

RWANDA / JUDGMENT

BUGINGO V USANASE N'ABANDI

RCA00033/2022/HC/MUS

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BUGINGO V USANASE N'ABANDI

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Text

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BUGINGO V USANASE N'ABANDI

[Rwanda URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA00033/2022/HC/MUS (Gasore, P.J.) 08 Werurwe 2023] Itegeko ry'imiburanishirize y'imanza mbonezamubano – impanuka – impanuka itari iyo mu muhanda – Impanuka yitwa iyo muhanda iyo ikinyabiziga kiri kugenda mu muhanda kikagongana n'ikindi cyangwa kikagonga umuntu – indishyi zikomoka ku mpanuka itari iyo mu muhanda zibarwa mu bushishozi bw'Urukiko. Itegeko rigenga uburyozwe – uburyozwe bushingiye ku ikosa – ikosa ryakozwe n'umukozi uri mu kazi – Ikosa ryakozwe n'umukozi mu rwego rw'akazi, mu masaha y'akazi kandi mu mwanya no mu nyungu z'umukoresha, rituma uburyozwe bw'indishyi zirikomokaho busabwa umukoresha Incamake y'ukibazo: uru rubanza rwatangiye abo mu muryango wa Twahirwa barega Bugingo mu Rukiko Rwisumbuye rwa Rubavu, basaba Urukiko kumutegeka kubishyura indishyi zitandukanye zikomoka ku mpanuka yatewe n'imodoka ye ariko itari kugenda mu muhanda kuko iyo modoka yatobotse ipine, shoferi wayo yitabaza Twahirwa kugira ngo arihome, amaze kurihoma, shoferi yacometse itiyi ivana umwuka muri compresseur y'imodoka iwujyana mu ipine, abwira Twahirwa gufata iyo tiyo kugira ngo umwuka winjire neza, ajya kuri volant akandagira umwuka

arenza ukenewe bituma urugori rw'ipine ruvamo, ipine iraturika, rizamura Twahirwa mu kirere yikubita hasi arangirika, ajyanwa kwa muganga, agezeyo arapfa. Bugingowe yireguye asaba ko iki kirego kitakirwa kuko bagombye kuba barareze umwishingizi w'imodoka yateje impanuka bikaviramo Twahirwa gupfa. Urukiko mu rubanza RCA00040/2021/TGI/RBV rwemeje ko abagize umuryango wa Twahirwa bafite inyungu n'ububasha bwo kurega kuko Bugingo ari we utarubahirije imihango ijyanye n'imenyekanisha y'impanuka itewe n'ikinyabiziga cye. Rwasanze imodoka ya Bugingo yarishe Twahirwa arimo guhoma ipine ryayo kubera uburangare, rusanga agomba guha indishyi zitandukanye abagize umuryango we kuko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse. Bugingo ntiyishimiye iki cyemezo, akijurira mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko icyatumye ajurira ari uko Urukiko rwirengagije inzitizi yari yarushyikirije yo kutakira ikirego, Impamvu ya kabiri ni uko ngo Urukiko rwavuze ko imodoka ye yateje impanuka kandi atari byo, ahubwo ngo hari icyaha cyakozwe n'umushoferi w'imodoka, uyu ngo akaba ari we ukwiye kuryozwa indishyi zikomoka kuri icyo cyaha. Indi mpamvu ya gatatu ni uko ngo indishyi zose zatanzwe muri uru rubanza zitagombaga gutangwa. Urukiko rwemeje mu rubanza RCA00033/2022/HC/MUS ko ibyabaye kuri Twahirwa atari impanuka yo mu muhanda kuko imodoka idashobora gukora impanuka ngo ikomeretse umuntu, itigeze iva aho iri. Icyabaye ni uko, bimwe mu bigize iyo modoka (ipine na compresseur) byakoreshejwe nabi bikomeretsa Twahirwa bimuviramo gupfa. Bityo Urukiko rwemeza ko impamvu y'ubujurire yuko Urukiko rwabanje rwakiriye ikirego rutaragomba kucyakira kuko harezwe utagomba kuregwa nta shingiro ifite kuko ntihari kuregwa umwishingizi kandi nta mpanuka yabaye ahubwo Bugingo iyo yumva indishyi zigomba kuryozwa umwishingizi yari kumugobokesha. Urukiko rwemeje kandi ko Umushoferi w'imodoka ataryozwa indishyi kuko ibyo yakoze yabikoze mu rwego rw'inshingano ze za shoferi, abikora mu izina no mu nyungu za nyiri modoka, akoresha ibikoresho bigize imodoka yakoresheje mu kazi kandi abikora mu masaha y'akazi. Ku bijyanye n'uburyo indishyi z'abazwe mu rubanza rwajuririwe, Urukiko Rukuru urugereko rw Musanze rwemeje ko zabazwe mu bushishozi bw'Urukiko bityo rukaba nta Tegeko rwishe kuko nta rihari riteganywa uburyo bwo kubara indishyi zikomoka ku mpanuka itari iyo mu muhanda. Incamake y'icyemezo:1. Impanuka yitwa iyo muhanda iyo ikinyabiziga kiri kugenda mu muhanda kikagongana n'ikindi cyangwa kikagonga umuntu. bityo, impanuka ikinyabiziga gikoze

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gihagaze, ibikoresho byacyo bigakomeretsa cyangwa bigahitana umuntu ntabwo ari impanuka yo muhanda ituma umwishingizi asabwa indishyi ahubwo ni impanuka isanzwe ituma hatangwa indishyi mu bushishozi bw'Urukiko.

- Ikosa ryakozwe n'umukozi mu rwego rw'akazi, mu masaha y'akazi kandi mu mwanya no mu nyungu z'umukoresha, rituma uburyozwe bw'indishyi zirikomokaho busabwa umukoresha. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Amabwiriza No 01/2014 agena ibihembo mbonera by'abavoka, ingingo ya 34 Imanza zifashishijwe: Urubanza RPA 0210/10/CS rw'Ubushinjacyaha v Munyankumburwa Valens, rwaciye n'Urukiko rw'Ikirenga kuwa 18 Nyakanga 2014. Urubanza RS/INJUST/RC 00013/2021/CA, rwa Manirarora v Rwanda Rudniki

Ltd, rwaciwe n'Urukiko rw'ubujurire ku wa 28/06/2022 Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 04/10/2017 imodoka ya Bugingo Bashir ifite plaque RD 977E yatobotse ipine, shoferi wayo yitabaza Twahirwa Pacifique kugira ngo arihome. Amaze kurihoma, shoferi yacometse itiyi ivana umwuka muri compresseur y'imodoka iwujyana mu ipine, abwira Twahirwa Pacifique gufata iyo tiyo kugira ngo umwuka winjire neza, ajya kuri volant akandagira umwuka arenza ukenewe bituma urugori rw'ipine ruvamo, ipine iraturika, rizamura Twahirwa Pacifique mu kirere yikubita hasi arangirika, ajyanwa mu bitaro, agezeyo arapfa. Nyuma y'urupfu rwa Twahirwa Pacifique, umwana yasize witwa Uwase Shekna, ababyeyi be Zirimwabagabo Pascal na nyina Uwayo Valentine n'abavandimwe be Bucyanayandi Albert, Niyonkuru Marcel, Dusenge Placide na Nibishaka Emmanuel, bereze nyiri modoka bamusaba kubaha indishyi z'akababaro zingana na 21.000.000Frw. Bugingo Bashir yasabye ko iki kirego kitakirwa kuko bagombye kuba barareze umwishingizi w'imodoka yateje impanuka bikaviramo Twahirwa Pascal gupfa. [2] Urukiko Rwisumbuye rwa Rubavu, nyuma yo gusuzuma imiburanire ya buri ruhande n'ibimenyetso rwashyikirijwe, rwasanze abagize umuryango wa Twahirwa Pacifique bafite inyungu n'ububasha bwo kurega kuko Bugingo Bashir ari we utarubahirije imihango ijyanye n'imenyekanisha y'impanuka itewe n'ikinyabiziga cye. Rwasanze imodoka ya Bugingo Bashir ifite plaque RD 977E yarishe Twahirwa Pacifique arimo guhoma ipine ryayo kubera uburangare, rusanga agomba guha indishyi abagize umuryango we kuko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse. Rwategetse Bugingo Bashir guha Uwase Shekna indishyi z'akababaro zikomoka ku rupfu rwa se Twahirwa Pacifique zingana na miliyoni imwe (1.000.000Frw). Rwamutegetse guha ababyeyi ba nyakwigendera aribo Zirimwabagabo Pascal na Uwayo Valentine, indishyi z'akababaro zingana na 500.000Frw kuri buri umwe, bombi akabaha miriyoni imwe (1.000.000Frw). Rwamutegetse guha abavandimwe ba nyakwigendera : Bucyanayandi Albert, Niyonkuru Marcel, Dusenge Placide na Nibishaka Emmanuel indishyi z'akababaro zingana na 250.000Frw kuri buri umwe, bese akabaha miriyoni imwe (1.000.000Frw). Rwamutegetse gusubiza abarega igihembo cy'avoka wabahagarariye kingana n'ibihumbi magana atanu (500.000Frw). [3] Bugingo Bashir ntiyishimiye iki cyemezo. Yajuririye uru rubanza mu Rukiko Rukuru, Urugereko rwa Musanze. Yavuze ko icyatumye ajurira ari uko Urukiko rwirengagije inzitizi yari yarushyikirije yo kutakira ikirego. Impamvu ya kabiri ni uko ngo Urukiko rwavuze ko imodoka ye yateje impanuka kandi atari byo, ahubwo ngo hari icyaha cyakozwe n'umushoferi w'imodoka,

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uyu ngo akaba ari we ukwiye kuryozwa indishyi zikomoka kuri icyo cyaha. Indi mpamvu ni uko ngo indishyi zose zatanze muri uru rubanza zitagombaga gutangwa. Buri wese, yasabye amafaranga y'ikurikiranarubanza n'ighembo cya avoka mu bujurire. [4] Hakurikijwe ibimaze kuvugwa haruguru, muri uru rubanza hasuzumwe ibibazo bikurikira Kumenya niba ibyabaye ku wa 04/10/2017 ari impanuka no kumenya niba Urukiko rwirengagije yo kutakira ikirego Kumenya niba umushoferi w'imodoka ari we ukwiye kuryozwa indishyi muri uru rubanza

Kumenya niba indishyi zose zemejwe n'Urukiko Rwisumbuye rwa Rubavu zaragombaga gutangwa Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya avoka akwiye gutangwa II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA A. Kumenya niba ibyabaye ku wa 04/10/2017 ari impanuka no kumenya niba Urukiko rwariyengagije inzitizi yo kutakira ikirego [5] Bugingo Bashir, aburanirwa na Me Rusagara Innocent, yavuze ko yatanze inzitizi mu rubanza rujurirwa avuga ko ikirego kitagombaga kwakirwa ngo gisuzumwe mu gihe abaregeye indishyi batubahirije imihango iteganywa n'Iteka rya Perezida No 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga cyane cyane mu ngingo yaryo ya 3 aho iteganywa ko: Uretse igihe habayeho ikurikiranacyaha, hakurikijwe ingingo ya 9 y'itegeko N° 41/2001 ryo kuwa 19/09/2001 ryerekeye itangwa ry'indishyi ku bagize impanuka zitewe n'ibinyabiziga, uwahohotewe agomba, ku buryo budakuka, mbere yo gutanga ikirego mu rukiko cyerekeye indishyi zitangwa n'umwishingizi w'umushoferi uri mu cyaha, kwaka indishyi mu bwumvikane no kumuha inyandiko zose zerekana ko ibyo yaka bifite ishingiro, hanmo n'inyandiko-mvugo igaragaza impanuka yakozwe na polisi. Ngo iyi ngingo ikomeza ivuga ko mu minsi mirongo itatu ikurikira iyakirwa ry'inyandiko zemeza impanuka zivugwa mu gika kibanza, umwishingizi agomba kumenyesha uwahohotewe icyemezo cye ku buryozwe bw'impanuka. Abagiranye amasezerano babyumvikanyeho, igihe cyavuzwe haruguru gishobora kongerwaho iminsi itarënga mirongo itandatu, kugira ngo bifashe umwishingizi gushakisha amafaranga akurikije ibyo abona ko an ngombwa kugira ngo atunganye ikibazo cy'uburyozwe, nko kwitabaza ubundi buhanga. Mu gihe hatabaye ubwumvikane ku buryozwe bw'impanuka, nibwo uwahohotewe ashobora gutanga ikirego mu rukiko. iyo umwishingizi yemera uburyozwe, uwahohotewe agomba gukurikiza uburyo bw'ubwumvikane bw'itangwa ry'indishyi, hakurikijwe ubwumvikane buteganyijwe mu ngingo zikurikira z'uyu mutwe. [6] Yakomeje avuga ko nk'uko abaregeye indishyi babivugaga ndetse na Raporo y'inzego z'ibanze nayo igashimangira ko impanuka yabaye itewe n'ikibazo cy'umwuka wabaye mwinshi mu ipine igaturika, mu gihe urukiko rujuririwe rwabona ko ibyabaye ari impanuka yo mu muhanda; ngo rwakwemeza ko abaregeye indishyi batubahirije inzira ziteganywa n'itegeko mu rwego rwo kwishyura indishyi zikomoka ku mpanuka zatewe n'ibinyabiziga nk'uko biteganywa n'iteka rya perezida No 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Ngo uretse no kutubahiriza inzira ziteganyijwe n'itegeko, ngo bareze uwo batagombaga kurega uko imodoka RD 977E yateye impanuka yari ifite umwishingizi bwa RADIANT Insurance company Ltd, ngo iki kirego nticyagombaga kwakirwa ahubwo abaregeye indishyi bari bakwiye kurega RADIANT Insurance company Ltd kuko ari yo mwishingizi w'ikinyabiziga. [7] Abaregeye indishyi muri uru rubanza (abaregwa mu bujurire), bahagarariwe na Me Dukundane Anastase, bireguye bavuga ko iyi mpamvu y'ubujurire nta shingiro ifite kubera impamvu zitandukanye. Impamvu ya mbere ni uko urega avuga ko ibyabaye ari impanuka yo mu

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muhandanda kandi atari byo. Iyo aza kubona ko ari impanuka aba yarabimenyesheje umwishingizi w'ikinyabiziga, kuba atagaragaza imenyekanisha ry'impanuka yakoze bisobanuye ko nta mpanuka yo mu muhandanda yabaye, na none kandi ngo ntagaragaza inyandiko mvugo y'impanuka yakozwe na Police ishami ry'imapanuka zo mu muhandanda. Indi mpamvu bashingiraho ni uko ngo Bugingo Bashir yasabwe ko niba yumva ko ibyabaye yari impanuka yo mu muhandanda yagobokesha uwo yita umwishingizi w'ikinyabiziga ariko ntiyabikora, kuba rero adashobora kugobokesha umwishingizi no kuba atarakoze declararation ku mwishigizi mu mategeko bisobanuye ko agomba kwirengera indishyi zatewe n'ipine y'imodoka ye. Na none kandi ngo indishyi ziregwa Bugingo Bashir ntabwo zigomba kubahiriza ingingo ya 3 y'iteka rya Perezida No 31/01/ ryo kuwa 25/08/2003 rishyiraho uburyo bwo kubara indishyi zikomoka ku mpanuka yatetwe n'ibinyabiziga bifite moteri kuko uwarezwe ariwe Bugingo Bashir atari isosiyeti y'ubwishingizi. Basoje bavuga ko Bugingo Bashir wajuriye yitiranya indishyi z'akababaro abarega baregeye mu Rukuko Rwisumbuye rwa Rubavu n'indishyi umuntu ahabwa iyo yagonzwe n'ikinyabiziga ; ngo izindi zose zitangwa hashingiwe ku mategeko atandukanye kandi ngo imibarire yazo iratandukanye. ngo Urukiko rwagombaga kwakira ikirego kuko hari impamvu ziteganywa n'amategeko abareze bashingiyeho. [8] Urukiko rurasanga inzitizi ya mbere yasuzumwe ku rwego rwa mbere ari iyerekeye amategeko yari gukoreshwa ndetse n'uburyo ikirego cyagombaga gutangwa. Bugingo Bashir yaburanye avuga ko ibyabaye ku wa 04/10/2017 ari impanuka yo mu muhandanda. Ibi ngo byari gutuma ikirego gitangwa hashingiwe ku biteganywa n'Iteka rya Perezida no 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, cyane cyane mu ngingo yaryo ya 3. Ku bw'iyi ngingo ngo hagombaga kubanza kuba ubwumvikane, bwananirana abaregera indishyi bakabona gutanga ikirego mu Rukiko. Ibi ariko Urukiko rusanga nta shingiro bifite kuko nta mpanuka y'imodoka yabaye ku 04/10/2017. Nta modoka yagonze umuntu, cyangwa ngo se imodoka zigongane, cyane cyane ko imodoka idashobora gukora impanuka ngo ikomeretse umuntu ihagaze, itigeze iva aho iri. icyabaye ni uko, mu gihe iyo modoka yari ihagaze, bimwe mu bigize iyo modoka (ipine na compresseur) byakoreshejwe nabi bikomeretsa Twahirwa Pacifique bimuviramo gupfa. Ibi rero ntibyakwitwa impanuka yo mu muhandanda. [9] Urukiko rurasanga ikindi Bugingo Bashir yagarutseho mu bujuriye, nk'impamvu yatumye yari gutuma ikirego kitakirwa, ni uko ngo yarezwe kandi atari we wagombaga kuregwa. Ngo hagombaga kuregwa umwishingizi. Ibi ariko umuntu abisuzumiye hamwe n'ibivuzwe mu gika kibanzirizi iki, ikigaragara ni uko niba nta mpanuka yo mu muhandanda yabayeho, nta n'impamvu yo kurega umwishingizi kuko umwishingizi yishingirije ibyangiritse kubera impanuka. Na none kandi, nk'uko Urukiko Rwisumbuye rwa Rubavu rwabibonye, Bugingo Bshir yari afite uburenganzira bwo kugobokesha umwishingizi niba yari afite impamvu zumvikana zigaragaza ko umwishingizi ari we wagombaga kuregwa, kuba rero atarabikoze bigaragaza ko na we ibyo avuga atabihagazeho neza. [10] Ku bw'ibyo, icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Rubavu cyo kwakira ikirego cy'abaregeye indishyi gikwiye kugumaho. B. Kumenya niba umushoferi w'imodoka ari we ukwiye kuryozwa indishyi muri uru rubanza [11] Mu rubanza RPA0210/10/CS rwakijijwe n'Urukiko rw'Ikirenga kuwa 18 Nyakanga 2014, haburana ubushinjacyaha na Munyankumburwa Valens, hemejwe ko Mu guca urubanza

rusaba indishyi zikomoka ku cyaha cyakozwe n'umukozi, inkiko zigomba kureba niba igikorwa cyakozwe n'umukozi cyari giftanye isano n'akazi ke cyangwa n'inshingano ze. Umukoresha ntiyaryozwa ibyangijwe n'amakosa y'umukozi igihe ntaho bihuriye n'inshingano ze kandi bigakorwa igihe umukoresha atashoboraga kubigenzura. Ariko rero, umukoresha aryozwa izo ndishyi igihe umukozi yarimo arangiza inshingano ze kabone niyo yazirangiza nabi. Gukoresha igikoreshe nabi mu kazi ashinzwe ntibibuza umukoresha kuryozwa ibyangijwe n'iryo kosa mu gihe umukozi aba atatandukiriye inshingano ze. Na none kandi, mu rubanza RPA0074/07/CS rwakijijwe n'Urukiko rw'Ikirenga kuwa 25/07/2008, ubushinjacyaha buburana na Pte Niyoyita

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Innocent, Urukiko rw'Ikirenga rwasobanuye ko Abahanga mu mategeko (VINEY, JOURDAIN et STARK)¹ basanze hari imirongo ngenderwaho itanu mu kureba niba icyangijwe n'umukozi yagikoze mu rwego rw'inshingano ze aribyo bise "points de rattachement du fait dommageable aux fonctions ou au lien de subordination" kugira ngo umukoresha we abe yabiryoze. Harebwa niba ibyakozwe byabaye mu masaha y'akazi, byakorewe aho akazi kagomba gukorerwa, niba ibikoreshe byakoreshejwe byatanze n'umukoresha, niba hari amabwiriza yari yatanze n'umukoresha kandi niba byakozwe mu nyungu z'umukoresha. Ibyemezo byafashwe muri izi manza bikaba bikwiye kwifashishwa mu gusesengura ikibazo kiri muri uru rubanza. [12] Busingo Bashir, aburanirwa na Me Rusagara Innocent, yasobanuye ko nk'uko bishimangirwa n'ibaruwa yo kuwa 01/04/2019 yanditswe na avoka w'abaregwa muri uru rubanza, muri iyo baruwa bakaba barasabaga ko hakorwa PV y'impanuka y'ikinyabiziga cyateye impanuka ariko ubushinjacyaha bukaba butarigeze busaba ko iyo PV ikorwa bitewe n'uko icyo bise impanuka yo mu muhanda atari byo, ngo niho bahera basaba urukiko ko rwabona ko icyabaye atari impanuka yo mu muhanda kuko inzego zibishinzwe (police ishami ryo mu muhanda) ndetse n'ubushinjacyaha nazo niko zabibonye; ari yo mpamvu butakoze iyo PV. Ahubwo ukurikije kamere y'ibyabaye usanga icyabaye ari icyaha cyo kwica umuntu utabigambiriye cyakozwe n'uwaru umushoferi w'imodoka RAD 977E witwa Nkurikiye Patrick nk'uko yagiye agarukwaho muri raporo y'inzego z'ibanze, ko ari we wahaze umwuka ukarenga ugaturikana nyakwigendera. Ibi ngo bikaba bigize icyaha cy'Ubwicanyi budaturutse ku bushake. Hashingirwe kubiteganywa n'ingingo ya 29 y'Itegeko Nshinga mu gace kayo ka 5 aho iteganya ko uburyozwacyaha ari gatozi, indishyi abaregwa basabaga mu rubanza rwajuririwe bari kuziregera mu rubanza nshinjabyaha bakazaka uwishe nyakwigendera bidaturutse ku bushake, ngo nta mpamvu zo kurega Busingo Bashir. [13] Abaregeye indishyi muri uru rubanza, bahagarariwe na Me Dukundane Anastase, bavuze ko iyi mpamvu y'ubujurire nta shingiro ifite kubera ko Busingo Bashir wajuriye ari gutanga iyi mpavu ashingiye ku ibaruwa yanditswe na Me Dukundane Anastase yo kuwa 1/04/2019, nyamara ngo iyi baruwa ntiyafatwa n'ikimeyetso kigaragaza impanuka yo mu muhanda kuko impanuka yo kumuhanda igaragazwa n'ibimenyetso birimo inyandikomvuko y'impanuka, declararation igaragaza ko habaye impanuka, isosiyeti y'ubwishingizi igaragaza ko yishingiye ikinyabiziga. Ngo ibaruwa Me Dukundane Anastase yandikiye ubushinjacyaha si ikinyenyetso cy'impanuka ahubwo yayanditse ashaka kumenya niba ari impanuka, ariko bamusubije ko ibyabaye atari impanuka yo mu muhanda. Ku bijyanye no kuba urega avuga ko ibyabaye ari ukwica umuntu bidaturutse ku

bushake nta kuri kurimo kuko ikiregerwa ari indishyi ziregwa nyir'ipine yishe Twahirwa Pacifique, ariwe ukwiye gutegekwa gutanga indishyi. Ngo icyaregewe si icyaha [14] Urukiko rurasanga Bugingo Bashir yarajuriye avuga ko umushoferi watwaraga imodoka ye ari we ukwiye kuryozwa ndishyi zikomoka ku cyaha yakoze, ariko akirengagiza ko ibyo umushoferi yakoze byari mu rwego rw'inshingano ze nk'umukozi wa Bugingo Bashir, ipine y'imodoka ya Bugingo Bashir yatwaraga yaratobotse, biba ngombwa ko ayihoma kugira ngo abashe gukomeza akazi, nyuma yo kuyihoma agiye gushyiramo umwuka, arenza igipimo, iturikana uwari uri kumufasha. Ibyo yakoraga rero bihura neza n'inshingano yari afite zo gutwara imodoka no gukemura ikibazo cyavuka kandi gishobora kubuza imodoka gukomeza akazi kayo. Icyakabiri Bugingo Bashir yirengagiza ni uko ibyabaye byabaye mu masaha y'akazi, mu yandi magambo yari akiri mu kazi ke yari yahawe na Bugingo Bashir. Na none kandi ibyo umushoferi yifashishije byose ni ibikoresho yari yahawe na Bugingo Bashir kandi yabikoze mu nyungu za Bugingo Bashir kuko yari agamiye kugira ngo ipine yari yatobotse ihomwe kandi ijyemo umwuka ku buryo yakongera gusubira mu modoka ya Bugingo Bashir, hanyuma ikomeze akazi. Ibi bikaba byumvikanisha ko n'ubwo atabanje guhamagara Bugingo Bashir ngo abanze amusabe amabwiriza yo guhoma ipine no gushyiramo umwuka, nk'umushoferi yakoze igikwiye na Bugingo Bashir atari kumwangira. Ibi byose rero bikaba bigaragaza ko Bugingo Bashir ari we ukwiye kuryozwa indishyi zikomoka ku ikosa ryakozwe n'umushoferi we, ariko mu nyungu za Bugingo Bashir.

1 Urukiko rw'Ikirenga rwabikuye mu gitabo cyitwa Françoise BENAC-SCHMID, Responsabilité du fait d'autrui, Répertoire de droit civil, in Encyclopédie DALLOZ TIX, mise à jour 1999, p17, n°135

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- [15] Urukiko rurasanga ingingo y'ubujurire ya Bugingo Bashir yo kuvuga ko umushoferi ari we wagombaga kuryozwa indishyi ku giti cye nta shingiro ifite. C. Kumenya niba indishyi zose zemejwe n'Urukiko Rwisumbuye rwa Rubavu zaragombaga gutangwa [16] Mu rubanza RS/ INJUST/RC 00013/2021/CA, hagati ya Manirarora v Rwanda Rudniki LTD, rwakijijwe n'Urukiko rw'ubujurire ku wa 28/06/2022, hemejwe ko mu kubara indishyi zikomoka ku mpanuka zitari izo mu muhanda ntihashingirwa ku Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, icyakora nta cyabuza Urukiko kwifashisha uburyo (formule) buteganyijwe muri iryo teka.
- [17] Bugingo Bashir, aburanirwa na Me Rusagara Innocent, yasobanuye ko umucamanza yaciye urubanza yirengagije ibyo amategeko ateganya bituma agenekereza nyamara ari ibintu bitemewe b'amategeko. Yasabye ko indishyi zatanze hadashyingiye ku mategeko zikwiye gukurwa. [18] Abaregeye indishyi muri uru rubanza, bahagarariwe na Me Dukundane Anastase, bavuze ko indishyi zaregewe zagombaga gutangwa kuko abareze bafite inyungu n'ubushobozi bwo kuziregera kuko bagize akababaro gakomoka ku kuba ipine ry'imodoka ya Bugingo Bashir yarishe Twahirwa Pacifique. Kuba urega mu bujurire avuga ko amategeko yirengagijwe si byo, cyane cyane ko atagaragaza ingingo yirengagijwe ; ibyo avuga nta shingiro bifite. [19] Mu bujurire bwuririye ku bundi, uburanira abaregeye indishyi yavuze ko

Uwase Shekna, nk'umwana ukiri muto wavutse tariki 25/09/2016, umubyeyi we Twahirwa Pacifique yari amufiteho inshingano zo kumurera, kumwigisha, ndetse no kumuha affection parentale, ngo mu Rukiko Rwisumbuye rwa Rubavu yari yaregeye 15,000,000Frw, akubiyemo indishyi mbanganirabukungu ndetse n'iz'akababaro. Uyu mubyeyi we akaba yarangombaga kumurera kugeza ageze ku myaka y'ubukure, uyu mubyeyi akaba yari afite igihe kingana n'imyaka 15 yita kumwana we, nyamara Urukiko rwamugeneye 1,000,000frw gusa. Ngo nk'umwana wagombaga kurerwa imyaka 15, Uwase Shekna uhagarariwe na Iragena Claire, yasabye urukiko rwajuririwe kumuha amafaranga yari yasabye kuko ayo yahawe ku rwego rwa mbere ari make. [20] Urukiko rurasanga ku rwego rwa mbere, Urukiko Rwisumbuye rwa Rubavu rwarasobanuye ko indishyi zikwiye gutangwa mu bushishozi bw'urukiko, indishyi basaba zikagabanywa kuko zikabije kuba nyinshi. Ibi bikaba byarakozwe nyuma yo kugaragaza impamvu buri wese akwiye kugenerwa indishyi. Ubushishozi bw'Urukiko bwagarukiye gusa ku ngano y'indishyi zikwiye gutangwa, cyane cyane ko nta tegeko ryihariye cyangwa andi mabwiriza akena uburyo indishyi z'imbenezamubano mu rubanza nk'uru zikwiye kubarwa. [21] Urukiko rurasanga ku byerekeye ubujurire bwuririye ku bundi, nk'uko icyemezo cyafashwe n'Urukiko rw'Ikirenga cyagaragajwe haruguru kibisobanura, nta tegeko ryihariye rigagaragaza uburyo zatewe n'ikindi gikorwa kitari impanuka yo mu muhanda zigomba kubarwa. Nta n'ubwo iki cyemezo cyatanze umurongo y'uko Urukiko kwifashisha uburyo (formule) buteganyijwe mu Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga. Havuzwe ko Urukiko rushobora kwifashisha formule, ibi bikumvikanisha ko ashobora no kutayifashisha. Kuba rero Umucamanza wo mu Rukiko Rwisumbuye rwa Rubavu yatanze indishyi mu bushishozi bwe nta kosa yako. [22] Ku bw'ibyo rero, indishyi zemejwe n'Urukiko Rwisumbuye rwa Rubavu zikwiye kugumaho. D. Kumenya niba hari amafaranga y'ikurikiranarubanza n'igihembo cya avoka zikwiye gutangwa kuri uru rwego rw'ubujurire [23] Bugingo Bashir, aburanirwa na Me Rusagara Innocent, yasobanuye ko kuba abaregwa bareze Bugingo Bashir nyamara haragombaga kuregwa umwishingizi w'ikinyabiziga cyateye

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impanuka cyangwa bakarega uwo bikekwa ko yaba yarishe nyakwigendera atabishaka, kandi ngo bakaba batarubahirije inzira z'ubwumvikane zigomba kubanza kunyurwamo nk'uko ziteganywa n'itegeko, byatumye uregwa atakaza amafaranga y'ikurikiranarubanza n'igihembo cya avoka ku rwego rwa mbere ndetse no mu bujurire. Ngo hashingiwe ku biteganywa n'ingingo ya 111 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbenezamubano n'iya 26 y'amabwiriza mbonera akena ibihembombonera by'abavoka, Ngo Urukiko rukwiye gutegaka abarega kwishyura 1 500 000Frw y'ikurikiranarubanza ndetse na 2 000 000Frw y'igihembo cya avoka. [24] Abaregeye indishyi muri uru rubanza, bahagarariwe na Me Dukundane Anastase, bavuze ko aya mafaranga Bugingo Bashir aregera nta shingiro afite kuko iyo yemera kumvikana nta rubanza ruba rwarabayeho. Bavuze ko amafaranga y'ikurikiranarubanza aregera adakwiye kuyahabwa kuko ari we nyirabayazana w'imanza. Basoje bavuga ko Bugingo Bashir akwiye gutegekwa

gutanga amafaranga y'igihembo cy'avoka angana na 500 000Frw ku rwego rw'ubujurire. [25] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya avoka asabwa na Bugingo Bashir nta shingiro afite kuko ubujurire bwe nta shingiro bufite. [26] Urukiko rurasanga abaregeye indishyi ari bakwiye guhabwa indishyi kuri uru rwego, ariko amafaranga akwiye kwiyongera ku yemejwe n'Urukiko Rwisumbuye ni igihembo cya avoka mu bujurire, agatangwa hashingiwe ku ngingo ya 33 y'Amabwiriza akena ibihembo mbonera by'abavoka, bivuze ko kuri uru rwego igihembo cya avoka gikwiye kuba 250 000Frw. III. ICYEMEZO CY'URUKIKO [27] Rwemeje ko ikirego cy'ubujurire cyatanzwe na BUGINGO Bashir nta shingiro gifite.

[28] Rwemeje ko imikirize y'urubanza RC00040/2021/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 11/03/2022 ihindutse gusa ku bijyanye n'igihembo cya avoka. [29] Rwemeje ko Bugingo Bashir agomba guha abamureze indishyi zemejwe n'Urukiko Rwisumbuye rwa Rubavu, ziyongereyeho 250 000Frw y'igihembo cya avoka mu bujurire. Zigatangwa ku neza kandi mu bihe biteganywa n'amategeko, bitaba ibyo zigakurwa mu mitungo ye ku ngufu za Leta. [30] Rwemeje ko ingwate y'amagarama yatanze n'uwajuriye iheze mu isanduku ya Leta.

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