

RWANDA / JUDGMENT

SONARWA GENERAL INSURANCE COMPANY LTD v. NKUBITO

RCAA 0053/12/CS

COURT

Supreme Court

DECIDED

22 April 2016

CASE / FILE NUMBER

RCAA 0053/12/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

SONARWA GENERAL INSURANCE COMPANY LTD v. NKUBITO

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-04-22
- Case/document no.: RCAA 0053/12/CS
- Collection: Supreme Court

Text

Page 1

SONARWA GENERAL INSURANCE COMPANY LTD v. NKUBITO [Rwanda URUKIKO RW'IKIRENGA – N° RCAA 0053/12/CS (Nyirinkwaya, P.J., Nyirandabaruta na Mukandamage, J.) 22 mata 2016]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Kureka ikirego – Indishyi – amerekezo y'uwaretse ikirego – Kureka ikirego ni uburenganzira bw'umuburanyi – Ureste ikirego cyangwa urubanza ashobora gucibwa amafaranga yose yatanzwe n'uwo yari yareze mu gukurikirana urubanza – Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ukugikora kuriha ibyangiritse – Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo 26(1) – Amabwiriza N°002/2015 yo ku wa 18/05/2015 ya Perezida w'Urukiko rw'Ikirenga agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 29 – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo 258 Incamake y'ikibazo: Nkubito yareze STIR en liquidation na Sonarwa mu Rukiko Rwisumbuye asaba indishyi zingana na 48.900.000Frw kubera impanuka yabaye tariki ya 13/04/1992 ubwo

ikamyo ya STIR yagongaga imodoka ye; urwo Rukiko rwemeje ko Sonarwa ihagarariye STIR igomba kwishyura Nkubito amafaranga ahwanye n'agaciro k'ibyangiritse ku imodoka ye, ay'ingendo na y'inyandiko mvugo y'impanuka yakozwe na Polisi, ariko ko itagomba kumuha indishyi z'uko imodoka yamaze igihe ihagaze kuko nta kimenyetso yayatangiyeye. Sonarwa yajuririye icyo cyemezo mu Rukiko Rukuru mazena Nkubito atanga ubujurire bwuririye ku bundi hanyuma Urukiko rwemeza ko ko ikirego cya Sonarwa nta shingiro gifite, naho icya Nkubito Joseph ko kitakiriwe. Sonarwa yarangeye atanga ubujurire mu Rukiko rw'Ikirenga, maze mu ibanzirizasuzuma ry'ubwo bujurire umucamanza wari urishinzwe yemeza ko ubujurire butari mu bubasha bw'Urukiko rw'Ikirenga kubera ko nta mpamvu uwajuriye agaragaza mu ziteganywa n'itegeko. Sonarwa yajuririye icyo cyemezo hasuzumwa ubusabe bwatanzwe na Sonarwa bwo kureka ikirego. Incamake y'icyemezo: 1. kureka ikirego ni ukwiyambura ububasha bwo kuburana. Bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemera k'undi muburanyi si ngombwa bityo rero kureka ikirego ni uburenganzira bw'umuburanyi, ubusabe bwa Sonarwa bwo kureka ubujurire bwayo bukaba bugomba kwemerwa.

2. Ureste ikirego cyangwa urubanza ashobora gucibwa amafaranga yose yatanzwe n'uwo yari yareze mu gukurikirana urubanza ndetse kandi igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ukugikora kuriha ibyangiritse, kuko igikorwa cya Sonarwa cyo kujurira urubanza rwaciye n'Urukiko Rukuru no kujuririra icyemezo cy'ibanzirizasuzuma cyatumye ashiraho umuburanira ahemba.

Page 2

Ikirego cyo kureka ubujurire kiremewe; Amagarama y'urubanza aherereye kuri Sonarwa. Amategeko yashingiweho: Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo 26(1) Amabwiriza n°002/2015 yo ku wa 18/05/2015 ya Perezida w'Urukiko rw'Ikirenga agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 29. Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo 258. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Nkubito arega STIR en liquidation na Sonarwa, asaba indishyi zingana na 48.900.000 Frw kubera impanuka yabaye tariki ya 13/04/1992 ubwo ikamyo ya STIR yagongaga imodoka ye. [2] Urukiko rwaciye urubanza n° RC 0067/06/TGI/NYGE ku wa 23/11/2007, rwemeza ko Sonarwa ihagarariye Trident Insurance Company Ltd yari yarishingiye imodoka ya STIR igomba guha Nkubito amafaranga 796.058 ahwanye n'agaciro k'ibyangiritse ku modoka ye, 100.000 Frw y'ingendo na 1200 Frw y'inyandiko mvugo y'impanuka yakozwe na Polisi, ariko ko itagomba kumuha indishyi z'uko imodoka yamaze igihe ihagaze (indemnités de chômage) kuko nta kimenyetso yayatangiyeye. [3] Sonarwa yajuririye icyo cyemezo mu Rukiko Rukuru, Nkubito nawe atanga ubujurire bwuririye ku bundi, Urukiko ruca urubanza n°RCA 0248/07/HC/KIG ku wa 12/08/2011, rwemeza ko ikirego cya Sonarwa nta shingiro gifite, naho icya Nkubito Joseph ko kitakiriwe. [4] Sonarwa yajuririye Urukiko rw'Ikirenga ku wa 09/09/2011, ikirego cyandikwa kuri n° RCAA 0104/11/CS, ubujurire bwayo bukorerwa ibanzirizasuzuma kuri n° RCIV 0012/PRE-

EX /12/CS ku wa 20/10/2011, umucamanza wayikoze yemeza ko butari mu bubasha bw'Urukiko rw'Ikirenga kubera ko nta mpamvu uwajuriye agaragaza mu ziteganywa n'ingingo ya 43 y'Itegeko Ngenga n° 01/2004 ryo ku wa 29/01/2004 rigena imikorere y'Urukiko rw'Ikirenga [5] icyemezo cy'ibanzirizasuzuma cyamenyeshejwe Sonarwa ku wa 16/05/2012, ikijuririra ku wa 25/05/2012, ikirego gihabwa n° RCAA 0053/12/CS, urubanza ruburanisha mu ruhame ku wa 05/04/2016, Sonarwa General Insurance Company Ltd iburanirwa na Me Rutagengwa Jean Damascène, Nkubito Joseph ahagarariwe na Me Mbera Ferdinand, hasuzumwa ubusabe bwatanzwe na Sonarwa bwo kureka ikirego.

Page 3

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

- a) Kumenya niba Sonarwa yakwemererwa kureka ubujurire bwayo [6] Me Rutagengwa avuga ko Sonarwa iretse ubujurire bwayo hashingiwe ku ngingo ya 26 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [7] Me Mbera uburanira Nkubito Joseph avuga ko kureka ikirego ari uburenganzira bw'umuburanyi wajuriye. UKO URUKIKO RUBIBONA [8] Ku bijyanye no kureka ikirego, ingingo ya 26,1° y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iragira iti: "kureka ikirego ni ukwiyambura ububasha bwo kuburana. Bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemera k'undi muburanyi si ngombwa." [9] Hashingiwe kuri iyo ngingo, Urukiko rurasanga kureka ikirego ari uburenganzira bw'umuburanyi, bityo ubusabe bwa Sonarwa bwo kureka ubujurire bwayo bukaba bugomba kwemerwa.
- b) Kumenya niba Nkubito yagenerwa indishyi asaba [10] Me Mbera avuga ko Sonarwa yakuruye Nkubito mu rubanza, akaba asaba ko yakwishyurwa 2.000.000 frw y'igihembo cy' Avoka. [11] Avuga kandi ko kubera igihe gishyize urubanza ruciwe mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko amafaranga Nkubito Joseph yagenewe yakubwa nibura kabiri kugirango ahuzwe n'agaciro ifaranga rifite ubu. [12] Me Rutagengwa uburanira Sonarwa avuga ko iyo urubanza rutaburanishijwe mu mizi nta kindi umuburanyi yasaba. UKO URUKIKO RUBIBONA [13] Ku birebana no kuba amafaranga Nkubito yagenewe mu Rukiko Rwisumbuye rwa Nyarugenge yakubwa nibura kabiri kugirango ahuzwe n'agaciro ifaranga rifite ubu, Urukiko rusanga icyo kibazo kirebana n'imizi y'urubanza, kikaba rero kitasuzumwa mu gihe urubanza rutaburanishijwe mu mizi. [14] Ku birebana n'amafaranga y'igihembo cy'Avoka, Urukiko rusanga Nkubito akwiye kuyagenerwa hashingiwe ku ngingo ya 29 y'Amabwiriza n°002/2015 yo ku wa 18/05/2015 ya Perezida w'Urukiko rw'Ikirenga agenga imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko ureste ikirego cyangwa urubanza ashobora gucibwa amafaranga yose yatanzwe n'uwo yari yareze mu gukurikirana urubanza, ndetse no ku

Page 4

ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano ivuga ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ukugikora kuriha ibyangiritse, kuko igikorwa cya Sonarwa cyo kujurira urubanza rwaciwe n'Urukiko Rukuru no kujuririra icyemezo cy'ibanzirizasuzuma cyatumye ashyiraho umuburanira ahemba. [15] Urukiko rusanga ariko amafaranga asaba ari ikirenga, ahubwo mu bwitonzi bwarwo yagenerwa 800.000 Frw hakurikijwe imiterere y'urubanza. III. ICYEMEZO CY'URUKIKO [16] Rwemeje ko Sonarwa General Insurance Company Ltd yemerewe kureka ubujurire bwayo ku cyemezo cy'ibanzirizasuzuma; [17] Rwemeje ko nta gihindutse ku cyemezo cy'ibanzirizasuzuma N° RCIV 0012/PRE-EX /12/CS cyo ku wa 20/10/2011cyemeje ko ubujurire bwa Sonarwa butari mu bubasha bw'Urukiko rw'Ikirenga [18] Rutegetse Sonarwa General Insurance Company Ltd guha Nkubito Joseph 800.000 Frw y'igihembo cy'Avoka kuri uru rwego; [19] Ruyitegetse no kwishyura amagarama y'urubanza ahwanye na 100.000 Frw.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7022/7302>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/sonarwa-general-insurance-company-ltd-v-nkubito-joseph-withdrawalofappeal-supreme-court-2016--6a3ea5223b1caa91298182e8>

Prepared on 14 October 2026 · Esheria