

RWANDA / JUDGMENT

SANLAM INSURANCE COMPANY LTD v. ISHIMWE

RCA00080/2021/HC/MUS

COURT

High Court

DECIDED

24 May 2022

CASE / FILE NUMBER

RCA00080/2021/HC/MUS

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SANLAM INSURANCE COMPANY LTD v. ISHIMWE

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Text

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SANLAM INSURANCE COMPANY LTD v. ISHIMWE [Rwanda URUKIKO RUKURU URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA00080/2021/HC/MUS (Mukamuhire, P.J.) 24 Gicurasi 2022] Itegeko rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri biturutse ku mpanuka zitewe n'ibinyabiziga – kwivuza – guhimao muganga –. uwahohotewe ntategetswe kwivuza ku muganga runaka, ahubwo icy'ingenzi nuko asuzumwa n'umuganga wemewe na Leta Itegeko ry'ibimenyetso mu manza – ikimenyetso cy'umushahara – ntabwo umushahara w'umukozi ugaragazwa na extrait ya banki gusa – umushahara ushobora no kugaragazwa n'amasezerano ndetse n'icyemezo cy'umushahara. Incamake y'ikibazo: Uru rubanza rwatangiye Ishimwe arega Sanlam Assurances Generales mu Rukiko Rwisumbuye rwa Rubavu, kubera impanuka yagize ku wa 20/09/2020 ikamusigira ubumuga bwa 60%, agerageza gusaba indishyi mu bwumvikane ntibyakunda. Asaba Urukiko gutegeka Sanlam Assurances Generales kumuha indishyi zikomoka ku mpanuka yamukomerekeje

zikubiyemo

indishyi

z'ibangamirabukungu,

iz'akababaro, iz'ibangamiraburanga, izo gutakaza amahirwe yo gushaka, iz'uburambe ku kazi n'amafaranga yakoresheje kwa muganga yivuza, nayandi. Sanlam Assurances Generales yatanze inzitizi yo kutakira ikirego ngo cya Ishimwe ivuga ko yagiye gushaka ikigero cy'ubumuga buhoraho ku bitaro bya Kibagabaga bitamuvuye kandi akirwaye. Urukiko mu rubanza RC00199/2020/TGI/RBV rwemeje ko inzitizi ya Sanlam Assurances Generales nta shingiro ifite, hanyuma rwemeza ko ikirego cya Ishimwe gifite ishingiro kuri bimwe, rutegeka Sanlam Assurances Generales kumuha indishyi zitandukanye. Sanlam Insurance Company Ltd ntiyishimiye icyo cyemezo, maze ikijuririra mu Rukiko Rukuru, Urugereko rwa Musanze, inenga kuba Urukiko Rwisumbuye rwa Rubavu rwarakiriye ikirego cya Ishimwe bidakwiye, kuko yagaragaje icyemezo cy'uko yasuzumwe na muganga wo mu bitaro bya Kibagabaga, kandi yaragombaga gusuzumwa na muganga w'ibitaro bya CHUK kuko ari we wari wamusuzumye na mbere Ishimwe yireguye avuga ko impamvu z'ubujurire zatanzwe na Sanlam Insurance Company Ltd nta shingiro zifite, kuko yasuzumwe na muganga wemewe na Leta, akayishyikiriza ibisabwa byose ayisaba ko yamuha indishyi mu bwumvikane, na muganga wayo akaba yaramusuzumye ariko ntamuhe ibisubizo, bigatuma yitabaza Urukiko ngo rumurenganure. Yatanze kandi ubujurire bwuririye ku bundi, asaba ko indishyi mbangamirabukungu zabarwa hashingiwe ku mushahara yahembwaga nk'uko yabigaragariye ibimenyetso ku rwego rubanza. Urukiko mu rubanza RCA00080/2021/HC/MUS, rwemeje ko ubujurire bwa Sanlam Insurance Company Ltd nta shingiro bufite, kuko uwahohotewe ntategetswe kwivuza ku muganga runaka, ahubwo icy'ingenzi nuko asuzumwa n'umuganga wemewe na Leta, rwemeje kandi ko ubujurire bwuririye ku bundi bwa Ishimwe bufite ishingiro. Incamake y'icyemezo: Uwahohotewe agomba kugeza ku mwishingizi, mu gihe gito gishoboka, icyemezo cy'umuganga umuvura, gisobanura neza ibikomere yagize. uwahohotewe ntategetswe kwivuza ku muganga runaka, ahubwo icy'ingenzi nuko asuzumwa n'umuganga wemewe na

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Leta. Bityo kuba uwahohotewe yatangira yivuza ku muganga runaka ariko agashyikiriza raporo umwishingizi y'undi muganga nta kibazo kirimo ipfa kuba iyo raporo yarakozwe n'umuganga wemewe na Leta. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro. Amategeko yashingiweho: Iteka rya Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri biturutse ku mpanuka zitewe n'ibinyabiziga, Ingingo ya 4,5, 19 Itegeko No 22/2018 ryo kuwa 29/04/2018 Itegeko ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111 Nta manza zifashishijwe. Urubanza. I. IMITERERE Y'URUBANZA [1] Kuwa 20/09/2020, mu Mudugudu wa Kazabe, mu Kagali ka Kazabe, mu Murenge wa Ngororero, mu Karere ka Ngororero, imodoka Mitsubishi Fuso ifite plaque RAD963F, ifite ubwishingizi muri Sanlam Assurances Generales itwawe na Iradukunda Olivier iva Muhanga yerekeza Musanze, igeze aho bita Nyirantarengwa,

igonga moto yo mu bwoko bwa TVS ifite plaque RB534Z itwawe na Nyirimanzi Patrick ahetse Ishimwe Fabrice avunika ukuboko n'ukuguru agira ubumuga buhoraho buri ku kigero cya 60%. Avoka uhagarariye Ishimwe Fabrice yasabye Sanlam Assurances Generales indishyi zijyanye n'iyo mpanuka mu bwumvikane ntibyashoboka bituma aregera uru rukiko. Urukiko rwisumbuye rwa Rubavu rwaregwe ku rwego rwa mbere, rwemeje ko ikirego cya Ishimwe Fabrice gifite ishingiro kuri bimwe, rutegeka Sanlam Insurance Company Ltd mu izina ry'umuyobozi wayo kumwishyura indishyi ziteye zitya: 6.207.476Frw y'indishyi z'ibangamirabukungu, 1.080.000Frw y'indishyi z'akababaro, 1.080.000Frw y'indishyi z'ibangamiraburanga, 2.160.000Frw zo gutakaza amahirwe yo gushaka, 540.000Frw yo gutakaza amahirwe y'akazi, 992.044Frw yakoresheje mu bintu binyuranye, indishyi zose hamwe zikaba 12.059.520Frw. Rwategetse kandi Sanlam Assurances Generales gusubiza Ishimwe Fabrice 20.000Frw y'ingwate y'amagarama yatanze ayirega. [2] Sanlam ntiyishimiye imikirize y'urubanza, barujuririra mu rukiko rukuru, urugereko rwa Musanze. Me Gahutu Joseph ahagarariye Sanlam yavuze ko impamvu yatumye bajurira aruko Urukiko rwakiriye ikirego cya Ishimwe Fabrice ruragisuzuma kandi bitari bikwiriye kuko yagaragaje icyemezo (expertise medicale) cy'uko yasuzumwe na muganga wo mu bitaro bya Kibagabaga kandi yaragombaga gusuzumwa na muganga w'ibitaro bya CHUK kuko ari we wari wamusuzumye na mbere, asaba uru rukiko kwemeza ko ikirego cye kitagombaga kwakirwa,

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rugategeka ko Ishimwe Fabrice asubira kwisuzumisha muri CHUK cyangwa se akemera ko hashyirwaho itsinda ry'abaganga. [3] Me Gahutu Joseph ahagarariye Sanlam yasabye urukiko gutegeka Ishimwe Fabrice kuriha Sanlam indishyi zingana na 1.000.000Frws y'igihembo cya Avocat ku rwego rwa mbere no mu bujurire. [4] Me Ndereyimana Sylvestre ahagarariye Ishimwe Fabrice yavuze ko impamvu y'ubujurire ya Sanlam nta shingiro ikwiye guhabwa kuko Ishimwe Fabrice yasuzumwe na muganga wemewe na Leta, ashyikiriza Sanlam ibisabwa byose ashaka ko imuha indishyi mu bwumvikane, Muganga wa Sanlam yamutumyeho aranamusuzuma ariko undi ategereza ibisubizo araheba aricyo cyatumye yitabaza urukiko ngo arenganurwe. Yakomeje avuga ko Sanlam ishaka gusa kudindiza urubanza cyane ko itanagaragaza itegeko ryishwe n'urukiko rwakira ikirego. Yasoje asaba urukiko kwemeza ko ubujurire bwa Sanlam nta shingiro bufite. Yavuze kandi ko n'indishyi basaba nta shingiro zikwiye guhabwa kubera ko ari yo itarubahirije ibyo amategako ateganya kandi ikaba ari yo ikomeje kumusiragiza mu manza. [5] Me Ndereyimana Sylvestre ahagarariye Ishimwe Fabrice yakoze ubujurire bwuririrye ku bundi asaba urukiko kubarira Ishimwe Fabrice indishyi mbangamirabukungu hashingiwe ku mushahara yahembwaga nk'uko yabigaragariye ibimenyetso mu rukiko rwabanje, kandi nk'uko itegeko ribivuga ko umuntu wakoreraga umushahara agaragaza icyemezo cy'umushahara w'amafaranga yahembwaga n'akazi yakoraga, ibyo rero Ishimwe Fabrice akaba yarabigaragariye urukiko, bityo akaba ataragombaga kugenerwa indishyi nk'utagira umurimo uzwi kandi ntawigeze avuguruzwa ibimenyetso yagaragariye urukiko. Yasabye kandi urukiko kubarira Ishimwe Fabrice indishyi z'ibangamiraburamba mu kazi nanone hashingiwe ku mushahara yahembwaga ku kwezi: $300.000 \text{ frws} \times 6 = 1.800.000 \text{ Frws}$. Anasaba ko Ishimwe yagenerwa igihembo cya Avocat kingana na 500.000 Frws. [6] Uhagarariye Sanlam yavuze ko yo ivuga ko indishyi uregwa asaba nta shingiro

zifite kuko asaba ibyo adafitiye ibimenyetso. Byongeye kandi ngo iki ni ikirego gishya cyakagombye kuba cyararegewe ku rwego rwa mbere. Urukiko rugiye gusuzuma ibibazo bikurikira: Kumenya niba ikirego cya Ishimwe Fabrice cyari gikwiye kwakirwa kigasuzumwa mu mizi ku rwego rwa mbere; Kumenya niba indishyi z'ibangamirabukungu zagenewe Ishimwe Fabrice ku rwego rwa mbere zarabazwe mu buryo bwubahirije amategeko; Kumenya niba indishyi z'ibangamiraburambe mu kazi zagenewe Ishimwe Fabrice ku rwego rwa mbere zaragenwe mu buryo bwubahirije amategeko; Kumenya niba ubujurire bwuririye ku bundi bwakozwe na Ishimwe Fabrice bufite ishingiro; Kumenya niba indishyi zasabwe na Sanlam mu bujurire zifite ishingiro. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

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Ibyerekeye kumenya niba ikirego cya Ishimwe Fabrice cyari gikwiye kwakirwa kigasuzumwa mu mizi ku rwego rwa mbere: Uru rubanza ruburanwa ku rwego rwa mbere, uwari uhagarariye Sanlam yabyukije inzitizi yo kutakira ikirego cya Ishimwe Fabrice kuko yagaragaje expertise medicale yakozwe n'umuganga w'ibitaro bya Kibagabaga kandi yarabanje gusuzumwa n'umuganga w'ibitaro bya CHUK akanamubwira ko azagaruka nyuma y'amezi atandatu bakamusuzuma bakareba igipimo cy'ubumuga buhoraho afite, igihe yahawe kitararangira, undi ajya I Kibagabaga bamukorera expertise medicale igaragaza ko afite ubumuga buhoraho buri ku kigero cya 60%. Urukiko rwemeje ko iriya nzitizi nta shingiro ifite kuko ari uburenganzira bw'umurwayi kwivuza ku muganga yihitiyemo, ikindi nuko uriya muganga wo mu bitaro bya Kibagabaga ari umuganga wemewe na Leta, ikindi kandi nuko nyuma y'uko Ishimwe Fabrice yashyikirije Sanlam iriya expertise medicale, umuganga wayo yatumyeho Ishimwe Fabrice aramusuzuma ariko undi ategereza ibisubizo ntiyabibona, biba ngombwa ko aregera urukiko. [7] Uru rubanza ruburanwa ku rwego rwa mbere, uwari uhagarariye Sanlam yabyukije inzitizi yo kutakira ikirego cya Ishimwe Fabrice kuko yagaragaje expertise medicale yakozwe n'umuganga w'ibitaro bya Kibagabaga kandi yarabanje gusuzumwa n'umuganga w'ibitaro bya CHUK akanamubwira ko azagaruka nyuma y'amezi atandatu bakamusuzuma bakareba igipimo cy'ubumuga buhoraho afite, igihe yahawe kitararangira, undi ajya I Kibagabaga bamukorera expertise medicale igaragaza ko afite ubumuga buhoraho buri ku kigero cya 60%. Urukiko rwemeje ko iriya nzitizi nta shingiro ifite kuko ari uburenganzira bw'umurwayi kwivuza ku muganga yihitiyemo, ikindi nuko uriya muganga wo mu bitaro bya Kibagabaga ari umuganga wemewe na Leta, ikindi kandi nuko nyuma y'uko Ishimwe Fabrice yashyikirije Sanlam iriya expertise medicale, umuganga wayo yatumyeho Ishimwe Fabrice aramusuzuma ariko undi ategereza ibisubizo ntiyabibona, biba ngombwa ko aregera urukiko [8] Me Gahutu Joseph ahagarariye Sanlam yavuze ko impamvu ya mbere yatumye bajurira aruko babona ikirego cya Ishimwe Fabrice kitaragombaga kwakirwa ngo gisuzumwe kubera ziriya mpamvu basobanuye ku rwego rwa mbere, avuga ko hakenewe ko Ishimwe Fabrice yazajya mu bitaro byamuvuye (CHUK) agakorerwa isuzuma, agashyikiriza Sanlam AG PLC raporo ikozwe n'ibyo bitaro kugira ngo nayo izakore contre-expertise hagamijwe ko umuhango w'ubwumvikane wazakorwa. [9] Me Ndereyimana Sylvestre ahagarariye Ishimwe Fabrice yavuze ko kuba muganga w'ibitaro bya Kibagabaga yarasuzumye Ishimwe Fabrice maze akagaragaza ko yasanze afite ubumuga

buhoraho buri ku kigero cya 60% kandi akaba ari umuganga wemewe na Leta, ubifitiye ububasha no kuba umurwayi afite uburenganzira bwo kuvurwa na muganga yihitiyemo, zose ari impamvu zatuma ikirego cye cyakirwa, urukiko rukagena indishyi rushingiye ku kigero cy'ubumuga buhoraho bwa 60% Ishimwe Fabrice afite nyuma y'impanuka yagize bwagaragajwe n'ibitaro bya Kibagabaga kuko byubahirije ibiteganywa mu ngingo ya 5 y'Iteka rya Perezida no 31/01 ryo 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, bityo ikirego cye kikaba kigomba kwakirwa kigasuzumwa mu mizi. Yakomeje avuga ko ubujurire bwa Sanlam nta shingiro bwahabwa, ko ari ugusiragiza mu nkiko uwahohotewe, kuko Sanlam ari yo itarubahirije ibyo amategeko ateganywa

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kuko muganga wayo yasuzumye Ishimwe Fabrice ariko ntamumenyeshe ibyavuye muri iryo suzumwa ryakozwe, bikaba rero aribyo byatumye urukiko rutesha agaciro inzitizi yabyukije, kandi n'ubu nta shingiro urukiko Rukuru rukwiye guha iyi nzitizi, cyane ko Sanlam itagaragaza amategeko yaba yarirengagijwe, uretse kubivuga mu magambo gusa. [10] Ingingo ya 4 y'Iteka rya Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri biturutse ku mpanuka zitewe n'ibinyabiziga iteganywa ko Uwahohotewe agomba kugeza ku mwishingizi, mu gihe gito gishoboka, icyemezo cy'umuganga cyangwa cy'abaganga bamuvura, gisobanura neza ibikomere yagize, kandi uko avurwa cyangwa uko azavurwa. Mu gihe avurirwa mu bitaro, uwahohotewe agomba kwerekana icyemezo cy'umuganga gisobanura neza amatariki yinjiriyeho mu bitaro n'ayo yabisohokeye. Icyemezo kigomba kandi gusobanura neza itariki yasubiriyeho ku kazi burundu cyangwa yongereyeho kugakora igice, byaba bidashobotse, hagatangwa impamvu umuvura adatanga ibyo bisobanuro. Naho ingingo ya 5 ya ririya teka yo iteganywa ko Akimara kubona icyo cyemezo cyangwa ibyo byemezo, umwishingizi ashobora, igihe asanze ari ngombwa, kwitabaza undi muganga kugira ngo asuzume ibyo byemezo, uwo muganga kandi ashobora kwifashisha abandi baganga bamufasha gukora ibizami byihariye cyangwa bamwungura ibitekerezo. Umwishingizi agomba mu buryo bwose kumenyesha uwahohotewe mu minsi mirongo itatu ikurikira, icyemezo cye kuri gahunda y'ubuvuzi, cyangwa izina ry'umuganga we. Uwahohotewe agomba kujyana, aramutse abishatse, n'umuganga cyangwa n'abaganga yihitiyemo, igihe cyose agiye kwisuzumisha no gukoresha ibizami byategetswe na muganga w'umwishingizi. Icyo gihe, agomba kwerekana dosiye ye yose yo kwa muganga irebana n'impanuka. Iyi dosiye ishobora gutangwa n'abategetsi bo kwa muganga babishinzwe. [11] Mu gusesengura ziriya ngingo zombi z'Iteka rya Perezida, bigaragara ko uwahohotewe akimara gukora impanuka afite inshingano yo kugana muganga wemewe na Leta maze akamusuzuma, akamuvura hanyuma akamukorera raporo y'uburyo yakomeretse n'igipimo cy'ubumuga runaka yaba yaratewe n'impanuka yagize. Afite kandi inshingano yo gushyikiriza umwishingizi iyi raporo ya muganga mu gihe kihuse bishoboka. Umwishingizi nawe afite inshingano yo kwakira icyo cyemezo hanyuma yabona ari ngombwa akaba yakwifashisha umuganga we cyangwa itsinda ry'abaganga kugira ngo bamufashe kongera gusuzuma uwahohotewe, hanyuma ibivuye muri iryo suzuma akazabimenyesha uwahohotewe mu gihe cy'iminsi mirongo itatu. [12] Mu gusuzuma dosiye, urukiko rwasanze Ishimwe Fabrice yarashyikirije Sanlam raporo yakozwe

n'umuganga w'ibitaro bya Kibagabaga wamusuzumye, maze umuganga wa Sanlam nawe atumaho Ishimwe aramusuzuma ariko ntiyigera amumenyesha ibyavuye muri ririya suzuma yakorewe, nyuma rero y'igihe cy'iminsi 30 iteganywa n'Iteka rya Perezida, byabaye ngombwa ko Ishimwe Fabrice agana urukiko ngo rumurenganure. [13] Hashingiwe ku bimaze kuvugwa haruguru byose no ku biteganywa na ziriya ngingo zombi z'Iteka rya Perezida, urukiko rurabona Ishimwe Fabrice yarubahirije ibyo yasabwaga byose kandi abikora mu gihe cya ngombwa, naho Sanlam yo ntiyakoze ibyo yasabwaga kuko nyuma yo gushyikirizwa raporo yakozwe na muganga wa Kibagabaga, muganga wabo nawe yakozwe contre-expertise ariko ntiyigera amenyesha uwahohotewe icyavuye ku isuzuma

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yakorewe, hanyuma rero Ishimwe Fabrice abonye ntacyo bavuze muri kiriya gihe giteganywa n'iteka rya Perezida, nibwo yahisemo kwitabaza urukiko kugirango uburenganzira bwe budahonyorwa. Mu by'ukuri rero, kuba urukiko rwaremeye kwakira ikirego cya Ishimwe Fabrice rukagisuzuma mu mizi byubahirije amategeko. [14] Ibyo uhagarariye Sanlam avuga ko byanze bikunze Ishimwe Fabrice yagombaga gukomeza gusuzumwa na muganga w'ibitaro bya CHUK nta shingiro bifite kuko uwahohotewe ntategetswe kwivuka ku muganga runaka, ahubwo icy'ingenzi nuko asuzumwa n'umuganga wemewe na Leta, ikindi nuko iyo Umwishingizi amaze gushyikirizwa raporo ya muganga wasuzumye uwahohotewe, ayisuzuma yakumva atanyuzwe akamenyesha uwahohotewe ko hagomba gukorwa contre-expertise, ibi kandi Sanlam yarabikoze ariko ikibazo nuko batigeze bamenyesha Ishimwe Fabrice ibyavuye mu isuzuma yakorewe, ngo bagere ku ntambwe y'ubwumvikane ku ndishyi. Kubera rero ko Sanlam itakoze ibyo isabwa n'amategeko, ntibyari kuvutse Ishimwe Fabrice uburenganzira bwe bwo kuregera urukiko, ikindi kandi nta mpamvu ifatika Sanlam igaragaza yari kubuza urukiko kwakira ikirego cye. Ibyerekeye kumenya niba indishyi z'ibangamirabukungu zagenewe Ishimwe Fabrice ku rwego rwa mbere zarabazwe mu buryo bwubahirije amategeko: [15] Me Ndereyimana Sylvestre ahagarariye Ishimwe Fabrice yatanze ubujurire bwuririye ku bwa Sanlam avuga ko indishyi z'ibangamirabukungu zagenewe Ishimwe Fabrice zagombaga kubarwa hashingiwe ku mushahara yahembwaga ku kwezi ungana na 300.000 frws nk'uko yabitangiye ibimenyetso kandi ntawigeze abivuguruza, akaba asaba ko indishyi mbangamira bukungu zibazwe mu buryo bukurikira: $300.000\text{frws} \times 12 \times 41 \times 60\% = 25.595.375 \text{ Frws } 1 + (6\% \times 41)$ [16] Uhagarariye Sanlam yavuze ko indishyi uregwa asaba nta shingiro zifite kuko asaba ibyo adafiteye ibimenyetso. [17] Mu gusesengura dosiye, urukiko rwasanze hari amasezerano y'akazi yo kuwa 01/7/2019 n'icyemezo cy'umushahara cyatanzwe n'umuyobozi wa Muhororo Business Company LTD, Niyonsenga Anastase, byombi bigaragaza neza ko Ishimwe Fabrice yahembwaga umushahara wa 300.000 Frws ku kwezi. [18] Mu gusesengura dosiye, urukiko rwasanze urukiko rwisumbuye rwa Rubavu rwaravuze ko kuba uwari ahagarariye Ishimwe Fabrice yararugaragariye ko Ishimwe Fabrice yakoraga muri Muhororo Business Company LTD afite umushahara wa 300.000Frws ariko ntagaragaze ko ariya 300.000Frws ariyo mafaranga yatahanaga ku kwezi havuyemo imisoro, ntagaragaze historique ya banki ahemberwamo uwo mushahara wa buri kwezi, ngo nta gaciro byahabwa, bituma rumubarira indishyi z'ibangamirabukungu rushingiye ku mushahara muto

w'umwaka ntarengwa, rumugenera indishyi zibaze zitya: $(3.000\text{Frw} \times 30\text{jours} \times 12\text{mois} \times 41\text{ans} \times 60\%) = 6.207.476\text{Frw}$. 1 + $(8\% \times 41\text{ans})$ [19] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurabona kuba Ishimwe Fabrice yaragaragariye urukiko amasezerano y'akazi yagiranye na Muhororo Business Company Ltd

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kuwa 01/7/2019, aho bigaragara ko yahembwaga 300.000Frws ku kwezi, ibi bikaba byaranashimangiwe n'icyemezo cy'umukoresha we kiri muri dosiye (attestation de salaire), nacyo kigaragaza ko koko yari chef de chantier muri iriya Company kandi ko ahembwa 300.000Frws, urukiko rurabona ibi ari ibimenyetso bidashidikanywa bigaragaza ko ubwo Ishimwe Fabrice yakoraga impanuka kuwa 20/9/2020 yahembwaga 300.000Frws ku kwezi. Kuba rero nta historique ya banki Ishimwe Fabrice yahemberwagamo babashije kugaragariza urukiko si impamvu yatuma ariya masezerano y'akazi n'icyemezo cy'umukoresha bitesha agaciro kuko atari itegeko ko abakozi bese bahemberwa kuri banque kuko kugeza ubu mu gihugu cyacu hari abakozi bagishyikirizwa imishahara yabo mu ntoki, badahemberwa muri banki, ikindi kandi muri dosiye hakaba harimo ibyemezo by'umukoresha wa Ishimwe Fabrice bigaragaza ko yahemberwaga muri comptabilite ya Company, ko umushahara we utanyuraga kuri Banque. [20] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki, urukiko rurabona Ishimwe Fabrice yari umukozi wa Muhororo Business Company Ltd, akaba yarahembwaga 300.000Frws ku kwezi, akayatahana uko yakabaye, akaba rero agomba kugenerwa indishyi z'ibangamirabukungu zibazwe hashingiwe ku mushahara yahembwaga aho gushingira ku mushahara w'umwaka muto ntarengwa nk'umutu utaragiraga akazi kazwi, bityo akaba agomba kugenerwa na SANLAM indishyi z'ibangamirabukungu zibazwe mu buryo bukurikira : $300.000\text{frws} \times 12 \times 41 \times 60\% = 20.691.588\text{Frws}$ 1+ $(8\% \times 41)$ Ibyerekeye kumenya niba indishyi z'ibangamiraburambe mu kazi zagenewe Ishimwe Fabrice ku rwego rwa mbere zaragenwe mu buryo bwubahirije amategeko: [21] Urukiko rwisumbuye rwa Rubavu rwabariye Ishimwe Fabrice indishyi z'ibangamiraburambe ku kazi rushingiye ku mushahara muto ntarengwa nk'uko rwari rwabigenje mu kubara indishyi z'ibangamirabukungu, maze rumuha indishyi zibaze zitya : $3.000 \times 30 \times 6 = 540.000\text{Frws}$. [22] Me Ndereyimana Sylvestre ahagarariye Ishimwe Fabrice yakoze ubujurire bwuririye ku bwa Sanlam, asaba kubarira uwo ahagarariye indishyi z'ibangamiraburambe mu kazi rushingiye ku mushahara yahembwaga ku kwezi ungana na 300.000Frws. [23] Uhagarariye Sanlam ntacyo yavuze kuri iriya mpamvu y'ubujurire ya Ishimwe Fabrice. [24] Ingingo ya 19 y'Iteka rya Perezida ryavuzwe haruguru iteganya ko Ibangamira ry'uburambe mu kazi :

- gutakaza amahirwe y'akazi umunyeshuri wo mu mashuri yisumbuye, wo mu mashuri y'imyuga, wo mu mashuri makuru cyangwa andi angana na yo ashobora kwizera ;
- gutakaza uburambe mu kazi ku muntu wari usanzwe akora. Ku wa mbere, amafaranga agomba gutangwa ntashobora kurenga umushahara w'umwaka muto ntarengwa wemewe n'amategeko. Ku wa kabiri, ayo mafaranga agarukira gusa ku mezi atandatu y'umusaruro abazwe kandi atarengeje inshuro 30 umushahara w'umwaka muto ntarengwa wemewe n'amategeko.

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[25] Hashingiwe ku bimaze kuvugwa haruguru no ku biteganywa n'iriya ngingo y'itegeko yavuzwe mu gika kibanziriza iki, urukiko rurabona Ishimwe Fabrice agomba guhabwa na Sanlam indishyi z'ibangamiraburambe ku kazi zibazwe zitya : $300.000\text{Frws} \times 6 = 1.800.000\text{Frws}$. Ibyerekeye kumenya niba ubujurire bwuririye ku bundi bwatanzwe na Ishimwe Fabrice bufite ishingi: [26] Uretse ibyerekeye kubara indishyi z'ibangamirabukungu n'iz'ibangamiraburambe mu kazi hashingiwe ku mushahara Ishimwe Fabrice yahembwaga ku kwezi, ibi bikaba byamaze gusuzumwa haruguru, Me Ndereyimana Sylvestre yasabye urukiko gutegeka Sanlam kugenera uwo ahagarariye mu rubanza 500.000Frws y'igihembo cya Avocat. [27] Uhagarariye Sanlam yavuze ko indishyi uregwa asaba nta shingiro zikwiye guhabwa. [28] Hashingiwe ku byavuzwe haruguru byose, aho urukiko rwagaragaje ko impamvu z'ubujurire za Sanlam nta shingiro zifite, naho impamvu z'ubujurire bwa Ishimwe Fabrice zikaba zifite ishingi, hashingiwe kandi ku biteganywa n'ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuru, iz'umurimo n'iz'ubutegetsi iteganya ko Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza kandi ko Ikirego kiburanishirizwa rimwe n'ikirego cy'iremezo, urukiko rurabona indishyi z'igihembo cya Avocat Ishimwe Fabrice asaba zifite ishingi kubera ko yari ahagarariye na Avocat mu rubanza, ariko hashingiwe ku biteganywa n'ingingo ya 33 y'amabwiriza akena ibihembo mbonera by'abavoka, akaba agomba kugenera 250.000Frws y'igihembo cya Avocat aho guhabwa 500.000Frws . Ku byerekeye kumenya niba indishyi zasabwe na SANLAM mu bujurire zifite ishingi: [29] Uhagarariye Sanlam yasabye urukiko gutegeka Ishimwe Fabrice guha Sanlam $1.000.000\text{Frws}$ y'igihembo cya Avocat ku rwego rwa mbere no mu bujurire. [30] Uhagarariye Ishimwe Fabrice yavuze ko indishyi Sanlam isaba nta shingiro zahabwa kuko ari yo itarubahirije ibyo amategako ateganya kandi ni yo ikomeje kumusiragiza mu manza. [31] Hashingiwe ku byavuzwe haruguru, aho urukiko rwagaragaje ko impamvu z'ubujurire ya Sanlam nta shingiro zifite, urukiko rurabona n'indishyi basabye nazo nta shingiro zifite. III. ICYEMEZO CY'URUKIKO [32] Urukiko rwemeje ko ubujurire bwa Sanlam nta shingiro bufite. [33] Urukiko rwemeje ko ubujurire bwuririye ku bundi bwa Ishimwe Fabrice bufite ishingi. [34] Urukiko rutegetse Sanlam guha Ishimwe Fabrice indishyi ziteye zitya: $20.691.588\text{Frws}$ y'indishyi z'ibangamira ry'ubukungu, $1.080.000\text{Frws}$ y'indishyi z'akababaro,

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$1.080.000\text{Frws}$ y'indishyi z'ibangamira ry'uburanga, $2.160.000\text{Frws}$ zo gutakaza amahirwe yo gushaka, $1.800.000\text{Frws}$ y'indishyi z'ibangamiraburambe ku kazi; 992.044Frws yakoresheje hakubiyemo n'igihembo cya Avocat; 20.000Frws y'ingwate y'amagarama yatanze arega ku rwego rwa mbere; 250.000Frws y'igihembo cya Avocat mu bujurire. [35] Urukiko rutegetse ko RC00199/2020/TGI/RBV rwaciwe n'urukiko rwisumbuye rwa Rubavu kuwa 26/11/2021, ruhindutse ku byerekeye indishyi. [36] Urukiko rutegetse ko ingwate y'amagarama yatanzwe na Sanlam bajurira ihwanye n'imirimo yakozwe muri uru rubanza.

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