

RWANDA / JUDGMENT

SONARWA GENERAL INSURANCE COMPANY LTD v. GASANA N'ABANDI

RS/INJUST/RC 00007/2024/SC

COURT

Supreme Court

DECIDED

14 March 2025

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SONARWA GENERAL INSURANCE COMPANY LTD v. GASANA N'ABANDI

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Text

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SONARWA GENERAL INSURANCE COMPANY LTD v. GASANA N'ABANDI [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00007/2024/SC, (Cyanzayire, P.J., Kalihangabo na Kazungu, J.) 14 Werurwe 2025] Indishyi – Indishyi z'ibangamirabukungu – Indishyi z'ibangamirabukungu zikomoka ku rupfu rwatewe n'impanuka yo mu muhanda zigenerwa gusa uwari usanzwe atunzwe n'uwapfuye kandi akabitangira ibimenyetso ko yari amutunze koko. Amategeko agenga ibimenyetso – Ibimenyetso – Umuntu urengeje imyaka y'ubukure ntiyavuga ko adashoboye kwitunga iyo atagaragaje impamvu idasanzwe, kandi akabitangira ibimenyetso bifatika nk'inyandiko zo kwa muganga zerekana niba afite ubumuga, uburwayi cyangwa ikindi kibazo kidasanzwe cyatuma atibeshaho Incamake y'ikibazo: Imodoka Mitsubishi Fuso RAB 423E ifite ubwishingizi muri SONARWA, yakoze impanuka ihitana Ihirwe Remy Robert. Ababyeyi ba nyakwigendera aribo Gasana Alexis na Uwanyiribambe Laurence, ndetse n'abavandimwe be aribo Hirwa Alipe Fraterne, Uwihirwe Roger Christian na Gasana Regis bareze SONARWA mu Rukiko Rwisumbuye rwa Muhanga basaba indishyi zitandukanye zikomoka kuri iyo mpanuka.

Uru Rukiko rwaciye urubanza, maze rutegeka ko SONARWA yishyura indishyi zitandukanye zirimo iz'ibangamirabukungu zingana na 16.018.485Frw; iz'ibangamiramuco zingana na 1.620.000Frw ku babyeyi bombi; iz'ibangamiramuco zingana na 1.620.000Frw ku bavandimwe be; amafaranga yakoreshejwe kwa muganga no gushyingura 715.700; hamwe n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. SONARWA yajuririye mu Rukiko Rukuru, Urugereko rwa Nyanza, ivuga ko indishyi z'ibangamirabukungu zihabwa gusa uwari utunzwe na nyakwigendera kandi ugaragaza ko atari yishoboye ku buryo ubwo bufasha yari abukeneye, ivuga ko muri iyi dosiye atariko biri kuko nta bimenyetso bigaragaza ko nyakwigendera ari we wari utunze ababyeye be, bityo ko izo ndishyi zatanzwe mu buryo bunyuranyije n'amategeko; ivuga kandi ko Urukiko rwatanze amafaranga y'ibyakoreshejwe adateganyijwe n'Itegeko n'andi adafitiwe ibimenyetso. Abaregeye indishyi bisobanuye bavuga ko indishyi z'ibangamirabukungu zagombaga gutangwa kuko hari inyandiko yakorewe imbere ya Noteri igaragaza ko Ihirwe Remy Robert yari atunze ababyeyi be, ndetse ko amafaranga y'ibyakoreshejwe nayo bagombaga kuyagenerwa kuko ateganywa n'Itegeko. Urukiko Rukuru Urugereko rwa Nyanza rwaciye urubanza, maze rwemeza ko ubujurire bwatanzwe na SONARWA nta shingiro bufite, bityo ko imikirize y'urubanza rwaciye n'Urukiko Rwisumbuye rwa Muhanga ihindutse ku bijyanye n'indishyi zitanzwe mu bujurire, rutegeka SONARWA kwishyura abaregwa indishyi zose hamwe zingana na 450.000Frw yiyongera ku ndishyi zatanzwe ku rwego rwa mbere. SONARWA ntiyishimiye iyi mikirize y'urubanza, maze yandikira Perezida w'Urukiko rw'Ubujurire, isaba gusubirishamo ku mpamvu z'akarengane urubanza 00009/2022/HC/NYZ

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rwaciye n'Urukiko Rukuru Urugereko rwa Nyanza, ivuga ko nta kimenyetso gifatika kigaragaza ko nyakwigendera Ihirwe Remy Robert ariwe wari utunze ababyeyi be, kandi ko inyandiko yashingiweho hemezwa ko ariwe wari ubatunze, idakwiye guhabwa agaciro kuko icyo igaragaza ari uko Uwanyiribambe Laurance yamweguriye ubucuruzi bwe, ivuga ko icyo atari ikimenyetso cy'uko yari afite inshingano zo guha ababyeyi ibibatunga ngo kinagaragaze ingano y'ibyo yabahaga. SONARWA isoza ivuga ko abareze badakwiye kugenerwa indishyi z'ibangamirabukungu kuko Uwanyiribambe atabashije kugaragaza ko amafaranga yavaga mu bucuruzi bw'imbaho yeguriye Ihirwe Remy Robert ariyo yari atunze umuryango, bityo asaba ko izo ndishyi zategetswe zivaho ku babyeyi bombi ba nyakwigendera. Abaregwa biregura bavuga ko nta karengane kabaye mu rubanza rwaciye n'Urukiko Rukuru Urugereko rwa Nyanza, kuko rwashingiye ku nyandiko mpamo yakorewe imbere ya Noteri mbere y'urupfu rwa Ihirwe Remy Robert, aho umubyeyi we yamweguriye ubucuruzi bwe bw'imbaho, maze amusaba kumutunga hamwe n'umuryango kuko atari ashoboye gukora, ibyo byemezwa n'abayobozi b'Inzego z'Ibanze. Abaregwa bavuga kandi ko indishyi z'ibangamirabukungu zarabazwe hashingiwe ku musaruro w'umwaka ungana na 2.400.000Frw w'umumotari kuko ku manywa nyakwigendera yakoraga akazi k'ubucuruzi bw'imbaho, nijoro agakora ubumotari, kuko ubucuruzi bw'imbaho yari atarawumenya, yari atarigeraga akora declaration kuko ubwo bucuruzi bwari bucyanditse kuri nyina Uwanyiribambe Laurence. SONARWA ivuga ko itegeko rirebana no kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, rivuga ko amafaranga

agomba guhabwa abaregwa ari ayarakoreshejwe mbere y'urupfu, hakiyongeraho gusa ayo gutwara umurambo, nabwo abayasaba bakayahabwa ari uko bagaragaje ibimenyetso bihamye, bityo ikaba isaba gusubizwa amafaranga abaregwa bagenewe atateganyijwe n'itegeko. Abaregwa biregura bavuga kandi ko gukomeza gushorwa mu manza bituma bibuka akababaro bagize ko kubura umwana wabo, bityo ko basanga uru rubanza rushingiye kuri action téméraire et vexatoire. Incamake y'icyemezo: 1. Indishyi z'ibangamirabukungu zikomoka ku rupfu rwatewe n'impanuka yo mu muhanda zigenerwa gusa uwari usanzwe atunzwe n'uwapfuye kandi akabitangira ibimenyetso ko yari amutunze koko.

2. Umuntu urengeje imyaka y'ubukure ntiyavuga ko adashoboye kwitunga iyo atagaragaje impamvu idasanzwe, kandi akabitangira ibimenyetso bifatika nk'innyandiko zo kwa muganga zerekana niba afite ubumuga, uburwayi cyangwa ikindi kibazo kidasanzwe cyatuma atibeshaho. Ikirego gisabagisaba gusubirishamo ku mpamvu z'akarengane gifite ishingiro kuri bimwe.

Amategeko yashingiweho:

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Iteka rya Perezida N° 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 22; Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, ingingo ya 4. Imanza zifashishijwe: Urubanza RS/INJUST/RC 00018/2022/SC rwa Niyonzima Léonidas n'abandi na SANLAM AG Plc, rwaciwe n'Urukiko rw'Ikirenga; ku wa 27/01/2023; Urubanza RS/INJUST/RS 00021/2022/SC rwa Mukagatare Régine n'abandi na SANLAM AG, rwaciwe ku itariki ya 17/03/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 4/3/2021, imodoka Mitsubishi Fuso RAB 423E ifite ubwishingizi muri SONARWA, yakoze impanuka ihitana Ihirwe Remy Robert. Ababyeyi be Gasana Alexis na Uwanyiribambe Laurence, ndetse n'abavandimwe be Hirwa Alipe Fraterne, Uwihirwe Roger Christian na Gasana Regis baregeye indishyi zitandukanye zikomoka kuri iyo mpanuka mu Rukiko Rwisumbuye rwa Muhanga, ikirego cyabo cyandikwa kuri RC 00131/2021/TGI/MHG. [2] Ku wa 13/01/2022, urwo Rukiko rwaciye urubanza, rutegeka ko SONARWA yishyura:

- Indishyi z'ibangamirabukungu zingana na 16.018.485 Frw;
- Indishyi z'ibangamiramuco zingana na 1.620.000Frw ku babyeyi bombi;
- Indishyi z'ibangamiramuco zingana na 1.620.000Frw ku bavandimwe be;
- Amafaranga yakoreshejwe kwa muganga no gushyingura 715.700;
- Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka 620.000 Frw. [3] Urukiko rwasobanuye ko indishyi z'ibangamirabukungu zifite ishingiro kuko zishyigikiwe n'ibimenyetso birimo inyandiko nyakwigendera yasinyanye na nyina ivuga ko uyu amweguriye ubucuruzi bwe maze nawe agatunga umuryango hamwe n'icyemezo cy'inzego z'ibanze kibyemeza. Rwasobanuye ko ababuranyi bemeranywa ku ndishyi z'ibangamiramuco, naho amafaranga agomba gusubizwa ajyanye n'ibyakoreshejwe

rusobanura ko ayo rwatanze yubahirije ibiteganywa n'ingingo ya 21 y'Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rigena imyishyurire y'indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. [4] SONARWA yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, ivuga ko indishyi z'ibangamirabukungu zihabwa uwari utunzwe na nyakwigendera kandi ugaragaza ko atari yishoboye ku buryo ubwo bufasha yari abukeneye, nyamara ko muri iyi dosiye atariko biri, bityo ko zatanzwe mu buryo bunyuranyije n'amategeko; yanajurijwe kandi no kuba Urukiko rwaratanze amafaranga y'ibyakoreshejwe adateganyijwe n'Itegeko n'andi adafitiwe ibimenyetso, ubwo bujurire buhabwa RCA 00009/2022/HC/NYZ. [5] Kuri ubwo bujurire, abaregeye indishyi bisobanuye bavuga ko indishyi z'ibangamirabukungu zagombaga gutangwa kuko bagaragaje inyandiko yakorewe imbere ya

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Noteri igaragaza ko Ihirwe Remy Robert yari atunze ababyeyi be, ndetse ko amafaranga y'ibyakoreshejwe nayo bagombaga kuyagenerwa kuko ateganywa n'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. [6] Ku wa 31/01/2023, Urukiko Rukuru Urugereko rwa Nyanza rwaciye urubanza rwemeza ko ubujurire bwatanzwe na SONARWA nta shingiro bufite, ko imikirize y'urubanza RC 00131/2021/TGI/MHG rwaciye n'Urukiko Rwisumbuye rwa Muhanga ku wa 13/01/2022 ihindutse ku bijyanye n'indishyi zitanzwe mu bujurire, rutegeka SONARWA kwishyura abaregwa indishyi zose hamwe zingana na 450.000Frw yiyongera ku ndishyi zatanzwe ku rwego rwa mbere. [7] Urukiko rwasobanuye ko ingingo y'ubujurire ya SONARWA ku bijyanye n'indishyi z'ibangamirabukungu nta shingiro ifite kuko Uwanyiribambe Laurence yagaragaje inyandiko yakorewe imbere ya Noteri yemeza ko yeguriye ubucuruzi bwe bw'imbaho umwana we Ihirwe Remy Robert, nawe akazajya amuha ibimutunga. [8] Ku bijyanye n'amafaranga y'ibyakoreshejwe, rwavuze ko ayatanzwe ari mu biteganywa n'ingingo ya 21 y'Iteka rya Perezida ryavuzwe haruguru, kandi ko avugwa na SONARWA ko yatanzwe inshuro ebyiri ataribyo kuko bigaragara ko hari 118.000 Frw yatanzwe mu gukaraba, na 118.000 Frw yatanzwe mu gukura ikiriyo, kandi ko nta kigaragaza ko gukura ikiriyo byabereye rimwe no gukaraba, ndetse ko amafaranga y'ibyakoreshejwe yatangiwe ibimenyetso. [9] SONARWA ntiyishimiye iyi mikirize y'urubanza, ku wa 28/02/2023, yandikira Perezida w'Urukiko rw'Ubujurire, isaba gusubirishamo ku mpamvu z'akarengane urubanza RCA 00009/2022/HC/NYZ rwaciye n'Urukiko Rukuru Urugereko rwa Nyanza ku wa 31/01/2023. Perezida w'Urukiko rw'Ubujurire, amaze gusuzuma ubusabe bwayo yohereza raporo Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane. [10] Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma raporo yarukorewe, mu cyemezo cye N° 074/CJ/2024 cyo ku wa 23/05/2024, yemeje ko urubanza RCA 00009/2022/HC/NYZ rwaciye n'Urukiko Rukuru Urugereko rwa Nyanza ku wa 31/01/2023 rwongera kuburanishwa, ikirego cyandikwa kuri RS/INJUST/RC 00007/2024/SC. [11] Urubanza rwaburanishijwe mu ruhamwe ku wa 05/02/2025, SONARWA ihagarariwe na Me Muhisoni Stella Matutina, Gasana Alexis, Uwanyiribambe Laurence, Hirwa Alipe Fraterne, Uwihirwe Roger Christian na Gasana Regis bahagarariwe na Me Hategekimana Gratien,

hasuzumwa niba Uwanyiribambe Laurence, umubyeyi wa Nyakwigendera Ihirwe Remy Robert yagenerwa indishyi z'ibangamirabukungu, no kumenya niba mu mafaranga y'ibyakoreshejwe yagenewe abarega harimo adateganyijwe n'itegeko ndetse n'ibijyanye n'indishyi zasabwe mu rubanza. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba Uwanyiribambe Laurence, umubyeyi wa nyakwigendera Ihirwe Remy Robert yagenerwa indishyi z'ibangamirabukungu

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[12] Me Muhisoni Stella Matutina uhagarariye SONARWA avuga ko nta kimenyetso gifatika kigaragaza ko nyakwigendera Ihirwe Remy Robert ariwe wari utunze ababyeyi be, ko inyandiko yo ku wa 09/10/2020 yashingiweho hemezwa ko ariwe wari ubatunze, idakwiye guhabwa agaciro kuko icyo igaragaza ari uko Uwanyiribambe Laurance yeguriye umwana we Ihirwe Remy Robert ubucuruzi bwe, icyo akaba atari ikimenyetso cy'uko yari afite inshingano zo guha ababyeyi ibibatunga ngo kinagaragaze ingano y'ibyo yabahaga. [13] Asobanura ko iyo usesenguye iyo nyandiko, usanga Uwanyiribambe Laurance ariwe wari ufite ubushobozi kurusha umwana we Ihirwe Remy Robert kuko ariwe wamweguriye ubucuruzi bw'imbaho. Ko ibi bitafatwa nk'uburyo bwo gutunga umuryango ahubwo ko byari mu rwego rwo kumuha urwunguko rukomoka ku bucuruzi yamweguriye. Ko rero kuba iyi nyandiko ariyo ubuyobozi bw'Umudugudu wa Nyakariba bwashingiyeho ku wa 03/06/2021 bwemeza ko Ihirwe Remy Robert ariwe wari utunze Uwanyiribambe Laurence, ibi bigaragaza ko bwatanze amakuru butazi, bityo ko inyandiko bwatanze itashingirwaho nk'ikimenyetso. [14] Avuga kandi ko izo nyandiko zombi zimaze kuvugwa nta na hamwe zigaragaza ko Uwanyiribambe Laurance yari afite ikibazo kimubaza gukora, kuko akiri muto ndetse ari no mu myaka yo gukora kuko afite imyaka 54 nk'uko inyandiko z'irangamimerere zibigaragaza, kandi hakaba nta n'ikimenyetso yigeze atanga kigaragaza impamvu yari akeneye ubufasha. [15] Yongeraho ko bashingira ku ngingo ya 22 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga mu gika cyayo cya mbere (1)1, no ku rubanza RCAA 0049/14/CS rwaciwe ku wa 25/11/2016 haburana SORAS A.G. Ltd na Umuhiza Pacifique na bagenzi be, aho Urukiko rw'Ikirenga rwatanze umurongo, ko abafite uburenganzira ku ndishyi z'ibangamirabukungu ari abagaragaza ibimenyetso bifatika ko bari batunzwe na nyakwigendera. Asoza avuga ko badakwiye kugenerwa indishyi z'ibangamirabukungu kuko Uwanyiribambe atabashije kugaragaza ko amafaranga yavaga mu bucuruzi bw'imbaho yeguriye Ihirwe Remy Robert ariyo yari atunze umuryango, bityo indishyi z'ibangamirabukungu zategetswe zikavaho ku babyeyi bombi ba nyakwigendera, kuko nubwo havugwa Uwanyiribambe gusa ni uko ariwe wari watanze inyandiko ivugwa, aho yeguriye nyakwigendera ubucuruzi bw'imbaho, ariko ko na Gasana Alexis nawe yagenewe indishyi. [16] Me Hategekimana Gratien uhagarariye abaregwa avuga ko nta karengane kabaye mu rubanza rwaciwe n'Urukiko Rukuru Urugereko rwa Nyanza, ko rwashingiye ku nyandiko mpamo yakorewe imbere ya Noteri mbere y'urupfu rwa Ihirwe Remy Robert, aho umubyeyi we yamweguriye ubucuruzi bwe bw'imbaho, maze amusaba

kumutunga kuko atari ashoboye gukora, ibyo byanemejwe n'abayobozi b'Inzego z'Ibanze. Avuga ko atari uko nyakwigendera yari afite byinshi byo gutanga, ahubwo ko ari we wari ufite imbaraga zo gukora kugira ngo atunge umuryango. Asoza avuga ko SONARWA itabashije kugaragaza ibimenyetso bibivuguruza cyangwa ngo iregere inyandiko mpamo yakorewe kwa Noteri, bityo ko nta mategeko yigeze yirengagizwa.

1 Ingingo ya 22, igika cya mbere: “Abafite uburenganzira ku buryo bwumvikana ko bari batunzwe n'uwahohotewe nibo bonyine bashobora guhabwa indishyi”.

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[17] Ku bijyanye no kuba indishyi z'ibangamirabukungu zarabazwe hashingiwe ku musaruro w'umwaka ungana na 2.400.000Frw w'umumotari kandi hagaragajwe inyandiko yavuzwe yeguriraga nyakwigendera ubucucuruza bw'imbaho, Me Hategekimana Gratien uhagarariye abaregwa avuga ko ku manywa nyakwigendera yakoraga akazi k'ubucuruza bw'imbaho, nijoro agakora ubumotari, ko ariyo mpamvu indishyi zabazwe hashingiwe ku musaruro w'abamotari kuko umusaruro w'ubucuruza bw'imbaho yari atarawumenya cyane ko yari atarigera akora declaration kuko ubwo bucuruzi bwari bucyanditse kuri Uwanyiribambe Laurence. UKO URUKIKO RUBIBONA [18] Ingingo ya 22, igika cya mbere y'Iteka rya Perezida N° 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 « [...] Abafite uburenganzira ku buryo bwumvikana ko bari batunzwe n'uwahohotewe n'impanuka ari bo bonyine bashobora guhabwa indishyi ». Ingingo ya 4 y'Itegeko °N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, iteganya ko « (...) Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe (...) ». [19] Ingingo zimaze kuvugwa zumvikanisha ko usaba indishyi z'ibangamirabukungu zituruka ku rupfu rwatewe n'impanuka, azihabwa ari uko agaragaje ibimenyetso bifatika by'uko yari atunzwe na nyakwigendera koko. [20] Mu rubanza rwaciye n'uru Rukiko haburana Niyonzima Léonidas n'abandi na SANLAM AG Plc2, Urukiko rw'Ikirenga rwemeje ko indishyi z'ibangamirabukungu zikomoka ku rupfu rwatewe n'impanuka yo mu muhanda zigenerwa gusa uwari usanzwe atunzwe n'uwapfuye kandi akabitangira ibimenyetso ko yari amutunze koko. Rwanemeje ko umuntu urengeje imyaka y'ubukure atavuga ko adashoboye kwitunga atagaragaje impamvu idasanzwe, kandi akabitangira ibimenyetso bifatika nk'inyandiko zo kwa muganga zerekana niba afite ubumuga, uburwayi cyangwa ikindi kibazo kidasanzwe cyatuma atibeshaho. [21] Ibi ni nabyo byemejwe mu rubanza rwaburanwaga hagati ya Mukagatare Régine n'abandi na SANLAM AG Plc3, ko kugira ngo usaba indishyi z'ibangamirabukungu hashingiwe ku ngingo ya 22 y'Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru azihabwe, agomba kwerekana ko yari asanzwe atunzwe na nyakwigendera, mu gihe afite imyaka y'ubukure, akagomba kugaragaza impamvu idasanzwe yatumaga amwitaho, nk'inyandiko zo kwa muganga zerekana ko hari ubumuga afite, uburwayi cyangwa ikindi kibazo kidasanzwe cyatuma atibeshaho. [22] Ku birebana n'uru rubanza, Urukiko rusanga ikimenyetso abaregwa bagaragaje kuva urubanza rwatangira ari inyandiko yo ku wa 09/10/2020 aho Uwanyiribambe Laurence yeguriraga umwana we Ihirwe Remy Robert (ubwo yari akiriho)

ubucuruzi bw'imbaho hanyuma akajya amuha ibimutunga. Urukiko rurasanga iyi nyandiko ubwayo idahagije ngo hemezwe ko nyakwigendera yari atunze ababyeyi be koko, kuko yahitanywe n'impanuka aya masezerano amaze amezi atanu gusa, abaregwa bakaba batagaragaza umusaruro wavaga muri ubwo bucuruzi

2 Urubanza RS/INJUST/RC 00018/2022/SC rwaciwe ku itariki ya 27/01/2023, igika cya 21 na 22

3 Urubanza RS/INJUST/RS 00021/2022/SC rwaciwe ku itariki ya 17/03/2023, igika cya 32 na 33.

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bw'imbaho wakoreshwaga mu gutunga abo babyeyi. Ikindi kandi, urebye imyaka umubyeyi we Uwanyiribambe Laurence yari afite, biragaragara ko yari agishoboye kwikorera kuko yari afite imyaka 54, kandi bakaba batavuga ko hari uburwayi cyangwa ubumuga yari afite butuma atakibasha kwikorera. Ahubwo ubwo bucuruzi bwagombaga guhita bumugarukira bugakomeza kumutunga. [23] Iyo nyandiko kandi ntikwiye guhabwa agaciro kuko abaregwa ubwabo bagaragaje indi nyandiko iyivuguruza, yo igaragaza ko Ihirwe Remy Robert yari umumotari, ndetse akaba ari nayo Urukiko Rukuru rwashingiyeho rubara indishyi z'ibangamirabukungu zibariwe kuri 6000 Frw yemejwe ko ari yo umumotari yinjiza ku muni nk'uko byagaragajwe n'Ikigo cy'Igihugu cy'Imisoro n'Amahoro. [24] Urukiko rurasanga iyo ubwo bucuruzi buza kuba bwarinjizaga amafaranga ari bwo bari gutangira ibimenyetso akaba ari bwo buherwaho habarwa izo ndishyi, cyane cyane ko batashoboye gusobanura uko bahuza ubwo bucuruzi n'ubumotari mu kubara indishyi zisabwa, ahubwo bakavugaga ko nyakwigendera yakoraga ubumotari nijoro gusa kuko kumanywa yabaga ari mu bucuruzi bw'imbaho, ibyo bikagaragaza ko umumotari ukora nijoro gusa adashobora kugira umusaruro ungana n'uw'ukora amanywa n'ijoro. [25] Urukiko rusanga ku bw'izo mpamvu, n'inyandiko yo ku wa 03/06/2021 y'Umudugudu wa Nyakariba yemeza ko Ihirwe Remy Robert ariwe wari utunze umuryango we nayo itahabwa agaciro kuko yatanze hashingiwe ku nyandiko yo ku wa 09/10/2020 nayo itahawe agaciro nk'ikimenyetso nk'uko byasobanuwe haruguru. [26] Ibijyanye n'inyandiko yatanze n'inzego z'ibanze ivugwa mu gika kibanziriza iki, byasobanuwe n'Uru Rukiko mu rubanza rwa Radiant Insurance Company Ltd na Mukabera Francine n'abandi, rugaragaza ko iyo nyandiko ihabwa agaciro nk'ikimenyetso kigaraza ko nyakwigendera ariwe wari utunze usaba indishyi mu gihe yakozwe hashingiwe ku buhamya bwatangiwe mu nteko y'abaturage y'aho aba, kuko abaturanyi b'usaba indishyi baba bazi neza imibereho ye ya buri muni bakaba bashobora kwemeza niba ari nyakwigendera wari umutunze. [27] Hashingiwe ku ngingo z'amategako zimaze kuvugwa, ku mirongo yatanze n'Uru Rukiko ndetse no ku bisobanuro byatanze, Urukiko rusanga Uwanyiribambe Laurence atari akwiye kugenerwa indishyi z'ibangamirabukungu, bityo izatanze mu rubanza rwaciwe n'Urukiko Rwisumbuye rwa Muhanga zikaza kwemezwa n'Urukiko Rukuru Urugereko rwa Nyanza zingana na 16.018.485 Frw zikaba zigomba kuvanwaho.

2. Kumenya niba mu mafaranga y'ibyakoreshejwe yagenewe abaregeye indishyi harimo adateganyijwe n'Itegeko

4 Urubanza RS/INJUST/RC 00005/2023/SC, rwaciwe ku wa 12/07/2024, igika cya 20. 5 Iyo ngingo ivuga ko “amafaranga atangwa k’uwapfuye hamwe n’ayo gushyirwa mu bitaro yakoreshejwe mbere y’urupfu ndetse hamwe, igihe bibaye ngombwa, amafaranga yo gutwara umurambo, yose azishyurwa habanje kwerekanwa ibimenyetso bihamye, hakurikijwe uko biteye mu buryo bwumvikana. Ayo mafaranga azishyurwa abazaba bayatanze, mu rugero rutarenze inshuro cumi umushara muto ntarengwa wemewe n’amategeko”. Mu gifaransa yanditswe itya: « Les frais funéraires et d’hospitalisation exposés avant le décès, et s’il ya lieu, les frais de transport du corps seront remboursés sur production des pièces justificatives, dans la mesure de leur caractère raisonnable. (...) »

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[28] Me Muhisoni Stella Matutina uhagarariye SONARWA avuga ko ingingo ya 21 y’Iteka rya Perezida rigena uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga isobanura ko amafaranga agomba kuba yarakoreshejwe mbere y’urupfu hiyongeraho gusa amafaranga yo gutwara umurambo nabwo abayasaba bakayahabwa ari uko bagaragaje ibimenyetso bihamye5. [29] Asobanura ko hari ibyo Urukiko rwatanze bidateganywa n’itegeko, harimo nettoyage du costume = 5.000 Frw, drap funéraire = 12.000 Frw, parfum= 5.000 Frw, pink tissus= 12.000 Frw, bouquet de fleurs= 10.000Frw, intebe = 12.000 Frw, photos = 30.000 Frw, imikenyerero= 60.000Frw, intebe =30.000 Frw, kurangiza ikiriyo = 118.000 Frw, kurangiza ikiriyo =118.000 Frw, scan documents= 30.000 Frw na communication= 4.000Frw; yose hamwe ari 434.000 Frw. [30] Avuga kandi ko kuri ibi bivuzwe hagaragaramo indi nenge yo kuba Urukiko rwaratanze 118.000Frw yiswe ayo kurangiza ikiriyo inshuro ebyiri (2). Bityo ko Urukiko rw’Ikirenga rwabona izi nenge maze zigakosorwa rukemeza ko hagomba gusubizwa ibyo itegeko riteganywa kandi bifiye ibimenyetso bihamye. [31] Me Hategekimana Gratien uhagarariye abaregwa avuga ko nta karengane kagaragara mu rubanza rusubirishwamo, kuko kuvuga ko hari indishyi zabazwe kabiri babisobanuye ko zitandukanye, kuko harimo izakoreshejwe mu gukaraba n’izo gukura ikiriyo kandi ko izo ndishyi zose ziteganyijwe n’Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bwo ku mubiri. Ko abaregera indishyi basanga ari uburyo bwo gukomeza kubashora mu manza. UKO URUKIKO RUBIBONA [32] Ingingo ya 21 y’Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga, iteganywa ibi bikurikira: «Amafaranga atangwa ku wapfuye hamwe n’ayo gushyirwa mu bitaro yakoreshejwe mbere y’urupfu ndetse hamwe, igihe bibaye ngombwa, n’amafaranga yo gutwara umurambo yose azishyurwa habanje kwerekanwa ibimenyetso bihamye, hakurikijwe uko biteye mu buryo bwumvikana. Ayo mafaranga azishyurwa abazaba bayatanze mu rugero rutarenze inshuro icumi, umushahara muto ntarengwa wemewe n’amategeko ». [33] Mu rurimi rw’igifaransa yanditse itya : « Les frais funéraires et d’hospitalisation exposés avant le décès, et s’il ya lieu, les frais de transport du corps seront remboursés sur production des pièces justificatives, dans la mesure de leur caractère raisonnable (...) ». Naho mu rurimi rw’icyongereza yanditse mu buryo bukurikira « As long

as they are reasonable, funeral expenses and hospitalization fees presented before death, and if need, transport of the body expenses shall be reimbursed shall not exceed 10 times the guaranteed minimum wage". [34] Urukiko rusanga iyi ngingo yumvikana kurushaho harebwe uko yanditse mu rurimi rw'igifaransa n'icyongereza, by'umwihariko ahavugwa ko yishyurwa "hakurikijwe uko biteye mu buryo bwumvikana/as long as they are reasonable/dans la mesure de leur caractère raisonnable". icyumvikana muri iyi ngingo indimi zose zisomewe hamwe, ni uko amafaranga yishyurwa ari acishije mu gaciro kandi ya ngombwa, ibyo bikaba ari ibyasuzumwa mu bushishozi bw'Urukiko.

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- [35] Urukiko rurasanga mu mafaranga yakoreshejwe kwa muganga no gushyingura SONARWA yategetswe kwishyura n'inkiko zibanza, harimo atari aya ngombwa agizwe na nettoyage costume 5000 Frw, Parfum 5000 Frw, imikenyeri 60.000Frw, kurangiza ikiryo 118.000 Frw, yose hamwe akangana na 188.000Frw Frw. [36] Urukiko rusanga umwishingizi adakwiye kwishyura aya mafaranga, bityo akaba agomba kvanwa mu yo SONARWA yaciwe, bivuze ko andi yose yari yategetswe n'inkiko zibanza agumye. [37] Urukiko rushingiye ku ngingo zavuzwe haruguru no ku bisobanuro byatanze, rusanga ubusabe bwa SONARWA ku bijyanye n'amafaranga y'ibyakoreshejwe mu gushyingura bufite ishingiro kuri bimwe, bityo mu mafaranga yategetswe kwishyura y'ibyakoreshejwe hakaba hagomba kvanwamo 188.000 Frw.
3. Kumenya niba indishyi zasabwe muri uru rubanza zikwiriye gutangwa [38] Me Hategekimana Gratien uhagarariye abaregwa, avuga ko gukomeza gushorwa mu manza bituma abo ahagarariye bibuka akababaro bagize ko kubura umwana wabo, ko basanga uru rubanza rushingiye kuri action téméraire et vexatoire. Ko bashingiye ku ngingo ya 111 CPCCSA basaba Urukiko gutegeka SONARWA kubishyura 1.500.000Frw akubiyemo igihembo cya Avoka kingana na 1.000.000 Frw na 500.000 Frw y'ikurikiranarubanza. [39] Me Muhisoni Stella Matutina uhagarariye SONARWA, avuga ko indishyi abaregwa basaba SONARWA, Urukiko rudakwiye kuziha ishingiro kuko kuba yarasabye ko urubanza rusubirishwamo ku mpamvu z'akarengane byari uburenganzira bwayo, ariko ko Urukiko rubibonye ukundi rwazigena mu bushishozi bwari. Anasaba ko Urukiko rwategeka ko 450.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka yari yatanze n'Urukiko Rukuru, Urugereko rwa Nyanza, yakurwaho, rukanategeka abaregwa kwishyura SONARWA 40.000Frw y'igarama yari yatanze ijurira. UKO URUKIKO RUBIBONA [40] Urukiko rusanga amafaranga ababuranyi basaba badakwiye kuyahabwa, kuko hari ibyo buri ruhande rwatsindiye mu rubanza. III. ICYEMEZO CY'URUKIKO [41] Rwemeje ko ikirego cyatanze na SONARWA General Insurance Company Ltd gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA 00009/2022/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, kuwa 31/01/2023, gifite ishingiro kuri bimwe; [42] Rwemeje ko imikirize y'urubanza RCA 00009/2022/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, kuwa 31/01/2023 ihindutse kuri bimwe; [43] Rutegetse ko nta ndishyi z'ibangamirabukungu SONARWA General Insurance Company Ltd igomba kwishyura;

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[44] Rutegetse ko indishyi z'ibangamirabukungu zari zategetswe n'Urukiko Rwisumbuye rwa Muhanga zikagumishwaho n'Urukiko Rukuru Urugereko rwa Nyanza zivanyweho; [45] Rutegetse ko mu mafaranga y'ibyakoreshejwe yategetswe n'Urukiko Rwisumbuye rwa Muhanga akagumishwaho n'Urukiko Rukuru Urugereko rwa Nyanza, havanyweho angana na 188.000 Frw, SONARWA General Insurance Company Ltd ikaba itagomba kuyishyura.

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