BRITAM INSURANCE COMPANY LTD LTD v MAGASIN SOLUTION ET MATERIELS DE BUREAU LTD N'UNDI

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00616/2019/HCC – (Mukamurera, P.J.) 16 Kamena 2020]

Amategeko agenga ubwishingizi – Ubwishingizi bw'inkongi y'umuriro – Gutanga amakuru mu gihe cyo gufata ubwishingizi – Amakuru yatanzwe ku mwishingizi wa mbere – Umwishingizi wasuye inyubako akemera no kuyikorera amasezerano akamenya n'icyo aheraho yishyuza ubwishingizi (prime) ntaho yahera ahakana kwishyura indishyi z'impanuka yabaye yitwaje ko amasezerano yakoze yayashingiye ku bwishingizi bwari bwarafashwe mu yindi sosiyete burimo kutavugisha ukuri – Umwishingizi afite inshingano yo kugenzura neza ikishingirwa mbere yo gukora amasezerano y'ubwishingizi.

Amategeko agenga ubwishingizi – Amasezerano y'ubwishingizi – Kudafatwa nk'uburiganya mu gihe uwishingiwe utariwe witangiye amakuru ku mutungo we – Ntibifatwa nk'uburiganya ku ruhande rw'uwishingiwe ngo kuko atatanze amakuru y'ingenzi mu gihe cyo gufata ubwishingizi bw'umutungo we mu gihe ubwishingizi yabusabiwe kandi akabwishyurirwa n'uwo yari abereyemo umwenda.

Incamake y'ikibazo MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd yagiranye amasezerano y'ubwishingizi na BRITAM INSURANCE COMPANY Ltd yo kwishingira inkongi yaturuka ku nyubako yayo. Inyubako yaje gushya irakongoka ariko uwareze yishyuje BRITAM yanga kwishyura ishingira ko yishingiye inzu yo guturamo ariko nyuma yaje guhindurwa uruganda itabimenyeshejwe; bituma aregera Urukiko rw'Ubucuruzi asaba guhabwa indishyi z'impanuka yabaye. Muri uru rubanza kandi hari hagobokeshejwemo Equity bank yari yarahaye inguzanyo MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd kandi ikaba ari nayo yafashe ubwishingizi bw'inyubako yatanzweho ingwate hafatwa umwenda wa MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd.

Urukiko rw'Ubucuruzi rwemeje ko ikirego cya MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd ko ikwiye kwishyurwa indishyi ziri mu masezerano kuko ikishingiwe ari inyubako atari ibiyikorerwamo.

BRITAM INSURANCE COMPANY Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko icyemezo cyafashwe n'Urukiko rw'Ubucuruzi cyateshwa agaciro ngo kuko Urukiko rw'Ubucuruzi rwirengagije amategeko agenga ubwishingizi mu Rwanda, kandi ko mu gihe cyo gukora amasezerano habayeho uburiganya kuko amakuru yatanzwe ku mutungo wishingiwe atriyo kuko havuzwe inzu ri iyo guturamo kandi yarahinduwe uruganda ntibimenyeshwe.

MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd yireguye ivuga ko ubujurire bwa BRITAM INSURANCE COMPANY Ltd nta shingiro bufite kuko amategeko y'ubwishingizi yakurikijwe kuko yishingiwe inzu hatishingiwe ibirimo. Ikindi kandi ni uko mbere y'uko impande zombi zisinya amasezerano y'ubwishingizi BRITAM INSURANCE COMPANY Ltd yabanje gusura inyubako yishingiye isanga ari uruganda; bityo itahindukira ngo ivuge ko itishingiye ibitaribyo kandi yarabyigenzuriye neza.

Ikindi kandi ngo ubwishingizi bwafashwe na Equity Bank aho yanishyuye amafaranga y'ubwishingizi (prime) BRITAM INSURANCE COMPANY Ltd, ko rero nta ruhare cyangwa uburiganya yagize bwo kudatanga amakuru y'ingenzi ku mutungo wishingiwe cyane ko nayo yarawusuye ariwabona ibona gutegura amasezerano y'ubwishingizi impande zombi zashyizeho umukono.

MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd yatanze ubujurire bwuririye ku bundi isaba indishyi Equity Bank zo kwishyura umwenda yishyuzwa yafashe mu yindi banki kuko iyo ihita yishyuza BRITAM INSURANCE COMPANY Ltd biba bitarayisabye kubanza gusaba undi mwenda kugira ngo yishyure umwenda wayo.

BRITAM INSURANCE COMPANY Ltd nayo yasabye indishyi MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd z'igihembo cya Avocat n'izo gusiragizwa mu manza.

Incamake y'icyemezo: 1. Umwishingizi agomba kwishyura indishyi z'impanuka yabaye nta rundi rwitwazo mu gihe yasuye umutungo yishingiye akawukorera amasezerano ndetse akishyurwa n'amafaranga y'ubwishingizi (prime).

2. Nta buriganya buba bwabayeho mu gihe uwishingiwe atari we witangiye amakuru y'ingenzi ku mutungo akanagaragaza uwamufatiye n'uwamwishyuriye ubwishingizi (prime) n'uko uwishingiye yemeye ko bagirana amasezerano.

Ubujurire nta shingiro bufite.
Icyemezo cyafashwe mu rubanza rwajuririwe ntigihindutse.
Amagarama agumye mu isanduku ya Leta.

Amategeko yashingiweho:
Itegeko teka N° 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi muri rusange, ingingo ya 18.

Nta manza zifashishijwe.

Urubanza

I. INCAMAKE Y'URUBANZA

[1] Urubanza rwatangiriye mu rukiko rw'ubucuruzi, MAGASIN SOLUTION & MATERIELS DE BUREAU Ltd ivuga ko kuwa 14/05/2015 yagiranye amasezerano y'ubwishingizi bw'inkongi y'umuriro (Police no 800/00005) na BRITAM INSURANCE COMPANY Ltd, aya masezerano akaba yari agamije kwishingira inzu ye yari mu kibanza gifite UPI: 1/01/10/01/2148. Iyo nzu ngo yaje gufatwa n'inkongi y'umuriro irashya irakongoka, ariko MAGASIN SOLUTION MATERIELS DE BUREAU Ltd isabye BRITAM kuyishyura hashingiwe ku masezerano bafitanye irabyanga, bituma itanga ikirego mu rukiko rw'ubucuruzi ngo yishyurwe.

[2] BRITAM INSURANCE COMPANY Ltd yiregura ivuga ko isanga ikirego nta shingiro kigomba guhabwa kuko ubwishingizi yatanze ari ubwishingizi ku nzu yo guturamo ariko urega yahinduye icyo inzu yakoreshwaga iba inzu yo gucururizamo itabimenyeshejwe.

[3] Equity Bank Rwanda Ltd, nk'uwagobokeshejwe muri uru rubanza kuko inzu yishingiwe yari ingwate yayo, yavuze ko isanga ntacyo iregwa muri uru rubanza, ahubwo isaba indishyi zo gushorwa mu manza ku maherere.

[4] Urukiko rwavuze ko mu masezerano impande zombi zagiranye ntakigaragaza ko nyirinzu hari ibyo atari yemerewe kuyikoreramo, cyane cyane ko icyishingiwe ari inzu atari ibicuruzwa cyangwa ibindi byose biyirimo. Rwavuze ko ubwishyu bugomba gutangwa, hakongererwaho indishyi zo kutubahiriza amasezerano n'indishyi z'ibyagiye ku rubanza, yose hamwe akaba 125.636.915 frw. Magasin Solution nayo yategetswe kwishyura Equity Bank Rwanda Ltd indishyi zo gushorwa mu manza ku maherere.

[5] BRITAM INSURANCE COMPANY RWANDA Ltd yarajuriye isaba ko icyo cyemezo cyateshwa agaciro ngo kuko urukiko rw'ubucuruzi rwirengagije amategeko agenga ubwishingizi mu Rwanda, kandi ko mu gihe cyo gukora amasezerano habayeho uburiganya.

II. IBIBAZO BIGEYE GUSUZUMWA

A. Gusuzuma niba urukiko rw'ubucuruzi rwarirengagije amategeko agenga ubwishingizi

[6] Uhagarariye BRITAM avuga ko Magasin solution & materiels de bureau Ltd yagiranye na Britam insurance Company (Rwanda) Ltd amasezerano y'ubwishingizi bw'inkongi y'umuriro ku nzu iri mu kibanza UPI: 1/03/10/01/2148. Asobanura ko inzu yafatiwe ubwishingizi ari inzu yo guturamo nkuko bigaragazwa n'amasezerano y'ubwishingizi. Ariko ngo inzu imaze gushya, Britam yaje gutungurwa no gusanga inzu yahiye yari uruganda nk'uko bigaragazwa na PV ya Polisi ndetse ibi bikemezwa na ba nyiri inzu ubwabo. Avuga ko hari ibiteganywa n'amategeko y'ubwishingizi bigomba kwitabwaho, cyane cyane ingingo ya 18 y'itegeko teka No 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi muri rusange, ivuga ko " lorsqu' il y a aggravation des risques, telle que, si cette situation avait existé dès la conclusion du contrat, l'assureur n'aurait pas traité à des conditions plus onéureuses pour l'assuré, celui-ci doit en donner avis à l'assureur dans les quinze jours à partir du fait qui aggrave le risque, si ce fait est dû à l'assuré, ou dans quinze jours à partir du moment où l'assuré a connaissance de l'aggravation. Au cas de défaut de déclaration par l'assuré ou de déclaration inexacte, les articles 16 et 17 sont applicable".

[7] Ikomeza ivuga ko ingingo ya 16 y'iri tegeko iteganya ko "Les réticences et fausses déclaration intentionelles de l'assuré entraînent nullité du contrat si elles ont modifié l'appréciation du risque pour l'assureur, de telle sorte, que l'assureur n'aurait pas traité ou aurait traité à des conditions plus onéreuses pour l'assuré s'il avait été exactement renseigné. Les primes payées à l'assureur restent aquises à l'assureur". Asobanura ko ibi Britam yabigaragaje mu myanzuro yo ku rwego rwa mbere muri issue ya 2 ndetse no mu gihe cy'iburanisha, nyamara ngo mu guca uru rubanza, umucamanza ntiyigeze agira icyo avuga kuri izi ngingo z'amategeko nkuko bigaragara mu ncarubanza.

[8] Akomeza avuga ko uretse n'itegeko ryacu, iyi nshingano yo gutanga amakuru inagaragara mu mategeko yo mu bindi bihugu, nko mu itegeko No 17418 rigenga ubwishingizi muri Argentine ryo kuwa 30/8/1967. Iri tegeko riteganya ko mu gihe habaye impanuka hatarabayeho kumenyekanisha impinduka zabayeho ku kishingiwe, iyo zatumye habaho ubwiyongere bw'ibyago byo kubaho kw'impanuka, umwishingizi ntashobora kuryozwa iyo mpanuka yabayeho.

[9] Avuga kandi ko iri hame ryo kumenyekanisha impinduka ku kishingiwe ngo ryavuzweho n'abahanga mu mategeko Professors Brown na Menezes babivuga mu gitabo cyabo cyitwa Insurance Law in Canada, aho bavuga ko uwishingiwe agomba kumenyesha umwishingizi impinduka zibaye kukishingiwe iyo bigaragara ko zongereye ibyago byo kubaho kw'impanuka, umwishingizi nawe icyo gihe agafata icyemezo cyo gusesa amasezerano y'ubwishingizi cyangwa se akayakomeza amaze kongera igiciro cyo kwishingira igishinganishwa. Ibi kandi ngo byagarutsweho n'umuhanga mu mategeko y'ubwishingizi Axelle Astegiano-La Rizza akaba n'umwarimu muri Kaminuza ya Jean Moulin Lyon, mu nyandiko ye yise "la déclaration des risques en cours de contrat: entre nouvelles précisions jurisprudentielles et incertitudes récurrentes", ngo akaba yaragize ati "L'assuré doit déclarer, en cours de contrat, les circonstances nouvelles qui ont pour conséquence soit d'aggraver les risques, soit d'en créer de nouveaux".

[10] Akomeza avuga ko ku rwego rwambere, ibi byose yabishyikirije Urukiko, ariko ngo mu ikiza ry'urubanza umucamanza ntiyabyitaho ahubwo ahitamo gushingira ku itegeko rigenga amasezerano muri rusange nyamara yirengagije itegeko ryihariye rigenga ubwishingizi maze yemeza ko Britam insurance Company (Rwanda) Ltd igomba kwishyura Magasin solution & materiels de bureau Ltd indishyi zose isaba, akaba asaba ko byakosorwa.

[11] Uhagarariye Magasin solution & materiels de bureau Ltd yiregura avuga ko abanza kwibutsa ko imvo n'imvano y'ariya masezerano y'ubwishingizi hagati yayo na BRITAM ari amasezerano y'inguzanyo yagiranye na EQUITY Bank igatangaho ingwate umutungo wayo utimukanwa UPI: 1/03/10/01/2148, hanyuma EQUITY Bank ikayisaba ko yanawufatira ubwishingizi bw'inkongi y'umuriro (Assurance Incendie). MAGASIN SOLUTION & MATERIELS DE BUREAU ngo yabanje gufata ubwo bwishingizi muri SORAS, aho bushiriye, EQUITY ikura amafaranga (prime d'assurance) kuri compte ya MAGASIN SOLUTION & MATERIELS DE BUREAU iba ariyo iyifatira ubundi bwishingizi muri BRITAM. Nk'umwishingizi mushya (nouvel assureur) ngo birumvikana ko BRITAM yabanje gusura umutungo ugomba kwishingirwa (immeuble à assurer) mbere y'uko isinya amasezerano yo ku wa 14/05/2015; isanga MAGASIN SOLUTION & MATERIELS DE BUREAU ihafite uruganda rukora inzoga rwatangiye gukora mu mpera za 2013 nkuko bigaragazwa na "Inspection report" ya RBS (Rwanda Bureau of Standards) yo ku wa 17/10/2013.

[12] Yakomeje avuga ko BRITAM idakwiye guhindukira ngo ivuge ko habayeho "aggravation des risques" kuko yasuye inzu igasanga ari uruganda kuko rwatangiye mbere cyane y'uko amasezerano yo ku wa 14/05/2015 abaho. Byongeye kandi, ngo amategeko agenga ubwishingizi yarakurikijwe kuko Umucamanza wa mbere yerekanye ko ikishingiwe ari inzu atari ibiyikorerwamo, bityo ashingira ku ngingo ya 25 y'Itegeko no 20/75 ryo ku wa 20/06/1975, yerekana "Les risques exclus" ndetse no ku ngingo ya 27 ivuga ko: "L'assurance des biens est un contrat d'indemnité…". Bityo rero ngo ntaho BRITAM yahera ivuga ko amategeko agenga ubwishingizi atakurikijwe.

[13] Uhagarariye Equity Bank avuga ko ariyo yatanze umusanzu muri Britam Insurance hagamijwe kwongera ubwishingizi ku ngwate igihe ubwishingizi bwa mbere bwafashwe muri SORAS kuwa 04/11/2013 bikozwe na nyiri nzu NYINAWANKUSI Anastasie bwari bwarangiye. Asobanura ko nubwo uruganda rushobora kuba rwaratangiye gukorera muri iriya nzu mbere yo kuwa 07/10/2013 nkuko inyandiko ya RBS ibigaragaza, ubwishingizi bwa SORAS bwatanzwe hashingiwe ku makuru yatanzwe na nyiri nzu NYINAWANKUSI Anastasie ko inzu ari iyo

guturamo. Ikindi kibigaragaza ngo ni uko mu ngingo ya 6 y'amasezerano y'umwenda hagati ya bank na Magasin Solutions, hari hateganyijwe ko ubukode bwayo bwose bugomba kunyura muri Equity Bank bityo Bank ntaho yari guhera imenya ko inzu yahindutse uruganda.

UKO URUKIKO RUBIBONA

[14] Urukiko rusanga iki kibazo gishingiye ku masezerano y'ubwishingizi yo kuwa 14/05/2015. Ayo masezerano akaba ari ay'ubwishingizi bw'inyubako yatanzweho ingwate na MAGASIN SOLUTION, ubwo bwishingizi BRITAM ikaba yarabukoze ibisabwe kandi yishyurwa na EQUITY BANK, nayo yaje kwiyishyura kuri konti ya MAGASIN SOLUTION.

[15] Urukiko rusanga BRITAM ishingira ku ngingo ya 18 y'itegeko teka No 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi muri rusange, iteganya ko iyo habayeho impinduka zongera ibyago byo kubaho kw'impanuka, uwishingiwe agomba kubimenyesha umwishingizi mu minsi 15 izo risques ziyongereye cyangwa kuva igihe abimenyeye, atabikora hagakurikizwa ingingo za 16 na 17. Avuga kandi ko ingingo ya 16 iteganya ko kutavugisha ukuri kuwishingiwe bitera gutesha agaciro amasezerano iyo bitumye hatamenyekana ingano y'ibyago by'impanuka, kuburyo umwishingizi iyo abimenya atari gukora ayo masezerano cyangwa akayakora ku giciro cyo hejuru.

[16] Urukiko rusanga izo ngingo zashingiweho na BRITAM kimwe n'izindi nyandiko z'abahanga yashingiyeho bidahura n'ibyabaye hagati ya BRITAM na MAGASIN SOLUTION, kuko ingingo ya 18 y'itegeko teka No 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi muri rusange ivuga ibijyanye n'uko bigenda iyo nyuma yo gukora amasezerano habayeho impinduka zongera ibyago by'impanuka ku kishingiwe. Nyamara kuva BRITAM yatanga amasezerano y'ubwishingizi ntigaragaza impinduka zabaye ku nyubako yishingiye. Ikibazo kigaragara ni uko mu miburanire ya BRITAM ishaka kuyishingira ku masezerano MAGASIN SOLUTION yari yaragiranye na SORAS, ibyo urukiko rukaba rusanga nta shingiro bifite, kuko abo bishingizi bombi baratandukanye kandi n'amasezerano yabo si amwe kuko nubwo yakorewe ku nyubako imwe ariko yabaye mu bihe bitandukanye. BRITAM ikaba itakwishingikiriza ku masezerano yari yarakozwe na SORAS, kandi akaba yararangiye nta kibazo SORAS igiranye na MAGASIN SOLUTION.

[17] Urukiko rusanga kandi uhagarariye BRITAM yarabajijwe mu iburanisha niba uwo ahagarariye yarasuye iyo nyubako mbere yo gukora amasezerano y'ubwishingizi, asubiza ko yayisuye, avuga ariko ko bitari na ngombwa kuko hari declaration uwishingiwe yari yarakoze muri SORAS nazo zikaba zarashingiweho. Ibyo urukiko rukaba rutabiha agaciro kuko nkuko bimaze kuvugwa amasezerano aburanwa hano ntabwo ari aya SORAS ni aya BRITAM, bivuga ko ibyabaye icyo gihe muri 2013 SORAS ikora amasezerano ataribyo bigomba gusuzumwa muri uru rubanza kuko rushingiye kumasezerano yakozwe na BRITAM muri 2015. Ikindi kandi uru rubanza SORAS ntabwo irurimo ngo isobanure ibyo yashingiyeho cyangwa ibyo yumvikanye na MAGASIN SOLUTION mbere yo kugirana amasezerano. Ibigomba gusuzumwa rero bikaba ari ibyabaye hagati ya BRITAM n'uwo yishingiye.

[18] Urukiko rusanga nkuko byasobanuwe n'ababuranyi, ubwishingizi bwatanzwe na BRITAM bwabaye iyo nyubako imaze igihe ikoreramo uruganda. Niba BRITAM yarayisuye yagombye kuba ibizi kuko ariho yakabaye yarahereye imenya ibyo ishyira mu masezerano kuko ariyo yayakoze, ikamenya n'icyo iheraho yishyuza ubwishyingizi (prime). Ntabwo rero nyuma

y'amasezerano habayeho guhindura icyo inyubako yakoreshwaga nkuko uwajuriye abivuga, ahubwo yakomeje gukoreshwa icyo yari isanzwe ikora igihe amasezerano yabaga. Ikindi kandi nta declaration MAGASIN SOLUTION yakoze kuri BRITAM kuburyo yavuga ko yayibeshye, kuko impande zose zemeranwa ko atari MAGASIN SOLUTION yagiye gusaba ubwishingizi, ahubwo bwasabwe na EQUITY BANK iba ari nayo yatanze amakuru ishingiye ku masezerano yakozwe na SORAS, irangije yishyura na prime. Ikosa ryabaye ryo kwandika ko inzu ari iyo guturamo aho kwandika ko ikorerwamo imirimo y'uruganda ntabwo ryakwitirirwa MAGASIN SOLUTION kuko atariyo yahaye BRITAM ayo makuru, ahubwo iryo kosa ryatewe nuko BRITAM itagenzuye neza ikishingirwa ngo ibone gukora amasezerano, ikaba yarayakoze ishingiye ku masezerano ya SORAS yarangije igihe. Ntabwo kandi BRITAM yabishingiraho ngo yange kwishyura ubwishingizi kuko ni ibyo yashyize mu masezerano yakoze. Hakaba nta nzitizi cyangwa imbogamizi yagaragaje zayibujije gusuzuma icyo igiye kwishingira, cyane cyane ko atari ivugururwa ry'amasezerano asanzwe hagati y'impande zombi ryakorwaga ngo ivuge ko yari isanzwe izi ikishingirwa, ahubwo yari amasezerano mashya ku mu client mushya. Kuba yariringiye ibyo yagejeweho na EQUITY BANK kandi atariyo nyirumutungo, ikabishingiraho igakora amasezerano, ntabwo yavuga ko ari nyirumutungo wayibeshye.

B. Kumenya niba mu gihe cyo gukora amasezerano y'ubwishingizi habayemo uburiganya

[19] Uhagarariye BRITAM avuga ko ingingo ya 15 y'itegeko teka No 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi muri rusange, ivuga ko "L'assuré doit declarer exactement, lors de la conclusion du contrat, toutes les circonstances connues de lui qui sont de nature à faire apprécier par l'assureur les risques qu'il prend en charge". Asobanura ko mu gihe cy'iburanisha urubanza rugeze hagati, uhagarariye urega ngo yavuze ko iyi nzu yari yishingiwe yabaye uruganda kuva kuwa 17/10/2013 ikaba yararinze ishya ikiri uruganda. Ibi ngo bikaba bigaragara mu nyandiko mvugo y'iburanisha ryo kuwa 1/4/2019 mu gika cya gatatu. Akomeza asobanura ko iyo uhuje ibivugwa n'urega n'amasezerano y'ubwishingizi yabaye kuwa 14/5/2015, ngo usanga mu gihe cyo gusinya amasezerano harabayeho uburiganya ku ruhande rwa Magasin Solution & Materiels de Bureau Ltd, aho yemeje ko inzu yishingiwe ari inzu yo guturamo aho kwemera ko ari uruganda. Ibi ngo ikaba yarabikoze izi neza ingaruka byari bifite, kuko Britam insurance Company (Rwanda) Ltd itagombaga kwemera kwishingira uruganda, kandi ngo n'iyo ibyemera ntabwo yagombaga gutanga ubwishingizi kuri premium yahabwaga na Magasin solution.

[20] Akomeza avuga ko nkuko biteganywa n'ingingo ya 52 y'itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano ivuga ko "kugaragaza ibintu uko bitari bifatwa nko kuyobya urundi ruhande iyo bitumye urwo ruhande rubishingiraho kugira ngo rufate icyemezo cyo gukora amasezerano". Ingingo kandi ya 54 y'iryo tegeko ikavuga ko "iyo uruhande rwemeye amasezerano rushingiye ku byo rwagaragarijwe n'urundi ruhande bitari ukuri rushobora gusaba gutesha agaciro ayo masezerano". Ibi kandi binateganywa n'ingingo ya 16 y'itegeko teka No 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi muri rusange, ivuga ko "iyo uwishingiwe atanze amakuru atari ukuri mu gihe cyo gukora amasezerano, bituma amasezerano y'ubwishingizi ateshwa agaciro cyane cyane iyo bigaragara ko iyo umwishingizi aza kumenya ayo makuru yashoboraga kudatanga ubwo bwishingizi".

[21] Bityo ngo ashingiye kuri izi ngingo z'amategeko, arasaba Urukiko kwemeza ko mu gihe hakorwaga amasezerano, Magasin solution & materiels de bureau Ltd yahishe amakuru y'ingenzi

yagombaga gutuma Britam ifata icyemezo gitandukanye nicyo yafashe kuko ngo iyo imenya ko inzu yafatirwaga ubwishingizi ari uruganda, ntabwo iba yararwishingiye.

[22] Uhagarariye Magasin solution & materiels de bureau Ltd yiregura avuga ko mbere yo gusinya amasezerano yo ku wa 14/05/2015, BRITAM yabanje gusura umutungo ugomba kwishingirwa kugirango ikore icyo bita “Evaluation des risques”. Ikindi ngo kuwa 14/05/2015, BRITAM yakiriye Prime d’assurance ihawe na EQUITY. Avuga kandi ko atari MAGASIN SOLUTION & MATERIELS DE BUREAU yagiye gushaka ubwo bwishingizi muri BRITAM kuko yo yari isanzwe ari umukiriya wa SORAS, ahubwo ni EQUITY yayifatiye ubwishingizi muri BRITAM.

[23] Akomeza avuga ko bisanzwe bizwi ko Umwishingizi ariwe witegurira amasezerano maze uwishingirwa akayasinya (contrat d’adhésion). Bityo ngo niba BRITAM yarashyize mu masezerano ko inzu yishingiye ari iyo guturamo kandi ari inzu irimo uruganda, dore ko n’aho iri ari muri zone industrielle, birumvikana ko itavuga ko habayeho uburiganya (dol) ahubwo ngo bivuga ko BRITAM itagomba kuburanisha amafuti yayo (Nul ne peut invoquer sa propre turpitude).

[24] Uhagarariye EQUITY BANK avuga ko nyuma y’uko igiranye amasezerano y’inguzanyo na Magasin Solution Materiels De Bureau Ltd yo kuwa 9/10/2013 afite agaciro k’imyaka ine (4), harimo condition yo gufata ubwishingizi ku ngwate. Uwatije Magasin Solutions ingwate iri mu kibanza No 2148 ariwe NYINAWANKUSI Anastasie yayifatiye ubwishingizi muri SORAS kuwa 04/11/2013 bufite agaciro kugeza 13/11/2014. Ubwishingizi bwa SORAS burangiye, Magasin Solutions yamaze amezi hafi atandantu (6) itarashobora gufata ubundi bwishingizi ku ngwate yahaye banki bityo kuwa 14/05/2015, EquityBank ishingiye ku burenganzira yahawe na Magasin Solutions nkuko bigaragara mu masezerano y’inguzanyo (art 16 – mortgage rules), yafashe ubwishingizi bwa Britam ariko busa nubwo NYINAWANKUSI Anastasie (nyiri nzu) yari yarafashe muri SORAS hagamijwe ko amasezerano y’umwenda akomeza kubahirizwa.

[25] Avuga ko kuba Magasin Solutions ishaka kumvikanisha ko Equity bank ishobora kuba yarakoze amakosa kutabwira Britam kubijyanye n’igikorerwa mu nzu nyacyo aho ivuga ko ubwayo itigeze isanga Britam ngo bagirane amasezerano ahubwo ngo byakozwe na Equity Bank ubwo yatangaga Prime d’assurance muri Britam, ngo asanga ari ukwirengagiza ko mu rwego rwo kongera amasezerano y’ubwishingizi ku nkongi y’umuriro Equity Bank yafashe ubwishingizi ku nzu yo guturamo bitewe nuko na nyiri nzu aribwo yari yarafashe muri Soras. Bisobanuye ko iyo nyiri nzu aza kumenyesha Soras ko guhera cyangwa mbere ya 07/10/2013 iriya nzu yari uruganda ntaho Equity Bank yari guhera ivuga ko ari residential igihe yasabaga insurance muri Britam.

[26] Ikindi nanone, ngo Urukiko Rukuru rw’Ubucuruzi ruzasanga ko mbere yo gufata ubwishingizi muri Soras hari inyandiko “Inspection report” ya Rwanda Bureau of Standards (RBS) yo kuwa 17/10/2013, aho yagaragaje ko icyo gihe, inzu yari irimo uruganda ahubwo rutanujuje ibisabwa kandi rugomba kuhimuka bitarenze umwaka umwe kugirango rushobore kujya aho inganda zigomba gukorera cyane ko aho hari aho gutura. Ibyo ngo bigaragaza ko ibyasobanuwe haruguru byose ari ibimenyetso ko EquityBank ntakosa yakoze ubwo yafataga ubwishingizi ku nzu yo guturamo igihe nyirayo ubwe nawe niko yari yarabigenje mbere yuko itangwaho ingwate kandi abizi neza ko inzu irimo uruganda.

UKO URUKIKO RUBIBONA

[27] Urukiko rusanga nkuko byasobanuwe mu ngingo ibanziriza iyi, ntabwo BRITAM igomba kuburana ishingiye ku masezerano yakozwe na SORAS mu gihe yakoze amasezerano yayo ayireba kandi ari nayo aburanwa. Ntabwo kandi uburiganya ivuga bwabaye mu ikorwa ry'amasezerano bwakwemerwa mu gihe itagaragaza icyo MAGASIN SOLUTION yayiriganijeho cyane cyane ko atari nayo yasabye ubwo bwishingizi ngo itange amakuru atariyo. Uhubwo ubwishingizi bwasabwe na EQUITY BANK iranabwishyura ishingiye ku masezerano ya SORAS kandi yararangije igihe cyayo. Ntabwo rero BRITAM yavuga ko yariganijwe na MAGASIN SOLUTION kandi atariyo yayihaye amakuru, kuko atariyo yatanze amakuru mu gukora amasezerano, bityo n'ingingo z'amategeko yashingiyeho ntabwo zashingirwaho kuko zidahuye n'ibyabaye. Ntabwo kandi yaburana ivuga ko MAGASIN SOLUTION yahaye SORAS amakuru atariyo kuko nta kibazo kigeze kivuka ku maserano abo bombi bagiranye, kandi nkuko byasobanuwe mu ngingo ibanziriza iyi, SORAS ikaba itari muri uru rubanza ngo isobanure ibyo yumvikanye n'uwishingiwe n'ibyo bashingiyeho icyo gihe bagirana amasezerano.

C. Kumenya ishingiro ry'indishyi zisabwa na Britam

[28] Uhagarariye BRITAM asaba ko Magasin solution & materiels de bureau Ltd yategekwa kubasubiza 3.000.000 frw y'igihembo cya avoka ku nzego zombi na 1,000,000FRW y'ikurikiranarubanza.

[29] Uhagarariye MAGASIN SOLUTION & MATERIELS DE BUREAU avuga ko asanga BRITAM itagomba guhabwa ibyo isaba kuko iyo iza kuba yarubahirije amasezerano y'ubwishingizi, nta manza zari kuba. Yaboneyeho gutanga ubujurire bwuririye k'ubundi avuga ko ntacyo EQUITY BANK yagombaga kugenerwa kuko ariyo yafashe ubwishingizi muri BRITAM, nyamara ngo ingwate imaze gushya, aho kwishyuza ubwishingizi yafashe, yahise yishyuza MAGASIN SOLUTION & MATERIELS DE BUREAU ishaka no kugurisha indi mitungo, nyamara yarashoboraga guhita yishyuza BRITAM nkuko biteganywa n'ingingo ya 33 y'Iteka no 20/75 rigenga ubwishingizi muri rusange. Bityo ngo iyo myitwarire ya EQUITY Bank ikaba yarateje MAGASIN SOLUTION & MATERIELS DE BUREAU igihombo cy'ubucuruzi (préjudice commercial) kuko yarinze gufata irindi deni muri Letshego rya 70.000.000 Frws kugirango ishobore kuyishyura, nubu iryo deni rikaba rikomeje kubyara inyungu. Akaba ariyo mpamvu MAGASIN SOLUTION & MATERIELS DE BUREAU nayo isaba ko EQUITY Bank yayishyura 50.000.000 Frws y'igihombo yatewe n'uko Bank itishyuje BRITAM, cyane ko ari nayo yari yasabye iriya assurance – incendie mu masezerano y'inguzanyo. Yasabye kandi Urukiko gutegeka BRITAM ifatanyije na EQUITY Bank kuyishyura 11.991.643 Frws y'igihembo cya Avoka (voir contrat) na 3.000.000 Frws y'ikurikiranarubanza.

[30] Uhagarariye Equity avuga ko MAGASIN SOLUTION & MATERIELS DE BUREAU idashobora kugaragaza ikosa Equity Bank yaba yarakoze ngo ibone kubisabira indishyi. Ikindi ngo amasezerano y'ubwishingizi ntabwo yigeze asimbura amasezerano y'inguzanyo, bityo ngo inshingano zo kwishyura umwenda zagumye kuri Magasin Solutions Materiels de Bureau Ltd. Avuga kandi ko guhera mbere hose, yagaragarije Magasin Solutions ko gutanga umusanzu muri Britam atari ikosa kuko impande zombi zari zarabyemeranyije. Equity Bank ngo ikaba isaba Urukiko gutegeka Magasin Solutions gutanga 1,000,000 frw y'igihembo cy'Avoka kiyongereye ku yatanzwe mu rwego rwa mbere, cyane cyane ko ngo kuba Urukiko rwambere rwarategetse ko

Equity Bank ihabwa indishyi zo gushorwa mu manza nuko MAGASIN Solution yananiwe kugaragaza icyo irega bank.

UKO URUKIKO RUBIBONA

[31] Urukiko rusanga indishyi zisabwa na BRITAM itazihabwa kuko urubanza izishingiraho irarutsindwa.

[32] Indishyi zisabwa na MAGASIN SOLUTION, urukiko rusanga zirimo ibice bibiri, zikaba zigizwe n'indishyi z'igihombo ivuga ko yatejwe na EQUITY BANK itarishyuje umwishingize ahubwo igashaka guteza cyamunara indi mitungo bigatuma isaba indi nguzanyo muyindi bank ngo yishyure, ndetse n'indishyi z'ibyagiye ku rubanza.

[33] Urukiko rusanga indishyi Magasin Solution isaba EQUITY BANK itazihabwa kuko icyaregewe muri uru rubanza ni ugutegeka BRITAM kubahiriza amasezerano y'ubwishingizi yagiranye na MAGASIN SOLUTION igahatirwa kwishyura amafranga y'ubwishingizi. EQUITY BANK yazanywe muri urwo rubanza nk'uwafashe ubwo bwishingizi muri BRITAM ikanishyura ishingiye ku bubasha yari yahawe mu masezerano y'inguzanyo yagiranye na Magasin Solution, ariko ntihagaragajwe uruhare rwayo mu kutubahiriza ayo masezerano. Bityo nta ndishyi yacibwa muri uru rubanza. Naho indishyi z'ibyagiye k'urubanza, urukiko rusanga MAGASIN SOLUTION yahabwa 500 000 frw y'igihembo cy'avocat agenwe mu bushishozi bw'urukiko hashingiwe ku mirimo yakozwe ku rubanza no kubiteganwa n'ingingo ya 26 y'Amabwiriza n° 01/2014 ashyiraho ibihembo mbonera by'abavoka Rwanda, kuko 11.991.643 Frws yasabwe ari umurengera.

[34] Urukiko rusanga indishyi EQUITY BANK isaba guhabwa na MAGASIN SOLUTION nayo yahabwa izihwanye na 500 000 frw y'igihembo cy'avoka wayiburaniye kuko nkuko bimaze gusobanurwa, urubanza rwatangiye ari MAGASIN SOLUTION ivuga ko BRITAM itubahirije amasezerano y'ubwishingizi, igasaba ko itegekwa kwishyura. Ntahantu na hamwe hagaragajwe uruhare rwa EQUITY BANK muri uko kutishyura kwa BRITAM. Kuvuga ko EQUITY BANK itahise yishyuza BRITAM ahubwo ikishyuza uwahawe inguzanyo, ntabwo hagaragajwe niba ariyo mpamvu BRITAM yanze kwishyura. Niyo mpamvu Bank igomba guhabwa izo ndishyi kuko yarezwe mu rubanza kandi ntacyo irubazwamo.

III. ICYEMEZO CY'URUKIKO

[35] RWEMEJE kwakira ubujurire bwa BRITAM INSURANCE COMPANY Ltd ariko ko nta shingiro bufite.

[36] RWEMEJE ko icyemezo cyafashwe mu rubanza rwajuririwe kidahindutse.

[37] RWEMEJE ko BRITAM INSURANCE COMPANY Ltd igomba guha MAGASIN SOLUTION ET MATERIELS DE BUREAU Ltd indishyi z'igihembo cy'avocat mu bujurire kingana na 500 000 frw.

[38] RWEMEJE ko MAGASIN SOLUTION ET MATERIELS DE BUREAU Ltd igomba guha EQUITY BANK RWANDA Ltd 500 000 frw y'igihembo cy'avoka mu bujurire.

[39] RUTEGETSE ko amafranga y’igarama yatanzwe n’uwajuriye aguma mu isanduku ya Leta.