CYABAKANGA v SANLAM AG Plc

[Rwanda URUKIKO RW'UBUJURIRE – RCOM 00007/2022/CA (Kanyange, PJ.) 23 Ukuboza 2022]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Irangiza ry'urubanza – Urukiko rufite ububasha - Impaka zavutse mu irangiza ry'urubanza zikemurwa n'ubundi n'urukiko rwaciye urubanza bwa nyuma.

Incamake y'ikibazo: CYABAKANGA Jean Bosco yareze SAHAM INSURANCE COMPANY Ltd mu Rukiko rw'Ubucuruzi avuga ko itubahirije amasezerano y'ubwishingizi bw'inkongi y'umuriro arebana na hoteri ye yitwa ORIENT PARK HOTEL, asaba uwo mwishingizi we kumwishyura agaciro k'ibyangirijwe n'inkongi kangana na 224.816.872 Frw. Urukiko rw'Ubucuruzi rwemeje ko SAHAM INSURANCE COMPANY Ltd igomba kwishyura indishyi zose hamwe zingana na 201.796.871 Frw, naho ku bujurire bwa SANLAM AG Plc, Urukiko Rukuru rw'Ubucuruzi ruca urubanza rwemeza ko SANLAM AG Plc yishyura 8.000.000 Frw y'ibyangijwe ku nyubako, 16.232.456 Frw y'ibikoresho byangijwe n'inkongi, ikanatanga sauna na steam bishya, na 4.500.000 Frw y'indishyi mbonezamusaruro yiyongera kuyo CYABAKANGA yagenewe ku rwego rwa mbere. SANLAM AG Plc yajuririye na none mu Rukiko rw'Ubujurire, Urukiko rwemeza ko ubujurire bwayo bufite ishingiro kuri bimwe, ruyitegeka kwishyura CYABAKANGA Jean Bosco indishyi zitandukanye zingana na 44.003.520 Frw.

Nyuma y'urwo rubanza, CYABAKANGA Jean Bosco yatanze ikirego gisaba kurusobanura, kugira ngo SANLAM AG Plc ibone uko yishyura indishyi yatsindiwe kandi zitajuririwe. Urukiko rw'Ubujurire rwemeza ko ikigego cye nta shingiro gifite kuko nta kigomba gukosorwa. Yongeye gutanga ikirego asaba Urukiko gukemura impaka zavutse mu irangiza ry'urubanza kuko yasabye SANLAM AG Plc kumwishyura amafaranga yatsindiye angana na 71.235.976 Frw ariko yishyura gusa 44.003.520 Frw yategetswe n'Urukiko rw'Ubujurire, ayandi yategetswe n'Urukiko Rukuru rw'Ubucuruzi irayamwima kandi atarajuririwe. SANLAM AG Plc yatanze inzitizi yo kutakira ikirego ivuga ko cyamaze gufatwaho icyemezo mu rubanza RS/INTERT/2021/RCOM 00001/2021/CA, ko ahubwo isanga icyo yita impaka zavutse mu irangiza ry'urubanza ari izishingiye ku mikirize y'urubanza zakemurwa hashingiwe ku biteganywa n'ingingo za 55 na 56 z'Itegeko rigena ububasha bw'inkiko, ivuga ko bene izo mpaka zikemurirwa mu nzira y'ikirego cy'akarengane, cyane cyane ko atagaragaza ingingo y'itegeko ashingiraho ibyo asaba.

Incamake y'icyemezo: 1. Impaka zavutse mu irangiza ry'urubanza, ibijyanye no gukemura bene izo mpaka bitagarutsweho mu Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko cyangwa mu Itegeko y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, zikemurwa n'ubundi n'urukiko rwaciye urubanza bwa nyuma.

2. Mu rwego rwo gukemura impaka zavutse mu irangiza ry'urubanza n° RCOMAA 00053/2020/CA, bigomba kumvikana ko hejuru y'amafaranga Urukiko rw'Ubujurire rwategetse angana na 44.003.520 Frw SANLAM AG Plc ivuga ko yishyuye, igomba no kwishyura 24.232.456 Frw y'ibikoresho byangijwe n'inkongi hamwe n'ibyangiritse ku nyubako, hamwe na 3.000.000 Frw y'indishyi zategetswe n'Urukiko rw'Ubucuruzi zikemezwa n'Urukiko Rukuru rw'Ubucuruzi.

Ikirego gisaba gukemura impaka zavutse mu irangiza ry'urubanza, 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 14, 111 na244.

Imanza zifashishijwe:
Urubanza rubanziriza urundi mu rubanza n° RC 00003/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/06/2018 haburana KAMATENESI Jovia na KING FAYSAL HOSPITAL.

Inyandiko z'abahanga:
Aurélie BERGEAUD WETTERWALD, Evelyne Bonis, Yannick CAPDEPON, Procédure civile, Edition 2017/2018, Editions CUJAS, p.333

Urubanza

I. IMITERERE Y'URUBANZA

[redacted]CYABAKANGA Jean Bosco yareze SAHAM INSURANCE COMPANY Ltd mu Rukiko rw'Ubucuruzi avuga ko itubahirije amasezerano y'ubwishingizi bw'inkongi y'umuriro arebana na hoteri ye yitwa ORIENT PARK HOTEL, asaba uwo mwishingizi we kumwishyura agaciro k'ibyangirijwe n'inkongi yabaye ku wa 25/07/2017 kangana na 224.816.872 Frw, SAHAM INSURANCE COMPANY Ltd yo ikavuga ko CYABAKANGA Jean Bosco yananiwe kwerekana ko ibikoresho bivugwa byari mu mutungo wayo, ariko ikemera kwishyura ibyangirijwe ku nyubako bifite agaciro ka 6.587.372 Frw.

[redacted]Mu rubanza n° RCOM 01117/2019/TC, Urukiko rw'Ubucuruzi rwemeje ko SAHAM INSURANCE COMPANY Ltd igomba kwishyura CYABAKANGA Jean Bosco indishhyi zose hamwe zingana na 201.796.871 Frw, naho ku bujurire bwa SANLAM AG Plc (yahoze ari SAHAM INSURANCE COMPANY), Urukiko Rukuru rw'Ubucuruzi ruca urubanza n° RCOMA 00952/2019/HCC, rusanga ingingo irebana n'uburangare bwa CYABAKANGA Jean Bosco idashobora gusuzumwa kuko yabyukijwe bwa mbere mu bujurire, naho ku birebana n'ibyangijwe n'inkongi y'umuriro, rwemeza ko SANLAM AG Plc yishyura 8.000.000 Frw y'ibyangijwe ku nyubako, 16.232.456 Frw y'ibikoresho byangijwe n'inkongi, ikanatanga sauna na steam bishya mu rwego rwo kwishyura ibyangijwe n'inkongi, 4.500.000 Frw y'indishyi mbonezamusaruro yiyongera kuyo CYABAKANGA yagenewe ku rwego rwa mbere.[1]

[redacted]SANLAM AG Plc yajuririye Urukiko rw'Ubujurire,mu rubanza n° RCOMAA 00053/2020/CA rwaciwe ku wa 26/02/2021, Urukiko rwemeza ko ubujurire bwayo bufite ishingiro kuri bimwe, ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruhindutse, ruyitegeka kwishyura CYABAKANGA Jean Bosco 5.303.520 Frw ya sauna na steam, 38.700.000 Frw y'indishyi ku mahirwe yavukijwe yo kubyaza inyungu sauna na steam, yose hamwe akaba 44.003.520 Frw.

[redacted]Nyuma y'urwo rubanza, CYABAKANGA Jean Bosco yatanze ikirego gisaba kurusobanura, hakandikwa ko urubanza nº RCOMA 00952/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi '*'ruhindutse kuri bimwe''* kugira ngo SANLAM AG Plc ibone uko yishyura indishyi yatsindiwe kandi zitajuririwe. Urukiko rw'Ubujurire rwaciye urubanza n° RS/INTERT/2021/RCOM 00001/2021/CA ku wa 28/09/2021, rwemeza ko ikigego cya CYABAKANGA Jean Bosco nta shingiro gifite kuko nta kigomba gukosorwa.

[1] Yari yagenewe 85.500.000 Frw

[redacted] Nyuma y'izo manza CYABAKANGA Jean Bosco yatanze ikirego asaba Urukiko gukemura impaka zavutse mu irangiza ry'urubanza n° RCOMAA 00053/2020/CA rwaciwe ku wa 26/02/2021, kuko yasabye SANLAM AG Plc kumwishyura amafaranga yatsindiye angana na 71.235.976 Frw ariko yishyura gusa 44.003.520 Frw yategetswe n'Urukiko rw'Ubujurire, ayandi yategetswe n'Urukiko Rukuru rw'Ubucuruzi irayamwima kandi atarajuririwe; ko yiyambaje abahesha b'inkiko batandukanye kugira ngo bamwishyurize ayo mafaranga ariko birananirana kuko SANLAM AG Plc ivuga ko yishyuye ibyo yategetswe n'Urukiko rw'Ubujurire ko kandi urwo rukiko rutemeje ko urubanza rwari rwajuririwe ruhindutse kuri bimwe, maze abahesha b'inkiko bamenyesha CYABAKANGA Jean Bosco ko urubanza rudashobora kurangizwa kuko rurimo impaka.

[redacted] SANLAM AG Plc yatanze inzitizi ebyiri, imwe y'iburabubasha bw'Urukiko rw'Ubujurire, indi yo kutakira ikirego kuko cyamaze gufatwaho icyemezo mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA.

[redacted] Urubanza rwaburaishijwe mu ruhame ku wa 13/12/2022, CYABAKANGA Jean Bosco yunganirwa na Me MUHIGANWA Damas hamwe na Me MURINDABIGWI Miriam, SANLAM AG Plc ihagarariwe na Me NYABAGABO Félicien. Muri iryo buranisha uburanira SANLAM AG Plc yaretse inzitizi yari yatanze y'iburabubasha bw'Urukiko, maze hasuzumwa gusa iyo kutakira ikirego cya CYABAKAMBA Jean Bosco, n'ishingiro ry'icyo kirego mu gihe cyaba cyakiriwe.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya niba ikirego cya CYABAKANGA Jean Bosco kitagomba kwakirwa

[redacted] Uburanira SANLAM AG Plc avuga ko hashingiwe ku ngingo ya 14 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirie y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko urubanza rwaciwe ku rwego rwa nyuma rudashobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe, asanga ikirego cya CYABAKANGA Jean Bosco kitagomba kwakirwa, kuko icyo yeregeye ari nacyo yari yareregeye mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA gifatwaho icyemezo, Urukiko rwemeza ko nta gikenewe gukosorwa mu cyemezo cy'urubanza n° RCOMAA 00053/2020/CA, n'ubu akaba asaba gukosora urubanza hakandikwa izindi ndishyi zitavugwa muri urwo rubanza nk'uko yari yabisabye mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA nkuko bigaragara mu gika cya 9 cyarwo, kuko yasabaga Urukiko guhindura ibivugwa mu rubanza n° RCOMAA 00053/2020/CA.

[redacted] Asanga mu gihe Urukiko rwakwakira ikirego cye, byaba ari ibirego bibiri bitanzwe ku mpamvu zimwe, ko no mu gihe rwakwemera guhindura urubanza n° RCOMAA 00053/2020/CA rwaba rwivuguruje kuko mu gika cya 15 cy'urubanza n° RS/INTERT/2021/RCOM 00001/2021/CA, Urukiko rwemeje ko nta gikenewe gukosorwa muri urwo rubanza rwa mbere.

[redacted] CYABAKANGA Jean Bosco n'abamwunganira bavuga ko inzitizi yatanzwe na SANLAM AG Plc nta shingiro ifite, kuko yitiranya ibintu bibiri bidafite aho bihuriye, ko gusobanuza urubanza no gukemura impaka zavutse mu irangiza ry'urubanza ari ibintu bitandukanye.

[redacted] Bavuga ko n'ubwo bemera ko ababuranyi ari bamwe mu manza zombi, basanga impamvu (cause) zitandukanye, kuko mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA CYABAKANGA Jean Bosco yasabye gusobanura urubanza naho mu kirego cya kabiri asaba gukemura impaka zavutse mu irangiza ry'urubanza.

UKO URUKIKO RUBIBONA

[redacted]Impaka kuri iki kibazo zishingiye ku kumenya niba ikirego cya CYABAKANGA Jean Bosco gisaba gukemura impaka zavutse mu irangiza ry'urubanza kitagomba kwakirwa kuko cyafashweho icyemezo mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA ku kirego cyasabaga gusobanura urubanza RCOMAA 00053/2020/CA.

[redacted]Ingingo ya 14 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: '*'Urubanza rwaciwe ku rwego rwa nyuma rudashobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe''*.

[redacted]Iyo ngingo yumvikanisha ko kugira ngo hemezwe ko urubanza rutongera kuburanisha bundi bushya ari uko haba hari urundi rwaciwe hagati y'ababuranyi bamwe, ikiburanwa ari kimwe n'impamvu ari zimwe, bikanumvika kandi ko muri ibyo bintu bitatu nta kigomba kuburamo.

[redacted]Urukiko rurasanga ku kibazo cy'ababuranyi bo mu manza zombi, nta gushidikanya ko ari bamwe mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA no muri uru rubanza rurebana no gusaba gukemura impaka zavutse mu irangiza ry'urubanza, kuko uwareze muri izo manza zombi ari CYABAKANGA Jean Bosco naho uregwa akaba SANLAM AG Plc.

[redacted]Ku birebana n'ikiburanwa, Urukiko rurasanga nk'uko ingingo ya 6 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ibiteganya, ikiburanwa kigenwa n'ibisabwa na buri muburanyi, bigaragarira mu myanzuro iregera urukiko n'iyo kwiregura (…). Abahanga mu mategeko nabo bavuga ko ikiburanwa kigizwe n'icyo umuburanyi asaba urukiko.[2]

[redacted]Urukiko rurasanga ku birebana n'urubanza n° RS/INTERT/2021/RCOM 00001/2021/CA, bigaragara ko icyo CYABAKANGA Jean Bosco yasabaga Urukiko ari ugukosora icyemezo cyafashwe mu rubanza n° RCOMAA 00053/2020/CA rwaciwe n'Urukiko rw'Ubujurire (dispositif) hakandikwa ko urubanza n° RCOMA 00952/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi '*'ruhindutse kuri bimwe''*, kugira ngo SANLAM AG Plc ibone uko yishyura indishyi yatsindiwe kandi zitajuririwe, bivuze ko yasabaga ko ahanditse ko ''*urubanza rwajuririwe ruhindutse'',* handikwa ko ruhindutse kuri bimwe. Naho mu rubanza ku kirego gisaba gukemura impaka zavutse mu irangiza ry'urubanza, bigaragara ko icyo CYABAKANGA Jean Bosco yaregeye ari nacyo asaba Urukiko, ari ugukemura impaka zavutse mu irangiza ry'urubanza n° RCOMAA 00053/2020/CA kuko SANLAM AG Plc yanze kwishyura amafaranga yose yategetswe, bitewe n'uko Urukiko rw'Ubujurire rwavuze ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruhindutse, rugategeka SANLAM AG Plc kwishyura 44.003.520 Frw, mu gihe hari andi mafaranga yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi itari yajuririye.

[redacted]Urukiko rurasanga kuba mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA CYABAKANGA Jean Bosco yarasabaga ko hagira ibisobanurwa mu cyemezo cy'Urukiko, naho mu rubanza rurebana n'iki kirego akaba asaba gukemura impaka zavutse mu irangizwa ry'urubanza zishingiye ku mafaranga avuga ko yatsindiye ariko SANLAM AG Plc ntiyishyure, mu gihe yo ivuga ko yishyuye amafaranga yose yategetswe n'Urukiko rw'Ubujurire, byumvikana ko ikiburanwa mu manza zombi atari kimwe, bityo iyo mpamvu yonyine ikaba ituma ibiteganywa n'ingigo ya 14 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru bituzura, akaba atari na ngombwa gusuzuma niba impamvu z'imanza zombi ari zimwe (même cause).

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[2] L'objet de la demande en justice se définit comme la prétention formulée et soumise à l'appréciation du juge. Il s'agit, en somme, de ce qui est demandé au juge:Aurélie BERGEAUD WETTERWALD, Evelyne Bonis, Yannick CAPDEPON, Procédure civile, Edition 2017/2018, Editions CUJAS, p.333

[redacted]Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga inzitizi yo kutakira ikirego cya CYABAKANGA Jean Bosco yatanzwe na SANLAM AG Plc, nta shingiro ifite.

2. Kumenya niba hari impaka zavutse mu irangiza ry'urubanza n° RCOMAA 00053/2020/CA.

[redacted]CYABAKANGA Jean Bosco n'abamwunganira bavuga ko mu mwanzuro wa SANLAM AG Plc w'ubujurire bw'urubanza n° RCOMA 00952/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, yavugaga ko yemera icyemezo cyafashwe n'urwo Rukiko ku birebana no kumwishyura 8.000.000 Frw y'ibyangiritse ku nyubako na 16.232.456 Frw y'ibikoresha byangiritse nk'uko bigaragara mu gika cya 23 cy'Urubanza n° RCOMAA 00053/2020/CA rwaciwe n'Urukiko rw'Ubujurire; ko ku birebana na 3.000.000 Frw y'indishyi zo kutubahiriza amasezerano, ikurikiranarubanza n'ingwate y'amagarama yategetswe n'Urukiko rw'Ubucuruzi, Urukiko Rukuru rw'Ubucuruzi rwemeje ko afite ishingiro nk'uko bigaragara mu gika cya 60 cy'urubanza n° RCOMA 00952/2019/HCC kandi SANLAM AG Plc ikaba itarayajuririye mu Rukiko rw'Ubujurire, bikaba rero byumvikana ko ibyo yajuririye ari ibirebana na *sauna* na *steam* hamwe n'indishyi mbonezamusaruro, ari nabyo byasuzumwe n'urwo Rukiko, akaba ari nabyo byahindutse ku rubanza rw'Urukiko Rukuru rw'Ubucuruzi, maze Urukiko rw'Ubujurire rutegeka SANLAM AG Plc kwishyura 5.303.520 Frw y'agaciro ka *sauna* na *steam* na 38.700.000 Frw y'indishyi ku mahirwe CYABAKANGA Jean Bosco yavukijwe.

[redacted]Bavuga ko kuba mu rubanza n° RCOMAA 00053/2020/CA Urukiko rw'Ubujurire rwaremeje ko icyemezo cy'Urukiko Rukuru rw'Ubucuruzi gihindutse aho kuvuga ko gihindutse kuri bimwe, rugategeka SANLAM AG Plc kwishyura 44.003.520 Frw ari byo byateje impaka mu irangiza ry'urwo rubanza, kuko Urukiko rutagaragaje ko indishyi z'ibyangijwe ku nyubako no ku bikoresho SANLAM AG Plc itajuririye, nayo igomba kuzishyura, bakaba basanga Urukiko rwakemura izo mpaka rukemeza ko amafaranga yose SANLAM AG Plc igomba kwishyura ari 71.235.976 Frw.

[redacted]Uburanira SANLAM AG Plc avuga ko iyo sosiyete yishyuye amafaranga yose yategetswe mu rubanza n° RCOMAA 00053/2021/CA rwaciwe n'Urukiko rw'Ubujurire ndetse yishyura 8.000.000 Frw yemejwe mu bwumvikane ku birebana n'ibyangijwe ku nyubako, ikaba isanga nta bundi bwishyu ikwiye gusabwa kuko yishyuye ishingiye ku byemezo byafashwe n'Urukiko rw'Ubujurire rwemeje umwenda ugomba kwishyurwa runavuga ko imanza zaciwe mbere zihindutse, ko rero umwenda wa 71.235.976 Frw CYABAKANGA Jean Bosco yishyuza nta shingiro ufite kuko utagaragara mu rubanza rurangizwa, cyane cyane ko ibyo asaba ari nabyo yasabaga mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA.

[redacted]Avuga ko nta mpaka ziri mu rubanza n° RCOMAA 00053/2020/CA kuko rusobanutse, ko ahubwo asanga icyo CYABAKANGA Jean Bosco yita impaka zavutse mu irangiza ry'urubanza ari izishingiye ku mikirize y'urubanza zakemurwa hashingiwe ku biteganywa n'ingingo za 55 na 56 z'Itegeko rigena ububasha bw'inkiko, ivuga ko bene izo mpaka zikemurirwa mu nzira y'ikirego cy'akarengane, cyane cyane ko CYABAKANGA Jean Bosco atagaragaza ingingo y'itegeko ashingiraho ibyo asaba nk'uko biteganywa n'ingingo ya 9 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ivuga ko umucamanza aca urubanza ashingiye ku mategeko, naho iya 10 ikavuga ko Umucamanza aca urubanza ku cyaregewe, akibaza niba uyu munsi Urukiko rushobora guhindura icyemezo cyafashwe mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA kuko Urukiko rwamaze kwemeza ko nta kigomba gukosorwa mu rubanza n° RCOMAA 00053/2020/CA.

[redacted]Avuga ko mu gihe Urukiko rwabibona ukundi rugasanga hari impaka zavutse mu irangiza ry'urubanza, rwazabona ko 3.000.000 Frw CYABAKANGA Jean Bosco avuga, SANLAM AG Plc yari yayajuririye mu Rukiko rw'Ubujurire, ko kuba rutarayafasheho icyemezo, kitafatirwa mu rubanza rurebana no gukemura impaka zavutse mu irangizwa ry'urubanza. Ku bijyanye na

16.232.456 Frw, avuga ko Urukiko rwazareba niba rufite ububasha bwo kuyafataho icyemezo rugahindura ibyemejwe n'Urukiko (dispositif), naho ku birebana na 8.000.000 Frw asanga nta kibazo ateye kuko yamaze kwishyurwa.

UKO URUKIKO RUBIBONA

[redacted]Ingingo ya 244, igika cya mbere, y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko:*''Urubanza rubaye itegeko cyangwa indi nyandikompesha biba bishobora guhita birangizwa kugira ngo ibyo byemeza bishyirrwe mu bikorwa*''.

[redacted]Ku birebana no gukemura impaka zavutse mu irangiza ry'urubanza, Urukiko rw'Ikirenga rwasobanuye ko biba bigamije gutanga umucyo ku rubanza rurangizwa kugira ngo irangizwa ryarwo rikorwe mu buryo busobanutse kandi ryubahirije amategeko, hirindwa ko hagira ubirenganiramo.[3]

[redacted]Ku birebana n'Urukiko rukemura impaka zavutse mu irangiza ry'urubanza, mu rubanza rumaze kuvugwa Urukiko rw'Ikirenga rwasobanuye ko kuba ibijyanye no gukemura bene izo mpaka bitagarutsweho mu Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko cyangwa mu Itegeko y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bitafatwa ko Umushingamategeko yavanyeho inzira yo gukemura bene izo mpaka cyangwa se ko hari urundi rwego yabyeguriye, ko ahubwo byibagiranye muri ayo mategeko, ko izo mpaka zikemurwa n'ubundi n'urukiko rwaciye urubanza bwa nyuma.[4]

[redacted]Dosiye igaragaza imanza zaciwe ku kirego CYABAKANGA Jean Bosco yatanze asaba indishyi zishingiye ku nkongi y'umuriro yabaye kuri hoteri ye n'ibyari biyirimo, yari yishingiwe na SAHAM INSURANCE COMPANY Ltd (ubu yahinditse SANLAM AG Plc)

[redacted]Mu rubanza n° RCOM 01117/2019/TC, Urukiko rw'Ubucuruzi rwemeje ko SAHAM INSURANCE COMPANY Ltd igomba kwishyura CYABAKANGA Jean Bosco 113.296.871 Frw y'ibyangijwe n'inkongi agizwe na 99.697.462 Frw y'agaciro k'ibikoresho na 13.599.410 Frw y'indishyi z'ibyangiritse ku nyubako, 85.500.000 Frw y'igihombo cyo kudakora ubucuruzi, 3.000.000 Frw y'ibyakozwe ku rubanza, yose hamwe akaba 201.796.871 Frw, naho Urukiko Rukuru rw'Ubucuruzi rwemeza ko SANLAM AG Plc yishyura 8.000.000 Frw y'ibyangijwe ku nyubako[5], 16.232.456 Frw y'ibikoresho byangijwe n'inkongi, ikanatanga *sauna* na *steam* bishya mu rwego rwo kwishyura ibyangijwe n'inkongi, 4.500.000 Frw y'indishyi mbonezamusaruro yiyongera kuyo CYABAKANGA Jean Bosco yagenewe ku rwego rwa mbere.[6] Urukiko rwanasobanuye ko indishyi zingana na 3.000.000 Frw, Urukiko rw'Ubucuruzi rwagombaga kuzigena.[7]

[redacted]Bigaragara kandi ko ku bujurire bwa SANLAM AG Plc, Urukiko rw'Ubujurire, mu rubanza n° RCOMAA 00053/2020/CA, rwemeje ko ubujurire bwayo bufite ishingiro kuri bimwe, ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruhindutse, ruyitegeka kwishyura CYABAKANGA Jean Bosco 5.303.520 Frw ya *sauna* na *steam* na 38.700.000 Frw y'indishyi ku mahirwe yavukijwe yo kubyaza inyungu *sauna* na *steam*, yose hamwe akaba 44.003.520 Frw.

[3] Urubanza rubanziriza urundi mu rubanza n° RC 00003/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/06/2018 haburana KAMATENESI Jovia na KING FAYSAL HOSPITAL, igika cya 17
[4] Reba igika cya 15 na 16
[5] Impande zombi zayumvikanyeho urubanza rukiburanishwa, SANLAM AG Plc ikaba ivuga ko yishyuwe
[6] Yari yagenewe 85.500.000 Frw
[7] Reba igika cya 60 cy'urubanza

[redacted] Na none dosiye igaragaza ko nyuma y'urwo rubanza, CYABAKANGA Jean Bosco yatanze ikirego gisaba kirusobanura, mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA, Urukiko rwemeza ko ikirego cye nta shingiro gifite, rusobanura ko rwafashe icyemezo ku ngingo eshatu zari zajuririwe, ko ku birebana na 24.232.456 Frw y'ibikoresho byangijwe n'inkongi hamwe n'ibyangiritse ku nyubako, bitasuzumwe kuko bitajuririwe, akaba ari nako bimeze ku birebana na 3.000.000 Frw y'indishyi z'akababaro n'ikurikiranarubanza SANLAM AG Plc yatsindiwe mu Rukiko rw'Ubucuruzi.

[redacted] Urukiko rurasanga nk'uko imikirize y'imanza zavuzwe ibigaragaza, hari indishyi zagenwe n'Urukiko rw'Ubucuruzi zagiye zihinduka uko urubanza rwajuririrwaga, hakaba n'izindi zagumyeho kuko zitajuririwe, bituma ku birebana no kumenya ibigomba kwishyurwa, buri muburanyi abyumva mu buryo bwe, SANLAM AG Plc ikumva ko igomba kwishyura amafaranga avugwa mu rubanza rwa nyuma rwaciwe n'Urukiko rw'Ubujurire, mu gihe CYABAKANGA Jean Bosco asanga hejuru y'ayo mafaranga avugwa mu rubanza rwa nyuma hari andi atajuririwe agomba kwishyurwa, bivuze rero ko hari impaka ku birebana no kumenya ibyo uruhande rumwe rugomba kwishyura urundi, bityo nk'uko Urukiko rw'Ikirenga rwabisobanuye, uru Rukiko rukaba rugomba gutanga umucyo ku rubanza rurangizwa kugira ngo irangizwa ryarwo rikorwe mu buryo busobanutse kandi ryubahirije amategeko, hirindwa ko hagira ubirenganiramo.

[redacted] Urukiko rurasanga nk'uko imiburanire y'impande zombi ibigaragaza, impaka zihari zishingiye kuri 24.232.456 Frw y'ibikoresho byangijwe n'inkongi hamwe n'ibyangiritse ku nyubako, hamwe na 3.000.000 Frw y'indishyi z'akababaro n'ikurikiranarubanza SANLAM AG Plc yatsindiwe mu Rukiko rw'Ubucuruzi.

[redacted] Ku birebana na 24.232.456 Frw, bigaragara ko yagenwe n'Urukiko Rukuru rw'Ubucuruzi, akaba agizwe na 16.232.456 Frw y'ibikoresho byangijwe n'inkongi hamwe na 8.000.000 Frw y'ibyangiritse ku nyubako. Bigaragara kandi ko mu bujurire bwa SANLAM AG Plc mu Rukiko rw'Ubujurire, yaravugaga ko nta ndishyi igomba kuryozwa kubera uburangare bwa CYABAKANGA Jean Bosco ku birebana n'inkongi y'umuriro yafashe inyubako ye, ko ariko mu gihe Urukiko rwasanga nta burangare bwabayeho, yemera kwishyura ayo mafaranga ko ndetse yarangije kwishyura 8.000.000 Frw bumvikanyeho mbere y'icibwa ry'urubanza mu Rukiko Rukuru rw'Ubucuruzi, bivuze rero ko kuba bigaragara ko Urukiko rw'Ubujurire rwasanze nta burangare CYABAKANGA Jean Bosco yagize, izo ndishyi zemejwe n'Urukiko Rukuru rw'Ubucuruzi zaragumyeho kuko na SANLAM AG Plc yazemeraga, ikanavuga ko yishyuyeho igice.

[redacted] Ku birebana na 3.0000.000 Frw yagenwe n'Urukiko rw'Ubucuruzi, bigaragara ko SANLAM AG Plc yayajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko atagombaga gutangwa ariko urwo Rukiko rusanga byari ngombwa ko atangwa nk'uko rwabisobanuye mu gika cya 60 cy'urubanza n° RCOMA 00952/2019/HCC, kandi n'ubwo uburanira SANLAM AG Plc avuga ko yayajuririye mu Rukiko rw'Ubujurire, ntaho bigaragara haba mu bibazo yasabye ko bisuzumwa cyangwa mu nama ntegurarubanza hamwe no mu iburanisha ry'urubanza, bivuze rero ko nk'uko byasobanuwe mu rubanza n° RS/INTERT/2021/RCOM 00001/2021/CA, ayo mafaranga atajuririwe.

[redacted] Urukiko rurasanga kuba mu rubanza n° RCOMAA 00053/2020/CA Urukiko rw'Ubujurire rwaragize amafaranga rutegeka SANLAM AG Plc kwishyurwa rushingiye kubyo rwari rwajuririwe, bitavanaho ko igomba kwishyura ayo itari ifiteho ikibazo yanemeraga nk'uko byasobanuwe haruguru, kuko CYABAKANGA Jean Bosco yari yamaze kuyagiraho uburenganzira ndakuka, ndetse n'ayo itigeze ivuga ko yemera kwishyura angana na 3.000.000 Frw yagenwe n'Urukiko rw'Ubucuruzi akemezwa n'Urukiko Rukuru rw'Ubucuruzi, nayo CYABAKANGA Jean Bosco yamaze kuyagiraho uburenganzira ndakuka kuko SANLAM AG Plc itayajuririye.

[redacted]Urukiko rurasanga rero mu rwego rwo gukemura impaka zavutse mu irangiza ry'urubanza n° RCOMAA 00053/2020/CA, bigomba kumvikana ko hejuru y'amafaranga Urukiko rw'Ubujurire rwategetse angana na 44.003.520 Frw SANLAM AG Plc ivuga ko yishyuye, igomba no kwishyura 24.232.456 Frw y'ibikoresho byangijwe n'inkongi hamwe n'ibyangiritse ku nyubako, hamwe na 3.000.000 Frw y'indishyi zategetswe n'Urukiko rw'Ubucuruzi zikemezwa n'Urukiko Rukuru rw'Ubucuruzi.

3. **Kumenya niba SANLAM AG Plc na CYABAKANGA Jean Bosco bagenerwa amafaranga basaba**

[redacted]Uburanira SANLAM AG Plc avuga ko hashingirwa ku ngingo ya 110 na 111 z'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ikagenerwa 1.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza naho CYABAKANGA Jean Bosco akavuga ko ayo mafaranga nta shingiro afite, kuko ari yo yamushoye mu manza bitari ngombwa yirengagije ibyemejwe mu manza. Avuga ko ahubwo ari we wagenerwa 2.000.000 Frw y'igihembo cya Avoka, 100.000 Frw y'ikurikiranarubanza na 20.000 Frw y'igarama, naho SANLAM AG Plc ikavuga ko ayo mafaranga idakwiye kuyacibwa ahubwo ariyo ikwiye kugenerwa ayo yasabye kubera gushorwa mu manza ku maherere.

UKO URUKIKO RUBIBONA

[redacted]Ingingo ya 111 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirie y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: ''*Ikirego cy'amafaranga y'ikirikiranarubanza ari ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Kiburanishirizwa rimwe n'ikirego cy'iremezo''*.

[redacted]Urukiko rurasanga kuba byagaragajwe haruguru ko ikirego cya CYABAKANGA Jean Bosco gifite ishingiro kuko hari impaka mu irangiza ry'urubanza zagombaga gukemurwa n'Urukiko, nta mafaranga yategekwa kwishyura SANLAM AG Plc y'ibyagiye ku rubanza, ahubwo ari we ukwiye kuyahabwa kuko ikirego cye gifite ishingiro kandi bikaba byarabaye ngombwa ko ashaka Avoka wo kumuburanira anagira ibyo atanga arukurikira. Urukiko rurasanga ariko 2.100.000 Frw asaba ari menshi kandi nta kigaragaza ko ari yo koko yatanzwe, ahubwo harebwe ingano y'asanzwe atangwa muri uru Rukiko yagenerwa 800.000 Frw akubiyemo igihembo cya Avoka n'ikurikiranarubanza, akanahabwa 20.000 Frw y'igarama, yose hamwe akaba 820.000 FRw.

III. ICYEMEZO CY'URUKIKO

[redacted]Rwemeje ko ikirego cya CYABAKANGA Jean Bosco gisaba gukemura impaka zavutse mu irangiza ry'urubanza n° RCOMAA 00053/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/02/2021, gifite ishingiro ;

[redacted]Rwemeje ko mu rwego rwo gukemura izo mpaka, bigomba kumvikana ko hejuru y'amafaranga Urukiko rw'Ubujurire rwategetse angana na 44.003.520 Frw SANLAM AG Plc ivuga ko yishyuye, igomba no kwishyura 24.232.456 Frw y'ibikoresho byangijwe n'inkongi hamwe n'ibyangiritse ku nyubako, hamwe na 3.000.000 Frw y'indishyi zategetswe n'Urukiko rw'Ubucuruzi zikemezwa n'Urukiko Rukuru rw'Ubucuruzi ;

[redacted]Rutegetse kandi SANLAM AG Plc kwishyura CYABAKANGA Jean Boso 820.000 Frw y'ikurikiranarubanza, igihembo cya Avoka hamwe n'igarama yatanze ;

[redacted]Rutegetse ko amagarama yatanzwe ahwanye n'ibyakozwe ku rubanza.