

SANLAM AG Plc v BAYIJAHE

[Rwanda URUKIKO RUKURU– RCA 00071/2021/HC/RWG (Nyirabagande, P.J.) 25 Ugushyingo 2022]

Amategeko agenga imanza mbonezamubano – Ubwishingizi – Impanuka itewe n'ibinyabiziga – Raporo y'ikigero cy'ubumuga – Umwishingizi utanyuzwe na raporo y'ikigero cy'ubumuga yakoreshejwe n'uwahohotewe akoresha iyindi “contre-expertise” mu gihe cy'iminsi mirongo itandatu (60 jrs) ishobora kongerwa mu bwumvikane.

Incamake y'ikibazo : Urubanza rwatangiye Bayijahe arega Sanlam AG Plc mu Rukiko Rwisumbuye rwa Nyagatare asaba Urukiko kuyitegeka kumwishyura indishyi zitandukanye nyuma yuko akoze impanuka yamusigiye ubumuga bwa 55% nubwo Sanlam yo ivuga ko iyo mpanuka yamusigiye ubumuga bwa 22%, avuga ko yasabye Sanlam AG Plc indishyi mu bwumvikane ariko ntizimuhe, Urukiko mu rubanza RC00072/2020/TGI/NYG rwemeje ko ikirego cya Byijahe gifite ishingiro rutegeka Sanlam AG Plc kumwishyura indishyi zitandukanye.

Sanlam AG Plc yajuririye icyo cyemezo inenga ko Urukiko rwashingiwe ku mpuzandengo y'igipimo cyatanzwe n'uwahohotewe n'icy'umwishingizi.

Bayijahe na we yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana avuga ko yari kugenerwa indishyi zijyanye no gutakaza amahirwe yo gushaka nk'uko ziteganywa n'Itegeko, kandi ngo ntiyagenewe igihembo cya avoka kandi yaramufite.

Sanlam AG Plc ivuga kandi ko indishyi zagombaga kugenwa hashingiwe ku gipimo cy'ubumuga cya 22% cyatanzwe na muganga w'umwishingizi kubera ko Bayijahe yanze kuza gufata igisubizo kuri “contre expertise”, kandi ngo impuzandengo ikaba idateganyijwe n'Itegeko. uhagarariye Bayijahe avuga ko hagombaga gushingirwa ku biteganywa n'ingingo ya 7 y'Iteka rya Perezida ivuga ko ngo hashingirwa ku raporo ya muganga w'uwahohotewe.

Urukiko Rukuru rwemeje mu rubanza. ko Sanlam AG Plc itubahirije ibihe biteganywa n'amategeko byo gukoresha “contre-expertise”; kandi naho iyikoreshereje ntiyayishyiriza Bayijahe, ngo agire icyo abivugaho. Bityo, Sanlam AG Plc ikwiye kwemera raporo yatanze n'uwahohotewe kuko itamugaragariye icyo iyinenga, haba mu bihe biteganywa n'amategeko cyangwa mu bihe bigereranyije (delai raisonable). Urukiko rwemeje kandi ko kuba mu rubanza rujuririrwa harashingiwe ku mpuzandengo hagati ya raporo ya muganga w'uwahohotewe na muganga w'umwishingizi bitahabwa agaciro kuko bidateganyijwe n'amategeko.

Urukiko rwemeje na none ko nta mpamvu yari gutuma Bayijahe adahabwa indishyi zo gutakaza amahirwe yo gushaka mu rubanza rujuririrwa kubera ko agaragaza icyemezo cy'uko ari ingaragu kandi nta myaka ntarengwa yo gushingirwa iteganyijwe.

Incamake y'icyemezo:1. Umwishingizi utanyuzwe na raporo y'ikigero cy'ubumuga yakoreshejwe n'uwahohotewe akoresha iyindi “contre expertise” mu gihe cy'iminsi mirongo itandatu (60 jrs) ishobora kongerwa mu bwumvikane kandi igashyikirizwa uwahohotewe. Iyo ibyo bidakozwe cyangwa bigakorwa hashize igihe kinini, hashingingirwa kuri raporo yakoreshejwe n'uwahohotewe.

2. Gushingira ku mpuzandengo ya raporo y'umwishingizi na raporo y'uwahohotewe ntibiteganyijwe n'amategeko.

3. Nta myaka ntarengwa yo gutanga Indishyi zo gutakaza amahirwe yo gushaka, uzisaba apfa kuba arengeye imyaka 25 kandi atarigeze ashaka.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho.

Iteka rya Perezida N° 31/2001 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, Ingingo ya 6 Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi Ingingo ya 9, 111

Imanza zifashshijwe:

Urubanza RCOMAA0054/2016/CS rwa APE Isuku Asbl na Bank of Kigali na Habiyaremye Jean Baptiste rwaciwe n'Urukiko rw'Ikirenga ku wa 01/12/2017,

Inyandiko z'abahanga zifashishijwe

AF Toulet, Dictionnaire des codes français : ou Manuel du droit, Paris, p.433 "Tout fait quelconque de l'homme qui cause un dommage, oblige celui par la faute duquel il est arrivé à le réparer).

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku rwego rw'ubujurire, SANLAM AG Plc iranenga icyemezo cy'Urukiko, rwayitegetse kwishyura Bayijahe Fred indishyi zose hamwe zingana na 3.647.903Frw hashingiwe ku mpuzandengo y'igipimo cyatanzwe n'uwahohotewe n'icy'umwishingizi.

[2] Mu mpanuka yabaye ku wa 03/10/2018, imodoka Toyota Corolla yagonze moto yari itwawe na Bayijahe Fred, arakomereka, ku wa 28/11/2018 muganga we agaragaza ko afite ubumuga bwa 55%, muri dosiye habonekamo "contre expertise" ya Sanlam AG Plc yo ku wa 02/11/2020, igaragaza ubumuga bwa 22%.

[3] Mu rubanza rujuririwa, indishyi zabazwe hashingiwe ku bumuga bwa 35,5%: impuzandengo hagati y'ubumuga bwatanzwe n'urega n'ubwatanzwe n'umwishingizi. Sanlam AG Plc yajuririye Urukiko Rukuru, Me Twagiramungu Ernest avuga ko indishyi zagombaga kugenwa hashingiwe ku gipimo cy'ubumuga cya 22% cyatanzwe na muganga w'umwishingizi kubera ko Bayijahe yanze kuza gufata igisubizo kuri "contre expertise", impuzandengo ikaba idateganyijwe n'Itegeko. Me Nshimiyimana Emmanuel uhagarariye Bayijahe Fred avuga ko hagombaga gushingirwa ku biteganywa n'ingingo ya 7 y'Iteka rya Perezida ivuga ko hashingirwa ku raporo ya muganga w'uwahohotewe. Urukiko rurasuzuma raporo y'umuganga yashingirwaho hagati y'iy'uwahohotewe n'iy'umwishingizi.

[4] Bayijahe Fred na we yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana avuga ko yari kugenerwa indishyi zijyanye no gutakaza amahirwe yo gushaka nk'uko bivugwa mu Itegeko, kandi ntiyagenerwa igihembo cya avoka muri dosiye bigaragara ko yari afite avoka. Urukiko rurasuzuma niba Bayijahe Fred yari kugenerwa indishyi zo gutakaza amahirwe yo gushaka n'igihembo cya avoka.

[5] Urubanza rwaburanishijwe ku wa 18/10/2022, Sanlam AG Plc ihagarariwe na Me Ernest Twagiramungu, naho Bayijahe Fred ahagarariwe na Me Nshimiyimana Emmanuel.

[6] Ibibazo bisuzumwa muri uru rubanza ni ibi bikurikira:

Kumenya raporo ya muganga yashingirwaho hagati y'iy'umwishingizi n'iy'uwahohotewe.

Kumenya niba hari impamvu yatuma Bayijahe Fred atagenerwa indishyi zijyanye ngo gutakaza amahirwe yo gushaka

Kumenya niba hari impamvu yari gutuma atagenerwa igihembo cya avoka

II. IKIBAZO KIRI MU RUBANZA N’ISESENGURWA RYACYO.

Kumenya raporo ya muganga yashingirwaho hagati y’iy’umwishingizi n’iy’uwahohotewe.

[7] Ingingo ya 6 y’Iteka rya Perezida N° 31/2001 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga, iteganya ko iyo ari ibintu byarangirira rimwe, mu gihe cy’iminsi mirongo itandatu uhereye ku ihamagarwa rya mbere cyangwa ku kizami cya mbere, igihe gishobora no kongerwa biturutse ku bwumvikane hagati yabo, umuganga w’Umwishingizi ashidikiriza Umwishingizi, uwahohotewe hamwe n’umuganga w’uwahohotewe, raporo isobanura ibirebana n’ingaruka z’impanuka ku wahohotewe, n’igihe ubumuga bw’igihe gito buzamara hamwe n’igipimo cy’ubumuga buhoraho, ibyangijwe bindi bitajyanye n’umutungo hamwe n’uko bingana. Iyo ari ibintu birambye, igihe gihita cyongerwa. Mu minsi mirongo cyenda ikurikira iyakirwa ry’iyo raporo y’umuganga, uwahohotewe ahita atanga icyemezo cye kuri iyo raporo. Iyo icyo gihe kirenze, uwahohotewe ataratanga icyemezo cye, bifatwa nk’aho uwahohotewe abyemeye. Igihe bitumvikanyweho, raporo y’umuganga w’Umwishingizi ntiyitabwaho. Igihe abagiranye amasezerano benera raporo ya muganga cyangwa bigafatwa nk’aho bayemeye, bagomba gukurikiza ibirebana n’ubuvuzi byose hamwe n’ibigereranyo bivugwa muri iyo raporo.

[8] Muri iyi ngingo humvikanamo ko mu minsi 60 uhereye ku ihamagarwa rya mbere cyangwa ku kizamini cya mbere, igihe gishobora kongerwa ku bwumvikane, umuganga w’umwishingizi ashidikiriza umwishingizi, uwahohotewe n’umuganga w’uwahohotewe raporo isobanura ibirebana n’ingaruka z’impanuka. Mu minsi 90 ikurikira iyakirwa ry’iyo raporo y’umuganga, uwahohotewe agaragaza icyo avuga kuri iyo raporo. Igihe bitumvikanyweho, raporo y’umuganga w’umwishingizi ntiyitabwaho.

[9] Mu rubanza rujuririrwa, Urukiko rwabaze indishyi rushingiye ku mpuzandengo hagati ya raporo y’umuganga w’umwishingizi n’iy’uwahohotewe. Sanlam AG Plc yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, Me Twagiramungu Ernest avuga ko uburyo indishyi zabazwe bunyuranyije n’amategeko, hashingirwa ku mpuzandengo kandi hatashyizweho itsinda ry’abaganga, asaba ko byakosorwa hashingirwa ku gipimo cya 22% cyangwa hashingirwaho itsinda ry’abaganga.

[10] Me Nshimiyimana Emmanuel uhagarariye Bayijahe Fred avuga ko ibivugwa n’avoka w’umwishingizi bitahabwa agaciro, kuko indishyi zagombaga kubarwa hashingiwe ku gipimo we yatanze cya 55% kubera ko umwishingizi atigeze agaragaza “contre-expertise”. Avuga ko mu bihe nk’ibyo hakoreshwa raporo ya muganga y’uwahohotewe.

[11] Nk’uko biboneka muri dosiye, hari ibaruwa yanditswe kuwa 18/03/2020 na Me Nshimiyimana Emmanuel isaba kwishyurwa indishyi ku bwumvikane, ku mpanuka yasize ubumuga bungana na 55%, iki gipimo ni nacyo kigaragazwa muri rapport de consolidation yo 03/10/2018, ibi byashyikirijwe umwishingizi kuri iriya tariki. Dosiye igaragaza ko ikirego cyatanzwe ku wa 19/12/2020, nyuma y’amezi hafi icyenda (270 jrs). Muri dosiye kandi habonekamo “contre-expertise” yakozwe na muganga wa Sanlam AG Plc yo ku wa 02/11/2020, nyuma y’amezi asaga 7 ; ariko nta kimenyetso kigaragazwa cy’uko yashyikirijwe uwahohotewe nk’uko Itegeko rivuga ko muganga wakoze raporo ayishyikiriza umwishingizi, muganga w’uwahohotewe.

[12] Urukiko rusanga rero Sanlam AG Plc itarubahirije ibihe bivugwa mu ngingo zasobanuwe haruguru kuko nyuma yo guhabwa raporo y’uwahohotewe, asaba kwishyurwa mu bwumvikane,

yategereje iminsi irenga 210 (amezi asaga 7) ngo ibone gukoresha “contre-expertise”; mu gihe hateganywa iminsi 60, ishobora kongerwa mu bwumvikane. Muri iyi dosiye ariko ntihagaragazwa ko iyo raporo yaba yarashyikirijwe Bayijahe Fred, bityo ngo na we agire icyo abivugaho. Rukaba rusanga rero Sanlam AG Plc itarubahirije ibiteganywa n’amategeko mu gihe hari impaka ku raporo ya muganga y’uwahohotewe ; bikaba bikwiye gufatwa ko yemeye raporo yatanzwe n’uwahohotewe kuko itamugaragarije ko iyinenga, atari mu bihe biteganywa n’amategeko ariko nibura mu bihe bigereranyije (delai raisonable), ahubwo ntiyanamugaragarije; ahubwo yari yahaye umurwayi gahunda yo kuza kuyifata ku wa 11/11/2020; bityo rero, raporo ya muganga y’uwahohotewe ni yo ikwiye gushingirwaho.

[13] Rusanga kandi ibyo Sanlam AG Plc isaba ko hakorwa “contre-expertise” bitahabwa agaciro kubera ko ari iyo yiyambuye ubwo burenganzira yemererwa n’amategeko, ku mpamvu itagaragariza Urukiko, byafatwa nko gutinza dosiye ku buryo bukabije. Rusanga nibura n’ubwo yari ihisemo guhindura ibiteganywa n’amategeko ku buryo “contre-expertise” imenyeshwa uwahohotewe na muganga we, ariko nibura iyo iza kuba yarabikoze mu bihe bikwiye.

[14] Rusanga kandi ibyo kuba mu rubanza rujuririrwa harashingiwe ku mpuzandengo hagati ya raporo ya muganga w’uwahohotewe na muganga w’umwishingizi bitahabwa agaciro kuko bidateganyijwe n’amategeko, hakaba ahubwo hari gushingirwa kuri raporo y’uwahohotewe nk’uko bisobanurwa mu ngingo yavuzwe haruguru, ikaba igaragaza igipimo cya 55%.

[15] Rukaba rusanga indishyi mbangamirabukungu zikwiye kugenerwa Bayijahe Fred zigomba kubarwa kuri ubu buryo: $3.000 \times 30 \times 12 \times 16 \times 55\%$: $1 + 8\% \times 16 = 4.168.421$ Frw; ku ndishyi z’akababaro: hashingirwa ku bivugwa mu ngingo ya 19 y’Iteka ryavuzwe rigena ikigereranyo cy’inzezo 4, irikomeye: iyo ari ubumuga buhoraho kuva kuri 41 kugera kuri 75%; ku rwego rukomeye hagatangwa 100% by’umushahara muto ntarengwa w’umwaka: $3000 \times 30 \times 12 \times 100\% = 1.080.000$ Frw; indishyi zose zigenwe zikaba zihwanye n’amafaranga miliyoni eshanu, ibihumbi magana abiri na mirongo ine n’umunani n’amafaranga magana ane na makumyabiri na rimwe (5.248.421 Frw).

Kumenya niba hari impamvu yatuma Bayijahe Fred atagererwa indishyi zijyanye ngo gutakaza amahirwe yo gushaka.

[16] Ingingo ya 19 y’Iteka ryavuzwe haruguru, iteganya ko gutakaza amahirwe yo gushaka bishobora gusa gutangirwa indishyi ku muntu w’ingaragu kandi bitewe n’uko nyuma y’impanuka yagize ubumuga buhoraho bungana cyangwa burengeje 50% ; ibangamira ry’uburanga ringana cyangwa rirengeje urwego rwa 5 rwavuzwe hejuru. Iyo rishobora kwemerwa, iryo bangamira ritangirwa indishyi ku buryo bukurikira: $1 \times$ umushahara w’umwaka muto ntarengwa wemewe n’amategeko iyo uwahohotewe arengeje imyaka 25. Iyi ngingo yumvikanisha ko iyo uwahohotewe ari ingaragu akaba yagize ubumuga burengeje urwego rwa 5, kubangamira amahirwe yo gushaka bitangirwa indishyi zihwanye n’umushahara w’umwaka muto ntarengwa wemewe n’amategeko.

[17] Mu rubanza rujuririrwa hemejwe ko nta ndishyi zo gutakaza amahirwe yo gushaka, rusobanura ko ubumuga yasigiwe n’impanuka butamubuza kubyara akaba kandi yarakoze impanuka afite imyaka 50 ku buryo bitavugwa ko ari impanuka yamubujije gushaka. Bayijahe Fred arajurira, we na Me Nshimiyimana Emmanuel umwunganira, bavuga ko izo ndishyi yari kuzihabwa kubera ko ari ingaragu kandi nta gihe ntarengwa cyo gushaka giteganyijwe ; ikirebwa akaba ari uko impanuka yamusigiye ubusembwa bwatuma atabengukwa n’uwo yari agiye gushaka. Bavuga kandi ko Urukiko rwitiranyije ibintu uko byagenze, kuko indishyi zitangwa n’izo gutakaza amahirwe yo gushaka bikaba ntaho bihuriye no kuba yabyara. Me Twagiramungu Ernest uhagarariye Sanlam AG PLc avuga ko izo ndishyi zidakwiye.

[18] Urukiko rusanga nta mpamvu yari gutuma Bayijahe Fred adahabwa indishyi zo gutakaza amahirwe yo gushaka kubera ko agaragaza icyemezo cy'uko ari ingaragu kandi nta myaka ntarengwa yo gushyingirwa iteganyijwe ahubwo mu Itegeko hagenwa uburyo indishyi nk'izo zitangwa mu gihe uwahohotewe arengeje imyaka 25, ariko ntibavuge imyaka ntarengwa. Izo ndishyi kandi ntaho zihuriye no kuba ubumuga uwahohotewe yasigiwe n'impanuka bwamubuza kubyara, ahubwo ni indishyi zijyanye no kuba ubumuga yasigiwe bwatuma uwahohotewe atabengukwa n'uwo yifuza gushyingiranwa na we. Bityo, Bayijahe Fred akwiye guhabwa indishyi zo gutakaza amahirwe yo gushaka, zingana na 3.000 Frw x 30 x 12 = 1.080.000 Frw.

Kumenya niba hari indishyi zari kugenwa muri uru rubanza

[19] Ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko urega agaragaza ibimenyetso by'ibyo aregera. Ingingo ya 111 y'iryo Tegeko, igateganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Iyi ngingo yumvikanamo ko umuburanyi ashobora gusaba kugenerwa indishyi z'ibyo yatakaje akurikirana urubanza. Mu rubanza rwaciwe n'Urukiko rw'Ikirenga¹, rushingiye ku nyandiko z'abahanga mu mategeko, igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyir'ukugikora kwishyura ibyangiritse². Ibisobanuwe muri izo ngingo no mu nyandiko z'abahanga, byumvikanisha ko ugaragaje ko ibikorwa by'undi byamwangirije, ategetswe kwishyura ibyangiritse.

[20] Mu rubanza rujuririrwa, Urukiko ntirwagennye igihembo cya avoka, nta mpamvu itanzwe, Bayijahe Fred na Me Nshimiyimana Emmanuel bavuga ko yari kugenerwa indishyi z'igihembo cya avoka kuko yagaragaje ko yari afite avoka kandi no kuri uru rwego akaba amufite, ko rero agomba kwishyurwa igihembo yari yasabye n'icyo kuri uru rwego. Me Twagiramungu Ernest uhagarariye Sanlam AG Plc avuga ko byasuzumwa n'Urukiko.

[21] Urukiko rusanga kuba Bayijahe Fred yaratsinze urubanza ku rwego rwa mbere, akaba kandi yari afite avoka, nta mpamvu yari gutuma atishyurwa igihembo cya avoka; akanishyurwa kandi kuri uru rwego kuko na ho amufite kandi akaba amwishyura. Sanlam AG Plc ikaba ikwiye kumwishyura amafaranga abariwe hamwe ku nzego zose, amafaranga ibihumbi magana inani (800.000Frw) agenwe ku nzego zombi.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko ikirego cy'ubujurire cyatanzwe na Sanlam AG Plc nta shingiro gifite;

[23] Rwemeje ko ikirego cy'ubujurire cyatanzwe na Bayijahe Fred gifite ishingiro;

[24] Rwemeje ko urubanza RC00072/2020/TGI/NYG rwaciwe ku wa 22/10/2021 rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ruhindutse gusa ku ndishyi;

[25] Rutegetse Sanlam AG Plc kwishyura Bayijahe Fred indishyi zihwanye n'amafaranga miliyoni enye, ibihumbi ijana na mirongo itandatu n'umunani n'amafaranga magana ane na makumyabiri na rimwe (4.168.42Frw) y'indishyi z'ibangamirabukungu; indishyi z'akababaro zingana na miliyoni imwe n'ibihumbi mirongo inani (1.080.000Frw); indishyi zo gutakaza amahirwe yo gushaka miliyoni imwe n'ibihumbi mirongo inani (1.080.000Frw); amafaranga ibihumbi magana inani (800.000Frw)

¹ Urubanza RCOMAA0054/2016/CS rwo ku wa 01/12/2017, haburana APE ISUKU Asbl na Bank of Kigali na Habiaremye Jean Baptiste.

² AF Toulet, Dictionnaire des codes français : ou Manuel du droit, Paris, p.433 "Tout fait quelconque de l'homme qui cause un dommage, oblige celui par la faute duquel il est arrivé à le réparer).

y'igihembo cya avoka; hakiyongeraho 83.309Frw yakoresheje yivuzza, 14.700Frw yaguze dosiye na 200.000Frw y'ingendo yakoze, yagenwe mu rubanza rujuririrwa;

[26] Rutegetse ko amafaranga ibihumbi mirongo ine (40.000Frw) Sanlam AG Plc yatanze ajuririra, n'ibihumbi mirongo ine (40.000Frw) Bayijahe Fred yatanze ajurira ahwanye n'ibyakoze;