

RWANDA / JUDGMENT

RADIANT INSURANCE COMPANY Ltd v UWAJENEZA N'ABANDI

RCA 00329/2022/HC/KIG

COURT

High Court

DECIDED

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RADIANT INSURANCE COMPANY Ltd v UWAJENEZA N'ABANDI

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Text

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RADIANT INSURANCE COMPANY Ltd v UWAJENEZA N'ABANDI [Rwanda URUKIKO RUKURU - RCA 00329/2022/HC/KIG (Hitimana, P.J.) 21 Ukuboza 2023] Amategeko agenga imanza z'imbonezamubano – Amasezerano y'ubugure – Umutungo utimukanwa - Igurishwa riba ryuzuye mu gihe abagiranye amasezerano y'ubugure bumvikanye ku kigurishwa n'igicro cyacyo kabone nubwo ikigurishwa cyaba kicyanditse kuwagurishije. Incamake y'ikibazo: Uru rubanza rukomoka ku mpanuka yabaye ikozwe n'ikinyabiziga cyari gifite ubwishingizi bwa RADIANT INSURANCE COMPANY (Radiant), hanyuma iza kwishyura indishyi maze nayo itanga ikirego mu Rukiko rwisumbuye isaba ko Uwajeneza, nyiri kinyabiziga yayisubiza indishyi yatanze kuko iyo mpanuka yatewe n'uko uwari utwaye icyo kinyabiziga atari afite uruhushya rwo kugitwara bigatuma akora amakosa yateye impanuka. Muri urwo rubanza, Uwajeneza yavugaga ko icyo kinyabiziga yari yaramaze kukigurisha uwitwa Niyonagize, nawe akaba yaremeraga ko yakiguze kandi ko cyakoze impanuka ariwe ugitwaye. Urukiko rwasanze ikirego nta shingiro gifite kuko nubwo Uwajeneza ariwe wanditse kuri moto ivugwa ariko ko atakiri nyirayo ahubwo yayigurishije ko atariwe ukwiye

kuryozwa indishyi zivugwa na Radiant ko yaba yarishyuye. Urega yajuririye mu Rukiko Rukuru narwo rwakira ubwo bujurire maze rusuzuma ikibazo cyo kumenya uwaryozwa indishyi zishyuye na Radiant hagati y'utunze moto wayiguze ari nawe wateje impanuka ndetse n'uwo yanditseho. Radiant isobanura ko indishyi yatanze igomba kuzisubizwa n'Uwajeneza bafitanye amasezerano dore ko na moto yishingiwe ariwe yanditseho bigaragaza ko ariye bitaba ibyo akayishyurwa na Niyonagize wiyemerera ko yaguze iyo moto. Uwajeneza we yiregura avuga ko impanuka yabaye yaramaze kugurisha iyo moto ndetse igakorwa n'uwayiguze unabyemera ko rero asanga atariwe waryozwa indishyi kuko icyo kinyabiziga kitakiri icye. Niyonagize, nyiri kinyabiziga wakiguye ari nawe wari ugitwaye gikora impanuka, we yiregura avuga ko adakwiriye gusabwa gutanga indishyi kuko ntaho ahuriye na Radiant kandi ko n'icyaha yakoze cyo gutwara ikinyabiziga nta ruhushya afite ko yagihaniwe na polisi ko atahanwa kabiri. Incamake y'icyemezo: Igurishwa riba ryuzuye mu gihe abagiranye amasezerano y'ubugure bumvikanye ku kigurishwa n'agiciro kacyo kabone nubwo ikigurishwa cyaba kicyanditse kuwagurishije. Bityo indishyi Radiant zikaba zigomba gutangwa na Niyonagize, nyiri kinyabiziga akaba ari nawe wakoze impanuka. Ubujurire bufite ishingiro kuri bimwe. Amategeko yashingiweho: Itegeko-Teka N° 32/75 ryo ku wa 07/08/1975 ryerekeye ubwishingire butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri nk'uko ryahinduwe kugeza ubu, ingingo ya 3, 11; Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutseku mpanuka zitewe n'ibinyabiziga, ingingo ya 2;

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Imanza zifashishijwe: RS/INJUST/CIV 0004/15/CS, Twagirayezu n'abandi na Banki y'Abaturage y'u Rwanda, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/09/2015. Urubanza I. IMITERERE Y'URUBANZA [1] Urukiko Rwisumbuye rwa Gasabo rwakijije urubanza RC 00486/2021/TGI/Gic kuwa 15/07/2022 aho rwaburanwaga na Radiant yaregaga Uwajeneza Aimée Diane ariko rugobokeshwamo ku gahato Niyonagize Claude, ivuga ko isaba kwishyurwa Indishyi zikomoka ku mpanuka yabaye kuwa 10/02/2020 yatewe na moto TVS VICTOR RD 320Y ya Uwajeneza Aime Diane yari itwawe n'uwitwa Niyonagize Claude akaba yarayitwaye atagira uruhushya rwo gutwara ikinyabiziga ku bw'ubumenyi buke bwo gutwara ateza impanuka, akomeretsa uwitwa Rutayisire Jean Damascene, nyuma y'iyi mpanuka uwakomerekeyemo yishyuye indishyi zingana na 1.465.320Frw na Radiant, nyuma yo kwishyura kuko iyo moto yari ifite ubwishingizi, Radiant yandikiye Uwajeneza Aime Diane imumenyesha ko agomba gusubiza Radiant amafranga 1.465.320Frw yishyuye uwakomerekeye mu mpanuka maze nyuma yo kubona ko ibibazo byananiranye, niko kuregera urukiko irusaba kurenganurwa rugatega Uwajeneza Aime Diane kuyishyura; [2] Mu kwiregura kwa Uwajeneza Aime Diane asobanura ko ikinyabiziga cyakoze impanuka cyari cyaraguzwe mu buryo bukurikije amategeko na Niyonagize Claude ku wa 14/01/2020 ko yari ategereje ko akorerwa Mutation, asaba ko arenganurwa indishyi zose zisabwa na Radiant zikaryozwa Niyonagize Claude; [3] Niyonagize Claude wagobokeshejwe asobanura ko moto yayiguze koko, kandi ko yakoze impanuka uwo yari atwaye agakomereka, police iramufata iramuhana ngo yumva ko byarangiye ku buryo nta bindi bihano yakagombye kubazwa kuko yahaniwe ikosa yakoze ryo gutwara ikinyabiziga nta ruhushya afite; [4] Urukiko Rwisumbuye rwa

Gasabo rwaciye urubanza rwemeza kwakira ikirego cya Radiant Insurance Company, rugisuzumye rusanga nta shingiro gifite, rutegeka ko amagarama y'urubanza angana n'ibihumbi makumyabiri (20.000Frw) Radiant Insurance Company yatanze irega ahwanye n'ibyakozwe mu rubanza, rwemeza ibi rushingiye ko nubwo Uwajeneza Aime Diane ariwe wanditse kuri moto ivugwa ariko ko atakiri nyirayo ahubwo yayigurishije ko atariwe ukwiye kuryozwa indishyi zivugwa na Radiant ko yaba yarishyuye; [5] Radiant Insurance Company Ltd ntabwo yishimiye iyo mikirize, yayijuririye mu rukiko rukuru, ivuga ko mu ica ry'urubanza rujuririrwa urukiko rwisumbuye rwemeje ko Uwajeneza Aime Diane adakwiye kwishyura indishyi yaregwaga kuko yagurishije Moto ariko rwirengagiza ko ubugure buvugwa butarashoboraga gutuma Uwajeneza Aimee Diane atishyura radiant amafaranga yatakaje, kandi ko niba mu gihe urukiko rusanze ubugure bwari bwujuje ibisabwa Niyonagize Claude wagobokeshejwe ku gahato yagombaga gutegekwa kwishyura, igasaba kugenerwa igihembo cya avoka n'ikurikirana rubanza hamwe n'amafaranga y'igarama;

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[6] Mu kwiregura kwa Uwajeneza Aime Diane avuga ko impamvu z'ubujurire nta shingiro zahabwa kubera ko n'amasezerano y'ubwishingizi Radiant ishingiraho imwishyura yari yararangiye ndetse ko Radiant idakwiriye gukomeza gukurikirana Uwajeneza Aimee Diane mu gihe utunze iyo Moto yemera ko icyo kinyabiziga ariwe wakiguze, agitunze mu buryo bwemewe n'amategeko; [7] Niyonagize Claude we yiregura avuga ko impamvu z'ubujurire zitangwa na Radiant Insurance Company Ltd nta shingiro zikwiye guhabwa kubera ko ntaho ahuriye na Radiant kandi ko n'icyaha yakoze cyo gutwara ikinyabiziga nta ruhushya afite ko yagihaniwe na polisi ko atahanwa kabiri, ikindi ko yaguze moto mu buryo bukurikije amategeko; [8] Uru rukiko rukaba rusuzuma ibyerekeranye no kumenya niba ikinyabiziga cyakoze impanuka yatumye umwishingizi yishyura indishyi zakwishyuzwa inde hagati y'utunze moto ari nawe wakoze impanuka n'uwo icyanditseho ugaragara ku byangombwa ndetse no kumasezerano y'ubwishingizi, kumenya niba hari ndishyi zagenwa muri uru rubanza; II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Ku byerekeye kumenya niba ikinyabiziga cyakoze impanuka yatumye umwishingizi yishyura indishyi zikomoka kuriyo mpanuka zaryozwa inde hagati y'utunze moto ari nawe wateje impanuka n'uwo icyanditseho ugaragara ku byangombwa ndetse no kumasezerano y'ubwishingizi; [9] Radiant Insurance Company Ltd iburanirwa na Me Habimana Joseph, asobanura ko mu gika cya 11 cy' urubanza rujuririrwa urukiko rwavuze ko ikirego cya Radiant Insurance Company Ltd nta shingiro gifite kuko ngo nubwo yagiranye amasezerano na Uwajeneza Aimee Diane y'ubwishingizi bwa moto ye TVS VICTOR RD 129I, iyo moto yaragurishijwe mu bantu batandukanye kugeza kuri Niyonagize Claude wakoze impanuka ayitwaye kandi nawe ubwe nk'uwagobokeshejwe ku ngufu akaba yarabyemereye imbere y'Urukiko kandi ibyakozwe bikaba bishimangirwa n'ingingo ya 120 y'Itegeko no 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko Ihererekanya ry'uburenganzira ni ugutanga ku bushake uburenganzira bukomoka ku masezerano bugahabwa undi muntu, bityo rero nubwo moto yavuzwe haruguru icyanditswe kuri Uwajeneza Aimee Diane akaba atariwe warukwiye

kwishyuzwa amafaranga 1.456.320 Frw na Radiant Insurance Company mu gihe atariwe nyirayo; [10] Me Habimana Joseph uburanira Radiant akomeza avuga ko kuri iki cyemezo cyafashwe n'urukiko rwisumbuye Radiant isanga kirimo ukwivuguruza kubera ko ubwarwo rwavuzwe ko moto icyanditswe kuri Uwajeneza Aime Diane ndetse runemeza ko ariwe wagiranye amasezerano y'ubwishingizi na Radiant nyamara ku rundi ruhande ruvuga ko atariwe wakwishyura Radiant ngo kubera ko iyo moto yagurishijwe ku bantu batandukanye kugeza kuri Niyonagize Claude, ko aha hakaba hagomba gusuzuma mu rwego rw'amategako uburyo wakwemeza ko Moto (ikinyabiziga cyakoze impanuka) ari iya Niyonagize Claude utacyanditseho mu Kigo cy'Igihugu gishinzwe Imisoro (RRA) atarigeze agifatira ubwishingizi muri radiant; [11] Me Habimana Joseph uburanira Radiant akomeza avuga ko ikindi kandi urukiko ntirwigeze rusuzuma ihererekanya ry'ikinyabiziga rwashingiyeho, Radiant itanemera, ngo rurebe neza ko uwagurishije iyo Moto Niyonagize Claude ariwe Karambizi Jean Claude nta bubasha yari afite

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bwo kugurisha iyo Moto ya Uwajeneza Aime Diane bityo ko byose byakozwe ari uburyo bwo kugerageza guhunga kutishyura Radiant ku mpamvu zikurikira: 1. Amasezerano yiswe ubugure bwa moto kuwa 14/01/2020 yabaye aragaragara ya Niyonagize Claude na Karambizi Jean Claude wagurishije avuga ko agurishije moto ye yo mu bwoko bwa TVS RD 129 I, ikibaza iti ese uyu Karambizi yaba yarakuyehe uburenganzira bwo kuyigurisha, 2. Amasezerano yo gupatana moto yo kuwa 29/04/2017 yabaye hagati ya Uwajeneza Aimee Diane na Nyirigira Jean de Dieu ariko nta kigaragaza niba amasezerano yarubahirijwe cyangwa niba yarishyuye mbere Nyirigira akegukana icyo kinyabiziga na cyane ko nta masezerano agaragaza uburyo ikinyabiziga cyavuye kuri Nyirigira Jean de Dieu wapatanye kikagera kuri Karambizi Jean Claude wakigurishije Niyonagize Claude; [12] Me Habimana Joseph uburanira Radiant akomeza avuga ko amasezerano y'ipatana rero agaragaza ko mu gihe kwishyura bitagenze neza hatarubahirijwe amasezerano nyirikinyabiziga agisubirana nta mananiza, ko bashingiye kuri iyi ngingo y'amasezerano kuba bigaragara ko, aya masezerano y'ipatana hatabayeho kwishyura neza kwa Nyirigira bigatuma Uwajeneza Aime Diane asubirana ikinyabiziga cye ari nayo mpamvu kikumwanditseho akaba atarigeze anasaba ko kimuvaho, ko Radiant ishimangira ko nta bugure bwigeze bubaho kuko iyo buza kuba bwarabayeho koko, mu bantu bitwa ko baguze hagombye kuba hari umwe cyanditseho cyangwa wagifatiye ubwishingizi byibuze kikagera ku bandi bigaragara ko kimuvuyeho kuba rero kikicyanditse ku Uwajeneza Aimee Diane kugeza igihe cyakoraga impanuka gitwawe n'umuntu utabifitiye ububasha nka nyiri kinyabiziga akaba ariwe ugomba kwishyura indishyi zingana na 1,465,320Frw yagaragarije ibimenyetso, hamwe n'inyungu zazo zingana na 791,272Frw; [13] Me Habimana Joseph uburanira Radiant akomeza avuga ko hashingiwe ku mategeko n'amasezerano by'ubwishingizi, nk'uko Radiant yari yazisabye aho gushingira ku ngingo ya 120 y'itegeko rigenga amasezerano mu gihe bigaragara ko nta n'amasezerano y'ubugure yemewe (byibuze yanyuze no kwa noteri) yabaye hagati ya Uwajeneza Aimee Diane na Niyonagize Claude, ko Radiant isaba urukiko rwajuririwe gukosora inenge yagaragajwe, ariko mu gihe rwasanga ubugure buvugwa muri iyi ngingo bukurikije amategako rugatega uwo rusanga yaraguze mu buryo bwemewe

n'amategeko kwishyura ibyo Radiant yatakaje nk'uko bikubiye mu ngingo (Issue) ikurikira; [14] Me Habimana Joseph uburanira Radiant akomeza avuga ko ingingo ya 11 y'urubanza rujuririrwa urukiko rwarongeye rugira ruti "Rurasanga ikirego cya Radiant Insurance Company Ltd nta shingiro gifite kuko nubwo yagiranye amasezerano na Uwajeneza Aimee Diane y'ubwishingizi bwa moto ye TVS VICTOR RD 129I, iyo moto yaragurishijwe mu bantu batandukanye kugeza kuri Niyonagize Claude wakoze impanuka ayitwaye kandi nawe ubwe nk'uwagobokeshejwe ku ngufu akaba yarabyemerereye imbere y'Urukiko kandi ibyakozwe bikaba bishimangirwa n'ingingo ya 120 y'Itegeko no 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko Ihererekanya ry'uburenganzira ni ugutanga ku bushake uburenganzira bukomoka ku masezerano bugahabwa undi muntu", ko isanga mu gihe urukiko rwabona ko kugurisha Moto yakoze impanuka yari itwawe n'utabyemerewe cyangwa se ubifitiye ububasha bwarakozwe mu buryo bukurikije amategeko, n'uwaguze ariwe Niyonagize Claude akaba yaragobokeshejwe n'uwarezwe (Uwajeneza Aimee Diane) kugirango nirusanga afite ukuri uwagobokeshejwe ku gahato azategukwe kwishyura izo ndishyi, nyamara ariko rukarengaho rukanzura ko ikirego cya Radiant nta shingiro gifite hakibazwa icyo iryo gobokeshwa mu rwego rw'amategeko ryari rimaze cyangwa se niba Niyonagize Claude igihe yagobokeshwaga atarabaye umuburanyi mu rubanza;

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[15] Me Habimana Joseph uburanira Radiant akomeza avuga ko kuri iyi ngingo radiant ikaba isaba urukiko gusuzumana ubushishozi ukugobokeshwa kwa Niyonagize Claude rwasanga gufite ishingiro akaryozwa amafaranga yishyurwe na Radiant n'ibyo yatakaje byose ku mpanuka yabaye kandi bitari bikwiye; [16] Me Nshimirwa Munyuza Xavier uburanira Uwajeneza Aimee Diane yiregura kuri izo mpamvu z'ubujurire zitangwa na Radiant avuga ko zitahabwa ishingiro kubera ibi bikurikira: 1) Amasezerano yo kugura ubwishingizi Radiant igaragaza yari yararangiye ubwo impanuka yabaga kuwa 10/02/2020, ko muri ayo masezerano yo kuwa 25/5/2019 yo kugura ubwishingizi yabonye muri system Radiant igaragaza, yari gutangira kuwa 27/5/2019 akarangira kuwa 26/7/2019, bityo kuba impanuka yarabaye kuwa 10/02/2020 ntabwo icyo kimenyetso cyahabwa ishingiro, ikindi nuko Radiant idakwiriye gukomeza gukurikirana Uwajeneza Aimee Diane mu gihe utunze iyo Moto yemera ko icyo kinyabiziga ariwe wakiguze, agitunze mu buryo bwemewe n'amategeko, Niyonagize Claude akaba yarabyiyemerere imbere y'Urukiko ko Moto TVS Victor RD129I ariwe wayiguze ndetse impanuka iba ariwe wari uyitunze mu buryo bwemewe n'amategeko anayikoresha mu kazi ndetse akanerekana n'amasezerano yo kuwa 14/1/2020 yayiguriyeho, ntabwo imvugo y'uburanira Radiant Insurance Company Ltd ikwiriye guhabwa ishingiro kuko iyo Moto Niyonagize Claude yari ayitunze mu buryo bwemewe n' amategeko; [17] Me Nshimirwa Munyura Xavier uburanira Uwajeneza Aimee Diane akomeza avuga ko Uburanira Radiant Insurance ariwe ukwiriye kugaragaza ibimenyetso by'ibyo avuga ndetse ibyo bimenyetso bikaba bihuje kamere y'ikiburanwa, ko kuba yibaza ati: ese amasezerano yo gupatana Moto yo kuwa 29/04/2017 yaba yarubahirijwe no kuba yibaza ati ni gute ikinyabiziga cyavuye kuri Nyirigira Jean de Dieu kikagurwa na Karambizi Jean Claude, nawe waje kugurisha Niyonagize Claude, ko izo mvugo zose ntacyo zamarira Urukiko mu

kugaragaza ukuri mu gihe uwari utunze Moto TVS Victor RD129I mu buryo bukurikije amategeko yariyemereye imbere y'Urukiko ko iyo Moto ari iye bwite, Uwajeneza Aime Diane akaba asanga imvugo ya Niyonagize Claude ikuraho urujijo kuko binagaragazwa n'amasezerano yo kuwa 14/01/2020 yaguriyeho iyo Moto; [18] Me Nshimirwa Munyura Xavier uburanira Uwajeneza Aimee Diane akomeza avuga ko indishyi zingana na 1,465,320Frw, Radiant Insurance isaba Uwajeneza Aimee Diane nta shingiro zikwiriye guhabwa kuko iyo Moto TVS Victor RD129I itari iya Uwajeneza Aimee Diane, naho ku byerekeye inyungu zingana 791,272Frw zisabwa na Radiant nazo nta shingiro zifite dore ko zibaze nabi, inkiko zemeje ko inyungu z'umwenda uregerwa zigomba kubarirwa ku gipimo cy'ibitsa cya Banki Nkuru nk'uko byemejwe mu rubanza RCOMA 0148/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 23/05/2014, rukavuga ko urega akwiye inyungu z'amafaranga atishyuriwe igihe zibazwe ku gipimo cya 8% cyemejwe na Banki Nkuru y'Igihugu (taux de placement moyen BNR) zibazwe guhera ku munsu urega yihanangirijeho uregwa kuko igipimo cya 18 % urega yasabaga ari menshi (CS, 23 mai 2015, N° RCOMA 0148/11/CS, publié in icyegeranyo cy'ibyemezo by'Inkiko, vol. 2/2015, Avril 2015, p. 153, <https://www.bnr.rw>, Consulté le 29/10/2020, (1,465,320Frw x 8% x 90jours): 360jours = 29,306Frw; [19] Me Nshimirwa Munyura Xavier uburanira Uwajeneza Aimee Diane akomeza avuga ko ku ngingo y'ubujurire ijyanye n'uko Urukiko Rwisumbuye rwa Gasabo rwagombaga gutegeka Niyonagize nyiri moto ivugwa na Radiant ko asanga nta kosa urwo rukiko rwakoze, aho rwanzuye ko ikirego cya Radiant Insurance Company nta shingiro gifite kuko harezwe Uwajeneza Aimee

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Diane kandi icyo kinyabiziga atari we nyiracyo, Radiant Insurance Company Ltd nyuma yo kugaragarizwa ukuri kose hamwe n'ibimenyetso ko Moto TVS Victor RD129I ari iya Niyonagize Claude, aho kugirango Radiant Insurance Company isabe ko Niyonagize Claude (wagobokeshejwe) atanga indishyi zose zisabwa ntabwo yakoze ahubwo uburanira Radiant yakomeje gutsimbarara ko indishyi zose zatangwa na Uwajeneza Aimee Diane, bityo rero urukiko ntirwari gufata icyemezo kukitararegwe mu rukiko cyangwa kitaburanweho dore ko mu iburanisha ryabanje ntacyo Radiant yasabye kuri Niyonagize Claude; [20] Me Nshimirwa Munyura Xavier uburanira Uwajeneza Aimee Diane akomeza avuga ko icyo asaba Urukiko Rukuru rwa Kigali, aruko rwashimangira icyemezo cyafashe mu rubanza rujurirwa RC 00486/2021/TGI/GSBO, mu gika cya 11, kubera ko Moto TVS Victor RD 129I, yaraguzwe na Niyonagize Claude ndetse nawe ubwe akaba abyemera ko yari ayitunze mu buryo bukurikije amategeko ntaho Radiant Insurance yahera isaba indishyi Uwajeneza Aimee Diane, nubwo iyo Moto ikimwanditseho muri Rwanda Revenue Authority (RRA) ntabwo akiyitunze ahubwo yaguzwe na Niyonagize Claude ariwe nyirayo, akwiriye kuryozwa ibyo yangije byose; [21] Mu kwiregura kwa Niyonagize Claude avuga ko asaba Urukiko kudashingira ku mvugo nibyifuzo bya Uwajeneza Aime Diane byo kumugobokesha ku gahato mu rubanza kandi nyamara akaba ntaho ahuriye nurwo rubanza afitanye na Radiant cyane cyane ko amasezerano bagiranye hagati yabo ntaho ahuriye nayo bityo rero akaba adakwiye gushorwa mu manza byamaherere dore ko n'urukiko rwisumbuye rwa Gasabo (RC 00486/2021/TGI/GSBO) ntaho rwagaragaje ko agomba kugira icyo

abazwa bigaragara ko ntaho ahuriye nurwo rubanza bityo rero akaba atazanwa mu bujurire bw'urwo rubanza kuko ntaho ahuriye narwo; [22] Niyonagize Claude akomeza avuga ko kukijyanye n'amasezerano y'ubugure ye agaragazwa mu rubanza ko atagomba guhabwa ishingiro kuko ntaruhande narumwe yagiranye narwo amasezerano, aribyo bituma yibaza impamvu ashorwa mu manza nabo atagiranye amasezerano nabo akaba ariyo mpamvu asaba urukiko kumurenganura, agasaba ko mu gihe urukiko rwasanga ubugure buri hagati ye na Diane bwemewe azategukwe kwishyura, kukijyanye n'amakosa yakoze yo gutwara ikinyabiziga gifite Plaque RD129I atabifitiye uruhushya rwa burundu (Permis) ibyo yabihaniwe na Police ishami rishinzwe umutekano wo mu muhanda aho yahanishijwe igifungo cy'iminsi irindwi (7iminsi) n'amande ibihumbi mirongo itanu (50.000frw) acibwa uwatwaye ikinyabiziga nta ruhushya rwa burundu afite; Uko uru rukiko rubibona. [23] Ingingo ya 3 y'Itegeko-Teka N° 32/75 ryo ku wa 7 Kanama 1975 ryerekeye ubwishingire butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri nk'uko ryahinduwe kugeza ubu, iteganya ko ubwishingizi bugomba kwishyura uburyozwe bw'ibyangijwe na nyir'ikinyabiziga, ufite ikinyabiziga ndetse n'umushoferi w'ikinyabiziga gifite ubwishingizi, usibye uburyozwe bw'ibyangijwe n'abatwaye ikinyabiziga bujura cyangwa bakoresheje urugomo ("L'assurance doit couvrir la responsabilité civile du propriétaire, de tout détenteur et de tout conducteur du véhicule assuré, à l'exclusion de la responsabilité civile de ceux qui se seraient rendus maîtres du véhicule par vol ou violence »; [24] Ingingo ya 11 y'iryo tegeko-teka N° 32/75 ryo ku wa 7 Kanama 1975 ryerekeye ubwishingire butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri nk'uko

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ryahinduwe kugeza ubu, nayo ikavuga ko "Nta mpamvu n'imwe yatate agaciro, igira icyo izigama cyangwa itagikurikizwa bitewe n'itegeko cyangwa amasezerano, uwishingiye yakwitwaza ku wangirijwe. Uwishingiye ashobora kwiteganyiriza uburenganzira bwo gukurikirana uwakoze amasezerano y'ubwishingire cyangwa se, uwishingiye utari uwakoze amasezerano, mu gihe itegeko cyangwa amasezerano y'ubwishingire yaba amwemerera kwanga cyangwa kugabanya ibyo agomba gukora"; [25] Ingingo ya 2 y'iteka rya perezida N° 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutseku mpanuka zitewe n'ibinyabiziga, itanga ibisobanuro byamwe mu magambo yakoreshejwe mu gika kibanziriza iki, aho ivuga ko "Umwishingizi: ari Isosiyete y'ubwishingizi na/cyangwa Isanduku y'ubwishingizi bw'imodoka bureba buri muntu wateye impanuka. Uwishingiye: Umuntu wikorera ku giti cye ufite cyangwa isosiyete ifite amasezerano y'ubwishingizi n'isosiyete y'ubwishingizi. Uwahohotewe: umuntu wahohotewe akagira impanuka yo ku mubiri itewe n'ikinyabiziga"; [26] Muri uru rubanza rusanga uwiswe umwishingizi ari radiant naho uwishingiye akaba ari Uwajeneza Aime Diane ugaragara ku masezerano y'ubwishingizi bwo kuwa 27/07/2019 buzarangira kuwa 26/04/2020, ariwe wafashe ubwishingizi bw'ikinyabiziga RD 129I, bityo ibivugwa na Uwajeneza Aime Diane ko impanuka yabaye kuwa 10/02/2020 amasezerano y'ubwishingizi yari yararangiye nta shingiro byahabwa kuko bigaragara ko amasezerano y'ubwishingizi yari agifite agaciro ku muni w'impanuka, bikanagaragara ko ayo masezerano yanditseho ko Uwajeneza Aime Diane ko ariwe wafashe ubwishingizi, ariko rwabihuza n'ibindi

bimenyetso biri mu rubanza rusanga hari undi muntu witwa ko ariwe wishingiwe utari uwugaragara ko yakoze amasezerano y'ubwishingizi witwa ko ariwe nyiri kinyabiziga cyane ko bigaragara ko ari uwari utwaye icyo kinyabiziga wamenyekanishije iyo mpanuka witwa Niyonagize Claude akagaragaza n'icyateye impanuka; [27] Uru rukiko rusanga uwahohotewe ari nawe wasabye indishyi ku mwishingizi w'ikinyabiziga cyateje impanuka ari uwitwa Rutayisire Jean Damascene kandi akaba agaragara ku nyandiko mvugo y'impanuka ko ariwe wahohotewe n'ikinyabiziga RD 129I cyari gitwawe na Niyonagize Claude wahinduye icyerekezo akagongana na moto kandi afite ubumenyi buke bwo gutwara ikinyabiziga kuko nta ruhushya rwo kubitwara yarafite; [28] Kuba rero uwahohotewe n'impanuka yarasabye umwishingizi w'ikinyabiziga cyateje impanuka ariwe Rutayisire Jean Damascene akazisaba Radiant rusanga kuba radiant yarazisabwe ikaba itaragombaga kubyangana nkuko biteganywa n'ingingo ya 11 y'itegeko-teka N° 32/75 ryo ku wa 7 Kanama 1975 ryerekeye ubwishingire butegatswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri nk'uko ryahinduwe kugeza ubu, ivuga ko "Nta mpamvu n'imwe yatate agaciro, igira icyo izigama cyangwa itagikurikizwa bitewe n'itegeko cyangwa amasezerano, uwishingiye yakwitwaza ku wangirijwe"; [29] Uru rukiko rusanga kuba Radiant yarareze isaba ko nyiri kinyabiziga ari nawe yabonaga ko ari uwishingiye akwiye kumwishyura amafaranga y'indishyi yishyuriye uwahohotewe kubera ko yatanze ikinyabiziga kigakoreshwa n'utabifitiye uruhushya ari amakosa uwayakoze akwiye kuryozwa, akabikora ashingiye ku biteganywa n'igika cya 2 cy'ingingo ya 11 kivuga ko "Uwishingiye ashobora kwiteganyiriza uburenganzira bwo gukurikirana uwakoze amasezerano y'ubwishingire cyangwa se, uwishingiye utari uwakoze amasezerano, mu gihe itegeko cyangwa

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amasezerano y'ubwishingire yaba amwemerera kwanga cyangwa kugabanya ibyo agomba gukora"; [30] Uru rukiko rusanga mu kurega mu rukiko Uwajeneza Aimee Diane ugaragara ku masezerano y'ubwishingizi ariwe wiswe Uwishingiye (assuré) nta kosa Radiant yakoze ariko kandi icyishingiye ariyo moto RD 129I rusanga hari amasezerano y'ubugure atandukanye agaragaza ko iyo moto yagurishijwe kandi Uwajeneza Aimee Diane akaba atakiyitunze ahubwo nkuko na Niyonagize Claude bigaragara ko ariwe uyitunze kandi uyifite akaba ari nawe uyibyaza umusaruro, ndetse n'inyandiko mvugo y'impanuka ikagaragaza ko iyo moto yakoze impanuka itwawe na Niyonagize Claude ariwe wakoze amakosa yo kuyitwara nta ruhushya afite ndetse akayobora nabi icyo kinyabiziga yaratwaye ko kuba adafite uruhushya ariko ntabwo abujijwe kuba yagura umutungo wa moto, nubwo bigaragara ko icyanditse ku mazina ya Uwajeneza Aimee Diane ariko kandi amakosa ntabwo yakozwe na Uwajeneza Aimee Diane ahubwo umutungo (bien meuble) waragurishijwe kandi bene uyu mutungo uwufite akaba ari nawe nyirawo (en fait de meuble possession vaut titre), kuba wanditse kuri Uwajeneza Aimee Diane ntabwo bisobanuye ko uwo mutungo ukiri uwe kuko hari amasezerano y'ubugure Niyonagize Claude agaragaza ko yawuguze kandi na Uwajeneza Aimee Diane akagaragaza andi masezerano ko nawe yawugurishije, kuba yarawivanyeho rero kandi uwutunze unawukoresha ariwe uwusanganwe ari nawe wakoze amakosa, kuba radiant yari imaze kugaragarizwa na Uwajeneza Aimee Diane ko uwo mutungo utakiri uwe kabone nubwo ukimwanditseho mu nyandiko y'ubwishingizi ariko

kandi ntabwo bivanaho ko wagurishijwe mu buryo bukurikije amategeko, kuko uru rukiko rusanga harishingiwe ikinyabiziga ntabwo hishingiwe amazina y'ucyanditseho kandi bikaba bigaragara ko ucyanditseho atakiri nyiracyo nkuko nyiri kinyabiziga abiyemerera mu rukiko ariwe Niyonagize Claude; [31] Uru rukiko rusanga ibyerekeye kuba umutungo waragurishijwe nubwo waba ukimwanditseho nkuko bigaragara ko Uwajeneza Aimee Diane acyanditse ku byangombwa bya moto RD 129I ariko itunzwe na Niyonagize Claude nkuko ubwe abiyemerera, bishimangirwa n'ibyemejwe mu rubanza RS/INJUST/CIV 0004/15/CS rwaciwe kuwa 11/09/2015 aho mu gika cya 37 na 38 rwemeje ko igurishwa riba ryuzuye mu gihe abagiranye amasezerano y'ubugure bumvikanye ku kigurishwa n'igiciro cyacyo kabone nubwo ikigurishwa cyaba kicyanditse kuwagurishije, ariko kuba ntacyo ashobora kugikoresha kigakoreshe n'uwaguze, rusanga Moto yaguzwe na Niyonagize Claude ari iye nubwo yaba icyanditse kuwundi muntu mu mpapuro ziyiranga; [32] Uru rukiko rushingiye ko mu kuburana kwa Niyonagize Claude ubwe yemera ko ariwe wakoze amakosa akaba yaratwaye ikinyabiziga RD 129I ari nacyo cyateje impanuka bigatuma Rutayisire Jean Damascene wasabye indishyi Radiant nk'umwishingizi w'icyo kinyabiziga ndetse uyu nawe akemera kwishyura kuko atemerewe kwanga kwishyura ariko akaba afite gusaba uwakoze amakosa kumwishyura ayo yishyuye nkuko ingingo ya 11 y'itegeko teka ryavuzwe haruguru ibiteganyira mu gika cyayo cya 2 kivuga ko "Uwishingiye ashobora kwiteganyiriza uburenganzira bwo gukurikirana uwakoze amasezerano y'ubwishingire cyangwa se, uwishingiye utari uwakoze amasezerano, mu gihe itegeko cyangwa amasezerano y'ubwishingire yaba amwemerera kwanga cyangwa kugabanya ibyo agomba gukora", ko nubwo ubwishingizi bwafashwe mu mazina ya Uwajeneza Aimee Diane ariko byakozwe na Niyonagize Claude ari nawe nyiri moto wanafashe ubwishingizi mu izina rya Uwajeneza Aimee Diane akaba ari nawe ukwiye kuryozwa ibyo yakoze nk'amakosa kubera ko rusanga nubwo moto yanditse kuri

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Uwajeneza Aimee Diane ariko uyu ntabwo ariwe watumye habaho amakosa ahubwo amakosa yakozwe na Nayigiziki Claude kuri moto ye yaguze yakoreshe ashakisha ibimutunga ariko abikora atubahiriza amasezerano y'ubwishingizi yafashe mu izina ry'uwanditse kuri moto, bityo indishyi zatanze na Radiant zingana na 1.465.320Frw zikaba zikwiye kwishyurwa na Niyonagize Claude wiyemerera mu kuburana kwe ko ariwe nyiri kinyabiziga cyakoze amakosa yavuyemo impanuka igakomeretsa umugenzi yarahetse witwa Rutayisire Jean Damascene; [33] Ku bivugwa na Niyonagize Claude ko nta masezerano yagiranye na Radiant cyangwa na Uwajeneza Aimee Diane ariko kandi rusanga hari ihuriro riri hagati yo kuba yaratunze moto icyanditse ku mazina ya Uwajeneza Aimee Diane, akaba ari nawe wayikoreshe icyanditse ku mazina ye, ari nawe wafashe ubwishingizi mu izina rya Uwajeneza Aimee Diane, akaba ariko nta ruhare mu mpanuka Uwajeneza Aimee Diane yagize yatumye Radiant iryozwa indishyi ahubwo iryozwa indishyi kubera amakosa ya Niyonagize Claude kuko ariwe wakoze amakosa kuri moto ye yaguze kandi ubugure bwe akaba nta muntu ubukemanga cyangwa ngo bube buburanwa, ikitarakorwa gusa nuko atari yandikwaho iyo moto ariko ibindi akaba ariwe ubikoreshe, akaba akwiye kwirengera amakosa ye aho kuyagereka kuri Uwajeneza Aimee Diane utarayizemo uruhare; [34] Kuba Niyonagize Claude aburana avuga ko amakosa ye yo gutwara moto nta ruhushya ryo gutwara

ikinyabiziga yayahaniwe ariko ntabwo ibihano nshinjabyaba byo kutubahiriza kugenda mu muhanda bivanaho ko adakwiye kwishyura indishyi z'ibyo yangirije ari nazo ndishyi akwiye kwishyura umwishingizi wazitanze ku wahohotewe n'iyi mpanuka; [35] Ku byerekeye inyungu z'indishyi ziregerwa muri uru rubanza, aho radiant yasabye ko kuba yarishyuye indishyi uwazize impanuka yakwishurwa na Uwajeneza Aimee Diane inyungu zihwanye na 791.272Frw, uru rukiko rusanga kuba mu gihe cyo kwishyura Rutayisire Jean Damascene Radiant itarahise imenyeshya Uwajeneza Aimee Diane ngo nawe ayigaragarize ukwiye kwishyura izo ndishyi, ndetse rwanasuzuma inyandiko y'imenyeshya ryo kwishyurwa kwa Radiant yandikiye Uwajeneza Aimee Diane, bigaragara ko icyo yamwishyuzaga ari indishyi yishyuye uwahohotewe n'impanuka gusa ntabwo yigeze imusaba ko mu gihe atishyuye izo ndishyi azishyura inyungu asaba muri uru rubanza, gukererwa mu manza nayo yabigizemo uruhare kubera ko yagaragarijwe ko moto yagurishijwe ariko ikaba itarashatse kwishyura nyiri moto ariwe Niyonagize Claude cyane ko ari nawe bigaragara ko yamenyekanishije impanuka ndetse n'inyandiko y'impanuka ikagaragaza ko Niyonagize Claude ariwe wari utwaye iyo moto, akaba usabwa izo nyungu ku ndishyi ariwe Uwajeneza Aimee Diane adakwiye kuzitanga ariko kandi n'uwo akaze amakosa utarigeze ahamagazwa mu bwumvikane bwabaye hagati ya Radiant ba Rutayisire Jean Damascene akaba atategukwa kwishyura izo nyungu zitigeze zishyuzwa mbere bakimenyeshya Uwajeneza Aimee Diane ko akwiye kwishyura, ikindi mu kuburana uru rubanza ku rwego rwa mbere Radiant yari imaze kumva imiburanire y'uwo yareze ikaba itarigeze isaba koi zo nyungu zishyurwa na Niyonagize Claude, izo nyungu zikaba zidakwiye gutangwa muri uru rubanza; Ku byerekeye kumenya niba hari izindi ndishyi zagenwa muri uru rubanza. [36] Me Habimana Joseph uburanira Radiant Insurance Company Ltd avuga ko yakwishyurwa amafaranga 500,000Frw yishyuye avoka wayiburanije ku rwego rwa mbere, hamwe na 250,000Frw yishyuye ku rwego rw'ubujurire, igasaba kandi kugenerwa amafaranga 200.000Frw y'ikurikiranarubanza akubiyemo ibihumbi 100,000 byo ku rwego rwa mbere, hamwe n'ibihumbi

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100,000Frw ku rwego rwa kabiri, igasaba kandi kugenerwa ibihumbi 20,000Frw y'igarama yishyuye ku rwego rwa mbere hamwe n'ibihumbi 40,000Frw yishyuye ku rwego rwa kabiri; [37] Uwajeneza Aimee Diane avuga ko amafaranga yose Radiant Insurance Company Ltd isaba ntabwo akwiriye gucibwa Uwajeneza Aimee Diane kuko atari we ukwiriye kwishyuzwa kuko ikinyabiziga cya Moto TVS Victor RD129I atari we nyiracyo, ahubwo kubera ko Radiant yamenye ko iyo Moto ari iya Niyonagize Claude ntibiyiteho ahubwo ikarega Uwajeneza Aimee Diane, ko ariyo yishoye mu manza ikwiriye kwirengera ibyo yatakaje byose, ko kuba yaregereye ubuyobozi bwa Radiant Insurance akayisobanurira ko Moto TVS Victor RD 129I yaguzwe na Niyonagize Claude, maze ikarenga ikamurega mu Rukiko, Radiant yatsindwa ikajurira ibyo byose byamuteje akababaro no guhangayika kuko Radiant idashaka gukurikirana uwaguze Moto ariwe Niyonagize Claude, ko ibyo bikorwa byose akorerwa na Radiant Insurance, Uwajeneza Aimee Diane arabisabira indishyi za 2,000,000frw, akanahabwa ibihumbi 500,000frw y'umwunganizi (Avocat) amuburanije ku rwego rwa mbere dore ko yaburanije na Me Shimirwa Munyura Xavier hamwe n'ibihumbi 150,000frw y'ikurikiranarubanza; [38] Uburanira Radiant avuga ko ayamafaranga

Uwajeneza Aimee Diane asaba nta shingiro afite kubera ko Radiant yamureze nkuwo bafitanye amasezerano y'ubwishingizi ndetse n'ikinyabiziga yishingiye uwari ugitwaye ariwe wakoze amakosa Radiant akaba ariyo ikwiye guhabwa izo ndishyi nkuko yazisabye ibyavuga by'ubugure btiyigeze bimenyeshwa radiant; [39] Niyonagize avuga ko izo ndishyi zaba isisabwa na Radiant cyangwa izisabwa na Uwajeneza zitamureba; Uko uru rukiko rubibona. [40] Uru rukiko rusanga mu guca urubanza rujuririrwa, urukiko rwisumbuye rwanze ko radiant ikwiye kwishyurwa indishyi yishyuye kubera impanuka yatejwe n'amakosa yakozwe na Niyonagize Claude ariko mu kuburana urwo rubanza bigaragara ko Uwajeneza Aimée Diane yagaragaje ko Moto yakoze impanuka ari iya Niyonagize Claude nyamara radiant ntiyashatse ko izo ndishyi zikurikirana rubanza urukiko rwazitegeka uwakoze amakosa, ahubwo itsimbarara no mubujurire ko indishyi zikurikirana rubanza n'igihembo cya avocat biryozwa Uwajeneza Aimee Diane nyamara uyu nta kosa yakozwe ndetse yaranagaragaje ko atagitunze iyo moto, iyo radiant ibyumva igahamagaza Niyonagize kuko ariwe wari ufite moto ndetse anemera ko ariwe wakoze impanuka ayitunze ko nta nikigaragaza ko imanza zari kubaho, ikaba ariyo yishoye mu manza indishyi n'igihembo cya avocat bisabwa n'utaragize uruhare mu mpanuka akaba atazitanga; [41] Ku ndishyi zisabwa na Uwajeneza Aimee Diane rusanga nawe atazigenerwa kubera ko nawe iyo agurisha moto akayiyandukuzaho nubwo bigaragara ko yabimenyesheje radiant igakomeza gushaka ko ariwe wishyura ariko kandi rusanga nawe yaragombaga kwiandukuzaho moto ikavanwa ku mazina ye ko byari kumurinda imanza nkizi, akaba rero kuzanwa mu manza ari uburangare bwe bwo kutiyandukuzaho moto yateje impanuka, yaba indishyi zikurikirana rubanza n'igihembo cya avocat asaba nyamara Radiant hari igice cy'indishyi itsindira atabihabwa; III. ICYEMEZO CY'URUKIKO RUKURU

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[42] Rwemeje ko ubujurire bwatanzwe na Radiant Insurance Company Ltd iregamo Uwajeneza Aimée Diane na Niyonagize Claude bufite ishingiro. [43] Rutegetse ko imikirize y'urubanza RC 00486/2021/TGI/Gsbo rwaciye n'urukiko rwisumbuye rwa Gasabo kuwa 15/07/2022 ihindutse mu ngingo zerekeye indishyi zigomba gusubizwa Radiant Insurance Company Ltd ikanahinduka n'ukwiye kuziryoza uwariwe; [44] Rutegetse nubwo Moto RD 129/I icyanditse ku mazina ya Uwajeneza Aimée Diane ariko ko ari umutungo wimukanwa waguzwe na Niyonagize Claude ari nawe uwukoresha akaba ari nawe wakoze amakosa yateje impanuka yatumye Radiant Insurance Company Ltd yishyura indishyi zikomoka kuri iyo mpanuka yabaye kuwa 10/02/2020 y'uwitwa Rutayisire Jean Damascene; [45] Rutegetse ko Niyonagize Claude ariwe ukwiye kwishyura indishyi Radiant yishyuye uwakomerekejwe n'iyi mpanuka yatejwe na Niyonagize Claude akishyura izihwanye na miliyoni imwe n'ibihumbe Magana ane na mirongo itandatu na bitanu n'amafaranga Magana atatu na makumyabiri (1.465.320Frw); [46] Rutegetse ko ingwate y'amagarama yatanze na Radiant ijurira angana na 40.000Frw ahwanye n'ibyakoreshejwe muri uru rubanza.

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