KWIZERA v RADIANT INSURANCE COMPANY Ltd

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00014/2022/SC (Mukamulisa, P.J., Nyirinkwaya, Cyanzayire, J.) 18 Gicurasi 2023]

Amategeko agenga imanza z'imbonezamubano – Imanza zikomoka ku mpanuka – Ibisabwa mu kwishyura indishyi – Indishyi ku bantu bakora umwuga bigengaho - Abafite umwuga wigenga cyangwa abantu bakora umwuga bigengaho (nk'abamotari) bagomba kwerekana ibikorwa bigaragara byerekana inyungu zabo zicirirtse z'amezi 12 abanziriza impanuka. Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 14.

Amategeko agenga imanza z'imbonezamubano – Imanza zikomoka ku mpanuka – Ibisabwa mu kwishyura indishyi – Indishyi ku bantu bakora umwuga bigengaho batabasha kubona inyandiko mpamo yemeza umushahara wabo - Iyo inyandiko mpamo zemeza umushahara zitabonetse, umwuga uwangirijwe akora ukaba uzwi neza, indishyi zigenwa hakoreshejwe kugereranya n'umushahara uvanze (brut) w'umuntu ukora umwuga bimeze kimwe cyangwa ujya kumera kimwe n'uwo akora. Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye Imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, ingingo ya 4.

Amategeko agenga imanza z'imbonezamubano – Imanza zikomoka ku mpanuka – Uburyo bwo kubara indishyi – Umusaruro ugenderwaho mu kubara indishyi z'ibangamirabukungu - Indishyi ku bantu bakora umwuga bigengaho - Mu kubara indishyi z'ibangamirabukungu ku bantu bakora umwuga bigengaho, harebwa umusaruro w'umwaka umuntu atahana (net) aho kuba umusaruro mbumbe.

Amategeko y'imanza mbonezamubano - Imanza z'indishyi zikomoka ku mpanuka – Indishyi mbangamirabukungu – Ibarwa ry'indishyi mbangamirabukungu ku muntu ukora umwuga wo gutwara abagenzi kuri moto - Umusaruro utahanwa - Umusaruro utahanwa ku mwaka n'umuntu ukora umwuga wo gutwara abantu kuri moto hamaze kuvanwaho umusoro ku musaruro n'umusoro w'ipatanti, ungana na 2.400.000 Frw - 72.000 Frw – 8.000 Frw = 2.320.000 Frw. Umusaruro atahana ku kwezi ungana na 2.320.000 Frw:12 = 193.333 Frw; naho umusaruro atahana ku munsi ukaba 193.333 Frw:30 = 6.444 Frw.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyagatare, Kwizera, wakomerekeye mu mpanuka ya Moto yishingiwe na Radiant Insurance Company Ltd (Radiant), ayirega asaba ko itegekwa kumuha indishyi zikomoka kuri iyo mpanuka. Urwo Rukiko rwategetse Radiant kumuha indishyi zinyuranye.

Radiant yajuririye mu Rukiko Rukuru, Urugereko rwa Rwamagana, urwo Rukiko rushingiye ku kuba Kwizera atarashoboye kugaragaza umusaruro yinjizaga ku munsi cyangwa ku kwezi ku buryo buhoraho, rusanga ataragombaga kubarirwa indishyi z'ibangamirabukungu hashingiwe ku 200.000 Frw yinjizaga ku kwezi ahubwo yaragombaga kuzibarirwa hashingiwe ku mushahara w'umwaka muto ntarengwa (SMIG) ungana na 3.000 Frw ku munsi bituma indishyi zihabwa Kwizera zigabanywa.

Kwizera yasabye ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane, hemezwa ko ruburanishwa n'Urukiko rw'Ikirenga, mu iburanisha, ababuranyi bajya impaka ku kibazo cyo kumenya uburyo indishyi z'ibangamirabukungu zisabwa zigomba kubarwa.
Urega avuga ko adakwiye kubarirwa mu bantu badafite umushahara uzwi, kugira ngo ibe impamvu ituma agenerwa indishyi z'ibangamirabukungu hagendewe kuri SMIG ya 3.000 Frw agashingira ku bimenyetso birimo ikarita yerekana ko yari umumotari, n'inyandiko RRA yatanze igaragaza ko abatwara moto binjiza 2.400.000 Frw ku mwaka.

Radiant yo ivuga ko izo ndishyi zikwiye kubarwa hashingiwe ku mushahara w'umwaka muto ntarengwa wemewe n'amategeko (SMIG) kuko ariwo ushingirwaho igihe cyose usaba indishyi atabashije kugaragaza umusaruro yinjizaga ku munsi cyangwa ku kwezi ku buryo buhoraho nk'uko byemejwe n'Urukiko Rukuru.

Incamake y'icyemezo: Abafite umwuga wigenga cyangwa abantu bakora umwuga bigengaho (nk'abamotari) bagomba kwerekana ibikorwa bigaragara byerekana inyungu zabo zicirirtse z'amezi 12 abanziriza impanuka bityo ibyo Radiant ivuga ko Kwizera atagaragaza umusaruro yinjiza ku munsi sibyo kuko Kwizera wari utunze moto, afatwa nk'umusoreshwa uri mu cyiciro cy'abinjiza 2.400.000 Frw ku mwaka.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111;
Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, ingingo ya 4;
Itegeko Nº 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage, ingingo ya 5;
Itegeko Nº 027/2022 ryo ku wa 20/10/2022 rishyiraho imisoro ku musaruro, ingingo ya 14;
Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ingingo ya 14; 18.

Imanza zifashishijwe:
RCAA 0049/14/CS, SORAS AG Ltd C/ Umuhoza Pacifique n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016;
RS/INJUST/RC 00010/2021/SC, Prime Insurance Company Ltd na Uwimanimpaye Jean Claude, rwaciwe n'Urukiko rw'Ikirenga ku wa 02/12/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 25/08/2018, i Kiziguro mu Karere ka Gatsibo, Intara y'Iburasirazuba habereye impanuka ya moto ifite plaque RD 42V, yari itwawe na Nshimiyimana Gilbert agonga indi moto Victor TVS ifite plaque RD 950Q yari itwawe na Kwizera Eric, ayikomerekeramo, agira ubumuga buhoraho bwa 90%. Iyo moto yamugonze yari ifite ubwishingizi muri Radiant Insurance Company Ltd, iza kwitwa Radiant muri uru rubanza.

[2] Nyuma yo kugerageza inzira y'ubwumvikane bikananirana, Kwizera Eric yatanze ikirego mu Rukiko Rwisumbuye rwa Nyagatare arega Radiant, asaba indishyi zikomoka kuri iyo mpanuka zibazwe mu buryo bukurikira:

- Indishyi z'ibangamira ry'uburanga: 240.000 Frw X 12 X 150%= 4.320.000 Frw;
- Indishyi z'akababaro: 240.000 Frw X 12= 2.880.000 Frw;
- Indishyi z'ibangamirabukungu: (240.000Frw X 12 X 35 X 90) /1+ (35 X 8%) = 90.720.000/3.8 = 23.873.684, 2 Frw;
- Amafaranga yakoreshejwe kubera impanuka harimo ayakoreshejwe mu kwivuza, amafaranga y'ingendo, amafaranga yaguze dosiye y'impanuka n'amafaranga yaguze ibyemezo by'inzego z'ibanze.[1]

[3] Mu rubanza Nº RC 00048/2020/TGI/NYG rwaciwe ku wa 09/06/2021, Urukiko Rwisumbuye rwa Nyagatare rwemeje ko ikirego cya Kwizera Eric gifite ishingiro, rutegeka Radiant kumuha indishyi zingana na 23.700.867 Frw arimo n'igihembo cy'Avoka cya 600.000 Frw.

[4] Mu gufata icyo cyemezo, urwo Rukiko rwasanze Kwizera Eric yaramugajwe n'impanuka yatejwe n'ikinyabiziga cyishingiwe na Radiant, rusanga akwiye guhabwa indishyi zikurikira:

- Indishyi z'ibangamirabukungu: (200.000 Frw × 12 × 36 × 90%) 1+ (8%-taux de placement actuel × 36) = 20.041.237 Frw.
- Indishyi z'ibangamiramuco/akababaro (pretium doloris): (3000 Frw

  × 30 × 12) × 150% = 1.620.000 Frw.
- Indishyi z'ibangamira ry'uburanga: (3000 Frw × 30 × 12) × 150% = 1.620.000 Frw. Yose hamwe akaba 20.041.237 Frw + 3.240.000 Frw = 23.281.237 Frw (Urukiko rwongeyeho ko igiteranyo cy'izo urega yasabye ari 22.000.867 Frw). Kuri izi ndishyi Urukiko rwavuze ko hiyongeraho 1.700.000 Frw atanzwe mu bushishozi bwarwo, akubiyemo amafaranga y'ingendo, ay'ikurikiranarubanza harimo no gushaka

[1] Mu myanzuro ye, Kwizera Eric ntabwo yigeze agaragaza ingano y'aya mafaranga asaba, ariko mu iburanisha ryo ku wa 12/05/2021, Me Shema Déo umuburanira yamenyesheje Urukiko Rwisumbuye rwa Nyagatare ko basaba indishyi z'ibangamirabukungu zihwanye na 19.018.867 Frw, indishyi z'akababaro zingana na 1.620.000, indishyi z'ibangamira ry'uburanga zingana na 1.200.000 Frw, amafaranga yakoreshejwe kubera impanuka harimo ay'ingendo angana na 500.000 Frw, ayo kwivuza 396.232 Frw, igihembo cy'Avoka 1.000.000 Frw n'amafaranga y'igarama ya 20.000 Frw yose hamwe akaba 23.755.099 Frw.

ibyangombwa bitandukanye, ayo kwivuza, igihembo cy'Avoka n'igarama. Bityo indishyi zose hamwe zikaba 22.000.867 Frw + 1.700.000 Frw = 23.700.867 Frw[2].

[5] Radiant yajuririye mu Rukiko Rukuru, Urugereko rwa Rwamagana, isaba gusuzuma ibirebana n'indishyi z'ibangamirabukungu kuko hatanzwe iz'umurengera kandi zidakurikije amategeko, hakaba n'andi mafaranga Urukiko rwatanze adasobanutse kuko yatanzwe nta bimenyetso ashingiyeho.

[6] Mu rubanza Nº RCA 00051/2021/HC/RWG rwaciwe ku wa 11/01/2022, Urukiko Rukuru, Urugereko rwa Rwamagana rwemeje ko ubujurire bwa Radiant bufite ishingiro kuri bimwe, ko urubanza Nº RC 00048/2020/TGI/NYG rwaciwe ku wa 09/06/2021, ruhindutse gusa ku bijyanye n'indishyi z'ibangamirabukungu, rutegeka Radiant kwishyura Kwizera Eric indishyi z'ibangamirabukungu zingana na 9.208.421 Frw na 1.700.000 Frw yagenwe mu rubanza rujuririrwa ku byakoreshejwe mu rubanza harimo n'igihembo cy'Avoka.

[7] Mu gufata iki cyemezo, urwo Rukiko rwasanze indishyi z'ibangamirabukungu Kwizera Eric yagenewe zidakurikije amategeko kubera ko atashoboye kugaragaza umusaruro yinjizaga ku munsi cyangwa ku kwezi ku buryo buhoraho, rwemeza ko agomba kubarirwa indishyi z'ibangamirabukungu hashingiwe ku mushahara w'umwaka muto ntarengwa (SMIG) ungana na 3.000 Frw nk'uko yemejwe n'Urukiko rw'Ikirenga mu rubanza Nº RCAA 0049/14/CS rwaciwe ku wa 25/11/2016, zikabarwa mu buryo bukurikira : 3.000 Frw x 30 x 12 x 36 x 90% : 1 + (7.992% x 36) = 9.208.421 Frw.

[8] Ku wa 06/02/2022, Kwizera Eric yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza Nº RCA 00051/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 11/01/2022 rwasubirwamo ku mpamvu z'akarengane. Amaze gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza rwavuzwe haruguru rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma raporo yakozwe kuri urwo rubanza, ku wa 22/08/2022, yafashe icyemezo Nº 130/CJ/2022 cy'uko urubanza Nº RCA 00051/2021/HC/RWG rusubirwamo n'Urukiko rw'Ikirenga ku mpamvu z'akarengane, ruhabwa Nº RS/INJUST/RC 00014/2022/SC.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 27/03/2023, Kwizera Eric ahagarariwe na Me Shema Deo naho Radiant ihagarariwe na Me Uwamariya Agnès, ababuranyi bajya impaka ku bibazo byo kumenya uburyo indishyi z'ibangamirabukungu Kwizera Eric yasabye zagombaga kubarwa no kumenya niba hari izindi ndishyi zatangwa muri uru rubanza. Iburanisha risojwe, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 21/04/2023, ariko ntirwasomwa uwo munsi kuko hari ibyari bigisuzumwa, isomwa ryarwo rishyirwa ku wa 18/05/2023 saa yine.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya uburyo indishyi z'ibangamirabukungu Kwizera Eric asaba zigomba kubarwa.

[2] Biraboneka ko imibare yo mu rubanza rwaciwe na TGI irimo amakosa kubera ko mu myanzuro y'urega, mu nama ntegurarubanza ndetse no mu iburanisha nta na hamwe bigaragara ko indishyi zasabwe na Kwizera Eric zose hamwe zingana na 22.000.867 Frw.

[10] Me Shema Deo avuga ko ku rwego rwa mbere, Urukiko Rwisumbuye rwa Nyagatare rwemeje ko Kwizera Eric akorera 200.000 Frw ku kwezi rushingiye ku bimenyetso binyuranye birimo icyemezo cya RRA, historique de compte ya Remera Sacco Giribakwe yerekana ko yishyura umusoro wa 18.000 Frw ku gihembwe ndetse n'inyandiko za RRA z'imenyekanisha musoro mu mwaka wa 2018, hakaba kandi ikimenyetso cya plan de remboursement yatanzwe kigaragaza uburyo Kwizera Eric yishyura umwenda w'iyo moto yakoreshaga kuko yari inguzanyo ya Remera Sacco Giribakwe.

[11] Akomeza asobanura ko ayo mafaranga yose bavuze muri ibyo bimenyetso yavaga ku musaruro wa moto Kwizera Eric yakoreshaga mu kazi k'ubumotari. Asobanura kandi ko hari inyandiko yo ku wa 18/08/2020 ya Remera Sacco Giribakwe ihamya ko moto Kwizera Eric yakoreshaga nk'umumotari ari inguzanyo yafashe kandi ko yagendaga yishyura ariko moto ikaba yari itaramwandikwaho kuko yari atararangiza kwishyura. Yongeraho ko iyo ufashe ibyo bimenyetso byose byagaragajwe, ukabihuza n'inyandiko ya RRA yo ku wa 27/02/2017 yemeza ko abantu bose bakora akazi k'ubumotari binjiza 2.400.000 Frw ku mwaka, byerekana nta shiti ko yinjizaga 2.400.000 Frw ku mwaka.

[12] Asoza asaba ko iyo nyandiko ya RRA nk'ikimenyetso cy'inyandikomvaho ariyo yashingirwaho mu kugena indishyi Kwizera Eric azahabwa kuko bitumvikana ukuntu yabarirwa mu cyiciro cya ba nyakabyizi kandi ari umumotari wishyura umusoro.

[13] Me Uwamariya Agnès uburanira Radiant avuga ko nta karengane kabayeho mu rubanza n° RCA 00051/2021/HC/RWG kubera ko nta kimenyetso na kimwe Urukiko Rukuru, Urugereko rwa Rwamagana rwigeze rushyikirizwa ngo kibe kitaritaweho, bikumvikana ko kuba Kwizera Eric atemeranya n'icyemezo cy'urwo Rukiko bitaba impamvu ituma urubanza yatsinzwe rusubirwamo ku mpamvu z'akarengane.

[14] Akomeza avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rwasobanuye ko ibimenyetso Kwizera Eric yatanze birimo ikarita y'akazi, icyemezo cyo ku wa 08/05/2017 yahawe na Koperative COTAMNDAGA kigaragaza ko yinjizaga 200.000 Frw ku kwezi hamwe n'inyandiko ya RRA yo ku wa 27/02/2017 yerekanaga ko yinjiza 2.400.000 Frw ku mwaka, bidahagije ngo hemezwe ko yinjizaga koko 200.000 Frw ku kwezi. Asanga rero rutaramurenganyije kubera ko uretse no kuba inyandiko ya RRA yarandikiwe uwitwa Hanyurwimfura Vincent, ikaba itari igenewe Kwizera Eric, nta n'ubwo yigeze agaragaza amasezerano y'akazi kuko ariyo yonyine yari kwerekana umushahara ahembwa.

[15] Asoza avuga ko Kwizera Eric atagaragaza ko koko yakoreraga 200.000 Frw ku kwezi, ari nayo mpamvu Radiant ikomeje gusaba ko indishyi z'ibangamirabukungu zabarirwa kuri SMIG, kuko ariyo ishingirwaho igihe cyose usaba indishyi atabashije kugaragaza umusaruro uturuka ku mirimo akora.

Uko Urukiko rubibona

[16] Ingingo ya 5 y'Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, igira iti: "iyo impanuka yateye ubumuga uwangirijwe bumubuza gukora akazi burundu, agomba guhabwa amafaranga y'indishyi kubera ubusembwa ku mubiri, guhungabana mu bwenge bwe

cyangwa kubera ingaruka bifite ku nyungu yavanaga ku mwuga we atagishoboye gukora kubera ubumuga. Indishyi zigenwa hakurikijwe Iteka rya Perezida wa Repubulika".

[17] Ingingo ya 18 y'Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga iteganya ibikurikira: "Iyo ubumuga buhoraho burengeje 30%, indishyi y'ibangamirabukungu ikorwa hakurikijwe amategeko akurikira: Iyo uwahohotewe akora umurimo ahemberwa, ahabwa amafaranga abarwa hakurikijwe igihembo umuntu atahana, urwego rw'ubumuga n'imyaka ye. Iyo uwahohotewe ahembwa umushahara amaze igihe kitarenze amezi atandatu adakora, ahabwa amafaranga abarwa hakurikijwe igihembo cye cya nyuma atahana, urwego rw'ubumuga n'imyaka ye; Iyo uwahohotewe akora umurimo adahemberwa, cyangwa iyo yakoraga gusa imirimo yo mu rugo, cyangwa se iyo abamufiteho uburenganzira badashobora kwerekana umusaruro we nyakuri ukomoka ku murimo, kandi niba yari afite imyaka irenze 16 igihe cy'impanuka, amafaranga agomba guhabwa azabarwa bahereye ku ifatizo ry'inshuro imwe y'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Indishyi izakorwa mu buryo bukurikira: Umusaruro w'umwaka umuntu atahana x umubare w'imyaka ashigaje kubaho akora x ijanisha ry'ubumuga kugabanya 1 + (igipimo cy'ibitsa x umubare w'imyaka ashigaje kubaho akora). Ibyo ari byo byose, iyo ndishyi ntigomba kurenga, yose hamwe, inshuro mirongo inani umushahara w'umwaka muto ntarengwa wemewe n'amategeko".

[18] Urukiko rurasanga ababuranyi bemeranya ko Kwizera Eric yakoze impanuka ku wa 25/08/2018 akora akazi k'ubumotari, akaba yari afite imyaka 30, agira ubumuga buhoraho bungana na 90%. Urukiko rusanga kandi, moto Kwizera Eric yatwaraga yari iye kuko nk'uko bigaragara muri dosiye y'urubanza, ku wa 23/02/2018 yahawe inguzanyo na Remera Sacco Giribakwe ingana na 900.000 Frw yagombaga kwishyura mu gihe cy'amezi 18, ku nyungu ya 24% ku mwaka, akishyura 60.000 Frw ku kwezi, inguzanyo yose ikishyurwa bitarenze ku wa 23/08/2019. Ibi bikaba bivuze ko yakoraga umwuga yigengaho wo gutwara abantu kuri moto.

[19] Ababuranyi banemeranya kandi ko kubera impanuka yagize, Kwizera Eric akwiye indishyi z'ibangamirabukungu, icyo batemeranyaho, ari nacyo kigize impaka muri uru rubanza, ni ukuba umuhagarariye avuga ko yagombaga kubarirwa indishyi hashingiwe ku kuba abakoresha moto binjiza 2.400.000 Frw ku mwaka, nk'uko byemejwe na Komiseri Wungirije Ushinzwe Abasora Bato n'Abaciriritse, mu gihe uhagarariye Radiant avuga ko indishyi zikwiye kubarwa hashingiwe ku mushahara muto w'umwaka ntarengwa wemewe n'amategeko (SMIG) kuko adashobora kwerekana umusaruro we nyakuri yinjizaga.

[20] Urukiko rurasanga nk'uko byasobanuwe mu ngingo ya 18 y'Iteka rya Perezida no 31/01 ryibukijwe haruguru, uwakomeretse wagize ubumuga buhoraho burengeje 30%, akaba afite umurimo ahemberwa, ahabwa amafaranga abarwa hakurikijwe igihembo atahana, urwego rw'ubumuga n'imyaka ye. Ni mu gihe uwakomeretse akora umurimo adahemberwa, cyangwa se iyo abamufiteho uburenganzira badashobora kwerekana umusaruro we nyakuri ukomoka ku murimo, ahabwa indishyi zibarwa bahereye ku ifatizo ry'inshuro imwe y'umushahara w'umwaka muto ntarengwa wemewe n'amategeko (SMIG) ingana na 3.000 Frw ku munsi[3].

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[3] Nk'uko wemejwe mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga, nko mu rubanza Nº RCAA 0049/14/CS rwaciwe ku wa 25/11/2016, haburana SORAS AG Ltd C/ UMUHOZA Pacifique n'abandi, igika cya 28.

[21] Urukiko rurasanga ariko mu bahohotewe bavugwa mu ngingo ya 18 yavuzwe haruguru, hatagaragaramo abantu bakora umwuga bigengaho nk'abamotari, akaba ariyo mpamvu mu kugena umusaruro fatizo waherwaho mu kubabarira indishyi z'ibangamirabukungu, hakwifashishwa ingingo ya 14, igika cya 3, y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru iteganya ko abafite umwuga wigenga cyangwa abantu bakora umwuga bigengaho bagomba kwerekana ibikorwa bigaragara byerekana inyungu zabo ziciriritse z'amezi 12 abanziriza impanuka. Ingingo ya 4, igika cya 5, y'Itegeko Nº 41/2001 ryo ku wa 19/09/2001 yongeraho ko inyandiko mpamo zitabonetse, umwuga uwangirijwe akora ukaba uzwi neza, indishyi zigenwa hakoreshejwe kugereranya n'umushahara uvanze (brut) w'umuntu ukora umwuga bimeze kimwe cyangwa ujya kumera kimwe n'uwo akora.

[22] Urukiko rurasanga nk'uko byasobanuwe, Kwizera Eric yarakoraga umwuga yigengaho w'ubumotari, bityo rero mu kumubarira indishyi z'ibangamirabukungu hakaba hashingirwa ku musaruro abandi bakora umurimo nk'uwe binjiza ku mwaka aho kubarirwa izo ndishyi hashingiwe ku mushahara muto ntarengwa wemewe n'amategeko (SMIG) nk'uko byakozwe n'Urukiko Rukuru, Urugereko rwa Rwamagana. Icyakora, kubera ko hashingiwe ku biteganywa n'ingingo ya 18 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003, mu kubara indishyi z'ibangamirabukungu harebwa umusaruro w'umwaka umuntu atahana (net) hatarebwa umusaruro mbumbe, ni ngombwa kubanza kureba umusaruro ukora akazi ko gutwara abantu kuri moto atahana, hamaze kuvanwaho umusoro.

[23] Ingingo ya 14, igika cya 3, y'Itegeko Nº 027/2022 ryo ku wa 20/10/2022 rishyiraho imisoro ku musaruro, iteganya ko umusoro ucishirije, ungana n'atatu ku ijana (3%) y'ibyacurujwe mu mwaka, utangwa na nyir'igikorwa cy'ubucuruzi giciriritse. Mu gika cyayo cya nyuma, iteganya ko bitabangamiye uburenganzira bwo gusora ku nyungu nyakuri, ibikorwa byo gutwara abantu n'ibintu mu nzira y'ubutaka bicibwa umusoro ukomatanyije ubarwa mu buryo bugaragara ku mugereka w'iri tegeko. Uwo mugereka ugaragaza ibipimo by'umusoro ku musaruro w'ibinyabiziga bitwara abantu n'ibintu. Ku bijyanye na moto nini, bigaragara ko umusoro ku mwaka ari 72.000 Frw.

[24] Ingingo ya 5, 2º y'Itegeko Nº 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage, iteganya umusoro w'ipatanti mu misoro yishyurwa inzego z'imitegekere y'Igihugu zegerejwe abaturage. Ingingo ya 32 y'iryo Tegeko, iteganya ko umusoro w'ipatanti utangwa n'umuntu wese buri hantu atangije igikorwa cy'ubucuruzi mu Karere, naho ingingo ya 34 igateganya ko umusoro w'ipatanti ubarwa hashingiwe ku mbonerahamwe ziri ku mugereka w'Itegeko, aho imbonerahamwe ya II, b igaragaza ko abatwara ibintu n'abantu ku mapikipiki bishyura umusoro w'ipatanti ungana na 8.000 Frw (ku mwaka).

[25] Nk'uko byasobanuwe haruguru, Kwizera Eric nk'uwari utunze moto afatwa nk'umusoreshwa uri mu cyiciro cy'abinjiza 2.400.000 Frw ku mwaka, kuko nk'uko byibukijwe, umusoro wa 72.000 Frw wagenwe n'Itegeko ko ugomba kwishyurwa buri mwaka n'amapikipiki, ni umusoro ucishirije ungana na 3% y'umusaruro yinjije mu mwaka, utangwa na nyir'igikorwa cy'ubucuruzi giciriritse nk'uko byasobanuwe mu gika cya 2 cy'ingingo ya 14 y'Itegeko Nº 027/2022 ryavuzwe haruguru. Mu yandi magambo, 72.000 Frw y'umusoro ku mwaka ahwanye na 3% y'umusaruro wa 2.400.000 Frw ku mwaka aribyo (72.000 Fw×100): 3 = 2.400.000 Frw.

[26] Urukiko rusanga kandi, Kwizera Eric nk'ukora umwuga wo gutwara abantu kuri moto, agomba kwishyura umusoro w'ipatanti hashingiwe ku mbonerahamwe ya II, b iri ku mugereka w'Itegeko no 75/2018 ryo ku wa 07/09/2018 ryavuzwe haruguru.

[27] Urukiko rusanga rero amafaranga atahanwa ku mwaka n'umuntu utunze moto, hamaze kuvanwaho umusoro ku musaruro n'umusoro w'ipatanti, angana na 2.400.000 Frw - 72.000 Frw - 8.000 Frw = 2.320.000. Ni ukuvuga ko ku kwezi atahana 2.320.000 Frw: 12 = 193.333 Frw; naho ku munsi agatahana 193.333 Frw: 30 = 6.444 Frw.

[28] Nk'uko Urukiko rw'Ikirenga rwabyemeje mu rubanza Nº RS/INJUST/RC 00010/2021/SC rwaciwe ku wa 02/12/2022, igipimo cy'ibitsa gishingirwaho habarwa indishyi z'ibangamirabukungu ni igishyirwaho na Banki Nkuru y'u Rwanda (Central Bank rate), kigaragara ku rubuga (Website) rwayo ku munsi w'isomwa ry'urubanza[4]. Urukiko rurasanga kandi iminsi y'akazi ikwiye kwifashishwa mu kubara izi ndishyi ari iminsi 30 n'igipimo cy'ibitsa cya BNR kigomba gukoreshwa kikaba gihwanye na 7%[5]. Bityo indishyi z'ibangamirabukungu zikaba zikwiye kubarwa mu buryo bukurikira:

$$\frac{6.444 \text{ Frw} \times 30 \times 12 \times 35 \times 90\%}{1+ (7\% \times 35)} = \mathbf{21.181.147\ Frw}\ .$$

2. Ku byerekeye izindi ndishyi zisabwa muri uru rubanza

[29] Me Shema Deo uburanira Kwizera Eric avuga ko mu gihe akarengane Kwizera Eric yakorewe mu rubanza RCA 00051/2021/HC/RWG kaba kemejwe, asaba Urukiko rw'Ikirenga kumugenera igihembo cy'Avoka kingana na 1.000.000 Frw ndetse n'amafaranga y'ikurikiranarubanza angana na 500.000 Frw.

[30] Me Uwamariya Agnès uburanira Radiant avuga ko Kwizera Eric adakwiye kugenerwa igihembo cy'Avoka n'ikurikiranarubanza kuko ariwe wakomeje gushoza imanza nta mpamvu.

Uko Urukiko rubibona

[31] Ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ibikurikira: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza...".

[32] Urukiko rushingiye ku ngingo imaze kuvugwa haruguru, rurasanga n'ubwo ikirego cya Kwizera Eric cyahawe agaciro, ariko muri dosiye y'urubanza nta bimenyetso birimo bigaragaza ko yakoresheje 500.000 Frw akurikirana uru rubanza ndetse akaba yaratanze 1.000.000 Frw y'igihembo cy'Avoka, Urukiko rukaba ntaho rwahera rutegeka ko ayo mafaranga ariyo akwiye gusubizwa nk'uko abisaba.

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[4] Reba urubanza Nº RS/INJUST/RC 00010/2021/SC rwaciwe ku wa 02/12/2022 haburana Prime Insurance Company Ltd na Uwimanimpaye Jean Claude.

[5] https://www.bnr.rw/home/ (urubuga rwasuwe ku wa 08/05/2023)

[33] Urukiko rurasanga ahubwo yayagenerwa mu bushishozi bwarwo, bityo akaba agenewe 500.000 Frw y'igihembo cy'Avoka hamwe na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ikirego cyatanzwe na Kwizera Eric cyo gusubirishamo ku mpamvu z'akarengane urubanza Nº RCA 00051/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 11/01/2022, gifite ishingiro;

[35] Rutegetse ko imikirize y'urubanza Nº RCA 00051/2021/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 11/01/2022, ihindutse gusa ku bijyanye n'indishi z'ibangamirabukungu;

[36] Rutegetse Radiant Insurance Company Ltd kwishyura Kwizera Eric indishyi z'ibangamirabukungu zingana na 21.181.147 Frw yemejwe kuri uru rwego;

[37] Rutegetse Radiant Insurance Company Ltd kwishyura Kwizera Eric 1.620.000 Frw y'indishyi z'akababaro (pretium doloris) hamwe na 1.620.000 Frw y'indishyi z'ibangamira ry'uburanga yategetswe n'Urukiko Rwisumbuye rwa Nyagatare, hakiyongerayo 1.700.000 Frw y'ibyakoreshejwe mu rubanza n'igihembo cya Avoka, na 40.000 Frw y'ingwate y'igarama yategetswe n'Urukiko Rukuru, Urugereko rwa Rwamagana;

[38] Rutegetse Radiant Insurance Company Ltd guha Kwizera Eric 500.000 Frw y'igihembo cy'Avoka hamwe na 300.000 Frw y'ikurikiranarubanza kuri uru rwego, yose hamwe akaba angana na 800.000 Frw.