NTUKAMAZINA v. PRIME INSURANCE LTD (EX-COGEAR LTD)

[Rwanda URUKIKO RW'IKIRENGA – RSOC00001/2016/CS (Kanyange, P.J., Ngagi na Mukandamage, J.) 20 Mutarama 2017]

Irangiza ry'imanza – Kudahindura urubanza – Urubanza rugomba kurangizwa n'inzego zose zirebwa uko rwaciwe mu gihe nta nzira y'ubujurire yiyambajwe ngo ihindure ibyemejwe muri urwo rubanza – Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 151.

Irangiza ry'imanza – Igihano gihatira kurangiza urubanza – Igihano gihatira umuburanyi kurangiza urubanza gisabwa igihe cy'iburanisha ry'urubanza mu mizi kikaba rero kitasabirwa mu rubanza rwerekeranye n'impaka zavutse mu irangiza ryarwo – Itegeko N^{o}21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 217.

Incamake y'ikibazo: Mu rubanza rw'umulimo Ntukamazina yaburanye na Prime Insurance yatsindiyemo indishyi zingana na mafaranga 134.185.600Frw zose hamwe. Urubanza rumaze kuba ntakuka, Ntukamazina yasabye Prime Insurance kurangiza urwo rubanza. Mwiragiza ryarwo havutse impaka, kuko Prime Insurance Ltd yashakaga kwishyura amafaranga angana na 67.975.013Frw ivuga ko ariyo ibona ikwiriye kwishyura, Ntukamazina Jean Baptiste we akabyanga avuga ko icyemezo cyafashwe mu rubanza kigomba kubahirizwa uko kiri.

Ntukamazina yaregeye Urukiko rw'Ikirenga asaba ko rwa kemura izo impaka zavutse mwiragiza ryurwo rubanza ,akasaba ko urwo rukiko rwafata icyemezo rugategeka Prime Insurance Ltd kurangiza urwo rubanza, akanasaba ko Prime Insurance Ltd yahabwa igihano kiyihatira kurangiza urubanza hamwe n'indishyi zo gushorwa mu manza nta mpamvu n'igihembo cy'Avoka.

Prime Insurance Ltd yatanze ingoboka ijyanye no gukobokesha Ikigo cy'Imisoro n'Amahoro (RRA) n'Ikigo cy'Ubwiteganyirize bw'Abakozi (RSSB) ivuga ko nibyo byatumye urubanza rutarangizwa kuko hari amafaranga yabyo yagombaga kuvanwa mu yemejwe n'Urukiko. Kuri iyi ngoboka, Ntukamazina avuga ko nta nyungu Prime Insurance Ltd ifite yo kugobokesha RRA na RSSB.

Urukiko rwahise rusuzuma iyo ngoboka maze rusanga iryo gobokeshwa ritakwemerwa, bityo rufatira icyemezo mu ntebe cyokutaryakira, iburanisha mu mizi rirakomeza.

Prime Insurance Ltd yireguye ivuga ko nta mpaka ziri mu irangiza ry'urubanza kuko amafaranga Prime Insurance Ltd ikuramo ateganyijwe n'amategeko ndetse n'inzego bireba zikaba zarabigaragaje kandi ko impamvu ayo mafaranga ya RRA na RSSB ataburanwe ari uko ababuranyi bombi bari bazi ko hari ibigomba kuvamo.

Kubyerekeranye igihano gihatira kurangiza urubanza ivuga ko yari ifite ubushake bwo kurangiza urubanza kuko yari yakoze sheki, Ntukamazina akaba yagombaga kuba yarayifashe agasigara asaba ayo atabonye kandi ko niwe ugomba ku yiha amafaranga yo gusiragizwa mu manza n'igihembo cy'Avoka kuko ariwe wayishoye mu manza.

Incamake y'icyemezo: 1. Kuba ababuranyi bombi batumvikana ku buryo urwo rubanza rugomba kurangizwa bigaragaza impaka zishingiye ku iragiza ry'urubanzabityo zikaba zigomba gukemurwa.

2. Urubanza rugomba kurangizwa n'inzego zose zirebwa uko rwaciwe mu gihe nta nzira y'ubujurire yiyambajwe ngo ihindure ibyemejwe muri urwo rubanza.

3. Igihano gihatira umuburanyi kurangiza urubanza gisabwa igihe cy'iburanisha ry'urubanza mu mizi, kikaba rero kitasabirwa mu rubanza rwerekeranye n'impaka zavutse mu irangiza ryarwo, bityo igihano kiyihatira kurangiza urubanza, kitagomba kwakirwa.

4. Uregwa agomba kwishyura uwareze indishyi zugushorwa mu manza kuko yashowe muri uru rubanza ku maherere, bigatuma atakaza igihe n'amafaranga yo kwishyura Avoka zigenwe mu bushishozi bw'urukiko.

Ikirego gifite ishingiro kuri bimwe;.
Urubanza RSOCAA0001&0002/16/CS rugomba kurangizwa uko rwaciwe, uwareze akishyurwa amafaranga yose yatsindiye;
Uregwa agomba guha urega indishyi zo gushorwa mu manza n'igihembo cy'Avoka;.
Uregwa agomba gusubiza urega ingwate y'igarama yatanze arega.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 151.
Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimon'iz'ubutegetsi, ingingo ya 208.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu rubanza Nº RSOCAA0001 & 0002/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 14/10/2016, uru Rukiko rwategetse ko Prime Insurance Ltd igomba kwishyura Ntukamazina Jean Baptiste 134.185.600Frw, akubiyemo 43.248.000Frw y'indishyi z'uko Ntukamazina yirukanywe mu buryo bunyuranyije n'amategeko, 7.208.000Frw y'integuza, 14.416.000Frw y'imperekeza zishingiye ku isezererwa, 43.248.000Frw zijyanye n'icyemezo cy'umurimo atahawe, 23.065.600Frw y'ikiruhuko na 3.000.000Frw y'igihembo cy'Avoka n'ikurikiranarubanza.

[2] Nyuma y'icibwa ry'urwo rubanza, Ntukamazina Jean Baptiste yaregeye Urukikorw'Ikirenga avuga ko mu irangiza rwaryo havutse impaka, kuko Prime Insurance Ltd yashakaga kwishyura amafaranga angana na 67.975.013Frw ivuga ko ariyo ibona ikwiriye kwishyura, Ntukamazina Jean Baptiste we akabyanga avuga ko icyemezo cyafashwe mu rubanza rwavuzwe haruguru kigomba kubahirizwa uko kiri.

[3] Mu kirego cye, Ntukamazina Jean Baptiste, asaba uru Rukiko gutegeka Prime Insurance Ltd kurangiza urubanza Nº RSOCAA0001&0002/16/CS ikamwishyura 134.185.600Frw nk'uko yategetswe n'Urukiko, Prime Insurance Ltd igahabwaigihano kiyihatira kurangiza urubanza kingana na 1.000.000Frw buri munsi kugeza igihe izarangiriza kwishyura kuko bigaragara ko yakomeje kwanga kurangiza urubanza. Asaba kandi Prime Insurance Ltd kumwishyura amafaranga angana na 5.000.000Frw y'indishyi zo gushorwa mu

manza nta mpamvu, igihembo cy'Avoka kingana na 2.000.000Frw, ndetse n'amagarama ya 100.000Frw.

[4] Ku rundi ruhande, Prime Insurance Ltd yatanze ingoboka ijyanye no kugobokesha Ikigo cy'Imisoro n'Amahoro (RRA[1]) n'Ikigo cy'Ubwiteganyirize bw'Abakozi (RSSB[2]) kubera ko ari ibyo bigo byatumye urubanza rutarangizwa biturutse ku kuba hari amafaranga yabyo agomba kuvanwa mu yemejwe n'Urukiko. Kuri iyi ngoboka, Ntukamazina Jean Baptiste akaba avuga ko nta nyungu Prime Insurance Ltd ifite yo kugobokesha RRA na RSSB.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 10/01/2017, Ntukamazina Jean Baptiste yunganiwe na Me Rutabingwa Athanase, naho Prime Insurance Ltd iburanirwa na Me Rutembesa Phocas; Urukiko rwahise rusuzuma ingoboka yavuzwe haruguru, nyuma yo gusesengura ingingo ya 116[3]n'iya 117[4] z'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rusanga igobokesha ryasabwe na Prime Insurance Ltd ritakwemera, bityo rufatira icyemezo mu ntebe cyo kutaryakira, iburanisha mu mizi rirakomeza.

II. BIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Kumenya niba hari impaka zavutse mu irangiza ry'urubanza N°RSOCAA0001&0002/16/CS n'uko zakemurwa.

[6] Ntukamazina Jean Baptiste n'umwunganizi we Me Rutabingwa Athanase, bavuga ko urubanza rurangizwa rwategetse ko Prime Insurance Ltd itsinzwe, itegekwa kwishyura Ntukamazina Jean Baptiste amafaranga aruvugwamo, hanyuma aho kuyishyura yose, itanga sheki iriho 67.975.013 Frw adahura n'ayo Ntukamazina Jean Baptiste yatsindiye.

[7] Bavuga ko impaka mu irangiza ry'urubanza zigaragarira ku kuba Prime Insurance Ltd yagaragaje ko itagomba kwishyura 134.185.600Frw yategetswe n'Urukiko rw'Ikirenga kuko hari amafaranga agomba kuvanwa mo agahabwa RRA na RSSB, kandi ko na Bank of Kigali Ltd yanze gutanga amafaranga yose ari mu rubanza izo mpaka zitarakemuka, bityo ko nta bundi buryo Ntukamazina Jean Baptiste afite bwo kwihesha amafaranga yatsindiye, uretse kugaruka imbere y'Urukiko kugira ngo abe ari rwo rufata icyemezo, cyane cyane ko nta rundi rwego rushobora kuyagabanya nk'uko biteganywa n'Itegeko Nshinga rya Repubulika y'u Rwanda.

[8] Me Rutembesa Phocas, uburanira Prime Insurance Ltd, avuga ko nta mpaka ziri mu irangiza ry'urubanza kuko amafaranga Prime Insurance Ltd ikuramo ateganyijwe n'amategeko ndetse n'inzego bireba zikaba zarabigaragaje, ko impamvu ayo mafaranga ya RRA na RSSB ataburanwe ari uko ababuranyi bombi bari bazi ko hari ibigomba kuvamo, ndetse ko babimenyesheje Ntukamazina Jean Baptiste, ntiyabyumva, bityo biyambaza RRA

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[1]Rwanda Revenue Authority.
[2]Rwanda Social Security Board.
[3]"Guhatirwa kugoboka ni uburenganzira bw'ababuranyi bwo kuzana mu rubanza umuntu utarurezwemo".
[4] "Guhatirwa kugoboka mu rubanza bikorwa ku muntu wese utaburana urubanza akaba ategereje ko rucibwa ngo arutambamire kandi hari umuburanyi ushaka kumufatanya n'uwo baburana ngo abatsindire mu rubanza rumwe".

kugira ngo itange umucyo (clarification) kuri icyo kibazo, irabikora, igaragaza ko amafaranga Ntukamazina Jean Baptiste yatsindiye agomba gucibwa umusoro.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 208 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko: "Impaka zishingiye ku irangiza ry' urubanza ryaba riri gukorwa cyangwa ryararangiye zikemurwa n'urukiko rwaruciye bwa nyuma cyangwa urwemeje ko urubanza rwo mu mahanga rurangirizwa mu Rwanda mu gihe kitarenze iminsi cumi n'itanu (15) guhera igihe urukiko rwakiriye ikirego. Bene izo manza ntizijuririrwa".

[10] Ingingo ya 151, agace ka 4, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, iteganya ko: "[…] Ibyemezo by'ubucamanza bigomba gukurikizwa n'abo bireba bose, zaba inzego z'ubutegetsi bwa Leta cyangwa abantu ku giti cyabo. Ntibishobora kuvuguruzwa keretse binyuze mu nzira no mu buryo buteganywa n'amategeko; […]".

[11] Dosiye y'uru rubanza igaragaza ko mu rubanza N°RSOCAA0001&0002/16/CS, Prime Insurance Ltd yategetswe kwishyura Ntukamazina Jean Baptiste 134.185.600Frw agizwe na 43.248.000Frw y'indishyi z'uko yirukanywe mu buryo bunyuranyije n'amategeko, 7.208.000Frw y'integuza, 14.416.000Frw y'imperekeza zishingiye ku isezererwa, 43.248.000Frw zijyanye n'icyemezo cy'umurimo atahawe, 23.065.600Frw y'ikiruhuko na 3.000.000Frw y'igihembo cy'Avoka n'ikurikiranarubanza. Ariko, mu rwego rwo kurangiza urwo rubanza, Prime Insurance Ltd ikaba ishaka kwishyura gusa 67.975.013Frw ivuga ko igomba kuvanamo umusoro wa RRA n'amafaranga y'ubwiteganyirize bw'abakozi ya RSSB.

[12] Ku byerekeranye no kumenya niba hari impaka zavutse mu irangiza ry'urubanza N° RSOCAA0001&0002/16/CS, Urukiko rurasanga, nk'uko bimaze gusobanurwa mu gika kibanziriza iki, kuba ababuranyi bombi batumvikana ku buryo urwo rubanza rugomba kurangizwa, aho Prime Insurance Ltd ivuga ko mu mafaranga Ntukamazina Jean Baptiste yatsindiye hari agomba kuvanwamo, naho Ntukamaniza Jean Baptiste akavuga ko urwo rubanza rugomba kurangizwa nk'uko rwaciwe, ibyo byerekana ko izo mpaka zihari, bityo zikaba zigomba gukemurwa.

[13] Ku byerekeranye n'uburyo izo mpaka zakemurwa, Urukiko rurasanga, hashingiwe ku biteganywa n'ingingo ya 151 y'Itegeko Nshinga (yavuzwe haruguru), ntawemerewe guhindura icyemezo cy'Urukiko, uretse Urukiko rwajuririwe[5], bityo Prime Insurance Ltd ikaba ntaho yahera ivuga ko hari amafaranga agomba kuvanwa muri 134.185.600Frw y'indishyi, Ntukamazina Jean Baptiste yatsindiye mu rubanza N°RSOCAA0001&0002/16/CS rwabaye ndakuka. Kuba uburanira Prime Insurance Ltd avuga ko ababuranyi bari basanzwe bazi ko hari amafaranga agomba kuvanwamo, Urukiko rurasanga ibyo bitahabwa agaciro kuko byagombye kuba byaragiweho impaka, n'Urukiko rukabifataho icyemezo.

[5] Inzira zo kujurira zisanzwe n'izidasanzwe ziteganywa n'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu ngingo zaryo za 155 – 161 (Gusubirishamo urubanza), 162 - 174 (Ubujurire), 175 – 183 (Gutambamira urubanza), na 184 – 193 (Gusubirishamo urubanza ingingo nshya).

[14] Mu gihe nta nzira y'ubujurire (voie de recours) yiyambajwe ngo ibe yarahinduye ibyemejwe mu rubanza N° RSOCAA0001 & 0002/16/CS, Urukiko rurasanga urwo rubanza rugomba kurangizwa uko rwaciwe, Ntukamazina Jean Baptiste akishyurwa amafaranga yose yatsindiye uko ari 134.185.600Frw.

Kumenya niba muri uru rubanza Prime Insurance Ltd yahabwa igihano kiyihatira kurangiza urubanza, no kumenya niba hari indishyi zatangwa.

[15] Ntukamazina Jean Baptiste n'umwunganizi we, Me Rutabingwa Athanase, bavuga ko Prime Insurance Ltd yahabwa igihano kiyihatira kwishyura amafaranga yatsindiwe mu rubanza N°RSOCAA0001&0002/16/CS kubera ko yagize ubushake buke bwo kurangiza urubanza, ko bari basabye 100.000Frw ku munsi, ariko ko basanze ari make, ahubwo ko yaba 1.000.000Frw ku munsi. Basoza basaba ko Prime Insurance Ltd yategekwa kwishyura amafaranga angana na 5.000.000Frw y'indishyi zo gushorwa mu manza nta mpamvu, igihembo cy'Avoka kingana na 2.000.000Frw, ndetse n'amagarama ya 100.000Frw.

[16] Me Rutembesa Phocas, uburanira Prime Insurance Ltd, avuga ko Prime Insurance Ltd yari ifite ubushake bwo kurangiza urubanza kuko ku wa 25/11/2016 yari yakoze sheki ya 67.975.013Frw, ko Ntukamazina Jean Baptiste yagombye kuba yarafashe amafaranga yari ahawe, agasigara asaba ayo atabonye. Avuga ko indishyi zisabwa na Ntukamazina Jean Baptiste nta mpamvu yazo kuko ariwe washoye Prime Insurance Ltd mu manza, bityo ko ari we ugomba kuyishyura 2.000.000Frw yo gusiragizwa mu manza n'igihembo cy'Avoka.

UKO URUKIKO RUBIBONA

Ku gihano gihatira kurangiza urubanza.

[17] Ingingo ya 216 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, iteganya ko: "Abisabwe n'umwe mu baburanyi, mu gihe cy'iburanisha ry'imanza mbonezamubano, iz'ubucuruzi n'iz'umurimo, umucamanza ashobora, guteganyaigihano cyo gutanga amafaranga y'ubukererwe abazwe buri munsi, buri cyumweru, buri kwezi cyangwa buri mwaka k'uwo baburana mu gihe azaba atubahirije imikirize y'urubanza rw'iremezo, bitabujije ko yacibwa indishyi z'akababaro mu gihe bibaye ngombwa […]". Ingingo ya 217 y'iryo Tegeko, iteganya ko: "Ikirego gisaba icyo gihano kirakirwa n'ubwo cyaba gitanzwe bwa mbere mu gusubirishamo urubanza cyangwa mu rwego rw'ubujurire".

[18] Urukiko rurasanga, ingingo zivuzwe haruguru zumvikanisha ko igihano gihatira umuburanyi kurangiza urubanza gisabwa igihe cy'iburanisha ry'urubanza mu mizi, kikaba rero kitasabirwa mu rubanza rwerekeranye n'impaka zavutse mu irangiza ryarwo.

[19] Urukiko rurasanga rero icyifuzo cya Ntukamazina Jean Baptiste cy'uko muri uru rubanza rushingiye ku mpaka zavutse mu irangiza ry'urubanza N° RSOCAA0001&0002/16/CS, Prime Insurance Ltd yahabwa igihano kiyihatira kurangiza urubanza, kitagomba kwakirwa.

Ku ndishyi

[20] Ku bijyanye n'indishyi zisabwa na Prime Insurance, Urukiko rurasanga idakwiye kuzihabwa kuko bigaragara ko ari yo yagize uruhare mu gutuma urubanza N° RSOCAA0001&0002/16/CS rutarangizwa nk'uko rwaciwe, bityo ikaba itarasiragijwe mu manza nk'uko uyiburanira abivuga.

[21] Ku bijyanye n'indishyi zisabwa na Ntukamazina Jean Baptiste, Urukiko rurasanga koko akwiye kuzihabwa kuko yashowe muri uru rubanza ku maherere, bigatuma atakaza igihe n'amafaranga yo kwishyura Avoka, ndetse n'ay'ingwate y'igarama[6]; ko ariko amafaranga yo gushorwa mu manza n'ay'igihembo cy'Avoka yifujwe ari ikirenga, bityo, mu bushishozi bwarwo, rukaba rumugeneye 1.000.000Frw y'indishyi zo gushorwa mu manza ku maherere na 1.000.000Frw y'igihembo cy'Avoka.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko ikirego cyatanzwe na Ntukamazina Jean Baptiste gifite ishingiro kuri bimwe;

[23] Rwemeje ko urubanza N°RSOCAA0001&0002/16/CS rurangizwa uko rwaciwe, Ntukamazina Jean Baptiste akishyurwa na Prime Insurance Ltd amafaranga yose yatsindiye uko ari 134.185.600Frw;

[24] Rutegetse Prime Insurance Ltd guha Ntukamazina Jean Baptiste 1.000.000Frw y'indishyi zo gushorwa mu manza na 1.000.000Frw y'igihembo cy'Avoka;

[25] Ruyitegetse gusubiza Ntukamazina Jean Baptiste ingwate y'igarama yatanze arega, ingana na 100.000Frw.

[6] Ingingo ya 3, igika cya mbere, y'Iteka rya Minisitiri N°002/08.11 ryo ku wa 11/02/2014 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko: "Iyo umuburanyi watanze amafaranga y'ingwate y'amagarama atsinze urubanza, umucamanza ategeka, mu cyemezo cy'urukiko, uwatsinzwe kuyamwishyura, akagena n'igihe azishyurwamo.[…]".