

RWANDA / JUDGMENT

RADIANT INSURANCE COMPANY LTD v. TUYIGANE

RLR V.1-2026

COURT

Supreme Court

DECIDED

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CASE / FILE NUMBER

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Text

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RADIANT INSURANCE COMPANY LTD v. TUYIGANE [Rwanda SUPREME COURT – RS/INJUST/RC 00004/2024/SC, (Cyanzayire, P.J., Kalihangabo and Kazungu, J.) April 25, 2025] Laws governing insurance – Insurance policy – The right to recovery action – The right to recovery action cannot exist if the insured proves that the damage was caused by a third party, and that it occurred without his/her knowledge or that the person who caused it acted in violation of his/her instructions. Laws governing insurance - The right to subrogatory action – After compensating the insured who suffered the loss, the insurer has the right to pursue the person responsible for the accident in place of the insured, but only within the limits of the amount paid in compensation. Facts: This case arises from an accident that occurred on March 15, 2020, involving a TVS Victor motorcycle with plate number RD 715 R, registered under the name of Tuyigane Jean Paul but who lent it to Ndyibingoye Jean Paul. The latter collided with another TVS Victor motorcycle bearing plate number RD 335 E, which was being ridden by Nyamwasa François, resulting in injury to Uwabakurikiza Théoneste, who was a passenger on that

motorcycle and sustained a leg fracture. The investigation carried out by the Traffic Police revealed that the cause of the accident was the motorcycle belonging to Tuyigane Jean Paul, as Ndyibingoye Jean Paul, who was riding it, was under the influence of alcohol. Uwabakurikiza Théoneste (who was injured in the accident) wrote to Radiant Insurance Company Ltd (hereinafter referred to as RADIANT in this case), which had insured the motorcycle that caused the accident, requesting an amicable settlement and damages for the injuries sustained. Both parties agreed that Uwabakurikiza Théoneste would be paid Frw 2,820,350, and on January 5, 2021, he signed to acknowledge receipt of the amount by cheque. Subsequently, RADIANT wrote to Tuyigane Jean Paul, informing him that he should be held liable for the fault committed by the person who was riding his motorcycle and caused the accident. The company also requested him to reimburse Frw 2,820,350 paid to the victim of the accident. However, he declined, prompting RADIANT to file a lawsuit before the Intermediate Court of Gasabo, seeking an order compelling him to pay the said amount along with 18% interest. The Intermediate Court of Gasabo found that there was no evidence proving that the fact that Tuyigane Jean Paul had lent his motorcycle Ndyibingoye Jean Paul, who was riding it under the influence of alcohol, was in breach of the agreement between RADIANT and Tuyigane Jean Paul such that he should be held liable for the faults committed by Ndyibingoye Jean Paul. The court declared RADIANT's claim unfounded and ruled that Tuyigane Jean Paul should not reimburse Frw 2,820,350 and the interest arising from it. RADIANT appealed to the High Court, arguing that the Intermediate Court of Gasabo erred in its judgment solely based on the insurance policy RADIANT had entered into with Tuyigane Jean Paul, while disregarding the fact that such a contract does not exclude the provisions of

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article 11 of Law-Decree n° 32/75 of 07 August 1975 on compulsory civil liability insurance with regard to automotive vehicles; It has the right to be reimbursed by Tuyigane Jean Paul for the amount it paid to the person injured in the accident, because it is not liable for liability arising from intentional or deliberate faults committed by the insured when he lent his motorcycle to Ndyibingoye Jean Paul, who then rode it under influence of alcohol which caused the accident. Furthermore, article 25 of the insurance contract concluded between Radiant and Tuyigane Jean Paul provides that the insured shall not be covered for intentional faults committed by the insured. The High Court found that the insurance policy between RADIANT and the motorcycle owner did not contain any provision prohibiting the lending or leasing of the motorcycle. It further held that there is no legal provision granting RADIANT the right to recover the amount it had paid, since the owner of the motor vehicle had not instructed the person who caused the accident to do so, and therefore did not commit intentional fault. The Court thus concluded that RADIANT's appeal was unfounded and ruled that Tuyigane Jean Paul was not required to refund any money, thereby upholding the decision of the Intermediate Court of Gasabo in its entirety. RADIANT wrote to the President of the Court of Appeal, requesting a review of case n0 RCA 00018/2022/HC/KIG, which had been decided by the High Court on June 29, 2023, on grounds of injustice, arguing that they could not pursue Ndyibingoye Jean Paul (the person to whom the motorcycle had been lent and who caused the accident) because there was no contractual

relationship between them, therefore chose to take action against the person with whom they had entered into the contract, namely the owner of the motorcycle, Tuyigane Jean Paul.

RADIANT requested the Court to order him to refund the amount paid, asserting that it had not insured the faults committed by the person who had borrowed the motorcycle. RADIANT further argues that it has the right to recovery action against the insured or the insured when it becomes necessary to compensate for losses caused by an accident. Held: 1. The right to recovery action cannot exist if the insured proves that the damage was caused by a third party, and that it occurred without his/her knowledge or that the person who caused it acted in breach of his/her instructions.

2. After compensating the insured who suffered the loss, the insurer has the right to pursue the person responsible for the accident in place of the insured, but only within the limits of the amount paid in compensation. The case lacks merit. Statutes and statutory instruments referred to: Law- Decree n° 32/75 of 07 August 1975 on compulsory civil liability insurance with regard to automotive vehicles, article 11. No caselaws referred to.

Judgment

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- i. BACKGROUND OF THE CASE [1] This case arises from an accident that occurred on March 15, 2020, in Gicikiza Village, Kagugu Cell, Kinyinya Sector, Gasabo District, City of Kigali. It involved a TVS Victor motorcycle with plate number RD 715 R, registered under Tuyigane Jean Paul but lent to Ndyibingoye Jean Paul. The latter collided with another TVS Victor motorcycle bearing plate number RD 335 E, which was being ridden by Nyamwasa François, resulting in injury to Uwabakurikiza Théoneste, who was a passenger on that motorcycle and sustained a leg fracture. [2] The investigation conducted by the Traffic Police revealed that the cause of the accident was the motorcycle belonging to Tuyigane Jean Paul, as its rider, Ndyibingoye Jean Paul, was under the influence of alcohol. Tests' results showed that his blood alcohol concentration was 2.34. [3] Uwabakurikiza Théoneste wrote to Radiant Insurance Company Ltd (hereinafter referred to as "RADIANT" in this case), which had insured the motorcycle that caused the accident, requesting an amicable settlement and compensation for the damages resulting from the accident. Both parties agreed that Uwabakurikiza Théoneste would be paid Frw 2,820,350; consequently, on January 5, 2021, he signed to acknowledge receipt of the amount by cheque. [4] RADIANT wrote to Tuyigane Jean Paul informing him that he should be held liable for the fault committed by the person who was riding his motorcycle and caused the accident. The company also requested him to reimburse the amount of Frw 2,820,350 that had been paid to the person injured in the accident. [5] Tuyigane Jean Paul did not reimburse the requested amount, which led RADIANT, on June 17, 2021, to file a lawsuit before the Intermediate Court of Gasabo, requesting the court to order Tuyigane Jean Paul to pay Frw 2,820,350 as damages arising from the accident that had been paid to Uwabakurikiza Théoneste, together with 18% interest, procedural fees and counsel's fees. Tuyigane Jean Paul did not respond to the

claims brought against him. [6] During the hearing held on November 11, 2021, the Intermediate Court of Gasabo stated that Tuyigane Jean Paul would be tried in absentia, as he had been duly notified in accordance with the law. [7] In the case n0 RC00255/2021/TGI/GSBO, decided on December 3, 2021, the Intermediate Court of Gasabo found that there was no evidence proving that Tuyigane Jean Paul's act of lending his motorcycle to Ndyibingoye Jean Paul, who then rode it under the influence of alcohol, was in violation of the insurance contract between RADIANT and Tuyigane Jean Paul to make him liable for the fault committed by Ndyibingoye Jean Paul. [8] The court concluded that RADIANT's claim was unfounded and declared that Tuyigane Jean Paul was not required to reimburse RADIANT the amount of Frw 2,820,350 and the 18% of interest thereon. The court further held that RADIANT was not entitled to procedural and counsel's fees since the principal claim lacks merit. [9] RADIANT appealed to the High Court arguing that:

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- i. The Intermediate Court of Gasabo erred in rendering its judgment solely based on the insurance policy concluded between Tuyigane Jean Paul, ignoring the fact that such a contract does not supersede the provisions of article 111 of Law-Decree n° 32/75 of 07 August 1975 on compulsory civil liability insurance; ii. It has the right to claim reimbursement from Tuyigane Jean Paul for the amount paid to the person injured in the accident, because it does not cover liability arising from intentional fault committed by the insured, who lent the motorcycle to Ndyibingoye Jean Paul, and the latter drove it under the influence of alcohol, which caused the accident; iii. Article 25 of the contract between Radiant and Tuyigane Jean Paul provides that the insurer is not liable for intentional faults committed by the insured. [10] Tuyigane Jean Paul did not submit the defense submissions before the High Court and did not appear for the hearing; consequently, the case was heard in absentia. [11] In the case RCA 00018/2022/HC/KIG decided on 29 June 2023, the High Court found that in the insurance policy concluded between RADIANT and the owner of the motorcycle, there was no provision prohibiting lending or renting out the motorcycle. The Court further found that neither that clause nor article 11 of Law N° 32/75 of 07/08/1975 mentioned above, grants RADIANT the right to recover the compensation paid, since Tuyigane Jean Paul did not instruct Ndyibingoye Jean Paul to cause the accident and did not commit any intentional fault. [12] The Court declared the the appeal filed by Radiant unfounded and held that Tuyigane Jean Paul is not required to reimburse any money to RADIANT, ordered that the judgment rendered by the Intermediate Court of Gasabo in case RC 00252/2021/TGI/GSBO on 3 December 2021 remain unchanged. [13] On 25 July 2023, RADIANT wrote to the President of the Court of Appeal requesting the review of the case RCA 00018/2022/HC/KIG, which had been decided by the High Court on 29 June 2023, on grounds of injustice. After examining the request, the President of the Court of Appeal wrote to the President of the Supreme Court requesting that the case be retried. In decision N° 058/CJ/2024 of 3 May 2024, it was approved that the case should be transferred to the Registry of the Supreme Court for rehearing. [14] The public hearing was held on 5 February 2025, with Radiant represented by

Counsel Mudahogora Angelique, while Tuyigane Jean Paul did not appear and did not present submissions. However, the case file contains the document from the Court Registry indicating that the defendant had been summoned and reminded several times to inform the Court of his legal counsel, in case he failed to do so, he presents to the court a certificate of indigence so that he could be provided with legal assistance, but he stated that he was unable to obtain the legal counsel and also such certificate because given the social category (“ubudehe”) to which he belongs, the defendant does not qualify him for such assistance.

1 That article provides that “The insurer may reserve the right to recovery action or subrogatory action in case the law or the insurance contract permits the insurer to refuse or reduce the obligations.”

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[15] Based on the report prepared by the Court Registry and the summons addressed to Tuyigane Jean Paul to appear at the pre-trial conference scheduled for 12 December 2024 at 2:00 p.m., which shows that he received and signed it on 25 October 2024 at 6:30 p.m., the Court ruled in bench that Tuyigane Jean Paul’s conduct demonstrated that his failure to appear was intentional. The Court therefore decided that the case would proceed in absentia, as he had been duly notified in accordance with the law. [16] The Court proceeded with the hearing by examining the following issues: i. Whether Tuyigane Jean Paul should be ordered to reimburse RADIANT Frw 2,820,350 paid to Uwabakurikiza Théoneste; ii. Whether Tuyigane Jean Paul should be ordered to pay RADIANT interest of 18% on the amount of 2,820,350 paid.; iii. Whether the damages claimed in this instant case are relevant. I. ANALYSIS OF LEGAL ISSUES II.1. Whether Tuyigane Jean Paul should be ordered to reimburse RADIANT 2,820,350 RW paid to Uwabakurikiza Théoneste [17] Counsel Mudahogora Angelique, representing RADIANT, stated that the report of the Traffic Police Department of 25/04/2020 shows that the accident caused by the motorcycle belonging to Tuyigane Jean Paul which was ridden by Ndyibingoye Jean Paul, who was under influence of alcohol. She argued that Tuyigane Jean Paul should be held liable for these faults and requested that the Court should order him to refund the money paid, since RADIANT did not assume responsibility for the faults committed by the person who borrowed the motorcycle. [18] She explained that the reason RADIANT is not pursuing Ndyibingoye Jean Paul is that there was no contract between them, and they chose instead to pursue the person with whom they had a contractual agreement as provided in article 25, subparagraph 6 of the General Rules. [19] She concluded on this issue by stating that the High Court ignored the faults committed by Tuyigane Jean Paul when it ruled that he should not be ordered to refund Frw 2,820,350 paid to Uwabakurikiza Theoneste. The company considers this a serious injustice and therefore requests the Supreme Court to correct this error and declare that Tuyigane Jean Paul should reimburse the said amount in accordance with article 11 of Decree-Law n° 32/75 of 07 August 1975 on compulsory civil liability for motor vehicle insurance, and article 32 of Decree-Law n° 20/75 of 20 June 1975 relating to insurance in its first paragraph. DETERMINATION OF THE COURT [20] Article 11 of Decree-Law N° 32/75 of 07 August 1975

on compulsory civil liability for motor vehicle insurance provides the following : “No expired ground, reserved or no longer applicable by law or contract, may be invoked by the insurer against the injured party. The insurer may reserve the right to take recourse against the person who entered into the insurance contract or, if necessary, against the insured who is not the

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contracting party in case the law or the insurance contract allows the insurer to refuse or reduce its obligation”. [21] Article 32, paragraph 1, of Decree-Law N°20/75 of 20 June 1975 relating to insurance provides that: “The insurer who has paid compensation under the insurance policy, subrogates the insured to the extent of the compensation paid, to the right to get back reimbursement from other at-fault parties”. [22] Counsel for RADIANT stated that her argument is based on the two aforementioned provisions, which address different matters: whereby article 11 refers to the right to recovery action, whereas article 32 concerns the right to subrogatory action. Before determining the rights that RADIANT holds on this matter, it is necessary to first clarify the meaning of both rights. The right to recovery action [23] This refers to the right of the insurer to take action against the insured or the policyholder when it becomes necessary to compensate them for losses caused by an accident while the insurer would not be held accountable² in accordance with the law or the terms of the contract³ they have concluded, and the insurer cannot refuse to compensate the victim⁴. This right is exercised only in very limited circumstances so as not to undermine the purpose of insurance. That is why this right applies only in circumstances provided by law and in relation to acts that are excluded from insurance coverage, which the insurer cannot invoke as a ground to refuse compensating the victim⁵. Such acts include those committed intentionally by the insured or the policyholder, such as providing false information when subscribing to the insurance⁶ or, during

2 "L'assureur peut, dans la mesure où il aurait pu refuser ou réduire ses prestations suivant la loi ou le contrat d'assurance, se réserver un droit de recours contre le preneur d'assurance et, s'il y a lieu, contre l'assuré autre que le preneur d'assurance, à concurrence de la part de responsabilité incombant personnellement à l'assuré; Bruno PIERARD: Les recours de l'assureur dans les différents contrats d'assurance; Travail de Fin d'Etudes en vue de l'obtention du titre de Bachelier en Droit, Année académique 2021-2022, p 20. chromeextension://efaidnbmnnnibpcajpcglclefindmkaj/https://biblio.helmo.be/opac_css/doc_num.php?explnum_id=19645 3 “Le recours a une nature contractuelle” Catherine Paris, Manuel de droit des assurances, Collection de la Faculté de droit de l’Université de Liège, Editions Larcier, 2021, para 442 4 « Un procédé technique spécifique à l’assurance de la responsabilité civile, destiné à rétablir l’équilibre contractuel. Elle « sanctionne [...] un manquement contractuel imputable au preneur ou à un autre assuré, manquement que l’assureur n’a pu en vertu de la loi opposer à la victime. Elle constitue à ce titre un contrepoids de principe de l’inopposabilité des exceptions. L’action récursoire s’identifie alors, dans les assurances de responsabilité, comme une action en remboursement de l’assureur contre son propre assuré »; Martin LEJEUNE, Action récursoire de l’assureur à l’encontre de l’assuré: au-delà de l’assurance responsabilité? Travail écrit de fin

d'études Master en droit à finalité spécialisée en droit privé, Année académique 2023-2024. Recherche menée sous la direction de Madame Catherine Paris, Professeur, Liège Université. P.10 Chrome- extension://efaidnbmnnnibpcajpcglclefindmkaj/https://matheo.uliege.be/bitstream/2268.2/19702/4/TFE%20-%20Martin%20LEJEUNE%20-%20S190628.pdf 5 "Il faut noter l'art. R211-13-4o C. assur. qui prévoit que les exclusions de garantie qui peuvent être stipulés dans les contrats d'assurance de responsabilité civile automobile sont inopposables aux victimes d'accidents de la circulation: (...)" Yvonne Lambert-Faivre et Laurent Laveneur, Droit des assurances, Editions DALLOZ, 14^e éd., P.352 6 "Lorsque l'assureur n'a pas pu opposer une exception à la victime, l'article 152 de la loi de 2014 lui permet d'exercer un recours en remboursement de ses débours contre le preneur d'assurance et, le cas échéant, contre l'assuré autre que le preneur. Dans certaines situations c'est le preneur d'assurance qui est l'auteur du manquement, par exemple en cas d'ommission ou d'inexactitude dans la déclaration du risque préalablement à la conclusion du contrat; c'est donc lui qui sera le destinataire du recours. Dans d'autres hypothèses, le manquement,

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the time of the accident which should result in inadequate or inappropriate insurance coverage in relation to the risks insured, the fact that insured subscribes to the inadequate insurance coverage, it also includes cases where the vehicle was driven by someone below the legally required age, or by someone without a valid driving license⁷, or by a person under the influence of alcohol, drugs, medication, or any other psychotropic substances impairing their ability to drive⁸. [24] This is also reflected in French insurance law under article R211-139, as well as in Belgian law 10. [25] The legal scholar Martin LEJEUNE explains that for this right to be exercised, three conditions must be met: (i) there must be a breach of the insurance contract committed by the insured, and that fault must be attributable to the insured. On this point, he emphasizes that this right is based on liability insurance, which is intended to cover the liability or faults committed by the insured; otherwise, it would contradict the very purpose of insurance. He explains that this right must be provided for in the insurance contract. The second requirement is that (ii) there must be a damage, as this forms the basis for the insurer to recover the amount it has paid and that (iii) the fault of the insured must have caused the accident¹¹. [26] What has been explained, when read together with the provisions of article 11 of Decree- Law n° 32/75 of 07/08/1975 on compulsory liability insurance for motor vehicles, shows that for an insurer to take action against the insured or the policyholder, such action must be based on law or on the insurance contract. It also requires the existence of a fault committed by the insured or the policyholder that should not have obliged the insurer to pay compensation for the damages resulting from the accident. Moreover, the insurer cannot rely on that fault to refuse to compensate the victim. [27] The general insurance conditions of RADIANT, published in May 2013, explain this right in articles 24 and 25 as follows: the liability insurance cannot be applied when it is clear

cause du l'exception inopposable à la victime, est à reprocher à un assuré qui n'est pas le preneur d'assurance" Catherine Paris, idem para 439, 442/2 7 Art. R211-10: "1° Lorsqu'au moment du sinistre, le conducteur n'a pas l'âge requis ou ne possède pas les certificats, en état de validité, exigés par la réglementation en vigueur pour la conduite du véhicule, sauf en cas de vol, de violence ou d'utilisation du véhicule à l'insu de l'assuré" 8 "On notera que les seules fautes Lourdes autorisant un recours contre l'assuré sont la conduite en état d'ivresse, ou sous l'influence de drogues, médicaments ou hallucinogènes qui ont pour effet de priver l'assuré du contrôle de ses actes" Catherine Paris, idem para 441 9 Art. R211-13: "Ne sont pas opposables aux victimes ou à leurs ayants droit: 1° La franchise prévue à l'article L. 121-1; 2°, Les déchéances; 3° La réduction de l'indemnité applicable conformément à l'article L. 113-9; 4° Les exclusions de garanties prévues aux articles R. 211-10 et R. 211-11. Dans les cas susmentionnés, l'assureur procède au paiement de l'indemnité pour le compte du responsable. Il peut exercer contre ce dernier une action en remboursement pour toutes les sommes qu'il a ainsi payées ou mises en réserve à sa place". 10 Article 46 de l'annexe de l'Arrêté royal: "L'assureur dispose d'un droit de recours contre l'assuré: 2o lorsqu'il prouve que celui-ci a causé le sinistre en raison de l'une des fautes lourdes suivantes et pour autant que l'assureur démontre le lien causal avec le sinistre: a) conduite en état d'ivresse; b) conduite sous l'influence de drogues, médicaments ou hallucinogènes qui ont pour effet de priver l'assuré du contrôle de ses actes"; 11 "À l'instar de toute action en responsabilité contractuelle, il est nécessaire d'établir la faute, ou plutôt le manquement imputable (§1), le dommage (§2) et le lien causal (§3). Il en va de même qu'avec la notification, l'assureur a la charge de prouver les conditions de la responsabilité en vertu de l'article 8.4 du Code civil". Martin LEJEUNE. idem. section 3: Conditions de la responsabilité contractuelle, PP 28-32

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that the damage was committed by another insured person, and that it occurred without the insured's knowledge or because the other person acted in breach of their instructions." Article 24 "Notwithstanding the provisions of article 26, whoever violates any obligation under this agreement loses the rights granted by it. In that case, when it becomes necessary for the insurer to compensate the victim in accordance with the law, the insurer has the right to pursue the policyholder or the insured for the compensation paid on their behalf, the interest arising from it, as well as procedural fees. However, such right of recovery action cannot be exercised if the insured proves that the harm was caused by third party insured, and that it occurred without his knowledge or that the person who caused it acted in violation of their instructions.¹² Article 25: "The company may exercise the right mentioned in article 24 in the following circumstances: 1. When there has been doubtful information or providing false information at the time of subscription of insurance; 2. When there has been a change in the insured risks in a way provided under article 9 of this contract and such change has not been reported to the insurer; 3. When, at the time of the accident, the insured vehicle does not have a valid technical inspection certificate or has an expired certificate, except when the accident occurs while the vehicle is going for inspection or heading to the garage, or returning from the garage to the inspection; 4. When the insurance contract has been suspended due to non-payment of the insurance

premiums; 5. When the accident has not been reported within five days after its occurrence; 6. When the vehicle was being driven by a person who does not meet the legal or regulatory requirements to drive it, such as someone whose driving license has been revoked or who does not meet the required age; 7. When the accident occurs during unauthorized car racing competitions; 8. (Nothing is written under this paragraph); 9. When the accident was made intentionally;

10. When the accident occurs while the insured was under the influence of alcohol, unless they are able to prove that the accident had no connection with such drunkenness. However, in the circumstances referred to in paragraphs 8, 9, and 10, the right of recourse is exercised only against the insured who caused the accident". 13

12 That article 24 states that: "Sous réserve de ce qui est dit à l'article 26, toute infraction de l'assuré à ses obligations le prive du droit à la garantie du contrat. Dans ce cas et lorsqu'en vertu de la loi, la Société est néanmoins tenue directement envers les personnes lésées, elle a, indépendamment de toute autre action qui peut lui appartenir, un droit de recours contre le preneur d'assurance et s'il ya lieu, contre l'assuré autre que le preneur. Le recours sur les indemnités au paiement desquels la Société est tenue en principal ainsi que sur les intérêts compensatoires, les intérêts et frais judiciaires. Toutefois, le recours de la Société ne peut être exercé contre l'assuré, si ce dernier établit que les faits ou infractions générateurs du recours sont imputables à un assuré autre que lui-même et se sont produits à l'encontre de ses instructions ou à son insu". 13 That article 25 provides the following iteganya ibi bikurikira: "La Société peut notamment exercer les droits que lui reconnaît l'article 24: [...] 6. Lorsqu'au moment du sinistre, le véhicule est conduit par une personne ne

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[28] The provisions of Rwandan laws and foreign laws, along with the opinions of legal scholar, demonstrate that this right may be exercised in the circumstances provided for by law or by insurance contract as follow:

- i. Recourse may be taken against the policyholder or the insured for breaches arising from obligations under the insurance contract." For instance, where false or incomplete information is provided during the insurance subscription; where the insured fails to pay premiums resulting in the suspension of the insurance contract; where the insurer is not notified of any changes affecting the insured risk prior to the accident; or where the legal requirements for the vehicle to be allowed on the road are not complied with; ii. Recourse may be taken against the insured for faults intentionally committed by the insured such as driving a vehicle while drunk or under the influence of other substances that impair judgment, or intentionally caused an accident. iii. The right of recourse against the insured cannot be exercised when the insured proves that the damage was caused by another insured party, and that it occurred without their knowledge or in breach of their instructions. The right to subrogatory action [29] It is the right of the insurer to pursue the person who caused the accident on behalf of the insured; this right arises after the insurer

has compensated the insured who suffered the harm. This right is provided for in article 32, paragraph 1 of Decree-Law N° 20/75 of 20/6/1975 on insurance mentioned above. Article L121-12 of the French Insurance Code in its first paragraph states that the insurer who has paid compensation is subrogated to the insured in pursuing the person who caused the accident to the extent of the paid compensation¹⁴. Belgian law states the same in article 95, first paragraph¹⁵. [30] Legal scholar Julia Kagan explains that when the insurer pursues the person who caused the accident, the insurer acts on behalf of the insured, thereby having the same rights and powers as the insured to claim damages. She states that if the insured does not have the right to pursue the person who caused the accident, the insurer will also not be able to exercise that right.¹⁶

satisfaisant pas aux conditions prescrites par la loi et les règlements pour pouvoir conduire ce véhicule, par exemple par, une personne déchue du droit de conduire ou par une personne n'ayant pas atteint l'âge minimum requis; [...] 10. Si le sinistre est survenu alors que l'assuré était en état d'ivresse, sauf s'il démontre que ce sinistre est sans relation avec l'ivresse. [...] Toutefois, dans les cas visés aux no 8, 9, et 10, le recours ne peut être exercé que contre l'assuré auteur du sinistre". 14 Article L121-1: L'assureur qui a payé l'indemnité d'assurance est subrogé, jusqu'à concurrence de cette indemnité, dans les droits et actions de l'assuré contre les tiers qui, par leur fait, ont causé le dommage ayant donné lieu à la responsabilité de l'assureur. 15 Art. 95. L'assureur qui a payé l'indemnité est subrogé, à concurrence du montant de celle-ci, dans les droits et actions de l'assuré ou du bénéficiaire contre les tiers responsables du dommage 16 "When an insurance company pursues a third party for damages, it is said to "step into the shoes of the policyholder." Thus, the carrier will have the same rights and legal standing as the policyholder when seeking compensation for losses. If the insured party does not have the legal standing to sue the third party, the insurer will also be unable to pursue a lawsuit as a result"; Julia Kagan: Subrogation in Insurance: What it Is and Why It's Important <https://www.investopedia.com/terms/s/subrogation.asp>

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- [31] The difference between these two rights is that the first concerns pursuing the insured who caused the harm, while the second concerns pursuing the third party who caused harm to the insured. The latter requires that the victim is the one insured against the possible harm. [32] Accordingly, based on what RADIANT claims, it appears that the claimed right is that of pursuing the insured who caused the harm, as provided for in article 11 of the aforementioned Decree-Law, as well as in article 25 of RADIANT's general insurance policy which has been also referred to. [33] RADIANT alleges that it relies on the provisions of subparagraph 6 of that contract, which concerns circumstances in which a vehicle is driven by a person who does not meet the requirements prescribed by law or regulations to be allowed to drive it, such as having had their driving license revoked or not meeting the required minimum age. The fault relied upon in this instant case is the drunkenness of the person who was lent the motorcycle, called Ndyibingoye Jean Paul. RADIANT argues that the fault of the insured, Tuyigane Jean Paul, was to lend his motorcycle. In paragraph 6

referred as a basis, the fault of drunkenness was never mentioned, nor is there any indication that lending the vehicle constitutes a fault that could make the insured liable for damages. This shows that Tuyigane Jean Paul cannot be held liable for damages based on article 25, subparagraph 6 of RADIANT's general insurance contract, as its provisions are not related to the fault that caused the accident. [34] The fault of drunkenness that caused the accident is set out in article 25, subparagraph 10 of RADIANT's general insurance policy, which addresses circumstances in which the insured was drunk during the accident, in addition to that the last paragraph of this article states that this fault is only liable for the insured who caused the accident. This shows that the person held liable for the fault of drunkenness is only the insured. For Tuyigane Jean Paul to be held liable for an accident caused by Ndyibingoye Jean Paul, RADIANT would have proven that he lent the motorcycle knowing that Ndyibingoye was drunk, as provided in article 24, last paragraph of that contract. Consequently, Tuyigane Jean Paul cannot be held liable under paragraph 10, because he is not the one who caused the accident under the influence of alcohol, and nothing proves that he lent the motorcycle to someone who was drunk. [35] Based on the foregoing, the Court finds that Tuyigane Jean Paul should not be ordered to reimburse RADIANT the amount of Frw 2,820,350 paid to Uwabakurikiza Théoneste. II. 2. Whether Tuyigane Jean Paul should be ordered to pay RADIANT interest of 18% resulting from Frw 2,820,350 Frw paid [36] Counsel Mudahogora Angelique, Counsel for RADIANT, requests the Court to order Tuyigane Jean Paul to pay interest rate of 18% as charged by banks to client receiving a loan, resulting from the amount of Frw 2,820,350 that was paid due to his faults. She states that the claimed damages amounting to Frw 2,030,652, are calculated as follows: $\text{Frw } 2,820,350 \times 18\% \times 4 \text{ years} \times 100 = \text{Frw } 2,030,652$. She explains that the interests she is claiming are based on the fact that the company she represents is a commercial entity, and that the amount paid should have been used for business purposes. DETERMINATION OF THE COURT

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- [37] The Court finds that Tuyigane Jean Paul should not be ordered to pay any interest because he did not commit any fault as explained above. DETERMINATION OF THE COURT
- a. To determine whether the damages claimed in this instant case are relevant [38] Counsel Mudahogora Angelique, representing Radiant, requests the Court to order Tuyigane Jean Paul to pay Frw 2,000,000 of procedural fees and Frw 3,000,000 of counsel's fees DETERMINATION OF THE COURT [39] The Court finds that Tuyigane Jean Paul is not to be ordered to pay any damages because he did not commit any fault, as explained above. II. DECISION OF THE COURT [40] Declares that the claim filed by RADIANT Insurance Company Ltd, seeking review the case RCA 00018/2022/HC/KIG decided by the High Court on 29/06/2023 on grounds of injustice, lacks merit; [41] Declares that the judgment RCA 00018/2022/HC/KIG rendered by the High Court on 29/06/2023 is hereby confirmed; [42] Declares that Tuyigane Jean Paul is not ordered to reimburse any amount of money to RADIANT Insurance Company Ltd.

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