RADIANT INSURANCE COMPANY LTD v DUSABIMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00005/2021/SC– (Cyanzayire, P.J., Hitiyaremye na Karimunda) 21 Mutarama 2022]

Amategeko agenga imanza mbonezamubano – Uburyozwe mu by'imbonezamubano – Nyir'ugukora ikosa ryagize uwo ryangiriza, akora uko ashoboye akamwishyura indishyi zituma asubira kumera nk'uko yari kuba ameze iyo iryo kosa ritaza kubaho

Amategeko agenga imanza mbonezamubano – Kubura inyungu zari zitezwe (gain manqué) – Uwangirijwe agomba kuba yari yizeye mu buryo budashidikanywaho inyungu runaka, icyo cyizere kikaburizwamo n'igikorwa cyagize icyo kimwangiriza.

Amategeko agenga imanza mbonezamubano – Kuvutswa amahirwe (perte de chance) – Bifatwa nk'ukuvutswa amahirwe iyo umuntu yabuze ikintu yakozagaho imitwe y'intoki kandi yagombaga kungukiramo – Kuvutswa amahirwe bitangirwa indishyi zigomba kujyana n'amahirwe yatakaye, ariko zidashobora kungana n'ibyo umuntu yari kubona iyo ayo mahirwe ataza gutakara.

Incamake y'ikibazo: Dusabimana yareze Radiant Insurance Company Ltd ayisaba indishyi z'igihombo gituruka ku mpanuka imodoka ye yatejwe n'indi modoka yishingiwe n'iyo sosiyete y'ubwishingizi, akaba yaravugaga ko yari afitanye amasezerano y'akazi na Benediction Club yo kujya akoresha iyo modoka aherekeza abakinnyi b'amagare mu myitozo none akaba atarashoboye kuyakomeza kubera ko Radiant Insurance Company Ltd yanze kumukoreshereza imodoka.

Radiant Insurance Company Ltd yireguye ivuga ko indishyi zitashingirwa ku masezerano yagaragajwe kubera ko Dusabimana atashoboye kwerekana ko imodoka ye yari yemerewe gutwara abantu, ko ahubwo indishyi zashingira ku kuba yaravukijwe uburenganzira bwo kugendera mu modoka ye, ko ariko mu gihe Urukiko rwasanga yarakoraga ako kazi hagendewe ku masezerano, indishyi zabarwa hashingiwe ku bimenyetso bigaragaza amafaranga yakiriye.

Nyuma yo gusuzuma ibimenyetso biri muri dosiye, Urukiko rwasanze Dusabimana yari afite amasezerano y'ubukode bw'imodoka ye yakoze impanuka, ubwo yasabaga Radiant Insurance Company Ltd kuyimukoreshereza hakaba hari hasigaye amezi atatu ngo ayo masezerano arangire, ariko bikaba byari biteganyijwe ko yashoboraga kongerwa impande zombi zibyumvikanyeho.

Nyir'ugukora ikosa ryagize uwo ryangiriza akora uko ashoboye akishyura uwarikorewe indishyi zituma asubira kumera nk'uko yari kuba ameze iyo iryo kosa ritaza kubaho. Hashingiwe kuri iryo hame, mu gihe cy'amezi atatu amasezerano yari ashigaje kugira ngo arangire, Dusabimana yari yizeye amafaranga yose yari ateganyijwe muri ayo masezerano, bityo kuba atarashoboye kurangiza akazi bitewe no kuba Radiant Insurance Company Ltd itaramukoreshereje imodoka, ikaba igomba kumwishyura indishyi zihwanye n'amafaraga yose yari kwishyurwa muri icyo gihe cyari gisigaye.

Urukiko rwasanze kandi kuva igihe amasezerano yagombaga kurangirira, byarashobokaga ko yakongerwa, ayo akaba ari amahirwe yatakaje. Urukiko rwasanze uko gutakaza amahirwe nabyo Dusabimana agomba kubibonera indishyi zibazwe kuva igihe amasezerano y'ibanze yagombaga kurangirira kugeza igihe urubanza rw'Urukiko Rwisumbuye rwaciriwe, akishyurwa 80% by'ayo yari yiteze kubona muri icyo gihe.

Incamake y'icyemezo: 1. Nyir'ugukora ikosa ryagize uwo ryangiriza, akora uko ashoboye akamwishyura indishyi zituma asubira kumera nk'uko yari kuba ameze iyo iryo kosa ritaza kubaho

2. Kubura inyungu zari zitezwe (gain manqué) – Uwangirijwe agomba kuba yari yizeye mu buryo budashidikanywaho inyungu runaka, icyo cyizere kikaburizwamo n'igikorwa cyagize icyo kimwangiriza.

3. Bifatwa nk'ukuvutswa amahirwe iyo umuntu yabuze ikintu yakozagaho imitwe y'intoki kandi yagombaga kungukiramo – Kuvutswa amahirwe bitangirwa indishyi zigomba kujyana n'amahirwe yatakaye, ariko zidashobora kungana n'ibyo umuntu yari kubona iyo ayo mahirwe ataza gutakara.

Ikirego gisaba gusubirishamo ku mpamvu z'akarengane, 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 12.

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Itegeko N° 02/2002 ryo ku wa 17/01/2002 rihindura Itegeko -Teka N° 32/75 ryo ku wa 07 Kanama 1975 ryerekeye ubwishingizi butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri, ingingo ya 4.

Imanza zifashishijwe:

Corar na Mbonimpa Solange, RCOMA 0185/12/CS, rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 15/11/2013.

Inyandiko z'abahanga zifashishijwe:

Philippe Le Toureau et alii, Droit de la responsabilité et des contrats, Régime d'indemnisation, 10ème Edition, Février 2014, Paris, Dalloz, para. 1320.

Alain Benabent, Droit civil, Les obligations, 11ème édition, juillet 2007, LGDJ-Montchrétien, p. 485 in fine.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu, Dusabimana Fulgence arega Radiant Insurance Company Ltd kutamukoreshereza imodoka ye ifite plaque RAC 116 K ku giciro kingana na 1.880.000 Frw kuko yakoze impanuka igonzwe n'imodoka RAC 057 Q yari ifite ubwishingizi muri Radiant Insurance Company Ltd n'indishyi zitandukanye kubera igihombo yatejwe n'iyo mpanuka.

[2] Urubanza rwaburanishijwe Radiant Insurance Company Ltd idahari, ku itariki ya 14/09/2018, urwo Rukiko ruca urubanza RC 00181/2017/TGI/RBV, rwemeza ko ikirego cya Dusabimana Fulgence gifite ishingiro, rutegeka Radiant Insurance Company Ltd gukoresha iyo modoka ku giciro cya 1.880.000 Frw, ndetse runayitegeka kwishyura Dusabimana Fulgence 16.500.000 Frw y'indishyi z'igihombo yamuteje, igihembo cy'Avoka kingana na 500.000 Frw, 100.000 Frw y'ikurikiranarubanza no gusubizwa 50.000 Frw y'igarama.

[3] Radiant Insurance Company Ltd yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, ivuga ko Urukiko Rwisumbuye rwa Rubavu rwakiriye ikirego cya Dusabimana Fulgence kandi kitaragombaga kwakirwa, kuko uyu yihutiye gutanga ikirego kandi Radiant Insurance Company Ltd yari yemeye kumukoreshereza imodoka, byongeye kandi rukaba rwaramugeneye amafaranga yo gukoresha imodoka ntaho rushingiye, kuko nta kigaragaza ko devis de réparation rwashingiyeho yakozwe n'umuhanga mu by'amamodoka.

[4] Yavugaga kandi ko Urukiko rwageneye Dusabimana Fulgence 16.500.000 Frw y'igihombo ntaho rushingiye ruyabara kuko nta bimenyetso rwagaragarijwe byemeza ko iyo modoka yakoraga imirimo y'ubucuruzi bwo gutwara abantu n'amafaranga yinjizaga ku munsi.

[5] Dusabimana Fulgence yireguye avuga ko ubujurire bwa Radiant Insurance Company Ltd butagomba guhabwa agaciro kuko nyuma yo kuyishyikiriza dosiye isaba gukoresherezwa imodoka, yicecekeye ntiyanamukoreshereza. Yatanze ubujurire bwuririye ku bundi asaba Urukiko gutegeka Radiant Insurance Company Ltd kumwishyura indishyi zingana na 50.000 Frw ku munsi imodoka yinjizaga kugeza ku munsi urubanza ruzasomerwaho; 500.000 Frw y'igihembo cy'Avoka, na 300.000 Frw ahwanye n'indishyi zo kumukurura mu manza.

[6] Ku itariki ya 25/04/2019, Urukiko Rukuru, Urugereko rwa Musanze, rwaciye urubanza nº RCA 00092/2018/HC/MUS, rwemeza kandi rutegeka ko:

- ubujurire bwa Radiant Insurance Company Ltd nta shin giro bufite,
- ubujurire bwuririye ku bundi bwa Dusabimana Fulgence bufite ishingiro kuri bimwe,
- urubanza RC 00181/2017/TGI/RBV rwajuririwe ruhindutse gusa ku birebana n'indishyi z'igihombo Dusabimana Fulgence yagize kubera gutinda gukoresherezwa imodoka, no ku ndishyi z'ikurikiranarubanza n'igihembo cy'Avoka;
- Radiant Insurance Company Ltd yishyura Dusabimana Fulgence indishyi zingana na 1.880.000 Frw yo gukoresherezwa imodoka, 18.366.669 Frw y'igihombo yamuteje, 900.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka, na 50.000 Frw y'igarama yatanze ku rwego rwa mbere, indishyi zose hamwe zihwana na 21.196.669 Frw.

[7] Ku itariki ya 20/05/2019, Radiant Insurance Company Ltd yandikiye Perezida w'Urukiko rw'Ubujurire imusaba gusuzuma akarengane kari mu rubanza RCA 00092/2018/HC/MUS, amaze gusuzuma ubwo busabe akorera raporo Perezida w'Urukiko rw'Ikirenga. Ashingiye kuri iyo raporo, ku itariki ya 18/08/2021, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo nimero 209/CJ/2021 ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu Bwanditsi bw'Urukiko ruhabwa RS/INJUST/RC 00005/2021/SC.

[8] Mu myanzuro ye, uburanira Radiant Insurance Company Ltd muri rusange anenga uburyo indishyi z'igihombo Dusabimana Fulgence yatewe n'impanuka zabazwe, agasaba ko mu gihe Urukiko rwasanga yarishyuye indishyi z'umurengera, rwategeka Dusabimana Fulgence kuzisubiza hiyongereyeho n'inyungu. Ku ruhande rwa Dusabimana Fulgence bo bavuga ko indishyi z'igihombo zabazwe mu buryo bukwiye, bityo akaba ntacyo agomba gusubiza.

[9] Urubanza rwaburanishijwe mu ruhame ku itariki ya 14/12/2021, Radiant Insurance Company Ltd ihagarariwe na Me Bakashyaka Géraldine, Dusabimana Fulgence yunganiwe na Me Sekazuba Gasore Célestin.

[10] Ibibazo byasuzumwe muri uru rubanza ni ukumenya niba indishyi z'igihombo Dusabimana Fulgence yatewe n'imodoka ye yakoze impanuka zarabazwe mu buryo bukwiye n'ikijyanye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza yasabwe kuri uru rwego.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya ingano y'indishyi z'igihombo Radiant Insurance Company Ltd yagombaga guha Dusabimana Fulgence

[11] Uburanira Radiant Insurance Company Ltd avuga ko icyo banenga urubanza RCA 00092/2018/HC/MUS, rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ari uko rwemeje indishyi z'igihombo zingana na 16.500.000 Frw Dusabimana Fulgence yatewe n'impanuka y'imodoka nk'uko zagenwe n'Urukiko Rwisumbuye rwa Rubavu. Avuga ko urwo Rukiko rwazibaze rushingiye ku masezerano Dusabimana Fulgence avuga ko yagiranye na Benediction Club, nyamara mu bujurire bwuririye ku bundi, Urukiko Rukuru, Urugereko rwa Musanze rumugenera indishyi z'igihombo rushingiye ku bimenyetso bigaragaza ko mu gihe cy'amezi 6 yakoreye 1.600.000 Frw, bivuze ko buri kwezi yakoreraga 266.667 Frw, ariyo ahwanye na 1.886.669 Frw mu gihe cy'amezi arindwi uhereye kuva igihe urubanza rwa mbere rwaciriwe. Avuga ko Urukiko Rukuru rwahinduye uburyo bwo kubara indishyi kuko aribwo rwabonaga ko bukwiye, nyamara ariko rugumishaho izagenwe n'Urukiko Rwisumbuye aho kuzihuza n'ubwo buryo rwabazemo izo rwamugeneye, bakavuga ko ibyo bidasobanutse.

[12] Bavuga kandi ko n'uburyo Urukiko Rukuru rwahisemo kubara indishyi z'igihombo rushingiye ku mpuzandengo (*moyenne*) y'amezi atandatu (6), nabyo basanga bidakemura ikibazo, kuko amafaranga avugwa ko Dusabimana Fulgence yaba yarakoreye muri ayo mezi, atafatwa nk'inyungu yahombejwe, kuko atagaragaza dépenses zijyanye n'akazi yakoraga, zirimo iza carburant, maintenance n'ibindi, cyane cyane ko amasezerano azisabiraho agaragaza ko yagombaga kwinyweshereza carburant. Bavuga ko ibyo banabishingira ku murongo watanzwe n'uru Rukiko mu rubanza RCOMA 0185/12/CS, CORAR yaburanagamo na Mbonimpa Solange rwaciwe ku itariki ya 15/11/2013, aho mu gika cya 22 n'icya 24 by'urwo rubanza, Urukiko rwasobanuye uburyo indishyi zo kuvutswa amahirwe n'izijyanye n'amafaranga ikinyabiziga cyagombaga kuba cyarakoreye zibarwa hakurikijwe igiciro kiri ku isoko havanywemo ibyari kukigendaho.

[13] Uburanira Radiant Insurance Company Ltd anavuga ko igiciro cy'ubukode bw'imodoka cya 50.000 Frw ku munsi nacyo ari umurengera, kuko niba mu rubanza RCOMA 0185/12/CS rwavuzwe haruguru, Cammionette Daihatsu ikora imirimo y'ubucuruzi ijyanye n'ubwikorezi bw'ibintu yarahawe igiciro nk'icyo, bitumvikana ukuntu ivatiri yo mu bwoko bwa Toyota Carina E nayo ari cyo giciro yabarirwaho. Avuga ko ibimenyetso bya sheke (*chèques*) Dusabimana Fulgence agaragaza nabyo ubwabyo bidakemura ikibazo kuko bitagaragaza amasezerano ubwo bwishyu bwashingiyeho.

[14] Ku birebana n'amasezerano ya Dusabimana Fulgence na Benediction Club, Me Bakashyaka Géraldine uburanira Radiant Insurance Company Ltd avuga ko nta n'ikigaragaza ko yabayeho, kuko nta cyerekana amafaranga yakoreye mu mezi abiri y'ayo masezerano abanziriza impanuka, byongeye kandi akaba atanagaragaza ko iyo modoka yo mu bwoko bwa Toyota Carina E yari ifite ibyemezo by'uko yakoraga imirimo y'ubucuruzi bwo gutwara abantu; kubera iyo mpamvu akavuga ko atagombaga guhabwa indishyi mbonezamusaruro, ko ahubwo yari guhabwa indishyi zo kuvutswa uburenganzira bwo kugenda mu modoka ye zibariwe ku mafaranga atarenze 150.000 Frw ku kwezi, bityo kubera ko yamaze amezi 18 atarishyurwa, Urukiko Rukuru, Urugereko rwa Musanze, rukaba rwari kumubarira 150.000 Frw x 18 = 2.700.000 Frw.

[15] Uburanira Radiant Insurance Company Ltd akomeza avuga ko n'ubwo byafatwa ko Dusabimana Fulgence yagize igihombo cy'ubucuruzi gituruka ku bukode yaba yaravukijwe, Urukiko Rukuru, Urugereko rwa Musanze, rwagombaga kumubarira indishyi rushingiye ku murongo watanzwe n'uru Rukiko mu rubanza RCOMA 0185/12/CS rwavuzwe haruguru, maze rugashingira ku giciro cyari ku isoko havanywemo ibyari kugenda ku modoka bingana na 40% byayo; kandi kubera ko ayo mafaranga ari ayo imodoka yari kuba yarinjije iyo iza kuba yarakoze nta nkomyi, amahirwe yavukijwe yo kuyakorera akagereranyirizwa ku gipimo cya 80%.

[16] Uhagarariye Radiant Insurance Company Ltd, akomeza avuga ko Dusabimana Fulgence yishyuwe indishyi zingana na 18.366.669 Frw ntacyo zishingiyeho, bakaba basaba Urukiko rw'Ikirenga kumutegeka kuyisubiza ikinyuranyo kingana n'ayo yishyuwe atagombaga kwishyurwa, akayasubiza hiyongeyeho inyungu zayo zibariye ku ijanisha rya 18% ku kwezi mu gihe kingana n'amezi 29 ayamaranye, kuko

Radiant Insurance Company Ltd, nk'umucuruzi, ari cyo giciro ifatiraho umwenda, muri icyo gihe cyose bikaba byarayiteje igihombo. Asaba ko inyungu zikwiye kubarwa guhera igihe Dusabimana Fulgence yishyuriwe kugeza uru rubanza ruciwe. Avuga ko indishyi zafatiwe ku rugero yatanze zabarwa hashingiwe ku kinyuranyo cy'amafaranga yagenewe kandi yishyuwe ahwanye na 18.366.669 Frw 2.700.000 Frw, akaba ariyo yabarirwaho inyungu.

[17] Mu gusoza, avuga ko nubwo byakwemezwa ko hari indishyi z'igihombo Radiant Insurance Company Ltd igomba kwishyura Dusabimana Fulgence, uburyo bwakoreshejwe n'Urukiko Rukuru, Urugereko rwa Musanze, mu kuzibarira ku mezi arindwi (7) gusa, ari nabwo bwakoreshwa mu kubara izagenwe n'Urukiko Rwisumbuye ku mezi 11, bityo mu mezi 18 indishyi zikaba 4.806.000 x 80% = 3.840.004 Frw, akuwe mu yishyuwe hagasigara 16.666.667 Frw, wakongeraho 18% byayo mu gihe cy'amezi 29 Dusabimana Fulgence amaranye ayo mafaranga bikaba 24.600.167 Frw, aya akaba ari yo agomba gusubiza Radiant Insurance Company Ltd.

[18] Dusabimana Fulgence n'umwunganizi we bavuga ko indishyi Radiant Insurance Company Ltd yishyuye arizo yagombaga kwishyura, kuko zabazwe neza zishingiye ku masezerano yari hagati ya Dusabimana Fulgence na Benediction Club, kandi Dusabimana Fulgence akaba yari yarategetswe kuyubahiriza nk'uko bayagiranye. Bavuga ko impanuka yamuteje igihombo mu mikoranire ye n'abo bari bafitanye amasezerano nk'uko atahwemye kubisaba Radiant Insurance Company Ltd ubwo yayandikiraga ayisaba kumukoreshereza imodoka ye ngo asubire mu kazi ari nazo ngaruka Urukiko rwayiryoje.

[19] Bavuga ko uburyo Urukiko Rukuru, Urugereko rwa Musanze, rwabaze indishyi, Radiant Insurance Company Ltd itakagombye kubifata nk'akarengane, kuko nayo yari mu rubanza, ariko ntiyagaragaza uko zagombaga kubarwa binyuranyije n'uko Dusabimana Fulgence yazisabaga, ngo Urukiko Rukuru rube rutarabihaye agaciro, cyane cyane ko buri muburanyi yari afite uburyo yifuzaga ko indishyi zibarwamo, anabitangira ibimenyetso kugira ngo Urukiko rubone aho ruhera rukemura impaka zari hagati yabo.

[20] Dusabimana Fulgence na Me Sekazuba Célestin umwunganira bavuga kandi ko kugereranya igiciro cya Daihatsu yakoraga imirimo y'ubwikorezi rimwe na rimwe ari uko yabonye akazi, n'imodoka yari ifite akazi gahoraho nk'uko bigaragazwa n'amasezerano yari hagati ya nyirayo n'ikigo cyayatanze ari ibintu bidakwiye na gato, ko iyo modoka ya Dusabimana Fulgence itatwaraga abantu nka tagisi, ko ahubwo yaherekezaga ababaga bari mu myitozo itwawe na nyirayo cyangwa se undi yishakiye. Bavuga ko atari Radiant Insurance Company Ltd ikwiye kugena akazi iyo modoka yabaga ifite, mu gihe ba nyiri amasezerano bazi impamvu yayo n'akamaro kayo.

[21] Ku kibazo cy'amafaranga Radiant Insurance Company Ltd isaba gusubizwa, Dusabimana Fulgence na Me Sekazuba Célestin umwunganira, bavuga ko indishyi Dusabimana Fulgence yahawe yari azikwiye kandi zikomoka ku modoka ye yangijwe ntikoreshwe n'abakagombye kuyikoresha bikamutera igihombo. Bavuga ko ibivugwa na Radiant Insurance Company Ltd ko izo ndishyi ntacyo zishingiyeho ari ukwirengagiza ukuri, kuko Urukiko Rukuru, Urugereko rwa Musanze, mu kuzimugenera rwabisobanuye rushingiye ku bimenyetso rwari rwagaragarijwe.

[22] Ku birebana n'inyungu Radiant Insurance Company Ltd isaba, Dusabimana Fulgence na Me Sekazuba Célestin bavuga ko, n'ubwo indishyi yagenewe n'inkiko zibaze mu buryo bukwiye, bityo akaba nta mafaranga y'ikirenga yakiriye ku buryo hari ayo agomba kuyisubiza nk'ikinyuranyo, ko n'iyo yaba ahari nta nyungu akwiye kubarirwa kubera ko amafaranga yamwishyuye yayategetswe n'Urukiko, atari amafaranga akomoka ku masezerano baba baragiranye ku buryo yayishyurira inyungu.

UKO URUKIKO RUBIBONA

[23] Kuri uru rwego, impande zombi zemeranya ko Dusabimana Fulgence yagize igihombo gikomoka ku mpanuka yetewe n'imodoka yari yishingiwe na Radiant Insurance Company Ltd, kandi ko agomba kubibonera indishyi. Icyo ababuranyi batemeranyaho, ni uburyo izo ndishyi zigomba kubarwa. Dusabimana Fulgence avuga ko zigomba kubarwa hashingiwe ku masezerano y'akazi ari muri dosiye iyo modoka yari ifite, mu gihe Radiant Insurance Company Ltd yo ivuga ko nta kigaragaza ko ayo masezerano yabayeho, ko indishyi zashingira ku kuba yaravukijwe uburenganzira bwo kugenda mu modoka ye, bitaba ibyo hagashingirwa ku bimenyetso bigizwe n'amasheki y'amafaranga yakiriye mu gihe cy'amezi atandatu, hakarebwa impuzandengo yayo.

[24] Ingingo ya 12, 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 urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Ibiteganywa n'iyo ngingo, binahura n'ibivugwa mu ngingo ya 3, igika cya mbere, y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[25] Ingingo ya 4 y'Itegeko N° 02/2002 ryo ku wa 17/01/2002 rihindura Itegeko-Teka N° 32/75 ryo ku wa 07 Kanama 1975 ryerekeye ubwishingizi butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri, iteganya ko umwishingizi ariha uburyozwe bukomoka ku mpanuka ahereye ku munsi hatangiweho imenyekanisha ry'impanuka, ikimenyetso cy'uko byakiriwe akaba ari yo ntangamugabo.

[26] Abahanga mu mategeko bavuga ko umwihariko w'uburyozwe mu by'imbonezamubano, ari uko nyir'ugukora ikosa ryagize uwo ryangiriza, amwishyura indishyi zituma asubira kumera nk'uko yari kuba ameze iyo iryo kosa ritaza kubaho (*Le propre de la responsabilité civile est de rétablir aussi exactement que possible l'équilibre détruit par le dommage et de replacer la victime, aux dépens du responsable, dans la situation où elle se serait trouvée si l'acte dommageable n'avait pas eu lieu*)[1].

[27] Ubwo Radiant Insurance Company Ltd yajuririraga urubanza rwaciwe n'Urukiko Rwisumbuye, yarunengaga kuba rwarageneye Dusabimana Fulgence indishyi z'igihombo zihwanye na 16.500.000 Frw rutagaragaje aho rushingira ruzibara ngo rwerekane amafaranga yinjizaga ku munsi, no kuba nta cyemezo cyerekana ko imodoka ye yakoraga imirimo y'ubucuruzi bwo gutwara abantu. Mu guca urubanza, Urukiko Rukuru, Urugereko rwa Musanze, rwemeje ko indishyi zategetswe n'Urukiko Rwisumbuye zigumaho. Urukiko Rwisumbuye rwari rwazibaze rushingiye ku masezerano y'ubukode bw'imodoka Dusabimana Fulgence yakoranye na Benediction Club, agaragaza ko ukodeshwa imodoka yagombaga kujya yishyura ibihumbi mirongo itanu (50.000 Frw) ku munsi. Rwafashe ayo mafaranga rukuba iminsi 30 mu gihe cy'amezi 11 yari ashize kuva igihe Dusabimana Fulgence yandikiye Radiant Insurance Company Ltd asaba gukemurirwa ikibazo, rubona 16.500.000 Frw, bisobanuye ko n'Urukiko Rukuru, Urugereko rwa Musanze, rwemeje ko ariko byagombaga kugenda.

[28] Amasezerano y'ubukode bw'imodoka Dusabimana Fulgence yakoranye na Benediction Club ari muri dosiye, yasinywe ku itariki ya 05/06/2017 agomba gutangira ku ya 05/07/2017, akaba yaragombaga kumara amezi atandatu yashoboraga kongerwa byumvikanyweho n'impande zombi. Ni ukuvuga ko yagombaga kurangirana n'itariki ya 05/01/2018. Hashingiwe ku bikubiye muri ayo masezerano, biragaragara ko koko Dusabimana Fulgence, yagombaga kujya yishyurwa 50.000 Frw ku munsi, akigurira *carburant* ndetse akihembera n'umushoferi bibaye ngombwa.

[29] Ku itariki ya 05/08/2017, imodoka ya Dusabimana Fulgence yaje gukora impanuka bituma idashobora gukomeza akazi yari ifite hashingiwe ku masezerano amaze kuvugwa, ku itariki ya 05/10/2017

[1] Philippe Le Toureau et alii, Droit de la responsabilité et des contrats, Régime d'indemnisation, 10ème Edition, Février2014, Paris, Dalloz, para. 1320.

yandikira Radiant Insurance Company Ltd asaba gukoresherezwa imodoka kubera ko ari yo yari yarishingiye imodoka yamukoresheje impanuka.

[30] Urukiko rurasanga koko, kuba imodoka ya Dusabimana Fulgence yarakoze impanuka, Radiant Insurance Company Ltd yaragombaga kuyimukoreshereza kugira ngo ikomeze akazi yari ifite, ariko ntibyakozwe, bituma adashobora kukarangiza; kubera iyo mpamvu, nk'uko n'inkiko zabanje zabibonye, ikaba igomba kubitangira indishyi hashingiwe ku biteganywa n'ingingo ya 4 y'Itegeko N° 02/2002 ryo ku wa 17/01/2002 ryavuzwe haruguru.

[31] Urukiko rurasanga ariko, mu kumugenera indishyi z'igihombo yatewe n'iyo mpanuka, Urukiko Rwisumbuye rwaragombaga guhera ku itariki ya 06/10/2017, umunsi yatangiye ibaruwa muri Radiant Insurance Company Ltd asaba gukoresherezwa imodoka, kugeza igihe amasezerano yagombaga kurangirira, ni ukuvuga ku itariki ya 05/01/2018, kubera ko muri icyo gihe aribwo yari afite akazi. Ni ukuvuga ko hari hasigaye amezi atatu (3). Muri icyo gihe, abahanga mu mategeko bavuga ko umuntu yabuze inyungu zari zitezwe. Basobanura ko uwangirijwe aba yari yizeye mu buryo budashidikanywaho inyungu runaka, icyo cyizere kikaburizwamo n'igikorwa cyagize icyo kimwangiriza. Ni byo bise mu rurimi rw'igifaransa *gain manqué*, bakaba barabisobanuye muri aya magambo: *Gain manqué. La victime avait à juste titre la certitude de faire des gains déterminés, du butin [...]. Cette perspective a disparu par suite du fait dommageable. [...]*[2]. Hakurikijwe ihame ryavuzwe haruguru ry'uko nyir'ugukora ikosa ryagize uwo ryangiriza, akora uko ashoboye akamwishyura indishyi zituma asubira kumera nk'uko yari kuba ameze iyo iryo kosa ritaza kubaho, Radiant Insurance Company Ltd igomba guha Dusabimana Fulgence indishyi zihwanye n'amafaranga yose yari kuba yarakoreye muri icyo gihe. Uyu murongo urasubira ku wari warafashwe mu rubanza rwa CORAR na Mbonimpa Solange[3] aho Urukiko rwitiranyije inyungu zari zitezwe (*gain manqué*) no gutakaza amahirwe (*perte de chance*).

[32] Urukiko rurasanga mu masezerano Dusabimana Fulgence yakoranye na Benediction Club hari hateganyijwemo ko yashoboraga kongerwa. Bisobanuye ko hari amahirwe ko yakongerwa, ariko ntibyashobotse kubera ko imodoka ye yakoze impanuka, Radiant Insurance Company Ltd yagombaga kuyimukoreshereza kugira ngo ikomeze akazi ntiyabikora, bityo ikaba igomba kubitangira indishyi kuri ayo mahirwe yamuvukije. Abahanga mu mategeko, bifashishije igisobanuro cyatanzwe n'Urukiko Rusesa imanza rwo gihugu cy'Ubufaransa, batanze igisobanuro cyo **kuvutswa amahirwe** nko kubura ikintu wakozagaho imitwe y'intoki kandi wagombaga kungukiramo. Bakomeza bavuga ko bitangirwa indishyi iyo bigaragara ko koko ayo mahirwe yari ahari. Babivuze muri aya magambo: *La perte d'une chance, c'est la disparition actuelle et certaine d'une éventualité favorable. Elle n'est réparable que si la chance est sérieuse, c'est-à-dire s'il est probable que l'événement heureux aurait pu se réaliser. [...]*[4]

[33] Harebwe imiterere y'uru rubanza, Urukiko rurasanga amahirwe Dusabimana Fulgence yavukijwe ari ayo guhera igihe amasezerano y'ibanze yarangiriye kugeza urubanza rw'Urukiko Rwisumbuye ruciwe ku itariki ya 14/09/2018, ni ukuvuga amezi umunani (8) n'iminsi icyenda (9). Ku birebana n'indishyi zitangwa mu gihe umuntu yavukijwe amahirwe, abahanga mu mategeko bavuga ko zigomba kujyana n'amahirwe yatakaye, ko ariko zidashobora kungana n'ibyo umuntu yari kubona iyo ayo mahirwe ataza gutakara. Babisobanuye muri aya magambo: .... "*La réparation d'une perte de chance doitêtre mesurée à la chance perdue et ne peut être égale à l'avantagequ'aurait procuré cette chance si elle s'était réalisée" [...]*[5]. Mu rubanza CORAR yaburanagamo na Mbonimpa Solange rusa n'uru, mu bushishozi bwarwo, uru Rukiko rwemeje ko indishyi zikomoka ku gutakaza amahirwe zigomba kubarirwa ku kigereranyo cya 80 % y'icyari cyitezwe.

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[2]Philippe Le Tourneau et alii, Droit de la responsabilité et des contrats, régimes d'indemnisation, 10ème Edition, février2014, Dalloz, § 1507.

[3] RCOMA 0185/12/CS, rwaciwe ku itariki ya 15/11/2013, igika cya 24.

[4] Philippe Malaurie et alii, Droit des obligations, 10ème édition, 2018, Paris, LGDJ, § 242, 1°.

[5] Alain Benabent, Droit civil, Les obligations, 11ème édition, juillet 2007, LGDJ-Montchrétien, p. 485 in fine.

[34] Ku birebana n'umubare nyakuri w'amafaranga Dusabimana Fulgence yari kwinjiza, Urukiko rurasanga ku mafaranga agaragara mu masezerano hakwiye kuvanwamo 40 % agenwe mu bushishozi bw'Urukiko y'ibyagombaga kugenda ku modoka byose, harimo kuyikoresha, kugura *carburant*, kwishyura umusoro, bityo hagasigara 30.000 Frw ku munsi. Mu bushishozi bw'Urukiko kandi, rurasanga imodoka itarashoboraga gukora buri munsi, ahubwo yarakoraga iminsi 22 mu kwezi harebwe ko hari iminsi nibura ibiri mu cyumweru yashoboraga kudakora ku mpamvu zinyuranye zirimo no gukoreshwa kwayo (*entretien*) n'ikiruhuko. Ibyo akaba ari nabyo byemejwe n'uru rukiko mu rubanza CORAR yaburanagamo na Mbonimpa Solange rwavuzwe haruguru[6].

[35] Hashingiwe ku bisobanuro bimaze gutangwa no ku gitekerezo cy'abahanga mu mategeko cyagarajwe haruguru ko nyir'ugukora ikosa ryagize uwo ryangiriza yishyura uwarikorewe indishyi zituma asubira kumera nk'uko yari kuba ameze iyo iryo kosa ritaza kubaho, Urukiko rurasanga, harebwe amasezerano y'ubukode bw'imodoka Dusabimana Fulgence yagiranye na Benediction Club, mu gihe cy'amezi atatu (3), yaravukijwe 30.000 Frw x 22 x 3 = 1.980.000 Frw. Urukiko rurasanga kandi, nyuma y'aho amasezerano y'ibanze arangiriye yaravukijwe amahirwe agomba kubonera indishyi zihwanye na [(30.000 Frw x 22 x 9) + (30.000 x 9)] x 80 % = 4.968.000 Frw. Yose hamwe akaba ari 6.948.000 Frw.

[36] Ku bivugwa n'uburanira Radiant Insurance Company Ltd ko indishyi zose zagombaga kubarwa hashingiwe ku bimenyetso bigizwe n'amasheki nk'uko Urukiko Rukuru, Urugereko rwa Musanze, rwabikoze ubwo rwasuzumaga ubujurire bwuririye ku bundi, ariko ntiruhindure uburyo bwari bwakoreshejwe n'Urukiko Rwisumbuye, Urukiko rurasanga ibyo nta shingiro bifite kubera ko ubwo urubanza rwacibwaga mu Rukiko Rwisumbuye, ikimenyetso cyari gihari cyerekana amafaranga Dusabimana Fulgence yavukijwe kandi cyagombaga gushingirwaho, ni amasezerano y'ubukode bw'imodoka. bimenyetso bishingiye ku masheki byashingiweho n'Urukiko Rukuru, Urugereko rwa Musanze, byatanzwe na Dusabimana Fulgence mu bujurire bwuririye ku bundi, agaragaza amafaranga yinjije akoresheje indi modoka kuva aho urubanza ruciriwe ku rwego rw'Urukiko Rwisumbuye. Bikaba rero bitakoreshwa mu kubara igihombo cyabazwe igihe hacibwaga urubanza ku rwego rwa mbere.

[37] Ku byo nanone uburanira Radiant Insurance Company Ltd avuga ko Dusabimana Fulgence atagenerwa indishyi z'igihombo, ko ahubwo yahabwa indishyi zo kuvutswa uburenganzira bwo kugendera mu modoka ye, Urukiko rurasanga ibyo nta shingiro bifite, kubera ko Dusabimana Fulgence yagaragarije Urukiko ikimenyetso kigizwe n'amasezerano y'ubukode bw'imodoka ye yari afitanye na Benediction Club ndetse n'amasheki atandukanye y'amafaranga yishyuwe mu rwego rwo gushyira mu bikorwa ayo masezerano. Bikaba bigaragara rero ko imodoka ye yagombaga kumwinjiriza amafaranga iyo itaza gukora impanuka.

[38] Hashingiwe ku ngingo z'amategeko zagaragajwe haruguru ndetse no ku bisobanuro byatanzwe, Urukiko rurasanga hari ibimenyetso bihagije byerekana ko Dusabimana Fulgence yavukijwe ibyo yagombaga kwinjiza bitewe n'impanuka yakozwe n'imodoka ye itewe n'uwari wishingiwe na Radiant Insurance Company Ltd, ariko iyi yanga kumukoreshereza imodoka nk'uko byemejwe n'inkiko zabanje, bityo ikaba igomba kubitangira indishyi. Nk'uko byasobanuwe haruguru, Radiant Insurance Company Ltd igomba kumwishyura 6.948.000 Frw abazwe hashingiwe ku masezerano na 1.886.669 Frw yabazwe hashingiwe ku bimenyetso byatanzwe, yose hamwe akaba 8.843.669 Frw.

[39] Mu rwego rwo kurangiza urubanza rwasubiwemo mu rwego rw'akarengane, Urukiko rurasanga Radiant Insurance Company Ltd yarishyuye 18.366.669 Frw y'igihombo Dusabimana Fulgence yagize. Kubera ko rero bigaragara ko amafaranga yagombaga kwishyura ari make kuri ayo, Dusabimana Fulgence akaba agomba gusubiza arengaho ahwanye na 18.366.669 Frw - 8.843.669 Frw = 9.523.000 Frw.

[6] RCOMA 0185/12/CS, rwaciwe ku itariki ya 15/11/2013, igika cya 22.

[40] Urukiko rurasanga inyungu zisabwa na Radiant Insurance Company Ltd kuri ayo mafaranga ntazo igomba guhabwa kubera ko yabazwe kandi ategekwa n'Urukiko, akaba atari amafaranga Dusabimana Fulgence yahawe nk'umwenda ku buryo yabarirwa inyungu.

2. Ku bijyanye n'amafaranga y'igihembo cy'Avoka n'ay'ikurikiranarubanza asabwa muri uru rubanza

[41] Me Bakashyaka Géraldine uhagarariye Radiant Insurance Company Ltd, asaba Urukiko gutegeka Dusabimana Fulgence kwishyura ikigo aburanira 1.000.000 Frw y'igihembo cy'Avoka na 500.000 Frw y'ikurikiranarubanza.

[42] Dusabimana Fulgence na Me Sekazuba Célestin umwunganira, bavuga ko amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka Radiant Insurance Company Ltd isaba itayakwiye kuko ariyo yishoye mu manza, ikaba ariyo nyirabayazana wazo kubera ko iyo bakemura ikibazo bitaba bigejeje iki gihe bakibashora mu manza. Bavuga ko ahubwo aribo basaba Urukiko rw'Ikirenga gutegeka Radiant Insurance Company Ltd guha Dusabimana Fulgence 500.000 Frw y'igihembo cy'Avoka na 500.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[43] Ku birebana n'amafaranga y'igihembo cy'Avoka n'ay'ikurikiranarubanza Radiant Insurance Company Ltd isaba, Urukiko rurasanga igomba kuyahabwa kubera ko itsinze urubanza kandi bikaba bigaragara ko byabaye ngombwa kurukurikirana no gushaka Avoka uyihagararira. Icyakora kubera ko 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza isaba ari menshi kandi itagaragaza uburyo ariyo yagiye kuri uru rubanza, mu bushishozi bw'Urukiko ikaba igenewe 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

[44] Ku birebana n'amafaranga y'igihembo cy'Avoka n'ay'ikurikiranarubanza Dusabimana Fulgence asaba, Urukiko rurasanga ntayo agomba guhabwa, kuko, kuba Radiant Insurance Company Ltd yarabonye ko yarenganye igatanga ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane kandi Urukiko rukaba rusanze ikirego cyayo gifite ishingiro, ntaho rwahera ruyitegeka gutanga indishyi.

III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ikirego cyatanzwe na Radiant Insurance Company Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza RCA 0092/2018/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, gifite ishingiro.

[46] Rwemeje ko indishyi z'igihombo Dusabimana Fulgence yagombaga guhabwa na Radiant Insurance Company zose hamwe ari 8.843.669 Frw.

[47] Rutegetse Dusabimana Fulgence gusubiza Radiant Insurance Company Ltd 9.523.000 Frw y'ikinyuranyo cy'ayo yishyuwe ataragomabaga kuyishyurwa.

[48] Rutegetse Dusabimana Fulgence guha Radiant Insurance Company Ltd 800.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.