomba guhabwa kubera ko nyine ntako yari afite, bityo na Uwimanimpaye akaba nta ndishyi zo gutakaza akazi agomba guhabwa kubera ko, n'ubwo avuga ko yari nyakabyizi, atagaragarije urukiko ibimenyetso by'ako kazi ka nyakabyizi yari afite.

2. Ntabwo ari ngombwa ko umuburanyi abanza kwiyambaza inzira yo gusubirishamo urubanza ingingo nshya kugira ngo agire uburenganzira bwo gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, mu gihe we abona ko nta mpamvu n'imwe yujuje mu zo itegeko riteganyaga kugira ngo ikirego cyo gusubirishamo urubanza ingingo nshya cyakirwe bityo ibyo Uwimanimpaye avuga by'uko Prime Insurance Company Ltd itabanje gusubirishamo urubanza ingingo nshya nta shingiro bifite.

3. Ku birebana n'indishyi zitangwa ku mukozi wagize igihombo kubera impanuka, icyo gihombo kibererwa mu byo yinjizaga biturutse ku kazi ku munsu w'impanuka. Ku bantu badafite akazi, (abana, abanyeshuri, abageze mu zabukuru, abagore cyangwa abagabo baba mu rugo), nta gihombo cy'ako kanya gituruka ku kazi gishobora kubaho, igishobora kwitabwaho ni amahirwe yo kubona akazi kubera iyo impanuka bityo Uwimanimpaye akaba adakwiye kuhabwa izo ndishyi kuko atagaragaza igihombo gituruka mu byo yinjizaga.

**Ikirego cyatanzwe na Prime Insurance Company Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00029/2019/HC/RSZ gifite ishingiro; Urubanza ruhindutse ku bijyanye n'indishyi Prime Insurance Company Ltd yagombaga guha Uwimanimpaye; Uwimanimpaye agomba gusubiza Prime Insurance Company Ltd 6.702.142,4 Frw.**

**Amategeko yashingiweho:**

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, ingingo ya 19.

**Nta manza zifashishijwe**

**Inyandiko z'abahanga zifashishijwe:**

Philippe Malaurie et alii, Droit des obligations, 10ème édition, 2018, Paris, LGDJ, § 241.

Yvaine BUFFELAN-LANORE, Virginie LARRIBAU-TERNEYRE, Droit civil des obligations, 17ème édition 62020-2021, Paris, Dalloz, § 2508.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Uwimanimpaye Jean Claude yareze Prime Insurance Company Ltd mu Rukiko Rwisumbuye rwa Karongi asaba indishyi zikomoka ku mpanuka y'ikinyabiziga cyari gifite ubwishingizi muri icyo kigo. Yavugaga ko iyo mpanuka yabaye ku itariki ya 29/06/2018 yayikomerekeyemo ku buryo yamusigiye ubumuga buhoraho bwa 78% n'ubusembwa ku mubiri bwa 65% nk'uko byemejwe n'umuganga wa Leta wamukurikiranye.

[2] Uwimanimpaye Jean Claude yasobanuriye Urukiko ko ku itariki ya 11/10/2018, Prime Insurance Company Ltd yakiriye ibaruwa ye asaba guhabwa indishyi zikomoka kuri iyo mpanuka mu bwumvikane, maze ku itariki ya 13/11/2018, abaganga bo ku ruhande rwayo bamukorera irindi suzuma bemeza ko ubumuga buhoraho yasigiwe n'impanuka buri ku kigero cya 28%. Avuga ko ku itariki ya 20/11/2018 yatumijwe mu muhango w'ubwumvikane, ariko birangira impande zombi zitumvikanye ku gipimo cy'ubumuga, umushahara muto ku munsu n'iminsi y'akazi, bituma agana Urukiko asaba indishyi zinyuranye.

[3] Uhagarariye Prime Insurance Company Ltd yaburanye avuga ko iyo sosiyete yemera gutanga indishyi, ko ariko Uwimanimpaye Jean Claude hari umuhango atubahirije wo gukora irindi suzuma ry'ubumuga, agasaba ko wakorwa kugira ngo babone igipimo cy'ubumuga cyagenderwaho batanga indishyi.

[4] Ku itariki ya 28/03/2019, Urukiko Rwisumbuye rwa Karongi rwaciye urubanza N° RC 00003/2019/TGI/KNG rwemeza ko ikirego cya Uwimanimpaye Jean Claude gifite ishingiro, rutegeka Prime Insurance Company Ltd kumuha indishyi zose hamwe zingana na 14.186.126 Frw zikubiyemo izi zikurikira :

- indishyi z'ibangamirabukungu: 8.646.186 Frw,

- indishyi z'akababaro : 1.620.000 Frw,
- indishyi z'ibangamira ry'uburanga : 1.080.000 Frw,
- indishyi zo gutakaza amahirwe yo gushaka : 2.160.000 Frw,
- amafaranga y'ingendo no kwivuza n'ibindi : 100.000 Frw,
- amafaranga yishyuye ingwate y'amagarama :20.000 Frw,
- igihembo cya Avoka :500.000 Frw.

[5] Prime Insurance Company Ltd yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, ivuga ko nyuma y'aho uwahohotewe atemeye ibyagaragajwe muri contre-expertise yakozwe na muganga w'umwishingizi, Urukiko rwagombaga gutegeka ko hakurikizwa ibiteganywa mu ngingo ya 7 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ivuga ko buri ruhande rugomba kwihitiramo umuganga warwo, bombi bagakora raporo bumvikanyeho, ko kuba ibyo bitarakozwe ahubwo Urukiko rukagera uwahohotewe indishyi ari amakosa.

[6] Uwimanimpaye Jean Claude we yireguraga avuga ko gushyiraho umuganga wa gatatu ubusanzwe bidakorerwa mu rubanza, ko ahubwo Prime Insurance Company Ltd ikimenyeshwa ko uwahohotewe atemera ingano y'ubumuga yagaragajwe n'umuganga wayo aribwo yari kubivugaho, nyamara yarabimenyeshwe iricecekerako kugeza igihe Uwimanimpaye Jean Claude abonye ko ibikorwa byayo bigamije kumunaniza gusa ahitamo kuyimenyeshya ko avuye mu nzira y'ubwumvikane akagana urukiko. Yarangiye atanga ubujurire bwuririye ku bundi asaba amafaranga y'igihembo cya Avoka ku rwego rw'ubujurire.

[7] Ku itariki ya 17/10/2019, Urukiko Rukuru, Urugereko rwa Rusizi, rwaciye urubanza N° RCA 00029/2019/HC/RSZ, rwemeza ko ubujurire bwa Prime Insurance Company Ltd nta shingiro bufite, rwemeza ko ubujurire bwuririye ku bundi bwatanzwe na Uwimanimpaye Jean Claude bufite ishingiro kuri bimwe, ruyitegeka kumuha 500.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza ku rwego rw'ubujurire, rwemeza ko urubanza N° RC 00003/2019/TGI/KNG rwaciye n'Urukiko Rwisumbuye rwa Karongi ku itariki ya 28/03/2019 idahindutse.

[8] Mu kugera kuri uwo mwanzuro, Urukiko Rukuru rwashingiye ku mpamvu y'uko kuba mu muhango w'ubwumvikane wabaye ku itariki ya 21/11/2018, Uwimanimpaye Jean Claude ataremeye igipimo cy'ubumuga cya 28% cyerekanywe n'abaganga bo ku ruhande rw'umwishingizi, Prime Insurance Company Ltd yagombaga kumvikana na Uwimanimpaye Jean Claude ku ishyirwaho ry'umuganga cyangwa itsinda ry'abaganga bo gukemura impaka. Rwavuze ko kuba ntacyo yakoze ngo ubwo bwumvikane bubeho kandi byari mu nshingano zayo kugeza Uwimanimpaye Jean Claude atanze ikirego mu Rukiko ku itariki ya 07/01/2019, yagombaga guhabwa indishyi zibazwe hashingiwe ku gipimo cy'ubumuga buhoraho bwa 78% n'ubusembwa ku mubiri bwa 65% hubahirijwe ibivugwa mu ngingo ya 6, agace ka 4, y'Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[9] Ku itariki ya 14/11/2019, Me Masumbuko NDE Emile, mu mwanya wa Prime Insurance Company Ltd, yandikiye Perezida w'Urukiko rw'Uburundi asaba ko urubanza N° RCA

00029/2019/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ku itariki ya 17/10/2019, rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire, amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwakongera kuburanishwa. Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma raporo yarukozweho, yemeje ko rwongera kuburanishwa ruhabwa N° RS/INJUST/RC 00010/2021/SC.

[10] Urubanza rwaburanishijwe mu ruhamwe ku itariki ya 23/05/2022, Prime Insurance Company Ltd ihagarariwe na Me Masumbuko NDE Emile, naho Uwimanimpaye Jean Claude ahagarariwe na Me Nsengiyumva Jean Claude.

[11] Urukiko rwabanje kumva ababuranyi ku birebana n'inzitizi yari yatanzwe na Uwimanimpaye Jean Claude asaba ko ikirego cy'akarengane cyatanzwe na Prime Insurance Company Ltd kitakwakirwa ngo gisuzumwe kubera ko urubanza N° RCA 00029/2019/HC/RSZ rusubirishwamo ku mpamvu z'akarengane rwagombaga kubanza gusubirishwamo ingingo nshya mbere yo kugana inzira y'akarengane. Nyuma yo gusuzuma iyo nzitizi, Urukiko rwafatiye icyemezo mu ntebe, rusobanura ko atari ngombwa ko umuburanyi abanza kwiyambaza inzira yo gusubirishamo urubanza ingingo nshya kugira ngo agire uburenganzira bwo gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, mu gihe we abona ko nta mpamvu n'imwe yujuje mu zo itegeko riteganywa kugira ngo ikirego cyo gusubirishamo urubanza ingingo nshya cyakirwe. Urukiko rwemeje ko inzitizi yabyukijwe n'uregwa muri uru rubanza nta shingiro ifite rutegeka ko iburanisha rikomeza.

[12] Ku bijyanye n'imizi y'urubanza, Prime Insurance Company Ltd ivuga ko akarengane yagiriwe gashingiye ku kuba mu cyemezo cy'urubanza N° RCA 00029/2019/HC/RSZ, umucamanza yaravuze ko itagaragaje icyo yakoze ngo yumvikane na Uwimanimpaye Jean Claude ku ishyirwaho ry'umuganga cyangwa itsinda ry'abaganga nyuma y'uko ayigaragarije ko atemera raporo y'umuganga wo ku ruhande rw'umwishingizi kandi yarabigaragaje. Ivuga ko mu kugera kuri uwo mwanzuro, Urukiko rwirengagije email Prime Insurance Company Ltd yandikiye Uwimanimpaye Jean Claude ibinyujije ku mu Avoka we imusaba kugena umuganga wakorana n'uwayo kugira ngo bagene ingano y'ubumuga yagombaga gushingirwaho mu kumugenera indishyi, nyamara aho kubikora aregera urukiko. Uwimanimpaye Jean Claude we asobanura ko icyo itegeko rivuga ari uko we na Prime Insurance Company Ltd bashoboraga gushyiraho umuganga cyangwa itsinda ry'abaganga mu gihe babyumvikanyeho, ko ariko ibyo batigeze babyumvikanaho.

[13] Ku itariki ya 22/07/2022, Urukiko rwaciye urubanza rubanziriza urundi, rwemeza ko ikirego cyatanzwe na Prime Insurance Company Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00029/2019/HC/RSZ, rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ku itariki ya 17/10/2019 gifite ishingiro, rutegeka ko hagomba gushyirwaho umuganga cyangwa itsinda ry'abaganga impande zombi zumvikanyeho kugira ngo bafashe kugena igipimo cy'ubumuga bwa Uwimanimpaye Jean Claude, ruvuga ko iburanisha ry'urubanza rizakomeza hasuzumwa ingano y'indishyi zigomba gutangwa nyuma yo kubona raporo.

[14] Nyuma y'uko hashyizweho itsinda ry'abaganga bumvikanyeho n'impande zombi, raporo yabo ikagaragaza ko Uwimanimpaye Jean Claude afite ubumuga buhoraho bwa 49% ndetse n'ubusembwa bw'umubiri buri ku kigero cya 4/6, impande zombi muri uru rubanza zatanze imyanzuro zigaragaza ko hari indishyi zumvikanyeho n'izitarumvikanyeho.

[15] Urubanza rwongeye kuburanishwa mu ruhame ku itariki ya 14/11/2022, ababuranyi bahagarariwe nka mbere, hasuzumwa indishyi Prime Insurance Company Ltd igomba guha Uwimanimpaye Jean Claude n'ingano yazo, kimwe n'ikibazo cy'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.**

- **Kumenya indishyi Prime Insurance Company Ltd igomba guha Uwimanimpaye Jean Claude n'ingano yazo.**

[16] Me Masumbuko NDE Emile, uhagarariye Prime Insurance Company Ltd, avuga ko raporo yumvikanyweho n'impande zombi yagaragaje ko impanuka yasigiye Uwimanimpaye Jean Claude ubumuga buhoraho buri ku gipimo cya 49% n'ibangamira ry'uburanga riri ku kigero cya 4/6, Prime Insurance Company Ltd ikaba isanga igomba kwishyura indishyi zibazwe ku buryo bukurikira:

- Indishyi z'ibangamirabukungu:  $3000 \times 30 \times 12 \times 49\% \times 41 = 5.431.578$  Frw,
- $1 + (7.304\% \times 41)$  aho kuba 8.646.186 Frw yishyuwe nyuma yo kuyategekwa n'urukiko.
- Indishyi z'ububabare (Pretium doloris):  $3000 \times 30 \times 12 \times 100\% =$
- 1.080.000 Frw, aho kuba 1.620.000 Frw yatanzwe;
- Indishyi z'ibangamira ry'uburanga:  $3000 \times 30 \times 12 \times 40\% = 432.000$  Frw, aho kuba 1.080.000 Frw yishyuwe.

[17] Avuga ko indishyi zikurikira Urukiko rwageneye Uwimanimpaye Jean Claude ntazo yari akwiye:

- Frw y'igihembo cya Avoka;
- 20.000 Frw y'igarama kubera ko iyo akora ibyo itegeko risaba Prime Insurance Company Ltd yari kwishyura ku neza bitabaye ngombwa ko ijyanwa mu nkiko;
- 2.160.000 Frw y'indishyi zo gutakaza amahirwe yo gushaka kuko atarengeje 50% hashingiwe ku biteganywa n'ingingo ya 19 y'Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[18] Me Masumbuko NDE Emile avuga ko amafaranga yose hamwe yagombaga gutangwa ari 7.043.578 Frw, ko kuba Prime Insurance Company Ltd yatanze 14.126.186 Frw ku bw'akarengane, asaba Urukiko gutegeka Uwimanimpaye Jean Claude kuyisubiza ikinyuranyo kingana na  $14.126.186 \text{ Frw} - 7.043.578 \text{ Frw} = 7.082.608 \text{ Frw}$ .

[19] Ku birebana n'igipimo cy'ibitsa cyatumye badahuza ku ndishyi z'ibangamirabukungu, Me Masumbuko NDE Emile avuga ko mu gihe uwo baburana yazagaragaza ko igipimo yabariyeho

aricyo cyashyizweho na Banki Nkuru y'Igihugu nta kibazo yabyemera. Naho ku birebana n'indishyi z'ibangamira ry'uburambe mu kazi, avuga ko ntazo Uwimanimpaye Jean Claude agomba guhabwa kubera ko nta kimenyetso yagaragaje cyerekana ko hari akazi kazwi yagiraga.

[20] Me Nsengiyumva Jean Claude, uhagarariye Uwimanimpaye Jean Claude, avuga ko nyuma yo kubona raporo y'abaganga igaragaza igipimo cy'ubumuga impanuka yasigiye Uwimanimpaye Jean Claude, hashingiwe ku ngingo ya 18 n'iya 19 z'Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, asanga Prime Insurance Company Ltd ikwiye kwishyura indishyi zibazwe mu buryo bukurikira:

- Indishyi z'ibangamirabukungu:  $3000 \times 30 \times 12 \times 49\% \times 41 = 7.113.836$  Frw, 1+ (5% x 41)
- Indishyi z'ububabare bw'umubiri (Pretium doloris) buturutse ku mpanuka zitewe n'ibinyabiziga:  $3000 \times 30 \times 12 \times 100\% = 1.080.000$  Frw;
- Indishyi z'ibangamira ry'uburanga hashingiwe ku ngingo ya 19 y'Iteka rya Perezida ryavuzwe haruguru:  $3000 \times 30 \times 12 \times 40\% = 432.000$  Frw;
- Indishyi z'ibangamira ry'uburambe mu kazi nazo zibazwe hashingiwe ku ngingo ya 19 y'Iteka rya Perezida ryavuzwe:  $3000 \text{ Frw} \times 30 \times 6 = 540.000$  Frw.

[21] Ku birebana n'igipimo cy'ibitsa impande zombi zidahurizaho mu kubara indishyi z'ibangamirabukungu, Me Nsengiyumva Jean Claude avuga ko bo babariye kuri 5% kubera ko aricyo gipimo cyashyizweho n'amabwiriza ya Banki Nkuru y'Igihugu.

[22] Ku birebana n'indishyi z'ibangamira ry'uburambe mu kazi Prime Insurance Company Ltd itabaze ivuga ko impamvu ari uko izo ndishyi zibarwa ku muntu uhembwa ku kwezi, avuga ko, n'ubwo Uwimanimpaye Jean Claude adahembwa ku kwezi, ariko hari icyo impanuka yamubangamiyeho nk'umuntu ufite akazi asanzwe akora gatuma atahana 3.000 Frw ku muni kuko ari nyakabyizi. Agasanga nawe agomba kubarirwa izo ndishyi hakurikijwe umushahara muto umuntu atahana ku muni (SMIG) wa 3.000 Frw, kuko ubumuga yagize bwatumye atagishobora ako kazi yari asanzwe akora kubera ko ingufu yari afite atarizo agifite ubu.

## **UKO URUKIKO RUBIBONA**

[23] Impande zombi muri uru rubanza zemeranya ku ndishyi z'ibangamira ry'uburanga no ku ndishyi z'ububabare (pretium doloris), izo batumvikanaho akaba ari indishyi z'ibangamirabukungu bitewe n'igipimo cy'ibitsa badahurizaho. Prime Insurance Company Ltd yabariye kuri 7.304%, mu gihe Uwimanimpaye Jean Claude we yabariye 5%. Izindi ndishyi batumvikanaho ni iz'ibangamira ry'uburambe mu kazi, aho Prime Insurance Company Ltd ivuga ko ntazigomba gutangwa, mu gihe Uwimanimpaye Jean Claude we avuga ko agomba kuzihabwa hashingiwe ku biteganywa n'ingingo ya 19 y'Iteka rya Perezida ryavuzwe haruguru.

[24] Ku birebana n'igipimo cy'ibitsa, Urukiko rurasanga igipimo kigaragara ku rubuga (website) rwa Banki Nkuru y'Igihugu (Central Bank rate) ku muni w'isomwa ry'urubanza ari 6.5%, bityo akaba aricyo kigomba gushingirwaho mu kubara indishyi z'ibangamirabukungu Prime

Insurance Company Ltd igomba guha Uwimanimpaye Jean Claude. Habariwe kuri icyo gipimo rero, indishyi zigomba gutangwa ni  $3000 \times 30 \times 12 \times 41 \times 49\% = 5.912.043,6$  Frw.  
 $1 + (6.5\% \times 41)$

[25] Ku birebana n'indishyi z'ibangamira ry'uburambe mu kazi impande zombi zitumvikanaho, ingingo 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, iteganya ko [...] bene izo ndishyi zitangwa ku bantu bakurikira :

- Gutakaza amahirwe y'akazi ku munyeshuri wo mu mashuri yisumbuye, uwo mu mashuri y'imyuga, uwo mu mashuri makuru cyangwa andi angana na yo;
- Gutakaza uburambe mu kazi ku muntu wari usanzwe akora. [...] Mu rurimi rw'igifaransa iyi ngingo yanditswe muri aya magambo : *Le préjudice de carrière s'entend :*
  - *soit de la perte de chance certaine d'une carrière à laquelle peut raisonnablement espérer un élève ou un étudiant de l'enseignement secondaire, technique, supérieur ou leur équivalent ;*
  - *soit de la perte de carrière subie par une personne déjà engagée dans la vie active. [...]*

[26] 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.

[27] Ku birebana n'abahabwa indishyi zo gutakaza amahirwe yo kubona akazi kavugwa mu ngingo ya 19, igika cya 4, y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru, Urukiko rurasanga abo umushingamategeko yazigeneye ari abanyeshuri gusa. Abandi bagenewe izo gutakaza akazi, ibyo bikaba bisobanuye ko bagomba kuba bari bagafite bakagatakaza kubera mpanuka. Ibi byumvikanisha ko umuntu utagaragaza ko hari akazi yari afite ubwo yakoraga impanuka nta ndishyi ashobora guhabwa kubera ko nyine ntacyo yatakaje. Ibi binahura n'ibyo abahanga mu mategeko bavuga ko kugira ngo hatangwe indishyi, iyo igihombo kidakomoka ku makosa ashingiye ku masezerano, icyo gihombo kigomba kugaragaza ibintu bitatu : kuba gihari mu buryo butaziguye, kuba kidashidikanywaho kandi kikaba cyaragabanuye umutungo w'uwakorewe ikosa. [...] (Pour être réparable, le préjudice, quand il s'agit de responsabilité extracontractuelle, n'a à remplir que trois conditions : il doit être direct, certain et avoir amoindri le patrimoine propre de la victime)<sup>1</sup>. Ibi bikajyana n'ihame ry'uko ikiba kigamijwe mu gutanga indishyi ari uko nyir'ugukora ikosa ryagize uwo ryangiriza, amwishyura indishyi zituma asubira kumera nk'uko yari kuba ameze iyo iryo kosa ritaza kubaho. (La réparation vise à remettre la victime dans l'état où elle se serait trouvée s'il n'y avait pas eu le fait dommageable)<sup>2</sup>.

[28] Ku birebana n'indishyi zitangwa ku mukozi wagize igihombo kubera impanuka, abahanga mu mategeko kandi bavuga ko icyo gihombo kireberwa mu byo yinjizaga biturutse ku kazi ku

<sup>1</sup> Philippe Malaurie et alii, Droit des obligations, 10ème édition, 2018, Paris, LGDJ, § 241.

<sup>2</sup> Yvaine BUFFELAN-LANORE, Virginie LARRIBAU-TERNEYRE, Droit civil des obligations, 17ème édition 62020-2021, Paris, Dalloz, § 2508.



munsi w'impanuka. Ku bantu badafite akazi, (abana, abanyeshuri, abageze mu zabukuru, abagore cyangwa abagabo baba mu rugo), nta gihombo cy'ako kanya gituruka ku kazi gishobora kubaho, igishobora kwitabwaho ni amahirwe yo kubona akazi kubera iyo mpanuka. (Les pertes de gains professionnels sont appréciées par rapport aux revenus dont disposait la victime au moment de l'accident. Il faut donc distinguer les inactifs et les personnes ayant une activité au moment de l'accident. Pour les inactifs (enfants, étudiants, retraités, femmes ou homme au foyer), il ne peut y avoir de pertes de revenus actuels et seule l'incidence professionnelle et/ou scolaire du dommage peut être pris en compte (perte de chance de trouver un emploi par exemple)<sup>3</sup>).

[29] Ku mpaka ziri hagati y'abaturanyi muri uru rubanza zo kumenya niba uhabwa indishyi zo gutakaza akazi ari ubona umushahara ku kwezi nk'uko byemezwa na Prime Insurance Company Ltd, mu gihe Uwimanimpaye Jean Claude we avuga ko n'udafite akazi kagaragara gahemberwa ku kwezi agenerwa bene izo ndishyi, Urukiko rurasanga, hashingiwe ku bisobanuro byatanzwe haruguru, umuntu utagaragaza ibimenyetso ko hari akazi yari afite igihe yakoraga impanuka, nta ndishyi zo kugatakaza agomba guhabwa kubera ko nyine ntako yari afite, bityo na Uwimanimpaye Jean Claude akaba nta ndishyi zo gutakaza akazi agomba guhabwa kubera ko, n'ubwo avuga ko yari nyakabyizi, atagararije urukiko ibimenyetso by'ako kazi ka nyakabyizi yari afite.

[30] Hashingiwe ku bisobanuro byose byatanzwe haruguru, Urukiko rurasanga Uwimanimpaye Jean Claude agomba guhabwa Indishyi z'ibangamirabukungu zihwanye na 5.912.043,60 Frw, indishyi z'ububabare (Pretium doloris) zihwanye na 1.080.000 Frw; n'indishyi z'ibangamira ry'uburanga zihwanye na 432.000 Frw, zose hamwe zikaba 7.424.043,6 Frw.

[31] Urukiko rurasanga, mu rwego rwo kurangiza urubanza rwasubiwemo mu rwego rw'akarengane, Prime Insurance Company Ltd yarishyuye Uwimanimpaye Jean Claude indishyi zose hamwe zihwanye na 14.126.186 Frw. Kubera ko rero bigaragara ko amafaranga yagombaga kwishyura ari make kuri ayo, Uwimanimpaye Jean Claude akaba agomba gusubiza arengaho ahwanye na 14.126.186 Frw - 7.424.043,6 Frw = 6.702.142,4 Frw.

**▪ Kumenya niba amafaranga y'ikurikiranarubanza n'ay'igihembo cy' Avoka yangwa muri uru rubanza.**

[32] Uhagarariye Prime Insurance Company Ltd avuga ko isaba indishyi zingana na 2.000.000 Frw akubiyemo ay'ikurikiranarubanza n'ay'igihembo cya Avoka. Avuga ko indishyi zisabwa n'uruhande baburana nta shingiro zifite kuko yatanze ikirego ishingiyeye ku byo yemererwa n'amategeko.

[33] Ku ruhande rwa Uwimanimpaye Jean Claude uregwa muri uru rubanza, bavuga ko indishyi Prime Insurance Company Ltd isaba ntazo ikwiye guhabwa kuko ariyo itarakoze ibyo yasabwaga ngo inereke umucamanza ko ibyo yaburanishaga byari ukuri. Bavuga ko ahubwo kuba Prime Insurance Company Ltd yarongeye kumuzana mu manza ari ukumurenganya, kubera iyo mpamvu bakaba basaba ko yamuha indishyi zingana na 1.000.000 Frw, n'igihembo cy'Avoka kingana nacyo na 1.000.000 Frw.

## UKO URUKIKO RUBIBONA

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<sup>3</sup> Id. § 2315.

[34] Urukiko rurasanga indishyi z'ikurikiranarubanza n'igihembo cya Avoka Prime Insurance Company Ltd isaba ikwiye kuzihabwa kubera ko ariyo itsinze urubanza kandi bikaba bigaragara ko yagombye gushaka Avoka wo kuyiburanira ikanakurikirana urubanza. Urukiko rurasanga ariko 2.000.000 Frw yasabye ari menshi, bityo mu bushishozi bwarwo ikaba igenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza.

[35] Ku birebana n'indishyi zisabwa na Uwimanimpaye Jean Claude, Urukiko rurasanga ntazo agomba guhabwa kuko ntacyo atsindiye muri uru rubanza.

### **III. ICYEMEZO CY'URUKIKO**

[36] Rwemeje ko ikirego cyatanzwe na Prime Insurance Company Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00029/2019/HC/RSZ, rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ku itariki ya 17/10/2019 gifite ishingiro ;

[37] Rwemeje ko urwo rubanza ruhindutse ku bijyanye n'indishyi Prime Insurance Company Ltd yagombaga guha Uwimanimpaye Jean Claude ;

[38] Rwemeje ko Uwimanimpaye Jean Claude yagombaga guhabwa indishyi zingana na 7.424.043,6 Frw ;

[39] Rutegetse Uwimanimpaye Jean Claude gusubiza Prime Insurance Company Ltd 6.702.142,4 Frw.

[40] Rutegetse Uwimanimpaye Jean Claude guha Prime Insurance Company Ltd 800.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.