

RWANDA / JUDGMENT

BRD v. NDEZAHAYO N'ABANDI

RCOMAA 0076/12/CS

COURT

Supreme Court

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BRD v. NDEZAHAYO N'ABANDI

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Text

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BRD v. NDEZAHAYO N'ABANDI [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0076/12/CS (Mugenzi, P.J., Kanyange na Nyirinkwaya J.) 1 Mata 2016] Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Inyungu – Inyungu zibyara izindi nyungu – Zigomba nazo kubyara inyungu hakurikijwe amasezerano impande zombie zagiranye – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 52. Indishyi – Nta ndishyi impande zombi zahabwa muri uru rubanza igihe hari ibyo zose zatsindiwe. Incamake y'ikibazo: Uru rubanza ruturuka ku masezerano y'ubwishingire yabaye hagati ya BRD na Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine. Aba bishingiraga amasezerano y'inguzanyo ya 5 500 000 Frw BRD yari yagiranye na Rwanda rw'Ubu Association Amizero. Hari hatanzwe kandi n'izindi ngwate zitandukanye. BRD yareze abo bishingizi mu Rukiko rw'Ubucuruzi isaba ko bafatanywa kwishyura umwenda bishingiye ungana na 10.273.768 Frw akubiyemo umwenda remezo ungana na 5.500.000 Frw, inyungu zisanze za 2.272.914 Frw, inyungu z'ubukererwe zingana na 2.500.667 Frw kandi inyungu zigakomeza kubarwa kugeza urubanza rupfundikiwe. Basabye kandi amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. Urukiko rw'Ubucuruzi rwemeje ko bagomba kwishyura ayo mafaranga, 821

901 Frw y'indishyi z'akababaro zihwanye na 8% by'umwenda wose. Abaregwaga bajuriye mu Rukiko Rukuru rw'Ubucuruzi bavuga ko Urukiko ntacyo rwavuze ku bijyanye n'ubwishingire bw'Ikigega cy'Ingwate BPC/GF n'ibyemezo byafashwe mu rubanza rusa nk'urwajuririwe. Urukiko rwaciye urubanza rwemeza ko BRD yagombaga kwiyishyura ihereye ku ngwate ya BPC/GF umwenda ukimara gushyirwa mu kicio cya gatanu bityo kuba itarabikoze bikaba byarashyize mu gihombo abishingiye iyo Association kuko bishingiye kwishyura umwenda ubwishyu butabanje gushakirwa mu mitungo ya Association bityo ikaba igomba kwishyura umwenda uvanyemo ingwate ya BPF/BF inyungu z'ubukererwe zigakomeza kubarwa kugeza urubanza ruciwe. BRD yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwasesenguye nabi ingingo ya 8 ua MoU (Memorandum of Understanding) yasinwe hagati ya BRD na PSF kuba rwarategutse BRD kwishyura abo yareze aho kubatega kwishyura ntirusobanure umubare w'amafaranga agomba kwishyurwa no kuba ntacyo rwavuze ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. Uburanira abaregwa we yavuze ko uburyo BRD ibaramo inyungu bunyuranyije n'amategako. Urwunguko ivuga rukaba rukabije hakurikijwe amasezerano impande zombi zagiranye.

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Incamake y'icyemezo: 1. Inyungu zibyawe n'imari y'iremezo zishobora nazo kubara izindi nyungu biturutse k'urubanza cyangwa ku masezerano yihariye, zipfa gusa, ari mu. kirego cyangwa mu masezerano kuba ari inyungu nibura z'umwaka wuzuye. Kuba rero abagiranye amasezerano barumvikanye inyungu, inyungu z'ubukererwe ndetse bakanumvikana ko amafaranga y'ubukererwe azajya ahita yongerwa ku mafaranga yakereranywe byumvikanisha ko amafaranga yose yakereranywe agomba kubarirwa inyungu zisanze za 15%, n'iz'ubukererwe za 4% ni ukuvuga 19%. Bityo, nazo zigomba kubara inyungu hakurikijwe ibyo impande zombi zari zarumvikanye.

2. Nta ndishyi ababuranyi bahabwa kuko buri ruhande hari ibyo rwatsindiwe. Ubujurire bufite ishingiro kuri bimwe; Abishingizi bategetswe kwishyura umwenda; Bategetswe kandi kwishyura amagarama y'urubanza. Amategako yashingiweho Tegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 52. Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA: [1] Kuwa 11/05/2007, BRD yagiranye na Rwanda rw'ubu association amasezerano y'iguriza ya 5.500.000 Frw azakoreshwa mu bikorwa by'umushinga "café internet" mu Karere ka Huye. Mu rwego rwo kugaragaza ko iyo nguzanyo izishyurwa, Rwanda rw'ubu Association yatanze ingwate zikurikira: ubwishingizi bw'Ikigega cy'ingwate "Business Plan Competition Guarantee Fund (BPC/GF)" cya Private Sector Federation (PSF) bungana na 10.000 USD; ingwate ku mutungo w'ubucuruzi (gage de fonds de commerce) n'ubwishingire bw'umwenda bw'abagize Inama y'Ubutegetsi y'umuryango, kuwa 15/05/2007 naho igirana andi masezerano y'ubwishingire na Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhiza Francine, bishingira ko Rwanda rw'ubu association izishyura inguzanyo yahawe, ko nitishyura aribo bazishyura. [2] Kuwa 20/12/2011, BRD yareze Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhiza Francine mu Rukiko rw'Ubucuruzi isaba

ko bafatanya kwishyura umwenda bishingiye ungana na 10.273.768 Frw abazwe kugeza kuwa 20/10/2010, ukubiyemo umwenda remezo ungana na 5.500.000 Frw, inyungu zisanzwe za 2.272.914 Frw, inyungu z'ubukererwe zingana na 2.500.667 Frw, inyungu zigakomeza kubarwa kugeza urubanza rupfundikiwe, bakanishyura amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka angana na 8% y'umwenda wose wishyuzwa.

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- [3] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza kuwa 09/03/2012, rwemeza ko abaregwa bagomba gufatanya kwishyura umwenda wa 10.273.768 Frw, ukubiyemo umwenda remezo, inyungu zisanzwe n'iz'ubukererwe, bakanishyura 821.901 Frw y'indishyi z'akababaro zihwanye na 8% by'umwenda wose, yose hamwe akaba 11.095.669 Frw. [4] Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhiza Francine bajurirye Urukiko Rukuru rw'Ubucuruzi bavugaga ko umucamanza wa mbere ntacyo yavuze ku bijyanye n'ubwishingire bw'Ikigega cy'ingwate BPC/GF no ku byemezo byafashwe mu manza zisa nk'urwajurirwe. [5] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza kuwa 21/09/2012, rwemeza ko hashingiwe ku ngingo ya 8(e) ya Memorandum of Understanding (MoU) yo mu mwaka wa 2010 ihindura MoU yasinywe kuwa 02/08/2007, BRD yari kwishyura ihereye ku ngwate ya BPC/GF umwenda ukimara gushyirwa mu cyiciro cya 5, kuba itarabikoze bikaba byarateye igihombo abishingiye Rwanda rw'ubu association kuko biyemeje kwishyura ubwishyu butabanye gushakirwa mu mutungo w'umuryango, bityo ikaba igomba kwishyura umwenda ubaze kugeza kuwa 31/12/2009, havanywemo ingwate ya BPC/GF, inyungu z'ubukererwe zigakomeza kubarwa uherye tariki ya 01/01/2010 kugeza urubanza ruciye. [6] BRD yajurirye mu Rukiko rw'Ikirenga ishingiyeye ku mpamvu zikurikira: kuba Urukiko Rukuru rw'Ubucuruzi rwarasesenguye nabi ingingo ya 8 ya Memorandum of understanding (MoU) yasinywe hagati ya BRD na PSF rwemeza ko abaregwa batagomba kwishyura amafaranga y'Ikigega cy'ingwate; kuba rwarategetse BRD kwishyura abo yareze aho kubatega kwishyura, ntirusobanure amafaranga BRD igomba kwishyurwa; kuba ntacyo rwavuze ku mafaranga y'ikurikirana rubanza n'igihembo cy'Avoka angana na 8% y'umwenda wishyuzwa. [7] Urubanza rwaburanishijwe mu ruhame ku matariki atarandukanye. Kuwa 10/04/2015, Urukiko rwafashe icyemezo ku nzitizi y'iburabubasha yari yabyukijwe n'abaregwa, rwemeza ko ubujurire bwa BRD buri mu bubasha bw'Urukiko rw'Ikirenga. [8] Kuwa 06/11/2015 naho rwafashe icyemezo ku kibazo cyo kumenya niba Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhiza Francine bagomba kwishyura umwenda wose bishingiye, hatavanywemo amafaranga yishingiye n'Ikigega cy'ingwate BPC/GF nk'uko BRD ibivugaga cyangwa agomba kuvanywamo nk'uko abaregwa babivugaga ngo kuko BRD nta bubasha yahawe bwo kuyishyuriza n'amafaranga bahawe akaba yatanze nk'inkunga itarasabwaga kugaruzwa, maze rushingiye ku masezerano BRD yagiranye na PSF rwemeza ko bagomba kwishyura umwenda wose hatavanywemo amafaranga yishingiye n'Ikigega cy'ingwate BPC/GF. [9] Kuri iyo tariki rwemeje kandi ko BRD yagombaga kuba yariyishyuye ihereye ku ngwate ya BPC/GF bitarenze kuwa 31/12/2009, umwenda usigaye utishyurwe nyuma yo kuvanamo ingwate

ukabarirwaho inyungu guhera tariki ya 01/01/2010 kugeza kuwa 31/12/2012, bityo ko mbere yo kwemeza ingano y'umwenda abaregwa bagomba kwishyura, BRD igomba gutanga inyandiko igaragaza umwenda ubaze mu buryo bwashobanuwe.

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[10] Urubanza rwongeye kuburanishwa mu ruhamwe kuwa 23/02/2016, BRD ihagarariwe na Me Barezi Marie Aimée, Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine bahagarariwe na Me Buzayire Angèle, hasuzumwa ingano y'umwenda abaregwa bagomba kwishyura BRD n'indishyi zasabwe n'ababuranyi. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

- i. Kumenya ingano y'umwenda Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine bagomba kwishyura [11] Uburanira BRD avuga ko inyandiko "summary of loan statement" banki yashyikirije urukiko kuwa 10/02/2016 igaragaza ko nyuma yo kuvanamo amafaranga yishingiwe n'ikigega cy'ingwate BPC/GF ku itariki ya 31/12/2009 nk'uko byemejwe n'Urukiko, hasigaye hatishyurwe inyungu zisanze za 1.360.453 Frw n'inyungu z'ubukererwe za 539.647 Frw, yose hamwe aba 1.900.100 Frw, aya mafaranga nayo abariwa inyungu mu gihe cy'amezi 36 guhera tariki ya 01/01/2010 kugeza kuwa 31/12/2012, igiteranyo cyazo kiba 1.986.166 Frw, bivuze ko inyungu abaregwa bagomba kwishyura zihwanye na 3.346.619 Frw (1.360.453 Frw + 1.986.166 Frw). [12] Uburanira Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhoza Francine avuga ko uburyo BRD ibara inyungu butemewe kandi bunyuranyije m'amategeko kuko yakoze "capitalisation" ya 1.900.000 Frw, ifata inyungu zisanze za 1.360.453 Frw, izongeraho inyungu z'ubukererwe za 539.647 Frw, igiteranyo cya 1.900.100 Frw iyabarira inyungu zisanze za 15% n'inyungu z'ubukererwe za 4% mu gihe cy'amezi 36, ziba 1.986.166 Frw, uru rwunguko rukaba rukabije hakurikijwe amasezerano y'inguzanyo ateganywa ko amafaranga atishyurwe abarirwaho gusa inyungu z'ubukererwe za 4%. [13] Akomeza avuga ko abaregwa basanga hashingiwe ku masezerano bagiranye na BRD, imibare yakorwa mu buryo bukurikira: inyungu za 1.900.100 Frw zasigaye nyuma yo kuvanamo amafaranga yishingiwe n'ikigega cy'ingwate zabarirwaho inyungu z'ubukererwe za 4% ku mwaka mu gihe cy'amezi 36, aya mafaranga 228.012 Frw (76.004 Frw:12 x 36 mois) agateranywa na 1.360.453 Frw yasigaye atishyurwe ku nyungu zisanze, akaba 1.558.468 Frw y'inyungu zigomba kwishyurwa, ko bibaye ngombwa urukiko rwashyiraho umuhanga wo kubara inyungu. [14] Uburanira BRD avuga ko asanga atari ngombwa gushyiraho umuhanga wo kubara inyungu kuko uburyo banki yazibaze bihuje n'icyemezo cy'Urukiko, ko kandi bitakwumvikana ko abaregwa bateshuka ku nshingano zabo zo kwishyura noneho bagategewe kwishyura gusa inyungu z'ubukererwe za 4%, ko bibaye gutyo abantu bese bajya bareka kwishyura mu gihe kugirango bajye bishyura gusa inyungu z'ubukererwe. [15] Uburanira abaregwa avuga ko urwunguko rusabwa na BRD rukabije kuko amafaranga 1.900.100 abarwaho inyungu z'ubukererwe nayo ubwayo abariwemo inyungu z'ubukererwe, ko atabona icyo BRD yaba ihombye hashyizweho umuhanga kuko batemeranywa ku mibare. UKO URUKIKO RUBIBONA:

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[16] Ingingo ya 52 y'Igitabo cya gatatu cy'urwunge rw'amategako y'imbonezamubano ku byerekeye imirimo nshinganwa cyangwa amasezerano cyakurikizwaga igihe amasezerano hagati ya BRD na Rwanda rw'ubu association yakorwaga ivuga ko "inyungu zibyawe n'imari y'iremezo zishobora nazo kubyara izindi nyungu biturutse k'urubanza cyangwa ku masezerano yihariye, zipfa gusa, ari mu kirego cyangwa mu masezerano kuba ari inyungu nibura z'umwaka wuzuye". [17] Mu masezerano BRD yagiranye na Rwanda rw'ubu association, havugwamo mu ingingo ya 5 ko "banki izajya ihabwa inyungu y'amafaranga 15% buri mwaka ku mafaranga izaba yaratanze ariko akaba atarishyurwa....", kandi ko "inyungu z'ubukererwe zingana na 4% z'amafaranga yose atarishyurwa zizajya zihita ziyongera ku mafaranga yakereranywe....", ibi bikaba byumvikanisha ko amafaranga yose yakererewe kwishyurwa agomba kubarirwaho inyungu zisanze za 15% n'iz'ubukererwe za 4%, ni ukuvuga 19%. [18] Ku birebana n'inyungu zishyuzwa muri uru rubanza, bigaragara ko ku itariki ya 31/12/2009 inyungu zasigaye zitishyurwe nyuma yo kvanamo amafaranga yishingiwe n'Ikigega cy'ingwate BPC/GF ari 1.360.453 Frw y'inyungu zisanze na 539.647 Frw y'inyungu z'ubukererwe, yose hamwe akaba 1.900.100 Frw, Urukiko rukaba rusanga aya mafaranga nayo ari umwenda wa Banki ugomba kwishyurirwa inyungu zisanze za 15% n'iz'ubukererwe za 4% hakurikijwe ibyo ababuranyi bumvikanye mu masezerano yihariye bagiranye no ku ingingo ya 52 y'Igitabo cya gatatu cy'urwunge rw'amategako y'imbonezamubano. [19] Hakurikijwe rero ibimaze gusobanurwa n'icyemezo cyafashwe mu rubanza rubanziriza urundi ko inyungu zasigaye zitishyurwe nyuma yo kvanamo amafaranga yishingiwe n'Ikigega cy'ingwate BPC/GF zabarirwa inyungu kugeza kuwa 31/12/2012, Urukiko rusanga abaregwa bagomba kwishyura inyungu za 3.346.619 Frw nk'uko byagaragajwe na BRD mu nyandiko "summary of loan statement, ayo mafaranga akaba yiyongera ku mafaranga 5.600.100 yishyurwe n'Ikigega cy'ingwate BPC/GF bagomba gusubiza binyujijwe kuri BRD, yose hamwe akaba 8.946.719 Frw. ii. Kubyerekeye indishyi zisabwa n'ababuranyi ku mpande zombi [20] Uburanira BRD asaba ko abaregwa bategekwa kwishyura 1.000.000 Frw mu Rukiko rw'Ikirenga na 500.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka, ndetse na 8% y'amafaranga yoze yishyuzwa y'indishyi z'akababaro nk'uko bikubiye mu masezerano banki yagiranye n'abaregwa, naho uburanira abaregwa akavuga ko nta ndishyi BRD ikwiye kuko bakomeje kuyisaba kwishyura ihereye ku mafaranga y'ikigega cy'ingwate ntibikore, umwenda ukomeza gukura ku makosa yayo, banki ikaba kandi idashobora kwerekana akababaro yagize, kuba amasezerano yagiranye n'abaregwa ateganywa indishyi za 8% bikaba nta gaciro bifite kuko bidakurikije amategako. [21] Uburanira abaregwa nawe mu bujirire bwuririye ku bundi asaba ko BRD yategekwa kwishyura 1.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka, naho uburanira BRD akavuga ko ubundi igihembo cy'Avoka cyishyurwa n'uwatsinzwe, ko nta kosa banki yakoze ku buryo yategekwa kwishyura indishyi abaregwa. UKO URUKIKO RUBIBONA

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[22] Urukiko rusanga indishyi ababuranyi basaba nta shingiro zifite kuko buri ruhande rufite ibyo rwatsindiwe mu rubanza. III. ICYEMEZO CY'URUKIKO [23] Rwemeje ko ubujurire bwa BRD bufite ishingiro kuri bimwe; [24] Rutegetse Ngezahayo Rutamu Vincent, Kavuma Emmanuel, Ndahumba Jean Baptiste na Umuhiza Francine gufatanya kwishyura BRD umwenda wa 8.946.719 Frw, ukubiyemo amafaranga yishuwe n'Ikigega cy'ingwate BPC/GF angana na 5.600.100 Frw, inyungu zisanzwe n'iz'ubukererwe zingana na 3.346.619 Frw; [25] Rubategetse kandi gufatanya kwishyura amagarama y'urubanza ahwanye n'ibihumbi ijana (100..000 Frw)

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