

RWANDA / JUDGMENT

SONARWA GENERAL INSURANCE COMPANY Ltd v NDIZEYE

RS/INJUST/RC 00018/2024/SC

COURT

Supreme Court

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SONARWA GENERAL INSURANCE COMPANY Ltd v NDIZEYE

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Text

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SONARWA GENERAL INSURANCE COMPANY Ltd v NDIZEYE [Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00018/2024/SC (Cyanzayire, P.J., Mukamulisa, Kazungu, J.) 09 Mutarama 2026]

Amategeko agenga imanza z'imbonezamubano – Imanza z'akarengane – Ibirego bishya - Kuba urubanza rushobora gusubirishwamo ku mpamvu z'akarengane rukaburanishwa bundi bushya, ntabwo bivuga ko umuburanyi yakwitwaza iyo nzira kugira ngo abe yazana ibirego bishya kandi bitararegwe ntibinasuzumwe mu rubanza rusabirwa gusubirwamo, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba Urukiko gusuzuma. Incamake y'ikibazo: Ku wa 09/05/2011, habereye impanuka y'imodoka i Shinyanga muri Tanzaniya, imodoka yari ifite ubwishingizi bwa SONARWA bukorera no mu bihugu bya COMESA (Yellow Card). Iyo mpanuka yakomerekeyemo Ndizeye Marc, imusigira ubumuga buhoraho bwa 35%. Ndizeye yasabye SONARWA indishyi, ariko irabyanga imwohereza muri National Bureau of Tanzania, nayo iramuhakanira ivuga ko hakenewe icyemezo cy'urukiko kigaragaza uwateje impanuka. Ibi byatumye Ndizeye ajya kuregera mu Rukiko Rwisumbuye rwa Nyarugenge. Ku wa 26/05/2022,

urwo rukiko rwemeje ko SONARWA igomba kwishyura indishyi (rwayiburanishije idahari). SONARWA yajuririye mu Rukiko Rukuru, ivuga ko hakoreshwe itegeko ritari ryo kandi ko impanuka yabereye muri Tanzaniya, bityo amategeko ya COMESA ari yo yagombaga gukoreshwa ndetse ikirego kikaregerwa muri Tanzaniya. Urukiko Rukuru rwatesheje agaciro ubujurire, ruvuga ko Ndizeye yari afite uburenganzira bwo kuregera mu Rwanda hashingiwe ku ngingo ya 7 y'Itegeko-Teka N°32/75 ryo ku wa 07/08/1975 ryerekeye ubwishingizi bw'uburyozwe butegetswe ku binyabiziga bigenzwa na moteri Nyuma, SONARWA yasabye gusubirishamo urubanza ku mpamvu z'akarengane mu Rukiko rw'Ikirenga hasuzumwa niba ibyo isaba bifite ishingiro. Mu gusuzuma iki kibazo, Urukiko rwasanze kitarigeze kiregerwa mu Rukiko Rukuru bityo ko cyafatwa nk'ikirego gishya kije mu karengane ahubwo ko akwiye kugenerwa indishyi z'ikurikiranarubanza n'iz'igihembo cy'avoca. Incamake y'icyemezo: Kuba urubanza rushobora gusubirishwamo ku mpamvu z'akarengane rukaburanishwa bundi bushya, ntabwo bivuga ko umuburanyi yakwitwaza iyo nzira kugira ngo abe yazana ibirego bishya kandi bitararegwe ntibinasuzumwe mu rubanza rusabirwa gusubirwamo, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba Urukiko gusuzuma. Gusubirishamo urubanza ku mpamvu z'akarengane, nta shingiro bifite; Nta gihindutse ku mikirize y'urubanza No RCA 00247/2022/HC/KIG. Amategeko yashingiweho:

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Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe, ingingo ya 111. Imanza zifashishijwe: RS/INJUST/RC 00024/2018/CS, Ngizweninshuti Albert na Muhima Giovanni, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020; RS/INJUST/RC 00007/2018/SC, Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin, rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020; RS/ INJUST/RC 00004/2019/SC, Mukamana Mamique n'abandi na CANDALI Vèrene, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020; RS/INJUST/RC 00009/2022/SC, SANLAM AG Plc na Uwhanganye Jean, rwaciwe n'Urukiko rw'Ikirenga ku wa 18/05/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 09/05/2011, mu gihugu cya TANZANIYA, ahitwa SHINYANGA, habereye impanuka y'imodoka RAB 742 L ifite ubwishingizi bwemewe mu bihugu bigize Umuryango wa COMESA, nk'uko bigaragazwa na COMESA Yellow Card yatanze na SONARWA1, yakomerekeyemo Ndizeye Marc imusigira ubumuga buhoraho bungana na 35%.2 [2] Ndizeye Marc yasabye SONARWA indishyi zikomoka kuri iyi mpanuka, imubwira ko atariyo ikiye kuzishyura, imugira inama yo kugana urwego rubishinzwe muri Tanzaniya, National Bureau of Tanzania, narwo rumusubiza rumuhakanira3, rumusobanurira ko atazihabwa nta rubanza ruhari rugaragaza umushoferi wateje impanuka (uri mu ikosa), bituma yiyambaza Inkiko asaba kurenganurwa. [3] Ndizeye Marc yareze SONARWA mu Rukiko Rwisumbuye rwa Nyarugenge, ikirego cyandikwa kuri N° RC 00601/2020/TGI/NYGE, asaba indishyi zikurikira: a) Iz'ibangamirabukungu: $680.000 \times 12 \times 37 \times 35\% / (1 + 7\% \times 37) = 29.43 \text{ 5.097 Frw}$; b) Iz'akababaro: $3000 \times 30 \times 12 \times 40\% = 432.000 \text{ Frw}$; c) Iz'ibangamira ry'uburanga: $3000 \times 30 \times 12 \times 40\% = 432.000 \text{ Frw}$; d) Iz'ibangamira ry'uburamba mu kazi : $680.000 \times 6 = 4.080.000 \text{ Frw}$. [4] Muri urwo Rukiko, SONARWA ntiyireguye ku ndishyi yarezwe kandi ntiyitabye ku munsu w'iburanisha, urubanza ruburanishwa

idahari, rucibwa ku wa 26/05/2022, Urukiko rwemeza ko

1 Avenant de modification du contrat n° 0278940, extension territoriale court terme N°0278940/AXTC/002, durée 8 jours débutant le 05/05/2011 et se terminant le 12/05/2011. Tanzaniya n'u Rwanda biri muri uyu Muryango. 2 Certificat médicale de consolidation yo ku wa 05/04/2014, yatanzwe na Dr Mukimbiri Edmond. 3 Ibaruwa yo ku wa 27/06/20216.

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ikirego cya Ndizeye Marc gifite ishingiro, rutegeka SONARWA kumwishyura indishyi zingana na 32.992.412 Frw. [5] Mu gufata icyo cyemezo, Urukiko Rwisumbuye rwa Nyarugenge rwashingiye ku bimenyetso birimo amasezerano y'ubwishingizi, ubusabe bw'indishyi bwa Ndizeye Marc n'ibisubizo yahawe na SONARWA, inyandiko y'impanuka yakozwe na Polisi ya Tanzaniya yamenyeshejwe CID yo mu Rwanda, certificat médical de consolidation n'icyemezo cy'umushahara (attestation de salaire) cyatanzwe na Minisiteri y'Ubuzima (MINISANTE) ku wa 23/4/2014 no ku 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 (muri uru rubanza Iteka rya Perezida). [6] SONARWA yajuririye mu Rukiko Rukuru, ikirego cyandikwa kuri N° RCA 00247/2022/HC/KIG, ivuga ko :

Urukiko Rwisumbuye rwa Nyarugenge rwakoresheje itegeko ritari rikwiye, ko hari gukoreshwa amasezerano ya COMESA igice cyayo cyerekeye ubwishingizi bw'uburyozwe bw'imodoka aho gushingira ku ngingo ya 7 y' Itegeko-Teka N°32/75 ryo ku wa 07/08/1975 ryerekeye ubwishingizi bw'uburyozwe butegatswe ku binyabiziga bigenzwa na moteri.

Itegeko -Teka rivuzwe rikoresheya gusa ku mpanuka zabereye mu Rwanda, kandi nyamara impanuka ikomokaho uru rubanza yarabereye muri Tanzaniya.

Urukiko Rwisumbuye rwirengagije ihame ry'ubusumbane bw'amategeko buteganywa n'ingingo ya 95 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

Ndizeye Marc yagombaga kurega ibiro bihagarariye COMESA muri Tanzaniya kuko ariyo igomba gukurikirana no kwishyura impanuka yakomerekeyemo, hashingiwe ku mategeko ya COMESA. [7] Urubanza rwaciwe ku wa 29/06/2023, Urukiko Rukuru rwemeza ko ubujurire bwa SONARWA nta shingiro bufite, rutegeka ko imikirize y'urubanza rwa mbere idahindutse, ko kandi SONARWA igomba kwishyura Ndizeye Marc igihembo cya Avoka kingana na 250.000 Frw yo ku rwego rw'ubujurire. [8] Mu gufata icyo cyemezo, Urukiko Rukuru rwasanze impamvu SONARWA yatanze ivuga ko indishyi zigomba gusabirwa muri Tanzaniya hashingiwe ku masezerano ya COMESA Yellow Card nta shingiro bifite, kuko uwahohotewe yahisemo kuregera Inkiko zo mu Rwanda, kandi ingingo ya 7 y'Itegeko-Teka N°32/754 ibimwemerera. Rwasobanuye ko ayo masezerano ya COMESA yari gukoreshwa gusa iyo ikirego gitangwa mu gihugu cyabereyemo impanuka, muri uru rubanza akaba atari ko byagenze. Rusanga Urukiko Rwisumbuye rutarakoze ikosa ubwo rwashingiraga ku Itegeko-Teka ryavuzwe haruguru, kandi ko rutirengagije ihame ry'ubusumbane bw'amategeko. [9] Ku wa 03/08/2023, SONARWA yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza No RCA 00247/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa

29/06/2023,

4 Ivuga ko uwahohotewe ashobora gusaba indishyi mu Rukiko rw'aho impanuka yabereye, aho atuye, cyangwa aho umwishingizi afite icyicaro amategeko.

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rusubirwamo ku mpamvu z'akarengane. Amaze gusuzuma ubwo busabe, yakoreye raporo Perezida w'Urukiko rw'Ikirenga avuga ko asanga urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Amaze gusuzuma raporo yarukorewe, yemeje ko rwongera kuburanishwa, rwandikwa kuri N°RS/INJUST/RC00018/2024/SC. [10] Ku wa 16/07/2025, urubanza rwakorewe inama ntegururubanza, ababuranyi bemeranya ko SONARWA ariyo igomba kwishyura Ndizeye Marc indishyi asaba, hasigara ikibazo cyo kumenya uburyo zabarwa n'itegeko rigomba gushingirwaho, n'icyo kumenya ishingiro ry'igihembo cya Avoka n'amafaranga y'ikurikiranarubanza bisabwa (nabyo) muri uru rubanza. Iburanisha ry'urubanza ryashyizwe ku wa 11/11/2025, saa tatu (9H00'). [11] Uwo munsu urubanza rwaburanishijwe mu ruhame, ababuranyi bose bitabye, SONARWA ihagarariwe na Me Bimenyimana Eric naho Ndizeye Marc ahagarariwe na Me Yankuriye Dative. [12] Urukiko rwabanje gusuzuma ikibazo kijyanye no kumenya uburyo indishyi zisabwa na Ndizeye Marc zabarwa n'ingano yazo kubera ko kitaregewe ntikinasuzumwe mu rubanza N° RCA 00247/2022/HC/KIG rusabirwa gusubirwamo ku mpamvu z'akarengane. Nyuma yo kumva ibisobanuro byatanze n'ababuranyi, rushingiye ku murongo rwatanze mu manza zitandukanye ko kuba urubanza rushobora gusubirishwamo ku mpamvu z'akarengane rukaburanishwa bundi bushya, bitavuga ko umuburanyi yakwitwaza iyo nzira kugira ngo abe yazana ibirego bishya kandi bitaregewe ntibinasuzumwe mu rubanza rusabirwa gusubirwamo, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba Urukiko gusuzuma5, rwemeje ko icyo kibazo kitagomba gusuzumwa mu rwego rw'akarengane muri uru rubanza. [13] Ababuranyi bagiye impaka ku birebana n'ishingiro ry'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka bisabwa na Ndizeye Marc. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

- 1) Kumenya ishingiro ry'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka bisabwa na Ndizeye Marc [14] Me Yankuriye Dative uhagarariye Ndizeye Marc avuga ko SONARWA yatanze iki kirego bitari ngombwa kuko yemera ko ari yo ikwiye guha Ndizeye Marc indishyi, ko kubera ko yamushoye mu rubanza, asaba ko Ndizeye Marc ahabwa 1.000.000 Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cya Avoka. [15] Me Bimenyimana Eric uhagarariye SONARWA avuga ko indishyi zisabwa zitahabwa ishingiro kubera ko Urukiko Rukuru rwafashe icyemezo rushingiye ku ngingo inyuranyije n'amategeko, bikemezwa ko urubanza rwabayemo akarengane.

5 Reba urubanza N° RS/INJUST/RC 00024/2018/CS rwaciwe ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni, igika cya 19 - 22 ; Urubanza N° RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin, igika cya 64 - 67 ; Urubanza N° RS/ INJUST/RC 00004/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020 haburana Mukamana Mamique n'abandi na CANDALI

Vèreène, igika cya 23; Urubanza N° RS/INJUST/RC 00009/2022/SC rwaciwe ku wa 18/05/2023 haburana SANLAM AG Plc na Uwihanganye Jean, igika cya 35-37.

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UKO URUKIKO RUBIBONA [16] Impaka ziri muri iyi ngingo zerekeranye no kumenya niba Ndizeye Marc yahabwa amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka. [17] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. [18] Hashingiwe kuri iyi ngingo, Urukiko rurasanga Ndizeye Marc akwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kubera ko ari we watsinze, kandi bikaba bigaragara ko yiyambaje Avoka wo kumuburanira urubanza no gukurikirana ibyarwo. icyakora nta kigaragaza ko amafaranga asaba ari yo yatanze kuri uru rubanza, bityo mu bushishozi bw'Urukiko akaba agenewe 500.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego. III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ikirego cyatanzwe na SONARWA GENERAL INSURANCE COMPANY Ltd cyo gusubirishamo ku mpamvu z'akarengane urubanza No RCA 00247/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/06/2023, nta shingiro gifite; [20] Rwemeje ko nta gihindutse ku mikirize y'urubanza No RCA 00247/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 29/06/2023; [21] Rutegetse SONARWA GENERAL INSURANCE COMPANY Ltd kwishyura Ndizeye Marc 27.165.038 Frw y'indishyi z'ibangamirabukungu, 432.000 Frw y'indishyi z'akababaro, 432.000 Frw z'indishyi z'ibangamira ry'uburanga, 4.080.000 Frw y'indishyi z'ibangamira ry'uburambe mu kazi, 383.354 Frw y'ibyakoreshejwe, 500.000 Frw y'igihembo cya Avoka na 20.000 Frw y'ingwate y'amagarama yategetswe n'Urukiko Rwisumbuye rwa Nyarugenge hamwe na 250.000 Frw yategetswe n'Urukiko Rukuru; [22] Rutegetse SONARWA GENERAL INSURANCE COMPANY Ltd guha Ndizeye Marc 500.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego.

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