

RWANDA / JUDGMENT

# RADIANT INSURANCE COMPANY LTD V KAMALI N'ABANDI

RCA00021/2022/HC/RWG

COURT

High Court

DECIDED

30 June 2023

CASE / FILE NUMBER

RCA00021/2022/HC/RWG

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## RADIANT INSURANCE COMPANY LTD V KAMALI N'ABANDI

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### Text

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RADIANT INSURANCE COMPANY LTD V KAMALI N'ABANDI [Rwanda URUKIKO RUKURU URUGEREKO RWA RWAMAGANA – RCA00021/2022/HC/RWG (Mugeyo, P.J.) 30 Kamena 2023]

Itegeko Teka 20/75 ryerekeye ubwishingire – Ubwishinginzi rusange – Abatarebwa n'ubwishingizi rusange – Abakora ku modoka yakoze impanuka bafite ubundi bwishingizi – Ntabwo mu gutanga indishyi zikomoka ku mpanuka hashingirwa ku Iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga mu gihe uwahitanywe n'impanuka yari asanzwe akora kuriyo modoka kandi hari amasezerano y'ubwishingizi agenera indishyi abakozi bakomerekeye cyangwa baguye mu mpanuka yatewe n'ikinyabiziga bakoraho. Incamake y'ikibazo: Uru rubanza rwatangiye abo mu muryango wa Bazabibazwa barega Radiant Insurance Company Ltd mu Rukiko Rwisumbuye rwa Ngoma kubera impanuka yamuhitanye ubwo imodoka Pick-Up Daihatsu Delta plaque RAB 381C yarabereye tandiboyi yakoraga impanuka iva Kigali yerekeza Nzige. Abo mu muryango we bagerageje kumvikana na Radiant Insurance Company Ltd nk'umwishingizi biranga bituma

batanga ikirego. Urukiko mu rubanza RC00057/2021/TGI/NGOMA, rwemeje ko, ikirego cya Kamali n'umuryango we gifite ishingiye kuri bimwe; rwemeza ko, Radiant Insurance Company Ltd ibishyura indishyi zitandukanye baregeye zingana na 13 188 160Frw. Radiant Insurance Company Ltd ntiyanyuzwe nicyo cyemezo ikijuririra mu Rukiko Rukuru urugereko rwa Rwamagana. Radiant insurance Company Ltd ivuga ko, Urukiko Rwisumbuye rutitaye ku myiregurire yabo, ko indishyi zatanze ku rwego rwa mbere zitari gutangwa hashingiwe ku iteka rya Perezida rigena itangwa ry'indishyi zikomoka ku mpanuka kuko nyakwigendera yari kigingi w'imodoka ahubwo ngo haragombaga kugenderwa k'ubwishingizi bwafatiwe abakozi ku modoka. Abaregwa bose baburanye bavuga ko, amasezerano y'ubwishingizi yabaye hagati ya Sanlam Ag Ltd (Ex Soras) yagiranye na Hakizamungu kuwa 12/02/2019, aburanishwa na Radiant Insurance Company Ltd ari amasezerano y'abantu ku giti cyabo adashobora kuvuguruza ibikubiye mu ngingo z'itegeko ry'umuryango ndetse n'iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Basabye Urukiko kwemeza ko urubanza rujuririrwa rudahindutse. Urukiko mu rubanza RCA00021/2022/HC/RWG rwemeje ko indishyi zitangwa hashingiwe ku masezerano y'ubwishingizi bwafatiwe abakozi ku modoka kuko gutanga indishyi hashingiwe rya perezida ryavuzwe haruguru ari ukunyuranya n'amahame rusange yuko umwishingizi yishyura ibyo yishingiye kandi ibyo bakaba barabivuze muri ayo masezerano y'ubwishingizi kuko agaragaza amafaranga agomba kwishyurwa mu gihe cy'impanuka. Ku bijyanye n'indishyi z'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rwemeje ko zitagomba gutangwa kuko ubujurire bwa Radiant Insurance Company Ltd rwemeje ko bufite ishingiye kandi ntigagaraze ko ayo yaciye mu rubanza rujuririrwa yayatanze ngo ibe yasaba kuyasubizwa. Incamake y'icyemezo: 1. Ntabwo mu gutanga indishyi zikomoka ku mpanuka hashingirwa ku iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga mu gihe uwahitanywe n'impanuka yari

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asanzwe akora kuriyo modoka kandi hari amasezerano y'ubwishingizi agenera indishyi abakozi bakomerekeye cyangwa baguye mu mpanuka yatewe n'ikinyabiziga bakoraho.

2. Indishyi z'ikurikiranarubanza n'igihembo cya Avoka ntizitangwa ku muburanyi watsinzwe mu Rukiko rwabanye hanyuma agatsinda mu bujurire kandi atagaragaza ko izo yaciye ku rwego rwa mbere yazitanze. Ubujurire bufite ishingiye kuri bimwe. Amategeko yashingiweho. Iteka N° 32/75 ryo kuwa 07/06/1975 rigena ubwishinginzi bw'ibinyabiziga bifite moteri. Ingingo ya 4 Itegeko Teka 20/75 ryo kuwa 20/06/1975 ndetse n'ibisabwa byihariye (les conditions générales), ingingo ya 7 Imanza zifashishijwe. Urubanza RCA 00202/2020/HC/KIG haburana Sanlam AG Plc na Ayinkamiye n'abandi rwaciye n'Urukiko Rukuru kuwa 25/02/2021 Urubanza RCA 00298/2018/HC/KIG haburana Soras AG Ltd na Murekeyisoni n'abandi rwaciye n'Urukiko Rukuru kuwa 10/06/2019 Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku mpanuka yabaye ku wa 29/01/2021 saa 15h00, mu mudugudu wa Nkira, akagari ka Ntunga, umurenge wa Mwurire mu karere ka Rwamagana, intara y'I

Burasirazuba, yatewe n'imodoka PICK-UP DAIHATSU Delta plaque RAB 381C, ifite ubwishingizi muri Radiant insurance Company Ltd, itwawe n'umushoferi witwa Nshimiyimana Emmanuel wavaga I Kigali yerekeza I Nzige, ageze ahari "dos d'âne", afite umuvuduko mwinshi arenga umuhanda iragwa, Bazabibazwa wari Tandiboyi wari mu modoka aragwa arakomereka bimuviramo gupfa. Abaregera ndishyi ntibumvikana n'umwishingizi baregera Urukiko. [2] Mu rubanza RC00057/2021/TGI/NGOMA, abaregera mu Rukiko baregeye indishyi zitandukanye zirimo indishyi z'ibangamirabukungu, iz'impozamarira; iz'ibyakoreshejwe mu gushyingura nyakwigendera; n'amafaranga yakoreshejwe mu gukurikirana dosiye n'ayagiye ku rubanza, yose hamwe akaba 13.839.660Frw, maze Urukiko ruca urubanza rwemeza ko, ikirego cya Kamali Léonard n'umuryango we gifite ishingiro kuri bimwe; rwemeza ko, Radiant Insurance Company Ltd ibishyura indishyi zingana na 13 188 160Frw, akubiyemo amafaranga y'uRwanda 7 020 000frw y'indishyi z'ibangamirabukungu kuri Kamari Leonard na Nyirabahire Consolée; amafaranga y'uRwanda 3.240.000 (540.000Frw kuri buri wese) y'indishyi z'impozamarira; amafaranga y'uRwanda 661.160 y'indishyi zo gusubizwa ibyo umuryango watanze mu gushyingura; amafaranga y'uRwanda 647.000 y'indishyi z'amafaranga yagiye ku gukurikirana. Radiant Insurance Company Ltd yarajuriye. [3] Mu mwanzuro w'ubujurire wa Radiant insurance Company Ltd iburanirwa na Me Ndayisaba Fidèle yavuze ko, Urukiko Rwisumbuye rutitaye ku myiregurire yabo, ko indishyi zatanze ku rwego rwa mbere zatari gutangwa hashingiwe ku iteka rya Perezida rigena itangwa ry'indishyi zikomoka ku mpanuka mu gihe abaregaga bemeje ko, nyakwigendera yari kigingi w'imodoka

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cyangwa niba haragombaga kugenderwa k'ubwishingizi bwafatiwe abakozi ku modoka kuko uwitabye Imana yari umukozi wo ku modoka(kigingi). [4] Abaregwa bose bahagarariwe na Me Nshimiyimana Emmanuel baburanye bavuga ko, amasezerano y'ubwishingizi yabaye hagati ya SANLAM AG Ltd (Ex SORAS) yagiranye na Hakizamungu Théogène kuwa 12/02/2019 Radiant insurance Company Ltd iburanisha ni amasezerano y'abantu ku giti cyabo adashobora kuvuguruza ibikubiye mu ngingo z'itegeko ry'umuryango ndetse n'iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Yasabye Urukiko kwemeza ko urubanza rwaciye rudahindutse. [5] Ibigomba gusuzumwa muri uru rubanza ni ukumenya niba indishyi zaregowe zitaragombaga gushingirwa ku Iteka rya Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. II. ISESENGURA RY'IBIBAZO KIGIZE URUBANZA Ku byerekeye kumenya niba indishyi zatanze zitaragombaga gushingirwa ku Iteka rya Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga [6] Mu bisobanuro ku bujurire bwa Radiant insurance Company Ltd iburanirwa na Me Ndayisaba Fidèle yavuze ko, impanuka Bazabibazwa yazize yatewe n'ikinyabiziga PICK-UP DAIHATSU Delta plaque RAB 381C wari Tandiboyi(kigingi) wayo, iyo modoka ikaba yari yishingiye na Radiant Insurance Company Ltd, nyamara ngo Urukiko rwisumbuye rwageneye indishyi abarega rushingiye ku Iteka rya

Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga aho gushingira ku masezerano y'ubwishingizi Radiant insurance company Ltd yagiranye na nyir'ikinyabiziga cyakoze impanuka; [7] Radiant insurance Company Ltd na none yasobanuye ko, nyir'ikinyabiziga ariwe wahisemo ubwishingizi afata, aho yafatiye utwaye imodoka n' abayikoraho ubwishingizi bwihariye butandukanye n'ubundi bwishingizi ( uburebana n'impamvu izo arizo zose "assurance tous risques" cyangwa ubwishingizi bw'uburyozwe ku by'abandi "assurances contre tiers"), inshingano z'umwishingizi zikaba ari ukubahiriza ayo masezerano, nyakwigendera Bazabibazwa akaba yari umukozi kuri iyo modoka Tandiboyi (kigingi) wishingiwe ku mafaranga 3.000.000; yatanze imanza zitandukanye zirimo RCA00202/2020/HC/KIG na RCA00298/2018/HC/KIG zisa n'uru zaciwe n' inkiko zitandukanye uru Rukiko rwahuza n'imicire yazo hagakosorwa urubanza bajurirye. Yasabye amafaranga y' igihembo cya Avoka angana na 800.000Frw ku nzego zombi na 350.000Frw y' ikurikiranarubanza n' ingwate y' amagarama. [8] Abaregwa bahagarariwe na Me Nshimiyimana Emmanuel bireguye kuri ubu bujurire bavuga ko, amasezerano y'ubwishingizi yabaye hagati ya Radiant Insurance company Ltd yagiranye na Hakizamungu Théogène kuwa 12/02/2019 ni amasezerano y'abantu ku giti cyabo adashobora gushingirwaho hakurikijwe ingingo ya 4 y'Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango iteganya ko: "Amasezerano y'abantu ku giti cyabo ntagomba kunyuranya n'amategeko arengera uburenganzira bwa muntu cyangwa arebana n'umudendeze wa rubanda n'imyifatire mbonezabupfura." Kimwe na none n'ibiteganywa n'ingingo ya 22 y'Iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga urukiko rwashingiyeho nayo iteganya uburenganzira ku ndishyi zikomoka ku mpanuka. Yasabye Urukiko kwemeza ko urubanza rwaciwe rudahindutse no gutegeka Radiant insurance company Ltd kubaha indishyi z'ikurikiranarubanza n'igihembo cya Avoka

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zihwanye n'ibihumbi magana atanu y'Urwanda (500.000Frw) mu rwego rwa mbere na 500.000Frw ku rwego rw'ubujurire. UKO URUKIKO RUBIBONA [9] Nk'uko byasobanuwe impanuka Bazabibazwa yazize yatewe n'ikinyabiziga PICK-UP DAIHATSU Delta plaque RAB 381C wari Tandiboyi (kigingi) wayo, iyo modoka ikaba yarishingiwe na Radiant Insurance Company Ltd, amasezerano y'ubwishingizi Mukeshimana yagiranye na Radiant insurance Company Ltd yo kuwa 9/11/2020, yagombaga kurangira tariki ya 08/02/2021, muri ayo masezerano hakaba havugwamo ko, umubare w' amafaranga agomba kwishyurwa uwafashe ubwishingizi n' abakora ku modoka mu gihe habaye impanuka ari amafaranga miliyoni eshatu k'uwapfuye, ibihumbi magana atatu yo kwivuza n' amafaranga miliyoni eshatu mugihe umuntu agize ubumuga buhoraho; mu ijamba risoza muri ayo masezerano hagenekerejwe havugwa ko, ibikubiye muri ayo masezerano nk'uko byavuzwe aribyo byonyine umwishingizi agomba kwishyura nk'uko byasabwe n'uwishingiwe, byavuzwe muri aya magambo " Seules les garanties ci-dessus limitées sont acquises. Toutes autres garanties non mentionnées sont exclues a la demande expresse de l'assuré ". [10] Mu rubanza RC00057/2021/TGI/NGOMA mugika cya 17, Urukiko Rwisumbuye rwavuze ko, ibyo kwishingira umukozi ukora ku mudoka bitari mu bwishingizi rusange

(assurance contre tiers) ukurikije “ les conditions générales d’assurance”, ko ibi Urukiko rutabigenderaho kuko rusanga bidakwiye ko, umukozi ukora ku modoka bivugwa ko, afatirwa ubwishingizi ku ruhande, kandi wajya kureba ugasanga ntabwo yafatiwe, akenshi bene abangaba nta bwishingizi bafatirwa. Ni biba ngombwa abishingizi bazazamure kuri ka “prime” ariko abashoferi n’abatandiboyi cyangwa undi mukozi ufite uko akora ku modoka abe yishingiwe bihagije, (...), ibi nyamara ayo masezerano akaba abivuguruzwa kuko abakozi kuri iyo modoka bafatiwe ubwishingizi bugaragaza n’amafaranga agomba kwishyurwa mu gihe cy’ impanuka. Ayo masezerano akaba ariyo agomba gushingirwaho mu kugena indishyi zigomba gutangwa mu gihe mukozi wakoraga kur’iyo modoka (tandiboyi) yitabyimana. [11] Uru Rukiko rurasanga, ibyo kwirengangiza amasezerano y’ ubwishingizi yakozwe k’ ubushake bw’uwafashe ubwishingizi no gushingira ku masezerano atareba uregera indishyi kandi ayo masezerano atarasheshwe cyangwa ngo aregerwe n’ ubufitemo inyungu ari ukunyuranya n’ amahame rusange yuko umwishingizi yishyura ibyo yishingiye kandi ibyo bakaba barabivuze muri ayo masezerano y’ ubwishingizi yakozwe, iyo ikaba ari inenge ituma urwo rubanza rugomba guhinduka. [12] Urukiko rero rusanga kuba imodoka PICK-UP DAIHATSU Delta plaque RAB 381C wari Tandiboyi(kigingi) wayo, iyo modoka ikaba yari yishingiwe na Radiant Insurance Company Ltd, amasezerano y’ubwishingizi yabaye hagati ya Mukeshimana na Radiant insurance Company Ltd yo kuwa 9/11/2020, akaba asobanutse yakozwe impanuka ifite ubwishingizi busobanutse mu masezerano yavuzwe, ayo masezerano akaba ariyo agomba gushingirwaho mu kugena indishyi zihabwa abareze ku rwego rwa mbere, kuko nta yindi mpamvu yatuma ayo masezerano y’ubwishingizi yirengagizwa ngo indishyi zishingirwe ku Iteka rya Perezida rigena indishyi kandi ibiyakubiyemo bisobanutse, byongeye ko niryo teka ubwaryo ritabirwanyana.

1 Ingingo ya 4 y’iteka N° 32/75 ryo kuwa 07/06/1975 rigena ubwishinginzi bw’ibinyaziga bifite moteri (l’assurance obligatoire de la responsabilité civile en matière de véhicule automoteurs) yagarutse ku biteganywa n’ ingingo ya 7 y’ Itegeko Teka 20/75 ryo kuwa 20/06/1975 ndetse n’ibisabwa byihariye(les conditions générales ) zigaruka ku batarebwa n’ ubwishinginzi rusange, barimo n’abakozi bo ku modoka bafatiwe ubundi bwishingizi

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[13] Kubera izo mpamvu, uru Rukiko rusanga icyemezo cyafashwe ku rwego rwa mbere kigomba guteshwa agaciro, Radiant insurance Company Ltd ikaba igomba gutegekwa guha Kamali Léonard na bagenzi be (les ayants droit) indishyi zingana n’ amafaranga miliyoni eshatu(3.000.000Frw) n’amafaranga ibihumbi Magana atatu(300.000Frw) yibyakoreshejwe hatitawe kuyasabwe, nk’uko zateganijwe mu masezerano y’ubwishingizi yo ku wa 9/11/2020 yagiranye na ny’irikinyabiziga cyateje impanuka ivugwa muri uru rubanza; uwo murongo ukaba ari nawo wafashwe mu zindi manza zisa n’uru zaciwe kuri uru rwego nka RCA00202/2020/HC/KIG na RCA00298/2018/HC/KIG zavuzwe. [14] Naho ku byerekeye indishyi z’ ikurikirana rubanza n’ igihembo cy’avoka yasabwe n’ impande zombi, uru Rukiko rusanga zitangomba gutangwa kuko ubujurire bwa Radiant insurance Company Ltd bufite ishingiro nyamara itagaragaza ko ayo yatsindiye yigeze yayishyuye ngo isigare iburana ayandi, bivuze ko nubundi igomba gutegekwa kwishyura ayo yemerewe kwishyura. III.

ICYEMEZO CY'URUKIKO [15] Rwemeje kwakira ubujurire bwa Radiant insurance Company Ltd kandi ko, bufite ishingiro kuri bimwe; [16] Rwemeje ko, RC00057/2021/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 27 Mutarama 2022, ruhindutse ku byerekeye indishyi zagenwe; [17] Rwemeje ko, abarega bagenerwa indishyi hakurikijwe amasezerano y' ubwishingizi Mukeshimana yagiranye na Radiant insurance Company Ltd yo kuwa 9/11/2020; [18] Rutegetse Radiant insurance company Ltd guha Kamali Léonard ; Nyirabahire Consolee, Nyiranizeyimana Donata, Mukandayisenga Dorocella, Uwimbabazi Devote, Urukundo Valentine, Uwiduhaye Jeannette, Nzayituriki Eric indishyi z' amafaranga miliyoni eshatu n' ibihumbi Magana atatu (3.300.000Frw). [19] Rutegetse ko, amafaranga yatanzweho ingwate y' amagarama muri uru rubanza ahwanye n' ibyakozwe.

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