SANLAM AG Plc v RUTAYISIRE

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00011/2022/SC (Cyanzayire, P.J., Hitiyaremye, Muhumuza, J.) 08 Werurwe 2024]

Amategeko agenga imanza z'imbonezamubano – Imanza z'indishyi zikomoka ku mpanuka – Impanuka z'ibinyabiziga – Kwerekana inyungu zikomoka ku mwuga – Abakora imirimo bigengaho - Abantu bakora imirimo bigengaho bagomba kwerekana inyandiko mpamo zerekana inyungu bakuye ku mwuga wabo mu gihe cy'amezi 12 yabanjirije impanuka.

Amategeko agenga imanza z'imbonezamubano – Imanza z'indishyi zikomoka ku mpanuka – impanuka z'ibinyabiziga – Uburyo bwo kubara indishyi – Abakora umwuga bigengaho – Gutwara abantu kuri moto - Iyo inyandiko cyangwa ibindi bimenyetso byerekana inyungu ukora umwuga wo gutwara abantu kuri moto yakuye mu mwuga we mu gihe cy'amezi 12 yabanjirije impanuka zitabonetse, harebwa umusaruro mbumbe (brut) abandi bakora umurimo nk'uwe binjiza ku mwaka, ukaba ariwo ushingirwaho mu kugena umusaruro fatizo waherwaho mu kumubarira indishyi z'ibangamirabukungu. Umusaruro abakora umwuga wo gutwara abantu kuri moto batahana ku munsi hamaze kuvanwamo imisoro ungana na 6.444 Frw.

Incamake y'ikibazo: Uru rubanza rukomoka ku mpanuka yabaye ikozwe n'ikinyabiziga cyari gifite ubwishingizi bwa SANLAM AG Plc (Sanlam) hanyuma igakomeretsa uwitwa Rutayisire wakoraga akazi ko gutwara abantu kuri moto, ari mu kazi atwaye moto, iza kumusigira ubumuga buhoraho bungana na 32%. Nyuma y'uko kumvikana n'umwishingizi ku ndishyi binaniranye, uwahohotewe yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge maze rumaze kuburanisha urwo rubanza rumugenera indishyi zitandukanye ariko ntiyanyurwa n'uko zabazwe kuko yabariwe hagendewe ku mushahara fatizo muto wemewe n'amategeko ungana na 3.000 Frw kandi we yarinjizaga 10.000 Frw ku munsi, ajuririra Urukiko Rukuru. Urwo Rukiko rwasanze ubujurire bwe bufite ishingiro, rumugenera indishyi zitandukanye.

Sanlam ntiyaje kunyurwa n'uburyo indishyi yaciwe zabazwe maze ijya mu nzira z'akarengane, urubanza ruburansihwa n'Urukiko rw'Ikirenga hasuzumwa indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho n'indishyi z'ibangamira ry'uburambe mu kazi Rutayisire akwiye guhabwa. Sanlam ivuga ko Urukiko Rukuru rwayitegetse gutanga indishyi rushingiye ku mushahara kandi Rutayisire atarabashije kugaragaza mu buryo bw'inyandiko umusaruro yabonaga nk'uwikorera hagendewe ku musoro yatangaga mu gihe cy'amezi 12. Ikomeza ivuga ko mu gihe impanuka yabaga, moto Rutayisire avuga ko yatwaraga yari yanditswe kuri Cycle Investment Cooperative (CIC) bityo akaba akwiye kubarirwa indishyi kuri SMIG ya 3.000 Frw kandi nk'umukozi aho kubarirwa indishyi nka nyirayo.

Rutayisire we asobanura ko indishyi zamubariwe mu buryo bukurikije amategeko ndetse hanashingiwe ku bimenyetso byari bihari yatanze kuko yakoreraga 10.000 Frw ku munsi. Akaomeza avuga ko moto yari ye kuko yaguzwe ku nguzanyo yatswe n'umugore we basezeranye uburyo bw'ivangamutungo rusange ariko ikaba itari yarangizwa kwishyurwa ngo babone kuyandikwaho akaba ariyo mpamvu icyanditse kuri CIC wabahaye iyo nguzanyo nkuko abayobozi bayo babyemeza.

Incamake y'icyemezo: 1. Abantu bakora imirimo bigengaho bagomba kwerekana inyandiko mpamo zerekana inyungu bakuye ku mwuga wabo mu gihe cy'amezi 12 yabanjirije impanuka bityo Rutayisire akaba atagomba kubarirwa indishyi ku mushahara avuga yinjizaga kuko atagaragaza inyandiko zerekana umusaruro yinjije mu gihe cy'amezi 12 abanziriza impanuka.

2. Iyo inyandiko cyangwa ibindi bimenyetso byerekana inyungu ukora umwuga wo gutwara abantu kuri moto yakuye mu mwuga we mu gihe cy'amezi 12 yabanjirije impanuka zitabonetse, harebwa umusaruro mbumbe (brut) abandi bakora umurimo nk'uwe binjiza ku mwaka, ukaba ariwo ushingirwaho mu kugena umusaruro fatizo waherwaho mu kumubarira indishyi z'ibangamirabukungu. Umusaruro abakora umwuga wo gutwara abantu kuri moto batahana ku munsi hamaze kuvanwamo imisoro ungana na 6.444 Frw.

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

Amategeko yashingiweho:

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 2, 14, 18, 19.

Imanza zifashishijwe:

RS/INJUST/RC 00009/2022/SC, SANLAM AG Plc na Uwihanganye, rwaciwe n'Urukiko rw'Ikirenga ku wa18/05/2023;

RS/INJUST/RC 00014/2022/SC, Kwizera Eric na Radiant Insurance Company Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 18/05/2023.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 15/04/2018, imodoka Toyota V/Picnic RAB 033 X yari ifite ubwishingizi muri SORAS AG Ltd itarahinduka SANLAM AG Plc, yagonze Moto TVS Victor RE 641 A itwawe na Rutayisire Faustin, bimuviramo gukomereka. Muganga yagaragaje ko iyo mpanuka yamuteye ubumuga bw'igihe gito bungana na 100% mu gihe cy'amezi atatu, n'ubumuga buhoraho bungana na 32%.

[2] Rutayisire Faustin yegereye SANLAM AG Plc ayisaba indishyi zijyanye n'ubwo bumuga ariko ntibabasha kumvikana, bituma atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba indishyi zinyuranye, ikirego cyandikwa kuri Nº RC 00891/2019/TGI/NYGE. Urubanza rwaciwe ku wa 29/06/2020, Urukiko rwemeza ko ikirego cya Rutayisire Faustin gifite ishingiro, rutegeka SANLAM AG Plc kumuha indishyi zose hamwe zingana na 4.672.149 Frw na 20.000 Frw y'igarama yatanze arega.

[3] Rutayisire Faustin yajuririye urubanza mu Rukiko Rukuru, avuga ko yagenewe indishyi habariwe ku mushahara fatizo muto wemewe n'amategeko ungana na 3.000 Frw kandi we

yarinjizaga 10.000 Frw ku munsi. Ubujurire bwe bwanditswe kuri Nº RCA 00229/2020/HC/KIG, urubanza rucibwa ku wa 05/05/2021, Urukiko rwemeza ko ubujurire bwe bufite ishingiro, rutegeka SANLAM AG Plc kumwishyura indishyi z'ibangamirabukungu zingana na 6.131.092 Frw, iz'ubumuga bw'igihe gito zingana na 600.000 Frw, iz'ibangamira ry'uburambe mu kazi zingana na 1.200.000 Frw, n'amafaranga y'ikurikiranarubanza angana na 350.000.

[4] Nyuma y'uko Urukiko Rukuru ruciye urubanza, SANLAM AG Plc yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubusabe bwa SANLAM AG Plc, yohereje Perezida w'Urukiko rw'Ikirenga raporo yarukozeho asaba ko rwasubirwamo, nawe yemeza ko rwongera kuburanishwa n'Urukiko rw'Ikirenga, rwandikwa kuri Nº RS/INJUST/RC 00011/2022/SC.

[5] Iburanisha ry'uru rubanza ryashyizwe ku wa 19/06/2023, ribera mu ruhame, SANLAM AG Plc ihagarariwe na Me Nzabihimana Jean Claude, naho Rutayisire Faustin yunganiwe na Me Muhire Jean Marie Eugène, ariko iburanisha ntiryakomeza kuko ababuranyi bifuje kubanza kugerageza inzira y'ubwumvikane.

[6] Nyuma y'uko ababuranyi badashoboye kumvikana, ku wa 25/09/2023, iburanisha ryarasubukuwe ribera mu ruhame, nanone SANLAM AG Plc ihagarariwe na Me Nzabihimana Jean Claude, naho Rutayisire Faustin yunganiwe na Me Muhire Jean Marie Eugène. Ababuranyi bagiye impaka ku bibazo bikurikira:

a. Kumenya indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho n'indishyi z'ibangamira ry'uburambe mu kazi Rutayisire Faustin akwiye guhabwa;

b. Kumenya niba Rutayisire Faustin yahabwa indishyi z'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito;

c. Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka.

[7] Iburanisha ryarapfundikiwe, Urukiko rumenyesha ababuranyi ko urubanza ruzasomwa ku wa 27/10/2023, runasaba Rutayisire Faustin gushyira muri IECMS amasezerano avuga ko umugore we yagiranye na SACCO agura moto ivugwa muri uru rubanza, n'inyandiko zigaragaza ko ari we wayisoreraga.

[8] Ku wa 04/10/2023, uburanira Rutayisire Faustin yashyize muri IECMS amasezerano y'inguzanyo yo kugura taxi (moto), yasinywe ku wa 28/11/2017 hagati ya CIC[1]-SACCO na Uzayisenga Petronille. Yashyizemo kandi inyandiko igaragaza uko imisoro ya moto RE 641 A yishyurwaga n'uwayishyuraga kuva mu mwaka wa 2017 kugeza mu mwaka wa 2021, hamwe na kopi ya carte jaune y'iyo moto yatanzwe ku wa 29/11/2017.

[9] Nanone ku wa 23/10/2023, uburanira Rutayisire Faustin yashyize muri IECMS inyandiko igaragaza ko uwo yunganira yashyingiranywe mu buryo bwemewe n'amategeko na Uzayisenga Petronille ku wa 31/08/1999.

[10] Nyuma yo kubona izo nyandiko, Urukiko rwasanze mbere yo gufata icyemezo ari ngombwa ko iburanisha ripfundurwa, kugira ngo ababuranyi bazabanze bagire icyo bazivugaho,

[1] Cycle Investment Cooperative

bituma ku wa 27/10/2023, ruca urubanza rubanziriza urundi, rwemeza ko iburanisha rizapfundurwa ku wa 06/02/2024.

[11] Ku wa 06/02/2024, iburanisha ryarapfunduwe ribera mu ruhame, SANLAM AG Plc ihagarariwe na Me Nzabihimana Jean Claude, naho Rutayisire Faustin yunganiwe na Me Uwiduhaye Julienne. Hitabye kandi n'abahagarariye Cycle Investment Cooperative (CIC muri uru rubanza) nk'abatangabuhamya, aribo Banamwana Gilbert (Umuyobozi) na Sunday Rogers (Umukozi ushinzwe inguzanyo).

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

- **Gusuzuma indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho n'indishyi z'ibangamira ry'uburambe mu kazi Rutayisire Faustin akwiye guhabwa**

[12] SANLAM AG Plc ivuga ko indishyi z'ibangamirabukungu ndetse n'indishyi z'ibangamira ry'uburambe mu kazi zashingiwe ku cyo inkiko zise umushahara, nyamara nta kindi cyagaragaza umusaruro w'abikorera batanga imisoro kitari impapuro zibimenyesha muri serivisi z'imisoro, nk'uko biteganywa n'ingingo ya 14 y'Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[13] SANLAM AG Plc ivuga kandi ko inyandiko y'Ikigo cy'Igihugu cy'imisoro n'amahôro irebana n'abatunze amapikipiki yatanzwe ku wa 31/03/2017, mu gihe impanuka ivugwa muri uru rubanza yabaye mu mwaka wa 2018, Rutayisire Faustin akaba atarigeze agaragaza ko moto yari imwanditseho kandi ko muri uwo mwaka yaba yaratanze umusoro w'umusaruro yinjije; akaba ariyo mpamvu indishyi zagombaga kubarirwa kuri SMIG ya 3.000 Frw ku munsi.

[14] Ikomeza ivuga ko kuba moto Rutayisire Faustin yakoreshaga itari iye ahubwo ari iya CIC, kandi akaba atarabashije gutanga ibimenyetso bigaragaza ko yasoreye umusaruro yakuraga kuri icyo kinyabiziga, Urukiko rwagombaga kumufata nk'umuntu utarabashije kurugaragariza umusaruro nyawo yinjije mu mezi 12 yabanjirije impanuka, rukamubarira indishyi zihwanye n'umushahara w'umwaka muto wemewe (SMIG) nk'uko biteganywa n'ingingo ya 18 y'Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[15] SANLAM AG Plc isobanura ko ibimenyetso bigaragaza ko moto itari iya Rutayisire Faustin ari carte jaune, inyandiko y'umusoreshwa n'inyandiko mvugo y'impanuka (PV de constat), ibyo bimenyetso bikaba byerekana ko ku munsi w'impanuka nyir'ikinyabiziga (owner) yari CIC.

Ku bijyanye n'ibyo Rutayisire Faustin avuga ko moto yanditse ku mugore we, SANLAM AG Plc ivuga ko nta kibigaragaza, kandi ko n'iyo yaba imwanditseho, ari we wabarirwa ibyo yinjizaga atari Rutayisire Faustin.

[16] Rutayisire Faustin n'abamwunganira bavuga ko bashingiye ku Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri biturutse ku mpanuka zitewe n'ibinyabiziga, riteganya mu ngingo zaryo za 14,15 na 19 uburyo indishyi zitangwa ku bantu bakomerekeye mu mpanuka zo mu muhanda, basanga indishyi zose

zamubariwe zarabazwe mu buryo bukurikije amategeko, hakurikijwe ibimenyetso byari bihari, no ku manza zatanze umurongo kuri icyo kibazo[2].

[17] Bavuga ko Urukiko rwashingiye ku ngingo ya 4 y'Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigendera ku butaka, no ku nyandiko y'Ikigo cy'Igihugu cy'imisoro n'amahôro yo ku wa 31/03/2017, igaragaza ko abantu batwara ibinyabiziga byo mu bwoko bw'amapikipiki bose babarirwa mu cyiciro kimwe kinjiza 2.400.000 Frw ku mwaka. Bongeraho ko kuba Rutayisire Faustin yari afite icyemezo kimwemerera gutwara moto, byari bihagije kugira ngo hemezwe ko umusaruro yinjizaga ku mwaka ungana na 2.400.000 Frw.

[18] Basobanura ko CIC yahaye Uzayisenga Petronille umwenda wo kugura taxi moto, kandi ko kuva iyo moto yagurwa ari umugabo we Rutayisire Faustin wayikoreshaga, akishyura ubwishingizi n'imisoro.

UKO URUKIKO RUBIBONA

[19] SANLAM AG Plc ivuga ko Rutayisire Faustin atigeze agaragaza ko moto yari imwanditseho, kandi ko atagaragaje ko muri uwo mwaka yaba yaratanze umusoro w'umusaruro yinjije; akaba ariyo mpamvu indishyi zagombaga kubarirwa kuri SMIG ya 3.000 Frw ku munsi hashingiwe ku biteganywa n'ingingo ya 18 y'Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

[20] Urukiko rurabanza gusubiza ikibazo cyo kumenya niba Rutayisire Faustin yari nyiri moto TVS Victor GLX RE 641 A, hagamijwe kwemeza niba yarakoraga umwuga yigengaho wo gutwara abantu kuri moto cyangwa niba yarakoreraga abandi akagenerwa umushahara, kuko bifite ingaruka ku buryo bwo kumubarira indishyi.

[21] Mu nyandiko zigize dosiye y'urubanza, harimo amasezerano y'inguzanyo yo kugura taxi (moto) yasinywe ku wa 28/11/2017 hagati ya Uzayisenga Petronille na Cycle Investment Cooperative (CIC SACCO) ihagarariwe na Banamwana Gilbert, Rutayisire Faustin nawe ayashyiraho umukono nk'uwashakanye na Uzayisenga Petronille. Harimo kandi inyandiko yitwa ibiranga ikinyabiziga (identification du véhicule) yatanzwe ku wa 29/11/2017, igaragaza ko moto TVS Victor GLX RE 641 A yari yanditse kuri Cycle Investment Cooperative; hakabamo n'indi yatanzwe ku wa 30/10/2019, igaragaza ko nyuma iyo moto yaje kwandikwa kuri Uzayisenga Petronille.

[22] Muri dosiye harimo nanone icyemezo kigaragaza ko Rutayisire Faustin yashyingiranywe na Uzayisenga Petronille mu buryo bukurikije amategeko ku wa 31/08/1999, cyatangiwe Gasabo ku wa 17/10/2023; hakabamo n'urupapuro rw'ishyingirwa rwatangiwe mu Karere ka Bugarama rugaragaza ko bashyingiranywe mu buryo bw'ivangamutungo rusange.

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[2] Urubanza No RCA 0113/14/HC/NYA rwo ku wa 30/04/2014 haburana SANLAM AG Ltd na Kayiranga Elphaz; Urubanza No RCA 00189/2016/HC/KIG rwo ku wa 13/07/2016 haburana Prime Insurance Ltd na Hakizimana Gaetan na bagenzi be.

[23] Banamwana Gilbert (wari uhagarariye CIC mu masezerano y'inguzanyo yo ku wa 28/11/2017) yahamagawe mu Rukiko nk'umutangabuhamya mu iburanisha ryo ku wa 07/02/2024 nk'uko byagaragajwe haruguru, kugirango asobanure iby'amasezerano yasinywe hagati y'Ikigo abereye Umuyobozi na Uzayisenga Petronille, yitaba ari kumwe n'umukozi ushinzwe inguzanyo witwa SUNDAY Rogers. Babwiye Urukiko ko CIC yahaye Uzayisenga Petronille umwenda wo kugura moto ikora akazi ko gutwara abantu, kandi ko iyo umukiriya yabaga yemerewe inguzanyo, amafaranga yashyirwaga kuri konti ye, akagura moto, ikandikwa kuri CIC kugeza igihe azarangiriza kwishyura ikamwegurirwa.

[24] Basobanuye ko n'ubwo moto yabaga yanditse kuri CIC mu rwego rwo kugirango umwenda nutishyurwa bazayifate nk'ingwate yabo, yabaga ari iy'uwagurijwe, akayikoresha nka nyirayo, umusaruro uyivuyemo ukaba uwe, akishyura umwenda, yawurangiza hakaba ihererekanya (mutation). Bavuze ko no kuri Uzayisenga Petronille ariko byagenze, ko kuva moto yagurwa ariwe wayikoreshaga nka nyirayo, amafaranga yinjiza akaba ariwe uyakoresha, akishyura n'imisoro, ariko mu gihe moto yari icyanditse kuri CIC, iyi ikaba ariyo yagaragaraga muri system y'Ikigo cy'Igihugu cy'imisoro n'amahôro.

[25] Hashingiwe ku byasobanuwe n'abatangabuhamya, no ku bikubiye mu nyandiko ziri muri dosiye, bigaragara ko igihe impanuka Rutayisire Faustin yakomerekeyemo yabaga ku wa ku wa 15/04/2018, moto TVS Victor GLX RE 641 A (yari atwaye) yari yanditse kuri CIC ariko ari iya Uzayisenga Petronille, ari nawe ubona umusaruro uyiturukaho. Nk'uko byasobanuwe kandi, Uzayisenga Petronille yazezeranye na Rutayisire Faustin mu buryo bwemewe n'amategeko, basezerana ivangamutungo rusange, bivuga ko moto TVS Victor GLX RE 641 A yari iyabo bombi, basangiye n'umusaruro uyiturukaho.

[26] Urukiko rusanga rero, igihe impanuka Rutayisire Faustin yakomerekeyemo yabaga, yarakoreshaga moto TVS Victor GLX RE 641 A nka nyirayo, mu mwuga yigengaho wo gutwara abantu, ikagira umusaruro imwinjiriza; akaba ari muri urwo rwego agomba kubarirwa indishyi aho kuzibarirwa nk'uwakoreraga CIC akagenerwa umushahara nk'uko SANLAM AG Plc ibiburanisha.

[27] Ibijyanye n'uburyo bwo kubara indishyi zigenerwa abakora umwuga bigengaho wo gutwara abantu kuri moto, byatanzweho umurongo mu rubanza N° RS/INJUST/RC 00009/2022/SC haburanagamo SANLAM AG Plc na Uwihanganye Jean[3], ndetse no mu rubanza No RS/INJUST/RC 00014/2022/SC haburanagamo Kwizera Eric na Radiant Insurance Company Ltd[4].

[28] Muri izo manza, Urukiko rwasesenguye ibiteganywa n'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[5], ndetse n'ibiteganywa n'Iteka rya Perezida N° 31/01 ryo ku wa

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[3] Urubanza N° RS/INJUST/RC 00009/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/05/2023 haburana SANLAM AG Plc na UWIHANGANYE Jean, igika cya 16-28.

[4] Urubanza N° RS/INJUST/RC 00014/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/05/2023 haburana KWIZERA Eric na Radiant Insurance Company Ltd, igika cya 20-28.

[5] Ingingo ya 4, igika cya 4, n'icya 5; n'ingingo ya 5, z'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;

25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga[6], rugaragaza ibi bikurikira:

a. Abantu bakora imirimo bigengaho bagomba kwerekana inyandiko mpamo zerekana inyungu bakuye ku mwuga wabo mu gihe cy'amezi 12 yabanjirije impanuka.

b. Iyo inyandiko cyangwa ibindi bimenyetso byerekana inyungu ukora umwuga wo gutwara abantu kuri moto yakuye mu mwuga we mu gihe cy'amezi 12 yabanjirije impanuka zitabonetse, harebwa umusaruro mbumbe (brut) abandi bakora umurimo nk'uwe binjiza ku mwaka, ukaba ariwo ushingirwaho mu kugena umusaruro fatizo waherwaho mu kumubarira indishyi z'ibangamirabukungu.

c. Igicuruzo (umusaruro mbumbe) cyemejwe n'Ikigo cy'Igihugu cy'imisoro n'amahôro, giherwaho mu kubara umusoro ku bakora umwuga wo gutwara abantu kuri moto ni 2.400.000 Frw ku mwaka; mu kubara indishyi z'ibangamirabukungu hakaba harebwa umusaruro w'umwaka umuntu atahana (net), ni ukuvuga hamaze kuvanwamo umusoro.

d. Umusaruro abakora umwuga wo gutwara abantu kuri moto batahana ku mwaka, hamaze kuvanwamo umusoro ku musaruro ungana na 72.000 Frw[7] n'umusoro w'ipatanti ungana na 8.000 Frw[8], ni 2.320.000 Frw (bihwanye na 2.400.000 Frw-72.000 Frw-8.000 Frw); bivuze ko ku munsi batahana 6.444 Frw.

[29] Hashingiwe ku mirongo yatanzwe muri izi manza, Urukiko rurasanga mu gihe Rutayisire Faustin nawe yakoraga umwuga yigengaho wo gutwara abantu kuri moto, kandi akaba ataragaragaje inyungu yakuye ku mwuga we mu gihe cy'amezi 12 yabanjirije impanuka, yabarirwa indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho n'indishyi z'ibangamira ry'uburambe mu kazi hagendewe ku musaruro utahanwa ku munsi ungana na 6.444 Frw.

- **Ku bijyanye n'indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho**

[30] Rutayisire Faustin yagize ubumuga buhoraho bungana na 32%. Ingingo ya 18, igika cya 4, y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru, iteganya ko indishyi z'ibangamirabukungu ku bafite ubumuga buhoraho burengeje 30% zibarwa mu buryo bukurikira:

Amafaranga (Capital) =

$$\frac{\text{Umusaruro w'umwaka umuntu atahana x umubare w'imyaka ashigaje kubaho akora x ijanisha ry'ubumuga}}{\text{1+(igipimo cy'ibitsa x umubarw'imyakaashigaje kubaho akora)}}$$

Hashingiwe kuri iyi ngingo, Urukiko rusanga Rutayisire Faustin agomba kubarirwa indishyi z'ibangamirabukungu zijyanye n'ubumugabuhoraho mu buryo bukurikira:

6.444 x 30 x 12 x 19[9] x 32% = 5.189.741 Frw.

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[6] Ingingo ya 14, igika cya 3, n'iya 18 z'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.

[7] Reba umugereka w'Itegeko Nº 027/2022 ryo ku wa 20/10/2022 rishyiraho imisoro ku musaruro.

[8] Reba ingingo ya 5, 2º, iya 32 n'iya 34 z'Itegeko Nº 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage; hamwe n' imbonerahamwe ya II, b iri ku mugereka waryo.

[9] Icyemezo kiranga umuntu cyatanzwe ku wa 18/ 09 /2018 kigaragaza ko Rutayisire Faustin yavutse ku wa 30/03/1972.

1 + (9,041%[10] x 19)

[31] Kubera ko Rutayisire Faustin yari yaragenewe n'Urukiko Rukuru indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho zingana na 6.131.092 Frw, kandi impande zombi zikaba zaravugiye mu iburanisha ryo ku wa 25/09/2023 ko urubanza rwarangijwe, Urukiko rurasanga agomba gusubiza SANLAM AG Plc ikinyuranyo kingana na 6.131.092 Frw - 5.189.741Frw = 941.351Frw.

- **Ku bijyanye n'indishyi z'ibangamira ry'uburambe mu kazi**

[32] Ingingo ya 19 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru iteganya ko amafaranga yo gutakaza uburambe mu kazi ku muntu wari usanzwe akora, agarukira gusa ku mezi atandatu y'umusaruro abazwe kandi atarengeje inshuro 30 umushahara w'umwaka muto ntarengwa wemewe n'amategeko.

[33] Hashingiwe ku biteganywa n'iyi ngingo, Urukiko rurasanga Rutayisire Faustin akwiye kugenerwa indishyi z'ibangamira ry'uburambe mu kazi zibaze mu buryo bukurikira: 6.444 x 30 x 6 = 1.159.920 Frw. Urukiko rurasanga ariko, Urukiko Rukuru rwari rwamugeneye indishyi z'ibangamira ry'uburambe mu kazi zingana na 1.200.000 Frw, kandi nk'uko byasobanuwe haruguru, ababuranyi bakaba bemeranya ko urubanza rwamaze kurangizwa. Urukiko rurasanga rero kuri izi ndishyi, Rutayisire Faustin agomba gusubiza SANLAM AG Plc ikinyuranyo kingana na 1.200.000 – 1.159.920 = 40.080 Frw.

- **Gusuzuma niba Rutayisire Faustin yahabwa indishyi z'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito n'uko zabarwa**

[34] SANLAM AG Plc ivuga ko Rutayisire Faustin atagombaga guhabwa indishyi z'ubumuga bw'igihe gito, kubera ko yagize ubumuga bwa burundu bungana na 32%, agahabwa indishyi zibushingiyeho, ko rero atari guhabwa n'izindi z'ubumuga bw'igihe gito, cyane cyane ko atagaragaza itakazwa ry'igice cyangwa ryuzuye ry'umushahara yahembwaga cyangwa cy'umusaruro ukomoka ku murimo, nk'uko biteganywa n'ingingo ya 14 y'Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Ivuga ko aramutse azihawe, byaba ari ukwishyura indishyi inshuro ebyiri.

[35] Rutayisire Faustin n'abamwunganira bavuga ko Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru riteganya, mu ngingo yaryo ya 14, ko nta tangwa ry'indishyi ku bumuga bw'igihe gito rigomba kubaho niba hatarabayeho koko itakazwa ry'igice cyangwa ryuzuye ry'umushahara, ry'igihembo cy'akazi cyangwa ry'umusaruro ukomoka ku murimo, inyandiko za muganga zikaba zigaragaza ko akimara gukomereka yagize ubumuga bwa 100% mu gihe cy'amezi atatu (3).

[36] Bavuga ko mu gika cya 15 cy'urubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko rwashingiye ku ngingo ya 14 y'Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru, rugasanga Rutayisire Faustin akwiye kubona indishyi z'ubumuga bw'igihe gito.

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[10] Impuzandengo y'igipimo cy'ibitsa kigaragazwa na Banki Nkuru y'Igihugu ku munsi urubanza rwasomeweho

[37] Bavuga kandi ko Rutayisire Faustin aramutse agenewe izo ndishyi bitaba ari ukuzishyurwa inshuro ebyiri, kuko izo basaba ari izo mu gihe gito yamaze arwaye, afite ubumuga bw'ijana ku ijana ku buryo ntacyo yashoboraga kwimarira; mu gihe iz'ubumuga buhoraho zo zishingiye ku bushobozi bwo gukora bwagabanutse kubera impanuka.

UKO URUKIKO RUBIBONA

[38] Hakurikijwe ibisobanuro bitangwa mu ngingo ya kabiri 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, ubumuga ku kazi bw'igihe gito ni uguhagarika akazi by'igihe gito cyangwa by'igice bitewe n'impanuka y'umuhanda. Naho ubumuga buhoraho ni igabanuka ry'ubushobozi bw'umubiri, ryo gutekereza no kumva cyangwa ry'ubwenge, riterwa no kumererwa nabi cyane k'umubiri w'uwahohotewe. Ubumuga butewe n'impanuka bufatwa ko buhoraho uhereye ku itariki bwagaragariyeho yemejwe n'abaganga (à partir de la date de consolidation fixée par les médecins). Iyi ngingo isobanura kandi ko itariki ubumuga bwagaragariyeho ari itariki ibikomere bitangiriraho kugaragara neza (date à partir de laquelle les lésions sont stabilisées).

[39] Ibisobanuro bitangwa n'iyi ngingo byumvikanisha ko ubumuga bw'igihe gito bureberwa igihe butaratangira kugaragara neza (avant consolidation), mu gihe ubumuga buhoraho bureberwa kuva igihe bwatangiye kugaragara neza (après consolidation). Kimwe rero ntigishobora kwitiranywa n'ikindi cyangwa ngo kimwe gisimbure ikindi, ahubwo ikigaragara ni uko umushingamategeko yashatse ko ibyo bihe byombi byitabwaho mu kugenera indishyi z'ibangamirabukungu uwahohotewe mu mpanuka.

[40] Ibimaze kuvugwa kandi si umwihariko w'u Rwanda. Mu gihugu cy'Ubufaransa bagira icyo bita perte de gains professionnel actuels, basobanura nko kuba uwahohotewe yagize icyo atakaza mu rwego rw'ubukungu mu gihe yari ahagaritse akazi by'igihe gito. Basobanura ko icyo gihe cyemezwa n'umuhanga, kigatangira ku itariki umuntu yagiriyeho impanuka, kikarangira ku itariki bigaragara ko nta kigishoboye gukorerwa uwahohotewe mu rwego rw'ubuvuzi cyazana impinduka zigaragara (date de la consolidation)[11]. Bagira kandi icyo bita Pertes de gains professionnels futurs (PGPF), bisobanurwa nko gutakaza cyangwa kugabanuka kw'ibyo umuntu yinjiza mu rwego rw'ubukungu bitewe n'ubumuga buhoraho kuva igihe bwatangiye kugaragara neza[12].

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[11] La Perte de gains professionnels actuels (PGPA) concerne le préjudice économique subi par la victime pendant la durée de son incapacité temporaire étant rappelé que celle-ci peut être totale ou partielle ou les 2 selon les Periods [….].
La durée de l'incapacité temporaire est fixée par l'expert.
Elle commence à la date du dommage et finit au plus tard à la date de la consolidation c'est à dire à la date à partir de laquelle l'état de la victime n'est plus susceptible d'être amélioré d'une façon appréciable et rapide par un traitement médical approprié; Indemnisation des dommages corporels, Recueil méthodologique, publié par la Cour d'Appel de Paris, 2012, p.23.
Ce poste de préjudice [Perte de gains professionnels actuels] cherche à indemniser l'invalidité subie par la victime dans sa sphère personnelle pendant la maladie traumatique et jusqu' à la consolidation de son état; La Nomenclature DINTILHAC, de l'évaluation à l'indemnisation, Dr Hélène Béjui-Hugues, p.36.

[12] Les PGPF correspondent à la perte ou à la diminution des revenus consécutive à l'incapacité permanente à compter de la date de consolidation, Indemnisation des dommages corporels, Recueil méthodologique, op.cit., p.28

[41] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta cyabuza ko Rutayisire Faustin ahabwa indishyi z'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito; ibivugwa na SANLAM AG Plc ko atazihabwa ngo anahabwe izijyanye n'ubumuga buhoraho bikaba nta shingiro bifite.

[42] Ku bijyanye n'uburyo izo ndishyi z'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito zabarwa, ingingo ya 14, igika cya 1, y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru, iteganya ko nta tangwa ry'indishyi ku bumuga bw'igihe gito rigomba kubaho niba hatarabayeho koko itakazwa ry'igice cyangwa ryuzuye ry'umushahara, ry'igihembo cy'akazi cyangwa ry'umusaruro ukomoka ku murimo. Raporo y'umuganga wasuzumye Rutayisire Faustin amaze kugira impanuka, igaragaza ko yagize ubumuga bw'igihe gito bungana na 100% mu gihe cy'amezi atatu. Nk'uko kandi byasobanuwe haruguru, yakoraga umwuga wo gutwara abantu kuri moto, yinjiza 6.444 Frw ku munsi, bivuga ko muri ayo mezi atatu nta musaruro ukomoka ku murimo we yashoboye kubona. Urukiko rurasanga rero akwiye kugenerwa indishyi z'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito zibaze mu buryo bukurikira: 6.444 x 30 x 3 = 579.960 Frw.

[43] Kubera ko Urukiko Rukuru rwari rwageneye Rutayisire Faustin indishyi z'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito zingana na 600.000 Frw, kandi nk'uko byavuzwe haruguru urubanza rukaba rwararangijwe, kuri izo ndishyi agomba gusubiza SANLAM AG Plc ikinyuranyo kingana na 600.000 - 579.960= 20.040 Frw.

- **Gusuzuma ibijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka.**

[44] SANLAM AG Plc ivuga ko yakomeje gushorwa mu manza zitari ngombwa, ikaba isaba Urukiko gutegeka Rutayisire Faustin kuyiha 1.000.000 Frw akubiyemo amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka. Ivuga kandi ko amafaranga y'ikurikiranarubanza asabwa na Rutayisire Faustin nta shingiro afite, kuko ariyo yarenganye.

[45] Rutayisire Faustin n'abamwunganira bavuga ko SANLAM AG Plc ariyo ikomeje kumusiragiza mu nkiko, akaba asaba ko yategekwa kumuha amafaranga 1.000.000 y'ikurikiranarubanza hatabariwemo igihembo cy'Avoka, kuko umwunganira ari uwo yagenewe nk'utishoboye.

UKO URUKIKO RUBIBONA

[46] Urukiko rurasanga amafaranga y'ikurikiranarubanza ababuranyi basaba, kimwe n'ay'igihembo cy'Avoka asabwa na SANLAM AG Plc, ntayo bahabwa kuko buri wese yagize ibyo atsindirwa.

III. ICYEMEZO CY'URUKIKO.

[47] Rwemeje ko ikirego rwashyikirijwe na SANLAM AG Plc cyo gusubirishamo ku mpamvu z'akarengane urubanza Nº RCA 00229/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 05/05/2021, gifite ishingiro kuri bimwe;

[48] Rwemeje ko imikirize y'urubanza Nº RCA 00229/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 05/05/2021, ihindutse ku bijyanye n'ingano y'indishyi Rutayisire Faustin yagenewe;

[49] Rwemeje ko Rutayisire Faustin agenewe indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho zingana na 5.189.741 Frw; iz'ibangamira ry'uburambe mu kazi zingana na 1.159.920 Frw; n'iz'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito zingana na 579.960 Frw;

[50] Rutegetse Rutayisire Faustin gusubiza SANLAM AG Plc amafaranga y'ikinyuranyo hagati y'ayo yishyuwe harangizwa urubanza Nº RCA 00229/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 05/05/2021, n'ayo agenewe muri uru rubanza, akurikira:

a. 941.351 Frw y'indishyi z'ibangamirabukungu zijyanye n'ubumuga buhoraho;

b. 40.080 Frw y'indishyi z'ibangamira ry'uburambe mu kazi;

c. 20.040 Frw y'indishyi z'ibangamirabukungu zijyanye n'ubumuga bw'igihe gito;

Yose hamwe akaba agomba gusubiza 1.001.471 Frw.