

RWANDA / JUDGMENT

SORAS AG Ltd v. MTS Ltd

RLR V.2 - 2015

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SORAS AG Ltd v. MTS Ltd

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Text

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SORAS AG Ltd v. MTS Ltd [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0044/13/CS (Mutashya, P.J., Nyirinkwaya na Gakwaya, J.) 21 Ugushyingo 2014] Amategeko agenga ubwishingizi – Gutwika icyishingiwe bikozwe n'umukozi – Uburyozwe bw'umukoresha ku byangijwe n'umukozi we – Aho buhera n'aho bugarukira – Umukoresha ntaryozwa ibikorwa by'umukozi we mu gihe yateshutse ku nshingano ze asanganywe mu kazi ashinzwe – Uwishingiye ntiyahunga inshingano zo kubahiriza amasezerano y'ubwishingire yagiranye n'uw'uwishingiwe ashingira ko inkongi yabaye yakozwe n'umukozi w'uwishingiwe kandi nta byari biteganyijwemo – Amabwiriza rusange yerekranye n'ubwishingizi bwihariye bw'inkongi, ingigo ya 46 – Itegeko-Teka no 20/75 ryo kuwa 20/06/1975 ryerekeye ubwishingizi, ingingo ya 12. Amategeko agenga ubwishingizi – Gusimbura uwishingiwe mu burenganzira bwo gukurikirana uwatumye umwishingizi yishyura – Uwishingiye wishyuye indishyi z'ubwishingire asimburu uwo yishingiye mu rugero rw'indishyi yatanze mu byerekeye uburenganzira no gukurikirana abandi bantu batumye yishyura kubera ibikorwa byabo – Itegeko-teka no 20/75 ryo kuwa 20/06/1975 ryerekeye ubwishingire, ingingo ya 32. Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Ubufatanye mu nshingano – Ubufatanye mu nshingano hagati y'umwishingizi n'uwagize uruhare mu kwangiza ibintu

by'uwishingiwe ntibushoboka mu gihe uwishingiwe ibyo aba asaba umwishingizi we biba bikomoka ku masezerano bagiranye ku giti cyabo – Ubufatanye mu nshingano ntibukekwa, bugomba guteganya ku buryo bweruye keretse mu gihe ubwo bufatanye bushingiye ku mategeko – Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano n'imirimo nshinganwa, ingingo ya 63 n'ya 100. Amategeko mboneza mubano cyangwa imirimo nshinganwa – Indishyi zituruka ku kutubahiriza cyangwa gutinda kubahiriza inshingano – Igihe cyose ugomba inshingano atagaragaza ko kutayubahiriza byatewe n'impamvu itamurutseho ategukwa kuzubahiriza bipfa gusa kutabamo uburyarya – Izo ndishyi ziba zigizwe muri rusange n'igihombo byateye ugombwa inshingano hamwe n'inyungu byamuvukije – Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano n'imirimo nshinganwa, ingingo ya 45 n'ya 47. Amategeko agenga ubwishingizi – Igena ry'indishyi mu gihe nta muburanyi ugaragaza agaciro k'icyishingiwe ku muni icyago kibereyeho – Iyo nta muburanyi ugaragaza agaciro k'icyishingiwe ku muni w'icyago kibereho, indishyi zigenwa hashingiwe ku mafaranga y'agaciro kishingiwe – Umubare w'indishyi ntushobora na rimwe gusumba agaciro k'icyintu cyishingiwe ku muni icyago kibereyeho – Itegeko-Teka no20/75 ryo kuwa 20/06/1975 ryerekeye ubwishingizi ,ingingo ya 27. Amategeko agenga imanza z'ubucuruzi – Igihano gihatira kwishyura – Mu manza z'ubwishingizi, Urukiko rushobora kugena igihano gihatira kwishyura uwishingiye mu gihe uwishingiwe yamaze igihe kire kire asaba kwishyurwa ariko ntibikorwe – Itegeko no 21/2012 ryo kuwa 14/06/2011 ryerekeye imiburanishirize y'imanza z'imbonezamubano,izubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 216.

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Incamake y'ikibazo: Kuwa 30/10/2011, Nzayirata Donat, wari umukozi wo mu rugo rwa Kayibanda Joseph, yatwitse imodoka 2 za Modern Technology Services (M.T.S) iharariwe na Kayibanda Joseph. Nyuma y'iyi mpanuka, M.T.S yandikiye SORAS AG Ltd iyisaba ko zakorwa cyangwa ikishyurwa agaciro zari zifite mbere y'uko impanuka iba. Kuwa 26/01/2012 SORAS AG LTD yasubije M.T.S ko idashobora kwishyura kuko inkongi yatewe n'umuntu uwishingiwe yaryozwa ibyangijwe nawe bitewe n'uko Nzayirata Donat watwitse imodoka ari umukozi wa Kayibanda Joseph. M.T.S yareze SORAS AG LTD mu Rukiko Rukuru rw'Ubucuruzi ivuga ko imodoka zatwitswe ari izayo atari iza Kayibanda, kandi ko bombi ari bantu babiri batandukanye. Urukiko Rukuru rw'Ubucuruzi rwategetse SORAS AG LTD na Nzayirata Donat gufatanya kwishyura agaciro k'imodoka, rutegeka kandi SORAS AG LTD kwishyura M.T.S na Kayibanda Joseph indishyi. SORAS AG LTD yajuririye mu Rukiko Rukuru rw'ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwakoresheje nabi ingingo ya 260 y'itegeko cya gatatu cy'urwunge rw'amategeko mbonezamubano bituma urubanza rucibwa nabi ko Urukiko rutasobanuye itegeko ryakurijwe n'ingingo zishingiye ku byabaye mu rubanza, bituma Urukiko rutegeka ubufatanye bwo kwishyura hagati ya SORAS AG Ltd na Nzayirata Donat kandi ntaho bahuriye ndetse ntirutange impamvu z'ubwo bufatanye. M.T.S na Kayibanda Joseph wagobokeshejwe mu rubanza bavuga ko ingingo ya 260 y'igitabo cya gatatu cy'amategeko mbonezamubano yakoreshejwe neza kubera ko Kayibanda Joseph ntiyari kwishingira ibikorwa byakozwe Nzayirata Donat kuko mu mirimo yari ashinzwe, iyo gutwika imodoka za M.T.S itarimo. Bavuze kandi ko bitewe n'uko SORAS AG Ltd ariyo yahamagaje Nzayirata Donat n'ubwo atitabye yifuzaga ko bafatanye, ko mu gihe yumva atari

ngombwa, yarangiza inshingano zayo zo kwishyura M.T.S ltd ibyononekaye byose yishingiye. M.T.S ltd na Kayibanda Joseph batanze ubujurire bwuririye ku bundi, M.T.S ltd isaba SORAS AG ltd amafaranga y'ikurikirana rubanza n'igihembo cya avoka angana na 10% y'amafaranga izagererwa n'Urukiko no kuyitegeka gutanga 1.000.000 frs buri kwezi y'igihano gihatira kwishyura. Naho Kayibanda Joseph we yasabye amafaranga y'ikurikirana rubanza n'igihembo cya avoka bingana na 800.000 frs. SORAS AG ltd yo yavuze ko nta ndishyi, nta n'amafaranga igomba M.T.S ltd na Kayibanda Joseph . Incamake y'icyemezo : 1. Bashebuja n'abakoreshwa baryozwa ibyangijwe n'abakozi babo mu gihe bakora imirimo babashinze. Ibi ntibyakurikizwa mu gihe uburyozwe bw'uwishyirye buba bukomoka ku masezerano yagiranye n'uwishyirye kandi ntaho umwishingizi yashingira ahunga cg yivanaho inshingano ziteganijwe mu masezerano. Ikindi ni uko kuva umwishingizi aba adafatwa nk'uwakorewe ikosa(victim) nta bubasha aba afite bwo gusaba ko ibivugwa hejuru byakurikizwa. Byongeye kandi ingingo ya 260 y'igitabo cya gatatu cy'amategako mbonezamubano ntiyakurikizwa mu gihe ibikorwa byakozwe n'umukozi ntaho bihuriye n'imirimo yari ashinzwe kandi akabikora abishaka ku mpamvu ze bwite.

2. Ubufatanye ntibukekwa, bugomba guteganywa kuburyo bweruye keretse mu gihe ubufatanye buriho nta shiti bishingiye ku mategeko. Umwishingizi ntategakwa gufatanya n'uwakoze amakosa ku bushake bwe mu gihe ibyo umwishingizi asabwa n'uwishyirye bikubiye mu masezerano bagiranye. Gusa ahubwo umwishingizi nyuma yo kwishyura indishyi asabwa, aba

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afite ububasha n'inyungu zo gusaba ko uwakoze amakosa yishyura ibyangiritse, akabikora atanze ikindi kirego.

3. Mu gihe ababuranyi batagaragaza agaciro k'icyishingiye ku muni icyago kibereyeho , hishyurwa amafaranga y'agaciro kishingiye. Iyo indishyi kandi zasabwe n'uwishyirye, umwishingizi ategakwa kwishyura indishyi zitewe no kutubahiriza inshingano cyangwa gutinda kuzubahiriza, igihe cyose atagaragaza ko kutayubahiriza byatewe n'impamvu itamuturutseho, bipfa gusa kutabamo uburiganya. Izo ndishyi kandi ziba zigizwe n'igihombo byateye uwishyirye hamwe n'inyungu byamuvukije.
4. Igihano gihatira kwishyura kiba gikwiye gucibwa umwishingizi mu gihe uwishyirye yamusabye kumwishyura akamara igihe kire kire atabikora. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro. Amagarama aherereye ku uwajuriye. Amategako yashingiweho: Itegeko – Teka no 20/75 ryo kuwa 20/06/1975 ryerekeye ubwishingizi, ingingo ya 12, 27 na 32. Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano n'imirimo nshimanganwa, ingingo ya 45, 47, 63 n'ya 100. Nta manza zifashishijwe: Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 30/10/2011, Nzayirata Donat yatwitse imodoka ebyiri (2) za Modern Technology Services Ltd (en sigle M.T.S. Ltd) zari muri parking y'inzu ya Kayibanda Joseph wari umuyobozi wayo. Kubera ko izo modoka zari zarafatiwe ubwishingizi muri SORAS AG Ltd, M.T.S. Ltd yayimenyesheje iby'iyi mpanuka inayohereza devis de réparation y'izo modoka zombi Toyota Hilux RAB 417P na Nissan Infiniti RAB 115U ndetse

n'agaciro zari zifite mbere y'impanuka, iyisaba ko zakorwa cyangwa akishyurwa agaciro zari zifite mbere y'uko impanuka iba. [2] Kuwa 26/01/2012, SORAS AG Ltd yasubije M.T.S. Ltd ko idashobora kwishyura, isobanura ko: «cet incendie a été commis par une personne dont notre assuré est civilement responsable en tant que son préposé» kandi ko ingingo ya 39 y'amasezerano bagiranye iteganya ko : «l'assuré n'a aucun droit aux garanties dégâts matériels, vol, incendie lorsqu'il se trouve dans une situation telle qu'en matière d'assurance responsabilité civile et conformément à la loi, la société pourrait soit lui refuser son intervention, soit lui réclamer l'indemnité payée», kandi Nzayirata Donat watwitse izo modoka ari umukozi (préposé) wa Kayibanda Joseph. [3] MTS Ltd yareze SORAS AG Ltd mu Rukiko Rukuru rw'Ubucuruzi iyisaba ibivugwa mu kiburanwa hejuru, isobanura ko izo modoka ari izayo atari iza Kayibanda, kandi ko bombi ari

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abantu babiri batandukanye (deux personnes juridiques différentes), ariyo mpamvu SORAS AG Ltd igomba kwishyura izo mpanuka. [4] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOM 0050/12/HCC kuwa 28/02/2013, rutegeka SORAS AG Ltd na Nzayirata Donat gufatanya kwishyura (in solidum) M.T.S. Ltd agaciro k'izo modoka kangana na 42.000.000 Frw, rutegeka kandi SORAS AG Ltd kwishyura M.T.S. Ltd 20.160.000 Frw, ruyitegeka no kwishyura Kayibanda Joseph 1.050.000 Frw. [5] SORAS AG Ltd ntiyishimiye imikirize y' urubanza, kuwa 22/03/2013, irujuririra mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwakoresheje nabi ingingo ya 260 y'Igitabo cya III cy'urwunge rw'amategako mbonezamubano, bituma urubanza ruba "mal jugée", ko rwirengagije ibiteganywa n'ingingo ya 141 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 4/6/2003, nk'uko ryavugururwe kugeza ubu, ingingo ya 147 y'Itegeko no 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, n'iya 100 y'Igitabo cya III cy'urwunge rw'amategako mbonezamubano kuko rwategetse nta mpamvu ubufatanye hagati ya SORAS AG Ltd na Nzayirata Donat mu kwishyura M.T.S. Ltd 42.000.000 Frw, ndetse ko rwirengangije ingingo ya 39 ya "conditions générales communes de l'assurance du véhicule contre l'incendie, le vol et les dégâts matériels". [6] Kayibanda Joseph yatanze ubujurire bwuririye ku bwa SORAS AG Ltd, asaba Urukiko ko yategakwe kumuha indishyi zirebana n'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire. [7] MTS Ltd yatanze ubujurire bwuririye ku bwa SORAS AG Ltd isaba indishyi zitandukanye zirebana n'impanuka yabaye, isaba kandi Urukiko gushyiraho igihano gihatira kurangiza urubanza, no kuyitegeka kumuha indishyi kubera gukomeza gusiragizwa mu manza nta mpamvu. [8] Urubanza rwaburanishijwe mu ruhamwe kuwa 21/10/2014, SORAS AG Ltd ihagarariwe na Me Rusanganwa Jean Bosco, Modern Technology Services (M.T.S.) Ltd ihagarariwe na Me Munderere Léopold, Kayibanda Joseph ahagarariwe na Me Ndayisaba Fidèle, naho Nzayirata Donat atitabye kandi yahamagajwe mu buryo bukurikije amategako, Urukiko rufata icyemezo cyo kuburanisha adahari. Mu iburanisha, SORAS AG Ltd yamenyesheje Urukiko ko iretse impamvu y'ubujurire irebana no kutubahiriza ibiteganywa n'ingingo ya 39 ya "conditions générales communes de l'assurance du véhicule contre l'incendie, le vol et les dégâts matériels". II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- a. Kumenya niba KAYIBANDA Joseph yaryozwa ibyakozwe na NZAYIRATA Donat, umukozi we wu mu rugo [9] Me Rusanganwa Jean Bosco avuga ko Urukiko Rukuru rw'Ubucuruzi rwakoresheje nabi ingingo ya 260 y'Igitabo cya III cy'urwunge rw'amategako mbonezamubano kuko rwemeje ko Kayibanda Joseph ataryozwa inkongi y'umuriro yakozwe na Nzayirata Donat, watwitse

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imodoka ziburanwa muri uru rubanza, nyamara Nzayirata Donat ari umukozi we. Asobanura ko ingingo ya 260 y'Igitabo cya III cy'urwunge rw'amategako mbonezamubano yavuzwe haruguru isobanutse ku buryo nka shebuja, Kayibanda Joseph agomba kuryozwa ibikorwa by'umukozi we byakozwe ari mu kazi, bityo akaba asanga kwemeza ko shebuja ataryozwa ibyakozwe n'umukozi we mu gihe atamutumye kubikora no mu gihe ibyo yakoze bidahuriye n'imirimo yari ashinzwe, ari ukwiringangiza ibiteganywa n'iyi ngingo. Asobanura kandi ko igitekerezo cyakoreshejwe n'Urukiko Rukuru rw'Ubucuruzi kivuga "gukora ikosa rijyanye n'imirimo umuntu ashinzwe" ntaho kiri mu ngingo ya 260 yavuzwe haruguru, nta n'aho kiri mu itegeko, nyamara nta kintu kigomba kwongerwa ku byo Umushingamategeko yavuze (il ne faut pas ajouter à la loi). [10] Me Rusanganwa Jean Bosco avuga ko usibye ibyo byose, hari urubanza RP 0054/11/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru kuwa 25/1/2012 aho Nzayirata Donat yemera ko yatwitse izo modoka kubera shebuja yamukubise imigeri mu mutwe no mu mbavu kuko yamusanze yateretse ibiryo mu modoka, maze nawe akagira umujinya akazitwika, bityo akaba asanga imvugo ya Nzayirata Donat igaragaza neza ko ibyo yakoze yabikoze ari ku kazi. [11] Me Rusanganwa Jean Bosco asoza avuga ko hashingiwe kuri ibyo byose, Kayibanda Joseph agomba kuryozwa (responsable) ibyangiritse kuko amasezerano y'ubwishingizi adakuraho uburyozwe bw'abandi bantu, bityo Kayibanda Joseph, mu mategeko, akaba afatwa nk'umuntu wishingiye Nzayirata Donat, umukozi we. [12] Me Munderere Léopold avuga ko ibivugwa na SORAS AG Ltd nta shingiro bifite kubera ko mu mirimo Nzayirata Donat yari ashinzwe kwa Kayibanda Joseph, iyo gutwika imodoka za M.T.S. Ltd itarimo, ko niba SORAS AG Ltd ibyemeza, igomba kubitangira ibimenyetso. Akomeza avuga ko ingingo ya 260 y'Igitabo cya III cy'urwunge rw'amategako mbonezamubano SORAS AG Ltd yitwaza, iyivugisha ibyo itavuga kandi ko Kayibanda Joseph yabisobanuye neza mu Rukiko rubanza aho yatanze inyandiko z'abahanga (doctrines) n'imanza zaciwe n'Urukiko rw'Ikirenga rwemeza ko umukoresha (Leta) ataryozwa indishyi zisabwa mu gihe abakoze ibyaha, n'ubwo ari abakozi bawe, babikoze batabitumwe n'umukoresha (Leta), bityo akaba asanga na Kayibanda Joseph nta kintu yaryozwa mu gihe atigeze atuma Nzayirata Donat gukora ibikorwa by'ubugome byakorewe M.T.S. Ltd. [13] Me Munderere Léopold avuga ko mu gihe SORAS AG Ltd yemerera ko Nzayirata Donat atari umukozi wa M.T.S. Ltd, nk'uko yabyanditse mu ibaruwa yo kuwa 26/1/2012, no kuba SORAS AG Ltd ariyo uwishingizi wayo ndetse ko yishyuye "primes d'assurances", igomba kwishyura mu gihe icyo yayifataye kibaye, hakurikijwe amasezerano ifitanye na M.T.S. Ltd. [14] Me Ndayisaba Fidèle avuga ko ibivugwa na SORAS AG Ltd nta shingiro bifite kuko nk'uko Urukiko rwabisobanuye, mu nshingano Nzayirata Donat yari yarahawe gutwika imodoka bitarimo, ko yakoze igikorwa gihabanye n'imirimo yari ashinzwe. Ko mu gufata icyemezo cyajuririwe, Urukiko Rukuru rw'Ubucuruzi rwifashishije ibitekerezo

by'abahanga mu mategeko aho bavuga ko umukoresha ataryozwa byanze bikunze ibikorwa by'umukozi we mu gihe yateshutse ku nshingano ze asanganywe mu kazi ashinzwe, ndetse rukemeza ko ntacyo Kayibanda Joseph yaryozwa ku byakozwe na Nzayirata Donat, bityo akaba asanga SORAS AG Ltd ikoresha ingingo ya 260 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano

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uko itari kuko mu gika cyayo cya 3, isobanura neza ko ba shebuja n'abakoresha baryozwa ibyangijwe n'abakozi babo mu gihe bakora imirimo babashinze. UKO URUKIKO RUBIBONA [15] Ingingo ya 260, agace ka 3 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko "Bashebuja n'abakoresha baryozwa ibyangijwe n'abakozi babo mu gihe bakora imirimo babashinze. [.....]". [16] Ingingo ya 33 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano ryakoreshwaga igihe SORAS AG Ltd na M.T.S. Ltd bagiranye amasezerano y'ubwishingire iteganya ko " Amasezerano akozwe k'uburyo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kwubahirizwa nta buryarya". [17] Ingingo ya 11, agace ka mbere y'Itegeko-Teka no 20/75 yo kuwa 20/6/1975 ryerekeye ubwishingire iteganya ko "Uwishingira yishingira ibyaba ku wishingiwe byateganyijwe mu masezerano". [18] Ingingo ya 46 ya "conditions générales communes de l'assurance du véhicule contre l'incendie, le vol et les dégâts matériels", irebana na "conditions spéciales de l'assurance contre l'incendie" iteganya ko "la société assure le véhicule désigné (châssis, carrosserie, y compris les accessoires fixes indispensables à l'usage normal du véhicule) contre l'incendie, les dégâts par le feu, l'explosion, les jets de flammes et la foudre, en quelque lieu que l'événement se produise et quelle qu'en soit la cause, à l'exception cependant;

- a) des dommages causés par un chargement de matières ou objets facilement inflammables ou explosibles ;
- b) des dommages causés par suite de tremblement de terre ou d'éruption volcanique ;
- c) des dommages causés aux appareils électriques et résultant de leur seul fonctionnement ;
- d) des cas d'exclusion résultant des conditions générales du titre II. [19] Urukiko rw'Ikirenga rurasanga muri uru rubanza M.T.S. Ltd isaba ko SORAS AG Ltd itegekwa kubahiriza ishingano zayo zikomoka ku masezerano y'ubwishingizi bagiranye kuwa 11/1/2011 (contrat d'assurance véhicule contre l'incendie, le vol et les dégâts matériels). [20] Ku byerekeranye n'ibivugwa na SORAS AG Ltd ko hakurikijwe ibiteganywa n'ingingo ya 260, agace ka 3 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, irebana n'amakosa akozwe ku bushake n'ibisa nayo, itagomba kwishingira ibyakozwe na Nzayirata Donat ku modoka za M.T.S. Ltd zivugwa muri uru rubanza kuko ari umukozi wa Kayibanda Joseph, n'uyu akaba umuyobozi wa M.T.S. Ltd, Urukiko rw'Ikirenga rurasanga iyo ngingo itakoreshwa muri uru rubanza kuko ibisabwa na M.T.S. Ltd birebana n'uburyozwe bwa SORAS AG Ltd bukomoka ku masezerano y'ubwishingizi yavuzwe haruguru. Byongeye kandi, nta ngingo nimwe y'ayo masezerano iteganya ko SORAS AG Ltd itagomba kwishingira ibyangijwe

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n'umukozi wa M.T.S. Ltd cyangwa n'umukozi w'umuyobozi wa M.T.S. Ltd, bityo hakurikijwe ingingo ya 64 y'Itegeko no 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, iya 11, agace ka mbere y'Itegeko-Teka no 20/75 yo kuwa 20/6/1975 ryerekeye ubwishingizi n'iya 46 ya "conditions générales communes de l'assurance du véhicule contre l'incendie, le vol et les dégâts matériels", irebana na "conditions spéciales de l'assurance contre l'incendie", SORAS AG Ltd igomba kubahiriza ishingano zayo zo kwishingira impanuka yabaye ku modoka zashinganywe. [21] Urukiko rw'Ikirenga rurasanga n'ubwo iyo ngingo yaba yari gukoreshwa (par extraordinaire), umuntu wangiritse wenyine (seule la victime) ashobora gusaba urukiko ko hakurikizwa iyo ngingo, kuko shebuja wa nyirugukora ikosa ryamwangirije¹, yanze kumuriha ibyangiritse n'umukozi we bityo SORAS AG Ltd ikaba nta bubasha ifite bwo gusaba ko muri uru rubanza hakurikizwa ibiteganywa n'ingingo ya 260, agace ka 3 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano kuko itari "victime" y'amakosa yakozwe na Nzayirata Donat, umukozi wa Kayibanda Joseph. [22] Byongeye kandi, Urukiko rw'Ikirenga rurasanga, nk'uko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye, hakurikizwa ibiteganywa n'ingingo ya 260, agace ka 3 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano gusa mu gihe umukozi yangirije undi cyangwa ibyabandi, akora imirimo ashinzwe, nyamara bigaragara mu rubanza RP 0054/11/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru kuwa 25/1/2012 ko Nzayirata Donat, umuzamu kwa Kayibanda Joseph, yemeye ko yatwitse izo modoka kubera shebuja yari yamukubise, nawe (Nzayirata Donat) akagira umujinya akazitwika, bityo igikorwa cye kikaba ntaho gihuriye n'imirimo yari ashinzwe (kurinda ibyo yari ashinzwe) kandi ko yagikoze abishaka ku mpamvu ze bwite². [23] Usibye n'ibyo byose kandi, Urukiko rw'Ikirenga rurasanga niyo Nzayirata Donat aza kuba umukozi wa M.T.S. Ltd, nta cyari kubuza SORAS AG Ltd kwishingira ibyangiritse kuko ingingo ya 12 y'Itegeko-Teka no 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi iteganywa ko "Uwishingiye yishingira ibyabura n'ibyakwangirika bitewe n'abantu uwishingiwe ariyozwa hakurikijwe ibivugwa mu gitabo cy'amategeko y'imbonezamubano, batitaye ku imiterere y'amakosa yakozwe n'abo bantu n'uko angana". [24] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rw'Ikirenga rurasanga iyo mpamvu yatanze na SORAS AG Ltd nta gaciro ikwiye guhabwa, bityo ikaba igomba kwishyura M.T.S. Ltd ibyangiritse, nyuma igasimbura M.T.S. Ltd mu byerekeye uburenganzira bwo gukurikirana uwatumye yishyura kubera ibikorwa bye³.

1Le principe de la responsabilité civile du commettant a pour but de protéger les tiers contre l'insolvabilité de l'auteur du préjudice en leur permettant de recourir contre son employeur, il s'ensuit que seule la victime a qualité pour mettre en cause et invoquer contre lui (l'employeur), à son profit, les dispositions de l'article 1384, alinéa 5 du code civil français (pendant de l'article 260, alinéa 3 de notre code civil, livre III), Civ. 6 févr. 1974 : D. 1974. 409, 28 oct. 1987 : Bull. civ. II, n° 214, in code civil, édition 2000, Dalloz, Paris, 2000, P. 1039. 2Le commettant ne s'exonère de sa responsabilité que si son préposé a agi hors des fonctions auxquelles il était employé, sans autorisation, et à des fins étrangères à ses attributions", Ass. Plén. 19 mai 1988 : D. 1988. 153, in code civil, édition 2000, Dalloz, Paris, 2000, P. 1039. "Que dès lors, après avoir constaté que la cause de dommages résidait dans un acte délibéré, étranger à ses fonctions, accompli parà des fins personnelles, la Cour d'appel a décidé à bon droit que la responsabilité de la société

n’était pas engagée”, Ass. Plén. 17 juin 1983. 3Ingingo ya 32, agace ka 1 y’Itegeko-Teka n° 20/75 yo kuwa 20/6/1975 ryerekeye ubwishingire iteganya ko “Uwishingiye wishyuye indishyi z’ubwishingire, asimburu uwo yishingiye, mu rugero rw’indishyi yatanze, mu byerekeye uburenganzira no gukurikirana abandi bantu batumye yishyura kubera ibikorwa byabo”.

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- b. Kumenya niba Urukiko Rukuru rw’Ubucuruzi rwarakoze amakosa mu gutegeka ubufatanye hagati ya SORAS AG Ltd na Nzayirata Donat mu kwishyura M.T.S. Ltd [25] Me Rusanganwa Jean Bosco avuga ko Urukiko Rukuru rw’Ubucuruzi rwategetse ko SORAS AG Ltd yishyura 42.000.000 Frw, ifatanyije na Nzayirata Donat kandi ntaho bahuriye ndetse ko rutatanze impamvu z’ubwo bufatanye (absence de motivation), bityo akaba asanga Urukiko Rukuru rw’Ubucuruzi rutarubahirije ibiteganywa n’ingingo ya 141 y’Itegeko Nshinga rya Repubulika y’u Rwanda ryo kuwa 4/6/2003, nk’uko ryavuguruwe kugeza ubu, n’ingingo ya 147 y’Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ndetse ko rwirengagije ibiteganywa n’ingingo ya 100 y’Igitabo cya III cy’urwunge rw’amategeko mbenezamubano. [26] Me Munderere Léopold avuga ko ibivugwa na SORAS AG Ltd nta shingiro bifite kuko yiyibagiza ko ariyo yahamagaje Nzayirata Donat mu rubanza, kandi ikaba yarifuzaga ko bafatanyaga kwishyura kuko yemezaga ko ariwe nyirabayazana w’amakuba M.T.S. Ltd yagize. Akomeza avuga ko niba SORAS AG Ltd yumva atari ngombwa ko Nzayirata Donat ayifasha kwishyura ibyo yangije, yo yarangiza inshingano zayo zo kwishyura M.T.S. Ltd ibyononekaye byose yishingiye. [27] Me Ndayisaba Fidèle avuga ko ibivugwa na SORAS AG Ltd nta shingiro bifite kuko Nzayirata Donat yakoze ikosa ryo gutwika imodoka, bityo hashingiwe ku ngingo ya 258 y’Igitabo cya III cy’urwunge rw’amategeko mbenezamubano akaba agomba kuryozwa ibikorwa bye. Akomeza avuga ko mu gihe SORAS AG Ltd yakiriye “prime d’assurance”, kuyitegeka kwishyura bikaba bitanyuranyije n’amategeko cyane ko ingingo ya 46 y’amasezerano (conditions générales communes de l’assurance du véhicule contre l’incendie, le vol et les dégâts matériels) bagiranye igaragaza igihe yishyurira, bidakozwe rero bikaba ari ukwikungahaza kudafite ishingiro (enrichissement sans cause), hatirengagijwe ko ariyo yagobokesheje Kayibanda Joseph na Nzayirata Donat, bityo Urukiko rusanze batafatanyaga kwishyura M.T.S. Ltd, rukaba rwayitegeka kwishyura yonyine. UKO URUKIKO RUBIBONA [28] Ingingo ya 100 y’Igitabo cya III cy’urwunge rw’amategeko mbenezamubano ryakoreshwaga igihe SORAS AG Ltd na M.T.S. Ltd bagiranye amasezerano y’ubwishingizi iteganya ko “Ubufatanye ntibukekwa, bugomba gutegeanywa k’uburyo bweruye. Iryo hame rireka gukurikizwa gusa mu gihe ubufatanye buriho nta shiti bishingiye ku mategeko”. [29] Ingingo ya 14, agace ka kabiri y’Itegeko Nshinga rya Repubulika y’u Rwanda ryo kuwa 4/6/2003, nk’uko ryavuguruwe kugeza ubu, iteganya ko “urubanza rwose rwaciwe rugomba kugaragaza impamvu rushingiyeho kandi rukandikwa mu ngingo zarwo zose [.....]”. [30] Ingingo ya 147, agace ka 2, ka 3 na ka 4 y’Itegeko no 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko “Ica ry’urubanza risobanura itegeko ryakurikijwe n’ingingo zishingiye ku byabaye zagaragajwe mu rubanza.

Ica ry'urubanza rigomba gusobanura impamvu yatumye ikimenyetso cyaba cyaratanzwe kitemerwa n'agaciro riha ibimenyetso byose byatanzwe

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mu rubanza. Ica ry'urubanza ry'urubanza rigomba kwerekana amategeko yose yakurikijwe mu ikemura ry'urubanza". [31] Ingingo ya 63 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano ryakoresheye igihe SORAS AG Ltd na M.T.S. Ltd bagiranye amasezerano y'ubwishingizi iteganya ko "Amasezerano agira inkurikizi hagati y'abayagiranye gusa , ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe mu ingingo ya 21". [32] Urukiko rw'Ikirenga rurasanga bigaragara mu gika cya 13 cy'urubanza rwajuririwe ko hashingiwe ku ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, Urukiko Rukuru rw'Ubucuruzi rwemeje ko SORAS AG Ltd igomba gufatanya na Nzayirata Donat kwishyura M.T.S. Ltd (in solidum) 42.000.000 Frw ariko ntirwasobanura impamvu y'ubwo bufatanye rutegeka, bityo rukaba rwariyangangije ibiteganywa n'ingingo zimaze kuvugwa. [33] Urukiko rw'Ikirenga rurasanga na none ubwo bufatanye budashoboka muri uru rubanza kuko ibyo M.T.S. Ltd isaba SORAS AG Ltd kwishyura bikomoka ku masezerano y'ubwishingizi bagiranye kandi ko Nzayirata Donat ntayirimo. Usibye n'ibyo, muri uru rubanza SORAS AG Ltd ikaba itari ifite ububasha bwo gusaba ko Nzayirata Donat ategukwa kwishyura M.T.S. Ltd ibyangiritse hashingiwe ku makosa yakozwe ku bushake n'ibisa nayo (responsabilité délictuelle) mu gihe M.T.S. Ltd isaba ko SORAS AG Ltd itegukwa kwishyura indishyi z'ubwishingizi hashingiwe ku masezerano y'ubwishingizi (responsabilité contractuelle). Byongeye kandi, SORAS AG Ltd ifite ububasha n'inyungu yo gusaba ko Nzayirata Donat ategukwa kwishyura ibyangiritse hashingiwe ku makosa akozwe ku bushake n'ibisa nayo (responsabilité délictuelle) gusa nyuma yo kwishyura indishyi z'ubwishingire ariko itanga ikindi kirego (action récursoire), hashingiwe ku ingingo ya 32 y'Itegeko-Teka n° 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi ryavuzwe haruguru. [34] Hakurikijwe ibisobanuro bimaze gutangwa, Urukiko rw'Ikirenga rurasanga hashingiwe ku ingingo ya 63 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, Urukiko Rukuru rw'Ubucuruzi rutagombaga gutegeka Nzayirata Donat kwishyura ibyangiritse kubera icyago cyabaye ku modoka zishingiwe na SORAS AG Ltd ndetse ko rutagombaga gutegeka SORAS AG Ltd gufatanya na Nzayirata Donat kwishyura M.T.S. Ltd (in solidum) 42.000.000 Frw, bityo rukaba rwariyangangije ibiteganywa n'ingingo zavuzwe haruguru. C. Kumenya niba M.T.S. Ltd ikwiye guhabwa indishyi isaba [35] Me Munderere Léopold avuga ko SORAS AG Ltd igomba gutegeka gukoresha imodoka "Toyota Hilux" ku mafaranga 23.290.170 Frw nk'uko bigaragara muri "devis ya réparation" cyangwa se kwishyura "valeur assurée" yayo ingana na 22.000.000 Frw no gukoresha imodoka "Infinity" ku mafaranga 37.161.806 Frw nk'uko bigaragara muri "devis ya réparation" cyangwa kwishyura "valeur assurée" yayo ingana na 20.000.000 Frw. [36] Me Munderere Léopold akomeza avuga ko M.T.S. Ltd isaba ko SORAS AG Ltd itegukwa kwishyura 52.800.000 Frw yishyuye mu gukodesha izindi modoka zo kuyifasha mu kazi kuwa 30/10/2011 kugeza kuwa 30/6/2014, isaba kandi ko ayo mafaranga azakomeza kwiyongera kugeza urubanza ruciwe.

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[37] Me Munderere Léopold asoza avuga ko MTS Ltd isaba kandi ko SORAS AG Ltd itegekwa kuyishyura amafaranga y'ikurikiranarubanza n'igihembo cya avoka angana na 10% y'amafaranga izagenerwa n'Urukiko no kuyiteka gutanga 1.000.000 Frw buri kwezi ya "astreinte". [38] Me Rusanganwa Jean Bosco avuga ko nta ndishyi SORAS AG Ltd igomba M.T.S. Ltd. UKO URUKIKO RUBIBONA [39] Ingingo ya 27 y'Itegeko-Teka no 20/75 ryo kuwa 20/6/1975 ryerekeye ubwishingizi iteganya ko "ubwinshigire bw'ibintu ni amasezerano y'indishyi. Umubare w'indishyi ntushobora na limwe gusumba agaciro k'ikintu cyishingiwe ku muni icyago kibereyeho". [40] Ingingo ya 45 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano ryakoreshwaga igihe SORAS AG Ltd na M.T.S. Ltd bagiranye amasezerano y'ubwishingizi iteganya ko "Ugomba inshingano ategukwa, iyo bibaye ngombwa, kwishyura indishyi zitewe no kutubahiriza inshingano cyangwa no gutinda kuyubahiriza, igihe cyose atagaragaza ko kutayubahiriza byatewe n'impamvu itamuturutseho, bipfa gusa kutabamo uburiganya". [41] Ingingo ya 47 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano ryakoreshwaga igihe SORAS AG Ltd na M.T.S. Ltd bagiranye amasezerano y'ubwishingizi iteganya ko "Indishyi zigenewe ugombwa inshingano zigizwe, muri rusange, n'igihombo byamuteye hamwe n'inyungu byamuvukije, uretse ibiseguriwe n'ibihinduwe bikurikira". [42] Ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". [43] Ku byerekeye n'indishyi zirebana n'imodoka zangiritse, Urukiko rw'Ikirenga rurasanga mu gace ka 13 k'urubanza rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwategetse SORAS AG Ltd guha M.T.S. Ltd 42.000.000 Frw angana n'umubare w'amafaranga y'imodoka zishingiwe. [44] Urukiko rw'Ikirenga rurasanga mu gihe ababuranyi batagaragaza agaciro k'imodoka zishingiwe ku muni icyago kibereyeho ndetse ko SORAS AG Ltd nta kintu ivuga kubyo M.T.S. Ltd isaba guhabwa, SORAS AG Ltd ikaba igomba guha M.T.S. Ltd indishyi zingana n'umubare w'amafaranga izo modoka zishingiwe (le montant de la garantie ou la valeur assurée), bityo SORAS AG Ltd ikaba igomba kwishyura MTS Ltd 42.000.000 Frw angana n'umubare w'amafaranga y'imodoka zishingiwe. [45] Ku byerekeye 52.800.000 Frw y'ubukode bw'imodoka asabwa na M.T.S. Ltd, Urukiko rw'Ikirenga rurasanga Urukiko Rukuru rwageneye M.T.S. Ltd 19.360.000 Frw irebana n'ubukode bw'imodoka ebyiri kuva ku kwezi kwa mbere k'umwaka wa 2012 kugeza ku kwezi kwa cumi na kumwe k'umwaka wa 2012. [46] Urukiko rw'Ikirenga rurasanga M.T.S. Ltd yarakomeje gukodesha imodoka ebyiri (Toyota Hilux RAB 207 V ku mafaranga 910.000 buri kwezi na Toyota RAV 4 RAB 838 P ku mafaranga 850.000 buri kwezi) kugeza mu kwezi kwa gatandatu 2014 kubera ko SORAS AG

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Ltd itubahirije inshingano zayo zikomoka ku masezerano y'ubwishingizi, bityo hashingiwe ku ingingo ya 45 n'ya 47 z'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano zavuzwe haruguru ndetse nk'uko bigaragara mu ma fagitiri yatanze na M.T.S Ltd, SORAS AG Ltd igomba kuyisubiza 33.440.000 Frw ku bukode bw'imodoka kuva mu kwezi kwa cumi n'abiri 2012 kugeza mu kwezi kwa gatandatu 2014, hiyongereyeho 19.360.000 Frw yari yagenewe n'Urukiko Rukuru

rw'Ubucuruzi, yose hamwe akaba 52.800.000 Frw. [47] Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya avoka kingana na 10% y'amafaranga izagenerwa, Urukiko rw'Ikirenga rurasanga amafaranga asabwa na M.T.S. Ltd ari menshi, bityo hashingiwe ku ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, mu bushishozi bwarwo, ruyigenera 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya avoka, yiyongereyeho 300.000 Frw yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba 1.100.000 Frw. [48] Ku byerekeranye n'igihano MTS Ltd isabira SORAS AG Ltd cyo guhatira kurangiza urubanza (astreinte), Urukiko rw'Ikirenga rurasanga hashingiwe ku ingingo ya 216 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, icyo gihano gikwiye kubera ko imaze igihe kire kire isaba ayo mafaranga ariko rukaba rugenye mu bwitonzi bwarwo ko SORAS AG Ltd igomba guhatirwa kwishyura M.T.S. Ltd 500.000 Frw buri kwezi mu gihe izatinda (izakererwa) kwishyura indishyi zategetswe muri uru rubanza aho kuba 1.000.000 Frw kuko ari menshi.

- d. Kumenya niba KAYIBANDA Joseph akwiye guhabwa amafaranga asaba [49] Me Ndayisaba Fidèle avuga ko hashingiwe ku ngingo ya 167 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, asaba Urukiko ko SORAS AG Ltd yategekwa guha Kayibanda Joseph indishyi zirebana n'ikurikiranarubanza n'igihembo cya avoka ku rwego rw'ubujurire zihwanye na 800.000 Frw. Asoza asaba ko urubanza rwajuririwe rutahinduka mu ngingo zarwo zose, usibye ku birebana n'indishyi asaba. [50] Me Rusanganwa Jean Bosco avuga ko nta mafaranga SORAS AG Ltd igomba guha Kayibanda Joseph. UKO URUKIKO RUBIBONA [51] Ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". [52] Urukiko rw'Ikirenga rurasanga Kayibanda Joseph akwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cy'avoka asaba, ni ukuvuga 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya avoka, yiyongereyeho 1.000.000 Frw yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba 1.800.000 Frw.

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III. ICYEMEZO CY'URUKIKO [53] Rwemeje ko ubujurire bwa SORAS AG Ltd nta shingiro bufite. [54] Rwemeje ko ubujurire bwa M.T.S. Ltd bwuririye ku bwa SORAS AG Ltd bufite inshingiro. [55] Rwemeje ko ubujurire bwa Kayibanda Joseph bwuririye ku bwa SORAS AG Ltd bufite inshingiro. [56] Rutegetse SORAS AG Ltd kwishyura M.T.S. Ltd 42.000.000 Frw angana n'umubare w'amafaranga y'imodoka zishingiwe. [57] Rutegetse SORAS AG Ltd kwishyura M.T.S. Ltd 52.800.000 Frw ku bukode bw'imodoka kuwa kwezi kwa cumi na kabiri k'umwaka wa 2011 kugeza ku kwezi kwa gatandatu k'umwaka wa 2014. [58] Rutegetse SORAS AG Ltd kwishyura M.T.S. Ltd 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya avoka, yiyongereyeho 300.000 Frw yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba 1.100.000 Frw. [59] Rutegetse SORAS AG Ltd kwishyura M.T.S. Ltd 500.000 Frw buri kwezi mu gihe izakererwa kwishyura indishyi zategetswe muri uru rubanza. [60] Rutegetse SORAS AG Ltd kwishyura Kayibanda Joseph 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya avoka,

iyongereyeho 1.000.000 Frw yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba 1.800.000 Frw. [61] Rutegetse SORAS AG Ltd kwishyura Kayibanda Joseph 50.000 Frw buri kwezi mu gihe izakererwa kwishyura indishyi zategetswe nk'uko Urukiko Rukuru rw'Ubucuruzi rwabitegetse. [62] Rutegetse SORAS AG Ltd gutanga amagarama y'urubanza.

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