

RWANDA / JUDGMENT

BRITAM INSURANCE COMPANY LTD v TWUBAHIMANA

RCA00078/2022/HC/RWG

COURT

High Court

DECIDED

14 July 2023

CASE / FILE NUMBER

RCA00078/2022/HC/RWG

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BRITAM INSURANCE COMPANY LTD v TWUBAHIMANA

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Text

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BRITAM INSURANCE COMPANY LTD v TWUBAHIMANA [Rwanda URUKIKO RUKURU URUGEREKO RWA RWAMAGANA – RCA00078/2022/HC/RWG (Mugeyo, P.J.) 14 Nyakanga 2023]

Itegeko rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga – raporo ya muganga ishingirwaho hatangwa indishyi zisabwa n'uwahohotewe n'impanuka – Ntabwo Urukiko rushingira kuri raporo ya muganga igaragaza ikigero cy'ubumuga buhoraho yakozwe na muganga w'uwahohotewe n'impanuka kandi hari raporo yakozwe na muganga washyizweho n'Urukiko. Incamake y'ikibazo: Uru rubanza rwatangiye Twubahimana arega Britam Insurance Company Ltd mu Rukiko Rwisumbuye rwa Ngoma asaba Urukiko gutegeka Britam kumuha indishyi zitandukanye zikomoka ku mpanuka yagize ubwo ikinyabiziga gifite plaque RC 577 gifite ubwishingizi muri Britam cyavaga mu Mumbumbu cyerekeza Rugende cyarenze umuhanda kiramukomeretsa. Urukiko mu rubanza RC00091/2021/TGI/NGOMA, rwemeje ko ikirego cya Twubahimana gifite ishingiro, rumugenera indishyi zitandukanye rushingiye ku mushahara muto wa 3.000Frw no k' ubumuga afite bwa 90%.

Britam Insurance Company Ltd ntiyashimishijwe n'iki cyemezo ijuririra Urukiko Rukuru urugereko rwa Ramayana ivuga ko Urukiko Rwisumbuye rwatanze indishyi zose urega yasabaga rutitaye ku myiregurire yabo; ko Urukiko rwirengagije ibimenyetso batanze rwanga icyifuzo cyabo cy'uko hashyirwaho umuganga wundi utandukanye n'uwoyakoze raporo yashingiweho yatanze n'uregera indishyi. Ivuga kandi ko Urukiko rwageneye urega indishyi z' umurenge rwirengagije ko uwakomerekeye mu mpanuka atamugaye ku rugero avuga. Twubahimana we avuga ko Britam Insurance Company Ltd itubahirije ibiteganywa n'ingingo ya 3 y'itegeko ry'ibimenyetso ko, kuba itarakoresheje contre expertise mu minsi 30 kuva ishyikirijwe dosiye ntitanze n'impamvu, bivuze ko ikigero cy'ubumuga cya 90% cyatanze n' umuganga we bacyemeye, ko iyo ngingo y' ubujurire bwe nta shingiro yahabwa. Yavuze na none ko Britam itigeze itanga amagarama y' urubanza, ko imyanzuro ikubiyemo ingingo z' ubujurire yatanze yayitanze impitagihe ko ubujurire bwayo budakwiye kwakirwa. Batanze ikirego kiregera kwiregura basaba n'amafaranga y' ikurikiranarubanza. Urukiko Rukuru rwafashe icyemezo cyo gushyiraho undi muganga agasuzuma ikigero cy'ubumuga buhoraho cya Twubahimana; arasuzumwa maze abaturanyi bese bagira icyo bavugaga kuri raporo y' umuganga. Urukiko rwabanye gusuzuma ibyerekeranye no kumenya raporo ya muganga igomba gushingirwaho igaragaza ingano y'ubumuga buhoraho (incapacite permanente), Twubahimana yatewe n' impanuka hatangwa indishyi zasabwe. Urukiko rwemeje mu rubanza RCA00053/2022/HC/RWG ko raporo ya muganga igomba gushingirwaho hatangwa indishyi ari iya muganga washyizweho n'Urukiko igaragaza ko yagize ubumuga buhoraho bwa 45% aho kuba raporo y'umuganga wa Twubahimana igaragaza ko yagize ubumuga bwa 90%. Urukiko rwemeje kandi ko indishyi z'ikurikiranarubanza n'igihembo cya Avoka zitagomba gutangwa kuri uru rurwego kuko ubujurire bwa Britam Insurance Company Ltd bufite ishingiro kuri bimwe Naho ku bindi bisabwa naTwubahimana Urukiko rwemeje ko bitasuzumwa kuko atajuriye.

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Incamake y'icyemezo: Ntabwo Urukiko rushingira kuri raporo ya muganga igaragaza ikigero cy'ubumuga buhoraho yakozwe na muganga w'uwoyakoze n'impanuka kandi hari raporo yakozwe na muganga washyizweho n'Urukiko. Bityo Urukiko rushingira kuri raporo ya muganga washyizweho n'urukiko. Ubujurire bufite ishingiro kuri bimwe. Amategeko yashingiweho. Iteka rya Perezida No 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, Ingingo ya 18,19 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku kuba, ku itariki ya 01/08/2018 saa sita z' amanywa mu mudugudu wa Murehe, akagali ka Nyarukombe, umurenge wa Muyumbu, akarere ka Rwamagana, intara y'Iburasirazuba habereye impanuka, umugenzacyaha wayikurikiranye avuga ko, iyo mpanuka yatewe n'ikinyabiziga gifite plaque RC 577 gifite ubwishingizi muri Britam Insurance Company LTD yari itwawe na Sibomana Aimable, iva mu Mumbumbu yerekeza Rugende ayirenda umuhanda, hakomerekeramo Twubahimana Justice. Britam Insurance Company Ltd na Twubahimana Justice ntibumvikanye ku ndishyi bituma aregera Urukiko. [2] Mu rubanza RC00091/2021/TGI/NGOMA, Twubahimana Justice yaburanye asaba Indishyi mbangamirabukungu zingana na 15,030,927Frw, indishyi z'akababaro

zingana na 2,700,000Frw, Indishyi z'ibangamiraburanga zingana na 2,700,000Frw, indishyi z'ibangamiraburambe ku kazi zingana na 1, 800,000Frw, indishyi zo gutakaza amahirwe yo gushaka zingana na 1,800,000Frw, izindi ndishyi zingana na 2,146,924Frw, indishyi z'ikurikiranarubanza zingana na 1,000,000Frw, Igihembo cya avoka kingana na 2,000,000Frw, izo ndishyi zose zibariwe ku mushahara muto w' amafaranga 3.000 no k' ubumuga afite bwa 90%. [3] Muri urwo rubanza hemejwe ko, Britam Insurance Company Ltd igomba guha Twubahimana Justice indishyi z'ibangamirabukungu zingana na 9.613.124Frw, indishyi z'akababaro zingana na 1.620.000Frw, Indishyi z'ibangamiraburanga zingana na 1.620.000Frw; Indishyi zo gutakaza amahirwe yo gushaka zingana na 1.080.000Frw; indishyi z'ibangamira burambe mu Kazi zingana na 540.000Frw, indishyi z'amafaranga yatanze kwa muganga n'ikurikiranarubanza angana na 300.000Frw, indishyi z'igihembo cy'Avoka kingana na 500.000Frw. Britam Insurance Company LTD ntiyashimishijwe n'iki cyemezo irajurira. [4] Britam Insurance Company Ltd iburanirwa na Me Mukawera Beatrice mu myanzuro y' ubujurire yavuze ko, Urukiko Rwisumbuye rwatanze indishyi zose urega yasabaga rutitaye ku myiregurire yabo; ko Urukiko rwariengagije ibimenyetso batanze rwanga icyifuzo cyabo cy'uko hashyirwaho umuganga wundi utandukanye n'uwoze raporo yagaragajwe n'uregera indishyi, kugira ngo hatangwe raporo itabogamye ko na none Urukiko rwageneye urega indishyi z' umurenge rwariengagije ko uwakomerekeye mu mpanuka atamugaye nk'uko abivugaga. [5] Me Ilimubuhanga uburanira Twubahimana Justice yavuze ko, Britam Insurance Company Ltd itubahirije ibiteganywa n'ingingo ya 3 y'itegeko ry'ibimenyetso ko, kuba itarakoresheje contre-

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expertise mu minsi 30 yari ifite kuva ishyikirijwe dosiye nta mpamvu, bivuze ko ikigero cy'ubumuga cya 90% cyatanze n' umuganga wabo bacyemeye, ko iyo ingingo y' ubujurire bwe nta shingiro yababwaga, ko na none Britam itigeze itanga amagarama y' urubanza, ko imyanzuro ikubiyemo ingingo z' ubujurire yatanze yayitanze impitagiye bityo ko ubujurire bwayo butakwagirwa. Batanze ikirego kiregera kwiregura basaba n'amafaranga y' ikurikiranarubanza [6] Tariki ya 20/03/2023, Urukiko rwafashe icyemezo cy'uko Twubahimana Justice asuzumwa n' umuganga ugenwe n' ibitaro bya Military Hospital Kanombe, akagaragaza ubumuga buhoraho afite; arasuzumwa maze ababuranyi bese bagira icyo bavugaga kuri raporo y' umuganga, urubanza rurapfundikirwa isomwa ry'urubanza rishyirwa ku wa 17/07/2023, rusomwa ku wa 14/07/2023 kubera amahugurwa y' abacamanza. [7] Ibigomba gusuzumwa muri uru rubanza ni ukumenya niba indishyi zasabwe zigomba gutangwa hashingiwe kuri raporo ya muganga igaragaza ingano y' ubumuga buhoraho (incapacity permanente) Twubahimana Justice yatewe n' impanuka. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Ku byerekeye kumenya niba indishyi zasabwe zigomba gutangwa hashingiwe kuri raporo ya muganga igaragaza ingano y'ubumuga buhoraho (incapacity permanente) Twubahimana Justice yatewe n' impanuka [8] Britam Insurance Company Rwanda Ltd iburanirwa na Me Mukawera Beatrice yasobanuye ko, Urukiko Rwisumbuye rutitaye ku miburanire yayo. Mu kubarira Twubahimana indishyi rwashingiye ku bumuga buhoraho bwa 90%, rumuburira indishyi zinyuranye nk'uko zigaragara muri kopi y' urubanza ntirwita ku bimenyetso yitangiye ubwe ko, nyuma y'ukwezi kumwe gusa akoze

impanuka yahise ajya kwiandikisha kuri Kaminuza ajya kwiga, kugeza igihe bamuhereye icyemezo cy'ishuri yari amaze imyaka itatu yiga kandi yitabira neza nta kibazo nk'uko ishuri yigagaho ryabihamiye. Yasabye ko, uru Rukiko rusuzuma bushya indishyi zatangwa hakurikijwe raporo nshya ya muganga igaragaza ko, afite ubumuga buhoraho bwa 45%; [9] Na none Me Mukawera Beatrice yasobanuye ko, mu ndishyi zagenwa hatatangwa izo gutakaza amahirwe yo gushaka kimwe niz' izibangamira ry' uburanga kuko mu cyemezo cya muganga, atigeze agaragaza ko, bwangiritse n'igipimo cyabwo, ko naho ku byerekeye ibihe by'ubujurire bivugwa n' uburanira Twubahimana bitahabwa ishingiro kuko mu bujurire batanze burimo ingingo yerekeye igipimo cy'ubumuga ndetse n'indishyi z' umurenge zagenwe hadashingiwe ku bumuga nyakuri, imyanzuro yakurikiye ikaba yaraje ishimangira izo ingingo. [10] Me Ilimubuhanga uburanira Twubahimana Justice yavuze ko, Urubanza rujuririrwa rwaciwe ku wa 6/7/2022, iyi ingingo y'ubujurire itangwa ku wa 17/11/2022, ko iyo ingingo y' ubujurire ya Britam Insurance Company Rwanda Ltd isaba ko, indishyi zongera gusuzumwa hakagenwa izikwiye itazihabwa kuko yatanze impitagihe, atanga imanza zitandukanye zashingirwaho. urubanza RCOMA00071/2017/ SC rwo kuwa 28/2/2019 hagati ya BRD na MBUTO Aimable, ibi kandi byemejwe na none mu rubanza RCOMAA00022/2020/CA rwaciwe n'Urukiko rw'Ubujujire ku wa 12/02/2021, Soyete yitwa MIG Ltd yaburanye na Barco Trading Ltd na Rujugiro. [11] Me Ilimubuhanga na none mu bisobanuro yavuze ko, Britam itigeze itanga amagarama y' urubanza kuko bigaragara muri "system"; Twubahimana kandi nawe akaba hari ibyo atanyuzwe nabyo mu buryo yabariwe indishyi: yasabye amafaranga yo kwivuza angana na 1,401,524 ariko yagenewe 300.000Frw, amafaranga yakoresheje agura dosiye angana na 8,900Frw; amafaranga y'ikurikiranarubanza angana na 1,000,000 ndetse n'igihembo cy'avoka cya 2,000,000Frw yafatanyijwe n'ayo kwa muganga, asaba uru Rukiko kubikosora akayahabwa ndetse anasaba

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gusubizwa igihembo cya avoka kuri uru rwego kingana na 1,000,000Frw n' indishyi z'ikurikiranarubanza za 500,000Frw. Uko urukiko rubibona Ku byerekeye kumenya niba indishyi zasabwe zigomba gutangwa hashingiwe kuri raporo ya muganga igaragaza ingano y' ubumuga buhoraho (incapacite permanente) Twubahimana Justice yatewe n' impanuka [12] Nk'uko icyemezo cya muganga witwa Dr Edmond Mukimbili wo mu bitaro bya Gisirikari bya Kanombe cyo 26/04/2023, uwo muganga akaba yarashyizweho hakurikijwe icyemezo cy' Urukiko cyo ku wa 20/03/2023; muri icyo cyemezo uwo muganga yavuze ko yasuzumye Twubahimana Justice wagize ubumuga butewe n' impanuka y' ikinyabiziga nk'uko byavuzwe, yavuze ko, yasigiwe ubumuga buhoraho bwa 45%, bivuguruza ubwo umuganga bwa mbere yavuze bwa 90%, ubwo bumuga buhoraho bwagaragajwe nyuma bukaba aribwo bugomba gushyingirwaho mu kubara indishyi Twubahimana Justice agomba guhabwa. [13] Urukiko rurasanga hakurikijwe ibiteganywa n'ingingo za 18 n'ingingo ya 19 z'Iteka rya Perezida No 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga nk'uko zashingiweho mu rubanza rujuririrwa nyamara hakabarwa indishyi hakurikijwe icyemezo cy'umuganga wasuzumye Twubahimana Justice amuha icyemezo abimusabye hatakozwe irindi suzuma "contre expertise" bityo, urwo rubanza rukaba rugomba

guhinduka indishyi agomba guhabwa zikabarwa hakurikijwe icyemezo cy' uwo muganga washyizweho bitegetswe n' Urukiko mu buryo bukurikira: [14] Indishyi mbangamirabukungu(3.000 Frw X 30X12X 45 %X 34 ans):(1+7%x 34)= 4.888.757Frw; -Indishyi z'ibangamiraburanga: 3.000 X 30X12x100%= 1,080,000Frw; y'indishyi z'akababaro 3.000 X 30X12x100%= 1,080,000Frw; indishyi z'ibangamira burambe mu Kazi 3000x30x6=540.000Frw nk'uko yayagenewe n'Urukiko Rwisumbuye; Indishyi zo gutakaza amahirwe yo gushaka ntazo akwiye kugenerwa kuko adafite ubumuga buhoraho bungana cyangwa burengeje 50% kandi yashatse; amafaranga yatanze kwa muganga n'ikurikiranarubanza angana na 300.000Frw n'indishyi z'igihembo cy'Avoka kingana na 500.000Frw nk'uko yatanze n' Urukiko Rwisumbuye yose hamwe akaba 8.388.757FRW. [15] Ku byerekeye indishyi zikurikirana rubanza n' igihembo cya Avoka zaregowe n' impande zombi muri uru rubanza, Urukiko rurasanga zitagomba gutangwa kuko ubujurire bwa Britam Insurance Company Ltd bufite ishingiro kuri bimwe.Naho ku bindi bisabwa n'uhagaragariye Twubahimana Justice bikaba bitasuzumwa kuko atajuriye. III. ICYEMEZO CY'URUKIKO [16] Rwemeje kwakira ubujurire bwa Britam Insurance Company Ltd kandi ko bufite ishingiro kuri bimwe; [17] Rwemeje ko urubanza RC00091/2021/TGI/NGOMA rwaciwe n'urukiko rwisumbuye rwa Ngoma kuwa 06/07/2022, ruhindutse kuri bimwe; [18] Rwemeje ko,Britam Insurance Company Ltd guha Twubahimana Justice indishyi z' amafaranga angana na 4.888.757 z'ibangamirabukungu; amafaranga y'uRwanada 1,080,000 y'indishyi z'ibangamiraburanga; amafaranga 1,080,000 y'indishyi z'akababaro; amafaranga 540.000 y'indishyi z'ibangamira burambe mu Kazi n'amafaranga 300.000 yatanze kwa muganga

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hamwe n' amafaranga 500.000 y'igihembo cy'Avoka yo ku rewgo rwa mbere amafaranga yatanze kwa muganga n'ikurikiranarubanza angana na 300.000Frw n'indishyi z'igihembo cy'Avoka kingana na 500.000Frw nk'uko yatanze n' Urukiko Rwisumbuye n' amafaranga ibihumbi makumyabiri (20.000) y'u Rwanda y'igarama yatanze yose hamwe akaba 8.408.757Frw. [19] Rutegetse ko, ingwate y'amagarama yatanze muri uru Rukiko ahwanye n'ibyakozwe muri rubanza.

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