SONARWA GENERAL INSURANCE COMPANY Ltd v UWIZEYIMANA

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00006/2022/SC (Ntezilyayo, P.J, Muhumuza, Karimunda, J.) 23 Kamena 2023]

Amategeko agenga imanza z'i mbonezamubano – Impanuka yatewe n'ikinyabiziga – Ubuzime – Kuregera indishyi ku mwana udafite imyaka y'ubukure – Igihe ubuzime butangirira kubarwa - Umwana wakoze impanuka udafite ababyeyi cyangwa umwishingizi wo kumukurikiranira indishyi, igihe cy'ubuzime gihagarara kubarwa; cyongera gutangira kubarwa uhereye igihe yuzurije imyaka y'ubukure

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Uwizeyimana, wakomerekeye mu mpanuka y'imodoka yishingiwe na SONARWA General Insurance Company Ltd (SONARWA) agacika akaboko, ayirega asaba ko itegekwa kumuha indishyi zinyuranye zikomoka kuri iyo mpanuka. Uregwa yatanze inzitizi yo kutakira icyo kirego avuga ko urega yarengeje igihe cy'imyaka itanu (5) iteganywa n'amategeko ku bijyanye no kuregera indishyi zikomoka ku mpanuka. Urwo Rukiko rwasanze ikirego kigomba kwakirwa, rutegeka SONARWA guha Uwizeyimana indishyiz'imbangamiraburanga, iz'imbonezamubano, iz'akababaro, izo gutakaza amahirwe yo gushaka n'amafaranga y'ibyakoreshejwe.

Uregwa yajuririye urwo rubanza mu Rukiko Rukuru, nuko rushingiye ku kuba n'ubwo Nyirasimpunga yaratoraguye Uwizeyimana, atigeze amugira umwana ku buryo yari kumukurikiranira indishyi zikomoka ku mpanuka no kuba yaritabye Imana nyuma y'imyaka ibiri impanuka ibaye, nyuma agakomeza kurerwa n'abaturanyi, rusanga kuba yararengeje imyaka itanu ataratanga ikirego, ubwo busaze budakwiye kubarwa kuko yari akiri umwana kandi nta babyeyi cyangwa abishingizi yari afite.

SONARWA yasabye ko urwo rubanza rusubirwamo, hamezwa ko ruburanishwa n'Urukiko rw'Ikirenga hasuzumwa ikibazo cyo kumenya niba harabaye ubuzime bwo gusaba indishyi zikomoka ku mpanuka yo mu muhanda. SONRWA isobanura ko ikirego cya Uwizeyimana kitagombaga kwakirwa kuko atubahirije igihe cy'imyaka itanu (5) yo gukurikirana indishyi zikomoka ku mpanuka akaba yaragitanze nyuma y'imyaka cumi n'umwe (11) impanuka ibaye, kandi ko Leta yakabaye yarakimukurikiraniye nk'umwana utari ufite umurera. Uwizeyimana we avuga ko ikirego cyagombaga kwakirwa hashingiwe ku kuba nk'umwana udafite ababyeyi, yaragitanze amaze kuzuza imyaka y'ubukure.

Incamake y'icyemezo: Igihe cy'imyaka itanu cyo gutanga ikirego gisaba indishyi cyahagaze kubarwa kubera ko Uwizeyimana yari akiri umwana adashobora kuzikurikirana, cyongera gutangira kubarwa uhereye igihe yuzurije imyaka y'ubukure, ni ukuvuga imyaka 18; bityo ibyo SONARWA ivuga ko mu gihe cyagenwe Leta yari kuba yaramukurikiraniye indishyi nk'umwana utari ufite umureberera, ntibimwambura uburenganzira bwo kuzikurikiranira amaze kugira imyaka y'ubukure. Kubera izo mpamvu zose, nta buzime bwabayeho.

Ikirego cyatanzwe gisaba gusubirishamo urubanza nt shingiro gifite.

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 111;

Itegeko-Teka N° 32/1975 ryo ku wa 7/8/1975 ryerekeye ubwishingire butegetswe n'ibigenzwa ku butaka bifite moteri, ingingo ya 10.

Imanza zifashijwe:

RS/REV/RCOM 00001/2022/SC, Munyaburanga vs ECOBANK Plc, rwaciwe n'Urukiko rw'Ikirenga ku wa 15/07/2022;

RS/INJUST/RAD 00002/2022/SC, Me MHAYIMANA Isaïe vs Urugaga rw'Abavoka mu Rwanda, rwaciwe n'Urukiko rw'Ikirenga ku wa 17/02/2023.

Inyandiko z'abahanga zifashishijwe:

B. Beigner & Sonia BEN, Droit des assurances, 2021, Paris, LGDJ, Lextenso, Pge 611.

Cour de cassation, civile, Chambre civile 2, 21 février 2008, 07-12.801, https://www.legifrance.gouv.fr/juri/id/JURITEXT000018166899.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tariki ya 27/01/2006 Uwizeyimana Clarisse wari ufite imyaka umunani (8) y'amavuko yagonzwe n'imodoka Toyota Hilux RDF 331 D yari ifite ubwishingizi muri SONARWA General Insurance Company Ltd, acika ukuboko kw'ibumoso.

[2] Nyuma yo kuzuza imyaka y'ubukure, Uwizeyimana Clarisse yandikiye SONARWA General Insurance Company Ltd ku wa 25/09/2017, ayisaba indishyi zikomoka kuri iyo mpanuka, yongera kuyandikira ku wa 22/08/2018 ayihanangiriza ariko ntiyamusubiza, maze atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge ku wa 26/09/2018 arusaba kuyitegeka kumuha indishyi zitandukanye zikomoka kuri iyo mpanuka.

[3] SONARWA General Insurance Company Ltd yatanze inzitizi yo kutakira icyo kirego ivuga ko Uwizeyimana Clarisse yarengeje igihe cy'imyaka itanu (5) iteganywa n'amategeko ku bijyanye no kuregera indishyi zikomoka ku mpanuka. Me Gabiro David wamuburaniraga yireguye kuri iyo nzitizi, avuga ko nta shingiro ifite kuko Uwizeyimana Clarisse yatangiye gukurikirana indishyi amaze kuzuza imyaka y'ubukure kubera ko nta babyeyi agira, akaba yari yaratoraguwe n'umukecuru witwa Nyirasimpunga Laurence badafite icyo bapfana akiri uruhinja, nyuma nawe akaza gupfa, akarerwa n'abaturanyi, kandi akaba yarakoze impanuka afite imyaka umunani (8) ku buryo atari yemerewe gukurikirana indishyi.

[4] Mu rubanza N° RC 00847/2018/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwasanze ikirego cya Uwizeyimana Clarisse kigomba kwakirwa, kandi rwemeza ko Uwizeyimana Clarisse yacitse akaboko biturutse ku mpanuka yatejwe n'ikinyabiziga cyishingiwe na SONARWA General Insurance Ltd, rusanga akwiye guhabwa indishyi zikurikira:

- Indishyi z'imbangamiraburanga zingana na 1.620.000 Frw;

- Indishyi mbonezamubano zingana na 9.765.219 Frw;
- Indishyi z'akababaro zingana na 1.620.000 Frw;
- Indishyi zo gutakaza amahirwe yo gushaka zingana na 2.160.000 Frw;
- Gusubizwa amafaranga yakoreshejwe akurikirana dosiye agizwe na 6.000 Frw yo kugura dosiye, 1.700 Frw yo kugura ibyemezo, 10.000 Frw yishyuwe za raporo za muganga, 600.000 Frw y'igihembo cya Avoka na 100.000 Frw yo gukurikirana urubanza.

[5] SONARWA General Insurance Company Ltd yajuririye urwo rubanza mu Rukiko Rukuru, isaba gusuzuma ibirebana n'iyakirwa ry'ikirego cyatanzwe na Uwizeyimana Clarisse kuko kuba umukecuru wamureraga yarapfuye hashize imyaka ibiri yose iyo mpanuka ibaye, bitumvikana impamvu atamutangiye icyo kirego cyangwa kitatanzwe n'abaturanyi bakomeje kumurera cyane ko bamenye iby'iyo mpanuka. Inasaba kandi gusuzuma niba Uwizeyimana Clarisse yaragombaga kugenerwa indishyi.

[6] Ku wa 25/10/2019, Urukiko Rukuru rwaciye urubanza NO RCA 00289/2019/HC/KIG, rwemeza ko ubujurire bwatanzwe na SONARWA General Insurance Company Ltd nta shingiro bufite rushingiye ku kuba n'ubwo Nyirasimpunga Laurence yaratoraguye Uwizeyimana Clarisse, atigeze amugira umwana ku buryo yari kumukurikiranira indishyi zikomoka ku mpanuka no kuba yaritabye Imana nyuma y'imyaka ibiri impanuka ibaye, nyuma agakomeza kurerwa n'abaturanyi. Rusobanura ko kuba yararengeje imyaka itanu ataratanga ikirego, ubwo busaze budakwiye kubarwa kuko yari akiri umwana kandi nta babyeyi cyangwa abishingizi yari afite.

[7] Ku wa 22/11/2019, SONARWA General Insurance Company Ltd yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza Nº RCA 00289/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 25/10/2019 rwasubirwamo ku mpamvu z'akarengane. Amaze gusuzuma ubusabe bwayo, Perezida w'Urukiko rw'Ubujurire nawe yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza rwavuzwe haruguru rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga, amaze kubona raporo yakozwe kuri urwo rubanza, ku wa 22/08/2022 yafashe icyemezo Nº 131/CJ/2022 cy'uko urubanza Nº RCA 00289/2019/HC/KIG rwongera kuburanwa, ruhabwa no RS/INJUST/RC 00006/2022/SC.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 23/05/2023, SONARWA General Insurance Ltd ihagarariwe na Me Bimenyimana Eric naho Uwizeyimana Clarisse ahagarariwe na Me Gabiro David, ababuranyi bajya impaka ku bibazo byo kumenya niba harabaye ubuzime bwo gukurikirana ikirego cy'indishyi no kumenya niba hari indishyi SONARWA General Insurance Company Ltd igomba gusubizwa, naho ikibazo kirebana no kumenya niba ubumuga bwagaragaye kuri Uwizeyimana Clarisse bwaraturutse ku mpanuka, uhagarariye SONARWA General Insurance Company Ltd yemereye mu iburanisha ko kitigeze kiburanwaho mu manza zabanje, kikaba rero kitasuzumwa bwa mbere ku rwego rw'akarengane nk'uko byatanzweho umurongo mu manza zitandukanye.[1] Iburanisha risojwe, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 23/06/2023.

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[1] Reba urubanza Nº RS/ INJUST/RC 00004/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020, haburana Mukamana Mamique na Vérène CANDALI n'abandi; urubanza Nº RS/INJUST/RC 00024/2018/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni n'urubanza Nº RS/INJUST/RC 00007/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

a. Kumenya niba harabaye ubuzime bwo gusaba indishyi zikomoka ku mpanuka yo mu muhanda

[9] Me Bimenyimana Eric uhagarariye SONARWA General Insurance Company Ltd avuga ko ikirego kitagombaga kwakirwa ngo gisuzumwe kuko nk'uko bigaragazwa n'inyandikomvugo yakozwe n'urwego rubifitiye ububasha, impanuka yabaye ku wa 27/01/2006, Uwizeyimana Clarisse ayimenyesha umwishingizi bwa mbere ku wa 25/09/2017, ni ukuvuga hashize imyaka irenga 11, ibyo bikaba binyuranije n'ingingo ya 4 y'Itegeko N° 01/2002 ryo ku wa 17/01/2002 rihindura kandi rikuzuza Itegeko Nº 20/75 ryo ku wa 20/06/1975 rirebana n'ubwishingizi muri rusange.[2]

[10] Akomeza asobanura ko Itegeko N° 01/2002 ryavuzwe haruguru riteganya ko impanuka igomba kumenyekanishwa mu myaka itanu (5) kuva ibaye, bitaba ibyo, iryo menyekanisha ntirigire agaciro. Ku bw'ibyo, akaba asanga Urukiko rutaragombaga guha agaciro imenyekanisha ryakozwe na Uwizeyimana Clarisse kuko yarengeje ibihe biteganywa n'amategeko, bityo akaba adashobora no gusaba indishyi.

[11] Avuga kandi ko PV de synthèse d'accident de roulage igaragaza ko abarega (plaignants) ari Ubushinjacyaha (Ministère Public) na Nyirasimpunga Laurence, inzego z'ibanze zikaba zaremeje ko Nyirasimpunga Laurence ariwe watoraguye Uwizeyimana Clarisse, akaba ari nawe wari umutunze icyo gihe, bikumvikana ko kuba yarabonye ubushobozi bwo kumuhagararira mu Bugenzacyaha, yaragombaga no kumuhagararira mu kumenyekanisha impanuka no gusaba indishyi. Ariko ko n'iyo Nyirasimpunga Laurence atari kubikora, abatangabuhamya babonye iby'iyo mpanuka cyangwa abaturanyi bamusigaranye nabo bari bafite ububasha bwo gukurikiranira Uwizeyimana Clarisse icyo kibazo.

[12] Avuga ko Urukiko Rwisumbuye rutagomba kwakira ikirego cya Uwizeyimana Clarisse, ahubwo ko uyu yari kwiyambaza izindi nzira kugira ngo arenganurwe hashingiwe ku biteganywa n'ingingo ya 128 y' Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano ryakurikizwaga impanuka ikorwa. Asobanura ko Uwizeyimana Clarisse yashoboraga gukurikirana uburenganzira bwe ku ndishyi yifashishije Conseil de Tutelle, cyangwa agasaba Leta kuzikurikirana kubera ko ariyo ireberera abana badafite kirengera. Agaragaza ko ibihe by'ubuzime byashoboraga guhagarara gusa mu gihe bari gushobora kugaragaza ko batangiye gusaba ko habaho ubwumvikane.

[13] Me Gabiro David uhagarariye Uwizeyimana Clarisse avuga ko asanga SONARWA General Insurance Company Ltd yitiranya umuhango wo kumenyesha impanuka, n'uwo gukurikirana indishyi zikomoka ku mpanuka. Asobanura ko umuhango wo kumenyekanisha impanuka utarebaga Uwizeyimana Clarisse kuko ukorwa na nyir'ikinyabiziga kiba cyateje iyo mpanuka, ahubwo ko yarebwaga no gukurikirana indishyi zikomoka ku mpanuka yatejwe n'ikinyabiziga cyari cyishingiwe na SONARWA General Insurance Company Ltd. Avuga ko

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[2] ………iteganya ko ikirego cyose cy'umuntu wangirijwe kiregerwa uwishingiwe, gikomoka kuri iri tegeko Teka gisibangana hashize imyaka itanu (5), uhereye ku munsi igikorwa cyateye ibyago cyabereyeho (Itegeko –Teka Nº 32/75 ryo ku wa 07 kanama 1975 ryerekeye ubwishingire butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri)

bitewe n’uko yari akiri umwana (mineur civil), amategeko atamwemereraga kwikurikiranira indishyi, ko ubundi byari gukorwa n’ababyeyi be iyo aba abazi, kandi nk’uko byasobanuwe mu manza zabanje, yatoraguwe ari uruhinja.

[14] Akomeza avuga ko uwitwa Nyiransimpunga Laurence wari waramutoraguye nawe nta bubasha yari afite bwo gukurikirana izi ndishyi kuko atari umwishingizi we (tuteur) cyangwa ngo abe yaremeye kumwiyandikishaho nk’umuntu umurera mu buryo bwemewe n’amategeko, na nyuma y’uko yitabye Imana, abasigaye barera Uwizeyimana Clarisse nabo batari bafite ububasha bwo kuregera indishyi kuko batigeze bamwiyandikishaho nk’uko amategeko abiteganya. Izo akaba arizo mpamvu zatumye Uwizeyimana Clarisse ategereza ko abanza kuzuza imyaka y’ubukure kugira ngo yitangire ikirego.

[15] Avuga kandi ko n’ubwo SONARWA General Insurance Ltd ivuga ko ikirego cya Uwizeyimana Clarisse kitagombaga kwakirwa, ishingiye ku gihe cy’imyaka 5 cyo kuba uwahohotewe yamenyekanishije impanuka asaba indishyi giteganywa n’ingingo ya 4 y’Itegeko nº 01/2002 ryo ku wa 17/01/2002 rihindura rikanuzuza Itegeko-Teka nº20/75 ryo ku wa 20/06/1975 rirebana n’ubwishingizi muri rusange, iteganya ibijyanye n’ibihe by’imyaka 5 yo kuregera indishyi zikomoka ku mpanuka, yirengagiza ko ingingo ya 10, igika cya 2 n’icya 3 n’ingingo ya 11 y’Itegeko –Teka nº 32/75 ryo ku wa 7/8/1975 rijyanye n’ubwishingire buturutse ku buryozwe butewe n’ibigenzwa ku butaka bifite moteri, yateganyije irengayobora ku birebana n’ibyo bihe.

[16] Asoza avuga ko kuba mu manza zabanje, inkiko zaragaragaje icyo zashingiyeho mu gufata ibyemezo nko mu rubanza N° RC 00847/2018/TGI/NYGE mu gika cya 11 no mu rubanza N° RCA 00289/2019/HC/KIG mu bika cya 13, 14, 15 na 16, aho Urukiko Rukuru rwagaragaje ibitekerezo by’abahanga ku birebana n’ubusaze ndetse runasesengura neza ingingo ya 3 y’Itegeko Teka Nº 32/1975 ryo ku wa 7/8/1975 ryerekeye ubwishingire butegetswe n’ibigenzwa ku butaka bifite moteri, asanga nta karengane kagaragara mu mikirize y’urubanza N° RCA 00289/2019/HC/KIG, ahubwo ko ari ukutanyurwa n’icyemezo cyafashwe n’Urukiko.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 10, mu gika cyayo cya 1, y’Itegeko-Teka N° 32/1975 ryo ku wa 7/8/1975 ryerekeye ubwishingire butegetswe n’ibigenzwa ku butaka bifite moteri, iteganya ko ikirego cy’uwangirijwe n’uwishingiye gisaza mu gihe cy’imyaka itanu ibarwa guhera igihe impamvu gikomokaho yabereye; naho mu gika cya 2 hakavugwa ko impamvu zihagarika ubuzime bw’ikirego cy’uwangirijwe, zinahagarika ubuzime bw’ikirego cy’uwishingiye.

[18] Itegeko rishyiraho Interuro y’Ibanze n’Igitabo cya mbere cy’Urwunge rw’amategeko mbonezamubano ryakurikizwaga impanuka yamugaje Uwizeyimana Clarisse iba, mu ngingo yaryo ya 431, yateganyaga ko imyaka y’ubukure ari imyaka 21. Naho Itegeko n° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango mu ngingo ya 113 ryo riyishyira kuri cumi n’umunani (18) y’amavuko.

[19] Urukiko rurasanga ababuranyi bemeranya ko Uwizeyimana Clarisse yagize impanuka ku wa 27/01/2006 afite imyaka 8 y’amavuko, adafite ababyeyi, acika ukuboko. Icyo batemeranyaho ari nacyo kigize impaka muri uru rubanza, ni ukuba uhagarariye SONARWA General Insurance Company Ltd avuga ko ikirego cye kitagombaga kwakirwa kuko atubahirije igihe cy’imyaka 5 yo

gukurikirana indishyi zikomoka ku mpanuka, kandi ko n'ubwo atari afite ababyeyi nk'uko babiburanisha, Leta yari kuzikurikirana kubera ko kureberera abana badafite kirengera biri mu nshingano zayo. Naho uhagarariye Uwizeyimana Clarisse avuga ko ikirego cyagombaga kwakirwa hashingiwe ku kuba nk'umwana udafite ababyeyi, yaragitanze amaze kuzuza imyaka y'ubukure.

[20] Mu rubanza N° RS/INJUST/RAD 00002/2022/SC rwaciwe n'uru Rukiko, haburana Me MHAYIMANA Isaïe n'Urugaga rw'Abavoka mu Rwanda, Urukiko rw'Ikirenga rwasobanuye 'ubuzime' nk'uburyo bwo gutuma habaho kuzima k'uburenganzira bitewe n'uko uwari ufite ubwo burenganzira cyangwa ububasha ntacyo yakoze mu gihe runaka. Ubuzime bukaba butangira kubarwa igihe ufite uburenganzira yamenyeye cyangwa yagombaga kuba yamenye ibikorwa bituma abukoresha.[3]

[21] Urukiko rurasanga icyumvikana mu ngingo ya 10, igika cyayo cya 1 n'icya 2 y'Itegeko-Teka N° 32/1975 ryavuzwe haruguru no mu bisobanuro by'ubuzime, ari uko uwangirijwe n'impanuka afite igihe cy'imyaka itanu cyo gusaba umwishingizi indishyi ziyikomokaho, atabikora ubwo burenganzira bukazima. Itegeko ariko rikemera ko hashobora kubaho impamvu zishobora guhagarika ubuzime bw'ikirego cy'uwangirijwe n'ubwo ritazirondoye cyangwa ngo rizisobanure.

[22] Dosiye y'uru rubanza igaragaza ko Urukiko Rukuru rwasanze nta buzime bwabaye ku kirego cya Uwizeyimana Clarisse gisaba SONARWA General Insurance Company Ltd indishyi zikomoka ku mpanuka, rushingiye ku kuba Uwizeyimana Clarisse yarakoze impanuka afite imyaka 8, kandi Nyirasimpunga Laurence wamureraga akaba ataramwiyandikishijeho nk'umwana kimwe n'abaturanyi bamureze nyuma y'aho apfiriye, rusanga kuba uwakabaye atanga ikirego yari atarageza ku myaka y'ubukure ari impamvu yatumye ibihe by'ubusaze by'ikirego byateganyijwe n'itegeko biba bisubitswe kubarwa.

[23] Ku bijyanye n'ibarwa ry'ibihe byo gutanga ikirego k'umuntu utarageza imyaka y'ubukure cyangwa undi muntu udafite ububasha, abahanga mu mategeko bavuga ko ubuzime bw'ikirego cy'uwangirijwe gishobora guhagarikwa gusa n'impamvu zituma uwangirijwe adashobora gutanga ikirego cyangwa mu gihe atarageza ku myaka y'ubukure;[4] uko ni nako byanemejwe n'Urukiko Rusesa Imanza rwo mu Bufaransa.[5]

Urundi rugero rw'impamvu ishobora gutinza itangwa ry'ikirego rwatanzwe mu rubanza Nº RS/REV/RCOM 00001/2022/SC, rwaciwe n'uru Rukiko, MUNYABURANGA aburana na ECOBANK Plc ku wa 15/07/2022, mu gika cya 29, aho rwasobanuye ko ibihe byo gutanga ikirego bishobora kongerwa bitewe n'uburwayi bwashyira umuntu mu mimerere (conditions) ituma atabasha gutekereza, kuvuga, kumva, kwandika, nk'igihe

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[3] Reba urubanza N° RS/INJUST/RAD 00002/2022/SC rwaciwe n'Urukiko rw'Ikirenga kuwa 17/02/2023 haburana Me MHAYIMANA Isaïe n'Urugaga rw'Abavoka mu Rwanda, ku rupapuro rwa 8, igika cya 14.

[4] B. Beigner & Sonia BEN, Droit des assurances, 2021, Paris, LGDJ, Lextenso, Pge 611. La prescription biennale ne peut être suspendue que par les circonstances mettant la partie dans l'impossibilité d'agir ou durant la minorité de l'assuré.

[5] Mu rubanza Cour de cassation, civile, Chambre civile 2, 21 février 2008, 07-12.801 : ttendu que, selon le premier de ces textes, l'action en garantie de l'assuré à l'encontre de l'assureur est interrompue par une des causes ordinaires d'interruption de la prescription ; que, selon le second, la prescription ne court pas contre les mineurs non émancipés et les majeurs en tutelle sauf ce qui est dit à l'article 2278 et à l'exception des cas déterminés par la loi." https://www.legifrance.gouv.fr/juri/id/JURITEXT000018166899

yaba ari muri coma, ku buryo atashobora no kugira uwo aha ububasha bwo kumutangira ikirego.

[24] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga kuba impanuka yarabaye Uwizeyimana Clarisse afite imyaka 8, kandi nk'uko ababuranyi babyemeranyaho, atari afite ababyeyi cyangwa umwishingizi, byumvikanisha ko nta wundi muntu wari ufite ububasha bwo gukurikirana indishyi zikomoka ku bumuga yatewe n'impanuka yatejwe n'imodoka yishingiwe na SONARWA General Insurance Company Ltd, rukaba rusanga igihe cy'imyaka itanu cyarahagaze kubarwa kuko Uwizeyimana Clarisse yari akiri umwana adashobora kuzikurikirana, cyongera gutangira kubarwa uhereye igihe yuzurije imyaka y'ubukure, ni ukuvuga imyaka 18. Iby'uhagararire SONARWA General Insurance Company Ltd avuga ko mu gihe cyagenwe Leta yari kuba yarakurikiraniye indishyi Uwizeyimana Clarisse, nk'umwana utari ufite umureberera, ntibimwambura uburenganzira bwo kuzikurikiranira amaze kugira imyaka y'ubukure. Kubera izo mpamvu zose, Urukiko rusanga, nk'uko Urukiko Rukuru rwabibonye, nta buzime bwabayeho.

[25] Urukiko rurasanga bitakiri ngombwa gusuzuma niba indishyi SONARWA General Insurance Company Ltd yishyuye ikwiye kuzisubizwa n'inyungu yazo kuko nta karengane kagaragara mu kuba Urukiko Rukuru rwaremeje ko nta buzime bwabaye, rukagenera Uwizeyimana Clarisse indishyi.

b. Kumenya ishingiro ry'igihembo cy'Avoka n'amafaranga y'ikurikirana rubanza bisabwa n'ababuranyi

[26] Me Nkurunziza Jean Pierre uhagarariye SONARWA General Insurance Company Ltd asaba Urukiko gutegeka Uwizeyimana Clarisse kuyisubiza amafaranga y'igihembo cy'Avoka n'ayikurikiranarubanza yatanze kuva ikirego gitangwa mu Rukiko Rwisumbuye kugeza mu Rukiko rw'Ikirenga angana na 3.000.000 Frw, harimo ay'igihembo cy'Avoka angana na 2.000.000 Frw ku nzego zose, na 1.000.000 Frw y'ikurikiranarubanza ku nzego zose, kuko iki kirego cyatumye SONARWA General Insurance Company Ltd yitabaza abanyamategeko.

[27] Me Gabiro David avuga ko nta ndishyi SONARWA General Insurance Company Ltd igomba guhabwa kuko yasubirishijemo urubanza ku mpamvu z'akarengane izi neza ko nta shingiro bifite, ikaba igomba kwirengera ingaruka zabyo. Avuga ko hashingiwe ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ndetse n'ingingo ya 32 y'amabwiriza rusanga ashyiraho ibihembo mbonera by'Avoka, asaba Urukiko gutegeka SONARWA General Insurance Company Ltd kwishyura Uwizeyimana Clarisse amafaranga y'igihembo cy'Avoka hamwe n'ikurikiranarubanza byose bingana na 3.000.000 Frw (igihembo cy'Avoka kingana na 2.500.000 Frw, n'ikurikiranarubanza rya 500.000 Frw).

[28] Uhagarariye SONARWA General Insurance Company Ltd yiregura avuga ko idakwiye kubazwa ibyo Uwizeyimana Clarisse yakoresheje mu rubanza rw'akarengane kuko atariyo yamuhamagaje mu rubanza, kandi bakaba bataranagaragaje ibimenyetso by'amafaranga basaba kuko mu Nkiko zibanza bayahawe, amafaranga 3.000.000 y'ikurikiranarubanza mu Rukiko rw'Ikirenga akaba asanga ari umurengera.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe."

[30] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ikurikiranarubanza SONARWA General Insurance Company Ltd isaba itayakwiriye kuko ntacyo itsindiye muri uru rubanza.

[31] Urukiko rurasanga, nk'uko biteganywa n'ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2019 ryavuzwe haruguru, amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Uwizeyimana Clarisse asaba agomba kuyahabwa kuko byabaye ngombwa gukurikirana urubanza bitewe no kuba SONARWA General Insurance Company Ltd ariyo yasabye gusubirishamo urubanza ku mpamvu z'akarengane, bikaba ngombwa ko ashaka umuburanira. Icyakora kubera ko ayo asaba ari menshi, kandi atagaragaza ko ariyo koko yatanzwe kuri uru rubanza, mu bushishozi bw'Urukiko akaba agenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ikirego cyatanzwe na SONARWA General Insurance Company Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00289/2019/HC/KIG, rwaciwe n'Urukiko Rukuru ku wa 25/10/2019, nta shingiro gifite.

[33] Rwemeje ko imikirize y'urubanza N° RCA 00289/2019/HC/KIG, rwaciwe n'Urukiko Rukuru ku wa 25/10/2019 idahindutse.

[34] Rutegetse SONARWA General Insurance Company Ltd guha Uwizeyimana Clarisse igihembo cya Avoka cya 500.000 Frw, na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw