

RWANDA / JUDGMENT

SANLAM v RWAMIRERA

RCA00086/2022/HC/MUS

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SANLAM v RWAMIRERA

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Text

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SANLAM v RWAMIRERA [Rwanda URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA00086/2022/HC/MUS (Mukamuhire, P.J.) 27 Kamena 2023] Itegeko rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga – contre expertise igaragaza ikigero cy’ubumuga – igihe cyo gutanga contre expertise mu Rukiko – Ntabwo igipimo cy’ubumuga kitagaragajwe mu gihe urubanza rwaburanishwaga ku rwego rwa mbere haba mu nama ntegurarubanza, cyangwa mu rubanza mu mizi cyangwa se no myanzuro yo kwiregura cyagaragazwa bwa mbere mu rubanza mu bujurire. Itegeko rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga – Indishyi mbangamiraburambe – Indishyi mbangamiraburambe ntizitangwa mu gihe uzisaba atagaragaza ko yarafite akazi ndetse ko yagatakaje kubera impanuka yagize Incamake y’ikibazo: Uru rubanza rwatangiye Rwamirera arega SANLAM mu Rukiko Rwisumbuye rwa Musanze asaba indishyi zitandukanye zikomoka ku mpanuka yagize akagongwa na moto TVS ifite plaque RE164V, ari mu murenge wa Busogo mu karere ka Musanze ikamusigira ubumuga bwa 20% agasaba SANLAM indishyi mu bwumvikane bikanga agahitamo kuregera Urukiko. Urukiko mu rubanza RC00067/2021/TGI/MUS rwaburanishijwe SANLAM ititabye, rwemeje ko ikirego cya Rwamirera

gifite ishingiyo, rutegeka SANLAM mu izina ry'umuyobozi wayo kumwishyura indishyi zitandukanye zingana na 2.190.600frw. SANLAM ntiyishimiye imikirize y'urubanza, ajuririra mu Rukiko Rukuru Urugereko rwa Musanze avuga ko Urukiko Rwisumbuye rwatanze indishyi rushingiye ku nyandiko mvugo y'impanuka igaragaza ko Rwamirera yagize ubumuga buhoraho bungana na 20%, kandi muri dosiye harimo raporo yakozwe nyuma, yagaragaje ko Rwamirera yagize ubumuga buhoraho bungana na 10%. Ikindi ngo yagenewe indishyi z'ibangamiraburambe kandi nta kigaragaza ko afite akazi gahoraho. Rwamirera avuga ko iyo raporo igaragaza ko yagize ubumuga bwa 10% yakozwe nyuma y'uko ikirego gisuzumwa mu rwego rwa mbere, ndetse ko yagenewe indishyi z'uburambe mu kazi kubera ko yatakaje akazi bitewe n'iyi mpanuka. Incamake y'icyemezo: 1. Ntabwo igipimo cy'ubumuga kitagaragajwe mu gihe urubanza rwaburanishwaga ku rwego rwa mbere haba mu nama ntegururubanza, cyangwa mu rubanza mu mizi cyangwa se no myanzuro yo kwiregura cyagaragazwa bwa mbere mu rubanza mu bujirire. 2. Indishyi mbangamiraburambe ntizitangwa mu gihe uzisaba atagaragaza ko yarafite akazi ndetse ko yagatakaje kubera impanuka yagize. 3. Indishyi z'akababaro ntizitangwa mu gihe uzisaba atagaragariza Urukiko akababaro yagize. 4. Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ntatangwa kuwa rezwe mu bujirire mu gihe hari ibyo yatsindiye nibyo yatsindiye.

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Ubujujire bufite ishingiyo kuri bimwe. Ubujujire bwuririye ku bundi nta shingiyo bufite. Amategeko yashingiweho. Itegeko 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 Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111,145 Imanza zifashishijwe. Urubanza RS/INJUST00010/2021/SC haburana Prime Insurance Company Ltd na Uwimanimpaye Jean Claude rwaciwe n'Urukiko rw'Ikirenga kuwa 02/12/2023 Urubanza RCAA0049/14/CS haburana SORAS AG LTD na UMUHOZA Pacifique, Izabayo Sylvie na Niyoyita Jacques rwaciwe n'Urukiko rw'Ikirenga kuwa 25/11/2016 Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 02/09/2020, mu gihe cya saa kumi n'ebyiri n'igice (18h30), mu mudugudu wa Gahanga, akagari ka Sahara, umurenge wa Busogo, akarere ka Musanze, habereye impanuka ya moto TVS Victors ifite plaque RE164V, yari itwawe na Maniraho Innocent avuye Rubavu yerekeza i Musanze, ageze ahavuzwe haruguru, agonga abanyamaguru 2, barimo Rwamirera Célestin wakomeretse agasigarana ubumuga buhoraho bungana na 20%. Yegereye SANLAM ngo ahabwe indishyi ku bwumvikane, abonye bidakunze ahitamo kuregera urukiko. [2] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Musanze, ruburanishwa SANLAM idahagarariwe, maze Rwamirera Célestin asaba guhabwa indishyi zitandukanye zikubiyemo indishyi z'ibangamiraburamba zingana na 648.000Frw, indishyi z'akababaro zingana na 108.000Frw, indishyi z'ibangamiraburanga zingana na 540.000Frw n'indishyi z'ibangamiraburambe zingana na 540.000Frw, akanasubizwa amafaranga yakoresheje yivuze n'igihembo cy'avoka kingana na 1.000.000Frw hamwe n'amafaranga y'ikurikiranarubanza angana na 300.000Frw. [3] Urukiko Rwisumbuye rwaburanishije urwo rubanza mu rwego rwa mbere, rwemeje ko ikirego cya Rwamirera Célestin gifite ishingiyo, rutegeka SANLAM mu izina ry'umuyobozi wayo

kumwishyura indishyi zingana na miliyoni ebyiri n'ibihumbi ijana na mirongo icyenda n'amafaranga magana atandatu (2.190.600frw). [4] Uhagarariye SANLAM ntiyishimiye imikirize y'urubanza, ajuririra mu Rukiko Rukuru avuga ko impamvu zatumye bajurira ari uko Urukiko Rwisumbuye rwatanze indishyi rushingiye ku nyandiko mvugo y'impanuka igaragaza ko Rwamirera Célestin yagize ubumuga buhoraho bungana na 20%, kandi muri dosiye harimo raporo yakozwe nyuma, yagaragaje ko Rwamirera Célestin yagize ubumuga buhoraho bungana na 10%. Ikindi ngo ni uko Rwamirera Célestin

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yagenewe indishyi z'ibangamiraburambe kandi nta kigaragaza ko afite akazi gahoraho. SANLAM ikaba isaba ko izindi ndishyi zigomba gutangwa, zashingira ku bumuga buhoraho bungana na 10%. [5] Uhagarariye Rwamirera Célestin avuga ko iyo raporo yakozwe nyuma y'uko ikirego gisuzumwa mu rwego rwa mbere, kandi ko ibipimo by'ubumuga bwa 10% bigaragajwe ari uko urubanza rugeze mu bujurire, ndetse ko yagenewe indishyi z'uburambe mu kazi kubera ko yatakaje akazi bitewe n'iyi mpanuka. [6] Ibibazo bikwiye gusuzumwa muri uru rubanza: Kumenya niba raporo igaragaza ubumuga Rwamirera Célestin yagize bungana na 10% yarashyikirijwe urukiko, mu rwego rw'ubujurire. Kumenya niba Rwamirera Célestin yari afite akazi gahoraho ku buryo yagombaga kubarirwa indishyi z'ibangamiraburambe. Kumenya niba ikirego cyuririye ku kindi cyatanzwe na Rwamirera Célestin gikwiye guhabwa agaciro. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba raporo igaragaza ubumuga Rwamirera Célestin yagize bungana na 10% yarashyikirijwe urukiko, mu rwego rw'ubujurire. [7] Me Nyabagabo Félicien avuga ko imwe mu mpamvu zatumye SANLAM ijurira ari uko muri dosiye y'impanuka, haje kugaragara raporo y'inyandikomvugo y'impanuka igaragaza ko Rwamirera Célestin yagize ubumuga buhoraho bungana na 20% nyuma hakaza gukorwa indi raporo ivuguruza iya mbere, igaragaza ko Rwamirera Célestin yagize ubumuga buhoraho bungana na 10%, ariko umucamanza waciye urubanza mu rwego rwa mbere akirengagiza iyo raporo ya nyuma ahubwo agatanga indishyi ashingiye kuri raporo ya mbere kandi yari imaze guteshwa agaciro na raporo ya muganga ya nyuma, igaragaza ubumuga buhoraho bungana na 10%, ngo hakaba hari urubanza rwaciye n'urukiko rw'ikirenga kuri iyo ngingo rushobora gutanga umurongo ngenderwaho mu gihe habaye ikibazo nk'icyo. [8] Me Dukundane Anastase uburanira Rwamirera Célestin yireguye kuri iyo ngingo avuga ko raporo igaragaza ko Rwamirera Célestin yagize ubumuga buhoraho bungana na 10% yatanze nyuma, ikirego kigeze mu bujurire kandi ko bajya gutanga icyo kirego, SANLAM yabanje gutumaho Rwamirera Célestin iramupima ariko ntiyamenyeshwa ibipimo yahawe muri iyo raporo ya nyuma ku buryo yagira icyo abivugaho, ari nayo mpamvu bahisemo kwiambaza inkiko, ngo keretse niba SANLAM ihakana ko atariyo igomba kuryozwa ingaruka z'impanuka ikomoka ku kinyabiziga cyatewe na moto yavugiye plaque haruguru kandi yari ifite ubwishingizi iwabo. [9] Urukiko rumaze kumva impamvu z'ubujurire kuri iyi ngingo no kwiregura kwa Me Dukundane Anastase uburanira Rwamirera Célestin, rusanga SANLAM nk'umwishingizi w'ikinyabiziga cya moto TVS Victors ifite plaque RE164V yari itwawe na Maniraho Innocent ava Rubavu yerekeza i Musanze, idahakana ko iyo moto ariyo yagonze Rwamirera Célestin, kandi ikaba itanahakana ko aribo ubwabo batumyeho

Rwamirera Célestin ngo aze gupimwa

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iwabo, nyamara ikirego kikaba cyaratinze kugera mu rukiko bataragaragariza Rwamirera Célestin ko igipimo cy'ubumuga yahawe mbere cyavuye kuri 20% kikagera kuri 10%. [10] Urukiko rusanga iyi mpamvu yo kuba ibipimo bya 10% bitaragejejwe mu rukiko ku ikirego kigitangira mu rukiko Rwisumbuye, ifite ishingiye, kuko no mu nama ntegururubanza mu rwego rwa mbere ndetse no mu gihe cy'iburanisha ry'uru rubanza mu mizi, SANLAM ntiyigeze yitaba urukiko ndetse nta n'imyanzuro yo kwiregura yigeze igaragazwa mu rukiko Rwisumbuye, ngo yiregure ku ngingo zashingiweho na Rwamirera Célestin mu rwego rwa mbere, bityo rero kuba umucamanza yaratanze indishyi ashingiye ku gipimo cy'ubumuga bungana na 20% akaba ari uko aribyo bipimo yashyikirijwe mu rwego rwa mbere kandi muri dosiye akaba nta bindi bipimo by'ubumuga byarimo bibivuguruzwa. [11] Urukiko rushingiye ku murongo watanze n'Urukiko rw'Ikirenga mu rubanza rubanziriza urundi RCOMAA00071/2017/CS rwaciye n'Urukiko rw'Ikirenga kuwa 26/10/2018, haburana Mbuto na BRD, aho urukiko rwasobanuye ko mu myanzuro y'ubujurire hagomba kuba harimo n'impamvu z'ubujurire zigaragaza inenge uwajuriye asaba ko zikosorwa, nyamara wareba urubanza rwajuririwe, ugasanga nta hantu na hamwe SANLAM yigeze ivugwa ku bijyanye n'ubumuga bwa 10%, cyane ko SANLAM itigeze yitaba urukiko mu rwego rwa mbere, bityo urukiko rwajuririwe rugasanga ibipimo bya 10% bitagomba gushingirwaho mu rwego rw'ubujurire kuko nta nenge byaba bije gukosora mu mikirize y'urubanza rwajuririwe. [12] Ibi kandi urukiko rwajuririwe rubishingira ku biteganywa n'ingingo ya 145 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko : Mu rwego rw'Ubugurire hadashobora gutangirwa ibirego bishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanze mu rukiko rw'ubujurire. [13] Kuba rero ibyerekeranye n'ibipimo bya 10% bitarigeze bigaragazwa mu miburanire y'urubanza ku rwego rwa mbere, ngo umucamanza yange kugira icyo abivugaho, urukiko rusanga kubizana mu rwego rw'ubujurire ari ukuzana ikirego gishya bityo bikaba bidashobora gusuzumwa. Kumenya niba Rwamirera Célestin yari afite akazi gahoraho ku buryo yagombaga kubarirwa indishyi z'ibangamiraburambe. [14] Me Nyabagabo Félicien uhagarariye SANLAM avuga ko indi mpamvu yatumye SANLAM ijurira ari uko urukiko Rwisumbuye rwageneye Rwamirera Célestin indishyi z'ibangamiraburambe kandi atarigeze agaragaza icyangombwa kigaragaza ko yaba yaratakaje akazi kubera iyo mpanuka naho Me Dukundane Anastase uburanira Rwamirera Célestin akavuga ko uwo yunganira akwiye kugenerwa indishyi z'ibangamiraburambe ngo kuko yagize ubumuga akaba yirirwa yicaye, kubera ko atagishoboye gukora akazi k'ubuhinzi yakoraga. [15] Ingingo ya 19 y'itegeko 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 ko Gutakaza uburambe mu kazi ku muntu wari usanzwe akora, bimuhesha uburenganzira ku ndishyi z'ibangamiraburambe ariko ayo mafaranga atangwa akagarukira ku musaruro w'amezi atandatu (6) ariko atarengeje incuro 30 y'umushahara w'umwaka muto

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ntarengwa wemewe n'amategako. Nyamara kugira ngo izo ndishyi zitangwe bisaba ko uwahohotewe aba yatakaje akazi atagishoboye kongera kugakora kubera iyo mpanuka. [16] Urukiko rwajuririwe rusanga kugeza ubu nta kimenyetso na kimwe Rwamirera Célestin yigeze agaragariza urukiko cyerekana ko yari afite akazi kazwi akaba yaragatakaje kubera iyo mpanuka. Ibi bikaba byarasuzumwe mu rubanza rw'icyitegererezo RS/INJUST 00010/2021/SC rwaciwe kuwa 02/12/2023 n'Urukiko rw'Ikirenga haburana Prime Insurance Company Ltd na Uwimanimpaye Jean Claude, aho rwasuzumaga ikibazo cyari gitanzwe na Prime Insurance Company Ltd, mu gihe Uwimanimpaye Jean Claude we avuga ko n'udafite akazi kagaragara gahemberwa ku kwezi agenerwa bene izo ndishyi. [17] Urukiko rw'Ikirenga mu gusuzuma icyo kibazo, rwemeje ko umuntu utagaragaza ibimenyetso ko hari akazi yari afite igihe yakoraga impanuka, nta ndishyi zo kugatakaza agomba guhabwa kubera ko nyine ntako yari afite, bityo rero bikaba bihura neza n'ikibazo cya Rwamirera Célestin, ari nayo mpamvu urukiko rusanga nta ndishyi mbangamirabukungu Rwamirera Célestin akwiye guhabwa kuko nubwo avuga ko ari umukozi wa nyakabyizi atagaragariye urukiko ibimenyetso by'ako kazi ka nyakabyizi yari afite, ngo hamenyekane niba ari umukozi wagiraga icyo yinjiza buri kwezi. [18] Urukiko rusanga ku bijyanye n'izindi ndishyi Rwamirera Célestin yagenewe mu rukiko Rwisumbuye zikwiye kuguma uko zatanze hashingiwe ku bipimo by'ubumuga byatanze na muganga wa mbere bingana na 20%, nk'uko byasobanuwe n'umucamanza mu rubanza RC00067/2021/TGI/MUS rwaciwe kuwa 20/10/2022 n'Urukiko Rwisumbuye rwa Musanze rwajuririwe, hakuwemo indishyi mbangamiraburambe zingana n'ibihumbi maganatanu na mirongo ine (540.000Frw). Kumenya niba ikirego cyuririra ku kindi cyatanze na Rwamirera Célestin gikwiye guhabwa agaciro [19] Me Dukundane Anastase ahagarariye Rwamirera Célestin yatanze ikirego cyuririye ku kindi, asaba igihembo cya Avoka kingana na 500.000Frw cyiyongera ku gihembo yahawe mu rwego rwa mbere, asaba n'indishyi z'ikurikirana rubanza zingana na 100.000Frw n'igihembo cya Avoka kingana na 1.000.000Frw ngo kubera ko SANLAM ikomeje kumusiragiza mu manza, naho uhagarariye SANLAM Ltd avuga ko icyo kirego cyuririra ku kindi kidakwiye guhabwa ishingiro kuko bagaragaje ishingiro ry'ubujurire bwabo. [20] Ingingo ya 111 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [21] Hashingiwe ku bimaze kuvugwa haruguru no ku biteganywa n'iriya ingingo ya 111 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, urukiko rubona indishyi z'akababaro no gucuragizwa zasabwe n'uregera indishyi nta shingiro zifite kuko Rwamirera Célestin atagaragariye urukiko umubabaro avuga ko yagize, kandi kuba SANLAM yarajuriye

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bikaba bwari uburenganzira bwayo nk'abandi baburanyi bose, bikaba bitafatwa nko gucuragizwa mu manza. [22] Ku byerekeye igihembo cya Avocat, urukiko rubona ko byari bikwiye kuzihabwa kuko bigaragara ko Rwamirera Célestin yahagarariwe na Avocat mu rubanza kandi byanze bikunze hari amafaranga yakoresheje mu gukurikirana urubanza, ariko ntashobora kuzigenerwa kuko byagaragaye ko ubujurire bwa SANLAM bufite ishingiro kuri bimwe, bivuga ko hari ibyo yatsindiye n'ibindi yatsindiye. [23] Ibi kandi urukiko runabishingira ku byemejwe n'urukiko rw'Ikirenga mu rubanza RCAA0049/14/CS rwaciye kuwa 25/11/2016 (igika cya 36, urupapuro rwa 12), haburana SORAS AG LTD na Umuhozo Pacifique, Izabayo Sylvie na Niyoyita Jacques, aho rwemeje ko nta muburanyi ukwiye guhabwa indishyi z'ikurikiranarubanza ndetse n'amafaranga y'igihembo cya Avocat mu gihe buri ruhande rufite ibyo rwatsindiye n'ibyo rwatsindiye. [24] Ku bijyanye n'izindi ndishyi zasabwe na Rwamirera Célestin ariko zitari mu mpamvu z'ubujurire za SANLAM Ltd, Urukiko rwajuririwe rusanga zigomba gukomeza guhabwa ishingiro ryazo nk'uko byasobanuwe mu rubanza rwajuririwe arirwo RC00067/2021/TGI/MUS rwaciye kuwa 20/10/2022 n'Urukiko Rwisumbuye rwa Musanze, bityo mu giteranyo cy'izo ndishyi zingana na 2.190.600Frw hakaba havanwemo gusa indishyi z'ibangamiraburambe zingana na n'ibihumbi maganatanu na mirongo ine (540.000Frw). III. ICYEMEZO CY'URUKIKO [25] Urukiko rwemeje ko ubujurire bwa SANLAM Ltd bufite ishingiro ku bijyanye n'indishyi z'ibangamiraburambe. [26] Rwemeje ko ubujurire bwuririye ku bundi bwakozwe na Rwamirera Célestin nta shingiro bufite. [27] Rwemeje ko indishyi z'ibangamiraburambe zihwanye na 540.000Frw zari zagenewe Rwamirera Célestin ku rwego rwa mbere zikuweho. [28] Rutegetse ko imikirize y'urubanza RC00067/2021/TGI/MUS rwaciye kuwa 20/10/2022 n'Urukiko Rwisumbuye rwa Musanze, ihindutse gusa ku byerekeye indishyi z'ibangamiraburambe. [29] Rutegetse ko SANLAM Ltd igomba guha Rwamirera Célestin indishyi zose hamwe zihwanye na 2.190.600Frw ukuyemo 540.000 frw, hagasigara 1.650.600Frw. [30] Rutegetse ko nta ndishyi z'ikurikiranarubanza n'iz'igihembo cya Avocat zigenwe muri uru rubanza mu bujurire. [31] Rutegetse ko ingwate y'amagarama yatanze na SANLAM Ltd ijurira ihwanye n'imirimo yakozwe muri uru rubanza.

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