

RWANDA / JUDGMENT

RADIANT INSURANCE COMPANY Ltd v GATABAZI

RCA 00211/2022/HC/KIG

COURT

High Court

DECIDED

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RADIANT INSURANCE COMPANY Ltd v GATABAZI

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Text

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RADIANT INSURANCE COMPANY Ltd v GATABAZI [Rwanda URUKIKO RUKURU - RCA 00211/2022/HC/KIG (Harerimana, P.J.) 28 Nyakanga 2023] Amategeko y'imanza z'imbonezamubano - Ubwishingizi - Imanza z'indishyi - Umuntu watakaje akazi kubera impanuka akagira igihombo, agenerwa indishyi zireberwa ku byo yinjizaga biturutse ku kazi ku muni w'impanuka. Amategeko agenga imanza z'imbonezamubano - Ubwishingizi - Imanza z'indishyi - Uhabwa indishyi zo gutakaza akazi - Uhabwa indishyi zo gutakaza akazi agomba kuba yari agafite akagatakaza kubera impanuka Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge Gatabazi arega RADIANT INSURANCE COMPANY Ltd (RADIANT) asaba indishyi zikomoka ku mpanuka yakorewe n'ikinyabiziga cyari cyishingiye na RADIANT. Urukiko rwageneye urega indishyi zitandukanye ariko uregwa ntiyanyurwa n'icyo cyemezo akijuririra mu Rukiko Rukuru avuga ko Urukiko rwageneye Gatabazi indishyi mbangamiraburambe ku kazi rutabanje kugaragaza ko yakoraga. Gatabazi nawe yatanze ubujurire bwuririye ku bundi avuga ko yagenewe indishyi mbangamiraburambe hagendewe ku

mushahara fatizo w'ibihumbi bitatu (3000 frw) kandi we afite akazi kazwi. Urukiko Rukuru rwakiriye ubwo bujuriye maze rusuzuma ibibazo birimo kumenya niba Gatabazi akora impanuka atari afite akazi no kumenya umushahara ukwiye gushingirwaho mu kumubarira indishyi. RADIANT ivuga ko Gatabazi yagombaga guhabwa indishyi mbangamiraburambe ku kazi amaze kugaragaza ko yari asanzwe akora, akaba atarigeze abigaragaza, ko n'ikarita y' akazi yatanze yari yararangiye. Gatabazi asobanura ko yari afite akazi kazwi kuko yari umumotari. Akomeza avuga ko atagombaga kubarirwa indishyi mbangamirabukungu nk'umuntu udafite akazi kazwi aho yabariwe ku bihumbi bitatu (3000 FRW) aho kuba ibihumbi icumi (10000 FRW) kuko ariyo yinjizaga. Incamake y'icyemezo: 1. Abakora umwuga w'ubumotari babarirwa mu bakora akazi bigengaho bityo ibyo RADIANT ivuga ko Gatabazi nta kazi kazwi yari afite nta shingiro bifite kuko afite ikarita y'akazi k'ubumotari ndetse na carte jaune ya moto iri mu mazina ye.

2. Umuntu watakaje akazi kubera impanuka akagira igihombo, agenerwa indishyi zireberwa ku byo yinjizaga biturutse ku kazi ku muni w'impanuka bityo mu kubarira Gatabazi indishyi z'ibangamirabukungu hakaba hashingirwa ku musaruro abandi bakora umurimo nk'uwe binjiza ku mwaka aho gushingira ku mushahara muto ntarengwa wemewe n'amategeko (SMIG). Ubujuriye bwatanze na Radiant Insurance Company Ltd nta shingiro bufite; Urubanza RC 00248/2021/TGI/NYGE ruhindutse gusa ku bijyanye n'ingano y'indishyi mbangamirabukungu n'ibyakoreshejwe mu rubanza. Amategeko yashingiweho:

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Itegeko N° 22/2018 ryo kuwa 29/4/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz' ubucuruzi, umurimo n'ubutegetsi, ingingo ya 111; Imanza zifashishijwe: RS/INJUST/RC 00010/2021/SC, Prime Insurance Company Ltd na Uwimanimpaye Jean Claude rwaciwe n' Urukiko rw'Ikirenga kuwa 2/12/2022; RS/INJUST/RC 00014/2022/SC, Kwizera Eric na RADIANT INSURANCE COMPANY Ltd rwaciwe n' Urukiko rw'Ikirenga kuwa 18/5/2023. Urubanza I. IMITERERE Y' URUBANZA [1] Ku wa 18/08/2020, mu Mudugudu w'Ubucuruzi, Akagali ka Nyabugogo, Umurenge wa Muhima, Akarere ka Nyarugenge, habaye impanuka y'imodoka Toyota Hiace RAB496B yari ifite ubwishingizi bwo muri Radiant Insurance Company Ltd, yari itwawe n'uwitwa Nsabimana Valens, iyo modoka ikaba yaragonze Gatabazi Pierre wari utwaye TVS RC 763A. [2] Gatabazi Pierre yandikiye RADIANT INSURANCE COMPANY Ltd asaba indishyi mu bwumvikane ntibyakunda, atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba indishyi z'akababaro, iz'ibangamiraburanga n'iz'ibangamira ry'uburambe mu kazi hagendewe ku bihumbi icumi (10.000 Frw) yatahanaga ku muni kuko yari umumotari utwara moto ye, no gusubizwa amafaranga yakoresheje kubera gukomerera kuko impanuka yamuteye ubumuga buhoraho bwa 20%, indishyi z'ibangamirabukungu, iz'ibangamiramuco ndetse n'andi mafaranga yose yakoreshejwe mu gukurikirana izo ndishyi, asaba kandi amafaranga y'ibyakoreshejwe mu rubanza arimo ikurikiranarubanza n'igihembo cy'avoka. [3] RADIANT INSURANCE COMPANY Ltd yavugaga ko indishyi zatangwa hashingiwe ku mushahara muto ntarengwa (SMIG) kuko nta kigaragaza ko umushahara Gatabazi Pierre yatahanaga kandi ko yagize ubumuga buhoraho buri muni ya 30%, ko andi mafaranga asaba harebwa ateganywa n'amategeko kandi yatangiwe ibimenyetso. [4] Mu rubanza N° RC 00248/2021/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa

Nyarugenge ku wa 19/4/2022, Urukiko rushingiye ku mushahara fatizo w'ibihumbi bitatu (3000 frw) rwageneye Gatabazi Pierre indishyi mbangamirabukungu zingana n' ibihumbi magana inani mirongo itandatu na bine (864.000 Frw), runamugenera kandi indishyi z'akababaro zingana n'ibihumbi ijana n'umunani (108.000 Frw), indishyi mbangamiraburanga zingana n'ibihumbi mirongo itanu na bine (54.000 Frw) n'indishyi mbangamiraburambe mu kazi zingana n'ibihumbi Magana atanu mirongo ine (540.000 Frw). [5] RADIANT INSURANCE COMPANY Ltd yajuririyeye uru Rukiko, ubujurire bwayo bwandikwa kuri N° RCA 00211/2022/HC/KIG, urubanza ruburanishwa mu ruhamye kuwa 11/7/2023, ababuranyi bombi bitabye, Radiant Insurance Company Ltd ihagarariwe na Me Uwamariya Agnes, naho Gatabazi ahagarariwe na Me Ntaganda Isaie.

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[6] Radiant Insurance Company Ltd inenga imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye aho ivuga ko rwageneye Gatabazi Pierre indishyi mbangamiraburambe ku kazi rutagaragaje ko yari asanzwe akora. Gatabazi avuga ko izo ndishyi yazihawe kuko ari umumotari. Akaba yatanze ubujurire bwuririye ku bundi anenga imikirize y'urubanza ku rwego rwa mbere aho avuga ko yahawe indishyi mbangamirabukungu hagendewe ku mushahara fatizo w'ibihumbi bitatu (3000 frw) kandi we afite akazi kazwi. Akavuga ko Urukiko rutamugeneye amafaranga y'ibyakoreshejwe mu rubanza mu buryo bukwiye. Impande zombi kandi zasabye amafaranga y'ikurikiranarubanza, igihembo cy'avoka n'indishyi zinyuranye. [7] Urukiko, rushingiye kuri izo mpaka, rusanga hakwiye gusuzumwa ibibazo bikurikira: a). Kumenya niba Gatabazi Pierre akora impanuka atari afite akazi kazwi ku buryo indishyi mbangamiraburambe ku kazi yagenewe zitari zikwiye. b). Kumenya ingano y'umushahara ikwiye gushingirwaho mu kubara indishyi mbangamirabukungu. c). Kumenya niba atari akwiye guhabwa amafaranga y'ikurikiranarubanza. d). Kumenya niba amafaranga y'ibyakoreshejwe mu rubanza ku rwego rw'ubujurire asabwa muri uru rubanza afite ishingiro. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA a). Kumenya niba Gatabazi Pierre akora impanuka atari afite akazi kazwi ku buryo indishyi mbangamiraburambe ku kazi yagenewe zitari zikwiye. [8] Mu myanzuro y'ubujurire no mu miburanire, Radiant Insurance Company Ltd ivuga ko Gatabazi Pierre yagombaga guhabwa indishyi mbangamiraburambe ku kazi amaze kugaragaza ko yari asanzwe akora, akaba atarigeze abigaragaza, ko n'ikarita y' akazi yatanze yari yarangiye, ko kuba Urukiko rwarabonye ko Gatabazi Pierre atagaragaza ko yishyura imisoro ya RRA, byari kuba bihagije kubona ko atagaraza ko akora, bityo izi ndishyi mbangamiraburambe ku kazi ntiyari kuzigenerwa. [9] Mu myanzuro yo kwiregura no mu miburanire, Gatabazi Jean Pierre avuga ko indishyi yazigenewe kuko ari umumotari. UKO URUKIKO RUBIBONA [10] Impaka ziri muri uru rubanza zishingiye ku kumenya niba indishyi mbangamiraburambe ku kazi zagenewe Gatabazi Jean Pierre yarazihawe hakurikijwe ibyo itegeko riteganyaga ku bijyanye n'ugenerwa izo ndishyi n'ibyo asabwa. [11] Mbere yo gusuzuma icyo kibazo cyagaragajwe haruguru, Urukiko ruributsa ko inyito y'indishyi zavuzwe haruguru atari mbangamibura burambe ku kazi ahubwo ari izo gutakaza akazi, nkuko byakosowe n' Urukiko rw'ikirenga mu rubanza RS/

INJUST/RC 00010/2021/SC rwaciwe n' Urukiko rw'ikirenga kuwa 2/12/2022.1 1 Muri urwo rubanza, Urukiko rw'ikirenga rwagaragaje ko nubwo mu ndishyi zivugwa mu ngingo imaze kuvugwa hari izo mu kinyarwanda bise ko ari iz'ibangamira ry'uburambe mu kazi, Urukiko rurasanga ari izo gutakaza akazi

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- [12] Ku bijyanye n'ikibazo kijyanye no kumenya abahabwa indishyi zo gutakaza akazi, Urukiko rw'ikirenga rwagitanzeho umurongo mu rubanza rwavuye haruguru ahaburana Prime Insurance Company Ltd na Uwimanimpaye Jean Claude; muri urwo rubanza Urukiko rw'ikirenga rwemeje ko abahabwa indishyi zo gutakaza akazi bagomba kuba bari bagafite bakagatakaza kubera impanuka. Ibi byumvikanisha ko umuntu utagaragaza ko hari akazi yari afite ubwo yakoraga impanuka nta ndishyi ashobora guhabwa kubera ko nyine ntacyo yatakaje. Izo ndishyi zitangwa ku mukozi wagize igihombo, icyo gihombo kireberwa mu byo yinjizaga biturutse ku kazi ku munsu w'impanuka. [13] Mu rubanza N° RC 00248/2021/TGI/NYGE rwaciwe n'Urukiko Rw'isumbuye rwa Nyarugenge ku wa 19/4/2022, mu kugenera Gatabazi Pierre indishyi zo gutakaza amahirwe y' akazi, Urukiko rwashingiye ko Gatabazi Pierre akora impanuka yari umumotari. [14] Urukiko ruhereye ko abakora umwuga w'ubumotari babarirwa mu bakora akazi bigengaho nkuko byatanzeho umurongo mu rubanza N° RS/INJUST/RC 00014/2022/SC rwaciwe n' Urukiko rw'ikirenga kuwa 18/5/2023 haburana Kwizera Eric na RADIANT INSURANCE COMPANY Ltd, Urukiko rusanga mu kugenera indishyi zo gutakaza akazi Gatabazi Pierre wari umumotari nta kosa Urukiko Rwisumbuye rwakoze. [15] Naho kuba Radiant Insurance Company Ltd ivuga ko ikarita y' umunyamuryango wa koperative y' abamotari ya Gatabazi Pierre yari yararangiye, rusanga kuba ikarita yari yararangiye bidasobanuye ko atari umumotari, kuba rero itabasha kuvugurura ibijyanye n'umwuga wa Gatabazi Pierre igihe yakoraga impanuka, rusanga iyo impamvu y'ubujurire ya Radiant Insurance Company Ltd nta shingiro ifite. Naho kuba ivuga ko atagaragaje ko yishyura umusoro ko byari bihagije ko ruvuga ko atari umumotari, rusanga ibivugwa na Radiant bihagije ngo rwemeze ko atari umumotari mu gihe hari ikarita y' akazi yakoraga iri muri dosiye iherekejwe na carte jaune ya moto iriho amazina ye ndetse na permis yo gutwara ikinyabiziga. b). Kumenya ingano y'umushahara ikwiriye gushingirwaho mu kubara indishyi mbangamirabukungu. [16] Mu myanzuro yo kwiregura no mu miburanire, Gatabazi Pierre avuga ko Urukiko Rwisumbuye rutari kumubarira nk' umuntu idafite akazwi kazwi aho yabariwe ku bihumbi bitatu (3000 frw) aho kuba ibihumbi icumi (10 000 frw) kuko ariyo yinjizaga. Uhagarariye Radiant Insurance Company Ltd avuga ko Gatabazi Pierre atagaragaza akazi yakoraga. UKO URUKIKO RUBIBONA [17] Mu bika bikurikira, hasuzumwa niba ingano y'umushahara muto ntarengwa Urukiko Rwisumbuye rwa Nyarugenge rwabariyeho ikwiriye. [18] Ikibazo cy'ingano y'umushahara ugenderwaho ku bakora umwuga w' ubumotari cyatanzeho umurongo mu rubanza N°RS/INJUST/RC 00014/2022/SC rwaciwe n' Urukiko rw' ikirenga kuwa 18/5/2023 haburana Kwizera Eric na Radiant Insurance Company Ltd aho mu nk'uko biri mu rurimi rw'igifaransa, hakaba harabayeho guhindura nabi ururimi hakurikijwe imiterere y'izo ndishyi, kuko iz'ibangamira

ry'uburambe mu kazi zitabaho . reka igika cya 26 cy'urwo rubanza.

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gika cya 22 rwasobanuye ko Kwizera Eric wakoraga umwuga yigengaho w'ubumotari, mu kumubarira indishyi z'ibangamirabukungu hakaba hashingirwa ku musaruro abandi bakora umurimo nk'uwe binjiza ku mwaka aho kubarirwa izo ndishyi hashingiwe ku mushahara muto ntarengwa wemewe n'amategeko (SMIG); mu gika cya 27, urwo Rukiko rwagaragaje ko umusaruro umuntu ukora umwuga w'ubumotari atahana ku munsu ungana n' amafaranga ibihumbi bitandatu magana ane mirongo ine n' ane (6 444 frw). [19] Uru Rukiko rusanga mu kubarira Gatabazi Pierre indishyi mbangamirabukungu, habarirwa ku kuri 6 444 frw aho kuba 3000 frw bityo indishyi akwiriye guhabwa zikaba zabarwa ku buryo bukurikira: $6\,444 \text{ Frw} \times 30 \times 12 \times 20\% \times 4 = 1\,855\,872 \text{ Frw}$. Naho kuba yari yasabye ko yabarirwa kuri 10 000 frw, Urukiko ruherereye ko Urukiko rw'ikirenga rwamaze gutanga umurongo ku kibazo cy' ingano y'umushahara abamotari bakwiriye kubarirwaho, rusanga ntaho rwahera rugendera kuri ayo 10 000 frw avuga kandi hari urubanza rwaciwe n' Urukiko rukuriye izindi rwabitanzeho umurongo. Kubera izo impamvu, Urukiko rugasanga indishyi zemejwe n' Urukiko Rwisumbuye zihinduwe. C. Kumenya niba Gatabazi Pierre atari akwiriye kugenerwa amafaranga y'ikurikiranarubanza. [20] Uhagarariye Gatabazi avuga ko ku rwego rwa mbere yari yasabye Urukiko igihembo cy'avoka kingana na miliyoni imwe (1.000.000 frw) ndetse n' ibihumbi magana atatu (300.000 frw) maze Urukiko rutanga ibihumbi magana atanu (500.000 Frw) y'igihembo cy'avoka, ntirwatanga amafaranga y' ikurikiranarubanza kandi yari yarugaragariye ko yasiragijwe kuko Radiant yari yanze kumuha indishyi ku bwumvikane bituma aregera inkiko. Radiant ntacyo yabivuzeho. UKO URUKIKO RUBIBONA [21] Ingingo ya 111 y' itegeko N° 22/2018 ryo kuwa 29/4/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz' ubucuruzi, umurimo n'ubutegetsi ivuga ko Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [22] Urukiko rusanga Gatabazi Pierre yari akwiriye guhabwa amafaranga y'ikurikiranarubanza ku rwego rwa mbere kuko kuba yari afite umwunganizi mu mategeko bidasobanuye ko atakurikiranaga urubanza rwe bityo akaba yagenerwa ibihumbi ijana (100 000 frw) y' amafaranga y'ikurikiranarubanza ku rwego rwa mbere. d). Kumenya niba amafaranga y'ibyakoreshejwe mu rubanza asabwa n'uregwa afite ishingiro [23] Mu mwanzuro we, Gatabazi Pierre asaba ko Radiant yamuha ibihumbi magana atanu (500 000 frw) yo gukomeza kumushora mu manza, n' ibihumbi magana atanu (500 000 frw) y'igihembo cy'avoka. Mu miburanire, Radiant ivuga ari uburenganzira bwayo bwo kujurira.

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UKO URUKIKO RUBIBONA [24] Urukiko ruherereye ko ubujurire bwa Radiant nta shingiro bwahawe, rusan- ga amafaranga y'ibyakoreshejwe mu rubanza agizwe n'igihembo cy'avoka afite ishingiro ariko akagenerwa ibihumbi magana abiri mirongo itanu (250 000 frw) yo ku rwego rw'ubujurire, hiyongereyeho ibihumbi ijana (100 000 frw) y'ikurikiranarubanza ku rwego

rw'ubujurire. III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ubujurire bwatanzwe na Radiant Insurance Company Ltd nta shingiro bufite. [26] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Gatabazi Pierre bufite ishingiro kuri bimwe. [27] Rwemeje ko urubanza RC 00248/2021/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 19/4/2022 ruhindutse gusa ku bijyanye n'ingano y'indishyi mbangamirabukungu, n' amafaranga y'ibyakoreshejwe mu rubanza(ikurikiranarubanza). [28] Rutegetse Radiant Insurance Company Ltd guha Gatabazi Pierre indishyi mbangamirabukungu zingana n' amafaranga y' u Rwanda miliyoni imwe n' ibihumbi magana inani mirongo itanu na bitanu n' amafaranga magana inani mirongo irindwi n'abiri (1 855 872 Frw) aho kuba ibihumbi magana inani mi- rongo itandatu na bine (864 000 frw) yemejwe n Urukiko Rwisumbuye. [29] Rutegetse Radiant Insurance Company Ltd guha Gatabazi Pierre in- dishyi nkuko zagenwe n' Urukiko Rwisumbuye rwa Nyarugenge mu buryo bu- kurikira: indishyi z'akababaro zingana n' ibihumbi ijana n' umunani (108.000 Frw), indishyi mbangamiraburanga zingana n'ibihumbi mirongo itanu na bine (54.000 Frw) n'indishyi mbangamiraburambe mu kazi zingana n'ibihumbi ma- gana atanu mirongo ine (540.000Frw), ibihumbi mirongo itatu na bitatu maga- na atanu (33 500 frw) yakoresheje kubera impanuka yagize. [30] Rutegetse Radiant Insurance Company Ltd gusubiza Gatabazi Pierre amafaranga ibihumbi magana atanu (500 000 frw) y'igihembo cy'avoka yagenenwe ku rwego rwa mbere na magana abiri mirongo itanu (250 000 frw) y'igihembo cy'avoka yagenwe ku rwego rw'ubujurire n'ibihumbi magana abiri (200 000 frw) y'ibyakoreshejwe mu rubanza mu Nkiko zombi. [31] Rutegetse Radiant Insurance Company Ltd gusubiza Gatabazi Pierre amafaranga ibihumbi makumyabiri (20 000 frw) y'ingwate y' igarama yo ku rwego rwa mbere, naho ingwate y' igarama angana n' ibihumbi mirongo ine (40 000 frw) Radiant yatanze ku rwego rw' ubujurire agahwana n'ibyakoze mu rubanza.

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