

RWANDA / JUDGMENT

Bucyensenge v IMBANK kinya

RCOMA 0464/14/HCC

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Text

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BUCYENSENGE v. I&M BANK [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0464/14/HCC (Rwanyindo, P.J) 12 Nzeli 2014] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Igihe ntarengwa cyo kujuririra ikirego cyatanzwe n'umuburanyi umwe – Kujuririra ikirego cyatanzwe n'umuburanyi umwe bikorwa mu minsi itanu – Itegeko no21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruci, iz'umurimo n'iz'ubutegetsi, ingingo ya 329. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gutambamira icyemezo cya perezida w'Urukiko gishyiraho itariki ya cyamunara – Umuburanyi ntiyasaba gutambamira icyemezo cya perezida gishyiraho itariki ya cyamunara avuga ko gifite inenge kuko atari urubanza ruburanishwa, ahubwo ari icyemezo cy'ubuyobozi – Itegeko no21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruci, iz'umurimo n'iz'ubutegetsi, ingingo ya 295. Incamake y'ikibazo: Bisabwe na I&M BANK, hagamijwe kurangiza urubanza rwaciwe n'Urukiko rw'Ikirenga, Urukiko rw'Ubucuruzi rwa Nyarugenge rwafashe icyemezo cyo gushyiraho itariki yo guteza cyamunara ubutaka hamwe n'inyubako biri mu bibanza n°283 na n°544, rwemeje ko Bucyensenge agomba kwishyura I&M BANK amafaranga angana na103.777.778 hiyongereyeho na 10.377.778frws. Bucyensenge charles

yatanze ikirego cyo gutambamira icyo cyemezo mu Rukiko rw'Ubucuruzi rwa Nyarugenge avuga ko urubanza rushakira kurangizwa rwateshejwe agaciro, uru rukiko narwo rwemeza ko ikirego cye nta shingiro gifite. Bucyensenge yajuririye mu Rukiko Rukuru rw'Ubucuruzi avuga ko icyemezo cyafashwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge cyo gushyiraho itariki yo guteza cyamunara cyagombaga kumanwaho kubera inenge gifite, ndetse ko I&M BANK yatanze ikirego ishingiyeye ku nyandiko nsobanura kirego itanzwe n'uburanyi umwe. I&M BANK Ltd yireguye ivuga ko ikirego cya Bucyensenge Charles kitagomba kwakirwa kubera ko yajuririye mpitagihe. Inavugaga kandi ko itatanze ikirego mu buryo bw'inyandiko nsobanura kirego itanzwe n'umuburanyi umwe ahubwo ko yasabye itariki ya cyamunara hakurikijwe amategeko kandi bidasaba gutanga igarama Incamake y'icyemezo: 1. Ubujurire bwa Bucyensenge bwatanzwe mu gihe gikurikijwe amategeko kuko igihe ntarengwa cyo kujuririra ikirego cyatanzwe mu buryo bw'inyandiko gitanzwe n'umuburanyi umwe ari iminsi 5.

2. I&M BANK ntiyatanze ikirego mu buryo bw'inyandiko itanzwe n'umuburanyi umwe ahubwo icyo yakoze ni ugushyikiriza urukiko ibisabwa kugirango ihabwe itariki ya cyamunara. Ikibigaragaza ni uko nta magarama yatanzwe kuko icyasabwaga cyari mu bubasha bwa Perezida w'urukiko bwo gufata ibyemezo by'ubuyobozi. Bityo icyo cyemezo kikaba kitagomba kujuririrwa cyangwa gutambamirwa.
3. Ikirego cya Bucyensenge Charles gitambamira icyemezo no 008/BMG/2014 cyo gushyiraho itariki yo guteza cyamunara ubutaka buri mu bibanza n° 283 na n° 544 n'inyubako abisabwe na I&M BANK cyafashwe na Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge

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ku wa 30/06/2014 nticyagombaga kwakirwa n'Umucamanza wa mbere kubera ko icyo cyemezo ari icyo ubuyobozi 3. Ubujurire bwa Bucyensenge bwatanzwe mu gihe gikurikijwe amategeko kuko igihe ntarengwa cyo kujuririra ikirego cyatanzwe mu buryo bw'inyandiko gitanzwe n'umuburanyi umwe ari iminsi 5. Ubujurire burakiriwe. Ikirego cyatanzwe mu rwego rwa mbere nticyagombaga kwakirwa. Amagarama yatanzwe n'uwajuriye agumye mu isanduku ya leta. Amategeko yashyirahweho: Itegeko no 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 295 na 329. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA MU NCAMAKE [1] Kuwa 30/06/2014, Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge yafashe icyemezo cyo gushyiraho itariki (12/08/2014) yo guteza cyamunara ubutaka buri mu bibanza n° 283 na n° 544 n'inyubako abisabwe na I&M BANK Ltd yashakaga kurangiza urubanza RCOMA 00119/10/CS rwaciye n'Urukiko rw'Ikirenga kuwa 28/12/2012 rwemeza ko Bucyensenge Charles agomba kuyishyura Frw 103.777.778 hiyongereyeho Frw 10.377.778. [2] Bucyensenge Charles yatanze ikirego cyo gutambamira icyo cyemezo mu Rukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko icyo kirego nta shingiro gifite kubera ko cyafashwe hakurikijwe ingingo ya 295 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (Abisabwe n'uwafatiriye, kandi amaze kugenzura ko imihango yose y'ifatira yubahirijwe, Perezida w'Urukiko rw'ibanza rw'aho icyamunara kizabera, cyangwa Perezida w'urukiko rw'ubucuruzi mu

gihe harangizwa urubanza rwaciwe n'inkiko z'ubucuruzi, akena itariki n'aho ibintu bigomba kugurishirizwa, ahantu n'uburyo amatangazo y'icyo cyamunara agomba kumanikwa) kandi icyo cyemezo kikaba kitari mu byemezo bivugwa mu ngingo ya 360 y'Itegeko ryavuzwe haruguru bisabwa gufatwa hamaze gutangwa ingwate y'amagarama. Rwemeje kandi ko ikirego cya Bucyensenge Charles nta shingiro gifite kubera ko ibyo avuga ko urubanza RCOMA 00119/10/CS rushaka kurangizwa rwateshejwe agaciro nta shingiro bifite kuko atagaragaza urundi ruruvuguruzwa rwabaye Itegeko. Rwemeje na none ko icyo kirego nta shingiro gifite kubera ko ibyo Bucyensenge Charles avuga ko imihango y'ifatira itubahirijwe nta shingiro bifite kuko yamenyeshejwe icyemezo gihatira kwishyura anamenyeshwa ko natishyura icyo cyemezo kizahinduka ifatirabwishyu ry'umutungo we utimukanwa. Icyo nyuma Urukiko rwemeje ni uko ikirego cya Bucyensenge Charles nta shingiro gifite kubera ko ibyo avuga ko agomba guhabwa uburenganzira bwo gutanga indi mitungo ye itimukanwa akaba ariyo yafatirwa nta shingiro bifite kuko atagaragaza iyo mitungo iyo ariyo n'aho ihereye ngo anagaragaze ko ishobora kuvamo ubwishyu bw'umwenda yishyuzwa.

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- [3] Bucyensenge Charles yajuriye urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku mpamvu zikurikira:
- Icyemezo cyafashwe cyo guteza cyamunara cyagombaga kvanwamo kubera inenge gifite ariko Urukiko ntirwabikoze. Ikindi ni uko icyagombaga gusuzumwa n'Umucamanza wa mbere ari ukureba niba haricyo icyo cyemezo cyagombaga kuramira mu buryo bwihuse nk'uko ingingo ya 324 y'Itegeko ryavuzwe haruguru ibiteganywa.
 - Mu kwemeza ko icyemezo cyatambamirwaga kitari mu biteganywa mu ngingo ya 360 y'Itegeko ryavuzwe haruguru, Urukiko rwanyuranyije n'iyi ngingo kuko mu gace kayo ka 8 hateganyijwe inyandiko nsobanurikirego itanzwe n'umuburanyi umwe, kandi ari nayo I&M BANK Ltd yakoresheje kugira ngo ibone icyemezo cy'Urukiko kiriho umukono w'Umucamanza n'Umwanditsi, kuko nta bundi buryo bushingiye ku mategeko bwagaragajwe yaba yaregeyemo Urukiko. [4] I&M BANK Ltd yireguye itanga inzitizi yo kutakira ikirego cya Bucyensenge Charles kuko yagitanze impitagihe. Ivuga ko Bucyensenge Charles yagombaga gutanga ikirego cy'ubujurire bitarenze ku 17/08/2014 kuko icyemezo cyarafashwe kuwa 12/08/2014 kandi iminsi yo kujurira ari 5. Ivuga kandi ko nk'uko Umucamanza wa mbere yabisobanuye umuhango wo kugena itariki ya cyamunara ntabwo uri ku rutonde rw'ibirego bisabwa ingwate y'amagarama bivugwa mu ngingo ya 360 y'Itegeko ryavuzwe haruguru; ahubwo uwo muhango ukorwa hakurikijwe ibivugwa mu ngingo ya 295, igika cya 1, y'iryo Tegeko. [5] Ibibazo bisuzumwa muri uru rubanza n'ibikurikira:
 - Kumenya niba Bucyensenge Charles yatanze ubujurire bwe impitagihe.
 - Kumenya niba Bucyensenge Charles yashoboraga gutambamira icyemezo cya Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge gishyiraho itariki ya cyamunara. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA A- Kumenya niba Bucyensenge Charles yatanze ubujurire

bwe impitagihe. [6] I&M BANK Ltd ivuga ko ikirego cya Bucyesenge Charles kitagomba kwakirwa kubera ko yajuriye mu gihe kidakurikije amategeko. Ivuga ko yagombaga gutanga ikirego cy'ubujurire bitarenze kuwa 17/08/2014 kuko icyemezo cyafashwe kuwa 12/08/2014 kandi iminsi yo kujurira ari 5. [7] Bucyesenge Charles yiregura avuga ko yajuriye mu gihe gikurikije amategeko, ko urubanza rwagombaga gusomwa ku wa 11/08/2014 ariko ntwasomwa uwo munsu, rusomwa umunsu ukurikira ku wa 12/08/2014. Abajijwe igihe yamenyeshejwe imikirize y'urubanza, asubiza ko atabyibuka ariko kandi ko atariwe ugomba kugaragaza itariki yamenyeshejwe ahubwo ko ari uvuga ko yajuriye impitagihe ugomba kubikora kuko amategeko ateganya ko urega ariwe utanga ibimenyetso by'ibyo aregera. [8] Ku bijyanye n'icyo kibazo, Urukiko rusanze ko nyuma yo kumva imyiregure ya Bucyesenge Charles, I&M BANK Ltd yavuze ko kopi ihari y'urubanza igaragaramo ko Umwanditsi yayihaye Bucyensenge Charles kuwa 19/08/2014. Rusanze ko Bucyensenge Charles nawe atabihakanye. Rusanze rero ko kuba Bucyensenge Charles yarajuriye ku wa 26/08/2014 urubanza yamenyeshejwe ku wa 19/08/2014, akaba yarajuriye mu gihe gikurikije

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amategeko kuko igihe ntarengwa cyo kujuririra ikirego cyatanze mu buryo bw'inyandiko gitanzwe n'umuburanyi umwe ari iminsi 5 nk'uko biteganywa n'ingingo ya 329 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (2012). B- Kumenya niba Bucyensenge Charles yarashoboraga gutambamira icyemezo cya Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge gishyiraho itariki ya cyamunara. [9] Bucyesenge Charles yatambamiye icyemezo cya Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge avuga ko gifite inenge kandi ko cyasuzumwe kigafatwaho icyemezo kandi uwagitanze nta garama yari yatanze. [10] I&M BANK Ltd ivuga ko itatanze ikirego mu buryo bw'inyandiko itanzwe n'umuburanyi umwe ahubwo yasabye itariki ya cyamunara hakurikijwe ingingo ya 295 y'Itegeko ryavuzwe haruguru kandi ibyo ntabwo bisaba gutanga igarama. [11] Urukiko rusanze koko ko I&M BANK Ltd itigeze itanga ikirego mu buryo bw'inyandiko itanzwe n'umuburanyi umwe nk'uko Bucyensenge Charles abivugaga ahubwo I&M BANK Ltd yasabye itariki ya cyamunara, ishikiriza Urukiko ibisabwa ngo ihabwe itariki. Rusanze ko Perezida w'Urukiko yafashe icyemezo cyo kuyiha itariki ya cyamunara hatabaye iburanisha kuko atari ngombwa ahubwo icyo yakoze ni gusuzuma ibyo yashyikirijwe bimwemerera gutanga itariki ya cyamunara. Rusanze ko ibyo Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge yakoze bishingiye ku ngingo ya 295 y'Itegeko ryavuzwe haruguru ivuga ko abisabwa n'uwafatiriye, kandi amaze kugenzura ko imihango yose y'ifatira yubahirijwe, Perezida w'Urukiko rw'ibanze rw'aho icyamunara kizabera, cyangwa Perezida w'urukiko rw'ubucuruzi mu gihe harangizwa urubanza rwaciye n'inkiko z'ubucuruzi, aha itariki n'aho ibintu bigomba kugurishirizwa, ahantu n'uburyo amatangazo y'icyo cyamunara agomba kumanikwa. Rusanze ko hakurikijwe iyo ngingo, icyemezo gifatwa na Perezida w'Urukiko ari icyemezo cy'ubuyobozi kuko atari urubanza arimo kuburanisha, bityo icyo cyemezo kikaba kitagomba kujuririrwa cyangwa gutambamirwa. Rusanze ko kuba Bucyensenge Charles avuga ko ikirego cya I&M BANK Ltd ari ikirego gitangwa mu buryo bw'inyandiko itanzwe n'umuburanyi umwe kubera ko Perezida yafashe icyemezo afashijwe

n'Umwanditsi, ibyo bikaba nta shingiro bifite kubera ingingo ya 295 yavuzwe haruguru itamubuza kubikora afashijwe n'Umwanditsi. Rusanze kandi ko ikigaragaza ko atari ikirego gitangwa mu buryo bw'inyandiko itanzwe n'umuburanyi umwe ni uko nta garama yatanze kuko icyasabwaga byari mu bubasha Perezida bw'Urukiko rw'Ubucuruzi afite bwo gufata ibyemezo by'ubuyobozi. [12] Bityo, rukaba rusanga ko ikirego cya Bucyensenge Charles gitambamira icyemezo no 008/BMG/2014 cyo gushyiraho itariki yo guteza cyamunara ubutaka buri mu bibanza no 283 na no 544 n'inyubako abisabwe na I&M BANK cyafashwe na Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 30/06/2014 kitagomba kwakirwa n'Umucamanza wa mbere kubera ko icyo cyemezo ari icy'Ubuyobozi. III. ICYEMEZO CY'URUKIKO [13] Rwemeje kwakira ubujurire bwa Bucyensenge Charles.

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[14] Rwemeje ko ikirego yatanze mu rwego rwa mbere gitambamira icyemezo no 008/BMG/2014 cya Perezida w'Urukiko rw'Ubucuruzi rwa Nyarugenge gishyiraho itariki ya cyamunara kitagombaga kwakirwa. [15] Rutesheje agaciro urubanza RCOM 0788/14/TC/NYGE rwaciwe ku wa 12/08/2014 n'Urukiko rw'Ubucuruzi rwa Nyarugenge. [16] Rutegetse ko ingwate y'amagarama Bucyensenge Charles yatanze ihera mu Isanduku ya Leta.

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