RADIANT INSURANCE COMPANY LTD v. ACCESS BANK RWANDA LTD N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RSA/RECT/RCOM 00001/2022/CA (Nyirandabaruta, P.J.) 13 Ukuboza 2022]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Gukosoza cyangwa gusobanuza urubanza – Gusobanuza no gukosoza urubanza bikorwa mu gihe cy'ukwezi kumwe uhereye igihe urubana rwaciriwe kereka iyo rurimo amakosa y'imyandikire ashobora gutuma rutarangizwa.

Incamake y'ikibazo: Uru rubanza rukomoka ku rubanza RCOMA 00351/2021/HCC rwaciwe n'Uukiko Rukuru rw'Ubucuruzi, haburana Access Bank Rwanda Ltd, Radiant Insurance Company Ltd, Bepk Consultant Ltd na Tuyizere, haburanwa guzubizwa amafaranga y'ingwate yo kurangiza imirimo neza n'andi y'indishyi zitandukanye. Muri urwo rubanza Urukiko Rukuru rw'Ubucuruzi rwategetse Access Bank Rwanda Ltd gusubiza Radiant Insurance Company Ltd 49,800,000Frw yari yayishyuye iyatangira Bepk Consultant Ltd ajyanye n'ingwate yo kurangiza imirimo neza.

Nyuma yurwo ubanza Radiant Insurance Company Ltd yatanze ikirego muri urwo Rukiko, irusaba gusobanura urubanza RCOMA00351/2021/HCC, ivuga ko Urukiko rwasobanuye neza ibijyanye n'amafaranga yagombaga gusubizwa, ariko ngo rwajya gufata icyemezo rugategeka ko isubizwa gusa 49,800,000Frw kandi yarayishyuye hiyongereyeho 800,000Frw y'igihembo cya Avoka na 60,000Frw y'igarama; ko mu kurangiza uwo rubanza, Access Bank Rwanda Ltd yasubije Radiant Insurance Company Ltd 49,800.000Frw yonyine ngo kuko ari yo ngwate yishingiye, akaba ari nayo Access Bank Rwanda Ltd yategetswe n'Urukiko kwishyura.

Urukiko Rukuru rwabanje gusuzuma ikibazo cy'iyubahirizwa ry'ibihe byo gutanga ikirego gisaba gusobanuza urubanza RCOMA 00351/2021/HCC, maze rwemeza ko Radiant Insurance Company Ltd itubahirije igihe cy'ukwezi giteganywa n'Itegeko cyo gutanga ikirego gisaba gusobanuza urwo rubanza, rwemeza ko ikirego cyayo kitakiriwe.

Radiant Insurance Company Ltd, yajuririye icyo cyemezo mu Rukiko w'Ubujuire, ivuga ko Urukiko Rukuru rwanze kwakira ikirego yatanze ngo rugisuzume rutitaye ku murongo wafashwe n'Urukiko rw'ikirenga mu rubanza RS/INTERT/RC00001/2019/SC n'ibindi byemezo by'Urukiko Rukuru rw'Ubucuruzi kuri iki kibazo. Radiant Insurance Company Ltd isaba Urukiko rw'Ubujurire gukuraho icyemezo cyo kutakira ikirego cyafashwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RSA/INTERT/RCOM 00001/2022/HCC rugategeka urwo Rukiko kwakira ikirego cyayo rukakiburanisha.

Urukiko rw'Ubujurire rwabanje gusuzuma niba ikirego cya Radiant Insurance Company cyaragombaga kwakirwa mu Rukiko Rukuru rw'Ubucuruzi, maze rwemeza ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rwanga kwakira ikirego cya Radiant Insurance Company Ltd kuko umurongo watanzwe mu rubanza rwaciwe n'Uukiko w'Ikirenga bashingiraho ureba amakosa y'imyandikire ashobora gutuma urubanza rutarangizwa kandi urubanza basaba Urukiko gusobanura rwaramaze kurangizwa.

Incamake y'icyemezo: Gusobanuza no gukosoza urubanza bikorwa mu gihe cy'ukwezi kumwe uhereye igihe urubana rwaciriwe kereka iyo rurimo amakosa y'imyandikire ashobora gutuma rutarangizwa. Bityo, iyo urubanza rwamaze kurangizwa nta nkomyi ntabwo umuburanyi yasubira inyuma ngo atange ikirego cyo kurukokosoza cyangwa kurusobanuza.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 140

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tariki ya 14/06/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA00351/2021/HCC rwa Access Bank Rwanda Ltd, Radiant Insurance Company Ltd, Bepk Consultant Ltd na Tuyizere Gerard, haburanwa 49.800.000Frw y'ingwate yo kurangiza imirimo neza n'andi 860,000Frw (arimo ay'igihembo cya Avoka, ay'ikurikiranarubanza n'igarama) Radiant Insurance Company Ltd yishyuye Access Bank Rwanda Ltd iyatangiye Bepk Consultant Ltd; muri urwo rubanza, Urukiko Rukuru rw'Ubucuruzi rwategetse Access Bank Rwanda Ltd gusubiza Radiant Insurance Company Ltd 49,800,000Frw yari yayishyuye y'ingwate yo kurangiza imirimo neza.

[2] Nyuma yabwo ku wa 25/08/2022, Radiant Insurance Company Ltd yatanze ikirego muri urwo Rukiko, irusaba gusobanura urubanza RCOMA00351/2021/HCC rwaciye ku wa 14/06/2022, ivuga ko Urukiko rwasobanuye neza ibijyanye n'amafaranga yagombaga gusubizwa mu gika cya [45] cy'urwo rubanza, ariko rwajya gufata icyemezo mu gika cya [63] rugategeka ko isubizwa 49,800,000Frw yonyine kandi yarayishyuye hiyongereyeho 800,000Frw y'igihembo cya Avoka na 60,000Frw y'igarama; ko mu kurangiza urubanza (RCOMA00351/2021/HCC), Access Bank Rwanda Ltd yasubije Radiant Insurance Company Ltd 49,800.000Frw ngo kuko ari yo ngwate yishingiye, akaba ari nayo Access Bank Rwanda Ltd yategetswe n'Urukiko Rukuru rw'ubucuruzi gusubiza Radiant Insurance Company Ltd.

[3] Urukiko Rukuru rw'Ubucuruzi rwasuzumye ikibazo cy'iyubahirizwa ry'ibihe byo gutanga ikirego gisaba gusobanuza urubanza RCOMA00351/2021/HCC rwaciwe ku wa 14/06/2022, maze rushingiye ku biteganywa mu ngingo ya 140, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye Imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1], rusanga Radiant Insurance Company Ltd itarubahirije igihe cy'ukwezi giteganywa n'Itegeko cyo gutanga ikirego gisaba gusobanuza urwo rubanza, rwemeza ko ikirego cyayo kitakiriwe.

[4] Radiant Insurance Company Ltd, ihagarariwe na Pacislaw firm, yajuririye icyo cyemezo muri uru Rukiko, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwanze kwakira ikirego yatanze ngo rugisuzume rutitaye ku murongo wafashwe n'Urukiko rw'ikirenga mu rubanza RS/INTERT/RC 00001/2019/SC rwaciwe kuwa 15/11/2019 n'ibindi byemezo by'Urukiko Rukuru rw'Ubucuruzi kuri iki kibazo, Urukiko rw'Ubujurire rukaba rugomba gusuzuma niba icyo kirego cyayo cyaragombaga kwakirwa.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ikirego cyatanzwe na Radiant Insurance Company Ltd gisobanuza urubanza RCOMA00351/2021/HCC cyaragombaga kwakirwa

[1]Ingingo ya 140, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeyei miburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi: "Gusaba gukosora cyangwa gusobanura urubanza bikorwa mu gihe cy'ukwezi kumwe uhereye igihe umuburanyi yamenyeye imikirize y'urubanza".

[5] Radiant Insurance Company Ltd ivuga ko Urukiko Rukuru rw'Ubucuruzi rwanze kwakira ikirego yatanze ngo rugisuzume ku mpamvu z'uko rwaregewe igihe cy'ukwezi giteganyijwe mu ngingo ya 140, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi cyararenze, rwirengagije umurongo wafashwe n'Urukiko rw'Ikirenga mu rubanza RS/INTERT/RC 00001/2019/SC rwaciwe kuwa 15/11/2019, n'ibindi byemezo by'Urukiko Rukuru rw'Ubucuruzi kuri iki kibazo.

[6] Radiant Insurance Company Ltd ivuga ko igihe cy'ukwezi kumwe giteganyijwe n'iyo ngingo ya140, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa cyahinduwe n'ibyemezo by'inkiko byagiye bifatwa byatanze umurongo kuri iki kibazo, asaba uru Rukiko kureba urubanza RS/INTERT/RC00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga n'imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi ubwarwo.

[7] Radiant Insurance Company Ltd isaba uru Rukiko gukuraho icyemezo cyo kutakira ikirego cyafashwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RSA/INTERT/RCOM 00001/2022/HCC rwaciwe ku wa 20/09/2022, rugategeka urwo Rukiko kwakira ikirego cyayo rukakiburanisha.

UKO URUKIKO RUBIBONA

[8] Ingingo ya 140, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi: "Gusaba gukosora cyangwa gusobanura urubanza bikorwa mu gihe cy'ukwezi kumwe uhereye igihe umuburanyi yamenyeye imikirize y'urubanza".

[9] Mu rubanza RSA/INTERT/RCOM 00001/2022/HCC rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rushingiye ku ngingo ya 140, igika cya 3, n'ingingo ya 83[2], igika cya 3, z'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, rwasanze kuba urubanza RCOMA00351/2021/HCC rwarasomwe kuwa 14/06/2022, ikirego kirusobanuza kigatangwa kuwa 25/08/2022, uburanira Radiant Insurance Company Ltd atubahirije igihe cy'ukwezi cyo kugitanga kuko cyagombaga gutangwa bitarenze kuwa 13/07/2022, rwanzura ko icyo kirego cyatanzwe impitagihe, kikaba kitagomba kwakirwa ngo gisesengurwe mu mizi yacyo.

[10] Urukiko rw'Ubujurire rurasanga usibye kuba Pacislaw Firm ihagarariye Radiant Insurance Company Ltd yarashyize mu muyoboro w'ikoranabuhanga rikoreshwa mu nkiko (IECMS), urubanza RS/INTERT/RC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga, ndetse n'izindi manza zaciwe n'Urukiko Rukuru rw'Ubucuruzi, nta bisobanuro yigeze itanga ngo yerekane uburyo umurongo ivuga ko watanzwe n'inkiko wavanyeho ibiteganyijwe mu ngingo ya 140, igika cya 3, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 yavuzwe haruguru, iteganya ibihe byo gutanga ikirego gisaba gusobanuza cyangwa gukosoza urubanza.

[11] Muri urwo rubanza RS/INTERT/RC00001/2019/SC, Uwihoreye Jean Pierre yasabye Urukiko rw'Ikirenga gusobanura urubanza RCAA0052/12/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 17/01/2014, rubanza gusuzuma ibijyanye n'iyubahirizwa ry'ibihe byo gutanga bene ibyo birego, maze nk'uko bigaragara mu gika cyarwo cya [13], Urukiko rw'Ikirenga rufata icyemezo ko "mu gihe umuburanyi agaragaza ko mu rubanza rwaciwe harimo amakosa y'imyandikire ku buryo kuyarekeramo byatera ibibazo mu kururangiza, gusuzuma ishingiro ry'icyo kirego bidakwiye

[2] Ingingo ya 83 Igika cya 4, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018: "Impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy'umuburanyi, hatinjiwe mu mizi yacyo, kubera ko adafite uburenganzira bwo kurega, nko kuba adafite ububasha n'inyungu zo kurega, ubusaze bw'ikirego, kurenza igihe cyo kurega, urubanza rwabaye itegeko cyangwa kudatanga amagarama, harabayeho amasezerano yo kwikiranura cyangwa iyo hari imihango itarubahirijwe iteganywa n'itegeko".

kubangamirwa n'igihe cy'ukwezi kumwe giteganywa mu gika cya gatatu cy'ingingo ya 140 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, no ku birego bisaba gusobanuza imanza akaba ari uko bigomba kumvikana".

[12] Urukiko rw'Ubujurire rurasanga mu rubanza ruvuzwe haruguru, icyo Urukiko rw'Ikirenga rwakemuye ari ibijyanye n'ikosorwa ry'amakosa y'imyandikire yagaragaye mu rubanza ndetse n'ibyategetswe mu rubanza bitumvikana neza/bidasobanutse, ku buryo kuyarekeramo byatera ibibazo mu kururangiza, ntabwo Urukiko rw'Ikirenga rwavanyeho ibiteganywa mu ngingo ya 140, igika cya 3 yavuzwe haruguru.

[13] Urukiko rw'Ubujurire rurasanga kandi nk'uko byavuzwe haruguru, Pacislaw firm ibiburanisha mu mwanya wa Radiant Insurance Company Ltd, ntaho yigeze igaragaza ko ibyo isaba Urukiko gusobanura bidasobanuwe bishobora guteza ikibazo mu kurangiza urubanza isabira gusobanura, bityo uwo murongo watanzwe n'Urukiko rw'Ikirenga ukaba utashingirwaho muri uru rubanza. Byumvikana rero ko kuba Radiant Insurance Company Ltd yaratanze ikirego cyayo impitagihe, icyo kirego kitagombaga kwakirwa.

[14] Rurasanga kandi Pacislaw firm yaragaragaje ko urubanza isaba ko rusobanurwa rwarangijwe/rwashyizwe mu bikorwa, kuko ivuga ko Radiant Insurance Company Ltd yasubijwe 49.800.000Frw yategetswe, n'ubwo ivuga ko hakabaye haretegetswe ko iyasubizwa hiyongereyeho 860.000Frw nayo yishyuye Access Bank Rwanda Ltd. Ibi bikaba byerekana ko uretse no kuba ikirego cya Radiant Insurance Company Ltd kitarakiriwe ku mpamvu yuko cyatanzwe impitagihe, kitagombaga no kwakirwa kubera ko nta mpamvu yacyo kuko urubanza isaba ko rusobanurwa rwashyizwe mu bikorwa nta nkomyi ku byategetswe.

[15] Rusanze rero nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rwanga kwakira ikirego cya Radiant Insurance Company Ltd gisaba gusobanuza urubanza RCOMA00351/2021/HCC rwaciwe kuwa 14/06/2022, bityo akaba ari nta kigomba guhinduka mu rubanza rwajuririwe.

III. ICYEMEZO CY'URUKIKO

[16] Rwemeje ko ubujurire bwatanzwe na Radiant Insurance Company Ltd nta shingiro bufite;

[17] Rwemeje ko nta gihindutse ku rubanza RSA/INTERT/RCOM 00001/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 20/09/ 2022 ;

[18] Ruvuze ko nta magarama ategetswe muri uru rubanza.