

RWANDA / JUDGMENT

BRD v.Ngezahayo

COMAA 0076/12/CS (

COURT

Supreme Court

DECIDED

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BRD v.Ngezahayo

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Text

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BRD v. NGEZAHAYO N'ABANDI [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0076/12/CS (Mugenzi, P.J., Kanyange na Nyirinkwaya, J.) 10 Mata 2015] Amategeko agenga ububasha bw'Urukiko rw'Ikirenga – Ububasha bwo kuburanisha ubujurire bwa kabiri – Inyandiko yashyikirijwe urukiko nyuma y'iburanisha – Iyo hari inyandiko urukiko rwahereyeho ruca urubanza kandi itaragiweho impaka mu gihe cy'iburanisha ituma iba impamvu y'ubujurire bwa kabiri mu Rukiko rw'Ikirenga kuko ihame ry'ivuguruzanya mu manza riba ritubahirijwe – Itegeko Ngenga no03/2012 ryo kuwa 13/06/2012 rigena imitunganyirize, imikorere n'ububasha bw'Urukiko rw'Ikirenga, ingingo ya 28, igice cya kabiri, agace ka gatatu. Incamake y'ikibazo: BRD Ltd yarenze Ngezahayo na bagenzi be mu Rukiko rw'Ubucuruza rwa Nyarugenge isaba ko bafatanyaga kuyishyura umwenda bishingiye yahaye Rwanda Rwubu Association. Urukiko rw'Ubucuruza rwa Nyarugenge rwemeje ko bagomba kwishyura BRD Ltd umwenda ungana na 10.273.768 frw abariwemo n'ingwate ya 10.000\$ bishyuriwe na PSF na 821.901 frw 'indishyi z'akababaro. Ngezahayo na bagenzi be bajuriye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruza rwemeza ko BRD Ltd yagombaga kuregera inkiko ibishyura umwenda yabahaye n'inyungu zawo hakuwemo ingwate ya 10.000\$ yatanze na PSF. BRD Ltd yajuririrye mu Rukiko rw'Ikirenga ivuga

ko Urukiko Rukuru rw'Ubucuruzi rwashingiye icyemezo cyarwo ku nyandiko yatanze iburanisha ryarapfundikiwe kandi ntasubukura ry'iburanisha ryabaye. Ngezahayo na bagenzi be bo batanze inzitizi yo kutakira ubujurire bwa BRD Ltd bavuga ko butari mu bubasha bw'Urukiko rw'Ikirenga kuko ikimenyetso BRD Ltd ishingiraho cyaburanweho kuva mu rwego rwa mbere. Bakomeje bavuga ko iyo nyandiko ishimangira gusa ibyari byaburanyweho. Incamake y'icyemezo: Inyandiko urukiko ruheryeho ruca urubanza kandi itaragiweho impaka mu gihe cy'iburanisha ituma iba impamvu y'ubujurire bwa kabiri mu Rukiko rw'Ikirenga kuko ihame ry'ivuguruzanya mu manza riba ritubahirijwe. Ubujurire buri mu bubasha bw'Urukiko rw'Ikirenga; Iburanisha rizakomeza kuwa 02/06/2015; Amagarama arasubitswe. Amategeko yashingiweho: Itegeko Ngenga no03/2012 ryo kuwa 13/06/2012 rigena imitunganyirize, imikorere n'ububasha bw'Urukiko rw'Ikirenga, ingingo ya 28, igice cya kabiri, agace ka gatatu. Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, BRD irega Ngezahayo Rutamu Vincent, Kavumba Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine isaba ko bafatanywa kwishyura umwenda bishingiye yahaye Rwanda rw'ubu Association, ruca urubanza kuwa 09/03/2012, rwemeza ko bagomba gufatanywa kwishyura umwenda wa 10.273.768 Frw abazwe kugeza kuwa 20/10/2010, akubiyemo umwenda remezo, inyungu zisanze n'izubukererwe, bakanishyura 821.901 Frw y'indishyi z'akababaro zihwanye na 8% by'umwenda wose, yose hamwe akaba 11.095.669 Frw. [2] Ngezahayo Rutamu Vincent, Kavumba Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine bajuririywe Urukiko Rukuru rw'Ubucuruzi, rwemeza ko BRD igomba kwishyura gusa umwenda ubaze kugeza 31/12/2009 ihereye ku ngwate ya 10.000\$ yatanze na Private Sector Federation (PSF) nk'uko biteganyijwe mu ngingo ya 8 ya Memorandum of understanding (MoU) yasinywe hagati ya PSF na BRD mu mwaka wa 2010 yahinduye ibyari biteganyijwe mu yayibanjirije yasinywe kuwa 02/08/2007, inyungu z'ubukererwe zigakomeza kubakwa uherye tariki ya 01/01/2010 kugeza igihe urubanza ruciye ku itariki ya 21/09/2012. [3] Mu gufata icyo cyemezo, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko mu gihe uwo yagurijwe yari amaze gushyirwa muri classe 5 y'abahawe inguzanyo ntibayishyure uko bikwiye, BRD yagombaga kuregera inkiko yishyura umwenda yatanze n'inyungu zawo, ugabanyijwemo amafaranga ahwanye n'agaciro k'ingwate ya \$10.000 yatanze na PSF. [4] BRD yajurijwe mu Rukiko rw'Ikirenga ivuga ko ishingira ubujurire bwayo ku ngingo ya 28, igice cya kabiri, agaca ka gatatu y'Itegeko Ngenga n° 03/2012 ryo kuwa 13/06/2012 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ngo kuko Urukiko Rukuru rwashingiye icyemezo cyarwo ku nyandiko ya MoU yatanze iburanisha ryarapfundikiwe kandi hatabaye gusubukura iburanisha. Umucamanza w'ibanzirizasuzuma nawe yemeje ko ubujurire bwa BRD buri mu bubasha bw'Urukiko rw'Ikirenga hashingiwe kuri iyo ngingo. [5] Urubanza rwaburanishijwe mu ruhame kuwa 03/03/2015, BRD ihagarariwe na Me Barezi Marie Aimée, Ngezahayo Rutamu Vincent, Kavumba Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine bahagarariwe na Me Buzayire Angèle, ababuranyi bajya impaka ku nzitizi y'iburabubasha yabyukijwe n'abaregwa mu bujurire. II. IKIBAZO KIRI MU RUBANZA

N'ISESENGURWA RYACYO Kumenya niba ubujurire bwa BRD buri mu bubasha bw'Urukiko rw'Ikirenga, ku mpamvu y'uko haba hari inyandiko yashyikirijwe Urukiko Rukuru nyuma y'iburanisha ikanashingirwaho mu guca urubanza. [6] Me Buzayire Angèle uburanira Ngezahayo Rutamu Vincent, Kavumba Emmanuel, Ndahumba Jean Baptiste na Umuhiza Francine avuga ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha mu bujurire bwa kabiri uru rubanza kuko inyandiko ya MoU

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uburanira BRD avuga ko yatanze iburanisha ryarapfundikiwe yaburanyweho kuva mu rwego rwa mbere abo uburanira bavugaga ko banki yagombaga kwiyezura ihereye ku ngwate ya 10.000 USD yatanze na PSF, bakaba batari kubivugaga batagaragaza ayo masezerano. [7] Akomeza avuga ko MoU umucamanza yashyigiyeho aca urubanza itakwitwa ikimenyetso cyangwa inyandiko nshya kuko yaje ishimangira gusa ibyari byaburanyweho, ibi bikaba binagaragazwa n'uko ntaho BRD yandikiye Urukiko ivugaga ko yohereje ikimenyetso gishya isaba ko iburanisha ripfundurwa kugirango kigibweho impaka. [8] Me Barezi Marie Aimée uburanira BRD avuga ko inzitizi y'iburabubasha yatanze n'abo baburana nta shingiro ifite kuko MoU bari baratanzeho ikimenyetso ari iyo kuwa 28/05/2007 yahinduraga iyo kuwa 28/06/2004, nyamara iyo BRD ivugaga ko umucamanza yabasabye iburanisha ryarapfundikiwe igashingirwaho mu ica ry'urubanza hatabaye isubukura akaba ari iyo kuwa 30/09/2010 itigeze igaragazwa cyangwa iburanyweho mu rukiko, iyo MoU nshya ikaba itandukanye cyane n'izayibanjirije. UKO URUKIKO RUBIBONA [9] Ingingo ya 28, igice cya kabiri, agaka ka gatatu y'Itegeko Ngenga n° 03/2012 ryo kuwa 13/06/2012 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ivugaga ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu bujurire bwa kabiri imanza zaciwe hashingiwe ku kimenyetso, inyandiko cyangwa imyanzuro byatanze nyuma yo gufundikira urubanza kandi hatarabayeho gusubukura iburanisha. [10] Ku bijyanye n'uru rubanza, inyandiko igibwaho impaka ni MoU yo kuwa 30/09/2010 yasinywe hagati ya PSF na BRD umucamanza yashyigiyeho yemeza ko BRD itagombaga gutegereza ko imanza zirangira kugirango yiyishyure ihereye ku ngwate ya 10.000USD, BRD ikaba ivugaga ko iyo nyandiko yatanze iburanisha ryarapfundikiwe, naho uburanira abaregwa akavugaga ko itakwitwa ikimenyetso gishya kuko yaburanyweho guhera mu rwego rwa mbere. [11] Urukiko rusanga mu nyandiko zigize dosiye, ntaho bigaragara ko Ngezahayo Rutamu Vincent, Kavumba Emmanuel, Ndahumba Jean Baptiste na Umuhiza Francine baba barashyikirije urukiko MoU yo kuwa 30/09/2010 yaje ihindura MoU yo kuwa 28/05/2007 nayo yahinduraga iyo kuwa 28/06/2004, ahubwo bigaragara ko BRD yayishyikirije urukiko kuwa 13/08/2012, urubanza rwarapfundikiwe kuwa 11/07/2012. [12] Urukiko rusanga kuba iyo nyandiko yaba yaravuzweho mu iburanisha nubwo nta kibigaragaza muri dosiye, bitari gutuma ishyirwa muri dosiye iburanisha ryarapfundikiwe ngo inashingirwaho mu ica ry'urubanza kandi itagaragarijwe urundi ruhande, kuba rero umucamanza yarayishyigiyeho nk'uko bigaragara mu duce twa 8, 9 na 10 tw'urubanza kandi hatabaye gusubukura iburanisha kugirango ababuranyi bayijyeho impaka hubahirizwa ihame ry'ivuguruzanya mu manza, bikaba biha uru rukiko ububasha bwo kuburanisha uru rubanza mu bujurire bwa kabiri nk'uko ingingo ya 28, igice cya kabiri, agaka ka gatatu y'Itegeko Ngenga n° 03/2012 ryo kuwa 13/06/2012 rigena

imitunganyirize, imikorere n'ububasha by'Urukiko ibiteganya.

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III. ICYEMEZO CY'URUKIKO [13] Rwemeje ko ubujurire bwa BRD buri mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku ngingo ya 28, igice cya kabiri, agaka ka gatatu y'Itegeko Ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. [14] Rwemeje ko iburanisha rizakomeza kuwa 02/06/2015. [15] Ruvuze ko amagarama y'urubanza asubitswe.

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