

RWANDA / JUDGMENT

SANLAM v MUKANDORI N'ABANDI

RCA000041/2022/HC/RSZ

COURT

High Court

DECIDED

13 February 2023

CASE / FILE NUMBER

RCA000041/2022/HC/RSZ

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SANLAM v MUKANDORI N'ABANDI

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- Date: 2023-02-13
- Case/document no.: RCA000041/2022/HC/RSZ
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Text

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SANLAM v MUKANDORI N'ABANDI [Rwanda URUKIKO RUKURU - RCA000041/2022/HC/RSZ (Bandora, P.J.) 13 Gashyantare 2023] Amategeko y'imanza mbonezamubano – Imanza z'ubwishingizi – Indishyi ku bantu bahetswe n'ikinyabiziga - Ubwishingizi bugomba kwishingira ibyago biba ku bantu bari bahetswe n'ibinyabiziga ku mpamvu izarizo zose mu gihe icyo kinyabiziga cyateye ibyo byago. Amategeko y'imanza mbonezamubano – Imanza z'ubwishingizi – Uburyozwe bwishingirwa - Ubwishingizi bugomba kwishingira uburyozwe bwa nyiri ikinyabiziga, ubw'ugifite n'ubw'ugitwaye wese. Amategeko y'imanza mbonezamubano – Imanza z'ubwishingizi – Kutanga gusabwa indishyi - Umwishingizi nta mpamvu yakwanga gusabwa indishyi mu gihe uwo yishingiye afite iby'abandi yangije hatitawe ku kureba niba ariwe amakosa yaturutseho cyangwa se atamuturutseho. Incamake y'ikibazo: Kuwa 18/04/2020, MITSUBISHI FUSO yambaye ibirango RAD718C ifite ubwishingizi bwa SANLAM Assurance Générales PLC, yakoze impanuka ihitana Uwiye, iyo mpanuka ikaba yarakomotse ku buteganye buke bw'umuyobozi w'ikinyabiziga nkuko byemejwe na raporo y'inzego z'abashinzwe umutekano mu muhanda. Abakomoka kuri nyakwigendera batanze ikirego mu rukiko rwisumbuye rwa Karongi basaba indishyi z'ibangamira muco n'andi mafaranga yakoreshejwe mu ishyingura no mu

ikurikiranwa ry'uru rubanza harimo n'igihembo cy'Avoka. Urukiko rwategetse ko SANLAM yakwishyura indishyi ku barega hanyuma ijurira mu Rukiko Rukuru ivuga ko nta ndishyi zatangwa kuko ikinyabiziga cyateje impanuka cyari cyibwe saa sita z'ijoro, ukibye ashyiramo abantu haza kuba iyo mpanuka yahitanye nyakwigendera. Urukiko rwasuzumye ikibazo cyo kumenya niba Uwihaye yarakoze impanuka ari mu modoka atagombaga kubamo kuko iyo modoka yagenewe gutwara ibintu. Urega avuga ko abasaba indishyi batagomba kuzihabwa kuko Uwihaye yari mu modoka atagombaga kubamo agerekaho no kujya hejuru y'imizigo, kuko imodoka yararimo yari ifite ubwishingizi bwo gutwara ibintu atari ugutwara abantu bityo ko atafatwa nka rubanda kandi n'amasezerano y'ubwishingizi akaba atamurengera, ibyo bikiyongera ku kibazo cyo kuba ikinyabiziga cyarakoze impanuka cyibwe agasanaga hari ikosa rigambiriwe ry'uwishingiwe. Abaregera indishyi bavuga ko SANLAM ntaho yahera yanga gutanga izo ndishyi kuko itegeko rivuga ko ubwishingire bugomba kwishingira ibyago biba ku bantu no kubintu bitewe n'ibikorwa bibereye mu Rwanda. Bugomba kwishingira ibyago biba ku bantu bahetswe, ku mpamvu izo arizo zose. Incamake y'icyemezo: 1. Ubwishingizi bugomba kwishingira ibyago biba ku bantu bari bahetswe n'ibinyabiziga ku mpamvu izarizo zose mu gihe icyo kinyabiziga cyateye ibyo byago bityo SANLAM ikaba igomba kwishyura indishyi kuko ikinyabiziga yishingiye cyateje ibyago.

2. Ubwishingizi bugomba kwishingira uburyozwe bwa nyiri kinyabiziga, ubw'ugifite n'ubw'ugitwaye wese bityo SANLAM ntiyavuga ko itakwishyura indishyi zikomoka kuri nyakwigendera wari uhetswe n'icyo kinyabiziga yitwaje ko ikinyabiziga cyari gitwawe n'uwakibye nta shingiro bifite.

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Ubujurire SANLAM AG PLC bufite shingiro kuri bimwe; Abaregera indishyi bagomba guhabwa na SANLAM Assurance Générales PLC Ltd indishyi zikomoka ku mpanuka ariko hakabaho gusangira uburyozwe ku kigero cya mirongo itanu ku ijana (50%) kuri buri ruhande. Amategeko yakoreshejwe: Itegeko N°02/2002 ryo kuwa 17/02/2002 rihindura Itegeko -Teka N° 32/75 ryo kuwa 7 Kanama 1975 byerekeye ubwishingizi butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri, ingingo ya 2; Itegeko teka N° 32/1975 ryo kuwa 07 Kanama 1975 ryerekeye Ubwishingire butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bufite moteri, ingingo ya 1, 3, 4; Iteka rya Perezida N° 85/01 ryo kuwa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo, ingingo ya 6, 26. Imanza zifashishijwe: RCA000019/2022/HC/RSZ, SANLAM Assurance Générales PLCyahoze ari SORAS AG Ltd, mu izina ry'yihagarariye vs MUKANDINDA et csrts rwaciwe ku wa 17/11/2022 n'Urukiko Rukuru urugereko rwa Rusizi. RCA00002/2022/HC/RSZ rwaciwe ku wa 05/09/2022 n'Urukiko Rukuru urugereko rwa Rusizi. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 18/04/2020, mu Mudugudu Nyegabo akagari ka Kiniha umurenge wa Bwishyura akarere ka Karongi, Intara y'Iburengerazuba, habereye impanuka y'imodoka MITSUBISHI FUSO yambaye ibirango RAD718C ifite ubwishingizi bwa SANLAM Assurance Générales PLC, ihitana Uwihaye Nkurabanga, iyo mpanuka ikaba yarakomotse ku buteganywe buke bw'umuyobozi w'ikinyabiziga, ibyo bikaba byemezwa na raporo y'inzego z'abashinzwe umutekano mu muhanda. [2] Abakomoka kuri nyakwigendera Uwihaye

Nkurabanga batanze ikirego mu rukiko rwisumbuye rwa Karongi, Nbasaba indishyi z'ibangamira muco zagenerwa umubyeyi wa nyakwigendera Mukandori hamwe n'abavandimwe be 3 aribo Nkundiye Dusengumuremyi, Ntirenganya na Nkurikiyineza Abdalah, ari nabo batanze ikirego, banasaba ko bahabwa n'amafaranga yandi yose yakoreshejwe mu ishyingura no mu ikurikiranwa ry'uru rubanza harimo n'igihembo cy'Avoka. [3] Ababuranyi batumiwe mu namantegurarubanza, abarega bahagarariwe na Me Manirakiza Claude, avuga ko bahabwa indishyi nk'uko zikubiye mu mwanzuro bashikirije Urukiko, zatangwa hashingiwe kumushahara muto mfatizo w'umunsi ungana na 3000 frw iminsi 30 y'akazi, naho SANLAM Assurance Générales PLC ititabye kandi yaramenyeshwe muburyo bukurikije amategeko, inamantegurarubanza ikorwa idahari, bituma hatabaho ubwumvikane, maze ruhabwa umunsi w'iburanisha wo kuwa 01/06/2022, kuri uwo munsi abaregera indishyi bahagarariwe na Me Manirakiza Claude avuga ko ntakindi yongera kubyo bagaragaje munamantegurarubanza, naho SANLAM Assurance Générales PLC ititabye bituma urubanza rwayo ruburanishwa idahari

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- [4] Mu mwanzuro warwo wo kuwa 10/06/2022, rwemeje ibi bikurikira: "RWEMEJE ko ikirego rwashyikirijwe n'abaregera indishyi muri uru rubanza gifite ishingiro. Rutegetse SANLAM Assurance Générales PLC kwishyura indishyi zikurikira: - Indishyi ku ibangamiramuco (umubyeyi wa nyakwigendera 1): 810.000 frw - Indishyi ku ibangamiramuco ku bavandimwe ba nyakwigendera 3: 1.620.000 Frw - Andi mafaranga yakoreshejwe: 100.000 frw Igihembo cy'Avocat 500.000 Frws - Ingwate y'amagarama :20.000 Frw Indishyi zose SANLAM Assurance Générales PLC izishyura ziteranyijwe ni 3.050.000 Frws RUTEGETSE ko ingwate y'amagarama yatanze ingana n'amafaranga 20.000 Frw iheze mu isanduku ya Leta, ko ahwanye n'imirimu yakozwe muri uru rubanza." [5] SANLAM Assurance Générales PLC yahoze ari SORAS AG ltd, mu izina ry'uyihagarariye ntabwo yishimiye uwo mwanzuro, Me Nsengiyumva Niyondora uyiburanira ageza ubujurire bwayo muri uru rukiko, avuga ko nta ndishyi zatangwa n'ikigo aburanira kuko ikinyabiziga cyateje impanuka cyari cyibwe saa sita z'ijoro, avuga ko Bikorimana Gad yari umuturanyi wa nyiri ikinyabiziga, yashatse imfunguzo z'impimbano ikinyabiziga FUSO aracyiba, ashiramo abantu nuko kubw'amahirwe make nyakwigendera arapfa. Saa sita z'ijoro nibwo police yahamagaye nyiri imodoka avuga ko atazi uburyo umuturanyi we yamwibye imodoka, kandi uyu yatanze ikirego kuri police. [6] Avuga ko atari SANLAM yasabwa indishyi, ahubwo ngo zari gusabwa fonds de granti. Declaration d'accident irahari, bityo asaba urukiko kuzemeze ko izi ndishyi zitari gucibwa SANLAM. Ibi ntibyavugiwe muri TGI kuko SANLAM ititabye. Izi ndishyi zari kuregwa ikigega cy'impanuka. [7] Avuga kandi ko Uwihaye Nkurabanga atari tiers/rubanda, kuko yari mu modoka hejuru. Abarega basabye indishyi bashingiye kuri AP kandi abarebwa nayo/ couvert ni abo ikinyabiziga gihohoteye bari hasi, batari mu modoka. [8] Avuga ko Nyakwigendera yafatwa nk'umuntu wari mu kinyabiziga cyishingiye gutwara imizigo, uwari wishingiye ni shoferi wenyine wari wafatiwe ubwishingi bungana na 1.000.000F, abantu bari mu modoka ngo ni occupant illegal. Asaba ko hazarebwa icyo amasezerano SANLAM yari ifite ateganya. [9] Ashingira ku ngingo ya 11 y'itegeko teka N° 20/75 rishyiraho ubwishingizi muri rusange.

Iyi ngingo ivuga ko umwishingizi ategetswe kwishyura gusa ibyo yishingiye hakurikijwe amasezerano. Bityo ko Iki kinyabiziga ntabwo cyari cyishingiye gutwara abantu. Asoza avuga ko impamvu ya 1 n'ya 2 imwe murizo irahagije kuba izi ndishyi zaciwe SANLAM zakurwaho. Anibaza impamvu nyakwigendera yafashe risk yo kujya mu kinyabiziga kidafite ubwishingizi bwo gutwara abagenzi, anibaza aho yajyaga naho yavaga muri iryo joro, bityo ko bigaragaza ikosa cyangwa bizafatwe ko ari ikosa rigambiriwe ry'uwishingiwe (faute intentionnelle de l'assuree). [10] Iburanisha rya nyuma ryabaye kuwa 23/11/2022 rirasozwa, ababuranyi bamenyeshwa ko bazaza gusomerwa kuwa 21/11/2022 saa tanu, ariko ntirwasomwa kuko umucamanza yaje kurwara ndetse anahabwa ikiruhuko cy'uburwayi, bityo isomwa ryimurirwa kuwa 24/01/2023 saa

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tanu, nabwo ntirwasomwa kuko umucamanza yari afite imanza nyinshi zo gusoma zirenga 40, akaba yari yashoboye kwandikamo izigera kuri 28, bityo isomwa ry'uru ryimurirwa kuwa 13/02/2023 SAA 11H00.11h00 saa11:00. [11] Muri uru rubanza harasuzumwa ibibazo cyo kumenya niba: Uwihaye Nkurabanga yari mu modoka atagombaga kubamo kuko imodoka yari ifite ubwishingizi bwo gutwara ibintu. [ASSURANCE DE TRANSPORT DE MARCHANDISES] atari ugutwara abantu, akayigiriramo ikibazo, atafatwa nka rubanda/tiers ngo abamufiteho uburenganzira babyuririreho babisabire indishyi umwishingizi na cyane ko ikinyabiziga cyakoze impanuka cyari cyibwe, bityo ko atari SANLAM Assurance Générales PLC yagombye kuregwa indshyi. II. IBIBAZO BIGARAGARA MURI URU RUBANZA

N'ISESENGURWA RYABYO Kubijyanye no kumenya niba Uwihaye Nkurabanga yari mu modoka atagombaga kubamo kuko imodoka yari ifite ubwishingizi bwo gutwara ibintu. [ASSURANCE DE TRANSPORT DE MARCHANDISES] atari ugutwara abantu, akayigiriramo ikibazo, atafatwa nka rubanda/tiers ngo abamufiteho uburenganzira baby uririreho babisabire indishyi umwishingizi na cyane ko ikinyabiziga cyakoze impanuka cyari cyibwe, bityo ko atari SANLAM Assurance Générales PLC yagombye kuregwa indshyi. [12] Ingingo ya 2 y'Itegeko n°02/2002 ryo kuwa 17/02/2002 rihindura Itegeko -Teka N° 32/75 ryo kuwa 7 Kanama 1975 byerekeye ubwishingizi butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bifite moteri, iteganya ko "ubwishingizi bugomba kwishingira uburyozwe bwa nyiri ikinyabiziga ,ubw'ugifite n'ubw'ugitwaye wese ,uretse igihe cyaba gfitwe n'uwacyibye cyangwa uwacyambuye ku ngufu .Ubwishingizi bugomba kwishingira ibyago biba ku bantu no ku bintu biturutse ku mpamvu zabereye mu Rwanda .Bugomba kwishingira ibyago biba ku bantu bari bahetswe n'ibinyabiziga ku mpamvu izarizo zose,mu gihe icyo kinyabiziga cyateye ibyo byago [...],indishyi zishyurwa hakurikijwe Itegeko ryerekeye imyishyurire y'abagize impanuka zitewe n'ibinyabiziga bifite moteri[...].1 [13] Ingingo za 1, 4 z'Itegeko teka N° 32/1975 ryo kuwa 07 Kanama 1975 ryerekeye Ubwishingire butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bufite moteri nk'uko ryahinduwe kandi ry'ujujwe kugeza ubu ziteganyako:" amasezerano y'ubwishingire ni amasezerano umwe mubayagize witwa uwishingira yiyemezamo aliko abihembewe , kuzalihilira undi, witwa uwishingiwe cyangwa ushinganywe mu gihe aguweho na kimwe mubyago byateganyijwe mu masezerano.Bashobora kuvanwa mu bwishingire Umushoferi w'ikingenzwa ku butaka cyateye

ibyago, kimwe n'uwishingiwe n'abandi bose bishingiwe ku buryo baryozwa, kimwe n'Uwashakanye n'abantu bavugwa mu nteruro ibanza, kimwe n'abo bafitanye isano n'abo bashyingiranye, bapfa kuba batuye mu rugo rwabo kandi batunzwe nabo, inavuga ko kandi hakurwamo abantu balindwa n'amategako ali ukwayo, mu byerekeye indishyi zitewe n'ibyago by'akazi, keretse iyo abo bantu bahisemo gukukirana indishyi ku wishingiwe (...).

1J.O. N° 6 du 15/03/2002

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[14] Ingingo zagaragajwe zishaka kumvikanisha ko Ubwishingizi bugomba kwishingira ibyago biba ku bantu bari bahetswe n'ibinyabiziga ku mpamvu izarizo zose mu gihe icyo kinyabiziga cyataye ibyo byago. ubwishingizi bugomba kwishingira uburyozwe bwa nyiri ikinyabiziga, ubw'ugifite n'ubw'ugitwaye wese. Izo ngingo zinerekana abantu bashobora kudafatwa nka rubanda/tiers kuko atari ngombwa kubafatira ubwishingizi aribo: "Umushoferi, uwishingiwe, n'Uwashakanye n'abantu bavugwa mu nteruro ibanza, kimwe n'abo bafitanye isano n'abo bashyingiranye, abantu balindwa n'amategako ali ukwayo[...], ndetse mu kwishyura uwahohotewe hashingirwa ku itegeko ryerekeye imyishyurire y'abagize impanuka zitewe n'ibinyabiziga bifite moteri. [15] Uburanira umwishingizi kuri iyi ngingo yanenze ibyemejwe n'urukiko rwisumbuye rwa Karongi avuga ko Uretse ingingo ya mbere SANLAM yatanze à titre principal, ariko kandi à titre subsidiaire, Urukiko Rukuru ruzabone ko Uwiha Nkurabanga ari umuntu wemeye kugenda hejuru y'ikinyabiziga kigenewe gutwara imizigo kandi ariyo yishingiwe gusa. Bikaba rero bitumvikana ukuntu umuntu mukuru w'umyaka 27 yemera kugenda hejuru y'ikinyabiziga gitwara imizigo mumasaha ya saa sita z'ijoro. [16] Asaba Urukiko kuzabona ko nyakwigendera yari occupant illegal, kuko ikinyabiziga cyari cyishingiwe gusa kubijyanye no gutwara imizigo, ntabwo cyari cyishingiye gutwara abagenzi. [17] Avuga kandi ko iyo kandi nyakwigendera Uwiha Nkurabanga aza kuba ari umukozi kuri iyo modoka uretse ko bitumvikana ukuntu yaba yari umu kazi saa sita z'ijoro, ariko bibaye ari ukuri nabwo kandi ngo nka tiers/rubanda, ahubwo yari kuba ari umukozi, bityo abamufiteho uburenganzira bakaba batagenerwa indishyi hashingiwe ku iteka rya Perezida y'iteka rya Perezida N° 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umuburi buturutse ku mpanuka zitewe n'ibinyabiziga bingendera ku butaka kandi bifite moteri. [18] Avuga ko ku rwego rwa mbere urukiko rwisumbuyentabwo rwigeze rubazaniba abahohotewe n'ikinyabiziga bari bishingiwe (couvert) n'amasezerano y'ubwishingizi, kandi n'abarega ntabwo bashatse kubigaragaza. Iyi ngingo SANLAM iyitanze à titre subsidiaire, kuko principalement itemera uburyozwe nkuko byasobanuwe ku ngingo ya mbere. Ashingiye ku ngingo ya 9 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko Umucamanza aca urubanza ashingiye ku ngingo z'amategako zirebana n'ikirego yaregewe. [19] Avuga ko kumugereka hari amasezerano y'ubwishingizi, hari hishingiwe ibicuruzwa ndetse na shoferi wenyine, byumvikane ko abemeye kujya hejuru y'ikinyabiziga ari occupant illegal, ntabwo bari couvert n'amasezerano y'ubwishingizi kandi ntabwo ikinyabiziga cyari kigenewe gutwara

abagenzi. [20] Avuga ko muri issue bigaragaza ko nyakwigendera atari tiers kuruhande rumwe, byongeye kandi amasezerano y'ubwishingizi ntabwo amurengera, ibyo bikiyongera kukibazo cyo kuba ikinyabiziga cyarakoze impanuka cyibwe, bityo kumpamvu imwe cyangwa indi SANLAM ntabwo ikwiye kuryozwa indishyi zisabwa, ahubwo izagenwe zose zikwiye kuvanwaho.

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- [21] Anibaza impamvu nyakwigendera yafashe risk yo kuja mu kinyabiziga kidafite ubwishingizi bwo gutwara abagenzi, anibaza aho yajyaga naho yavaga muri iryo joro, bityo ko bigaragaza ikosa cyangwa bizafatwe ko ari ikosa rigambiriwe ry'ubwishingiwe (faute intentionnelle de l'assuree). [22] Uburanira abaregeye indishyi yavuze ko kuri iyi mpamvu agaragaza ko nta shingiro ifite kuko umuporisi wakoze raporo igaragaza uko impanuka yagenze, ntabwo yigeze agaragaza Nkurabanga nka nyiri ikinyabiziga cyangwa nk'umuntu wari wuriye imodoka umuyobozi w'icyo kinyabiziga atabizi. [23] Asanga rero SANLAM nta tegeko ishingiraho rivuguruzwa ingingo ya 3 al 2 y'itegeko teka No 32/1975 ryo kuwa 07 Kanama 1975 ryerekeye Ubwishingire butegetswe ku buryozwe butewe n'ibigenzwa ku butaka bufite moteri, ivuga ko ubwishingire bugomba kwishingira ibyago biba ku bantu no kubantu bitewe n'ibikorwa bibereye mu Rwanda. Bugomba kwishingira ibyago biba ku bantu bahetswe, ku mpamvu izo alize zose. [24] Nyuma yizo mpaka icyo zivamo, ni uko uburanira umwishingizi asanga abafite uburenganzira kuri Uwihaye Nkurabanga wahohotewe n'impanuka, batagomba guhabwa indishyi hashingiwe ku iteka rya Perezida N° 31/2001 ryo kuwa 25/8/2003, kuko Uwihaye Nkurabanga yari mu modoka atagombaga kubamo kuko imodoka yararimo yari ifite ubwishingizi bwo gutwara ibintu. [ASSURANCE DE TRANSPORT DE MARCHANDISES] atari ugutwara abantu, bityo ko, atafatwa nka rubanda/tiers ngo abamufiteho uburenganzira babyuririreho babisabire indishyi umwishingizi, kuko afatwa nka nka occupant illégal. [25] Mu nyandiko mvugo yakozwe n'Umugenzacyaha ushinze ibibazo bwo mu muhanda, yerekanye icyateye impanuka muri aya magambo: "Dushingiye ku bimenyetso twabonye aho iyi mpanuka yabereye aribyo: Uburyo imodoka yarenze ibyuma byo kumuhanda ikabikubita bikangirika naho imodoka yabashije muri metero 37, tubona impanuka yaba yaratewe no kutaringaniza umuvuduko ndetse n'ubumenyi buke kuwari utwaye ariwe BIKORIMANA GAD, kuba yari atwaye imodoka atagira uruhushya rwo gutwara ibinyabiziga agira, bityo akaba atarubahirije ibivugwa mu ngingo ya 6 na 26 z'Iteka rya Perezida N° 85/01 ryo kuwa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo.2 [26] Ingingo ya 6 na 26 z'Iteka rya Perezida N° 85/01 ryo kuwa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo ziteganyako: "Ntawe ushobora gutwara ikinyabiziga kigendeshwa na moteri mu nzira nyabagendwa adafite kandi atitwaje uruhushya rwo gutwara ibinyabiziga rwatanzwe na Polisi. Umuyobozi wese agomba buri gihe kuyobora ikinyabiziga cye yitonze, kandi akaringaniza umuvuduko wacyo n'uko ahantu hameze, uko habona, imimerere y'umuhanda, imimerere y'ikinyabizigai n'ibyo cyikoreye, imiterere y'ikirere, ubwinshi bw'ibigenda kugira ngo uwo muvuduko utaba intandaro y'impanuka n'imbogamizi, y'uburyo

bwo kugenda mu muhanda [...]. [27] Urukiko rusanga kubijyanye nuko nyakwigendera atafatwa nka tiers/rubanda kuburyo abamufiteho uburenganzira babyuririho basaba indishyi umwishingizi, ahubwo yafatwa nka

2repsonsabilité délictuelle

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occupant illégal, mu rubanza rwaciye n'uru rukiko³ n'ubundi SANLAM Assurance Générales PLC yahoze ari SORAS AG Ltd uwayiburaniraga yazamuye iki kibazo ndetse haza gutangwa ibisobanuro ubundi byagombye kuba byarumvikanye, aho hasobanuwe ko uwitwa Occupant mu masezerano y'Ubwishingizi, akenshi aba ari umuntu cyangwa abantu ubundi atari itegeko kubafatira ubwishingizi bw'impanuka y'ikinyabiziga, ndetse akenshi usanga ari abantu baba bafite aho baturirira bya hafi n'ikinyabiziga cyishingiwe, ashobora kuba ari nyiri ikinyabiziga, umufasha we, umwana abana be, umuyobozi wacyo, umufasha w'Umushoferi n'ibindi. Ndetse n'umubare wabo uba uzwi n'amafaranga bazahabwa mu gihe bahuye n'impanuka aba azwi. Ibyo byumvikanisha neza ko occupant aba ari umuntu uzwi ariyo mpamvu adafatwa nka rubanda/tiers⁴ utazwi, ibyo nibyo bituma nyiri ikinyabiziga amufatira (occupant) ubundi bwishingizi bwihariye mu gihe akoreye impanuka muri icyo kinyabiziga cyishingiwe, ndetse ni naho haherwa hagenwa amafaranga azahabwa, bitandukanye rero n'undi wese/rubanda/tiers yagirira impanuka muri icyo kinyabiziga kuko we aba atazwi ariyo mpamvu hakoreshejwe iteka rya perezidariyagiye rivugwa mu kumubarira indishyi. [28] Urukiko rusanga uburanira SANLAM AG PLC atumva ko abarimo gusaba indishyi batarimo gusaba indishyi zikomoka kuri iriya mpanuka bashingiye ku masezerano ari hagati ya SANLAM AG PLC na nyiri modoka yakoze impanuka, kuko ayo masezerano nyakwigendera atari ayarimo, ahubwo bazisaba bashingiye ku makosa yakozwe n'umuyobozi w'icyo kinyabiziga/responsabilité délictuelle, cyishingiwe na SANLAM AG PLC kubera ubushishozi buke bwatwe n'uwaru ugitwaye byatumye akora impanuka yahitanye nyakwigendera nk'uko byakomajwe mu gika cya 23. [29] Byagombye kumvikana ko uburanira umwishingizi arimo kwitiranya kubwende, ukwica amasezerano y'ubucuruzi, y'ubwishingizi umuntu yagiranye na nyiri imodoka (responsabilité contractuelle)⁵ n'ibyererekeye ubwishingizi bw'iby'abandi ikinyabiziga cyakwangiza kikabiryoza (responsabilité délictuelle)⁶ kandi izo notions ziratanganywe n'ubwo zegeranye cyane.⁷ Bityo rero nk'uko byakomajweho, iki kirego gishingiye ku ikosa ryakozwe n'umushoferi wari utwaye iriya modoka (responsabilité délictuelle) aho yemeye gutwara umuntu inyuma ahagenewe gutwarwa imizigo, nyuma kubera ko nta n'uruhushya rwo gutwara ikinyabiziga yari afite no kugenda nabi mu muhanda, akora impanuka yahitanye nyakwigendera. [30] Na none imodoka yakoze impanuka yari ifite ubwishingizi bw'iby'abandi yakwangiza (assurance contre tiers) cyane ko ubu bwishingizi ari itegeko, byumvikana ko umwishingizi nta mpamvu yakwanga gusabwa indishyi mu gihe uwo yishingiye afite iby'abandi yangije hatitawe ku kureba niba ariwe amakosa yaturutseho cyangwa se ataturutseho, ibi bikaba bivuze ko ubujurire bwa SANLAM bushingiye kukuba atariyo yarikwiye kuregwa indishyi yitwaje ko

3Urubanza RCA000019/2022/HC/RSZ, SANLAM Assurance Générales PLCyahoze ari SORAS AG ltd, mu izina ry'yihagarariye vs MUKANDINDA et csrts rwaciwe ku wa 17/11/2022 n'urukiko Rukuruurugerekorwa Rusizi, rukorera i Karongi 4Reba igika cya 22 cy'urubanza RCA00002/2022/HC/RSZ rwaciwe n'uru rukiko kuwa 05/09/2022 5La responsabilité est contractuelle lorsque le dommage dont fait état la victime résulte de l'inexécution d'un contrat, elle correspond à l'obligation de réparer les conséquences qui résultent d'un manquement dans l'exécution d'un contrat 6La responsabilité délictuelle/extracontractuelle correspond à la réparation des conséquences dommageables causées à autrui en raison d'un fait volontaire ou involontaire. L'obligation de réparation puise sa source dans la loi 7Les deux forms de responsabilité se rapprochent notamment eu égard à leurs conditions d'engagement qui supposent: un manquement ou une faute, un prejudice et un lien de causalité.

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ikinyabiziga cyari cyibwe bitahabwa ishingiro, cyane ko nta kimenyetso kibyemeza afite, naho kuvuga ko batanze ikirego mu bugenzacyaha, nabyo ntibyahagarika isuzumwa ry'uru rubanza, bityo mu gihe inkiko azaregera zazemeza koko ko kiriya kinyabiziga cyakoze impanuka cyari cyibwe, bizamubere impamvu yo gusubirishamo ingingonshya uru rubanza! [31] Ubwishingizi bwavuzwe bugomba kwishingira ibyago biba ku bantu, biturutse ku mpamvu zibereye mu rwanda, bugomba kwishingira ibyago biba ku bantu bari bahetswe n'ibinyabiziga ku mpamvu izo arizo zose mu gihe icyo kinyabiziga cyateje ibyo byago nkuko byasobanuwe mu ngingo ya 3 y'itegeko-teka N°32/75 ryo kuwa 07/6/1975 ryavuzwe haruguru. [32] Urukiko rusanga ahubwo ikibazo uburanira umwishingizi yibajije ndetse anabaza urukiko, ni ukumenya impamvu nyakwigendera yafashe umwanzuro mubi/risk yo kujya mu kinyabiziga kidafite ubwishingizi bwo gutwara abagenzi cyane cyane akajya ahatemewe, anibaza aho yajyaga naho yavaga muri iryo joro, bityo ko bigaragaza ikosa cyangwa bizafatwe ko ari ikosa rigambiriwe ry'uwishingiwe (faute intentionnelle de l'assuree). [33] Ikibazo kizamuwe n'uwo munyamategeko, ni ukumenya niba umuntu wakoze amakosa ahabwa indishyi. [34] Uru rukiko rubona ingingo ya 66(1,4) y'itegeko rya Perezida N°85/01 ryo kuwa 02/09/2002 risyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo mu gika cya kane, iteganya ko umuyobozi wa kimwe mu binyabiziga abujijwe gutwara abantu mu bice byinyuma bya karisori y'icyo kinyabiziga cyangwa ya romoruki yacyo. naho mu gace ka (b) kakagaragaza ko umuyobozi ashobora kwemerera umuntu umwe cyangwa benshi mu gice cy'ikinyabiziga kigenewe gutwara ibintu, iyo abona bishoboka kandi bidashobora kuvamo impamvu yatera impanuka ko agomba kuba yizeye ko umutekano w'abantu bose atwaye umutekano wabo udashobora guhungabana. [35] Icyo uru rukiko rwavuga kuri iyi ngingo, n'uko ihame ari iriteganijwe mu ngingo ya 66(4) ko umuyobozi w'ikinyabiziga kivugwa muri iyi ngingo abujijwe gutwara abantu mu bice by'inyuma bya karisori, noneho irengayobora mu gace ka (b) akaba yabashira ahagenewe ibintu, ariko akubahiriza ko nta cyateza impanuka kandi akaba yizeye ko abantu atwaye umutekano wabo udashobora guhangabana, ikigaragara hano n'uko BIKORIMANA Gad wari utwaye imodoka atubahirije ibyo asabwa muri iri rengayobora kuko yagombaga gushira nyakwigendera ahagenewe ibintu aruko yizeye neza ko umutekano wuwo ashizemo udashobora guhungabana, kuba atariko byagenze bituma SANLAM

Assurance Générales PLC yo yari ifite ubwishingizi bw'iyi modoka, igira ibyo iryozwa nk'uko byakomajweho hanarebwe kandi n'uruhare rwa Uwihaye Nkurabanga waguye muri iyi mpanuka. [36] Ingingo ya 2 y'itegeko N°41/2001 ryo kuwa 19/09/2001 ryerekeye imyishurire y'abangijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na Moteri kandi bigenda ku butaka iteganya ko:" Indishyi zivugwa kuva ku ngingo ya 4 kugeza ku ya 10 z'iri tegeko zigabanywa hakurikijwe uruhare uwangirijwe yagize mu mpanuka yabaye. Ikosa ry'uwangirijwe ntirimwemerera uruhare ku ndishyi cyangwa abafite uburenganzira ku bintu bye. [37] Urukiko rusanga n'ubwo kubijyanye n'uwateje impanuka nta mpaka zikirimo, ariko ingaruka zayo kuko arizo zirimo gusuzumwa, zashoboraga kwirindwa n'impande zombi kubireba

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uru rubanza, kuko nk'uko byakomajweho, ni uko amategeko yavuzwe yishwe, areba impande zombi, ni ukuvuga uwari utwaye imodoka ndetse n'uwa hitanywe nayo, kuko ntawari wemerewe kujya ahatemewe n'itegeko, kabone n'ubwo yabihereza uburenganzira n'Umuyobozi w'ikinyabiziga, ndetse iza mpande zombi zikaba zarayirengagije zirayica mu rwego rwa magirirane, bityo n'ingaruka zagombye kuba magirirane ntihagire uruhande rwonyine rwirengera ingaruka zose zatejwe n'iriya mpanuka kuko ibyabaye bijyanye n'uru rubanza bireba impande zombi. [38] Urukiko rusanga ingaruka zatewe n'iriya mpanuka zashoboraga kwirindwa iyo BIKORIMANA GAD ataza kwemerera Uwihaye Nkurabanga kujya mu mwanya utemewe, ariko n'uyu wa nyuma iyo ataza kwemera kujya mu mwanya utemewe, ntabwo ingaruka zirimo gusuzumwa uyu munsu ziba zarabaye. [39] Uwihaye Nkurabanga uru ruhare rwe rwo kudashishoza kubibazo yatewe n'imodoka yuriye akajya mu mwanya atabanje kureba niba hatamutera ikibazo, bituma afatwa nk'umuntu wagize uruhare mu mpanuka yabaye yamuhitanye, bityo abamufiteho uburenganzira bakaba bagomba guhabwa indishyi zigabanijwemo kabiri ($\frac{1}{2}$ cyangwa se 50 -50) kuko we n'umushoferi wari utwaye imodoka yishingiye na SANLAM Assurance Générales PLC, bagize uruhare rungana mu mpanuka yabaye, byumvikana ko iyi mpamvu y'ubujurire ya SANLAM Assurance Générales PLC ifite ishingiro kubirebana n'uruhare rwa nyakwigendera. [40] Urukiko rubona indishyi zatanze ku rwego rwa mbere zigabanyijwe mu buryo bukurikira:

- Indishyi ku ibangamiramuco (umubyeyi wa nyakwigendera 1): $810.000 \text{ frw}/2 = 405.000$ - Indishyi ku ibangamiramuco ku bavandimwe ba nyakwigendera 3:

$1.620.000 \text{ Frw}/2 = 810.000$ - Andi mafaranga yakoreshejwe: $100.000 \text{ frw}/2 = 50.000$

- Igihembo cy'Avocat $500.000 \text{ Frws}/2 = 250.000$ - Ingwate y'amagarama : $20.000 \text{ Frw}/2 = 10.000$
- [41] Yose hamwe amafaranga angana na Miliyoni imwe n'ibihumbi magana atanu na makumyabiri na bitanu (1,525,000). [42] Kubijyanye nizindi ndishyi zitandukanye zasabwe n'ababuranyi kuri uru rwego ntazitanzwe kuko buri ruhande rufite ibyo rutsindiye n'ibyo rutsindiye. III. ICYEMEZO CY'URUKIKO [43] Rwemeje ko ubujurire SANLAM AG PLC mu izina ry'uyihagarariye bufite shingiro kuri bimwe. [44] Rwemeje ko urubanza RC 00053/2021/TGI/KNG rwaciye kuwa 10/06/2022 n'urukiko rwisumbuye rwa Karongi ruhindutse.

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[45] Rwemeje ko Mukandori, Nkundiye Dusengumuremyi, Ntirenganya, Nkurikiyineza Abdalah bagomba guhabwa na SANLAM Assurance Générales PLC Ltd mu izina ry'uyihagarariye indishyi zikomoka ku mpanuka yahitanye Uwihaye Nkurabanga, ariko hakabaho gusangira uburyozwe ku kigero cya mirongo itanu ku ijana (50%) kuri buri ruhande. [46] Rwemeje ko indishyi zatanze ku rwego rwa mbere zihindutse kuri uru rwego mu buryo bukurikira:

- Indishyi ku ibangamiramuco (umubyezi wa nyakwigendera 1): $810.000 \text{ frw} / 2 = 405.000$ - Indishyi ku ibangamiramuco ku bavandimwe ba nyakwigendera 3 :

$1.620.000 \text{ Frw} / 2 = 810.000$ - Andi mafaranga yakoreshejwe: $100.000 \text{ frw} / 2 = 50.000$

- Igihembo cy'Avocat $500.000 \text{ Frws} / 2 = 250.000$ - Ingwate y'amagarama : $20.000 \text{ Frw} / 2 = 10.000$ - yose hamwe agomba gutangwa kuri uru rwego ni amafaranga angana na Miliyoni imwe n'ibihumbi magana atanu na makumyabiri na bitanu (1,525,000). [47] Rwemeje ko nta zindi indishyi zitanze kuri uru rwego; [48] Rwemeje ko amafaranga yatanze hagwatirizwa uru rubanza ahwanye n'ibyarukozwemo byose; [49] Rwibukije ko uru rubanza rutasomewe ku gihe cyari cyatanze kubera ko umucamanza yagize amaburanisha menshi muri uku kwezi, bityo isomwa ryimurirwa kuwa 17/11/2022 saa tanu za mu gitondo.

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Prepared on 14 October 2026 · Esheria