

RWANDA / JUDGMENT

FINA BANK v. KAYIRANGWA

RCOMA 0067/12/CS

COURT

Supreme Court

DECIDED

11 April 2014

CASE / FILE NUMBER

RCOMA 0067/12/CS

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FINA BANK v. KAYIRANGWA

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- Date: 2014-04-11
- Case/document no.: RCOMA 0067/12/CS
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Text

Page 1

FINA BANK v. KAYIRANGWA [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0067/12/CS (Havugiyaremye, P.J., Mukandamage na Kayitesi, J.) Kuwa 11/04/2014] Amategeko agenga imiburanishirize y'imanza z'ubucuruza – Ikirego gisaba gusubirishamo urubanza – Iyo nta bimenyetso bigaragaza ko uregwa yamenyeshejwe yuko urubanza rwaciwe, ashobora gusaba ko rwasubirwamo – Kuba hari inyandiko ziri muri dosiye zigaragaza ko urubanza rwaciwe ,ruramenyeshwa ahatazwi, bivuze ko umuburanyi yarumenye kuko yanatanze imyanzuro itanga ikirego cyo gusubirishamo urubanza. Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ingingo ya 158. Incamake y'ikibazo: Fina Bank yareze Kayirangwa hamwe na Nkurunziza mu Rukiko Rukuru rw'Ubucuruza ibishyura umwenda hamwe n'inyungu yawo bingana na 25.893.000 frws ukomoka ku nguzanyo yabahaye. Urukiko rubatega kwishyura Fina bank 35.525.150 frws, ay'ikurikiranarubanza n'ay'igihembo cya Avoka. Kayirangwa nawe yareze muri urwo Rukiko asaba gusubirishamo urubanza, hagobokamo abana be, ariko ibyo birego ntibyakiriwe kubera ko atagaragaje itariki nyakuri yamenyeho imikurizwe y'urubanza kugirango urukiko rumenye niba ikirego cyo yagitanze mu minsi iteganywa n'itegeko. Kayirangwa yajuririyemo mu Rukiko rw'Ikirenga avuga ko Urukiko

Rukuru rw'Ubucuruzi rwirengagije amategeko nkana rumusaba gutunga ikimenyetso cy'igihe yamenyeye imikirize y'urubanza kandi atararumenyeshejwe n'abo itegeko ribisaba. Uburanira Kayirangwa avuga ko yaciriwe urubanza adahari, ko atigeze arumenyeshwa, kandi ko na Fina bank itigeze isaba irangizwa ryarwo. Uburanira abagobotse mu rubanza nawe avuga ko igihe cy'iminsi 15 iteganywa n'itegeko yo gusubirishamo urubanza igomba kubarwa igihe kopi y'urubanza yaguriweho mu rukiko kandi we atigeze arumenyeshwa. Uburanira Fina bank avuga ko ikirego cya Kayirangwa kitagombaga kwakirwa nk'uko urukiko rwabyemeje kuko igikorwa cyo kurangiza urubanza cyatangajwe kinyamakuru ariko abikora igihe cy'iminsi 15 yemerewe n'itegeko yararenze. Ku byerekeye ubujurire bwuririye ku bundi bwatanzwe na Fina bank, uyiburanira avuga ko Urukiko rukwiye kwemeza ko ubujurire bwa Kayirangwa, avuga ko ibyo GTBANK isaba nta gaciro byahabwa kuko kujurira ari uburenganzira bw'umuburanyi. Incamake y'icyemezo: 1. Hashingiye kw'itariki igaragaza igihe ikirego cyo gusubirishamo urubanza cyatangiweho, bigaragara ko icyo kirego cyatanzwe gikererewe iminsi 15 iteganywa n'itegeko yararenze, bityo kikaba kitagombaga kwakirwa ngo gisuzumwe. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro. Amagarama y'urubanza aherereye kuwareze.

Page 2

Amategeko yashingiweho: Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ingingo ya 158. Nta manza zifashishijwe: Urubanza I. IMITERERE Y'URUBANZA [1] FINA BANK, yahindutse Guaranty Trust Bank Ltd, yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi yishyura NKURUNZIZA Daniel na KAYIRANGWA Colette wamwishingiye, umwenda n'inyungu zawo bingana na 25.893.000 Frw, ukomoka ku nguzanyo yamuhaye, urubanza ruburanishwa abaregwa badahari ariko barahamagajwe ahatazwi mu buryo bukurikije amategeko, maze urukiko rubatega kwishyura FINA BANK 35.525.150 Frw bari bayibereyemo urubanza ruburanishwa, hiyongereyeho 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka. [2] KAYIRANGWA Colette yareze asaba gusubirishamo urubanza, hagobokamo abana be bavuzwe haruguru, Urukiko Rukuru rwemeza ko ikirego cye takirirwa hamwe n'ibirego by'abagobotse bigishamikiyeho kubera ko atashoboye kugaragaza itariki nyakuri yamenyeyeho imikirize y'urubanza RCOM 0178/010/HCC kugirango rumenye niba icyo kirego yaragitanze mu gihe cy'iminsi 15 iteganywa n'itegeko. [3] Urukiko rwanze guha agaciro itariki KAYIRANGWA yaguriyeho kopi y'urubanza nk'itariki yavugaga ko yamenyeyeho imikirize y'urwo rubanza, ruvuga ko byaba binyuranyije n'ingingo ya 158 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [4] KAYIRANGWA yajuririye Urukiko rw'Ikirenga avuga ko urukiko rwirengagije amategeko nkana, rumusaba gutanga ikimenyetso cy'igihe yamenyeye imikirize y'urubanza kandi atararumenyeshejwe n'abo itegeko ribisaba, ko kandi rutagaragaje impamvu rwashingiyeho rwemeza ko gufata ko yamenye urubanza ku munsu yaguriye kopi byaba binyuranyije n'ingingo ya 158 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru. [5] Iburanisha ry'urubanza ryabaye mu ruhame tariki ya 11/03/2014, KAYIRANGWA Colette ahagarariwe na Me NKEZA SEMPUNDU Clément, abana be bagobotse bahagarariwe na Me NTIHEMUKA Clément, naho Guaranty Trust Bank Ltd ihagarariwe na Me NDAGIJIMANA Emmanuel. II. IBIBAZO BIGIZE

URUBANZA N'ISESENGURA RYABYO

- a. Kumenya niba ikirego cya KAYIRANGWA Colette gisaba gusubirishamo urubanza RCOM 0178/010/HCC cyaratanzwe mu gihe giteganywa n'itegeko. [6] Me NKEZA uburanira KAYIRANGWA avuga ko ingingo ya 158 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi,

Page 3

iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe yasubirishagamo urubanza, ivuga neza igihe fatizo uregwa waciriwe urubanza adahari arusubirishamo, gitangira kubarwa uherye igihe yamenyesherejwe we ubwe imikirize yarwo, yaba ataramenyesherejwe, icyo gihe kikabarwa uherye igihe yamenyeye we ubwe ko hari igikorwa cya mbere cyo kurangiza urubanza. [7] Asobanura ko KAYIRANGWA yaciriwe urubanza adahari, ntiyigera arumenyeshwa, ko kandi na FINA BANK itigeze isaba irangizwa ryarwo, ko kuba rero urukiko rwaravuze ko atashoboye kuruha ikimenyetso cy'uko yatanze ikirego cye cyo gusubirishamo urubanza mu minsi cumi n'itanu uherye igihe yamenyesherejwe urubanza ari ukwirengagiza nkana ko atamenyesherejwe urubanza, akaba rero atatanga ikimenyetso cy'ibintu bitabayeho. [8] Me NKEZA avuga kandi ko bitumvikana impamvu urukiko rutafashe itariki KAYIRANGWA yaguriyeho kopi y'urubanza ko ariyo yamenyeyeho imikirize yarwo, ko rero kuba urukiko rwaravuze ko nta kigaragaza ko ari we ubwe wayiguriye bitumvikana mu gihe iyo kopi yanditse mu mazina ye, ko kandi icyangombwa ari ukumenya imikirize y'urubanza. Asanga na none kuba KAYIRANGWA mbere y'icyo gihe atari azi imikirize y'urubanza adakwiye kubibazwa mu gihe atabisabwa n'itegeko. [9] Avuga na none ko kuba KAYIRANGWA yarahamagawe ahatazwi ndetse FINA BANK ikaba ivuga ko yamumenyeshereje urubanza ahatazwi, yabikoze ku bwende bwayo kuko atigeze yimuka aho yari atuye, akaba yaramenye iby'urubanza yarezwe abwiwe n'ubuyobozi, ubwo yashakaga ibyangombwa by'inzu, ko afitanye ikibazo na banki, yajya kuri banki bakamubwira ko habayeho urubanza akabona kujya kugura kopi yarwo. [10] Me NTIHEMUKA uburanira abagobotse mu rubanza nawe avuga ko igihe cy'iminsi 15 iteganywa n'itegeko yo gusubirishamo urubanza igomba kubarwa guhera igihe KAYIRANGWA yamenyesherejweho we ubwe imikirize y'urubanza rwaciwe adahari, ni ukuvuga igihe yaguriye kopi y'urubanza mu rukiko kuko atigeze arumenyeshwa. [11] Me NDAGIJIMANA uburanira Guaranty Trust Bank Ltd avuga ko KAYIRANGWA yahamagawe kuburana urubanza asabira gusubirishamo hakoreshejwe imenyekanisharuhame nk'uko ryateganywaga n'ingingo ya 34 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, urubanza rucibwa kuwa 31/10/2010, umuhesha w'inkiko atangira kururangiza by'agateganyo kuko harimo irangizarubanza ry'agateganyo, arumenyeshwa KAYIRANGWA hakoreshejwe imenyekanisharuhame (exploit de signification d'arrêt) ryasohotse mu Mvaho nshya n° 2122 yo kuwa 15-17/08/2011. [12] Avuga ko icyo gikorwa cyo kurangiza urubanza cyatangajwe mu Mvaho ari cyo KAYIRANGWA yahereyeho asubirishamo urubanza, akaba yari afite iminsi 15 uherye kuwa 18/08/2011 kugira ngo arusubirishemo, ko ikimenyetso kigaragaza ko urwo rubanza yarumenye icyo gihe ari uko kuwa 04/09/2011 yandikiye FINA BANK ayimenyeshwa ko agiye gutanga ikirego cyo gusubirishamo urwo rubanza, kandi koko akaba yarabikoze kuwa 02/10/2011,

ariko abikora igihe cy'iminsi 15 cyararenze, bityo ikirego cye kikaba kitaragombaga kwakirwa nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje.

Page 4

[13] Me NDAGIJIMANA avuga kandi ko KAYIRANGWA atavugaga ko habayeho ikosa ry'imyandikire mu ibaruwa yandikiye FINA BANK tariki ya 04/09/2011, aho kwandika itariki ya "04/10/2011" akandika iya "04/9/2011", kubera ko muri iyo baruwa yavugaga ko agiye gusubirishamo urubanza kandi arusubirishamo kuwa 02/10/2011. [14] Ingingo ya 158 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ryakurikizwaga igihe KAYIRANGWA yasubirishagamo urubanza RCOM 0178/010/HCC, iteganya ko "Uregwa waciriwe urubanza adahari agatsindwa ashobora gusaba ko urubanza rwe rusubirwamo mu gihe kitarenze iminsi cumi n'itanu (15) amaze kurumenyeshwa we ubwe. Igihe atari we ubwe wimenyesherejwe urwo rubanza, ashobora gusaba ko rusubirwamo mu gihe kitarenze iminsi cumi n'itanu (15) uhereye igihe uwo wabimenyeshwe yabimenyeye. Iyo nta bimenyetso bigaragaza ko nyir'ubwite yamenyeshwe urwo rubanza, ashobora gusaba ko rusubirwamo mu gihe kitarenze iminsi cumi n'itanu (15), iyo minsi ibarwa kuva umunsi yamenyeye ubwe ko hagize igikorwa cya mbere cyo kurangiza urubanza. Nta na rimwe urukiko rwemera gusubira mu rubanza rwasabiwe gusubirwamo, nyuma y'irangizwa ryarwo ku ngingo zose". [15] Inyandiko ziri muri dosiye zigaragaza ko KAYIRANGWA yaciriwe urubanza RCOM 0178/010/HCC adahari aratsindwa, ariko yarahamagawe ahatazwi mu buryo bukurikije amategeko, ko urwo rubanza yarumenyeshwe ahatazwi na FINA BANK nk'uko bigaragara muri "exploit de signification d'arrêt à domicile inconnu" yo kuwa 02/08/2011 yakozwe n'Umuhesha w'inkiko w'umwuga, igatangazwa mu Mvaho n° 2122 yo ku itariki 15 - 17 Kanama 2011. [16] Urukiko rurasanga, nyuma y'uko imenyekanisha ry'urubanza ahatazwi ritangarijwe, KAYIRANGWA yararumenye kubera ko tariki ya 04/09/2011 Me NKEZA Clément umuburanira yakozwe imyanzuro itanga ikirego cyo gusubirishamo urwo rubanza ayimenyeshye FINA BANK avuga ko uwo ahagarariye agiye gutanga icyo kirego, cyaje gutangwa tariki ya 02/10/2011. [17] Hashingiwe rero kuri ayo matariki yombi Urukiko rurasanga ikirego cyo gusubirishamo urubanza cya KAYIRANGWA cyaratanze gikererewe, iminsi 15 iteganywa n'itegeko yararenze, bityo kikaba kitagombaga kwakirwa ngo gisuzumwe. Ubujurire bwe rero nta shingiro bufite.

- b. Ubujurire bwuririye ku bundi bwatanzwe na Guaranty Trust Bank Ltd. [18] Me NDAGIJIMANA uburanira Guaranty Trust Bank Ltd avuga ko Urukiko rukwiye kwemeza ko ubujurire bwa KAYIRANGWA nta shingiro, maze akayishyura 500.000 Frw y'igihembo cya avoka ku rwego rw'ubujurire. [19] Me NKEZA uburanira KAYIRANGWA avuga ko ibyo Guaranty Trust Bank Ltd isaba nta gaciro byahabwa kuko kujurira ari uburenganzira bw'umuburanyi, akaba rero atabihanirwa, ko ariko Urukiko rusanze bifite ishingiro rwamuha ayo mafaranga, ariko n'ubujurire bwa KAYIRANGWA bwaba bufite ishingiro nawe agahabwa 500.000 Frw.

Page 5

[20] Ku byerekeranye n'amafaranga y'igihembo cya avoka Guaranty Trust Bank Ltd isaba KAYIRANGWA, Urukiko rurasanga iyakwiye, ariko itagaragaza uburyo yayabazemo, mu bushishozi bwarwo, rukaba ruyigeneye 400.000 Frw. III. ICYEMEZO CY'URUKIKO [21] Rwemeje ko ubujurire bwatanzwe na KAYIRANGWA Colette nta shingiro bufite. [22] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Guaranty Trust Bank Ltd bufite ishingiro. [23] Rutegetse KAYIRANGWA Colette kwishyura Guaranty Trust Bank Ltd 400.000 Frw y'igihembo cya avoka. [24] Rutegetse KAYIRANGWA Colette kwishyura amafaranga 20.800 y'amagarama y'urubanza mu gihe cy'iminsi umunani (8), atabikora, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

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Prepared on 13 October 2026 · Esheria