

RWANDA / JUDGMENT

NSENGIYUMVA vs PRIME INSURANCE LTD

RS/INJUST/RC 00025/2024/SC

COURT

Supreme Court

DECIDED

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NSENGIYUMVA vs PRIME INSURANCE LTD

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Text

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NSENGIYUMVA vs PRIME INSURANCE LTD [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00025/2024/SC (Cyanzayire, P.J., Kazungu na Muhumuza J.) 7 Ugushyingo 2025] Amategeko agenga ubwishingizi – Ubwishingizi bw'uburyozwe – Umugenzi mu kinyabiziga cyakoze impanuka – Umuntu utwawe mu kinyabiziga cyishingiwe nk'umugenzi (passager), utarabaye mu masezerano y'ubwishingizi cyangwa ngo ayahagararirwemo, afatwa nk'utari mu masezerano (tiers), agahabwa indishyi zikomoka ku buryozwe bwa nyiri kinyabiziga, mu gihe atari mu bo itegeko rishyira mu batishyurwa mu bwishingizi bw'uburyozwe, aribo abafitanye isano n'umufatabwishingizi n'abantu barebwa n'amategeko ajyanye n'ubwiteganyirize bw'abakozi; n'abakozi cyangwa abahagarariye umufatabwishingizi mu gihe bari mu kazi kabo. Amategeko agenga ubwishingizi – indishyi – kubara indishyi – indishyi z'abantu bakora imirimo bigengaho – Abantu bakora imirimo bigengaho bagomba kwerekana inyandiko mpamo zerekana inyungu bakuye ku mwuga wabo mu gihe cy'amezi 12 yabanjirije impanuka, akaba arizo ziherwaho habarwa indishyi. Incamake y'ikibazo: Uru rubanza rwatangiye Nsengiyumva arega Prime

Insurance Ltd mu Rukiko Rwisumbuye rwa Rubavu asaba indishyi zitandukanye zikomoka ku mpanuka y'imodoka Camion Mercedes Benz Actros RAD 092 W yari itwawe na Sekimonyo ava i Karongi yerekeza i Muhanga yakomerekeyemo ku kigero cya 40% akaba yarayirimo nk'umugenzi. Avuga ko yasabye Prime indishyi ku bwumvikane bikananirana. Urukiko mu rubanza RC00113/2022/TGI/RBV rwemeje ko ikirego cya Nsengiyumva kidafite ishingiro, kuko yari mu modoka inyuma hagenewe gutwara imizigo, rumutegeka kwishyura Prime Insurance Ltd amafaranga y'igihembo cya Avoka. Nsengiyumva yajuriye mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko rwirengagije ibimenyetso birimo inyandiko yanditswe na Prime Insurance Ltd yemera kwishyura indishyi. Prime Insurance Ltd yireguye ivuga ko ubujurire bwa Nsengiyumva nta shingiro bufite. Urukiko mu rubanza RCA00061/2023/HC/MUS, rushingiye ku nyandiko Prime Insurance Ltd yakoze mu muhango w'ubwumvikane, igaragaza ko yemeraga kwishyura indishyi zingana na 2.993.693Frw, runashingiye ku kuba mu masezerano y'ubwishingizi Prime Insurance Ltd yagiranye na nyir'imodoka, barumvikanye ko mu gihe habaye impanuka igatera ubumuga umwe mu bayirimo (occupant), indishyi zizatangwa zidashobora kurenga miriyoni eshatu z'amafaranga y'u Rwanda (3 000 000Frw), rwemeje ko ubujurire bwa Nsengiyumva bufite ishingiro kuri bimwe, rutegeka Prime Insurance Ltd guha Nsengiyumva 3.000.000Frw. Nsengiyumva Daniel yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RCA00061/2023/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 25/09/2024, rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire yakoreye raporo Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo, nawe amaze kuyisuzuma yemeza ko rugomba kongera kuburanishwa, rukaburanishwa n'Urukiko rw'Ikirenga. Nsengiyumva yavuga ko akarengane ke gashingiye ku kuba Urukiko Rukuru rwaramubariye indishyi rushingiye ku masezerano y'ubwishingizi, aho gushingira ku Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryerekeye uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, rwirengagije ko atari umukozi kuri iyo modoka ahubwo yari ayirimo nk'umugenzi. Prime Insurance Ltd ivuga ko Nsengiyumva yivugira ko yari umugenzi mu modoka yishingiwe, akaba agomba kugenerwa indishyi hashingiwe ku masezerano umwishingizi yagiranye na nyir'ikinyabiziga, ateganya indishyi za 3.000.000Frw ku muntu wari utwawe mu modoka (occupant).

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Urukiko mu rubanza RS/INJUST/RC 00025/2024/SC rwemeje ko ikirego cyo gusubirishamo urubanza RCA00061/2023/HC/MUS ku mpamvu z'akarengane gifite ishingiro kuko Nsengiyumva nta sano yarafitanye na nyirimodoka kandi atari n'umukozi kuriyo, bityo ko ntacyabuza ko ahabwa indishyi ziteganywa n'Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryerekeye uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Incamake y'icyemezo: 1. Umuntu utwawe mu kinyabiziga cyishingiwe nk'umugenzi (passager), utarabaye mu masezerano y'ubwishingizi cyangwa ngo ayahagararirwemo, afatwa nk'utari mu masezerano (tiers), agahabwa indishyi zikomoka ku buryozwe bwa nyiri kinyabiziga, mu gihe atari mu bo itegeko rishyira mu batishyurwa mu bwishingizi bw'uburyozwe, aribo abafitanye isano n'umufatabwishingizi n'abantu barebwa n'amategeko ajyanye n'ubwiteganyirize bw'abakozi;

n'abakozi cyangwa abahagarariye umufatabwingizi mu gihe bari mu kazi kabo. 2.Abantu bakora imirimo bigengaho bagomba kwerekana inyandiko mpamo zerekana inyungu bakuye ku mwuga wabo mu gihe cy'amezi 12 yabanjirije impanuka, akaba arizo ziherwaho habarwa indishyi. Bityo, kugaragaza ikigero cy'umwenda wishyura banki cyangwa kugaragaza umusoro wishyura utagaragaje amafaranga yose winjiza nayo usora ndetse nayo usigarana ntibyagaragaza inyungu wakuye mu mwuga, iherwaho habarwa indishyi. Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro. Amategeko yashyingiweho: Itegeko Teka No 32/75 ryo ku wa 07 Kanama 1975 nk'uko ryahinduwe, ryerekeye ubwishingizi butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri, Ingingo 4 Itegeko N° 030/2021 ryo ku wa 30/06/2021 rigenga imitunganyirize y'umurimo w'ubwishingizi, ingingo ya 148 Itegeko No 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, Ingingo ya 5 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 14 igika cya 3, 18 Imanza zifashishijwe: Ubanza RS/INJUST/RC 00008/2024/SC, haburana Nzayikorera Jeanne na bagenzi na SANLAM AG PLC, rwaciwe n'Urukiko rw'Ikirenga ku wa 17/01/2025, igika cya 34. Urubanza RS/INJUST/RC00013/2024/SC, haburana Kamali Léonard na bagenzi be na Radiant Insurance Company Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 20/06/2025, igika cya 16. Urubanza RS/INJUST/RC 00021/2024/SC, haburana Sebyuje Cyprien na SANLAM AG Plc n'abandi rwaciwe n'Urukiko rw'Ikirenga ku wa 11/07/2025, igika cya 18. Urubanza RS/INJUST/RC 00009/2022/SC, haburana SANLAM AG Plc na Uwihanganye Jean rwaciwe n'Urukiko rw'Ikirenga ku wa 18/05/2023, igika cya 16 Urubanza RCAA0049/14/CS, haburana SORAS AG Ltd na Umuhozo Pacifique n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016, igika cya 28 Inyandiko z'abahanga zifashishijwe: Gérard CORNU, Vocabulaire juridique, 11ème édit., PUF, 2016, p. 97; 1026 Urubanza I. IMITERERE Y'URUBANZA

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- [1] Ku wa 06/08/2021, mu Mudugudu wa Nyarusange, Akagari ka Nsibo, Umurenge wa Nyange, Akarere ka Ngororero, Intara y'Iburengerazuba, habereye impanuka y'imodoka Camion Mercedes Benz Actros RAD092 W yari itwawe na Sekimonyo Jean ava i Karongi yerekeza i Muhanga, ikaba yaratewe no kuba uwari uyitwaye atararinganiye umuvuduko. Umugenzi wari urimo witwa Nsengiyumva Daniel yarakomeretse, agira ubumuga buhoraho bungana na 40%. Nsengiyumva Daniel yegereye Prime Insurance Ltd ifite ubwishingizi bw'iyi modoka kugira ngo bumvikane ku ndishyi, ariko ubwumvikane ntibwagerwaho, bituma aregera Urukiko Rwisumbuye rwa Rubavu. [2] Mu rubanza RC00113/2022/TGI/RBV rwaciwe ku wa 26/10/2023, Urukiko Rwisumbuye rwa Rubavu rwemeje ko ikirego cya Nsengiyumva Daniel kidafite ishingiro, kuko yari mu modoka inyuma hagenewe gutwara imizigo, rumutegeka kwishyura Prime Insurance Ltd 500.000Frw y'igihembo cya Avoka. [3] Nsengiyumva Daniel yajuriye mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko Urukiko rwirengagije ibimenyetso birimo inyandiko yanditswe na Prime Insurance Ltd yemera kwishyura indishyi. [4] Mu rubanza RCA00061/2023/HC/MUS rwaciwe ku wa 25/09/2024, Urukiko rwemeje ko ubujurire bwa Nsengiyumva Daniel bufite ishingiro kuri

bimwe, rutegeka Prime Insurance Ltd guha Nsengiyumva Daniel 3.000.000Frw y'indishyi kubera ubumuga yatewe n'imodoka Camion Mercedes Benz Actros RAD092 W. [5] Urukiko rwashingiye ku nyandiko Prime Insurance Ltd yakoze ku wa 06/06/2021 mu muhango w'ubwumvikane, igaragaza ko yemeraga kwishyura indishyi zingana na 2.993.693Frw. Rwashingiye kandi ku kuba mu masezerano y'ubwishingizi Prime Insurance Ltd yagiranye na nyir'imodoka, barumvikanye ko mu gihe habaye impanuka igatera ubumuga umwe mu bayirimo (occupant), indishyi zizatangwa zidashobora kurenga miriyoni eshatu z'amafaranga y'u Rwanda (3 000 000Frw). Rwasobanuye ko indishyi zirenzeho zaryozwa nyir'imodoka, kuko mu gihe yafataga bene ubu bwishingizi yari yiteguye kwirengera ibyakwiyongeraho. [6] Nsengiyumva Daniel yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza No RCA00061/2023/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 25/09/2024, rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yakoreye raporo Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo, nawe amaze kuyisuzuma yemeza ko rugomba kongera kuburanishwa, rwandikwa kuri RS/INJUST/RC00025/2024/SC. [7] Urubanza rwaburanishijwe mu ruhamwe ku wa 09/09/2025, Nsengiyumva Daniel yunganirwa na Me Twagiramungu Erneste, naho Prime Insurance Ltd iburanirwa na Me Umuhiza Béatrice. [8] Nsengiyumva Daniel yaburanye avuga ko akarengane ke gashingiye ku kuba Urukiko Rukuru rwaramubariye indishyi rushingiye ku masezerano y'ubwishingizi, aho gushingira ku Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryerekeye uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, rwirengagije ko atari umukozi kuri iyo modoka ahubwo yari ayirimo nk'umugenzi. Prime Insurance Ltd ivuga ko Nsengiyumva Daniel yivugira ko yari umugenzi mu modoka yishingiye, akaba agomba kugenerwa indishyi hashingiye ku masezerano umwishingizi yagiranye na nyir'ikinyabiziga, ateganya indishyi za 3.000.000Frw ku muntu wari utwawe mu modoka (occupant). [9] Urubanza rwarapfundikiwe, ababuranyi bamenyeshwa ko ruzasomwa ku wa 31/10/2025, ariko uwo munsu ntirwashobora gusomwa kubera ko hari umucamanza wari mu butumwa bw'akazi, rwimurirwa ku wa 07/11/2025.

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- [10] Ibibazo byasuzumwe mu rubanza ni ukumenya niba indishyi Nsengiyumva Daniel yahabwa ari iziteganywa n'amasezerano cyangwa niba ari iziteganywa n'Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryerekeye uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, n'uko zabarwa. Hasuzumwe kandi ishingiro ry'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka yasabwe n'ababuranyi. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO Kumenya niba indishyi Nsengiyumva Daniel yahabwa ari iziteganywa n'amasezerano y'ubwishingizi, cyangwa iziteganywa n'Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryerekeye uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, n'uko zabarwa [11] Nsengiyumva Daniel n'umwunganira bavuga ko amasezerano Urukiko rwashingiyeho rumugenera indishyi adakwiye gukurikizwa, kuko yakozwe hagati ya

nyir'ikinyabiziga na Prime Insurance Ltd, akaba areba gusa abari abakozi kuri icyo kinyabiziga. Bavuga ko Nsengiyumva Daniel yari mu modoka nk'umugenzi, ariyo mpamvu basaba Urukiko kuzakurikiza ingingo z'Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003, riteganywa uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kuko nta sano y'akazi afitanye na nyir'ikinyabiziga. [12] Ku birebana n'uburyo indishyi zabarwa, Nsengiyumva Daniel n'umwunganira bavuga ko ibyo yinjizaga bigaragazwa n'imenyekanishamusoro yakoraga muri RRA. Basobanura ko izo ndishyi zabarirwa ku mushahara yinjizaga ungana na 1.500.000Frw, aho kubarirwa ku mushahara muto ntarengwa wemewe n'amategeko wa 3.000.000Frw, Prime Insurance Ltd yemeraga kwishyura mu Rukiko Rukuru. [13] Basobanura ko bagennye uwo mushahara hagendewe ku bucuruzi bw'ubuconco Nsengiyumva Daniel yarakoraga, yishyura umusoro ku nyungu, nk'uko bigaragazwa n'inyandiko za RRA. Bavuga ko impapuro zigaragaza umusaruro yinjizaga cyangwa ingano y'inyungu yabonaga, yazishatse muri RRA ariko ntibazimuhe, bakamuha historique gusa yashyize muri system, ari yo mpamvu inyungu zabazwe mu buryo bugenekereje (forfaitaire). [14] Bavuga ko n'ubwo izo mpapuro zigaragaza umusaruro atarazibona, Urukiko rwashingira ku kuba yarishyuraga Banki y'Abaturage (BPR) 800.000Frw ku kwezi kubera inguzanyo yari yamuhaye, akishyura amafaranga y'ishuli y'abana n'ibindi ; ariyo mpamvu bagenekereje basanga yarabonaga umusaruro ungana na 1.500.000Frw. [15] Basaba ko indishyi Nsengiyumva Daniel asaba zabarwa mu buryo bukurikira : Indishyi z'ibangamirabukungu : $1.500.000 \text{ Frw} \times 12 \times 40\% \times 18 : 1 + (8\% \times 18) = 53.114.754.098 \text{ Frw}$; Indishyi z'akababaro : $1.500.000 \text{ Frw} \times 12 \times 40\% = 7.200.000 \text{ Frw}$; Indishyi z'ibangamira ry'uburanga : $1.500.000 \text{ Frw} \times 12 \times 40\% = 1.800.000 \text{ Frw}$; Indishyi z'ibangamira ry'uburamba mu kazi : $1.500.000 \text{ Frw} \times 6 = 9.000.000 \text{ Frw}$; yose hamwe akaba : 71.114.754.097Frw. [16] Uburanira Prime Insurance Ltd avuga ko ahereye ku byo urega yivugira ko yari umugenzi mu modoka yishingiye, asanga agomba kugenerwa indishyi hashingiye ku masezerano umwishingizi yagiranye na nyir'ikinyabiziga, nk'uko byemejwe n'Urukiko Rukuru, Urugereko rwa Musanze. Asobanura ko uru Rukiko rwashingiye cyane cyane ku ngingo ya 131 y'Itegeko N° 030/2021 ryo ku wa

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30/06/2021 rigenga imitunganyirize y'umurimo w'ubwishingizi. Avuga kandi ko iri Tegeko risumba Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru. [17] Asobanura ko icyo kinyabiziga cyari kigenewe gutwara imizigo n'abantu babiri (2) gusa, kandi Nsengiyumva Daniel akaba yari kumwe n'umushoferi mu modoka, akaba atarabashije kugaragariza inkiko zabanje ibimenyetso by'uko atakoraga kuri icyo kinyabiziga. [18] Akomeza avuga ko igihe Urukiko rwasanga hagomba gushingirwa ku Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru, kuba nta bimenyetso Nsengiyumva Daniel atanga by'umusaruro yinjizaga ungana na 1.500.000Frw, indishyi asaba zabarirwa ku mushahara muto ntarengwa wemewe n'amategeko wa 3.000Frw (SMIG). Avuga kandi ko ibyo Nsengiyumva Daniel aburanisha, avuga ko ashingira umushahara we ku nguzanyo yasabye muri banki, no ku misoro yishyuraga, bitahabwa agaciro kuko bitagaragaza umusaruro yinjizaga mu kwezi. [19] Ku kibazo cyo gutandukanya occupant na

third party bavugwa mu masezerano y'ubwishingizi, uburanira Prime Insurance Ltd avuga ko imyanya 2 yishingiwe igenewe occupant, naho third party akaba ari nk'umuntu wagenda inyuma hejuru y'imizigo mu modoka. Avuga kandi ko kuba mu masezerano bavuga imyanya ibiri ariko ntibavuge amazina y'abayicaramo, kandi Nsengiyumva Daniel akaba yari yicaranye na shoferi mu myanya 2 yari igenewe abakora ku kinyabiziga, ariho bahera bavuga ko yafatwa nk'uwakoraga kuri icyo kinyabiziga, akaba yari occupant. [20] Asoza avuga ko hari 3.000.000Frw Nsengiyumva Daniel yamaze guhabwa harangizwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, akaba agomba kuvanwa mu yo yahabwa. Urega nawe yemera ko yayabonye. UKO URUKIKO RUBIBONA [21] Impaka kuri iki kibazo, zishingiye ku kumenya niba Nsengiyumva Daniel, nk'umugenzi wari mu modoka yakoze impanuka, yagenerwa indishyi hashingiwe ku masezerano umwishingizi yagiranye na nyir'ikinyabiziga, cyangwa niba hashingirwa ku Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryerekeye uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. [22] Ikibazo cyo kumenya niba mu kwishyura indishyi hakoreshewa amasezerano y'ubwishingizi cyangwa Iteka rya Perezida ryavuzwe haruguru cyasuzumwe mu manza zaciwe n'uru Rukiko, zirimo urubanza Nzayikorera Jeanne na bagenzi be baburanaga na SANLAM AG PLC rwaciwe ku wa 17/01/2025, urubanza Kamali na bagenzi be baburanaga na Radiant Insurance Company Ltd rwaciwe ku wa 20/06/2025, n'urubanza Sebyuje Cyprien yaburanaga na SANLAM AG Plc rwaciwe ku wa 11/07/2025. icyakora, aho izi manza zitandukaniye n'uru, ni uko muri izo manza uwakomeretse mu mpanuka yari umukozi wa nyir'ikinyabiziga cyishingiwe, naho muri uru uwakomeretse akaba yari umugenzi. icyo izi manza zifashishwaho, ni ku bijyanye n'isesengura ryakozwe ku ngingo zavugaga abashobora kuvanwa mu bwishingizi bw'uburyozwe. [23] Muri izi manza, hasesengurwaga ingingo ya 4 y'Itegeko Teka No 32/75 ryo ku wa 07 Kanama 1975 nk'uko ryahinduwe, ryerekeye ubwishingizi butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri, iyo ngingo ikaba iteganya ibyiciro by'abashobora kuvanwa mu bwishingire, barimo abantu barebwa n'amategeko yihariye areba ibyago batewe n'impanuka y'akazi, uretse igihe bagumanye uburenganzira bwo gukurikirana uwishingiwe. Urukiko rwagaragaje ko n'ubwo iyi ngingo idasobanura

1 Iyi ngingo iteganya ko igihe habaye impamvu y'icyishingiwe, ikigo cy'ubwishingizi cyishyura indishyi ntarengwa hashingiwe ku gaciro k'icyishingiwe mu masezerano y'ubwishingizi yo kwishyura cyangwa kuriha umufatabwishingizi, cyangwa undi muntu ufite inyungu yishingiwe mu masezerano, ku gihombo cyangwa ibyangijwe byishingiwe.

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neza amategeko yihariye ayivugwamo ayo ari yo, byumvikana ko ari asanzwe arengera abakozi, ni ukuvuga ajyanye n'ubwiteganyirize bw'abakozi cyangwa ubundi bwishingizi bwafatirwa abakozi n'umukoresha wabo. [24] Ibyateganywaga mu ngingo ya 4 y'Itegeko Teka No 32/75 ryo ku wa 07 Kanama 1975 rimaze kuvugwa haruguru, byaje mu ngingo ya 148 y'Itegeko N° 030/2021 ryo ku wa 30/06/2021 rigenga imitunganyirize y'umurimo w'ubwishingizi, ryatangajwe mu igazeti ya Leta ku wa 02/08/2021, ari nabwo ryatangiywe gukurikizwa. Iyo ngingo yagaragaje neza ko mu batishyurwa mu bwishingizi bw'uburyozwe (assurance de responsabilité civile), harimo

abafitanye isano n'umufatabwishingizi bavugwa mu Itegeko; abantu barebwa n'amategeko yihariye mu byerekeye indishyi ziterwa n'ibyago bikomoka ku kazi, ni ukuvuga amategeko ajyanye n'ubwiteganyirize bw'abakozi nk'uko byasobanuwe mu manza zavuzwe haruguru (keretse iyo abo bantu bahisemo gukurikirana indishyi ku mufatabwishingizi); n'abakozi cyangwa abahagarariye umufatabwingizi mu gihe bari mu kazi kabo. [25] Prime Insurance Ltd ivuga ko Nsengiyumva Daniel adakwiye kwishyurwa indishyi zikomoka ku buryozwe, ko ahubwo akwiye kwishyurwa umubare ntarengwa ugenwe (forfait) w'indishyi zihabwa abari mu modoka (occupants), uvugwa mu masezerano y'ubwishingizi, kubera ko yari atwawe muri iyo modoka igihe cy'impanuka. Muri ayo masezerano, hanateganywa indishyi zikomoka ku buryozwe zidafite umubare ugenwe (unlimited) ku muntu utari mu masezerano (un tiers). Ikibazo kigomba gusubizwa aha, ni ukumenya niba Nsengiyumva Daniel wari utwawe mu modoka (occupant), yafatwa nk'utari mu masezerano (tiers) ushobora gusaba indishyi zikomoka ku buryozwe, cyangwa niba agomba guhabwa umubare ntarengwa ugenwe (forfait) w'indishyi uteganywa mu masezerano, nk'uko uregwa abivuga. [26] Umuhanga mu mategeko Gérard CORNU asobanura ko ubwishingizi bw'uburyozwe ari ubugamije kurengera uwishingiwe ku byo yakurikiranwaho n'abatari mu masezerano (tiers), kubera ibyo yabangirije agomba kuryozwa⁵. Uyu muhanga asobanura kandi ko mu byerekeye amasezerano, abatari mu masezerano ari abantu batayabayemo, batanayahagarariwemo, batarebwa no kuba ari itegeko ku bayagiranye, uretse gusa kuba yashobora gukoreshwa kuri bo⁶. Inkoranyamagambo mu byerekeye ubwishingizi nayo isobanura ko utari mu masezerano ari umuntu wese utarayabayemo, akaba atari itegeko kuri we, bitandukanye n'uwishingiwe, uwafashe ubwishingizi, n'uwishingiye⁷. [27] Mu bisobanuro bimaze gutangwa, humvikanamo ibintu by'ingenzi bikurikira :

2 Ubanza RS/INJUST/RC 00008/2024/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 17/01/2025, Nzayikorera Jeanne na bagenzi baburanaga na SANLAM AG PLC, igika cya 34. Urubanza RS/INJUST/RC 00013/2024/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 20/06/2025, Kamali Léonard na bagenzi be baburanaga na Radiant Insurance Company Ltd, igika cya 16. Urubanza RS/INJUST/RC 00021/2024/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 11/07/2025, Sebyuje Cyprien yaburanaga na SANLAM AG Plc n'abandi, igika cya 18. 3 Iyo ngingo iteganya ibi ibikurikira: “Mu bwishingizi bw'uburyoze, aba bakurikira ntibishyurwa: 1° uwashakanye n'umufatabwishingizi, abo akomokaho, abamukomokaho n'abo uwo bashakanye akomokaho baba iwe kandi abafite mu nshingano; 2° abantu barebwa n'amategeko yihariye mu byerekeye indishyi ziterwa n'ibyago bikomoka ku kazi keretse iyo abo bantu bahisemo gukurikina indishyi ku mufatabwishingizi; 3° abakozi cyangwa abahagarariye umufatabwingizi mu gihe bari mu kazi kabo”. 4 Impanuka ivugwa muri uru rubanza yabaye ku wa 06/08/2021, iri Tegeko ryaratangiye gukurikizwa. 5 “Assurances de responsabilité: assurance ayant pour objet de garantir l'assuré contre les recours exercés contre lui par des tiers à raison du préjudice qu'il a pu leur causer et qui engage sa responsabilité; Gérard CORNU, Vocabulaire juridique, 11ème édit., PUF, 2016, p. 97. 6 “En matière contractuelle: le tiers est une personne n'ayant été ni partie ni représentée à un contrat qui n'est pas touchée par son effet obligatoire”, ibidem, p. 1026. 7 “On qualifie de tiers toute personne qui n'est pas partie à un contrat d'assurance, et qui n'est donc pas engagée par celui-ci, à la différence de l'assuré, du souscripteur du contrat d'assurance et de l'assureur”; Lexique de l'assurance,

Définition tiers, consulté le 22/10/2025, <https://www.april.fr/assurance/lexique/tiers>.

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Itegeko rigena abatishyurwa mu bwishingizi bw'uburyozwe (assurance de responsabilité civile), abo bakaba ari abafitanye isano n'umufatabwishingizi bavugwa n'itegeko ; abantu barebwa n'amategeko yihariye mu byerekeye indishyi ziterwa n'ibyago bikomoka ku kazi, ni ukuvuga amategeko ajyanye n'ubwiteganyirize bw'abakozi ; n'abakozi cyangwa abahagarariye umufatabwishingizi mu gihe bari mu kazi kabo ; Ubwishingizi bw'uburyozwe bugamije kurengera uwishingiwe ku byo yakurikiranwaho n'abatari mu masezerano (tiers), kubera ibyo yabangirije agomba kuryozwa ; Utari mu masezerano (tiers) ni umuntu wese utarayabayemo cyangwa ngo ayahagararirwemo; Umuntu utwawe mu kinyabiziga cyishingiwe nk'umugenzi (passager), utarabaye mu masezerano y'ubwishingizi cyangwa ngo ayahagararirwemo, afatwa nk'utari mu masezerano (tiers), agahabwa indishyi zikomoka ku buryozwe bwa nyiri kinyabiziga, mu gihe atari mu bo itegeko rishyira mu batishyurwa mu bwishingizi bw'uburyozwe. [28] Ku bijyanye n'uru rubanza, Urukiko rusanga ababuranyi bemeranywa ko nta sano Nsengiyumva Daniel yari afitanye na nyir'ikinyabiziga cyafatiwe ubwishingizi muri Prime Insurance Ltd. Rusanga atari n'umukozi wa nyir'ikinyabiziga, kuko yatanze impapuro zerekana ko yari yariyandikishije nk'umusoreshwa mu Kigo cy'Igihugu Gishinzwe Imisoro (RRA), bigaragaza ko yari afite imirimo akora kandi asorera. Ntaho binagaragara ko yarebwaga n'amategeko yihariye ajyanye n'ubwiteganyirize bw'abakozi, bivuga ko atari mu batishyurwa mu bwishingizi bw'uburyozwe. [29] Urukiko rusanga Nsengiyumva Daniel yari umugenzi watwawe mu kinyabiziga cyateje impanuka yakomerekeyemo, akaba atarabaye mu masezerano y'ubwishingizi bw'icyo kinyabiziga, akaba atari mu batishyurwa mu bwishingizi bw'uburyozwe, bivuga ko nta kimubuza gukurikirana indishyi zikomoka ku buryozwe bwa nyir'ikinyabiziga cyishingiwe na Prime Insurance Ltd zigenwa n'amategeko. [30] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Nsengiyumva Daniel yahabwa indishyi ziteganywa n'Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 ryerekeye uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. [31] Ku bijyanye n'ibyo Prime Insurance Ltd ivuga ko ingingo ya 131 y'Itegeko N° 030/2021 ryo ku wa 30/06/2021 rigenga imitunganyirize y'umurimo w'ubwishingizi ari yo yashingirwaho, Urukiko rusanga nta shingiro bifite, kuko iyo ngingo irebana n'ubwishingizi bw'ibintu kandi atari cyo kiburanwa muri uru rubanza. Ku bijyanye n'uburyo indishyi zabarwa [32] Ababuranyi bemeranywa ko Nsengiyumva Daniel yagize ubumuga buhoraho bungana na 40%. [33] Ingingo ya 5 y'Itegeko No 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, iteganya ko iyo impanuka yateye ubumuga uwangirijwe bumubuza gukora akazi burundu, agomba guhabwa amafaranga y'indishyi kubera ubusembwa ku mubiri, guhungabana mu bwenge bwe cyangwa kubera ingaruka bifite ku nyungu yavanaga ku mwuga we atagishoboye gukora kubera ubumuga. Iyo ngingo iteganya kandi ko indishyi zigenwa hakurikijwe Iteka rya Perezida wa Repubulika. [34] Mu rwego rwo gushyira mu bikorwa ibiteganywa n'ingingo imaze kuvugwa, hagiyeho 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 yaryo ya 188 ikaba ari yo igena indishyi zihabwa abagize ubumuga buhoraho burenze 30%.

8 Iyo ngingo iteganya ibi bikurikira: “Iyo ari ubumuga buhoraho burengeje 30%, indishyi y’ibangamirabukungu ikorwa hakurikijwe amategeko akurikira:

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[35] Uru Rukiko rwasesenguye ibiteganywa n’iyi ngingo mu rubanza SANLAM AG Plc yaburanaga na Uwihanganye Jean9, rusanga mu bahohotewe bayivugwamo, hatagaragaramo abafite umwuga wigenga cyangwa abantu bakora umwuga bigengaho. Urukiko rwasanze mu kugena umusaruro fatizo waherwaho mu kubabarira indishyi, hakwifashishwa ibiteganywa mu ngingo ya 14, igika cya 3, y’Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru birebana n’ubumuga bw’igihe gito ; bikaba bihura n’ibiteganywa mu ngingo ya 4, igika cya 4, y’Itegeko No 41/2001 ryo ku wa 19/09/2001 naryo ryavuzwe haruguru irebana n’ubumuga bw’igihe gito. [36] Ingingo ya 4, igika cya 4, y’Itegeko No 41/2001 ryo ku wa 19/09/2001 ryavuzwe haruguru, iteganya ko abantu bakora imirimo bigengaho bagomba kwerekana inyandiko mpamo zerekana inyungu bakuye ku mwuga wabo mu gihe cy’amezi 12 yabanjirije impanuka. Mu ngingo ya 14, igika cya 3, y’Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003, hateganyijwe ko abafite umwuga wigenga cyangwa abantu bakora umwuga bigengaho bagomba kwerekana ibikorwa bigaragara byerekana inyungu zabo ziciriritse z’amezi 12 abanziriza impanuka. Mu gika cya 5, iyo ngingo yongeraho ko ibyo bigomba guhuzwa n’impapuro zibimenyesha serivisi z’imisoro n’Isanduku y’Ubwiteganyirize bw’Abakozi. [37] Ku bijyanye n’uru rubanza, impanuka yakozwe ku wa 06/08/2021, bivugwa ko inyandiko zerekana inyungu Nsengiyumva Daniel yakuye ku mwuga we mu gihe cy’amezi 12 yabanjirije impanuka yagombye kugaragaza, ari izo kuwa ku wa 06/08/2020 kugeza ku wa 06/08/2021. Asaba ko indishyi zabarirwa ku mushahara yinjizaga ungana na 1.500.000Frw, akavugaga ko ibimenyetso by’uko ari ayo mafaranga yinjizaga ari imenyekanishamusoro yakoraga mu Kigo cy’Igihugu gishinzwe Imisoro n’Amahoro (RRA). [38] Urukiko rusanga, mu mpapuro z’imenyekanishamusoro Nsengiyumva Daniel yatanze, harimo iza mbere y’itariki ya 06/08/2020, izo zikaba ntacyo zafasha mu rubanza, uretse ko zitanagaragaza ko yinjizaga 1.500.000Frw. Izindi mpapuro yatanze, ni izirebana n’umusoro wo kuwa ku wa 01/01/2020 kugeza ku wa 31/12/2020, ariko nazo zikaba zitagaragaza amafaranga yinjizaga yaheragaho asora, n’ayo yasigaranaga amaze gusora, kuko ari byo byafasha Urukiko kumenya umusaruro w’umwaka umuntu atahana uherwaho mu kubara indishyi. [39] Urukiko rurasanga kandi, inyandiko Nsengiyumva Daniel yarushyikirije y’amasezerano y’umwenda yagiranye na Banki y’Abaturage y’u Rwanda (BPR), igaragaza ko yari yiyemeje kujya yishyura iyi Banki 852.943Frw buri kwezi, idafasha kumenya umusaruro nyakuri yavanaga mu bucuruzi bwe, n’umusaruro utahanwa yinjizaga nyuma yo gusora. [40] Ingingo ya 18 y’Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru, iteganya ko iyo uwahohotewe cyangwa abamufiteho uburenganzira badashobora kwerekana umusaruro we nyakuri ukomoka ku murimo, akaba yari afite imyaka irenze 16 igihe cy’impanuka, amafaranga agomba guhabwa

Iyo uwahohotewe akora umurimo ahemberwa, ahabwa amafaranga abarwa hakurikijwe igihembo umuntu atahana, urwego rw'ubumuga n'imyaka ye. Iyo uwahohotewe ahembwa umushahara amaze igihe kitarenze amezi atandatu adakora, ahabwa amafaranga abarwa hakurikijwe igihembo cye cya nyuma atahana, urwego rw'ubumuga n'imyaka ye. Iyo uwahohotewe akora umurimo adahemberwa (si la victime n'exerce pas une activité rémunérée) cyangwa iyo yakoraga gusa imirimo yo mu rugo, cyangwa se iyo abamufiteho uburenganzira badashobora kwerekana umusaruro we nyakuri ukomoka ku murimo, kandi niba yari afite imyaka irenze 16 igihe cy'impanuka, amafaranga agomba guhabwa azabarwa bahereye ku ifatizo ry'inshuro imwe y'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Indishyi izakorwa mu buryo bukurikira: Umusaruro w'umwaka umuntu atahana x umubare w'imyaka ashigaje kubaho akora x ijanisha ry'ubumuga. Amafaranga(capital)= 1+(igipimo cy'ibitsa x umubare w'imyaka ashigaje kubaho akora) Ibyo aribyo byose, iyo ndishyi ntigomba kurenga, yose hamwe, inshuro mirongo inani umushahara w'umwaka muto ntarengwa wemewe n'amategeko". 9 Urubanza N° RS/INJUST/RC 00009/2022/SC rwaciye n'Urukiko rw'Ikirenga ku wa 18/05/2023, SANLAM AG Plc yaburanaga na Uwihanganye Jean, igika cya 16.

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y'indishyi z'ibangamirabukungu azabarwa bahereye ku ifatizo ry'inshuro imwe y'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. [41] Urukiko rusanga rero, mu gihe Nsengiyumva Daniel atabasha kugaragaza umusaruro nyakuri yinjizaga, indishyi z'ibangamirabukungu asaba guhabwa zigomba kubarirwa ku mushahara w'umwaka muto ntarengwa wemewe n'amategeko wemejwe n'uru Rukiko ungana na 3.000Frw10, zikabarwa mu buryo bukurikira: $3.000 \text{ Frw} \times 30 \times 12 \times 18 \times 40\% = 3.093.325 \text{ Frw}$ $1+(8,410\% \times 18)$ [42] Ku bijyanye n'izindi ndishyi Nsengiyumva Daniel asaba, Urukiko rusanga zigomba kubarwa mu buryo bukurikira : Indishyi z'akababaro : $3.000 \text{ Frw} \times 30 \times 12 \times 40\% = 432.000 \text{ Frw}$ Indishyi z'ibangamira ry'uburanga : $3.000 \text{ Frw} \times 30 \times 12 \times 40\% = 432.000 \text{ Frw}$ Indishyi z'ibangamira ry'uburambe mu kazi : $3.000 \text{ Frw} \times 30 \times 6 = 540.000 \text{ Frw}$ [43] Urukiko rurasanga indishyi zose hamwe Nsengiyumva Daniel agomba guhabwa zingana na : $3.093.325 \text{ Frw} + 432.000 \text{ Frw} + 432.000 \text{ Frw} + 540.000 \text{ Frw} = 4.497.325 \text{ Frw}$. Urukiko rurasanga ariko, hagomba kvanwamo 3.000.000Frw yemera ko yahawe na Prime Insurance Ltd harangizwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane. Ni ukuvuga ko ayo agomba guhabwa harangizwa uru rubanza ari $4.497.325 \text{ Frw} - 3.000.000 \text{ Frw} = 1.497.325 \text{ Frw}$. Kumenya ishingi ry'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka [44] Nsengiyumva Daniel n'umwunganira basaba ko Prime Insurance Ltd yamwishyura 1.500.000Frw kubera gukomeza kumushora mu manza ; ni ukuvuga 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka. [45] Uhagarariye Prime Insurance Ltd asaba ko ihabwa 500.000 Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka. UKO URUKIKO RUBIBONA [46] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka Prime Insurance Ltd isaba itayahabwa kuko itsinzwe urubanza. Rurasanga 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka Nsengiyumva Daniel asaba yayahabwa kuko ari mu rugero. III. ICYEMEZO CY'URUKIKO [47] Rwemeje ko ikirego rwashyikirijwe na Nsengiyumva Daniel cyo gusubirishamo ku mpamvu z'akarengane

urubanza RCA00061/2023/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 25/09/2024, gifite ishingiro; [48] Rwemeje ko imikirize y'urubanza RCA00061/2023/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 25/09/2024, ihindutse kuri byose;

10 Urubanza N° RCAA 0049/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016, SORAS AG Ltd yaburanaga na UMUHOZA Pacifique n'abandi, igika cya 28.

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[49] Rutegetse Prime Insurance Ltd guha Nsengiyumva Daniel indishyi zikomoka ku mpanuka zingana na 4.497.325 Frw, zikubiyemo indishyi z'ibangamirabukungu, iz'akababaro, iz'ibangamira ry'uburanga, n'iz'ibangamira ry'uburambe mu kazi ; [50] Rutegetse ko muri izo ndishyi habanza kvanwamo 3.000.000Frw Nsengiyumva Daniel yahawe na Prime Insurance Ltd harangizwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, agahabwa 1.497.325Frw ; [51] Rutegetse Prime Insurance Ltd guha Nsengiyumva Daniel 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka.

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