MUKAKIMENYI v SANLAM AG PLC

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00012/2022/SC (Hitiyaremye, P.J., Muhumuza, Kalihangabo, J.) 02 Gashyantare 2024]

Amategeko agenga imanza z'imbonezamubano – Indishyi z'ikomoka ku mpanuka yakozwe n'ikinyabiziga – Indishyi zo kwivuza - Uwahohotewe ufite ubushobozi ashobora kwivuza ku giti cye, noneho nyuma akazasaba uwateje impanuka cyangwa uwamwishingiye kumusubiza amafaranga yatanze yivuza hamaze gutangwa ibimenyetso bigaragaza amafaranga y'ikiguzi yatanzwe kuri ubwo buvuzi, mu gihe yaba nta bushobozi afite agasaba abo bombi kumuvuza.

Amategeko agenga imanza z'imbonezamubano – Indishyi zikomoka ku mpanuka – Indishyi z'ibangamira ry'uburanga - Kuba muganga atarerekanye ko hari ibangamira ry'uburanga ryabayeho, ntibivuze ko ritabayeho koko, ahubwo ni uko aba atarasabwe kuryerekana.

Amategeko agenga imiburanishirize y'imanza – Gusubirishamo urubanza ku mpamvu z'akarengane – Kugaragaza ibimenyetso bishya byerekana akarengane - Nyuma y'uko Perezida w'Urukiko rw'Ikirenga yemeye ko urubanza rwongera kuburanishwa, ntakibuza umuburanyi kuzana ibimenyetso byose bigaragaza ko yarenganye. Ikibujijwe ni ukuzana ingingo nshya itaraburanyweho mbere.

Incamake y'ikibazo: Uru rubanza rukomoka ku mpanuka yabaye ikozwe n'ikinyabiziga cyari gifite ubwishingizi bwa SORAS AG LTD yaje guhinduka SANLAM AG Plc (Sanlam) ubwo cyagongaga uwitwa Mukakimenyi bikamuviramo gukomereka cyane. Yasabye indishyi umwishingizi ariko ntiyazimuha atanga ikirego mu Rukiko rwisumbuye rwa Gasabo rumugenera indishyi zitandukanye zirimo amafaranga yakoresheje mu kwivuza, indishyi mbangamiraburanga n'izindi. Sanlam ntiyanyuzwe n'icyo cyemezo ikijuririra mu Rukiko rukuru ivuga ko yasabwe gutanga amafaranga yo kwivuza hashingiwe kuri facture proforma yatanzwe n'ibitaro kandi iyo facture mu busanzwe itagaragaza ibyakoreshejwe ndetse isaba ko n'indishyi z'ibangamira ry'uburanga zakurwaho. Urukiko rukuru rwemeje ko nta ndishyi z'amafaranga yo kwifuza ndetse n'indishyi z'ibangamira ry'ubukungu bigomba gutangwa.

Mukakimenyi yiyambaje inzira z'akarengane maze hemezwa ko urwo rubanza rwongera kuburanishwa n'Urukiko rw'Ikirenga aho rwasuzumye ibibazo byo kumenya niba Mukakimenyi yaragombaga kugenerwa 5.265.000 Frw yo gukorerwa opération agaragara kuri facture proforma yatanzwe n'Ibitaro no kumenya niba niba yaragombaga kugenerwa indishyi z'ibangamira ry'uburanga.

Mukakimenyi asobanura ko Urukiko rukuru rwakuyeho indishyi yagenewe zo kwivuza kandi azifitiye uburenganzira kuko uwangirijwe n'impanuka itamuviriyemo urupfu afite uburenganzira bwo kuvuzwa cyangwa gusubizwa amafaranga yatanze yivuza n'ayo yaguze imiti kubera uburwayi yatewe n'iyo mpanuka, akaba rero asaba ko yakwishyurirwa amafaranga yo kwivuza agaragazwa kuri facture proforma. Akomeza asobanura ko yakuriweho indishyi z'ibangamira ry'uburanga kandi impanuka yaramusigiye ubumuga bwa 40% kuko yavunitse amagufa akaba agendera ku mbago bityo agasaba ko yahabwa izo ndishyi.

Sanlam yiregura ivuga ko indishyi z'amafaranga yo kwivuza zidakwiriye gutangwa hashingiwe kuri facture proforma bitewe nuko umwishingizi yishyura ibyakoreshejwe, kandi facture proforma

ikaba idatanga amakuru y'ukuri kuko amafaranga ayiriho aba ashobora kwiyongera cyangwa kugabanuka, ko ahubwo ari ikigereranyo cy'amafaranga ashobora kuzakoreshwa ariko atari ikimenyetso cy'amafaranga yishyuwe ku buryo urega yavuga ko ariyo yakoresheje akaba yasaba kuyasubizwa. Ikomeza isobanura ko indishyi z'ibangamira ry'uburanga zitagombaga gutangwa kuko muganga atigeze agaragaza ikigero cy'uburanga bwatakaye kubera impanuka bityo ko hatashingirwa ku magambo gusa y'usaba izo ndishyi.

Incamake y'icyemezo: 1. Uwahohotewe ufite ubushobozi ashobora kwivuza ku giti cye, noneho nyuma akazasaba uwateje impanuka cyangwa uwamwishingiye kumusubiza amafaranga yatanze yivuza hamaze gutangwa ibimenyetso bigaragaza amafaranga y'ikiguzi yatanzwe kuri ubwo buvuzi, mu gihe yaba nta bushobozi afite agasaba abo bombi kumuvuza. Bityo rero Mukakimenyi akaba afite uburenganzira bwo kuvuzwa ariyo mpamvu agomba guhabwa amafaranga asaba yo kumuvuza.

2. Kuba muganga atarerekanye ko hari ibangamira ry'uburanga ryabayeho, ntibivuze ko ritabayeho koko, ahubwo ni uko aba atarasabwe kuryerekana bityo Mukakimenyi akaba agomba guhabwa indishyi z'ibangamira ry'uburanga kuko yagaragaje ko yagize ubusembwa kubera impanuka.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashingiweho:

Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, ingingo ya 3;

Itegeko N° 22/04/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 154;

Iteka rya Perezida N° 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 13, 19.

Imanza zifashishijwe:

RCAA 0202M/07/CS, Nyetera Jean Baptiste na CORAR, rwaciwe n'Urukiko rw'Ikirenga ku wa 09/04/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Inkomoko y'uru rubanza ni impanuka yabaye ku itariki ya 19/06/2018 aho Mukakimenyi Marie Claire yagonzwe n'imodoka Toyota Hilux ifite nimero RAC 416 D yari itwawe n'uwitwa Habumugisha Jean Claude ifite ubwishingizi muri SORAS AG Ltd. Mukakimenyi Marie Claire yasabye SORAS AG Ltd indishyi zikomoka kuri iyo mpanuka mu bwumvikane ntibyagira icyo bitanga, maze atanga ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba ko SORAS AG Ltd itegekwa kumuha indishyi z'ibangamirabukungu, indishyi z'akababaro, indishyi z'ibangamira ry'uburanga, indishyi z'ibangamiraburambe mu kazi no kwishyura 5.265.000 Frw kugira ngo

azavuzwe. SORAS AG Ltd yireguye ivuga ko idahakana uburyozwe bw'indishyi yasabwaga na Mukakimenyi Marie Claire, ko ariko zabarwa hakurikijwe uko amategeko abiteganya.

[2] Ku itariki ya 15/11/2019, urwo Rukiko rwaciye urubanza N° RC 00168/2019/TGI/GSBO, rwemeza ko ikirego cya Mukakimenyi Marie Claire gifite ishingiro, rutegeka SORAS AG Ltd kumuha 9.815.566 Frw akubiyemo ay'indishyi z'ibangamirabukungu, indishyi z'akababaro, indishyi z'ibangamira ry'uburanga n'amafaranga azishyurwa amaze kwivuza mu bitaro byitiriwe umwami Fayisali.

[3] SORAS AG Ltd hagati aho yari yarahindutse SANLAM AG Plc, yajuririye urwo rubanza mu Rukiko Rukuru ivuga ko Urukiko Rwisumbuye rwageneye Mukakimenyi Marie Claire indishyi zingana na 5.265.000 Frw ahwanye n'amafaranga yo kwivuza ari kuri facture proforma na 432.000 Frw y'indishyi z'ibangamira ry'uburanga mu buryo budakurikije amategeko, isaba ko ibyo bibazo byasuzumwa.

[4] Ku itariki ya 30/09/2020, Urukiko Rukuru rwaciye urubanza N° RCA 00491/2019/HC/KIG, rwemeza ko ubujurire bwa SANLAM AG Plc bufite ishingiro, rutegeka ko indishyi za 5.265.00 Frw zishingiye kuri facture proforma zivanyweho, runategeka ko nta n'indishyi z'ibangamira ry'uburanga zigomba guhabwa Mukakimenyi Marie Claire, ruvuga ko imikirize y'urubanza N° RC 00168/2019/TGI/GSBO, rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku itariki ya 15/11/2019, ihindutse ku byerekeye izo ndishyi.

[5] Mu gufata icyo cyemezo, Urukiko rwashingiye ku mpamvu zikurikira:

- 5.265.000 Frw yo kwivuza yatanzwe hagendewe kuri facture proforma kandi atari byo, kubera ko umwishingizi yishyura ibyakoreshejwe hashingiwe ku biteganywa n'ingingo ya 13 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 amafaranga yishyurwa n'umwishingizi ari ayamaze gukoreshwa kandi agatangirwa ibimenyetso bibihamya, mu gihe facture proforma idatanga amakuru ko amafaranga ayiriho ariyo yakoreshejwe.

- Indishyi z'ibangamira ry'uburanga zitangwa ari uko umuganga yagaragaje urwego rw'ubumuga uwahohotewe arimo, mu gihe Mukakimenyi Marie Claire na we ubwe yivugira ko nta cyemezo cya muganga bafite, bityo Urukiko Rwisumbuye rukaba ntaho rwahereye ruzitanga kuko nta kimenyetso cya muganga kigaragaza ikigero cy'ubusembwa yatejwe n'impanuka.

[6] Nyuma y'icibwa ry'urwo rubanza, Mukakimenyi Marie Claire yandikiye Perezida w'Urukiko rw'Ubujurire amusaba ko urubanza N° RCA 00491/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 30/09/2020 rwasubirwamo ku mpamvu z'akarengane. Amaze gusuzuma ubusabe bwe, yohereje Perezida w'Urukiko rw'Ikirenga raporo y'isesengura yakoze, nawe amaze kubisuzuma yemeza ko urubanza rwongera kuburanishwa ruhabwa N° RS/INJUST/RC 00012/2022/SC.

[7] Mukakimenyi Marie Claire yasabye ko urubanza rwasubirwamo ku mpamvu z'akarengane avuga ko Urukiko Rukuru rwanze kumugenera 5.265.000 Frw yo kwivuza kandi agaragara kuri facture proforma yahawe n'ibitaro hirengagijwe ibiteganywa n'ingingo ya 3 y'Itegeko N° 41/2001

ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigendera ku butaka. Yavugaga kandi ko akandi karengane kari mu rubanza ari uko Urukiko rwakuyeho indishyi z'ibangamira ry'uburanga yari yaragenewe ku rwego rwa mbere nyamara rwari rwashingiye ku bumuga bwa 40% bwagaragajwe na muganga. SANLAM AG Plc yiregura ivuga ko nta karengane kari mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane kubera ko indishyi Mukakimenyi Marie Claire asaba zidakurikije amategeko.

[8] Urubanza rwaburanishirijwe mu ruhame ku itariki ya 23/05/2023, Mukakimenyi Marie Claire ahagarariwe na Me Habyarimana Jean Baptiste, SANLAM AG Plc ihagarariwe na Me Nkeza Sempundu Clément afantanyije na Me Niyondora Nsengiyumva, ababuranyi bajya impaka ku kibazo cyo kumenya niba Mukakimenyi Marie Claire yaragombaga kugenerwa 5.265.000 Frw yo kubagwa (opération) agaragara kuri facture proforma yatanzwe n'Ibitaro byitiriwe Umwami Fayisali, no kumenya niba yaragombaga guhabwa indishyi z'ibangamira ry'uburanga. Iburanisha rishojwe, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku itariki ya 16/06/2023.

[9] Ubwo inteko yari yiherereye isuzuma ibibazo bimaze kuvugwa, yasanze mbere yo guca urubanza ari ngombwa gusaba muganga wasuzumye Mukakimenyi Marie Claire bwa nyuma kurugaragariza urwego rw'ibangamira ry'uburanga yasigiwe n'impanuka niba rihari, maze ku itariki ya 23/06/2023, Dr Uwiringiyimana Wellars waherukaga kumusuzuma, akora raporo yerekana ko impanuka yamusigiye ibangamira ry'uburanga riri ku rwego rwa 5/6.

[10] Ababuranyi bongeye kwitaba Urukiko ku itariki ya 18/10/2023, Mukakimenyi Marie Claire nanone ahagarariwe na Me Habyarimana Jean Baptiste, SANLAM AG Plc ihagarariwe na Me Niyondora Nsengiyumva bagira icyo bavuga kuri raporo ya muganga. Iburanisha rirangiye, bamenyeshejwe ko urubanza ruzasomwa ku itariki ya 17/11/2023, ariko hagati aho umwe mu bacamanza bari bagize inteko ahindurirwa imirimo biba ngombwa ko iburanisha ripfundurwa kugira ngo inteko ihinduke, rishyirwa ku itariki ya 16/01/2024.

[11] Kuri uwo munsi SANLAM AG Plc yitabye Urukiko ihagarariwe na Me Niyondora Nsengiyumva afatanyije na Me Nkeza Sempundu Clément, Mukakimenyi Marie Claire atitabye ariko yaramenyeshejwe itariki y'iburanisha mu buryo bukurikije amategeko, ababuranyi bamenyeshwa ko Inteko yahindutse kandi ko umucamanza mushya yemera ibyakozwe mu maburanisha yabanje, isomwa ry'urubanza rishyirwa ku itariki ya 02/02/2024.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

- **Kumenya niba Mukakimenyi Marie Claire yaragombaga kugenerwa 5.265.000 Frw yo gukorerwa opération agaragara kuri facture proforma yatanzwe n'Ibitaro byitiriwe Umwami Fayisali.**

[12] Me Habyarimana Jean Baptiste uhagarariye Mukakimenyi Marie Claire avuga ko akarengane kari mu rubanza basabye ko rwasubirwamo ari uko Urukiko Rukuru rwakuyeho indishyi zihwanye na 5.265.000 Frw Mukakimenyi Marie Claire yari yaragenewe n'umucamanza wo mu Rukiko Rwisumbuye rwa Gasabo kugira ngo ashobore kwivuza. Akomeza avuga ko Urukiko Rukuru rwakuyeho izo ndishyi rwirengagije ibiteganywa n'ingingo ya 3 y'Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe

n’ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, iteganya ko mu burenganzira uwangirijwe n’impanuka itamuviriyemo urupfu afite harimo ubwo kuvuzwa cyangwa gusubizwa amafaranga yatanze yivuza n’ayo yaguze imiti kubera uburwayi yatewe n’iyo mpanuka.

[13] Asobanura ko Mukakimenyi Marie Claire yakurikiranywe n’Ibitaro Bikuru bya Gisirikare bya Kanombe, hanyuma ibyo bitaro bimwohereza ku Bitaro Bikuru byitiriwe Umwami Fayisali (King Faisal Hospital) kugira ngo akorerwe opération ibitaro bya Kanombe bitari bishoboye, hanyuma ibyo bitaro bitanga facture proforma ya 5.265.000 Frw nk’ikiguzi ubwo buvuzi bwagombaga kuzatwara. Avuga ko kubera ubushobozi buke, Mukakimenyi Marie Claire yandikiye SORAS AG Ltd ayisaba kwishyurirwa ubwo buvuzi ariko ntiyagira icyo ibikoraho.

[14] Me Habyarimana Jean Baptiste avuga kandi ko Mukakimenyi Marie Claire atigeze aburana asaba gusubizwa amafaranga nk’uwayatanze, ko ahubwo icyo yasabaga ari uburenganzira bwe bwo kuvuzwa hashingiwe kuri facture proforma yari yatanzwe n’Ibitaro byitiriwe Umwami Fayisali, ibyo bikaba bigaragazwa n’ikimenyetso yahaye Urukiko kigizwe n’ibaruwa yo ku itariki ya 20/08/2019 Mukakimenyi Marie Claire yandikiye SORAS AG Ltd itarahinduka SANLAM AG Plc ayigezaho inyandiko ya transfert y’Ibitaro bya Kanombe n’ikiguzi opération izatwara nk’uko byagaragajwe n’Ibitaro byitirwe Umwami Fayisali ayisaba kumwishyurira ubwo buvuzi.

[15] Akomeza avuga ko abonye SORAS AG Ltd yinangiye ntigire icyo ikora kugira ngo avurwe, nk’uko bigaragara mu manza zaciwe mbere, Mukakimenyi Marie Claire yiyambaje inkiko asaba ko zategeka ayo mafaranga akayahabwa kugira ngo opération yari yarategetswe n’Ibitaro ishobore gukorwa, cyane cyane ko facture proforma ya 5.265.000 Frw nta rujijo yari iteye.

[16] Arangiza avuga ko n’ubwo mu gihe cy’inama ntegurarubanza Mukakimenyi Marie Claire yari yarasabye guhabwa 5.265.000 Frw kugira ngo ayikenuze kuko yari afite impungenge zo kuba ageze mu zabukuru aramutse abazwe yapfa, ko ariko ubu noneho yemera kuvurwa ayo mafaranga akishyurwa ivuriro nk’uko yari yabisabye mbere aho kugira ngo ayahabwe, abaganga akaba aribo bagena ubuvuzi akwiriye.

[17] Me Nkeza Sempundu Clément na Me Niyondora Nsengiyumva bahagarariye SANLAM AG Plc bavuga ko basanga nta karengane kabaye mu rubanza N° RCA 00491/2019/HC/KIG kuko Mukakimenyi Marie Claire atagaragaza aho gashingiye, haba ku byabaye (les faits), haba no ku mategeko (le droit) kubera ko nta gace na kamwe k’ingingo ya 55 y’Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’Inkiko yerekana ko akarengane gashingiyeho.

[18] Bavuga ko mu gika cya 6 cy’urubanza rusubirishwamo ku mpamvu z’akarengane, Urukiko Rukuru rwasobanuye neza ko 5.265.000 Frw yari yaratanzwe ku rwego rwa mbere hashingiwe kuri facture proforma atari akwiye gutangwa bitewe nuko umwishingizi yishyura ibyakoreshejwe, kandi facture proforma ikaba idatanga amakuru y’ukuri kuko amafaranga ayiriho aba ashobora kwiyongera cyangwa kugabanuka, ko ahubwo ari ikigereranyo cy’amafaranga ashobora kuzakoreshwa ariko atari ikimenyetso cy’amafaranga yishyuwe ku buryo urega yavuga ko ariyo yakoresheje akaba yasaba kuyasubizwa (se faire rembourser).

[19] Me Nkeza Sempundu Clément na Me Niyondora Nsengiyumva bavuga ko isesengura ry’ingingo ya 13 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

rigaragaza nta gushidikanya ko amafaranga umwishingizi atanga ashingiye kuri iyi ngingo ari ayo asubiza uwahohotewe amaze kugaragaza ibimenyetso by'uko yayishyuye koko.

[20] Bavuga kandi ko ingingo ya 3 y'Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka urega yitsitsaho avuga ko Urukiko rwayirengagije kandi ataribyo, kuko rutigeze ruvuga ko uwahohotewe adafite uburenganzira bwo kuvuzwa kuko ataricyo cyari cyajuririwe, ko icyo Urukiko rwasobanuye ari uko amafaranga agomba gusubizwa Mukakimenyi Marie Claire ari ayo yatanze yivuza (remboursement des frais médicaux), kugeza ubu akaba atagaragaza facture yayishyuriyeho hanyuma ngo SANLAM AG Plc iyamwime. Bavuga ko kuba umwishingizi amusaba kugaragaza ikimenyetso cy'amafaranga yishyuye kwa muganga kugira ngo abihereho ayamusubiza bitanyuranyije n'uburenganzira bwe bwo kwivuza.

[21] Abahagarariye SANLAM AG Plc bavuga nanone ko ingingo ya 9 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe, naho iya 10 n'iya 11 zaryo zigateganya ko umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine, ko ndetse adashobora gushingira icyemezo cye ku bitaragaragajwe mu iburanisha, kimwe n'uko adashobora no guca urubanza ashingiye ku byo aruziho ku giti cye. Bavuga ko ingingo ya 4 y'Itegeko N° 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko Urukiko ruca urubanza rushingiye ku bimenyetso bihuye na kamere y'ikiburanwa.

[22] Bavuga ko, nubwo ingingo ya 3 y'Itegeko N° 41/2001 ryavuzwe haruguru, kimwe n'ingingo ya 13 y'Iteka rya Perezida N° 31/2001 naryo ryavuzwe haruguru zidakuraho ko umwishingizi abisabwe ashobora gufasha uwahohotewe n'impanuka kwivuza cyangwa uwahohotewe wivuje yiyishyuriye asubizwa amafaranga yatanze afitiye ibimenyetso, SANLAM AG Plc isanga icyaburanywe mu rubanza rusubirishwamo ku mpamvu z'akarengane atari inshingano zayo zo kuvuza Mukakimenyi Marie Claire, ko ahubwo icyasuzumwe ku rwego rwa mbere kwari ukumenya niba yari akwiye gusubizwa 5.265.000 Frw ku byerekeye amafaranga yakoreshejwe.

[23] Bavuga ko Urukiko Rwisumbuye rwayamugeneye nk'ayo akwiriye gusubizwa yarayakoresheje, iryo akaba ariryo kosa ryakosowe n'Urukiko Rukuru mu bujurire aho rwasobanuye neza ko SANLAM AG Plc itari gutegekwa gusubiza amafaranga hashingiwe kuri facture proforma kandi itagaragaza amafaranga yishyuwe. Bakaba basanga rero nta karengane kari mu rubanza rwasabiwe gusubirwamo kuko nta kimenyetso na kimwe Mukakimenyi Marie Claire yatanze cyerekana ko amafaranga asaba yayishyuye.

[24] Ku birebana n'ibyavugwaga na Mukakimenyi Marie Claire mu gihe cy'inama ntegurarubanza ko adashaka ko SANLAM AG Plc imuvuza, ko ahubwo yahabwa ariya mafaranga kugira ngo ayikenuze, abahagarariye SANLAM AG Plc bavuga ko basanga kuba Mukakimenyi Marie Claire adashaka kuvuzwa yishakira amafaranga ntayo yamuha kuko byaba binyuranyije n'ibiteganywa n'amategeko.

[25] Ku birebana n'ibyavuzwe n'umuhagarariye mu gihe cy'iburanisha ko noneho yahinduye imvugo y'uko atagikeneye amafaranga ko ahubwo yavuzwa, bavuga ko basanga adakwiriye guhindura imvugo uko yishakiye, kuko byaba binyuranyije n'ibiteganywa n'ingingo ya 6

y’Itegeko ryerekeye imiburanishirize y’imanza z’imbonezamubano iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi.

UKO URUKIKO RUBIBONA

[26] Ingingo ya 3 y’Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y’abangirijwe n’impanuka zitewe n’ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, iteganya ko uwangirijwe n’impanuka itamuviriyemo urupfu afite uburenganzira bwo kuvuzwa cyangwa gusubizwa amafaranga yatanze yivuza n’ayo yaguze imiti kubera uburwayi yatewe n’iyo mpanuka. […]

[27] Ingingo ya 13, igika cya mbere, y’Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n’ibinyabiziga, iteganya ko amafaranga yo kwivuza, yo gushyirwa mu bitaro, yo kugura imiti, yo gutwarwa mu modoka itwara abarwayi, yo kongera kumenyereza umubiri, yo kugorora ingingo, y'ibyuma bikoreshwa, y'insimburangingo n'ay'ingendo zo kujya kwivuza arihwa n'uwateje impanuka cyangwa umwishingizi we, hakurikijwe ibiciro biriho mu Rwanda. Agomba kwishyurwa n'abo bombi, bamaze kubona inzandiko zibihamya, mu kwezi kw'iyakirwa ry'izo nyandiko.

[28] Ingingo z’amategeko zimaze kuvugwa zirebewe hamwe, zumvikanisha neza ko uwangijwe n’impanuka ntimuviremo urupfu afite uburenganzira bwo kuvuzwa n’uwateje impanuka cyangwa uwamwishigiye. Ibi kandi impande zombi muri uru rubanza zibyumvikanaho. Ikindi izi ngingo zumvikanisha, ni uko uwahohotewe ufite ubushobozi ashobora kwivuza ku giti cye, noneho nyuma akazasaba uwateje impanuka cyangwa uwamwishingiye kumusubiza amafaranga yatanze yivuza, ariko hamaze gutangwa ibimenyetso bigaragaza amafaranga y’ikiguzi yatanzwe kuri ubwo buvuzi, mu gihe yaba nta bushobozi afite agasaba abo bombi kumuvuza. Ibi bisobanuye ko uwateje impanuka cyangwa uwamwishingiye yohereza uwahohotewe kwa muganga akavurwa, noneho akaba ari we wishyura ivuriro.

[29] Ku birebana n’uru rubanza, dosiye yarwo igaragaza ko ku itariki ya 19/02/2019, Mukakimenyi Marie Claire, abinyujije kuri Avoka we, yandikiye SORAS AG Ltd (ubu yahindutse SANLAM AG Plc) ayisaba kumwishyurira opération yagombaga gukorerwa mu bitaro byitiriwe Umwami Fayisali cyangwa se kumwishingira ikiguzi kikazatangwa nyuma, ariko ntihagira igikorwa. Hari hatanzwe facture proforma ya 5.265.000 Frw. Dosiye igaragaza kandi ko amaze kubona ko imishyikirano yagiranaga na SORAS AG Ltd ntacyo yagezeho, Mukakimenyi Marie Claire yiyambaje inkiko asaba indishyi zitandukanye, muri zo hakaba no gusaba Urukiko kwemeza ko facture yazishyurwa kugira ngo opération ikorwe kuko ifitanye isano n'impanuka irebana n’urubanza.

[30] Ikigaragarira Urukiko, ni uko Mukakimenyi Marie Claire agana inkiko, icyo yasabaga atari uguhabwa amafaranga nk’uwayakoresheje yivuza nk’uko Urukiko Rukuru rwabifashe, ahubwo yasabaga ko 5.265.000 Frw yakwishyurwa ibitaro kugira ngo yivuze kuko yerekanaga facture proforma igaragaza ikiguzi ubuvuzi buzatwara, iyo facture akaba yari yaranayigejeje kuri SORAS AG Ltd asaba kuvuzwa ariko ntibyakorwa. Ibi biragaragarira mu gika cya 12 cy’urubanza rwaciwe n’Urukiko Rwisumbuye aho rwagize, ruti “niyo mpamvu asaba Urukiko kwemeza ko iyi facture yazishyurwa kugira ngo opération ikorwe kuko ifitanye isano n’impanuka iburanwa muri uru

rubanza." Ibi kandi ni nabyo byagarutsweho n'urwo Rukiko, aho mu gika cya 14 cy'urubanza rwavuze ko, "ku byerekeye amafaranga azishyurwa yakorewe opération mu bitaro byitiriwe Umwami Fayisali angana na 5.265.000 Frw, Urukiko rusanga ayo mafaranga nayo aturuka ku mpanuka nta cyatuma SORAS AG Ltd itayishyura kandi agaragarizwa ibimenyetso".

[31] Nyamara ariko, mu gufata icyemezo, Urukiko Rwisumbuye rwaribeshye rukora ikosa, mu mafaranga Mukakimenyi Marie Claire yagombaga guhabwa, rubariramo na 5.265.000 Frw yo kwivuza kandi atari byo byari byaburanwe. Urukiko rurasanga SANLAM AG Plc yarajuriye isaba Urukiko Rukuru gukosora iryo kosa, aho kurikosora hagendewe ku cyaburanwaga ruyakuraho, mu gihe nyamara no ku rwego rw'Ubujurire Mukakimenyi Marie Claire yakomezaga gusaba kuvuzwa.

[32] Urukiko rurasanga no kuri uru rwego Mukakimenyi Marie Claire akomeje gusaba uburenganzira bwe bwo kuvuzwa bitewe n'impanuka yatewe n'imodoka yishingiwe na SANLAM AG Plc yahoze ari SORAS AG Ltd. Nk'uko byavuzwe haruguru, ababuranira SANLAM AG Plc ntibahakana ihame ryo kuvuza uwahohotewe n'impanuka yatewe n'imodoka bishingiye, icyo batemera ni uko bavuga ko Mukakimenyi Marie Claire atanga ikirego atari byo yasabaga, ko ahubwo yasabaga guhabwa amafaranga, ko ubwo yaba ahinduye ikirego kandi bitemewe.

[33] Urukiko rurasanga ariko ibivugwa na SANLAM AG Plc nk'uko byasobanuwe haruguru ko ibyo Mukakimenyi Marie Claire asaba kuri uru rwego ari uguhindura ikirego atari byo, kuko kimwe mu byo yasabaga urubanza rugitangira, kwari ukwemeza ko amafaranga agaragara kuri facture proforma yazishyurwa kugira ngo opération yari yategetswe na muganga ishobore gukorwa[1], ndetse akaba ari nayo miburanire yakomeje no mu rwego rw'ubujurire aho yasabaga kuvuzwa ku bw'impanuka yabaye[2].

[34] Kuba Mukakimenyi Marie Claire yaravugiye mu nama ntegurarubanza ko atagishaka kwivuza yishakira amafaranga yo kwikenuza, mu gihe cy'iburanisha agahindura akavuga ko noneho ashaka kwivuza, SANLAM AG Plc ikavuga ko ibyo bitemewe ishingiye ku ngingo ya 6 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko rurasanga bitahabwa ishingiro kubera ko ikiburanwa kitagomba kureberwa ku rwego rw'akarengane, ahubwo kireberwa mu rwego rwa mbere. Kandi nk'uko byagarutsweho haruguru, kimwe mu byo Mukakimenyi Marie Claire yasabaga ashoza urubanza, kwari ukumwishyurira amafaranga akivuza.

[35] Hashingiwe ku ngingo ya 3 y'Itegeko N° 41/2001 ryo ku wa 19/09/2001 ryavuzwe haruguru no ku ya 13, igika cya mbere, y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 naryo ryavuzwe haruguru, ndetse no ku bisobanuro byatanzwe, Urukiko rurasanga, mu rwego rwo kurangiza inshingano zayo, SANLAM AG Plc igomba guhita ikora ibikenewe byose kugira ngo Mukakimenyi Marie Claire avurwe mu gihe kitarenze ukwezi kuva urubanza rusomwe, bitaba ibyo ikamuha 5.265.000 Frw kugira ngo abashe kwivuza ubwe, uwo mubare ukaba uri mu rugero rukwiye rw'ibyakenerwa gukorwa hagendewe ku nyandiko zerekana ibiciro zagaragajwe muri dosiye.[3] Icyemezo nk'iki cyo gutegeka umwishingizi kuvuza uwahohotewe n'impanuka yatewe

[1] Reba igika cya 12 cy'urubanza rwaciwe n'Urukiko Rwisumbuye.
[2] Reba igika cya 5 cy'urubanza rwaciwe n'Urukiko Rukuru.

[3] Proforma invoice N°: Oshen/02/19/016 yo ku itariki ya 19/02/2019 yatanzwe n'Ibitaro byitiriwe Umwami Fayisali.

n'ikinyabiziga yishingiye atabikora agatanga amafaranga nyirubwite akabyikorera, cyanafashwe n'uru Rukiko mu rubanza N° RCAA 0202M/07/CS hagati ya Nyetera Jean Baptiste na CORAR.[4]

- **Kumenya niba Mukakimenyi Marie Claire yaragombaga kugenerwa indishyi z'ibangamira ry'uburanga.**

[36] Me Habyarimana Jean Baptiste uburanira Mukakimenyi Marie Claire avuga ko akandi karengane kari mu rubanza basabye ko rwasubirwamo ari uko Urukiko Rukuru rwakuyeho indishyi z'ibangamira ry'uburanga zihwanye na 432.000 Frw Mukakimenyi Marie Claire yari yaragenewe mu Rukiko Rwisumbuye kandi bwari uburenganzira bwe. Avuga ko izo ndishyi zari zaratanzwe hashingiwe ku bumuga bwa 40% bwagaragajwe na muganga wa SANLAM AG Plc icyo gihe icyitwa SORAS AG Ltd, ubwo bumuga bukaba bumushyira ku rwego rwa 4 rw'ibangamira ry'uburanga. Avuga ko Urukiko Rukuru rwazikuyeho ruvuga ko muganga atagaragaje urwego rw'ubumuga uwahohotewe arimo kandi nyamara pratique yari ihari hagati ya SORAS AG Ltd n'abaganga bayo yari iyo kutagaragaza urwego rw'uburanga ku buryo bwihariye.

[37] Akomeza avuga ko mu bimenyetso Urukiko Rukuru rwahawe rukabyirengangiza harimo izindi ngero z'amaraporo, aho muganga wa SANLAM AG Plc yagiye agaragaza gusa ubumuga bwa burundu mu ijanisha, maze mu bwumvikane bwagiye bukorwa (transactions) hagatangwa indishyi z'ibangamira ry'uburanga hakozwe igereranya ry'ubumuga bwagaragajwe n'urwego bijyanye.

[38] Me Habyarimana Jean Baptiste arangiza avuga ko kuba Mukakimenyi Marie Claire yaravunitse amagufa kugeza ku gipimo cya 40% ndetse akaba anagendera ku mbago, Urukiko rutari kwanzura ko nta buranga bwe bwahungabanye ku buryo yabiherwa indishyi, ko ahubwo, aho kwemeza ko izo ndishyi zidatanzwe kubera gusa ko muganga atagaragaje by'umwihariko urwego rw'ihungabana ry'uburanga, wenda rwari gutegeka ko hagenwa umuganga cyangwa itsinda ryabo bakagena urwo rwego by'umwihariko.

[39] Nyuma yo kubona raporo yatanzwe na muganga nyuma y'uko bitegekwa n'Urukiko, Me Habyarimana Jean Baptiste avuga ko ashingiye kuri iyo raporo no ku ngingo ya 19 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, noneho basaba indishyi z'ibangamira ry'uburanga zibariye kuri SMIG ya 3000 Frw, iminsi 30 n'urwego rwa 5, ziteye ku buryo bukurikira: 3000 Frw x 30 x 12 x 100% = 1.080.000 Frw.

[40] Me Nkeza Sempundu Clément na Me Niyondora Nsengiyumva bahagarariye SANLAM AG Plc, bavuga ko ku birebana n'indishyi z'ibangamira ry'uburanga nta karengane Mukakimenyi Marie Claire yagiriwe mu rubanza yasabye ko rwasubirwamo, kubera ko atagaragarije Urukiko ikimenyetso cyerekana ikigero cy'uburanga yatakaje.

[41] Bavuga ko Urukiko Rukuru rwasobanuye neza ko indishyi z'ibangamira ry'uburanga zitangwa ari uko muganga yagaragaje ikigero cy'uburanga bwatakaye kubera impanuka, ko ibyo rwabishingiye ku ngingo ya 19 y'Iteka rya Perezida N° 31/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, iteganya ibyiciro

[4] Urubanza N° RCAA 0202M/07/CS rwaciwe ku itariki ya 09/04/2022, igika cya 88.

6 by'ikigero uwahohotewe n'ikinyabiziga ashobora kubamo ku bijyanye n'uburanga bushobora gutakara kubera impanuka.

[42] Bakomeza bavuga ko kugeza umunsi w'icibwa ry'urubanza rwasubirishijwemo ku mpamvu z'akarengane, nta cyemezo cya muganga cyigeze gitangwa kuri iyo ngingo nk'uko Urukiko Rukuru rwabigaragaje mu gika cya 9 cy'urubanza rwaciye, bityo rukaba rutari gushingira ku magambo y'umuburanyi adashimangiwe n'ikimenyetso giteganywa n'itegeko kandi rutagihawe, mu gihe urega ariwe wari ufite inshingano yo kugitanga kuko ariwe wari urimo ugisabisha indishyi.

[43] Me Nkeza Sempundu Clément na Me Niyondora Nsengiyumva mu gusoza bavuga ko kuba Mukakimenyi Marie Claire yaragize ubumuga buhoraho bwa 40% (incapacité permanente) bidakwiriye kwitiranywa n'urugero rw'uburanga bwatakajwe nk'uko yakomeje kubiburanisha, ko ahubwo ibyo byashingiweho agenerwa indishyi z'ibangamirabukungu ndetse n'iz'akababaro kuko arizo zibarwa hashingiwe ku bumuga bwa burundu, SANLAM AG Plc ikaba isanga ikigero cy'ubumuga bwe kidakwiye kwitiranywa n'ikigero cy'itakara ry'uburanga kuko itegeko ryatandukanyije ibyo bigero byombi, kandi rinagena ko byombi bikwiye kwemezwa n'abaganga.

[44] Ku birebana na raporo yatanzwe na muganga, Me Niyondora Nsengiyumva avuga ko ntacyo ayinenga ku bigendanye n'ireme ryayo, ko ariko itagomba gushingirwaho mu kugenera Mukakimenyi Marie Claire indishyi kuko ntayari ihari mu rubanza rwasubirishijwemo ngo bibe byafatwa ko ari ikimenyetso cyari gihari kikirengagizwa bikamutera akarengane. Avuga ko icyamutsinze ari ukubura ikimenyetso aho kuba cyari gihari kikirengagizwa.

[45] Avuga ko kuba Mukakimenyi Marie Claire ashingira akarengane ke ku kimenyetso cyashatswe nyuma y'icibwa ry'urubanza rusubirishwamo ku mpamvu z'akarengane, bishimangira ko n'Urukiko nta kimenyetso rwari rwahawe ku buryo rwaba rwaracyirengagije, ko hari kubaho akarengane iyo haba hari ibimenyetso bigaragarira buri wese ariko urukiko ntirugire icyo rubivugaho nk'uko byasobanuwe mu gatabo gasobanura imiburanishirize y'imanza zisabirwa gusubirwamo ku mpamvu z'akarengane. Arangiza avuga ko, uretse n'ibyo, urega atigeze asaba kongera gupimwa ngo inkiko zibimwangire.

Uko urukiko rubibona

[46] Ingingo ya 19 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, ku birebana n'ibangamira ry'uburanga, iteganya ko iryo bangamira kwa muganga bazarigereranya bakurikije ikigereranyo cy'inzego 6 kandi ritangirwe indishyi ku buryo bukurikira:

- Urwego rwa 1 (iryoroshye cyane): 5% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko;
- Urwego rwa 2 (iryoroshye): 10% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko;
- Urwego rwa 3 (iricishije bugufi): 20% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko;

- Urwego rwa 4 (iriciriritse): 40% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko;
- Urwego rwa 5 (irikomeye): 100% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko;
- Urwego rwa 6 (irikomeye cyane): 150% by'umushahara w'umwaka muto ntarengwa wemewe n'amategeko.

[47] Dosiye y'urubanza igaragaza ko muganga wa SORAS AG Ltd itarahinduka SANLAM AG Plc yasuzumye Mukakimenyi Marie Claire, ku itariki ya 16/11/2018 akora raporo (contre-expertise médicale) yerekana ko impanuka yakoze ku itariki ya 19/06/2018 yamusigiye ingaruka zikurikira:

- Ibikomere hamwe n'amagufa abiri y'ukuguru kw'ibumoso yavunitse n'utundi dukomere tworoheje mu rubavu rw'ibumoso (Notion de traumatisme avec une fracture des deux os de la jambe gauche et contusion de la hanche gauche);
- Isuzuma ryagaragaje ko ivi ry'ibumoso ridashobora guhina, ko adashobora guhindukirira ibumoso n'ikibyimba kinini ku kaguru k'ibumoso (L'anamnèse et l'examen physique faits ce jour font état de la limitation de la flexion du genou gauche, adduction et rotation externe de la hanche gauche et un œdème important et douleurs modérées de la jambe gauche).
- Yanzuye ko Mukakimenyi Marie Claire yari afite ubumuga buhoraho (incapacité permanente partielle) buri ku gipimo cya 40%, ariko iyo raporo ntiyagira icyo ivuga ku birebana niba hari ibangamira ry'uburanga yamusigiye.

[48] Dosiye kandi igaragaza ingero eshatu aho SORAS AG Ltd yagiye itanga indishyi z'ibangamira ry'uburanga kandi nyamara raporo ya muganga itaragaragaje niba iryo bangamira ry'uburanga ryarabayeho. Izo ngero ni izi zikurikira:

- Ku itariki ya 25/01/2018, muganga yerekanye ko impanuka uwitwa Habimana Paul yagize yamusigiye ubumuga buhoraho (IPP) buri ku gipimo cya 15%, ariko nyamara mu gihe cy'ubwumvikane, mu mafaranga bamubariye bashyiramo 78.000 Frw ahwanye n'indishyi z'ibangamira ry'uburanga kandi ntaryo muganga yerekanye.
- Ku itariki ya 14/06/2018, muganga yerekanye ko impanuka uwitwa Nyirangerageze Dancille yagize yamusigiye ubumuga buhoraho (IPP) buri ku gipimo cya 40%, ariko nyamara mu gihe cy'ubwumvikane, mu mafaranga bamubariye bashyiramo 312.000 Frw ahwanye n'indishyi z'ibangamira ry'uburanga kandi ntaryo muganga yerekanye.
- Ku itariki ya 10/05/2018, muganga yerekanye ko impanuka uwitwa Dusengamungu Damascène yagize yamusigiye ubumuga buhoraho (IPP) buri ku gipimo cya 35%, ariko nyamara mu gihe cy'ubwumvikane, mu mafaranga bamubariye bashyiramo 312.000 Frw ahwanye n'indishyi z'ibangamira ry'uburanga kandi ntaryo muganga yerekanye.

[49] Ingero zimaze gutangwa, zigaragaza ko kuba muganga atarerekanye ko nta bangamira ry'uburanga ryabayeho, bitavuze ko ritabayeho koko, ahubwo ni uko nta n'ikigaragaza ko yabaga yasabwe kuryerekana. Ni yo mpamvu mu gihe cy'ubwumvikane n'abo bireba, SORAS AG Ltd yagiye yemera gutanga indishyi zijyanye naryo.

[50] Ku birebana n'uru rubanza, bigaragara ko nta bwumvikane bwabayeho hagati ya Mukakimenyi Marie Claire na SORAS AG Ltd, bituma hitabazwa inkiko kugira ngo zibakiranure. Mu kugenera Mukakimenyi Marie Claire 432.000 Frw y'indishyi z'ibangamira ry'uburanga, Urukiko Rwisumbuye ntirwakurikije ibiteganywa n'itegeko kubera ko raporo ya muganga yari muri dosiye itagaragaza ko hari ibangamira ry'uburanga yasigiwe n'impanuka ngo ibe yarerekanye n'urwego rwayo. Urukiko rwashingiye ku gipimo cy'ubumuga nk'uko na SORAS AG Ltd yagiye ibigenza mu ngero zagaragajwe haruguru, kandi nyamara atari ko ingingo ya 19 y'Iteka rya Perezida n° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru ibiteganya, ibyo akaba aribyo byatumye mu bujurire Urukiko Rukuru ruzikuraho.

[51] Imiburanire ya SANLAM AG Plc si uko nta bangamira ry'uburanga Mukakimenyi Marie Claire yasigiwe n'impanuka, ahubwo ni uko nta kimenyetso yigeze abigaragariza kuva urubanza rwatangira. Nk'uko byagarutsweho haruguru, kuba muganga wasuzumye Mukakimenyi Marie Claire ataragaragaje ko hari ibangamira ry'uburanga yagize, ntibisobanuye ko ritabayeho koko, ahubwo ikigaragara ni uko atigeze asabwa kuryerekana. Niyo mpamvu mu rwego rwo gukemura impaka zari hagati y'ababuranyi muri uru rubanza kuri icyo kibazo no gutanga ubutabera, ku itariki ya 16/06/2023, Urukiko rwafashe icyemezo cyo gusaba muganga wasuzumye Mukakimenyi Marie Claire kugaragaza niba nta bangamira ry'uburanga yasigiwe n'impanuka; arukorera raporo yerekana ko iryo bangamira ry'uburanga ryabayeho ko kandi riri ku kigero cya 5.

[52] Ku bivugwa na SANLAM AG Plc ko hatashingirwa ku kimenyetso cyabonetse nyuma y'icibwa ry'urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, Urukiko rurasanga ibyo nta shingiro bifite kubera ko, nyuma y'uko Perezida w'Urukiko rw'Ikirenga yemeye ko urubanza rwongera kuburanishwa, ntakibuza umuburanyi kuzana ibimenyetso byose bigaragaza ko yarenganye. Ikibujijwe ni ukuzana ingingo nshya itaraburanyweho mbere, kandi muri uru rubanza siko bimeze. Ibi byasanishwa n'ibiteganyijwe mu ngingo ya 154, igika cya mbere n'icya gatatu, y'Itegeko N° 22/04/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko mu rwego rw'ubujurire hadashobora gutangwa ikirego gishya, ko ariko bitabujijwe gutanga ibisobanuro bishya cyangwa ibimenyetso bishya bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere.

[53] Hashinginwe ku ngingo ya 19 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru no ku bisobanuro bimaze gutangwa, Urukiko rurasanga SANLAM AG Plc igomba guha Mukakimenyi Marie Claire indishyi z'ibangamira ry'uburanga zibazwe ku buryo bukurikira: 3000 Frw x 30 x 12 x 100% = 1.080.000 Frw.

- **Gusuzuma niba indishyi zisabwa muri uru rubanza zatangwa.**

[54] Me Habyarimana Jean Baptiste uburanira Mukakimenyi Marie Claire asaba Urukiko rw'Ikirenga gutegeka SANLAM AG Plc kumuha indishyi zihwanye na 1.500.000 Frw, zikubiyemo 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza.

[55] Me Nkeza Sempundu Clément na Me Niyondora Nsengiyumva bahagarariye SANLAM AG Plc bavuga ko Mukakimenyi Marie Claire akwiye kwirengera igihembo cya Avoka yahaye umuburanira n'ibindi byose yatanze ku rubanza. Ibyo bakabishingira ku kuba ariwe wakomeje gukurura SANLAM AG Plc mu manza, kandi nyamara kugeza ubu atagaragaza ikosa ryakozwe n'Urukiko ryashingirwaho hemezwa ko yarenganye, mu gihe atabasha kwerekana aho akarengane ke gashingiye mu rwego rw'amategeko, bityo indishyi asaba kuri uru rwego zikaba nta shingiro zifite.

[56] Bavuga ko ahubwo SANLAM AG Plc ishingiye 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, isaba Urukiko rw'Ikirenga gutegeka Mukakimenyi Marie Claire kuyishyura 1.500.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza.

Uko urukiko rubibona

[57] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Mukakimenyi Marie Claire asaba agomba kuyahabwa kubera ko Urukiko rwasanze ikirego cye gifite ishingiro. Rurasanga ariko 1.500.000 Frw asaba akabije kuba menshi kandi atagaragaza ko ariyo yakoresheje muri uru rubanza kuri uru rwego, bityo mu bushishozi bwarwo rukaba rumugeneye 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

[58] Ku birebana n'amafaranga asabwa na SANLAM AG Plc, Urukiko rurasanga ntayo igomba guhabwa kubera ko itsinzwe urubanza.

III. ICYEMEZO CY'URUKIKO

[59] Rwemeje ko ikirego cyatanzwe na Mukakimenyi Marie Claire asaba gusubirishamo ku mpamvu z'akarengane urubanza N°RCA 00491/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 30/09/2020, gifite ishingiro;

[60] Rwemeje ko urwo rubanza ruhindutse mu ngingo zarwo zose;

[61] Rutegetse SANLAM AG Plc gukora ibikenewe byose mu gihe kitarenze ukwezi kumwe kuva urubanza rusomwe kugira ngo Mukakimenyi Marie Claire avurwe, bitaba ibyo ikamuha 5.265.000 Frw kugira ngo abashe kwivuza ubwe;

[62] Rutegetse SANLAM AG Plc guha Mukakimenyi Marie Claire 1.080.000 Frw y'indishyi z'ibangamira ry'uburanga;

[63] Rutegetse SANLAM AG Plc guha Mukakimenyi Marie Claire 800.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza kuri uru rwego.