

RWANDA / JUDGMENT

Sanlam vs Muhire

RCA 00024/2023/HC/RWG

COURT

High Court

DECIDED

13 November 2023

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Sanlam vs Muhire

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Text

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SANLAM AG vs ABO MU MURYANGO WA MUHIRE [Rwanda URUKIKO RUKURU – RCA 00024/2023/HC/RWG (Nyirabagande, P.J.) 13 Ugushyingo 2023] Amategeko Mboneyamubano – Ubwishingizi – imodoka itwara imizigo – occupant na third party – Kuba umuntu ari hejuru y’imodoka itwara imizigo Nta sano afitanye n’iyo modoka, ntiyafatwa nka “occupants” kuko atari kingingi, umushoferi cyangwa umukozi kuri iyo modoka. Incamake y’ikibazo: Urubanza rwatangiye abafite uburenganzira kuri Muhire batanga ikirego mu Rukiko rwisumbuye rwa Ngoma barega basaba SANLAM AG basaba Urukiko kuyitegeka kubaha indishyi zitandukanye zikomoka ku mpanuka yamuhitanye ubwo Imodoka RAF 669 B yari ifite ubwishingizi muri SANLAM AG yakoze impanuka, itwaye abantu bari hejuru y’amatafari, Muhire agwa hasi bimuviramo urupfu. SANLAM AG ivuga ko nta ndishyi yategekwe kwishyura, kubera ko uwishingiwe ariwe utubahirije amasezerano ariko ko Urukiko rubibonye ukundi nyakwigendera yahabwa 3.000.000Frw yari ateganyirijwe “occupant”. Urukiko mu rubanza RC00056/2022/TGI/NGOMA rwemeje ko nyakwigendera Muhire atari muri “occupants” bishingiwe muri iyo modoka, ahubwo ko yari “third party”. Rwategetse kandi Sanlam AG guha abagize umuryango wa Muhire indishyi zitandukanye zingana na 10.765.286Frw. SANLAM AG ntiyanyuzwe nicyo cyemezo

ikijuririra mu Rukiko Rukuru, Urugereko rwa Rwamagana, ivuga ko SANLAM AG yategetswe kwishyura indishyi mu buryo budakurikije amategeko; ko Muhire yari “occupants” kandi ko uwishingiwe atubahirije amasezerano akaba nta ndishyi ngo yari ikwiye gucibwa. Abasaba indishyi bavuga ko indishyi zagenwe mu rubanza rujurirwa zagenwe mu buryo bukurikije Amategeko, ko abangirijwe batagirwaho ingaruka n’amasezerano atari ayabo, kandi ngo nta n’ikimenyetso kigaragaza ko Muhire yari “occupants”. Incamake y’icyemezo: Kuba umuntu ari hejuru y’imodoka itwara imizigo Nta sano afitanye n’iyo modoka, ntiyafatwa nka “occupants” kuko atari kingingi, umushoferi cyangwa umukozi kuri iyo modoka. Bityo iyo ahitanywe cyangwa akomerekeye mu mpanuka afatwa nka “third party” kuri iyo modoka, akishyurwa indishyi hashingiwe ku Iteka rya Perezida wa Repubulika rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 30/08/2018 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, Ingingo ya 12 Itegeko No 30/2021 ryo ku wa 30/06/2021 rigenga imitunganyirize y’umurimo w’ubwishingizi, Ingingo ya 131 Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga, Ingingo ya 21 Itegeko N°41/2001 ryo ku wa 19/09/2001 ryerekeye itangwa ry’indishyi ku bahohotewe biturutse ku mpanuka zo ku mubiri zitewe n’ibinyabiziga. Ingingo ya 4

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Nta manza zifashishijwe. Urubanza I. IMITERERE Y’URUBANZA [1] Imodoka RAF 669 B yari ifite ubwishingizi muri SANLAM A G yakoze impanuka, itwaye abantu bari hejuru y’amatafari, Muhire Jean Pierre agwa hasi bimuviramo urupfu. Abamufiteho uburenganzira basabye SANLAM AG indishyi, batazihawe baregera Urukiko Rwisumbuye rwa NGOMA ; SANLAM AG ivuga ko nta ndishyi yategekwa kwishyura kubera ko uwishingiwe atubahirije amasezerano ariko ko nibura nyakwigendera yari guhabwa 3.000.000Frw nka yari ateganyirijwe “occupant” nk’uko byari mu amasezerano, abaregera indishyi batabyemeye batanga ikirego. [2] Mu rubanza RC00056/2022/TGI/NGOMA rwaciwe ku wa 14/04/2023, Urukiko Rwisumbuye rwa NGOMA rwemeje nyakwigendera (Muhire Jean Pierre) waguye mu mpanuka y’imodoka SINO TRUCK HOWO RAF 669 B atari muri “occupants” bishingiwe muri iyo modoka, ahubwo yari “third party” wishingiwe muri iyo modoka. Rwemeje kandi rutegeka Sanlam AG guha abagize umuryango wa Muhire Jean Pierre ugizwe na Umukundwa Carine, Umwiza Noella, Uwihagazeho Jean d’Amour, Muvunyi Théogène, Rukeshangabo Jean Bosco na Ndikumana Capitoline indishyi zose hamwe zingana na 10.765.286Frw agizwe na : indishyi z’ibangamirabukungu 5.826.986Frw, indishyi z’akababaro 4.050.000Frw ; andi mafaranga yakoreshejwe 388.300Frw hamwe n’igihembo cya avoka 500.000Frw. [3] Mu kwemeza ko abaregera indishyi bazihabwa, Urukiko rwasobanuye ko Muhire Jean Pierre yari mu modoka nk’undi muntu (third party) kuko atabarirwa mu bakora kuri iyo modoka yakoze impanuka, biswe “occupants” byari bigenwe ko yagenerwa indishyi zihwanye na 3.000.000Frw mu gihe habeyeho urupfu, nk’uko biboneka mu masezerano; kuko “occupants” ari umushoferi na kingingi, abantu baba bazwi mu gihe cy’ikorwa ry’amasezerano kuri bene izi modoka zitwara imizigo. [4] SANLAM AG yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, Me Nkiranuye Gratien uyihagarariye avuga ko SANLAM AG yategetswe kwishyura indishyi mu

buryo budakurikije amategeko; ko Muhire yari “occupants” kandi ko uwishingiwe atubahirije amasezerano akaba nta ndishyi zikwiye. Me Gatama Cassien uhagarariye abasaba indishyi avuga ko indishyi zagenwe mu buryo bukurikije amategeko, ko abangirijwe batagirwaho ingaruka n’amasezerano atari ayabo, kandi nta kimenyetso kigaragaza ko Muhire Jean Pierre yari “occupants”. Urukiko rurasuzuma niba Muhire Jean Pierre yafatwa nka “occupant” ntagenerwe indishyi ziteganywa n’Iteka rya Perezida rigena uburyo bwo kwishyura indishyi. [5] Ikibazo gisuzumwa muri uru rubanza: Kumenya niba Muhire Jean Pierre yari “occupants” ntiyagenwe indishyi zishingiye ku Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi zikomoka ku mpanuka zo mu muhanda. II. IBIBAZO BIBONEKA MU RUBANZA N’ISESENGURWA RYABYO.

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A.Kumenya niba hari ibimenyetso bigaragaza ko MUHIRE Jean Pierre yari “occupant” ntagenerwe indishyi hashingiwe ku Iteka rya Perezida rishyiraho uburyo bwo kubara indishyi zikomoka ku mpanuka. [6] Me Nkiranuye Gratien uhagarariye SANLAM AG avuga ko mu rubanza rujuririrwa hirengagijwe amategeko, hagenwa indishyi zidakwiye ; asobanura ko Muhire Jean Pierre yari umukozi ku modoka ipakira amatafari, we n’abandi 5 bari hejuru y’amatafari, ikoze impanuka, Muhire Jean Pierre aragwa hanyuma amatafari amugwaho bimuviramo urupfu. [7] Avuga ko hashingiwe ku masezerano SANLAM AG itari gutegekwa kwishyura indishyi zikomoka ku rupfu rwa Muhire Jean Pierre nka “third party” kubera ko yari umukozi kuri iyo modoka, SANLAM AG ikaba yari kwishyura nibura 3.000.000Frw yateganyirijwe “occupant” mu masezerano y’ubwishingizi, kuko yari yagiye gupakira amatafari, ayigenda hejuru agiye gupakurura, akaba afite aho yari ahuriye na yo, kuko yari umukozi kuri iyo modoka. [8] Mu iburanisha Me Nkiranuye Gratien uhagarariye SANLAM AG, avuga ko itagomba gutegekwa kwishyura indishyi kubera ko uwishingiwe ari we utarubahirije amasezerano, atwara abantu 6 hejuru y’amatafari, ikaba rero itagomba kwishyura indishyi nk’uko byasobanuwe mu manza zaciye n’Urukiko rw’Ubujurire ndetse n’izindi nkiko zemejwemo ko umwishingizi ataryozwa indishyi iyo uwishingiwe atubahirije amasezerano; bigashimangirwa n’ibivugwa mu ngingo ya 131 y’Itegeko No 030/2021 ryo ku wa 30/06/2021 rigena imitunganyirize y’umurimo w’ubwishingizi, ivugwamo ko utwaye ikinyabiziga afite inshingano zo kutarenza umubare w’abantu bishingiwe. Ku birebana n’uburyo bwo kubara indishyi, avuga ko bibaye ko SANLAM AG itegekwa hashingirwa ku masezerano, hagategyekwa kwishyura 3.000.000Frw zagenwe mu masezerano hagati y’uwishingiwe n’uwishingiye. [9] Me Gatama Cassien uhagarariye abaregwa mu bujurire, avuga ko urubanza rujuririrwa rutahinduka kuko rwubahirije ibiteganywa mu ngingo ya 17 y’Iteka rya Perezida wa Repubulika ku birebana no kwishyura indishyi zikomoka ku mpanuka yo mu muhanda. Avuga ko nta kimenyetso kigaragazwa na SANLAM AG cy’uko Muhire Jean Pierre yari umukozi ku modoka, ko rero atari “occupants”; ahubwo yari “third party” kandi mu masezerano nta mbibi ku ndishyi zagenwa mu gihe undi muntu agizweho ingaruka n’impanuka, cyane ko uwahohotewe ataryozwa amasezerano atamureba. UKO URUKIKO RUBIBONA [10] Ingingo ya 12 y’Itegeko No 22/2018 ryo ku wa 30/08/2018 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, iteganya ko urega agaragaza ibimenyetso by’ibyo aregera. Ingingo ya 131 y’Itegeko No 30/2021 ryo ku wa 30/06/2021 rigenga imitunganyirize y’umurimo

w'ubwishingizi, iteganya ko igihe habaye impamvu y'icyishingiwe, ikigo cy'ubwishingizi cyishyura indishyi ntarengwa hashingiwe ku gaciro k'icyishingiwe mu masezerano y'ubwishingizi yo kwishyura cyangwa kuriha umufatabwishingizi cyangwa undi muntu ufite inyungu yishingiwe mu masezerano, ku gihombo cyangwa ibyangijwe byishingiwe. Ingingo ya 21 y'Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, iteganya ko ibangamirabukungu rikorewe abafite uburenganzira bitewe n'urupfu rw'umuntu ritangirwa indishyi hakurikijwe umusaruro uva ku murimo umuntu atahana nk'uko ugenwa n'ingingo ya 4 y'Itegeko N°41/2001 ryo ku wa 19/09/2001 ryerekeye itangwa ry'indishyi ku bahohotewe biturutse ku mpanuka zo ku mubiri zitewe n'ibinyabiziga. Abafite uburenganzira ku buryo byumvikana ko bari batanzwe n'uwahohotewe ni bo bonyine bashobora guhabwa indishyi.

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[11] Izi ngingo zumvikanisha ko mu gihe habayeho urupfu rutewe n'impanuka y'ikinyabiziga, umwishingizi agomba abafite uburenganzira kuri nyandikwigendera kwishyura indishyi zinyuranye zirimo n'iz'ibangamirabukungu, iz'ibyakoreshejwe, bibarwa hagendewe ku biteganyijwe mu mategeko agenga iyishyurwa ry'indishyi ku mpanuka. Iyo impamvu y'icyishingiwe ibaye, hishyurwa indishyi ntarengwa hagendewe ku gaciro kishingiwe; kandi urega afite inshingano zo kugaragaza ibimenyetso. [12] Nk'uko biboneka mu masezerano y'ubwishingizi yo ku wa 26/08/2021 ingingo ya mbere "interests & sums insured", hagaragazwa ko hashingiwe (covers): third party, damages, fire, passenger's liability, occupant. Hari ingingo ya "limits of liability: third party bodily injury/death (any one person, any one event/occurrence) unlimited. Ibivuzwe muri izi ngingo byumvikanisha ko mu byishingiwe harimo undi muntu wapfa kubera impanuka kandi nta mbibi mu kwishyura indishyi. [13] Muri uru rubanza, ikibazo akaba ari ukumenya niba Muhire Jean Pierre ari undi muntu (third party) cyangwa se niba ari umuntu ufite aho ahuriye n'imodoka (occupants) kugira ngo hamenyekane indishyi yagenerwa: niba ari 3.000.000Frw zivugwa mu masezerano cyangwa se niba yakwishyurwa indishyi zigenwa mu Iteka rya Perezida ryasobanuwe haruguru. [14] Nk'uko biboneka muri dosiye, Muhire Jean Pierre yari hejuru y'imodoka itwaye amafafari, ntihagaragazwa isano yari afitanye n'iyi modoka kuko si nyirayo, si uwo uwo mu muryango wa nyirayo, si n'umukozi wayo. Rusanga kuba yapakira amafafari ubwabyo atari byo bimugira "occupants", kuko atari kingingi, si umushoferi cyangwa umukozi kuri iyi modoka, ahubwo ni "third party" kuri iyi modoka, bityo nta sano afitanye nayo; akaba rero akwiye kwishyurwa indishyi hashingiwe ku Iteka rya Perezida wa Repubulika. [15] Ibiburanishwa na Sanlam AG ko itategukwa kwishyura ariya mafaranga kubera ko habayeho kutubahiriza amasezerano ku ruhande rw'uwishingiwe, kuko yari atwaye abantu 6, Urukiko rusanga bitahabwa agaciro kubera ko muri ayo masezerano ntihavuzweho umubare w'abantu bishingiwe ahubwo hakoreshejwe "third party" na "occupant". Ibi kandi bishimangirwa ni uko mu myanzuro yo kwiregura mu nkiko zombi, ndetse no mu bwumvikane, Sanlam AG yemeraga kwishyura, impaka zikaba gusa ku buryo bwo kubara indishyi. [16] Ku biburanishwa kandi Sanlam AG ko habayeho kwica

amasezerano, akaba nta ndishyi zagenwa nk'uko byemejwe mu rubanza yatanze, Urukiko ruasnga bitahabwa agaciro, kubera ko, usibye no kuba muri uru rubanza hatagaragazwa ikimenyetso cy'uko amasezerano atubahirijwe, ariko mu rubanza rwavuzwe yasabaga ko rwashingirwaho ntiyagenwe indishyi, hasobanurwamo ko habayeho kwica amasezerano ku buryo bukabije. Muri urwo rubanza imodoka ivugwamo yari itwaye abantu barenga 50 mu modoka inyuma bagiye kwiyamamaza; ariko muri iyi dosiye, mu modoka harimo abantu 6; iyi mibare rero ntiyagereranywa. [17] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rusanga ibisobanuro byatanzwe mu rubanza rujurirwa, rwemeje ko Muhire yari “third party” atari “occupant” bihawe ishingiro; uburyo bwo kubara indishyi bukaba budahindutse, n'indishyi zagenwe mu rubanza rujurirwa zikaba zigumye, uretse izishobora kwiyongera kuri uru rwego. B.Ku byerekeranye n'indishyi zisabwa n'ababuranyi [18] Muri uru rubanza, buri muburanyi yasabye indishyi z'igihembo cya avoka n'ikurikiranarubanza.

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[19] Urukiko rusanga kuba ikirego cy'ubujurire cya SANLAM AG kitahawe ishingiro, byumvikanisha ko abaregera indishyi hari ibyo batakaje nta mpamvu, SANLAM AG ikaba igomba kwishyura amafaranga ibihumbi magana atanu (500.000Frw), agenwe kuri uru rwego agizwe n'igihembo cya avoka n'amafaranga y'ikurikiranarubanza, akaba agenwe hagendewe ku ndishyi zagenwe ku rwego rubanza. III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ikirego cy'ubujurire cyatanzwe na SANLAM AG Plc nta shingiro gifite; [21] Rwemeje ko MUHIRE Jean Pierre ari “third party” ku modoka yakoze impanuka; [22] Rwemeje ko urubanza RC00056/2022/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa NGOMA ku wa 14/04/2022 ruhindutse gusa ku ndishyi; [23] Rutegetse SANLAM AG Plc kwishyura; Umukundwa Carine, Umwiza Noëlla, Uwumuhagazeho Jean d'Amour, Muvunyi Théogène, Rukeshangabo Jean Bosco na Ndikumana Capitoline amafaranga ibihumbi magana atanu (500.000Frw) y'igihembo cya avoka n'ikurikiranarubanza yiyongera ku ndishyi zagenwe mu rubanza rujurirwa, 10.765.286Frw agizwe na: indishyi z'ibangamirabukungu 5.826.986Frw, indishyi z'akababaro 4.050.000Frw; andi mafaranga yakoreshejwe 388.300Frw hamwe n'igihembo cya avoka 500.000Frw; [24] Rutegetse ko amafaranga ibihumbi mirongo ine (40.000Frw) SANLAM AG Plc yatanze irega, ahwanye n'ibyakozwe.

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