

RWANDA / JUDGMENT

# HAKIZIMANA N'ABANDI v USENGIMANA N'UNDI

RCA 00063/2022/HC/KIG

COURT

High Court

DECIDED

15 December 2023

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RCA 00063/2022/HC/KIG

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## HAKIZIMANA N'ABANDI v USENGIMANA N'UNDI

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### Text

#### Page 1

HAKIZIMANA N'ABANDI v USENGIMANA N'UNDI [Rwanda URUKIKO RUKURU – RCA 00063/2022/HC/KIG (Gatete, P.J.) 15 Ukuboza 2023] Amategeko agenga imanza z'imbonezamubano – Umutungo – Ibigaragaza nyirumutungo - Uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze; bisobanuye ko uvuga ko ubutaka ari ubwe agomba kugaragaza inkomoko yabwo. Incamake y'ikibazo: Uru rubanza rukomoka ku makimbirane yakomotse ku butaka bwa Hakizimana na Sinamenye bwibarujweho mu buryo butazwi na Umutoni arangije arabugurisha. Ibi byabaye nyuma y'uko Company yitwa Imanzi Housing Developers iguriye ibaguriye ibikorwa byari ku butaka bwabo ibasezeranya ko izabaha ingurane y'ubutaka ariko ntibikore hakaza gufatwa icyemezo ko basubirana ubutaka bwabo. Muri uko gusubirana ubwo butaka nibwo Umutoni yabwibarujeho, igice kimwe akigurisha Kanakuze ariko ntibakora ihererekanya, arongerabugurishanya n'ubwa Hakizimana na Sinamenye bugurwa na Usengimana atangira kubwubakaho. Hakizimana, Sinamenye na Kanakuze, batanze ikirego Mu Rukiko Rwisumbuye

rwa Nyarugenge basaba ko Umutoni yabasubiza ubutaka bwabo yibarujeho, urukiko rwemeza ko ikirego cyabo nta shingiro gifite nabo bajurira mu Rukiko Rukuru. Mbere y'uko iburanisha ritangira, Hakizimana na Sinamenye baje kwikura mu rubanza bavuga ko ngo basanze ubutaka bwabo butaragurishijwe na Umutoni, urubanza rusigaramo Kanakuze. Urukiko rwasuzumye ikibazo cyo kumenya niba hari ubutaka bwa Kanakuze bwaba bwaragurishijwe na Umutoni kuri Usengimana. Kanakuze avuga ko yaguze ikibanza na Umutoni arangije arahazitira ariko asiga inyuma y'urupangu metero enye, ko ariho agomba gushyira amarembo ye asohoka mu gipangu nk'uko biteganyijwe kuri masterplan, akaba asaba ko agomba gusubizwa izo metero enye Kanakuze yagurishije Usengimana. Umutoni avuga ko ariwe wagurishije Kanakuze maze akamwereka aho ikibanza cye kirangiriye, maze Kanakuze ahashyira urupangu, ko rero izo metero enye (4m) avuga yasize inyuma ari ntazo ahubwo ngo n'inzira ijya kwa Usengimana. Incamake y'icyemezo: Uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze; bisobanuye ko uvuga ko ubutaka ari ubwe agomba kugaragaza inkomoko yabwo. Bityo ibyo Kanakuze avuga bikaba nta shingiro bifite kuko nta kimenyetso atanga kigaragaza ko metero enye (4m) ziri inyuma y'urupangu rwe ari ize. Ubujurire nta shingiro bufite. Nta mategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12. Imanza zifashishijwe:

## Page 2

RS/REV/INJUST/CIV0003/14/CS, Mukagatare n'abazungura ba Bwanacyeye, rwaciwe n'Urukiko rw'Ikirenga ku wa 03/02/2017; RCAA 00023/2018/CA, Muberuka na Home Basket Sacco Kimironko n'abandi, rwaciwe n'Urukiko rw'Ubujurire ku wa 18 Ukwakira 2019. Urubanza I. IMITERERE Y'URUBANZA [1] Abarega bavuga ko ku wa 01/04/2002 Sinamenye Leonard yaguze ikibanza na Ntabareshya JMV kingana na metero 20 kuri 30, ku wa 08/06/2006 agurishaho metero 19, 10 ku 12,50 Hakizimana Joseph. Muri 2007, IMANZI HOUSING DEVELOPERS kimwe n'abandi benshi yabaguriye ibikorwa byari kuri ubwo butaka, ibizeza ko izabaha ingurane y'ubutaka mu Kagari ka Karembure, mu Murenge wa Gahanga, Sinamenye atanga ubutaka bufite metero 10 kuri 7 ahabwa amafaranga 1.153.250 y'ibikorwa asigara ategereje ingurane y'ubutaka; naho Hakizimana atanga ubutaka bwe bwose ahabwa ingurane y'ibikorwa byariho ingana na 460.000 frw asigara ategereje ingurane y'ubutaka. Ubutaka bwari busigaye bwa Sinamenye bungana na metero 20 kuri 13 bwubatswe inzu yaje kubugurisha Kanakuze Valentine. Ikibazo cy'ingurane z'ubutaka zitatanzwe cyagejejwe ku rwego rw'Umuvunyi, hafatwa umwanzuro ko abaturage basubirana ubutaka bwabo ariko Umutoni Leatitia ku buryo butazwi ahuriza hamwe ubutaka bwa Sinamenye n'ubwa Hakizimana abwiyeandikishaho kuri UPI:1/03/02/03/684 nyuma agurishaho Kanakuze metero 20 kuri 6 ariko amwangira ko bakosozwa ubuso ngo kuko atarasora. [2] Ubutaka bwose Umutoni yari yibarujeho yaje kubugurisha Usengimana atanakuyeho ubwo yari yagurishije Kanakuze, n'ubwo Usengimana yagaragarijwe na Sinamenye, Hakizimana na Kanakuze ikibazo kiri kuri ubwo butaka cyatewe na Umutoni cyo kwibaruzaho ubutaka bwabo batabyumvikanyeho ndetse bikagera n'aho abugurisha, yatangiye imirimo yo kubwubakaho, ndetse anarengera

Kanakuze yubaka inkingi mu butaka bwe; abarega batanze ikirego mu Rukiko Rwisumbuye Nyarugenge maze gihabwa numero RC 00004/2020/TGI/NYGE, maze kuwa 18/02/2022 rwemeza ko ikirego cya Kanakuze Valentine, Hakizimana Joseph na Sinamenye Leonard nta shingiro gifite; maze rwemeza ko nta butaka bwa Kanakuze Valentine, Hakizimana Joseph na Sinamenye Leonard, bwagurishijwe na Umutoni Laetitia kuri Usengimana Jean d'Amour ndetse rutegeka ko ku buso bw'ikibanza buri ku cyangombwa cy'ubutaka cya Usengimana Jean d'Amour gifite UPI: 1/03/02/03/683 hakurwaho ubuso bungana na 120m2, bukongerwa ku buso bw'ubutaka bwa Kanakuze Valentine buri ku cyangombwa cy'ubutaka gifite UPI:1/03/02/03/684, nta gukata ubutaka kubayeho. [3] Kanakuze Valentine, Hakizimana Joseph na Sinamenye Leonard ntibishimiye icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Nyarugenge maze bajuririra mu Rukiko Rukuru; urubanza ruhabwa numero RCA 00063/2022/HC/KIG maze iburanishwa rishyurwa kuwa 19/10/2023. [4] Mu bujirire, Sinamenye Leonard ari imbere y'Urukiko yavuze ko aretse ubujirire bwe ndetse na Hakizimana Joseph yandikiye Urukiko ndetse abivuga imbere y'Urukiko ko aretse ikirego kuko nta nyungu bagifite muri uru rubanza kuko ngo bamaze kumenya ko uwo bareze atariwe wabagurishirije ikibanza.

### Page 3

- [5] Kanakuze Valentine yunganiwe na Me Mukashema Marie Claire avuga ko yaguze ikibanza na Umutoni Laetitia arangije arahazitira ariko asiga inyuma y'urupangu metero enye, ko ariho agomba gushyira amarembo ye asohoka mu gipangu nk'uko biteganijwe kuri masterplan; abajijwe impamvu yubatswe igipangu maze agasiga pariseri ye inyuma y'urupangu maze asubiza ko yahasize kuko ariho yari kujya asohokera; ko rero agomba gusubizwa izo metero enye (4m) aho Usengimana Jean d'Amour ashaka gushyira marembo. [6] Umutoni Laetitia yunganiwe na Me Barahira Mukazana avuga ko ariwe wagurishije Kanakuze Valentine maze akamwereka aho ikibanza cye kirangiriye, maze Kanakuze Valentine ahashyira urupangu, ko rero izo metero enye (4m) avuga yasize inyuma ari ntazo ahubwo ngo n'inzira ijya kwa Usengimana Jean d'Amour. [7] Usengimana Jean d'Amour yunganiwe na Barahira Mukazana avuga ko yaguze ikibanza na Umutoni Laetitia ahasanga na Kanakuze Valentine nawe yaraguze na Umutoni Laetitia kandi yaramaze kubaka urupangu; ko rero Kanakuze Valentine ajya kubaka urupangu muri 2017 yapimishije ubutaka bwe maze ahashyira urupangu, rero atari kubaka urupangu ngo asige ubutaka inyuma yarwo. [8] Me Barahira Eric ahagarariye COPEDU PLC mu izina ry'Umuyobozi wayo mukuru avuga ko yemeranya n'icyemezo cyafashwe n'Urukiko Rwisumbuye. [9] Ibu ranisha risojwe, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 16/11/2023, ariko uwo munsu ntirwasomwa kuko Umucamanza yari mu masomo i Nyanza, maze isomwa ryimurirwa kuwa 15/12/2023. [10] Muri uru rubanza, ikibazo kigomba gusuzumwa n'ukumenya niba hari ubutaka bwa Kanakuze Valentine bwaba bwagurishijwe na Umutoni Laetitia kuri Usengimana Jean d'Amour. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO Kumenya niba hari ubutaka bwa Kanakuze Valentine bwaba bwagurishijwe na Umutoni Laetitia kuri Usengimana Jean d'Amour. [11] Kanakuze Valentine yunganiwe na Me Mukashema Marie Claire avuga ko yaguze ikibanza na Umutoni Laetitia arangije arahazitira ariko asiga inyuma

y'urupangu metero enye, ko ariho agomba gushyira amarembo ye asohoka mu gipangu nk'uko biteganiywe kuri masterplan; abajijwe impamvu yubatswe igipangu maze agasiga pariseri ye inyuma y'urupangu maze asubiza ko yahasize kuko ariho yari kujya asohokera; ko rero agomba gusubizwa izo metero enye (4m) aho Usengimana Jean d'Amour ashaka gushyira marembo. [12] Umutoni Laetitia yunganiwe na Me Barahira Mukazana avuga ko ariwe wagurishije Kanakuze Valentine maze akamwereka aho ikibanza cye kirangiriye, maze Kanakuze Valentine ahashyira urupangu, ko rero izo metero enye (4m) avuga yasize inyuma ari ntazo ahubwo ngo n'inzira ijya kwa Usengimana Jean d'Amour. [13] Usengimana Jean d'Amour yunganiwe na Barahira Mukazana avuga ko yaguze ikibanza na Umutoni Laetitia ahasanga na Kanakuze Valentine nawe yaraguze na Umutoni Laetitia kandi yaramaze kubaka urupangu; maze Umutoni amwereka ikibanza cye nawe agtangira kuvugururra

## Page 4

inzu maze agiye gushyiraho amarembo nibwo Kanakuze Valentine yavuze ko atagomba gushyiraho amarembo kuko ari ubutaka bwe yasize inyuma y'urupangu; ko rero Kanakuze Valentine afite ubutaka bwe yaguze nawe akagura ubwe kandi ko izo 4m ariho hari inzira yinjira iwe ndetse ngo Umutoni wabagurishije we na Kanakuze Valentine yemeza ko izo 4m ari inzira yinjira kwa Usengimana Jean d'Amour kandi ngo Kanakuze Valentine afite amarembo areba imbere mu muhanda akaba atumva impamvu ashaka gushyira amarembo murubavu bw'ikibanza cye ndetse ngo ajya kubaka urupangu muri 2017 yabanye gupimisha ubutaka bwe abona gushyiraho urupangu, ko rero aho Kanakuze Valentine ashaka kwerekeza umuryango w'urupangu(portail) ari mubutaka bwa Usengima Jean d'Amour. [14] Me Barahira Eric ahagarariye COPEDU PLC mu izina ry'Umuyobozi wayo mukuru avuga ko yemeranya n'icyemezo cyafashwe n'Urukiko Rwisumbuye. Uko Urukiko rubibona; [15] Mu rubanza RS/REV/INJUST/CIV0003/14/CS rwabaye hagati ya Mukagatare n'abazungura ba Bwanacyeye rwatangajwe mu Cyegeranyo [2018] 2 RLR, Urukiko rw'Ikirenga rwatanze umurongo ujyanye n'uburyo bwemewe n'amategeko umuntu ashobora kubonamo umutungo utimukanwa, akaba uwo murongo uvuga ko: "Uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze"; akaba rero bisobanuye ko uvuga ko ubutaka ari ubwe agomba kugaragaza inkomoko yabwo ndetse byashimangiye no mu rubanza RCAA 00023/2018/CA rwabaye hagati ya Muberuka na Home Basket Sacco Kimironko n'abandi, Urukiko rw'Ubujurire rwatanze umurongo uvuga ko: "Kwandikwa ku mutungo utimukanwa ntibihagije kwemeza ko uwanditsweho arinyirawo mu gihe atagaragaza inkomoko yawo"; akaba muri uru rubanza nta kimenyetso Kanakuze Valentine atanga cyagaragaza ko metero enye(4m) ziri inyuma y'urupangu rwe ari ize kuko ntabwo atanga impamvu zifatika zatumye yubaka urupangu akazisiga inyuma ndetse uwo baguze ubwo butaka witwa Umutoni Laetitia akavuga ko aho Kanakuze Valentine yubatswe urupangu ariho pariseri igarukiye naho inyuma y'urupangu akaba atari ubutaka bwe ahubwo ngo n'inzira yinjira kwa Usengimana Jean d'Amour nawe wagurishijwe na Umutoni Laetitia. [16] Uru Rukiko rusanga mu gace ka [16] kurubanza rwajuririwe harasobanuwe ko n'ubwo Kanakuze avuga ko inyuma ya cloture ye hasigaye 1,50m ze, ntagaragaza ibimenyetso by'uko ubwo butaka bwe bwahasigaye koko.

Rurasanga iyo ku munsu wo kubaka cloture haba harabayeho ikibazo hagati ye na Umutoni, atari kwemera gukomeza kubaka cloture ikibazo kidakemutse, ariko kuba yarakomeje kubaka bikaba bigaragaza neza ko nta kibazo cyari gihari, bityo rukaba rusanga nta butaka bwe bwashigaye inyuma ya cloture.

1 Ingingo ya 12 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko: Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Urukiko rurasanga n'ubwo Kanakuze avuga ko inyuma ya cloture ye hasigaye 1,50 m ze, ntagaragaza ibimenyetso by'uko ubwo butaka bwe bwashigaye koko. Rurasanga iyo ku munsu wo kubaka cloture haba harabayeho ikibazo hagati ye na Umutoni, atari kwemera gukomeza kubaka cloture ikibazo kidakemutse, ariko kuba yarakomeje kubaka bikaba bigaragaza neza ko nta kibazo cyari gihari, bityo rukaba rusanga nta butaka bwe bwashigaye inyuma ya cloture, ahubwo ikigomba gukorwa ari ugukosora ubuso bw'ikibanza cye ku cyangombwa cy'ubutaka ndetse n'uburi ku cyangombwa cy'ubutaka cya Usengimana Jean d'Amour yaguze na Umutoni Laetitia, hakurwa ubuso bungana na 120 m2 ku buso buri ku cyangombwa cya Usengimana Jean d'Amour, bukongerwa ku buso buri ku cyangombwa cya Kanakuze Valentine, ariko nta gukata ubutaka kubayeho kuko ikibazo kiri ku buso buri ku cyangombwa gusa.

## Page 5

[17] Uru Rukiko rusanga kandi ibipimo byafashwe ku kibanza cya Kanakuze Valentine n'ikibanza cya Usengimana Jean d'Amour bigaragaza ko aho Kanakuze Valentine avuga ko ari ubutaka yasize inyuma y'urupangu yubatswe ari mu butaka bwa Usengimana Jean d'Amour; bigaragara kandi ko aho Kanakuze yita ikibanza cye yasize inyuma ya cloture ariho hari inzira ijya mu kibanza cya Usengimana Jean d'Amour, akaba rero bitumvikana ukuntu Umutoni Laetitia yari kugurisha Kanakuze ikibanza maze ntasige umuhanda uzagana mu kibanza kindi aricyo yagurishije Usengimana Jean d'Amour; akaba rero ibyemejwe n'Urukiko Rwisumbuye mu rubanza rwajuririwe aribyo bifite ishingiro, akaba uko ubutaka bwa Kanakuze Valentine buri murupangu yubatswe ubwe aribwo agomba kugumana; akaba ariyo mpamvu hagomba kugumaho urubanza rwajuririwe. III. ICYEMEZO CY'URUKIKO [18] Rwemeje ko ubujurire bwa Kanakuze Valentine bwakiriwe ariko busuzumye rusanga nta shingiro bufite. [19] Rutegetse ko imikirize y'urubanza RC 00004/2020/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 18/02/2022 igumye mu ngingo zarwo zose; ko nta butaka bwa Kanakuze Valentine, Hakizimana Joseph na Sinamenye Leonard, Umutozi Laetitia yagurishije Usengimana Jean d'Amour; ko ku buso bw'ikibanza buri ku cyangombwa cy'ubutaka cya Usengimana Jean d'Amour gifite UPI: 1/03/02/03/683 hakurwaho ubuso bungana na 120m2, bukongerwa ku buso bw'ubutaka bwa Kanakuze Valentine buri ku cyangombwa cy'ubutaka gifite UPI:1/03/02/03/684, nta gukata ubutaka kubayeho; ko Kanakuze Valentine, Hakizimana Joseph na Sinamenye Leonard bafatanyaga kwishyura Umutozi Laetitia amafaranga 500.000 y'igihembo cya avoka n'ikurikiranarubanza n'amafaranga 100.000 y'indishyi zo gushorwa mu manza; ko Kanakuze Valentine, Hakizimana Joseph na Sinamenye Leonard bafatanyaga kwishyura Usengimana Jean d'Amour

amafaranga 500.000Frw y'igihembo cya avoka n'ikurikiranarubanza n'amafaranga 100.000 y'indishyi zo gushorwa mu manza. [20] Rutegetse ko ingwate y'amagarama yatanzwe ahwanye n'imirimo yakozwe mu rubanza.

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