

RWANDA / JUDGMENT

Radiant v Turayisenga

RCA00088/2022/HC/RWG

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Text

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RADIANT INSURANCE COMPANY LTD v TURAYISENGA [Rwanda URUKIKO RUKURU URUGEREKO RWA RWAMAGANA – RCA00088/2022/HC/RWG (Mugeyo, P.J.) 30 Kamena 2023] Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi k’ububabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga – Uwateye imapanuka – Inyandikomvugo y’impanuka – Mu kwemeza uwateye impanuka Urukiko rushingira ku nyandikomvugo y’umugenzacyaha igaragaza uko impanuka yagenze, ntabwo rutegereza urubanza nshinjabyaha rukurikiranywemo ukekwahe guteza impanuka. Incamake y’ikibazo: Uru rubanza rwatangiye Turayisenga arega Radiant Insurance Company Ltd mu Rukiko Rwisumbuye rwa Nyagatare asaba indishyi zitandukanye zikomoka ku mpanuka ya Moto Bajaj / Boxer Bm 100 ifite plaki RE 028 R yavaga Kabarore yerekeza Ngarama ifite ubwishingizi muri Radiant Insurance Company Ltd yagonze Turayisenga warutwaye igare aheteze Mutuyimana. Turayisenga yarakomeretse agerageza gusaba umwishingizi indishyi zitandukanye mu bwumvikane ntibyakunda bituma aregera Urukiko. Turayisenga yaregeye indishyi zitandukanye zose hamwe zingana na 10.561.180Frw. Radiant insurance Company Ltd yo ivuga ko, urubanza yarezwemo na Turayisenga rutegereza urubanza RP00210/2021/TB/NG ruburanishwa mu Rukiko rw’ Ibanze rwa Ngarama ruzemeza nyirabayazana

w' impanuka akaba ariwe uzaryozwa ingaruka z'iyi mpanuka. Urukiko mu rubanza RC00005/2022/TGI/NYG, rwemeje ko inzitizi ya Radiant yatanze nta shingiro ifite; ruyitegeka kwishyura Turayisenga indishyi zitandukanye zingana na 7.747.554Frw. Radiant Insurance Company Ltd ntiyanyuzwe n'imikirize yurwo rubanza irujuririra mu Rukiko Rukuru, ivuga ko Urukiko Rwisumbuye rutitaye ku nzitizi yo gutegereza urubanza RP00210/2021/TB/NG ruburanishwa mu Rukiko rw' Ibanze rwa Ngarama ruzemeza nyirabayazana w' impanuka; ko na none Urukiko rwagennye indishyi mbangamira burambe kandi nta kazi uwakomeretse yari afite. Ivuga kandi ko mu rubanza rujuririrwa urukiko rwageneye Turayisenga amafaranga atandukanye atagaragarije ibimenyetso ivuga kandi ko indishyi z' akababaro zatanze inshuro ebyiri. Radiant yasabye Urukiko Rukuru gukosora ayo makosa yakozwe muri urwo rubanza no kuyigenera amafaranga y'ikurikiranarubanza nay'igihembo cy'Avoka. Urukiko Rukuru mu rubanza RCA00088/2022/HC/RWG rwemeje ko nta kosa Urukiko Rwisumbuye rwakoze mu gushingira ku nyandikomvugo y'impanuka yakozwe n'umugenzacyaha wemeje ko , uwarutwaye moto ariwe ufite amakosa. Bityo bikaba atari ngombwa gutegereza imyanzuro y'urubanza RP00210/2021/TB/NG. Urukiko rwemeje kandi ko amafaranga yakoreshejwe yagomba kugaragarizwa ibimenyetso kugirango yishyurwe n'umwishingizi bityo rwemeza ko ayatanzwe ari umurenge ruteka ko atangwa mu bushishozi bw'urwo, muri ubu buryo, 500.000frw y'igihembo cy'avoka; 200.000Frw y'ingendo; 200.000Frw yo kwivuka ayandi akaguma uko yagenwe. Naho ku byerekeye indishyi

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z'akababaro rwemeje ko zitanze kabiri nkuko Radiant ibivuga ahubwo yitiranyije indishyi z'ababaro n'indishyi mbangamiraburambe. Ku bijyanye n'amafaranga y'ikurikirana rubanza n'igihembo cya Avoka rwemeje ko kuri uru rwego atatangwa kuko Ubujurire bwa Radiant bufite ishingiro kuri bimwe. Incamake y'icyemezo: 1. Mu kwemeza uwateye impanuka Urukiko rushingira ku nyandikomvugo y'umugenzacyaha igaragaza uko impanuka yagenze, ntabwo rutegereza urubanza nshinjabyaha rukurikiranywemo ukekaho guteza impanuka.

2. Umwishingizi yishyura uwagizweho ingaruka n'impanuka ibihwanye n'ibyakoreshejwe mu kwivuka n' ibindi byakozwe. Bityo, bishingirwa ku biciro bihari cyangwa kuri gihamba y' ibyakoreshejwe. Ubujurire bufite ishingiro kuri bimwe. Amategeko yashingiweho. Iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi k'ububabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, Ingingo ya 13 Nta manza zifashishjwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku mpanuka yabaye ku wa 13/06/2021 saa tatu n'igice za mu gitondo, mu mudugudu wa Nyarugarama, akagari ka Karubungo, umurenge wa Gitoki mu karere ka Gatsibo, intara y'I Burasirazuba, yatewe na MOTO BAJAJ / BOXER BM 100 ifite ibirango RE 028 R ifite ubwishingizi muri Radiant insurance Company Ltd, itwawe na Ndagiwenimana Damascene, yavaga Kabarore yerekeza Ngarama, ata umurongo w' umuhanda we agonga Turayisenga Gilbert wakomerekeye muri iyo mpanuka, atwaye igare babisikana ahete umubyeyi we witwa Mutuyimana Marie, bavaga Karubungo berekeza Kabarore. Turayisenga Gilbert ntiyumvikanye na Radiant ku ndishyi bituma yiyambaza Urukiko. [2] Mu rubanza RC00005/2022/TGI/NYG, Turayisenga yaregeye indishyi zitandukanye zirimo:

iz'ibangamirabukungu, iz'akababaro, iz' ibangamiraburanga iz'ibangamiraburambe ku kazi, izo gutakaza amahirwe yo gushaka, amafaranga y'ingendo ayo kugura dosiye, amafaranga yokwivuzwa, agasubizwa igihembo cya Avoka n'igarama yose hamwe akaba amafaranga 10.561.180. Radiant insurance Company Ltd yaburanye ivuga ko, uru rubanza rutegereza urubanza RP00210/2021/TB/NG ruburanishwa mu Rukiko rw' Ibanze rwa Ngarama ruzemeza nyirabayazana w' impanuka akaba ariwe uzaryozwa ingaruka z'iyi mpanuka.

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- [3] Muri urwo rubanza, Urukiko Rwisumbuye rwa Nyagatare rwemeje ko inzitizi Radiant Insurance Company Ltd yatanze nta shingiro ifite; ruyitegeka kwishyura Turayisenga Gilbert amafaranga miliyoni zirindwi n'ibihumbi magana arindwi mirongo ine na birindwi na magana atanu mirongo itanu n'ane (7.747.554frw) akubiyemo, ay'indishyi: z'ibangamirabukungu, iz'akababaro, iz'ibangamiraburanga, iz'ibangamira ry'uburambe mu kazi n'ay'ibyo yatakaje n' amafaranga miliyoni imwe (1.000.000Frw) y'igihembo cya Avoka. Radiant Insurance Company Ltd yarajuriye. [4] Mu mwanzuro w' ubujurire wa Radiant insurance Company Ltd iburanirwa na Me Mudahogora Angelique yavuze ko, Urukiko Rwisumbuye rutitaye ku nzitizi yo gutegereza urubanza RP00210/2021/TB/NG ruburanishwa mu Rukiko rw' Ibanze rwa Ngarama ruzemeza nyirabayazana w' impanuka; ko na none Urukiko rwagennye indishyi mbangamira burambe kandi nta kazi uwakomeretse yari afite kuko nta bimenyetso byigeze bitangwa byerekena ko yari afite akazi by' imisoro atanga; amafaranga yagenwe y' ingendo ayo kwivuzwa n' ay'igihembo cya Avoka, nta gihamya bitangiwe n' indishyi z' akababaro zatanzwe inshuro ebyiri; yasabye uru Rukiko gukosora ayo makosa yakozwe muri urwo rubanza inasaba kugenerwa amafaranga 500.000 y'ikurikiranarubanza n' amafaranga 500.000 y'igihembo cy'Avoka kubera gushorwa mu manza nta mpamvu. [5] Turayisenga Gilbert uburanirwa na Me Shema Deo yireguye avuga ko, Urukiko rwasobanuye impamvu inzitizi yatanzwe idafite ishingiro, ko rwasuzumye inyandikomvugo y' impanuka ruyiha agaciro, ko indishyi zagenwe hashingiwe ku bimenyetso naho ku ndishyi zagenwe zo kwivuzwa, ingendo n' amafaranga yo kwishyura avoka Randiant ikaba idahaka ko Turayisenga yivuje kandi mu gihe cya COVID 19 ava Kabarore ajya I Gahini kandi afite Avoka. Yasabye kugenerwa amafaranga y'igihembo cya Avoka kingana n' amafaranga ibihumbi magana atanu kuri uru rwego. [6] Ibigomba gusuzumwa muri uru rubanza: kumenya niba inzitizi yatanzwe na Radiant insurance Company Ltd ifite ishingiro; kumenya niba indishyi zitandukanye zemejwe mu rubanza zitaragenwe mu buryo bukwiye. II. SESENGURA RY'IBIBAZO KIGIZE URUBANZA 1.Ku byerekeye kumenya niba inzitizi yatanzwe na Radiant insurance Company Ltd ifite ishingiro [7] Mu bisobanuro ku bujurire bwa Radiant insurance Company Ltd, Me Mudahogora Angelique yavuze ko, Urukiko Rwisumbuye rutitaye ku myiregurire yabo: ntirwahaye agaciro inzitizi yo gutegereza urubanza RP00210/2021/TB/NGA ruburanishwa mu rukiko rw' Ibanze rwa Ngarama ruzemeza nyirabayazana w' impanuka; yasobanuye ko, ibi urukiko rwabirenzeho rugena indishyi rutitaye ku biteganywa n' amategeko nk'uko icyemezo cyafashwe kibigaragaza. Muri PV ya police igaragaza ko nyirabayazana w'impanuka ari uwari utwaye

moto uvuga ko bamubeshyera, ko ahubwo ari igare ryabuze feri rikinjira mu muhanda rikagonga moto rikagwa imbere yayo.

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- [8] Turayisenga Gilbert uburanirwa na Me Shema Deo yireguye avuga ko, Urukiko rwasobanuye impamvu inzitizi yatanze idafite ishingiro, ko rwasuzumye inyandikomvugo y' impanuka ruyiha agaciro; ko moto ifite ubwishingizi muri Radiant Insurance Company Ltd, byatumye bayirega ngo ibahe indishyi zikomoka ku mpanuka yateje, iby'uko hari urubanza nshinjabyaha RP00210/2021/TB/NGA, ko ari rwo ruzagaragaza nyirabayazana w'impanuka atari byo, kuko Urukiko rwashingiye kuri PV ya police igaragaza ko, uko impanuka yagenze kandi mu manza zerekanywe n'indishyi zikomoka ku mpanuka hagenderwa kuri PV ya police iba yarakozwe iyo batayishimiye basaba "Pv subsequent". UKO URUKIKO RUBIBONA [9] Mu rubanza RC00005/2022/TGI/NYG mu gika cyarwo cya [9]-[12], Urukiko Rwisumbuye rwa Nyagatare rwasesenguye impamvu Radiant Insurance Company Ltd yatanze isaba ko, hategerezwa icyibwa ry'urubanza RP00210/2021/TB/NG mbere y' uko uru rucibwa maze rusanga nta shingiro zifite, rwavuze ko, ibyo umugenzacyaha wageze aho impanuka yabereye yashoboye gukusanya ashingiye ku buhamya bw'ababibonye ndetse n'imvugo za Ndagiwenimana Damascene, yemeje ko impanuka yatewe no kutaringaniza umuvuduko k'uware utwaye iyo moto BAJAJ / BOXER BM 100 ifite ibirango RE 028 R, waje kugonga Turayisenga Gilbert agakomereka bikomeye, kandi Radiant Insurance Company Ltd ariyo yishingiye iyo moto(...). [10] Mu bujurire bwa Radiant Insurance Company Ltd, ikaba itavuguruzwa ibivugwa muri iyo nyandikomvugo, na none iyo nyandikomvugo ikaba igaragaza mu gishushanyo cyaho impanuka yabereye, aho moto yagonganiye n' igare ko atari mu mukono w'uware utwaye moto, bigaragara ko yasanze umunyegari mu mukono we bikaba bivuze ko, ariwe wari mu makosa, iyo nyandiko mvugo ikaba Radiant ikaba itarayiregeye cyangwa ngo isabe ko hakorwa iyivuguruzwa, bityo, Urukiko Rwisumbuye rukaba rutaribeshye, ubujurire bwa Radiant Insurance Company Ltd kuri iyo ngingo bukaba nta shingiro bufite. Naho ku manza zatanze na Me Mudahogora Angelique Urukiko rusanga zitashingirwaho kuko zidahuye n'uru rubanza. 2.Ku byerekeye kumenya niba indishyi zitandukanye zemejwe mu rubanza zitaragenwe mu buryo bukwiye [11] Mu bujurire bwa Radiant insurance Company Ltd na none yavuze ko, Urukiko rwagennye indishyi mbangamira burambe ku kazi zingana na 540. 000FRW kandi nta kazi uwakomeretse yari afite kuko nta bimenyetso byigeze bitangwa byerekenye ko yari afite akazi by' imisoro atanga; amafaranga yagenwe y' ingendo anagana na 400.000FRW, ayo kwivuzwa angana na 650.000FRW n' ay'igihembo cya Avoka angana na 1.000.000Frw, nta gihamba bitangiye n' indishyi z' akababaro zatanze inshuro ebyiri, ko ibyo byakozwe n' Urukiko rwirengagije ibiteganywa n' ingingo ya 19 y' Iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburo bwo kwishyura indishyi k'ububabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga; Yasabye uru Rukiko gukosora ayo makosa yakozwe muri urwo rubanza banasaba kugenerwa amafaranga 500.000 y'ikurikiranarubanza na 500.000 y'igihembo cy'Avoka kuko yayishoye mu manza nta mpamvu.

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[12] Kuri iyo ngingo Me Shema Deo yavuze ko, indishyi zagenwe hashingiwe ku bimenyetso naho ku ndishyi zagenwe zo kwivuza, ingendo n'amafaranga yo kwishyura avoka, Radiant idahakana ko, Turayisenga yivuje kandi hari mu gihe cya COVID 19, ava Kabarore ajya I Gahini kandi afite Avoka. Yasabye kugenerwa amafaranga y'igihembo cya Avoka kingana n'amafaranga ibihumbi magana atanu muri uru rwego mu kirego kiregera kwiregura. UKO URUKIKO RUBIBONA [13] Ingingo ya 13 y' Iteka rya Perezida N°31/01 ryo kuwa 25/8/2003 rishyiraho uburo bwo kwishyura indishyi k'ububabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga iteganya ko, "Amafanga yo kwivuza, yo gushyirwa mu bitaro, yo kugura imiti, yo gutwarwa mu modoka itwara abarwayi, yo kongera kumenyereza umubiri, yo kugorora ingingo, y'ibyuma bikoresheha, y'insimburangingo n'ay'ingendo zo kujya kwivuza arihwa n'uwateje impanuka cyangwa umwishingizi we, hakurikijwe ibiciro biriho mu Rwanda. Agomba kwishyurwa n'abo bombi, bamaze kubona inzandiko zibihamya, mu kwezi kw'iyakirwa ry'izo nyandiko. (...)" [14] Iyo ngingo yumvikanisha ko, umwishingizi agomba kwishyura ibihwanye n'ibyakoreshejwe mu kwivuza n'ibindi byakozwe kuwagizweho ingaruka n'impanuka bivuze ko, bibabishyingiye ku biciro bihari cyangwa kuri gihamya y'ibyakoreshejwe. [15] Urukiko rero rurasanga nk'uko Radiant insurance Company Ltd ibivuga, kuba Turayisenga Gilbert atagaragaje ibimenyetso by'ibyakoreshejwe mu ngendo no kwivuza, akaba yarayagenewe izo ndishyi zavuzwe nta gihamya cyangwa inyemezabwishyu (facture) atanze, uru Rukiko rusanga ari ikirenga hakurikijwe ibiteganywa n'yo ngingo, bituma izo ndishyi zigomba guhinduka, akazigenerwa mu bushishozi bw'Urukiko mu buryo bukurikira: amafaranga y'uRwanda 500.000 y'igihembo cy'avoka; amafaranga y'uRwanda 200.000 y'ingendo; amafaranga y'uRwanda 200.000 yo kwivuza ayandi akaguma uko yagenwe. Naho ku byerekeye indishyi z'akababaro zivugwa ko zatanzwe inshuro ebyiri bitari byo kuko, ari ukwitiranya, ahubwo hatanzwe indishyi z'akababaro hatangwa n'indishyi mbangamira burambe ku kazi. [16] Naho ku byerekeye indishyi z'ikurikirana rubanza n'igihembo cy'abavoka zasabwe n'impande zombi kuri uru rwego, Urukiko rurasanga zitagomba gutangwa kuri bose kuko ubujurire bwatanzwe na Radiant insurance Company Ltd bufite ishingiro kuri bimwe. III. ICYEMEZO CY'URUKIKO [17] Rwemeje kwakira ubujurire bwa Radiant insurance Company Ltd kandi ko bufite ishingiro kuri bimwe; [18] Rwemeje ko, RC00005/2022/TGI/NYG rwaciye n'Urukiko Rwisumbuye rwa Nyagatare ku wa 28/11/2022 ruhindutse kuri bimwe; [19] Rutegetse Radiant insurance Company Ltd guha Turayisenga Gilbert amafaranga miliyoni enye ibihumbi magana inani na mirongo itanu na kimwe na Magana cyenda mirongo itanu na bine(4.851.954Frw) y'indishyi mbangamirabukungu; amafaranga miliyoni imwe n'ibihumbi

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mirongo inani(1.080.000Frw), amafaranga ibihumbi Magana abiri na cumi na bitandatu (216.000 Frw) y'indishyi mbangamiraburanga; amafatanga ibihumbi magana atanu na mirongo ine (540.000Frw) y'ibangamira ry'uburambe ku kazi; amafaranga ibihumbi Magana abiri (200.000) y'ingendo zo kwivuza; ibihumbi icyenda magana atandatu (9.600) yo Kugura dosiye; ibihumbi

magana atandatu na mirongo itanu (650.000Frw) yo kwivuza n' amafaranga ibihumbi magana atanu (500.000Frw) y' igihembo cy' avoka ku rwego rwa mbere yose hamwe akaba miliyoni umunani n' ibihumbi mirongo ine na birrindwi na Magana atanu na mirongo itanu n' ane (8.047.554Frw). [20] Rutegetse ko, ingwate y' amagarama yatanzwe muri uru rubanza ahwanye n'ibyakozwe.

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