

RWANDA / JUDGMENT

GAKWAYA v GATARAMA N

RCAA 00003/2022/HC/KIG

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GAKWAYA v GATARAMA N

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Text

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GAKWAYA v GATARAMA N'ABANDI [Rwanda URUKIKO RUKURU - RCAA 00003/2022/HC/KIG (Kamanzi, P.J., Nkusi, Mukakarisa, J.) 24 Ugushyingo 2023] Amategeko agenga imanza z'imbonezamubano – Uburenganzira ku mutungo – Gutesha agaciro cyamunara - Uburenganzira ku mutungo ni ntavogerwa, iyo hari ikirego cy'uko ubwo burenganzira butubahirijwe hagomba gusuzumwa niba ibyakozwe kuri uwo mutungo byarakurikije amategeko kandi ko byari bishingiye ku mpamvu zemewe kandi zumvikana, bishimangira ko mu gihe umutungo wagurishijwe muri cyamunara mu buryo bunyuranyije n'Amategeko, iyo cyamunara ikwiye guteshwa agaciro, ibintu bigasubira uko byari biri uwo mutungo utaragurishwa. Incamake y'ikibazo: Uru rubanza rukomoka ku Mwenda ungana n'amafaranga miliyoni imwe n'ibihumbi Magana arindwi na mirongo itanu (1.750.000frw) Gakwaya na EBENEZER EVANGELICAL CHURCH yari abereye umuyobozi batsindiwe mu rubanza RCA 00378/2018/HC/KIG bategekwa kuyishyura RIVERSIDE CITY ESTATE LTD ariko ntibayatanga ku neza bituma Me Gatarama agurisha umutungo ubaruye kuri Gakwaya muri cyamunara yatsindiwe na STRATERA RWANDA Ltd wishyuye 39.751.000frw. Gakwaya yatanze ikirego mu Rukiko rw'Ibanze asaba gutesha agaciro cyamunara avuga ko hari ibitarubahirijwe, hanyuma urwo rukiko rutesha agaciro iyo

cyamunara kuko yakozwe mu buryo bunyuranije n'amategeko. STRATERA RWANDA Ltd na Me Gatarama, Umuhesha w'inkiko w'umwuga ntibishimiye iki cyemezo barakijuririra, Urukiko rwisumbuye rwa Gasabo rwemeza ko cyamunara yabaye igumanye agaciro kayo. Urega yajuririye mu Rukiko Rukuru avuga ko cyamunara yabaye yateshwa agaciro kuko umuhesha w'inkiko atigeze ashinganya umutungo ndetse ko atanakoze igenagaciro ry'umutungo wagurishijwe. Urukiko Rukuru rwakiriye ubu bujurire busuzuma ikbazo cyo kumenya niba cyamunara yakozwe yateshwa agaciro. Gakwaya asobanura ko cyamunara yakozwe hagurishwa umutungo itakurikije amategeko kuko umuhesha w'inkiko atigeze ashinganya umutungo wagurishijwe kandi ko yanawugurishije atabanje gukoresha igenagaciro ryawo. Abaregwa basobanura ko cyamunara yakozwe mu buryo bukurikije amategeko kuko hari inyandiko yakozwe n'umuhesha w'inkiko akanayisinyaho ashinganya uwo mutungo bityo bagashimangira ko cyamunara yakozwe yakurikije amategeko, ko icyemezo cy'urukiko rwisumbuye gikwiye kugumaho. Inshamake y'icyemezo: Uburenganzira ku mutungo ni ntavogerwa, iyo hari ikirego cy'uko ubwo burenganzira butubahirijwe hagomba gusuzumwa niba ibyakozwe kuri uwo mutungo byarakurikije amategeko kandi ko byari bishingiye ku mpamvu zemewe kandi zumvikana, bishimangira ko mu gihe umutungo wagurishijwe muri cyamunara mu buryo bunyuranyije n'amategeko, iyo cyamunara ikwiye guteshwa agaciro, ibintu bigasubira uko byari biri uwo mutungo utaragurishwa. Kubwo ibyo rero, ibivugwa na Gatarama na bagenzi be nta shingiro bifite kuko umutungo wagurishijwe utigeze ushinganishwa ndetse ngo unakorere igenagaciro ukaba waragurishijwe mu buryo bunyuranije n'amategeko. Ubujurire bufite ishingiro;

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Cyamunara yo ku wa 19/11/2021, ku mutungo ubaruye kuri No UPI:1/03/01/02/1000 iteshejwe agaciro. Amategeko yashingiweho: Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111, 252, 260. Imanza zifashishijwe: RCAA 00006/2020/CA, Ndahimana Emmanuel n'Undi na Musoni Godfrey n'Undi, rwaciwe n'Urukiko rw'Ubujurire kuwa 30/10/2020; RCOMAA 00064/2019/CA, I&M BANK na SIMACO LTD rwaciwe n'Urukiko rw'Ubujurire kuwa 03/10/2019. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku Mwenda ungana n'amafaranga miliyoni imwe n'ibihumbi Magana arindwi na mirongo itanu (1.750.000frw) Gakwaya Mutesi Hope na EBENEZER EVANGELICAL CHURCH yari abereyemo umuyobozi batsindiwe mu rubanza RCA 00378/2018/HC/KIG bategekwa kuyishyura RIVERSIDE CITY ESTATE LTD. Nyuma yo kutishyura aya mafaranga, Me Gatarama Zacharie Umuhesha w'inkiko w'umwuga yateje cyamunara umutungo UPI 1/03/01/02/1000 uherereye Kigali, Kicukiro, Gahanga, Kagasa ubaruye kuri Gakwaya Mutesi Hope, iyi cyamunara yatsindiwe na STRATERA RWANDA Ltd yatanze amafaranga angana na miliyoni mirongo itatu n'icyenda n'ibihumbi magana arindwi mirongo itanu nakimwe (39.751.000frw). [2] Nyuma yiyi cyamunara Gakwaya Mutesi Hope yatanze ikirego mu Rukiko rw'Ibanze rwa Kicukiro, mu rubanza RC 00074/2022/TB/KICU asaba guteshwa agaciro cyamunara kuko yakozwe mu buryo bunyuranije n'amategeko, hagobokeshwamo STRATERA RWANDA Ltd mu izina ry'umuyobozi wayo, urukiko rwemeza ko ikirego cye gifite ishingiro, rwemeza ko cyamunara yakozwe ku mutungo UPI:1/03/01/02/1000 wa Gakwaya Mutesi Hope

kuwa 19/11/2021 iteshejwe agaciro. [3] STRATERA RWANDA Ltd mu izina ry'umuyobozi wayo na Me Gatarama Zacharie Umuhesha w'inkiko w'umwuga ntibishimiye iki cyemezo bakijuririra urukiko rwisumbuye rwa Gasabo mu kirego RCA 00089/2022/TGI/NYGE CMB RCA 00090/2022/TGI/NYGE rukizwa kuwa 03/06/2022 rwemeza ko cyamunara yakozwe kuwa 19/11/2021 ku mutungo UPI:1/03/01/02/1000 uherereye mu Kagali ka Kagasa, Umurenge wa Gahanga, Akarere ka Kicukiro, Umujyi wa Kigali, wa Gakwaya Mutesi Hope igumanye agaciro kayo. [4] Gakwaya Mutesi Hope ntiyishimiye iki cyemezo akijuririra uru rukiko Rukuru avuga ko asaba urukiko gusuzuma ishingiro ry'inzitizi yo kutakira ubujurire bwa COMPANY STRATERA RWANDA Ltd yabyukije Urukiko ntiruyihe agaciro, asaba ko cyamunara yakozwe k'umutungo ufite UPI: 1/03/01/02/1000 yateshwa agaciro no gusuzuma ibirebana n'indishyi.

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[5] Muri uru rubanza harasuzumwa ibibazo bikurikira: (i) Kumenya niba inzitizi yo kutakira ubujurire bwa COMPANY STRATERA RWANDA Ltd yatanzwe na Gakwaya Mutesi Hope ifite ishingiro (ii) Kumenya niba cyamunara yakozwe k'umutungo ufite UPI: 1/03/01/02/1000 yateshwa agaciro. (iii) Gusuzuma ibirebana n'indishyi. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA (i) Kubirebana no kumenya niba inzitizi yo kutakira ubujurire bwa COMPANY STRATERA RWANDA Ltd yatanzwe na Gakwaya Mutesi Hope ifite ishingiro [6] Me Rukarishya NgendaPhilemon uburanira Gakwaya Mutesi Hope avuga ko kuwa murwego rwa mbere mu rubanza RC 00074/2022/TB/KICU, uwagobotsemo avugako yaguze mu cyamunara umutungo wavuzwe haruguru, ni COMPANY STRATERA RWANDA Ltd, nyuma yimikirize y'Urubanza, ninawe wajuriye, ikirego gihabwa RCA 00089/2022/TGI/NYGE. Gakwaya Mutesi Hope amaze gutahura ko COMPANY STRATERA RWANDA Ltd idafite ubuzimagatozi, yabyukije inzitizi, asaba ko ikirego urukiko rwashikiriye na COMPANY STRATERA RWANDA Ltd kitagombakwirwa. [7] Me Rukarishya NgendaPhilemon avuga ko igitangaje COMPANY STRATERA RWANDA Ltd yakomeje iburana isaba ko kigomba kwakirwa (Reba Umwanzuro wa COMPANY STRATERA RWANDA Ltd ndetse na Note de Plaidoirie). Urukiko rubyibwirije, aho guha ishingiro ubusabe bwa Gakwaya Mutesi Hope no kuvugako ikirego cyatanzwe na COMPANY STRATERA RWANDA Ltd, rwahinduye ababuranyi, ruvugako, rukosoye, umuburanyi ahinduwe STRATERA RWANDA Ltd mugihe ari ababuranyi babiri batandukanye, ngo igitangaje, Urukiko rwahinduye ababuranyi, agace ka [15] rubyita gukosora ikosa ry'imyandikire, ndetse ruvuga ko rusanga rushingira kubiteganywa n'ingingo ya 97 y'Itegeko n° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza zimbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bikitwa ikosa ry'imyandikire, nyamara bitarigeze, biregerwa Urukiko hasabwa gukosora nkuko biteganywa n'ingingo ya 138, 140 ndetse na 141 y'itegeko N022/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [8] Kuba Urukiko, rwarirengagije Itegeko rugahindura ababuranyi, Urukiko rujuririwe ruzaboneko, amakosa yakozwe agomba gukosorwa rukemezako, COMPANY STRATERA RWANDA Ltd itagombaga kuburana ndetse no kujurira, ko ndetse itandukanye na STRATERA RWANDA Ltd. Ikindi kuba Urukiko mu rubanza rujuririwe, rwarahinduye ababuranyi rutabisabwe n'uwaburanye

akanajurira yitwa COMPANY STRATERA RWANDA Ltd, binyuranyije n'amategeko. [9] COMPANY STRATERARWANDA LTD mu izina ry'umuyoboziwayo yunganiwe na Me Ntaganda Christian avuga ko basanga ibivugwa na Gakwaya Mutesi Hope ku bijyanye n'inzitizi yo kutakira ikirego ngo bishingiye ku zina company Stratera Rwanda Ltd nta shingiro bikwiriye guhabwa kuko ikosa ry'imyandikire ryakosowe biturutse ku rukiko ryarakosowe nkuko

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amategeko abiteganywa, avuga kandi ko Stratera Rwanda yagobokeshejwe ku gahato bituma nayo ihinduka umuburanyi. UKO URUKIKO RUBIBONA [10] Uru rukiko rubona ibivugwa na Gakwaya Mutesi Hope ku bijyanye n'inzitizi yo kutakira ikirego ngo bishingiye ku zina company Stratera Rwanda Ltd nta shingiro bifite kuko iri ryari ikosa mu myandikire, urukiko rwagiye kugobokesha STRATERA RWANDA LTD mu kiswe "Forced intervening Party" nibwo rwatumije company STRATERARWANDA LTD, ibi rero bigaragazwa no kuba mu rukiko rw'ibanze muri attachment ku kimenyetso cya 20 muri systeme "IECMS", ari STRATERA RWANDA LTD. [11] Mu rubanza RCA 00089/2022/TGI/NYGE CMB RCA 00090/2022/TGI/NYGE mu gace ka 5 ku rupapuro rwa 3 byagiweho impaka, urukiko rubifataho umwanzuro mu gace ka 15 ku rupapuro rwa 7. Uru rukiko rubona ibivugwa na Me Rukarishya Ngenda Philemon kuri iyi nzitizi, bitavuguruza ibisobanuro byatanze mu rubanza rwavuzwe haruguru kuko bishingiye ku ngingo ya 97 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganywa ko: "Ukutagira agaciro kw'inyandiko y'urukiko kubera inenge y'imyandikire bikurwaho no kubikosora nyuma iyo hari icyo bikimaze kandi kubikosora bikaba ntacyo byangije", naho ingingo ya 141 y'iri tegeko iteganywa ko "Uwifuza ko urubanza rukosorwa cyangwa rusobanurwa kandi rwajuririwe, abigaragaza mu mwanzuro, Urukiko rwajuririwe rukabisuzumira hamwe n'izindi ngingo z'ubujurire. Muri icyo gihe Urukiko rwo hasi ntiruba rugifite ububasha bwo gukosora ayo makosa". Nkuko bigaragara ko habayeho kwibeshya mu bwanditsi bw'urukiko rw'ibanze, ikosa mu myandikire rigakosorwa mu rukiko rw'Isumbuye, kubigarura nk'inzitizi mu bujurire nta shingiro bifite kuko ikivugwa muri izi manza zose ni STRATERA RWANDA Ltd nkuko bigaragazwa n'icyemezo cyo kuyandikisha aho yanditswe kuwa 21/8/2020 (Certificate of Domestic Company) aho yanditswe ko ari STRATERA RWANDA Limited, umuyobozi mukuru wayo ari David Ross. (ii) Kumenya niba cyamunara yakozwe ku mutungo ufite UPI: 1/03/01/02/1000 yateshwa agaciro. [12] Me Rukarishya Ngenda Philemon avuga ko Gakwaya Mutesi Hope anenga Urubanza rujuririwe, rwavuzeko cyamunara yavuzwe haruguru igumanye agaciro kayo, mugihe yarugaragariye ko, muguteza umutungo we uri mukibanza gifite 1/03/01/02//1000, Umuhesha w'Inkiko Me Gatarama Zacharie, yirengagije ibiteganywa n'ingingo ya 252 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti: "Umuhesha w'inkiko umaze gukora inyandikomvugo y'ifatirabwishyu, akoresha igenagaciro ry'imitungo yafatiriwe mu gihe kitarenze iminsi cumi n'itanu (15) yifashishije impuguke ahawe n'Urugaga rw'abakora umwuga w'igenagaciro, raporo y'igenagaci(...)". Kuba mu rubanza RCA 00089/2022/TGI/NYGE, CMB RCA 00090/2022/TGI/NYGE rwo kuwa 03/06/2022, Urukiko ruvugako Umutungo

washinganishijwe, (Reba k'umugereka, igika cya 31), aho ruvugako gushinganisha bitaringombwa, nyamara akirengagiza, ibiteganywa n'ingingo ya 260 n'ya 252 CPCCVSA zasobanuwe haruguru.

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[13] Me Rukarishya Ngenda Philemon avuga ko ibivugwa na Gakwaya Mutesi Hope, byongeraga gushimangirwa n'ibiteganywa n'ingingo ya ya mbere (1) y'Itegeko N° 025/2021 ryo ku wa 12/05/2021 rihindura itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ndetse n'ingingo ya 217 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ihinduwe ku buryo bukurikira: "Umuhesha w'inkiko afatira umutungo hari nibura nyir'umutungo cyangwa uwo bawusangiye cyangwa uwubitse cyangwa uwishyuzwa n'Umunyamabanga Nshingwabikorwa w'Akagari umutungo ufatirwa uherereyemo cyangwa undi uhagarariye urwego rwa Leta (...)". [14] Kuba Umucamanza mu rubanza rujuriyirwa yarirengagije ibimaze kuvugwa haruguru, akemeza ko cyamunara yakozwe ku buryo bukurikije amategeko asaba ko Urukiko rwajuririwe rwazabitesha agaciro umutungo uri mu kibanza gifite 1/03/01/02//1000 ugasubizwa Gakwaya Mutesi Hope. [15] COMPANY STRATERA RWANDA LTD mu izina ry'umuyobozi wayo iburanirwa na Me Ntaganda Christian avuga ko basanga ibivugwa na Gakwaya Mutesi Hope kuri iyi ngingo nta shingiro bifite kuko cyamunara yakozwe mu buryo bwubahirije amategeko nkuko byagaragajwe mu rubanza rwajuririwe. Ikindi kandi kitaricyo nuko imvugo yuko urukiko rwisumbuye rwavuze ko gushinganisha bitari ngombwa, basanga nta kuri kurimo kuko ntaho bigaragara mu rubanza rwaciye. Mu gace ka 31 aho urega avuga ko biri nkuko urukiko ruzabyibonera ntaho biri rwose ahubwo urukiko rushimangira neza ko ibyo umuhesha w'inkiko yakozwe akora ishingana ry'ikibanza kandi abitangira ibimenyetso mu rubanza. Bityo rero, kuba cyamunara yakozwe na Me Zacharie yarubahirije amategeko basanga ubusabe bwa Gakwaya Mutesi Hope yuko yateshwa agacio nta shingiro bufite, bagasaba urukiko gutegeka ko ikomeza kugumaho. [16] David Lang Ross, avuga ko umutungo umwanditseho kandi yawubonye mu buryo bukurikije amategeko kandi uyu mutungo barawutambamiye ntacyo yawukoraho, ko nk' umushoramari igihe urubanza rwagenda ukundi afite impungenge ko yatakaza amafaranga yashoye ndetse n' umutungo yaguze, ko ibyo bavuga byose hari itambama ryakozwe kuri uwo mutungo icyo ashaka ni uko urubanza rushobora gutuma yatakaza umutungo yaguze akatakaza n'amafazranga ye kandi hari itambama bakoze kuri uwo mutungo; iryo tambama rikwiye naryo kuba rigendanye n'amafaranga yagombye kuba ari ahantu hizewe. [17] David Lang Ross avuga ko amaze kumva ko ayo mafaranga ayakoreshe, ibyo bimushira mu ruhande rutari rwiza igihe urukiko rwabibona ukundi ; kandi umutungo we barawutambamiye asaba ko ayo mafaranga agaruka kuri konti ya MINIJUST , avuga ko inyandiko Avoka yerekanye zubwumvikane atazishyizeho umukono we ni inyandiko bavuze yo gusesa amasezerano; kuvuga ko yahinduye izina rya Company babifitiye uburenganzira kandi icyakozwe ni uguhindura izina gusa ntacyo byabangamira mu migendekere y' urubanza , asaba ko ayo mafaranga asubizwa aho yavuye

kugira ngo atazayabura akabura n' umutungo yaguze, avuga ko aramutse yambuwe ahantu yaguze mu buryo bwemewe n'amategeko byatuma ajya gushora imari mu kindi gihugu. [18] Me Gatarama Zacharie Umuhesha winkiko wumwuga avuga ko ubu busabe bwa Gakwaya Mutesi Hope asaba bwo gutesha agaciro cyamunara ntashyingiro bwahabwa cyane ko ntaho amategeko abuteganya ahubwo yakemeye ko cyamunara yakurikije amategeko nkuko

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byemejwe n'Urukiko Rwisumbuye rwa Nyarugenge dore ko n'ubujurire bwe butemewe akaba anasaba ibidahari. UKO URUKIKO RUBIBONA [19] Urukiko rurebye ibiteganywa n'ingingo ya 260 y'itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ko: "Umuntu wese ubifitemo inyungu ashobora gusaba Urukiko rw'Ibanze rw'aho cyamunara igomba kubera kuyihagarika iyo: 1° Hatubahirijwe amategeko agenga ishingana, ifatira n'itangazwa rya cyamunara; 2° Umutungo ugomba kugurishwa udashobora kugurishwa kubera ubukene bwa nyirawo nk'uko biteganywa mu ngingo ya 259 y'iri tegeko; 3° Hari ikimenyetso kidashidikanywaho kigaragaza ko umutungo ugiye kugurishwa atari uw'uryozwa kwishyura. Izi mpamvu ni nazo zishingirwaho mu kirego gisaba gutesha agaciro cyamunara yakozwe. [20] Uru rukiko rubona ibitarubahirijwe muri cyamunara yakorewe ku mutungo ufite UPI: 1/03/01/02/1000 ari: (a) Ishingana ry'umutungo watejwe cyamunara). Uru rukiko rubona nubwo Me Gatarama Zacharie avuga ko umutungo washinganishijwe akagaragaza na form yujijwe ashingana uwo mutungo mu kigo cy'ubutaka kuwa 12/10/2021, aho kuri attachment ya 44 muri system ya i.e.c.m.s ahari inyandiko isaba gushingana umutungo – surety of property - form 27(a) itafatwa nk'ikimenyetso kuko n'ubwo yujijwe igashyirwaho umukono n'umuhesha w'inkiko igashyirwa muri system nta kigaragaza ko ikigo cy'igihugu cy'ubutaka cyakiriye ubwo busabe kuko iyo form itagaragaza itariki yakiriweho, uwayakiriye n'ugomba kuyisuzuma, iyi form rero ikaba nta gaciro ifite, bityo akaba nta kigaragaza ko umutungo washinganishijwe, iyi ikaba ari inenge itesha agaciro cyamunara. (b) Ibindi bitubahirijwe muri cyamunara ivugwa muri uru rubanza n'ibirebana n'igenagaciro ry'umutungo watejwe cyamunara, ku bijyanye no kuba nta genagaciro ryakozwe ku mutungo w'urega ngo anarimenyeshwe, urukiko rushingiye ku biteganywa n'ingingo ya 252 y'itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ko: "Umuhesha w'inkiko umaze gukora inyandikomvugo y'ifatirabwishyu, akoresha igenagaciro ry'imitungo yafatiriwe mu gihe kitarenze iminsi cumi n'itanu (15) yifashishije impuguke ahawe n'Urugaga rw'abakora umwuga w'igenagaciro, raporo y'igenagaciro akayishyikiriza nyir'umutungo ufatiriwe n'ubereyemo umwenda, akagera kopi umunyamabanga nshingwabikorwa w'Akagari uherereyemo. Iyo raporo y'igenagaciro itangazwa ku rubuga rw'imanza zirangizwa. Uwishyuzwa n'uwishyuzwa bafite uburenganzira bwo kunyomoza igenagaciro ryakozwe bifashishije impuguke bahawe n'Urugaga rw'Abagenagaciro. Iyo habayeho impaka, Umuhesha w'inkiko yemeza igiciro mpuzandengo gishingiye ku gaciro katanze n'abagenagaciro bese". Uru rukiko rurasanga uretse kuba uregwa avuga ko yakozwe igenagaciro arimenyeshya urega ariko iryo genagaciro ntarigaragaza, akaba atanerekana aho yaba yaramenyeshereje

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Gakwaya Mutesi Hope iryo genagaciro, kuko harebwe attachment ya 038 iri muri system mu rukiko rw'Ibanze email yo kuwa 10/11/2021 yiswe kumenyeshwa expertise ntabwo igaragazwa. [21] Urukiko rurasanga gukora igenagaciro atari umuhango gusa, uhubwo ni uburyo bwo kumenyesha nyir'umutungo, agaciro ku mutungo we mbere y'uko utezwa cyamunara akareba niba utateshejwe agaciro yasanga uteshejwe agaciro nawe akaba yakwishirireho umugenagaciro we. [22] Uru rukiko ruranzura ko intenge zagaragajwe haruguru zituma cyamunara yakorewe ku mutungo ufite UPI: 1/03/01/02/1000 wanditswe kuri Gakwaya Mutesi Hope iteshwa agaciro kuko yakozwe mu buryo bunyuranije n'ingingo z'amategeko zavuzwe haruguru zirebana n'uburyo cyamunara igomba gukorwamo, ibi bikaba bivuze ko ibintu bigomba gusubira uko byari bimeze mbere ya cyamunara, Gakwaya Mutesi Hope agasubizwa umutungo we ufite UPI: 1/03/01/02/1000 na David Lang Rossagasubizwa amafaranga yaguze muri cyamunara angana na miliyoni mirongo itatu n'icyenda n'ibihumbi Magana arindwi mirongo itanu na kimwe (39,751,000frw) haherewe kuri miliyoni mirongo itatu na zirindwi n'ibihumbi ijana mirongo ine na bitandatu n'amafaranga ijana (37,146,100frw) yasagutse muri cyamunara, agashirwa kuri konti ya minisiteri y'ubutabera ubu akaba ariho abitse and aburaho angana na 2,604,900frw Gakwaya Mutesi Hope azishyura amafaranga miliyoni imwe n'ibihumbi Magana arindwi na mirongo itanu (1.750.000frw) akomoka ku rubanza yatsindiwe hamwe na EBENEZER EVANGELICAL CHURCH yari abereye umuyobozi mu rubanza RCA 00378/2018/HC/KIG bagategewe kuyishyura RIVERSIDE CITY ESTATE LTD noneho Me Gatarama Zacharie agasubiza amafaranga yita ko yakoresheje muri procedure - imihango yo kurangiza urubanza angana n'ibihumbi Magana inani mirongo itanu na bine n'amafaranga Magana icyenda (854,900frw) kuko yarurangije mu buryo bunyuranije n'amategeko. [23] Ibirebana no gutesha agaciro cyamunara yakozwe mu buryo bunyuranije n'amategeko, ibintu bigasubira uko byari bimeze mbere y'uko iba, s'umwihariko w'uru rukiko muri uru rubanza kuko no mu rubanza RCOMAA 00064/2019/CA haburana I&M BANK na SIMACO LTD rwaciwe kuwa 03/10/2019 mugace ka 23 kubirebana n'ihame rikuru kubijyanye n'uburenganzira ku mutungo ari uko ari ntavogerwa (peaceful enjoyment of property: usus, fructus, abusus). Mugace ka 23, urukiko rw'ubujurire rwemeje ko rurasanga ihame ry'uko umutungo bwite ari ntavogerwa kandi ko uburenganzira kuri wo ari ndahungabanywa keretse mu buryo buteganyijwe n'amategeko byaribukijwe n'Urukiko rw'Uburayi rushinzwe kuburanisha imanza zerekeranye n'Uburenganzira bw'Ikiremwa muntu aho rwibukije ko ihame rikuru kubijyanye n'uburenganzira ku mutungo ari uko ari ntavogerwa (peaceful enjoyment of property : usus, fructus, abusus), ko iyo hari ikirego cy'uko ubwo burenganzira butubahirijwe hagomba gusuzumwa niba ibyakozwe kuri uwo mutungo byarakurikije amategeko kandi ko byari bishingiye ku mpamvu zemewe kandi zumvikana, nabyo bishimangira ko mu gihe umutungo wagurishijwe muri cyamunara mu buryo bunyuranyije n'Amategeko, iyo cyamunara ikwiye guteshwa agaciro, ibintu bigasubira uko byari biri uwo mutungo utaragurishwa, byaba bigikenewe ukongera kugurishwa hubahirijwe amategeko n'amabwiriza abigenga. [24] Ibi ninako byemejwe mu rubanza RCAA 00006/2020/CA Haburana Ndahimana Emmanuel namugenzi we hamwe na Musoni Godfrey na mugenzi we rwaciwe kuwa 30/10/2020 mu gace ka 80 urukiko rw'ubujurire rwavuze ko rurasanga, kuba bigaragara ko umutungo wa

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Ndahimana Emmanuel na Kansayire Christiane wagurishijwe muri cyamunara mu buryo bunyuranyije n'amategeko kuko ibihe byo kuyitangaza bitubahirijwe, cyamunara ikwiye guteshwa agaciro, ibintu bigasubira uko byari biri uwo mutungo utaragurishwa. (iii) Kubirebana n'indishyi n'amafaranga y'ikurikirana rubanza. [25] Gakwaya Mutesi Hope asaba urukiko gukuraho igihembo cy'Avoka yategetswe n'urukiko ngo zihabwa STRATERA RWANDA, avuga ko uwo STRATERA RWANDA Ltd ntawe azi kuko yaburanye n'uwitwa COMPANY STRATERA RWANDA Ltd nawe byaje gutahurwa ko ari ishyirahamwe ritabaho mubitabo by'URwanda mu kigo RDB, ikindi n'uko atigeze amugobokesha m'Urubanza doreko Uwamuzanye m'Urubanza ari Gatarama Zacharie. Kuba Urukiko rwarahinduye ababuranyi, nabyo rubyibwirije, binyuranyije n'ibiteganywa n'ingingo ya 11 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi: "Umucamanza ntashobora gushingira icyemezo cye ku bitagaragajwe mu iburanisha. Ntashobora kandi no guca urubanza ashingiye ku byo aruziho ku giti cye". [26] COMPANY STRATERARWANDA LTD mu izina ry'umuyobozi wayo iburanirwa na Me Ntaganda Kabano avuga ko basanga ibivugwa na Gakwaya Mutesi Hope kuri iyi ngingo nta shingiro bifite kuko urukiko rwasobanuye neza mu gika cya 36 na 44 mu rubanza rwajuririwe impamvu rwaciye indishyi z'igihembo cy'avoka zingana na 500.000 frws. Muri ubu bujuriwe bwa kabiri, bakaba basaba ko urukiko rwategeka ko hakwiyongeraho andi 500.000 frws kubera gukomeza gushora STRATERA RWANDA Ltd mu manza nta mpamvu ifatika. [27] Me Gatarama Zacharie Umuhesha winkiko wumwuga avuga ko Gakwaya Mutesi Hope asaba ko yakurirwaho indishyi ariko sibyo kuko hari ibihombo akomeje gutera kuburyo we asaba ko yategekwa kwishyura Gatarama Zacharie amafaranga angana na 500.000 frws yo gushorwa no gusiragiza mu nkiko cyane ko arega azi neza ko atakagobye kurega ahubwo agamije kumuhombya. UKO URUKIKO RUBIBONA [28] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ko: "Ikirego cy'amafaranga y'ikurikirana rubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikirana rubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'uyo ikirego cy'iremezo cyaba kitakiriwe". [29] Urukiko rurasanga amafaranga y'ikurikirana rubanza n'igihembo cya Avoka bisabwa muri uru rubanza, asabwa na STRATERA RWANDA Ltd, yahinduriwe izina ikitwa TIRUME akaba afite ishingiro kuko Me Gatarama Zacharie Umuhesha winkiko wumwuga niwe wateje cyamunara mu buryo bunyuranyije n'amategeko bituma agobokesha mu rubanza nk'umuntu waguze muri cyamunara, Me Gatarama Zacharie akaba ariwe ugomba kumusubiza amafaranga ibihumbi Magana atanu (500.000frw y'umunyamategeko wamwunganiye naho amafaranga ibihumbi Magana atanu (500.000frw) Gakwaya Mutesi Hope yaciye mu rubanza rujuririrwa yagombaga STRATERA RWANDA Ltd, avanyweho kuko yayaciye bitari ngombwa.

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III. ICYEMEZO CY'URUKIKO [30] Rwemeje ko ubujurire bwa Gakwaya Mutesi Hope bufite ishingiro. [31] Rwemeje ko cyamunara yo ku wa 19/11/2021, ku mutungo ubaruye kuri N° UPI:1/03/01/02/1000 uherereye Kigali, Kicukiro, Gahanga, Kagasa wa Gakwaya Mutesi Hope, yakozwe mu buryo budakurikije amategeko, ikaba iteshejwe agaciro. [32] Rwemeje ko amafaranga ibihumbi Magana atanu (500.000frw) y'igihembo cy'Avoka Gakwaya Mutesi Hope yaciwe mu rubanza rujuririrwa yagombaga guha STRATERA RWANDA Ltd, yahinduriwe izina ikitwa TIRUME avanyweho. [33] Rwemeje ko STRATERA RWANDA Ltd mw'izina ry'umuyobozi wayo yahindutse TIRUME isubizwa amafaranga yaguze muri cyamunara angana na miliyoni mirongo itatu n'icyenda n'ibihumbi Magana arindwi mirongo itanu na kimwe (39,751,000frw) haherewe kuri miliyoni mirongo itatu na zirindwi n'ibihumbi ijana mirongo ine na bitandatu n'amafaranga ijana (37,146,100frw) yasagutse muri cyamurana, agashirwa kuri konti ya minisiteri y'ubutabera andi aburaho angana na 2,604,900frw Gakwaya Mutesi Hope azishyura amafaranga miliyoni imwe n'ibihumbi Magana arindwi na mirongo itanu (1.750.000frw) noneho Me Gatarama Zacharie agasubiza amafaranga yita ko yakoresheje muri procedure - imihango yo kurangiza urubanza angana n'ibihumbi Magana inani mirongo itanu na bine n'amafaranga Magana icyenda (854,900frw; [34] Rutegetse ko ibintu bisubira uko byari bimeze mbere ya cyamunara, STRATERA RWANDA Ltd mw'izina ry'umuyobozi wayo yahindutse TIRUME igasubizwa amafaranga yaguze muri cyamunara angana na miliyoni mirongo itatu n'icyenda n'ibihumbi Magana arindwi mirongo itanu na kimwe (39,751,000frw) bigakorwa mu buryo bwashobanuwe haruguru. [35] Rutegetse Me Gatarama Zacharie kwishyura STRATERA RWANDA Ltd mw'izina ry'umuyobozi wayo yahindutse TIRUME amafaranga y'u Rwanda ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka kandi bigakorwa mu gihe giteganywa n'amategeko bitaba akavanwa mu mitungo ye ku ngufu za Leta. [36] Amagarama y'uru rubanza Gakwaya Mutesi Hope yatanzeho ingwate ajurira ahwanye n'ibyakozwe muri uru rubanza byose.

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