SANLAM AG Plc v BENDANTUNGUKA

[Rwanda URUKIKO RUKURU RWA RWAMAGANA– RCA 00001/2022/HC/RWG (Mugeyo, P.J.) 14 Nyakanga 2022]

Amategeko agenga imanza mbonezamubano – Ubwishingizi – Ubwishingizi bw'imodoka itwara ibintu – Indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga – Nubwo hakwishingirwa ibintu ariko mu modoka yishingiwe hagakomerekeramo umuntu, iyo umwishingizi atabashije kugaragaza ko uwakomerekeye mu mpanuka atandukanye nabishingiwe cyangwa ko atari mu bandi bafatiwe ubwishingizi (tiers), umwingizi agomba kuryozwa indishyi zikomoka kuriyo mpanuka

Incamake y'ikibazo: uru rubanza rwatangiye Bendantunguka arega SANLAM AG Ltd mu Rukiko Rwisumbuye rwa Ngoma kubera impanuka yagize ubwo yari ari mu modoka ya Fuso inyuma ipakiye amabuye agakora impanuka agakomereka bikomeye. Avuga ko yagerageje gusaba SANLAM AG Ltd indishyi mu bwumvikane ntiyazitanga. Urukiko Rwisumbuye rwa Ngoma rwaciye urubanza RC 00056/2021/TGI/NGOMA rutegeka Sanlam AG PLC guha Bendantunguka indishyi zitandukanye zirimo z'imbangamira bukungu, iz'akababaro, indishyi mbangamiraburanga, n'izindi.

SANLAM AG Plc yajuririye icyemezo cy' Urukiko Rwisumbuye isobanura ko, Urukiko rwayiciye indishyi kandi imodoka Fuso yari itwawe na Muyango , aho yapakiye amabuye akavangamo n'abantu nyamara yari afite ubwishingizi bw'ibintu agakora impanuka, asaba Urukiko kwemeza ko, umwishingizi ntacyo yaryozwa kuko abo bantu Muyango yashyize mu modoka bari abakozi ku modoka ariko batishingiwe. SANLAM AG Plc ivuga kandi ko Urukiko rurammutse rubibonye ukundi rwasubira ku indishyi mbangamirabukungu zagenwe n'Urukiko Rwisumbuye mu buryo budahuje n' Itegeko kuko izikwiye gutangwa ari amafaranga y'Urwanda angana 1.080.000 kubera ko Bendantunguka atagaragaza umusaruro nyakuri akura ku mirimo akora.

Uburanira Bendantunguka yavuze ko, SANLAM ariyo ikwiye kuryozwa indishyi kandi ikaba itarigeze ibihakana mbere kuko yitabiriye umuhango w'ubwumvikane (Transaction) ikitarumvikanyweho kikaba ari uburyo indishyi zibarwa hanyuma habayeho kwitabaza inkiko ihitamo kuburana ihakana uburyozwe bikaba ari ugutinza urubanza. asaba ko, ubujurire bwayo budahabwa ishingiro.Urukiko Rukuru rwemeje ko SANLAM AG Plc ariyo igomba kuryozwa indishyi kuko itagaragarije Urukiko ibimenyetso by'ibyo avuga nk'ikimenyetso cy'abo babiri bishingiwe abo aribo(imyirondoro, amazina…) batandukanye n'uwakomerekeye mu mpanuka ngo banagaragaze ko, atari mu bandi bafatiwe ubwishingizi ''tiers''.

Ku bijyanye no kubara indishyi mbangamirabukungu Urukiko rwemeje ko Bendantunguka ahabwa izibazwe hashingiye ku mushara muto ntarengwa wa 3000Frw bitewe nuko atabasha kugaragaza umusaruro nyakuri akura ku mirimo akora.

Incamake y'icyemezo: 1. Iyo uwakomerekejwe cyangwa uwahitanywe n'impanuka atabashije kugaragaza umusaruro nyakuri yakuraga mu mirimo yakoraga mbere y'impanuka, indishyi mbangamirabukungu, zibarwa hashingiwe ku mushara muto ntarengwa wa 3000Frw.

2. Nubwo hakwishingirwa ibintu ariko mu modoka yishingiwe hagakomerekeramo umuntu, iyo umwishingizi atabashije kugaragaza ko uwakomerekeye mu mpanuka atandukanye nabishingiwe cyangwa ko atari mu bandi bafatiwe ubwishingizi "tiers", umwingizi agomba kuryozwa indishyi zikomoka kuriyo mpanuka.

Ubujurire bufite ishingiro kuri bimwe.

Amategeko yashingiweho.

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 3,10 niya 22

Imanza zifashishijwe:

Urubanza RCA 00002/2018/HC/RSZ, rwa Icyimapaye Judith aburana SORAS rwaciwe n'Urukiko Rukuru urugereko rwa Rusizi kuwa 30/05/2018

Urubanza RCA 00373/2019/HC/KIG rwa Mukankaka Costasie n'abandi baburana na SORAS AG Ltd, rwaciwe n'Urukiko Rukuru urugereko rwa Rusizi kuwa 30/04/2021

Urubanza RCA 00187/2020/HC/KIG, rwa Mukandayambaje n'abandi baburana na SANLAM AG Ltd, rwaciwe n'Urukiko Rukuru kuwa 16/07/2020

Inyandiko z'abahanga zifashishijwe:

Jacques FLOUER, Jean – LUC AUBERT na Eric SAVAUX, Droit Civil Les obligations, fait juridique, 12 ème édition, Dalloz, 2007, p.97.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku mpanuka yabaye ku wa 15/08/2020, mu mudugudu wa Kibimba, akagari ka Mvumba, Umurenge wa Murama, akarere ka Ngoma, Intara y'Iburasirazuba,imodoka ya Fuso ifite plaque RAB 668 E yari itwawe na Muyango Jean Baptiste, ku bw'ubuteganyebuke, amabuye yarapakiye mu modoka akavangamo n'abantu byatumye hakomereka abantu ku buryo bukabije aribo Kuramba Alfred, Bimenyimana Olivier na Bendantunguka Emmanuel, iyo imodoka ikaba yari ifite ubwishingizi muri SANLAM AG Ltd, Bendantunguka yayisabye indishyi mu bwumvikane, ntibyashoboka, bituma atanga ikirego mu Rukiko Rwisumbuye rwa Ngoma.

[2] Mu rubanza RC00056/2021/TGI/NGOMA, Urukiko Rwisumbuye rwa Ngoma, rwategetse Sanlam AG PLC guha Bendantunguka Emmanuel indishyi z'imbangamira bukungu zingana na 5,034,418Frw; ay' indishyi z'akababaro anagana na 1080,000Frw; indishyimbangamiraburanga za 1080,000Frw; amafaranga yakoresheje akurikirana uru rubanza ateye atya: aya dosiye y'impanuka 12000Frw, ayo kwivuza agana na 55,100Frw , ay'icyemezo 500Frw; ay'ingendo 50,000Frw, ay'igihembo cya avoka 500,000Frw; ay' ikurikiranarubanza 50,000Frw n' ay' ingwate y'amagarama y'urubanza 20,000Frw

[3] SANLAM AG Plc yajuriye icyemezo cy' Urukiko Rwisummbuye kugira ngo irenganurwe Me Ernest Twagiramungu uburanira SANLAM AG Plc yasobanuye ko, Urukiko rwaciye indishyiabo aburanira kandi imodoka FUSO RAB 668 E yari itwawe na Muyango Jean Baptiste, aho yapakiye amabuye akavangamo n'abantu nyamara yari afite ubwishingizi bw'ibintu agakoraimpanuka, asaba Urukiko kwemeza ko, umwishingizi ntacyo yaryozwa kuko abo bantu Muyango Jean Baptiste yashyize mu modoka bari abakozi ku modoka ariko batarishingiwe.Na none ngo Urukiko rurammutse rubibonye ukundi rwasubira ku indishyi mbangamirabukungu zagenwe n'Urukiko Rwisummbuye mmmuburyo budahuje n' itegeko kuko izikwiye gutangwa ariamafaranga y'Urwanda angana 1.080.000Frw kubera ko Bendantunguka Emmanuel atagaragaza umusaruro nyakuri akura ku mirimo akora.

[4] Ku ngingo y' ubujurire ya SANLAM, Me Gatama Cassien uburanira Bendantunguka Emmanuel yavuze ko, SANLAM ariyo ikwiye kuryozwa indishyi kandi ikaba itarigeze ibihakana

mbere kuko yitabiriye umuhango w'ubwumvikane (Transaction) ikitarumvikanyweho kikaba ari uburyo indishyi zibarwa habayeho kwitabaza inkiko ihitamo kuburana ihakana uburyozwe bikabaari ugutinza urubanza. asaba ko, ubujurire bwe budahabwa ishingiro.

[5] Me Gatama Cassien ahagarariye Bendantunguka yatanze ikirego kiregera kwireguraasaba Urukiko gutegeka SANLAM gutanga amafaranga angana na Miliyoni ebyiri (2,000,000Frw) Akubiyemo igihembo cyavoka (1,000,000Frw) ikurikiranarubanza 300,000Frw) nindishyi zo gushorwa mumanza zingana na (700,000Frw).

Ikigomba gusuzumwa muri uru rubanza ni ukumenya niba SANLAM AG PLC itaragombaga gucibwa indishyi muri uru rubanza no kumenya niba hari indishyi zindi zatangwa kuri uru rwego

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Ku byerekeye kumenya niba SANLAM AG PLC itaragombaga gucibwa indishyi muri uru rubanza no kumenya niba hari indishyi zindi zatangwa kuri uru rwego

[6] Mu bisobanuro ku bujurire bwa SANLAM AG PLC Me Twagiramungu Ernest yasobanuye ko, mu rubanza RC00056/2021/TGI/NGOMA, Urukiko Rwisumbuye rwa Ngoma, rwategetse SANLAM AG PLC guha Bendantunguka Emmanuel indishyi zitandukanye, kandi bagaragarije urukiko ko, nta ndishyi agomba guhabwa kubera ko, yakomerekejwe n'imodoka yari imutwaye ariyo Mitsubishi Fuso RAB 668 E ifite ubwishingizi bwo gutwara imizigo ariko urukiko rumugenera indishyi nk'aho ari rubanda ''tiers'', iyo modoka ikaba ifite ubwishingizi ''assurance'' yo gutwara imizigo n'abandi bantu 2 bigaragara ko, ari abafitanye isanon'imirimo yishingiwe icyo kinyabiziga gikoresha cyangwa abakozi kuri iyi modoka(shoferi, kigingi cyangwa uwayikodesheje ngo ayitwaremo imizigo), akaba nta ndishyi yahabwa na SANLAM kuko atari yishingiwe.

[7] Me Twagiramungu Ernest yakomeje gusobanura ko, mu gihe Urukiko rwabibona ukundi, indishyi mbangamirabukungu zikwiye gutangwa ni 1.080.000Frw kubera ko, Bendantunguka Emmanuel atagaragaza umusaruro nyakuri akora ku mirimo akora hashingiwe ku ngingo ya 18 igika cya 3 y'Iteka rya Perezida aho gushingira ku gika cya 4 cy'ingingo kuko ubwo buryo bukoreshwa mu kubara indishyi mbangamirabukungu abantu bavugwa mu gika cya 1 n'icya 2 by'ingingo ya 18.

[8] Me Gatama Cassien uburanira Bendantunguka yavuze ko, ubujurire bwa SANLAM budakwiye guhabwa ishingiro kubera impamvu imwe y'ingenzi, kwitwaza ko ikinyabiziga cyari gifite ubwishingizi bw'imizigo kitari gifite ubwishingizi bw'abantu, ari uburyo bwo guhunga inshingano zuburyozwe kuko imihango y'ubwumvikane hagamijwe gutanga indishyi zumvikanweho n'impande zombi SANLAM, yawitabiriye ndetse yemera kwishyura ikitarumvikanyweho kikaba ari uburyo bwo kubara izo ndishyi, guhindukira ivuga ko noneho idafite uburyozwe ari uburyo bwo gutinza urubanza gusa. Asaba Urukiko kwemeza ko, icyemezocyafashwe mu rubanza rwajuririwe kidahindutse kukoindishyi zabazwe uko bikwiye.

UKO URUKIKO RUBIBONA

1.Ku ngingo yo kumenya niba SANLAM AG PLC itaragombaga gucibwa indishyi muri uru rubanza

[9] Mu rubanza RC00056/2021/TGI/NGOMA mu gika cya [12] rwajuririwe, havugwa ibi bikurikira: Urukiko rurasanga kuba SANLAM AG PLC ariyo yagiranye amasezerano y'ubwishingizi bwo gutwara ibicuruzwa na nyiri modoka nimba arinawe shoferi, ibyo bivuze ko baziranye kuko bahujwe nayo masezerano y'ubwishingizi,ibyo Me Twagiramungu Erneste avuga ko abahohotewe n'impanuka aribo bakwiye gukurikirana uwakoze impanuka ariko iyo ngingo nta

gaciro yahabwa kuko nta kimenyetso kigaragaza ko bari bazi ayo masezerano no kuba imodoka yakoze impanuka bagakomereka bikomeye ariyo yishingiye ikinyabiziga cyateje impanuka, ikind ni uko muri dosiye harimo inyandiko y'ubwumvikane hagati y'umwishingizi n'urega aho umwishingizi yari yemeye kwishyura indishyi zingana na 2,431,100 Frw ntibyagerwaho kuko bananiwe kumvikana ku ndishyi mbangamirabukungu, rusanga iyo nyandikoy'ubwumvikane yakozwe ku wa 01/6/2021 igaragaza ko uregwa nawe yabonaga ko, urega akwiyeguhabwa indishyi zikomoka ku mpanuka kuko yahohotewe n'imodoka yishingiye hashingiwe ku ngingo ya 3,10 n'iya 22 z'iteka rya Perezida N^{o} 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.''

[10] Mu bisobanuro k'ubujurire bwa SANLAM AG PLC Me Twagiramungu Ernest yavuzeko, nta ndishyi Bendantunguka Emmanuel agomba guhabwa kubera ko, yakomerekejwe n'imodoka yari imutwaye ariyo Mitsubishi Fuso RAB 668 E ifite ubwishingizi bwo gutwara imizigo n'abandi bantu 2 bigaragara ko, ari abafitanye isano n'imirimo yishingiwe icyo kinyabiziga gikoresha cyangwa abakozi kuri iyi modoka(shoferi, kigingi cyangwa uwayikodesheje ngo ayitwaremo imizigo), akaba nta ndishyi yahabwa na SANLAM kuko atari yishingiwe kandi atari rubanda ''tiers'', nyamara nubwo atagaragarije Urukiko ibimenyetso by'ibyo avuga nk'ikimenyetso cy'abo babiri bishingiwe abo aribo(imyirondoro, amazina…) batandukanyen'uwakomerekeye mu mpanuka ngo banagaragaze ko, atari mu bandi bafatiwe ubwishingizi ''tiers'', akaba ntacyo yungukiye muri uru Rukiko kivuguruza ibyasobanuwe n'Urukiko Rwisumbuye bimaze kuvugwa, bigaragaza SANLAM AG PLC ariyo ikwiye kuryozwa indishyi,bityo n' ubujurire bwayo kuri iyo ngingo bukaba butahabwa ishingiro.

[11] Ku ngingo ya SANLAM AG PLC yo kutemera ibarwa ry'indishyi mbangamirabukungu Me Twagiramungu Ernest yasobanuye ko, mu gihe Urukiko rwasanga SANLAM AG PLC yaryozwa indishyi, indishyi mbangamirabukungu zikwiye gutangwa ni 1.080.000Frw kubera ko,

Bendantunguka Emmanuel atagaragaza umusaruro nyakuri akora ku mirimo akora hashingiwe ku ngingo ya 18 igika cya 3 y'Iteka rya Perezida aho gushingira ku gika cya 4 cy'ingingo kuko ubwo buryo bukoreshwa mu kubara indishyi mbangamirabukungu abantu bavugwa mu gika cya 1 n'icya2 by'ingingo ya 18; ibi uburanira Bendantunguka Emmanuel akaba atabivuguruje.

[12] Mu rubanza RC00056/2021/TGI/NGOMA mu gika cya [15], Urukiko Rwisumbuye rwageneye Bendantunguka indishyi mbangamirabukungu zibariye ku bihumbi bitatu (3000Frw) nk'umushahara muto ntarengwa x n'iminsi (30) y'akazi x n'ameze cumi nabiri (12), igipimo cy'ubumuga yagize mirongo ine na kane ku ijana (44%) n'imyaka yarafite mirongo itatu n'itanu (35), guteranyo rimwe, igipimo cy'ibitsa kigezweho mu rubuga rwa Banki Nkuru y'Igihugu kingana na karindwi ku ijana (7%), zikabarwa gutya 3000 x 30 x 12 (1,080,000 Frw) x 44% x 41: 1+(7% x 41) = zikaba 5,034,418Frw arizo SANLAM AG PLC yishyura urega ngo kuko yakomeretse bikomeye. Nyamara rukaba rutaritaye ku kugena bene izo ndishyi hashingirwa ku musaruro wavaga mu murimo w'uwahohotewe, kandi abaregeye indishyi batarigeze babigaragariza ibimenyetso nk'uko SANLAM AG PLC.

[13] Kuba muri urwo rubanza Urukiko Rwisumbuye, rwavuze ko rushingira uko kubara indishyi ku ngingo ya 22 n' iya 23 y' Iteka rya Perezida rugakoresha ibara rirebana n' abafite umusaruro uzwi wavaga mu murimo w'uwahohotewe kandi nta gisobanuro Urukiko rwatanze, Uru Rukiko rusanga harimo kwibeshya ku biteganywa n' izo ngingo, kuko ikigarukwaho nk' uko byavuzwe muri iyo ngingo nuko kugira ngo indishyi mbangamira bukungu zibarwe muri buriya buryo hagomba kuba hari umusaruro uzwi ushingirwaho naho iyo ntawagaragajwe na none itegeko rikaba ryarateganyije uko izo ndishyi zibarwa, kuba bitaritaweho, uru Rukiko rusanga iyo ari inenge ituma icyo cyemezo gisubirwamo kigahuza n' ibiteganywa n' izo ngingo ndetse bikaba ari nabyo byagiye bihurizwaho mu isesengura ku manza nka RCA00002/2018/HC/RSZ, RCA00373/2019/HC/KIG na

RCA00187/2020/HC/KIG zisa n'uru ku bisobanuro mpamvu biteganywa n' Itegeko ku itangwa ry' indishyi mbangamirabukungu.

[14] Urukiko rero rurasanga indishyi mbangamirabukungu Bendantunguka agomba guhabwa zibarwa ku buryo bukurikira: 3,000 Frw x 12 x 30= 1,080,000Frw kuko abarega atabashije kugaragaza umusaruro yinjizaga ku kwezi nk' uko byasobanuwe ibindi bikaguma uko byemejwe mu rwego rwa mbere.

2.Ku kirego kiregera kwiregura

[15] Me Gatama Cassien ahagarariye Bendantunguka yatanze ikirego kiregera kwiregura asaba Urukiko gutegeka SANLAM gutanga amafaranga angana na Miliyoni ebyiri (2,000,000Frw) Akubiyemo igihembo cyavoka (1,000,000Frw) ikurikiranarubanza 300,000Frw) nindishyi zo gushorwa mumanza zingana na (700,000Frw) kuri icyo kirego, uburanira SANLAM AG PLC yavuze ko, ukujurira ari uburenganzira bemererwa n'amategeko mu gihe bumva batanyuzwe ko bitari uburyo bwo gutinza imanza bityo bakaba basanga nta ndishyi izo arizo zose basabwa.

[16] Urukiko rurasanga nubwo uburanira Bendantunguka atagaragaje ibimenyetso byerekana ko, aya mafaranga asaba koko yakoreshejwe muri uru rubanza kuri uru rwego, kuba baritabye kandi bagakurikirana uru rubanza, bivuze ko, hari ibyo bakoresheje muri uko gukurikirana urubanza, bagomba kugenerwa mu bushishozi bw'Urukiko kuri uru rwego amafaranga ibihumbi magana abiri na mirongo itanu y' ikurikirana rubanza kuko ayakwa ari ikirenga, naho ibindi bikaba byarafatiwe uwanzuro ku rwego rwa mbere, ibi uru rukiko rukaba rubishingira ku nyandiko z' abahanga nka Jacques FLOUER, Jean – LUC AUBERT na Eric SAVAUX ivuga ko: "Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute du quel il est arrivé à le réparer[1].'' Mu Kinyarwanda bishatse kuvuga ko: "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri gukora ikosa rigikomokaho kuriha ibyangiritse".

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje kwakira ubujurire bwa SANLAM AG PLC nyamara bukaba bufite ishingiro kuri bimwe;

[18] Rwemeje ko, urubanza RC 00056/2021/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 19/11/2021 ruhindutse ku byerekeye indishyi z'imbangamira bukungu;

[19] Rutegetse Sanlam AG PLC guha Bendantunguka Emmanuel indishyi z'imbangamira bukungu zingana na 1.080.000Frw; ay' indishyi z'akababaro anagana na 1080,000Frw; indishyi mbangamiraburanga za 1080,000Frw; amafaranga yakoresheje akurikirana uru rubanza ateye atya: aya dosiye y'impanuka 12000Frw, ayo kwivuza agana na 55,100Frw , ay'icyemezo 500Frw; ay'ingendo 50,000Frw, ay'igihembo cya avoka 500,000Frw; ay' ikurikiranarubanza 50,000Frw n' ay' ingwate y'amagarama y'urubanza 20,000Frw ay'igihembo cya avoka hiyongeyeho ibihumbi mmagana abiri na irongo itanu (250.000FRW yo kuri uru rwego, yose hamwe akaba miliyoni enye n' ibihumbi ijana na mirongo irindwi na birindwi na magana atandatu (4.177.600Frw), itayamuha mu minsi umunani (8) kuva urubanza rubaye ndakuka, agakurwa mu mutungo wayo ku ngufu za Leta.

[20] Rutegetse ko, ingwate y'amagarama yatanzwe muri uru rubanza kuri uru rwego ahwanye n'ibyarukozwemo.

---

[1] Jacques FLOUER, Jean – LUC AUBERT na Eric SAVAUX, Droit Civil Les obligations, fait juridique, 12 ème édition, Dalloz, 2007, p.97.