

RWANDA / JUDGMENT

SANALAM AG LTD v NSANZUMUHIRE

RCA 00380/2019/HC/KIG

COURT

High Court

DECIDED

30 July 2020

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RCA 00380/2019/HC/KIG

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SANALAM AG LTD v NSANZUMUHIRE

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Text

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SANALAM AG LTD v NSANZUMUHIRE [Rwanda URUKIKO RUKURU - RCA 00380/2019/HC/KIG (Kadigwa, P.J.) 30 Nyakanga 2020] Amategeko y'imanza mbonezamubano – Imanza z'indishyi zikomoka ku mpanuka - Kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga – Ugenerwa indishyi z'ibangamiraburambe - Ugenerwa izi ndishyi ni umunyeshuri wo mu mashuri yisumbuye, ay'imyuga cyangwa andi angana nayo, cyangwa umuntu wari usanzwe akora. Amategeko y'imanza mbonezamubano – Imanza z'indishyi zikomoka ku mpanuka - Kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga – Indishyi z'ibangamiraburambe – Umuntu wari usanzwe akora – Umuntu wari usanzwe akora agenerwa indishyi zihwanye n'umusaruro we w'amezi atandatu ariko zikaba zitagomba kurenga inshuro 30 z'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Ibi bisobanuye ko ari ngombwa ko uwahohotwe n'impanuka aba agomba kugaragaza ikimenyetso cy'ingano y'umusaruro we wa buri kwezi kugirango ube ariwo uherwaho ngo abarirwe indishyi z'ibangamiraburambe ku kazi. Incamake y'ikibazo: uru rubanza rukomka ku mpanuka yakozwe n'ikinyabiziga cyari gifite ubwishingizi muri SANALAM AG Ltd ikomeretsa Nsanzumuhire. Mu rubanza RC 00014/2019/TGI/NYGE uyu yatanze ikirego asaba ko SANLAM AG Ltd itegekwa

kumwishyura indishyi zishingiye kuriyo mpanuka, urukiko ruha agaciro ikirego cye, rutegeka SANLAM AG Ltd kumuha indishyi zose hamwe zingana na miliyoni enye ibihumbi Magana arindwi na mirongo icyenda na kimwe na Magana abiri na mirongo itanu (4.791.250 frw) no kumusubiza ibyo yatanze ku rubanza. Sanlam ntiyanyuzwe n'icyo cyemezo ikijurira mu rukiko Rukuru ivuga ko inzitizi yatanze itahawe agaciro ndetse ko itananyuzwe no kuba yaraciwe indishyi z'ibangamiraburambe ku kazi. Urukiko muri uru banza rwasuzumye ingingo zikurikira: kuba ku rwego rwa mbere urukukiko rutarahaye agaciro inzitizi yo kutakira ikirego ndetse n'ikibazo cy'indishyi z'ibangamiraburambe ku kazi. Urega avuga ko avuga ko inzitizi yatanze yo kutakira ikirego yari ishingiyeye ku rujijo ku ngano y'ubumuga buhoraho umuburanyi wayo yatejwe n'impanuka, akavuga ko icyagombaga gukorwa kwari gushakisha itsinda ry'abaganga bo kugaragaza ingano nyakuri y'ubwo bumuga nk'uko amategeko abiteganyaga mu mwanya wo kuregera inkiko. Agasaba kandi ko hashyirwaho itsinda ry'abaganga bo kugena ingano y'ubumuga bwatejwe n'impanuka. Akomeza avuga ko nta ndishyi mbangamiraburambe ku kazo zigomba gutangwa kuko uzisaba atagaragaza ko yari asanzwe akora. Nsanzumuhire avuga ko inzitizi SANLAM AG Ltd itanga nta shingiro ifite ngo kuko ubumuga buhoraho bwa 36% urukiko rwashingiyeho mu kumubarira indishyi bwatanze n'umuganga witwa Dr Kagame wishyiriweho na SANLAM AG Ltd. akomeza avuga ko ku bijyanye n'indishyi z'ibangamiraburambe ku kazi ko ari umuntu mukuru wari usanzwe akora kandi yitunze, ndetse akaba yarerekanye n'icyemezo kigaragaza ko yakoraga umwuga w'ububaji (charpentier).

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Incamake y'icyemezo: Uwahohotwe n'impanuka aba agomba kugaragaza ikimenyetso cy'ingano y'umusaruro we wa buri kwezi kugirango ube ariwo uherwaho ngo abarirwe indishyi z'ibangamiraburambe ku kazi bityo kuba Nsanzumuhire yari umuntu wibeshejeho ndetse ngo wakoraga akazi k'ububaji (charpentier) ariko ntiyerekana ikimenyetso cy'ingano y'umusaruro yavanaga muri ako kazi ke buri kwezi kugirango uwo musaruro ube igipimo cyaherwaho mu kumubarira indishyi z'ibangamiraburambe ku kazi, bigomba guteshwa agaciro kuko ataribyo Itegeko riteganyaga. Ubujurire bwatanze bufite ishingiro gusa ku bijyanye n'indishyi z'ibangamiraburambe ku kazi; Indishyi z'ibangamiraburambe ku kazi Nsanzumuhire yagenewe ku rwego rwa mbere zingana na 540.000frw zivanweho. Amategeko yashingiweho: 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, ingingo ya 19. Nta manza zifashishijwe Urubanza [1] Inkomoko y'uru rubanza ni impanuka yakozwe n'ikinyabiziga Camionnette Mitsubishi Fuso ifite plaque RAD767K cyari gifite ubwishingizi muri SANLAM AG Ltd ikomeretsa Nsanzumuhire Radjab. Mu rubanza RC 00014/2019/TGI/NYGE uyu yatanze ikirego asaba ko SANLAM AG Ltd itegakwe kumwishyura indishyi zishingiye kuriyo mpanuka, urukiko ruha agaciro ikirego cye, rutegeka SANLAM AG Ltd kumuha indishyi zose hamwe zingana na miliyoni enye ibihumbi Magana arindwi na mirongo icyenda na kimwe na Magana abiri na mirongo itanu (4.791.250 frw) no kumusubiza ibyo yatanze ku rubanza. [2] SANLAM AG Ltd ntiyanyuzwe n'icyo cyemezo ikijuririra muri uru Rukiko yinubira ko inzitizi yatanze yo kutakira ikirego itahawe agaciro, yinubira no kuba yaraciwe indishyi zikomoka ku mpanuka

by'umwihariko indishyi z'ibangamiraburambe ku kazi, ibi bibazo bikaba aribyo bigomba gusuzumwa muri uru rubanza hagasuzumwa n'ikibazo cy'indishyi z'ibyatanzwe ku rubanza zasabwe na buri muburanyi. ISESENGURA RY'IBIBAZO BIRI MURI URU RUBANZA Kuba ku rwego rwa mbere urukiko rutarahaye agaciro inzitizi yo kutakira ikirego [3] Uburanira SANALAM AG Ltd avuga ko inzitizi yatanze yo kutakira ikirego yari ishingiyeye ku rujijo ku ingano y'ubumuga buhoraho umuburanyi wayo yatejwe n'impanuka, akavuga ko icyagombaga gukorwa kwari gushakisha itsinda ry'abaganga bo kugaragaza ingano nyakuri y'ubwo bumuga nk'uko amategako abiteganyaga mu mwanya wo kuregera inkiko. Uburanira SANALAM AG asobanura urwo rujijo avuga ko dosiye y'ibitaro yerekanaga ko umuburanyi wabo yatejwe ubumuga buhoraho bwa 36% mu nyandiko yo kuwa 08/052019

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bikaba ngo bitandukanye n'ibyangitse kuri Formulaire de Consolidation des lésions yari isiribanze ahanditse Incapacité Physique Permanente utamenya niba ari 36% cyangwa 30%, bityo akaba adashobora kwemeza ukuri kw'iyi mibare. [4] Uburanira SANLAM AG Ltd akomeza avuga ko ku rwego rwa mbere urukiko rwirengagije ibisobanuro yatanze, bityo akaba asaba ko kuri uru rwego rw'ubujurire uru Rukiko rwaha agaciro imiburanire yabo, rukemeza ko hashyirwaho itsinda ry'abaganga bo kugena ingano nyakuri y'ubumuga umuburanyi wabo yatejwe urujijo rukabavanwaho ku byerekeye ingano y'ubumuga umuburanyi wabo yatejwe. [5] Uburanira Nsanzumuhire Radjab yisobanura avuga ko inzitizi SANALAM AG Ltd itanga nta shingiro ifite ngo kuko ubumuga buhoraho bwa 36% urukiko rwashingiyeho mu kumubarira indishyi bwatanzwe n'umuganga witwa Dr Kagame Abel wishyiriweho na SANLAM AG Ltd ubwayo, ibyo bikaba ngo bigaragazwa na "Requisition" SANLAM AG Ltd ubwayo yahaye uyu muganga imusaba gukorera Nsanzumuhire Radjab contre expertise ndetse nuyu muganga akemera kuyikora, bityo ngo n'indishyi zose zategatswe n'urukiko rwaciye uru rubanza ku rwego rwa mbere zikaba zarashingiye kuri contre expertise yakoze na Dr Kagame Abel yagaragaje ko Nsanzumuhire Radjab yatejwe n'impanuka ubumuga buhoraho bwa 36% n'ibangamiraburanga rya 2/3. Uko uru Rukiko rubibona [6] Ku bijyanye n'iki kibazo uru Rukiko rusanga impungenge SANLAM AG Ltd yagaragaje ku byerekeye ingano y'ubumuga buhoraho umuburanyi wayo yagize nta gaciro zahabwa kuko mu miburanire yayo kuri uru rwego rw'ubujurire uyiburanira ntiyahakanye ko Dr Kagame Abel wakoze contre expertise igaragaza ubumuga buhoraho bwa 36% ari SANLAM AG Ltd yabimusabye, asaba gusa ko itashingirwaho ngo kuko yagendeye ku makuru atariyo. Uru Rukiko rusanga kandi iyi contre expertise medicale ihuza n'iyakozwe n'Umuganga witwa Dr Nshimiyimana Alexis, ariko SANLAM AG Ltd ikaba yarayikemanze ivuga ko isiribanze ahanditse ingano y'ubumuga buhoraho. [7] Rushingiyeye ku bivuzwe haruguru uru Rukiko rusanga inzitizi SANLAM AG Ltd itanga nta shingiro ifite ndetse no gusaba ko hashyirwaho irindi tsinda ry'abaganga ryo gupima ingano nyakuri y'ubumuga buhoraho Nsanzumuhire Radjab yatejwe n'impanuka nta gaciro byahabwa. Kuba SANALAM AG Ltd yarabonye ko ishindikanyaga ku ngano y'ubwo bumuga, ikandikira ibitaro byamuvuye bwa mbere igisubizo ntikiyinyure igasaba Dr Kagame Abel gukora contre expertise kandi akayikora ndetse igahura n'iyakozwe n'umuganga witwa Dr Nshimiyimana Alexis SANLAM AG ikayigiraho impungenge, uru Rukiko rusanga nta

yindi mpamvu yatuma hashyirwaho irindi tsinda ry'abaganga ahubwo SANLAM AG Ltd igomba kwishyura indishyi zikomoka ku mpanuka Nsanzumuhire Radjab yatejwe n'impanuka hashingiwe ku bumuga buhoraho bwa 36% nk'uko ibimenyetso bimaze kuvugwa byabigaragaje, icyemezo cyafashwe kuri iki kibazo ku rwego rwa mbere kikaba kigomba guhamaho. Ikibazo cy'indishyi z'ibangamiraburambe ku kazi [8] Uburanira SANLAM AG Ltd avuga ko ku rwego rwa mbere urukiko rutagombaga gutegeka ko umuburanyi wabo ahabwa indishyi z'ibangamiraburambe ku kazi kuko ngo nta

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bimenyetso yagaragaje by'umurimo yakoraga uzwi, bityo ngo rukaba rwaranyuranije n'ingingo ya 19 y'iteka n°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, aho rivuga ko ibangamira ry'uburambe mu kazi ari: gutakaza amahirwe y'akazi ku munyeshuri wo mumashuricg se angana nayo ashobora kwizerwa; cyangwa se gutakaza uburambe mu kazi ku muntu wari usanzwe akora. [9] Uburanira SANLAM AG Ltd anenga urukiko rwaciye uru rubanza ku rwego rwa mbere ko rwagendeye gusa ko izi ndishyi zagiye zitangwa mu zindi manza bitabaye ngombwa ko uzisaba agaragaza icyemezo cy'akazi akora cyangwa umushahara ahabwa ahubwo harashingiwe ko ngo ari umuntu mukuru afite icyo akora, ibyo ngo bikaba ari ukwiringagiza nkana itegeko ahera aho asaba ko icyemezo cyatanze izi ndishyi z'ibangamiraburambe ku kazi giteshwa agaciro. [10] Uburanira Nsanzumuhire Radjab yisobanura avuga ko ku bijyanye n'indishyi z'ibangamiraburambe ku kazi urukiko ntaho rwibeshye ngo kuko uyu yari umuntu mukuru wari usanzwe akora kandi yitunze, ndetse ngo akaba yarerekanye n'icyemezo kigaragaza ko yakoraga umwuga w'ububaji (charpentier), bityo ngo indishyi zatanze zikaba zigomba guhamaho kuko zishingiye ku ngingo ya 19 y'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. Uko uru Rukiko rubibona [11] Ku bijyanye n'iki kibazo, uru Rukiko rusanga ingingo ya 19 y'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 iteganya mu gika cyayo cya nyuma ko ugenerwa bene izi ndishyi ari umunyeshuri wo mu mashuri yisumbuye, ay'umyuga cyangwa andi angana nayo, cyangwa umuntu wari usanzwe akora. [12] Kuri uyu uvuzwe nyuma iteka rya Perezida rivuzwe haruguru riteganya ko ahabwa indishyi zihwanye n'umusaruro we w'amezi atandatu ariko zikaba zitagomba kurenga inshyuro 30 z'umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Ibi bisobanuye ko ari ngombwa ko uwahohotwe n'impanuka aba agomba kugaragaza ikimenyetso cy'ingano y'umusaruro we wa buri kwezi kugirango ube ariwo uherwaho ngo abarirwe indishyi z'ibangamiraburambe ku kazi. [13] Ku bireba Nsanzumuhire Radjab uru Rukiko rusanga umuburanira avuga gusa ngo yari umuntu wibeshejeho ndetse ngo wakoraga akazi k'ububaji (charpentier) ariko ntiyerekana ikimenyetso cy'ingano y'umusaruro yavanaga muri ako kazi ke buri kwezi kugirango uwo musaruro ube igipimo cyaherwaho mu kumubarira indishyi z'ibangamiraburambe ku kazi. Kuba ku rwego rwa mbere urukiko rwarageneye Nsanzumuhire Radjab indishyi zihwanye n'amezi 6 rushingiye gusa ko ngo yari umuntu mukuru witunze rushingira no ku manza zaciwe rutagaragaje na numero zazo, uru Rukiko rusanga

bigomba guteshwa agaciro kuko ataribyo Itegeko Teka rya Perezida rivuzwe haruguru riteganya. Indishyi z'ibyatanzwe ku rubanza

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[14] Nk'uko bimaze gusobanurwa mu buryo burambuye ubujurire bwa SANLAM AG Ltd bufite ishingiro gusa ku byerekeye indishyi z'ibangamiraburambe ku kazi ariko ku bindi nta shingiro bufite, ikaba itagomba guhabwa indishyi z'ibyo yatanze ku rubanza kuko kubyo yajuririye bidafite ishingiro nayo yashoye umuburanyi wayo muri uru rubanza ku maherere bituma arutangaho ibye, kubera izo mpamvu rukaba rusanga buri mu buranyi agomba kwirengera indishyi z'ibyo yatanze ku rubanza, igarama ryatanzwe rigahera mu isanduku ya Leta. ICYEMEZO CY'IRUKIKO [15] Urukiko Rukuru Rwemeje kwakira ubujurire bwatanzwe na SANLAM AG Ltd rubusuzumye rusanga bufite ishingiro gusa ku bijyanye n'indishyi z'ibangamiraburambe ku kazi zahawe umuburanyi wayo Nsanzumuhire Radjab Rutegetse ko indishyi z'ibangamiraburambe ku kazi Nsanzumuhire Radjab yagenewe ku rwego rwa mbere zingana na 540.000frw zivanweho, agahabwa 4.791.250 frw- 540.000frw= 4.172.250 frw. Rutegetse ko bindi nta gihinduka ku mikirize y'urubanza rwajuririwe RC 00014/2019/ TGI/NYGE rwaciwe kuwa 26/07/2019; Rutegetse ko buri muburanyi yirengera indishyi z'ibyo yatanze ku rubanza; Rutegetse ko igarama ryatanzwe rihera mu isanduku ya Leta.

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