

RWANDA / JUDGMENT

MUA INSURANCE RWANDA Ltd v SANLAM AG. Plc

RS/INJUST/RC 00001/2024/SC

COURT

Supreme Court

DECIDED

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Text

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MUA INSURANCE RWANDA Ltd v SANLAM AG. Plc [Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00001/2024/SC (Hitiyaremye, P.J., Kazungu, Kalihangabo, J.) 17 Mutarama 2025]

Amategeko agenga imanza z'imbonezamubano – Ibimenyetso – Usabwa kugaraza ibimenyetso - Ufite ibyo yishyura niwe ugomba kubigaragariza ibimenyetso, yabibura Urukiko rukemeza ko ikirego cye nta shingiro gifite. Amategeko agenga imanza z'imbonezamubano – Ubwishingizi bw'uburyozwe – Kugaragaza uruhare rw'uwangirije - Ubwishingizi bw'uburyozwe busobanurwa nk'ubwishingizi bugamije kwishyurira uwishingiwe ibyo yakurikiranwaho n'abo yangirije, kandi uwangirijwe ni we ugomba kugaragaza uruhare rw'uwo avuga wamwangirije. Incamake y'ikibazo: SORAS AG. Plc yaje guhinduka SANLAM AG. Plc (SANLAM) yakoranye amasezerano y'ubwishingizi bw'inkongi y'umuriro na Sosiyete y'ubucuruzi Quincaillerie Cleal. Ku wa 28/04/2017, ibicuruzwa by'iyi Sosiyete byafashwe n'inkongi y'umuriro birashya, SANLAM yandikira EUCL Ltd iyimenyesha ko habaye inkongi itewe n'amashanyarazi ikangiza ibicuruzwa byishingiwe, na yo iyisubiza ko ifite umwishingizi witwa MUA INSURANCE RWANDA Ltd (MUA)

ko icyateye inkongi nikimara kumenyekana izayishyura. Nyuma y'ibarura ry'ibicuruzwa byahiye, SORAS A.G Ltd yishyuye Quincaillerie Cleal 46.188.816 Frw, inandikiria MUA iyisaba gusubizwa izo ndishyi ariko ntiyabikora kuko yari ikiri mu iperereza ry'inkomoko y'inkongi y'umuriro kandi ko iramutse inishyuye yakwishyura 35.000.000 Frw ari mu masezerano yagiranye na EUCL Ltd. Nyuma yo kutumvikana, SANLAM yatanze ikirego mu Rukiko rwisumbuye rwa Nyarugenge isaba kwishyurwa 46.188.816 Frw n'izindi ndishyi, MUA na EUCL Ltd bisobanura bavuga ko nta bimenyetso bigaragaza ko inkongi yaba yaratewe n'insinga za EUCL Ltd. Urukiko rwemeje ko ikirego gifite ishingiro rutegeka MUA kwishyura 46.188.816 Frw n'izindi ndishyi. Abaregwa ntibanyuzwe n'icyo cyemezo bakijuririra mu Rukiko Rukuru narwo rwemeza ko ubujurire bwabo nta shingiro bufite ko urubanza rujuririrwa rudahindutse. Abaregwa biyambaje inzira z'akarengane maze urubanza rwabo rwongera kuburanishwa n'Urukiko rw'Ikirenga hasuzumwa ikibazo cyo kumenya niba inkurikizi z'inkongi y'umuriro yabaye muri Quincaillerie Cleal zaryozwa EUCL Ltd n'umwishingizi wayo MUA Insurance Rwanda Ltd. MUA isaba ko hagomba kubanza kugaragazwa uruhare cyangwa se ikosa ryabaye biturutse ku bikorwa bya EUCL Ltd kuko ari cyo MUA yishingiye kuko nta kimenyetso SANLAM igaragaza cyerekana ko inkongi yatwitse ibicuruzwa yaba yaratewe n'insinga za EUCL Ltd dore ko iyo nkongi byaje kugaragara ko yatewe no gukoranaho kw'insinga z'inyuma ya mubazi kuko iz'imbere yayo ari zo za EUCL Ltd kandi zo ntizijya zigira court circuit. EUCL Ltd ivuga ko insinga zayo zigarukira kuri mubazi kandi zo ntacyo zabaye kuko umuriro waturutse mu nzu bityo ko nta ruhare cyangwa ikosa ifite muri iyo nkongi yabaye. SANLAM isobanura ko nkuko byemezwa n'abatangabuhamya ndetse na raporo ya "Fire Brigade" yazimije umuriro, inkongi y'umuriro yaturutse ku nsinga z'amashanyarazi zijyana umuriro mu nyubako. Ibi binashimangirwa n'uko igihe bandikiraga EUCL Ltd itigeze ihakana uruhare rwayo ko ahubwo yavuze ko ifite umwishingizi uzishyura. Urukiko rumaze gusesengura

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ibimenyetso byatanzwe, rwasanze inkongi ishobora kuba yaratewe n'ikoranaho ry'insinga kandi bikaba bidasobanutse niba ari insinga za EUCL Ltd zakoranyeho bigateza inkongi. Inshamake y'icyemezo: 1. Ufite ibyo yishyura niwe ugomba kubigaragariza ibimenyetso, yabibura Urukiko rukemeza ko ikirego cye nta shingiro gifite.

2. Ubwishingizi bw'uburyozwe busobanurwa nk'ubwishingizi bugamije kwishyurira uwishingiye ibyo yakurikiranwaho n'abo yangirije, kandi uwangirijwe ni we ugomba kugaragaza uruhare rw'uwo avuga wamwangirije. Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, ingingo ya 12; Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, ingingo ya 4. Imanza zifashishijwe: RS/INJUST/RC 00020/2022/SC, Gasana Tim Alphonse na RADIANT INSURANCE COMPANY Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/05/2023; RS/INJUST/RC 00019/2022/SC, Musengamana Jean Marie Vianney n'Ikigega Cyihariye cy'Ingoboka ku bwishingizi bw'uburyozwe bw'impanuka z'ibinyabiziga bifite moteri bigendera ku butaka n'izikomoka

ku nyamaswa (SGF), rwaciwe n'Urukiko rw'Ikirenga ku wa 02/06/2023; RS/INJUST/RC 00003/2023/SC, SORAS AG Ltd ubu yahindutse SANLAM AG PLC na Nzamwitakuze Thérèse, rwaciwe n'Urukiko rw'Ikirenga ku wa 16/02/2024. Inyandiko z'abahanga zifashishijwe: Alain BENABENT, Droit des obligations, 19ème édition, LGDJ, § 128 Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 28/03/2017, SORAS A.G. Ltd, ubu yahindutse SANLAM A.G Plc, na Sosiyete y'ubucuruzi izwi nka Quincaillerie Cleal, bagiranye amasezerano y'ubwishingizi bw'inkongi y'umuriro, ayo masezerano akaba yariswe "Contrat d'Assurance Incendie - Risque Commercial" mu rurimi rw'igifaransa. [2] Ku itariki ya 28/04/2017, ibicuruzwa bya Quincaillerie Cleal byari mu bubiko (stock) bwayo byafashwe n'inkongi y'umuriro birashya birakongoka, SORAS A.G. Ltd yandikira EUCL Ltd iyimenyesha iby'iyi mpanuka, iyibwira ko yatangiye ibarura ry'ibyahe igomba kwishyura nk'umwishingizi w'ibyo bicuruzwa, nyuma na yo ikazayisubiza ubwo bwishyura. EUCL Ltd

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yayishubije ko ifite umwishingizi ari we MUA Insurance Rwanda Ltd, iza kwitwa MUA muri uru rubanza. [3] Nyuma y'ibarura ry'ibicuruzwa byahiye, SORAS A.G Ltd yishyuye Quincaillerie Cleal 46.188.816 Frw, hanyuma na yo yandikira MUA iyisaba kuyisubiza ayo mafaranga, ariko ntiyabikora kubera ko yavugaga ko ikiri mu iperereza rijyanye no kumenya inkomoko nyayo y'inkongi y'umuriro, inavuga ko ubwishingizi buri mu masezerano yagiranye na EUCL Ltd bugarukira ku gaciro ka 35.000.000 Frw gusa, ko rero mu kwishyura itarenza ako gaciro. [4] Nyuma yo kutumvikana, SANLAM A.G Plc yasimbuye SORAS A.G. Ltd yareze EUCL Ltd n'umwishingizi wayo MUA mu Rukiko Rwisumbuye rwa Nyarugenge isaba kwishyurwa 46.188.816 Frw n'inyungu zayo, igihembo cya expert wagaragaje agaciro k'ibyahe, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kimwe n'amafaranga y'umuhesha w'inkiko wagombaga kurangiza urubanza. [5] EUCL Ltd na MUA ku ruhande rwabo bireguye bavuga ko nta bimenyetso bifatika byerekana ko inkongi yatwitse ibicuruzwa bya Quincaillerie Cleal yatewe n'insinga za EUCL Ltd, ndetse ko nta n'ikigaragaza ko ibicuruzwa byabaruwe ko byahiriye mu bubiko bwa Quincaillerie Cleal byari birimo koko. [6] Ku itariki ya 23/04/2021, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza N° RC 00946/2019/TGI/NYGE rwemeza ko ikirego cya SANLAM A.G Plc gifite ishingiro, rutegeka MUA kuyishyura indishyi zikurikira: • 46.188.816 Frw y'agaciro k'ibicuruzwa byahiye; • 500.000 Frw y'inyungu; • 620.000 Frw akubiyemo igihembo cya Avoka, ay'ikurikiranarubanza n'ingwate y'amagarama. [7] MUA yajuririye icyo cyemezo mu Rukiko Rukuru ivuga ko Urukiko Rwisumbuye rwayiciye indishyi zidafite icyo zishingiyeho, ndetse nta n'ibimenyetso bigaragaza uruhare cyangwa se ikosa EUCL Ltd yaba yarakoze mu nkongi y'umuriro yatumye ibicuruzwa bya Quincaillerie Cleal bishya. [8] EUCL Ltd yashimangiye ubujurire bwa MUA, ivuga ko nta ruhare yagize mu nkongi yabaye, ko rero nta mpamvu MUA nk'umwishingizi wayo yagombye kugira icyo iryozwa. [9] SANLAM A.G Plc yireguye ivuga ko impamvu MUA itanga mu bujurire zitahabwa agaciro, kubera ko hari ibimenyetso bihagije birimo raporo yakozwe na Polisi y'Igihugu, igaragaza neza ko umuriro watwitse ibicuruzwa bya Quincaillerie Cleal wakomotse ku nsinga z'amashanyarazi za EUCL Ltd. [10] Ku itariki ya 30/11/2022, Urukiko Rukuru rwaciye urubanza N° RCA 00139/2021/HC/KIG, rwemeza ko ubujurire

bwa MUA nta shingiro bufite, ko imikirize y'urubanza N° RC 00946/2019/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku itariki ya 23/04/2021 idahindutse usibye gukosora ibyerekeye ingingo ya 258 y'Igitabo cya gatatu cy'amategako y'imbonezamubano (CCLIII) yashyingiweho nyamara iryo tegeko ryaravuyeho,

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ruvuga ko ariko ibyo bidahindura indishyi zagenwe, MUA itegukwa kwishyura SANLAM A.G Plc indishyi zingana na 200.000 Frw y'ikurikiranarubanza na 250.000 Frw y'igihembo cya Avoka ku rwego rw'ubujurire. [11] Mu gufata iki cyemezo, Urukiko Rukuru rwashingiye ku mpamvu zikurikira: • Kuba hari ibimenyetso bifatika byashingiweho n'Urukiko Rwisumbuye bigaragaza ko impanuka y'umuriro ivugwa muri uru rubanza yatewe n'insinga za EUCL Ltd, ibyo bimenyetso bikaba birimo nka raporo yakozwe n'Umugenzacyaha ku itariki ya 17/05/2017, yagaragaje ko insinga za EUCL Ltd zahiye na zo zigakongeza izigana ku bubiko bw'ibicuruzwa bya Quincailerie Cleal; • Kuba kandi hari raporo yakozwe n'ishami rya Police rishinzwe kurwanya inkongi (Fire Brigade) na yo ishimangira ko inkongi yakomotse ku nsinga za EUCL Ltd; • Kuba SANLAM A.G Plc yaramenyeshije EUCL Ltd iyo mpanuka, igahitamo kuyisaba ko yabibwira umwishingizi wayo ari we MUA. [12] Me Bimenyimana Eric mu izina rya MUA, yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza N° RCA 00139/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 30/11/2022, rwasubirwamo ku mpamvu z'akarengane. Nyuma y'isesengura ry'urubanza, Perezida w'Urukiko rw'Ubujurire yakozwe raporo ayohereza Perezida w'Urukiko rw'Ikirenga, maze na we yemeza ko urubanza N° RCA 00139/2021/HC/KIG rwongera kuburanishwa, ruhabwa N° RS/INJUST/RC 00001/2024/SC. [13] MUA ivuga ko akarengane kayo gashingiye ku kuba yarategutse kwishyura SANLAM A.G Plc 47.308.816 Frw y'ibicuruzwa ivuga byahiriye mu bubiko bwa Quincailerie Cleal kandi ntakigaragaza ko impanuka yatewe n'uwo yishingiye ari we EUCL Ltd, ko uretse n'ibyo itari gutegekwa kwishyura arenze 35.000.000 Frw yari yarishingiye. [14] Mu nama ntegururubanza yabaye ku itariki ya 11/10/2024, Me Mbabazi Michel wari uhagarariye MUA, yavuze ko nyuma yo gusaba ko urubanza rusubirwamo ku mpamvu z'akarengane, basanze EUCL Ltd yarayisubije 11.188.816 Frw arenga ku yishingiwe, ko rero iyo issue irebana no kuba yarategutse kwishyura indishyi zirenze agaciro k'ibyishingiwe itakiri ngombwa. [15] Urubanza rwaburanishijwe mu ruhamwe ku itariki ya 02/12/2024, MUA ihagarariwe na Me Mbabazi Michel, EUCL Ltd ihagarariwe na Me Ngirishuti Jean Bosco, mu gihe SANLAM A.G Plc yo yari ihagarariwe na Me Nkurunziza François Xavier. [16] Muri uru rubanza hasuzumwe ikibazo cyo kumenya niba inkurikizi z'inkongi y'umuriro yabaye muri Quincailerie Cleal zaryozwa EUCL Ltd n'umwishingizi wayo MUA Insurance Rwanda Ltd, hamwe n'ikirebana n'indishyi zasabwe muri uru rubanza. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Kumenya niba inkurikizi z'inkongi y'umuriro yabaye muri Quincailerie Cleal zaryozwa EUCL Ltd n'umwishingizi wayo MUA Insurance Rwanda Ltd.

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[17] Me Mbabazi Michel uburanira MUA avuga ko akarengane kari mu rubanza basabye ko rwasubirwamo ari uko mbere y'uko Urukiko Rukuru rufata icyemezo gitegeka yaba EUCL Ltd cyangwa se MUA kugira ibyo baryozwa mu rubanza rwasabiwe gusubirwamo, hagombaga kubanza gusuzumwa uruhare cyangwa se ikosa ryabaye biturutse ku bikorwa bya EUCL Ltd kuko ari cyo MUA yishingiye, nyamara ariko nk'uko byagaragaye mu isesengura ryakozwe n'Urukiko, nta na hamwe hagaragajwe ko impanuka yaba yaratewe n'amakosa ya EUCL Ltd. [18] Avuga ko mu bika bya 28 na 29 by'urwo rubanza, mu gusesengura, umucamanza yagaragaje ko ibicuruzwa bya Quincaillerie Cleal byari mu bubiko byafashwe n'inkongi birashya birakongoka, ko kandi nk'uko byagaragajwe na raporo y'umuhanga, iyo nkongi yakomotse ku nsinga z'umuriro zahiye na zo zigakongeza ubwo bubiko, yanzura ko kuba umwishingizi w'ibyo bicuruzwa bya Quincaillerie Cleal yarishyuye 46.188.816 Frw hashingiwe ku masezerano y'ubwishingizi yo ku itariki ya 28/03/2017, MUA nk'umwishingizi wa EUCL Ltd igomba kwishyura SANLAM A.G Plc ayo mafaranga yishyuye Quincaillerie Cleal. Me Mbabazi Michel avuga ko MUA itagombaga gutegekwa kwishyura ayo mafaranga kandi nta bimenyetso bihagije bigaragaza uruhare rwa EUCL Ltd muri iyo mpanuka y'inkongi y'umuriro, ko ahubwo inkongi y'umuriro yatewe no gukoranaho kw'insinga (court circuit) zitari zifunitse nk'uko byagaragajwe n'umuhanga wa MUA, izo akaba ari insinga z'inyuma ya mubazi (cash power) kuko iz'imbere yayo ari zo za EUCL Ltd kandi zo zitajya zigira court circuit. [19] Akomeza avuga ko hari raporo y'impuguke iherekejwe n'amafoto y'igihe impanuka yabaga yagaragaje ko mubazi (Cash power) yari ku bubiko bw'ibicuruzwa bya Quincaillerie Cleal itigeze yangirika cyangwa ngo igerweho n'umuriro, ibyo bikaba byarashimangiwe na raporo ya Fire Brigade yerekanye ko inkongi y'umuriro yaturutse inyuma ya mubazi, kubera ko insinga za EUCL Ltd kugera kuri mubazi ntacyo zabaye. Asobanura ko impanuka y'inkongi itakomotse ku nsinga za EUCL Ltd kubera ko izo nsinga ziba ziri imbere ya cash power, ko rero iyo umuriro uturuka imbere yayo na yo iba yarahiye, ikigaragaza ko ntacyo yabaye akaba ari uko itigeze isimburwa. Ikindi kandi MUA ivuga ko umuhanga yasanze nyuma yo gusana ahari harangiritse byagaragaye ko hari insinga zitobora zikanyura mu mwenge w'ibati, bivuze ko zigenda zicika buhoro buhoro kubera kwikubanaho, ibyo na byo bikaba byarashoboraga guteza impanuka. [20] Avuga nanone ko raporo y'umuhanga yagaragaje ko impanuka iba hari mu gitondo mu gihe nta byuma bikoresha umuriro byari byagatangira gukoreshwa ngo hakekwe ko habayeho ubushyuhe bwatera insinga gushya (surchargement électrique), ndetse ko nta n'izari zaraye zikora ku buryo zateza ubwo bushyuhe, ibyo bikaba bisobanuye ko atari insinga za EUCL Ltd zateje impanuka, bityo rero ko nta ruhare na ruto EUCL Ltd yagize mu mpanuka yabaye ku buryo byari gushingirwaho mu gutegeka umwishingizi wayo gusubiza ibyishyuwe na SANLAM A.G Plc. [21] Me Mbabazi Michel avuga ko ikindi cyerekana ko nta ruhare UCL Ltd ifite mu mpanuka y'inkongi y'umuriro yatwitse ibicuruzwa bya Quincaillerie Cleal, ari raporo yakozwe ya Fire Brigade yavuzwe haruguru yagaragaje ko inkongi yaturutse inyuma ya mubazi (Cash power), insinga za EUCL Ltd kugeza kuri mubazi zikaba ntacyo zabaye kimwe na mubazi ubwayo, ibyo bikagaragaza ko nta ruhare EUCL Ltd ifite mu mpanuka

yabaye, bityo MUA ikaba nta nshingano yari ifite zo kwishyurira uwo yishingiye. [22] Asoza avuga ko kuba nta bimenyetso bigaragaza inkomoko y'inkongi y'umuriro yatwitse ibicuruzwa bya Quincaillerie Cleal, bidasobanura ko yatewe n'insinga za EUCL Ltd. Avuga ko

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ashingiye ku ngingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu1, no ku ngingo ya 4 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso2, asanga kuba nta kimenyetso gifatika SANLAM A.G Plc yagaragarije Urukiko gihamya uruhare rwa EUCL Ltd mu kubaho kw'impanuka y'inkongi ivugwa muri uru rubanza, umwishingizi wayo atari kuryozwa indishyi z'ibyangiritse. [23] Me Ngirinshuti Jean Bosco avuga ko nta ruhare EUCL Ltd aburanira yagize mu mpanuka y'inkongi y'umuriro ivugwa muri uru rubanza, kubera ko insinga zayo zihera ku ipoto zikagera kuri mubazi (cash power) gusa, kandi nk'uko byemejwe n'umugenzacyaha, ikibazo cyaraturutse mu nzu imbere, gitewe na court circuit, bikagaragazwa nk'uko cash power yasigaye ari nzima. Avuga ko iyo ikibazo gituruka imbere yayo ku nsinga za EUCL Ltd na yo yari kwangirika. Avuga kandi ko umutangabuhamya uvugwa mu nyandiko imenyeshya y'Ubugenzacyaha watangaje ko inkongi y'umuriro yatewe n'insinga zahiye, atigeze avuga ko iza nsinga ari iza EUCL Ltd, cyane cyane ko insinga zayo zitajya zikora court circuit, ko iyo biza kubaho, n'abandi bakiriya bose bo muri ako gace bari kugira ikibazo aho kugira ngo kigirwe n'umuntu umwe. [24] Avuga kandi ko n'ubwo nta ruhare EUCL Ltd yagize mu mpanuka y'inkongi y'umuriro yatwitse ibicuruzwa bya Quincaillerie Cleal nk'uko amaze kubisobanura, nta n'ibimenyetso bifatika bihamya ko ibicuruzwa bivugwa byahiye koko, kuko icyari kubigaragaza ari état financier cyangwa aho yagiye amenyekanishiriza imisoro, kuko impanuka yabaye nyuma y'ukwezi kumwe gusa hafashwe ubwishingizi. [25] Asoza asaba Urukiko ko mu gihe rwasanga urubanza rwasabiwe gusubirwamo rurimo akarengane, rwategeka SANLAM A.G Plc gusubiza UCL Ltd amafaranga yahaye MUA. [26] Me Nkurunziza François Xavier uburanira SANLAM A.G Plc avuga ko MUA yigiza nkana kubera ko ibimenyetso byashingiweho n'Urukiko bihagije ndetse nta n'urujijo biteye. Avuga ko hari raporo yakozwe na Police igaragaza abatangabuhamya babibonye bahamije ko umuriro wakomotse ku nsinga z'amashanyarazi za EUCL Ltd aho bavuze ko inyubako itangira gushya byaturutse ku nsinga z'amashanyarazi ziva ku ipoto ari naho inkongi yaturutse, igenda yototera inyubako ya Quincaillerie Cleal bituma ishya. [27] Avuga ko ikindi kimenyetso cyerekana ko inkongi y'umuriro yatewe n'insinga za EUCL Ltd ari raporo ya Fire Brigade yazimije umuriro, aho ivuga ko umuriro wakomotse ku nsinga z'amashanyarazi zigana ku nyubako, ibyo bikaba bisobanuye ko uwo muriro utakomotse mu nyubako imbere, kuko iyo biba ari ko byagenze, ababibonye bari kubona inzu ishya ariko batazi icyabiteye. [28] Ku birebana n'ibyo umuhanga wa MUA yatangaje, Me Nkurunziza François Xavier avuga ko na we ubwe muri raporo ye atangira avuga ko ibyago yagize ari uko yasuye ahabereye impanuka haramaze gusanwa ku buryo atashoboraga kumenya impamvu nyayo yateye impanuka, bivuze ko atigeze amenya icyateye inkongi y'umuriro watwitse ibicuruzwa bya Quincaillerie Cleal. Avuga ko MUA ishaka kuvugisha raporo yayo ibyo itavuga, uretse ko nta n'icyo yafasha urukiko kubera

1 Iyo ngingo iteganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, yabirura uwarezwe agatsinda. 2 Iyo ngingo iteganya ko urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba

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ko umuhanga ubwe yiyemereye ko yagiye ahabereye impanuka nyuma y'umwaka usaga haramaze gusanwa. [29] Ku birebana n'ibivugwa n'uhagarariye MUA ko cash power y'inyubako ya Quincaillerie Cleal ntacyo yabaye, ko iyo umuriro uza gukomoka ku nsinga za EUCL Ltd na yo iba yarangiritse, Me Nkurunziza François Xavier avuga ibyo nta shingiro bikwiye guhabwa, kubera ko yaba raporo ya Police cyangwa se iya Fire Brigade, zose nta n'imwe yigeze ihamya ko mubazi ntacyo yabaye, bikaba bivugwa na MUA gusa. [30] Me Nkurunziza François Xavier asoza avuga ko impamvu bemeza ko impanuka y'inkongi y'umuriro yatwitse ibicuruzwa bya Quincaillerie Cleal yakomotse ku nsinga za EUCL Ltd, ari uko iyo mpanuka SANLAM AG Plc yayimenyesheje EUCL Ltd, igasubiza ko ifite umwishingizi, ko kandi umwishingizi atanze kwishyura, ko ibyo bishimangira ko na yo ubwayo yemeraga ko insinga zayo ari zo zakomotseho inkongi y'umuriro watwitse inyubako ya Quincaillerie Cleal, bityo MUA ikaba idakwiriye guhunga uruhare rw'uwo yishingiye. [31] Ku birebana n'amafaranga EUCL Ltd isaba gusubizwa, Me Nkurunziza François Xavier avuga ko Urukiko ruramutse rusanze urubanza rusabirwa gusubirwamo rwarabayemo akarengane koko, buri muburanyi yasubizwa ibimureba. Uko Urukiko rubibona [32] Ingingo ya 12, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ko "urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda". [33] Ingingo ya 4, igika cya mbere, y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, iteganya ko urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba. Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe. icyakora, umucamanza cyangwa ukemura ikibazo ashobora gutegeka umuburanyi cyangwa umwe mu bafitanye ikibazo cyangwa undi muntu gutanga cyangwa kwerekana ikimenyetso afite. [34] Ibiteganywa muri izo ngingo zivuzwe haruguru bihura n'ibivugwa mu rubanza N° RS/INJUST/RC 00020/2022/SC aho uru Rukiko rwavuze ko ufite ibyo yishyuza ari we ugomba kubigaragariza ibimenyetso, yabibura Urukiko rukemeza ko ikirego cye nta shingiro gifite. Ibyo kandi binashimangirwa n'umuhanga mu mategeko witwa Alain BENABENT, aho, yifashishije ingingo ya 1353 y'Igitabo cy'amategeko y'imbonezamubano y'Abafaransa (code civil français), asobanura ko uvuga ko aberewemo umwenda agomba kubitangira ibimenyetso. (Charge de la preuve. L'article 1353 nouveau met très clairement à la charge de celui qui se prétend créancier l'obligation de prouver sa créance: celui qui réclame l'exécution d'une obligation doit la prouver) [...].⁴

3 Reba urubanza N° RS/INJUST/RC 00020/2022/SC rwaciwe ku wa 12/05/2023, haburana Gasana Tim Alphonse na RADIANT INSURANCE COMPANY Ltd, igika cya 16. 4 Alain BENABENT, Droit des obligations, 19ème édition, LGDJ, § 128.

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[35] Muri uru rubanza, ababuranyi bombi bemeranya ko ku itariki ya 28/04/2017, ububiko (stock) bwa Quincaillerie Cleal bwafashwe n'inkongi y'umuriro hagahiramo ibicuruzwa byayo, kandi ko igihe iyo nkongi yabaga, EUCL Ltd yari ifite ubwishingizi bw'ibikorwa byayo muri MUA. icyo batemeranyaho ari nacyo kigize impaka muri uru rubanza, ni ukumenya niba EUCL Ltd n'umwishingizi wayo MUA baryozwa inkurikizi z'iyi nkongi y'umuriro. [36] Mu rubanza No RS/INJUST/RC 00019/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/06/2023, uru Rukiko rwifashishije ibisobanuro by'Abahanga mu mategeko, rwagaragaje ko ubwishingizi bw'uburyozwe busobanurwa nk'ubwishingizi bugamije kwishyurira uwishingiwe ibyo yakurikiranwaho n'abo yangirije, kandi ko uwangirijwe ari we ugomba kugaragaza uruhare rw'uwo avuga wamwangirije5. [37] Ibivuzwe mu gika kibanziriza iki, byanashimangiwe mu rubanza No RS/INJUST/RC 00003/2023/SC rwaciwe ku wa 16/02/2024 aho uru Rukiko rwavuze ko kugira ngo umwishingizi yishyurire uwo yishingiye, ari ngombwa ko habanza kugaragazwa ko uwishingiwe ari we wateje ibyago kandi uwangirijwe akaba ari we ufite inshingano zo kubigaragaza6. [38] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga ikibazo cy'ingenzi kiri muri uru rubanza gishingiye ku kumenya niba hari ibimenyetso byerekana ko impanuka y'inkongi y'umuriro yatumye ibikoresho bya Quincaillerie Cleal bishya yakomotse ku nsinga za EUCL Ltd, ibi bikaba bigomba kugaragazwa na SANLAM A.G Plc isaba kwishyurwa, kugira ngo MUA nk'umwishingizi wa EUCL Ltd itegukwe kwishyura. [39] Nk'uko bigaragara mu rubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko Rukuru rwemeje ko hari ibimenyetso bihagije SANLAM A.G Plc yatanze byerekana uruhare rwa EUCL Ltd mu mpanuka y'inkongi y'umuriro yatumye hashya ibikoresho bya Quincaillerie Cleal. Ibyo bimenyetso bikaba bigizwe na raporo yakozwe n'Umugenzacyaha ku itariki ya 17/05/2017 hamwe na raporo yakozwe n'ishami rya Police rishinzwe kurwanya inkongi (Fire Brigade) zemeza ko inkongi yakomotse ku nsinga za EUCL Ltd zigakongeza izigana ku bubiko bw'ibicuruzwa bya Quincaillerie Cleal. [40] Raporo yo ku itariki ya 17/05/2017 yakozwe n'Umugenzacyaha Sgt Mukawera Marie Claire wo kuri Sitasiyo ya Polisi ya Gisozi iri muri dosiye, igaragaza ko ku itariki ya 28/04/2017 mu Gakiriro ka Gisozi, ahari inyubako zicururizwamo ibikoresho by'ubwubatsi, hafashwe n'inkongi y'umuriro maze ibicuruzwa bya Quincaillerie Cleal byari mu bubiko (stock) bwayo bigashya bigakongoka. Umugenzacyaha wayikoze akomeza avuga ko mu bo yabajije harimo uwitwa Habumugisha Cyprien wemeje ko yari mu kazi akabona umuriro uturutse ku nsinga z'amashanyarazi ugatangira gutwika, ko kandi izo nsinga zitari zitwikiriye cyangwa zifunitse. [41] Dosiye y'urubanza igaragaza kandi raporo ya Fire & Rescue Brigade yo ku itariki ya 28/04/2017 ari nabo batabaye bakazimya iyo nkongi y'umuriro, aho iyo raporo yerekana ko bikekwa ko iyo nkongi yatewe no gukoranaho kw'insinga (Electrical Short Circuit).

5 Urubanza No RS/INJUST/RC 00019/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/06/2023, haburana MUSENGAMANA Jean Marie Vianney n'Ikigega Cyihariye cy'Ingoboka ku bwishingizi bw'uburyozwe bw'impanuka z'ibinyabiziga bifite moteri bigendera ku butaka n'izikomoka ku nyamaswa (SGF), igika cya 24. 6 Reba urubanza No RS/INJUST/RC 00003/2023/SC rwaciwe ku wa 16/02/2024 haburana SORAS AG Ltd ubu yahindutse SANLAM AG PLC na Nzamwitakuze Thérèse, igika cya 25.

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[42] Muri dosiye kandi hagaragaramo raporo y'impuguke yashyizweho na MUA (Electrical Engineer's Report) isobanura ko iyo nkongi y'umuriro ishobora kuba yaratewe no kuba hari insinga zanyuze mu mwenge w'ibati zigenda zicika buhoro buhoro kubera kwikubanaho (Un bon nombre de paires de câbles passaient dans un passage troué dans une tôle métallique et cette tôle aurait blessé petit à petit les câbles et ceci provoquerait progressivement de petits courts circuits...). [43] Urukiko rushingiye ku bivuzwe haruguru, rurasanga nta kigaragaza ko inkongi y'umuriro yakomotse ku nsinga za EUCL Ltd nk'uko byemejwe n'inkiko zabanje. Rurasanga icyari kurugaragariza nta shiti icyateye inkongi y'umuriro ari raporo y'ishami rya Polisi rishinzwe kuzimya umuriro (fire brigade) ryatabaye, ariko raporo yaryo Urukiko rwashoboye kubona ntigaragaza aho inkongi y'umuriro yakomotse, uretse kuvuga gusa ko ishobora kuba yaratewe no gukoranaho kw'insinga (court circuit), ibi akaba ari byo bihurizwaho n'ibindi bimenyetso byatanze. Kuba insinga z'amashanyarazi zarakoranyeho bigatuma habaho inkongi y'umuriro, ubwabyo ntibihagije ngo hemezwe ko izo nsinga zari iza EUCL Ltd. [44] Urukiko rurasanga kandi n'ibaruwa yo ku wa 25/01/20197, atari ikimenyetso gihagije cyashingirwaho mu kwemeza ko EUCL Ltd yemera uruhare rwayo mu nkongi y'umuriro watwitse inyubako ya Quincaillerie Cleal nk'uko Urukiko rwaciye urubanza rusubirwamo rwabibonye, kuko kuba muri iyo baruwa EUCL Ltd ivuga ko nta mpamvu yo kubaha integuza yo kwishyura kubera ko umwishingizi wayo atigeze yanga kwishyura, ahubwo akireba impamvu nyayo yaba yarateye iyo mpanuka, ikigaragarira Urukiko ni uko umwishingizi wayo MUA yagombaga kwishyura ari uko bigaragaye ko inkongi y'umuriro yatewe n'insinga zayo. [45] Hashingiye ku ngingo ya 12, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, n'ya 4 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 na ryo ryavuzwe, ndetse no ku bisobanuro byose byatanze, Urukiko rurasanga SANLAM A.G Plc itarabashije kurugaragariza ibimenyetso byerekana nta gushidikanya ko inkongi y'umuriro yatwitse ibicuruzwa bya Quincaillerie Cleal yakomotse ku bikorwa bya EUCL Ltd, ku buryo inkurikizi zayo zaryozwa umwishingizi wayo MUA Insurance Rwanda Ltd, bityo urubanza rwasabiwe gusubirwamo rukaba rugomba guhinduka SANLAM A.G Plc igasubiza amafaranga yakiriye mu rwego rwo kururanga. [46] Ku birebana n'amafaranga agomba gusubizwa, Urukiko rurasanga ababuranyi bose mu gihe cy'iburanisha baremeranyijwe ko mu rwego rwo kururanga urubanza rumaze kuvugwa, MUA yishyuye SANLAM AG Plc amafaranga yari yategetswe, ndetse EUCL Ltd isubiza MUA 11.188.816 Frw yarengaga kuri 35.000.000 Frw yari yarishingiye. [47] Urukiko rurasanga, kuba inkongi y'umuriro ivugwa muri uru rubanza itaraturutse ku bikorwa bya EUCL Ltd

nk'uko byasobanuwe haruguru, ingaruka ari uko SANLAM A.G Plc igomba gusubiza amafaranga yakiriye harangizwa urubanza rusubirwamo mu rwego rw'akarengane. Ni ukuvuga 46.188.816 Frw yishyuwe ku bicuruzwa byahiriye mu nkongi y'umuriro ivugwa muri uru rubanza, 500.000 Frw y'inyungu, 620.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza yategetswe mu rubanza rwaciwe n'Urukiko

7 Umuyobozi wa EUCL Ltd yandikiye SANLAM A.G Plc avuga ko nta mpamvu yo kubaha integuza yo kwishyura, kubera ko umwishingizi wayo atigeze yanga kwishyura ahubwo ko akireba impamvu nyayo yaba yarateye iyo mpanuka

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Rwisumbuye, 450.000 Frw y'igihembo cya Avoka n'ay'ikurikiranarubanza yategetswe n'Urukiko Rukuru mu bujirire, yose hamwe akaba 47.758.816 Frw. Muri aya mafaranga hagomba kuvamo 11.188.816 Frw EUCL Ltd yahaye MUA Insurance Rwanda Ltd nk'ikinyuranyo cy'amafaranga yarengaga kuri 35.000.000 Frw yishingiwe hagasigara 36.570.000 Frw, aya akaba ari yo SANLAM A.G Plc igomba gusubiza MUA, andi 11.188.816 Frw ikayasubiza EUCL Ltd.

Kumenya niba indishyi zisabwa muri uru rubanza zatangwa. [48] Uburanira MUA avuga ko SANLAM AG Ltd yayishoye mu manza zidafite ishingiro, bituma itakaza amafaranga bitari ngombwa, kubera iyo impamvu, ishingiyeye 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 nk'uko ryahinduwe kugeza ubu, igasaba ko yayishyura indishyi zingana na 1.000.000 Frw y'igihembo cya Avoka na 700.000 Frw y'ikurikiranarubanza. [49] Uhagarariye SANLAM AG Plc avuga ko indishyi zisabwa na MUA nta shingiro zikwiriye guhabwa kuko yarezwe nk'umwishingizi wa EUCL Ltd. Kuba rero yaranze kwishyura ku bushake kandi ibona neza ko SANLAM AG Plc yarishye ibicuruzwa bya Quincailerie Cleal byangijwe n'inkongi y'umuriro yatewe na EUCL Ltd igahitamo kujyanwa mu nkiko, ni yo yabaye nyirabayazana w'uru rubanza, bityo ikaba igomba no kubyirengera kuko idakwiriye gushingira ku makosa yayo ngo igire ibyo isaba kwishyurwa. Avuga ko ahubwo kuba MUA ikomeje gukurura SANLAM AG Plc mu manza zidafite ishingiro aho kuyishyura, ari yo yategekwa kuyiha 3.000.000 Frw y'indishyi zo gutinda kwishyura na 1.500.000 Frw y'ikurikiranarubanza. [50] Uhagarariye EUCL Ltd avuga ko ashingiyeye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ayisabira gutegeka SANLAM AG Plc kuyishyura 3.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza. [51] Ku ndishyi zisabwa na EUCL Ltd, uhagarariye SANLAM AG Plc avuga ko nta shingiro ryazo kubera ko mbere na mbere SANLAM AG Plc atari yo yasubirishijemo urubanza ku mpamvu z'akarengane, ndetse no mu Rukiko Rukuru ikaba itari yarigeze irujuririra, ko ahubwo yazanywe muri uru rubanza no kuba yari yarabaye umuburanyi ku rwego rwa mbere gusa, ibyo bikaba bivuze ko yari yishimiye imikirize y'urubanza. Avuga ko, uretse n'ibyo, amafaranga SANLAM AG Plc isabwa na EUCL Ltd ari umurengera ugereranyije n'asanzwe atangwa n'inkiko, bityo ikaba isanga nta shingiro ryayo. Uko Urukiko rubibona [52] Urukiko rurasanga MUA na EUCL Ltd ari bo bakwiye guhabwa indishyi z'ikurikiranarubanza n'igihembo cya Avoka basaba kubera ko ari bo batsinze urubanza kandi bikaba bigaragara ko bashatse

Abavoka bo kubaburanira bakanakurikirana urubanza. Urukiko rurasanga ariko ayo basabye akabije kuba menshi kandi baterekana ko ari yo bakoresheje kuri uru rubanza, bityo mu bushishozi bwarwo bakaba bagenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw kuri buri wese. III. ICYEMEZO
CY'URUKIKO

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[53] Rwemeje ko ikirego cyatanzwe na MUA Insurance Rwanda Ltd kigamije gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00139/2021/HC/KIG rwaciwe n'Urukuko Rukuru ku wa 30/11/2022, gifite ishingiro; [54] Rwemeje ko urwo rubanza ruhindutse mu ngingo zarwo zose; [55] Rutegetse SANLAM AG Plc gusubiza MUA Insurance Rwanda Ltd 36.570.000 Frw; [56] Rutegetse SANLAM AG Plc gusubiza EUCL Ltd 11.188.816 Frw yahaye MUA Insurance Rwanda Ltd nk'ikinyuranyo cy'amafaranga yarengaga kuri 35.000.000 Frw yishingiwe; [57] Rutegetse SANLAM AG Plc kwishyura MUA Insurance Rwanda Ltd na EUCL Ltd 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza buri wese, yose hamwe akaba 800.000 Frw kuri buri wese.

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