

RWANDA / JUDGMENT

HAVUGIMANA v. Me GATEGEKO N'ABANDI

RS/INJUST/RC00009/2024/HC/KIG

COURT

High Court

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HAVUGIMANA v. Me GATEGEKO N'ABANDI

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Text

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HAVUGIMANA v. Me GATEGEKO N'ABANDI [Rwanda URUKIKO RUKURU – RS/INJUST/RC00009/2024/HC/KIG (Murererehe, J.P., Hitimana na Nkusi, J.) 7 Gashyantare 2025] Amategeko agenga imiburanishirize y'imanza mbonezamubano – Cyamunara – Gutangaza cyamunara – Gutangaza cyamunara si umuhango gusa, ahubwo ni uburyo bwo kumenyesha nyir'umutungo, ushobora kuba atari kumwe nawo, kumenyesha abandi baba bafite inyungu mu kurengera uwo mutungo, kumenyesha uberewemo umwenda wasabye ko uwo mutungo ugurishwa, abandi nyir'umutungo yaba abereyemo imyenda, abaguzi cyangwa uwo ariwe wese ufite icyo yabaza kuri uwo mutungo, washyizwe ku isoko kugira ngo habanze hishyurwe umwenda runaka. Incamake y'ikibazo: Havugimana yatanze ikirego mu Rukiko rw'Ibanze rwa Nyamata asaba guhagarika no gutesha agaciro cyamunara yakozwe ku mutungo we, aho yaregaga Me Gategeko nk'umuhesha w'inkiko utari uw'umwuga n'Indatsikira Sacco Kimihurura ndetse na Murihano wagobotse mu rubanza. Urukiko rwaciye urubanza rwemeza ko cyamunara igumana agaciro kayo, kuko Havugimana atabashije kugaragaza ibimenyetso bigaragaza ko cyamunara yakozwe n'umuhesha w'inkiko Gategeko hari imihango itubahirijwe. Havugimana yajuriye mu Rukiko Rwisumbuye rwa Gasabo avuga ko mu rubanza rujuririrwa, Urukiko rwirengagije ko hari imihango ya

cyamunara itarubahirijwe n'umuhesha w'inkiko, iyo cyamunara ikaba yaragombaga guseswa iyo Urukiko rw'Ibanze rubigenzura neza. Mu kwiregura, Gategeko na Indatsikira Sacco Kimihurura bavuga ko ubwo bujurire nta shingiro bufite, kuko ibiteganywa n'amategeko agenga icyamunara byarubahirijwe, basaba ko icyemezo cyafashwe kitahinduka. Mu guca urubanza, Urukiko Rwisumbuye rwemeje ko icyemezo cyafashwe mu rubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyamata, kidahindutse. Havugimana amaze gutsindwa izo manza, yasabye ko urwo rubanza rwaciwe n'Urukiko Rwisumbuye rusubirishwamo ku mpamvu z'akarengane, arabyemererwa, maze Urukiko rw'Ikirenga rwemeza ko rwongera kuburanishwa ku mpamvu z'akarengane n'uru Rukiko Rukiko. Muri uru rubanza rw'akarengane, Havugimana avuga ko yaba Indatsikira Sacco Kimihurura, Gategeko Aimable na Murihano Innocent, bagiranye amayeri akomeye bagamije kumujyana umutungo we. Asobanura ko Indatsikira Sacco Kimihurura na Me Gategeko bagiye bagurisha imitungo ye mu buryo bunyuranyije n'amategeko, ko Gategeko nta tangazo na rimwe rya cyamunara yigeze amushyikiriza, ko yagurishije umutungo udafatiriye kandi amategeko ateganya ko umuhesha w'inkiko afatira umutungo nibura nyirawo cyangwa uwo bafitanye isano bahari bakanashyikirizwa raporo, ariko ntibyakozwe. Ikindi ni uko cyamunara zzari zimaze gukorwa ari eshatu, birangira nta muguzi ubonetse, amatangazo yagombaga kuyanyuza ku maradiyo ariko ibyo byose ntibyigeze bikorwa. Akomeza avuga ko kuwa 01/10/2019 aribwo Umuhesha w'inkiko yateje cyamunara kandi ku wa 25/10/2019 aribwo yamanitse itangazo ku Kagari, akaba yibaza uburyo itangazo ryamanitswe cyamunara yaramaze gukorwa, ko n'amafaranga bavuga bamwishyuzaga yayishyuye kuwa 11/09/2019, bityo asaba ko yarenganurwa imanza asubirishamo ku mpamvu z'akarengane zikavanwaho. Indatsikira Sacco Kimihurura n'ibyavuzwe na Gategeko aburana ndetse n'ibigaragara mu mwanzuro wo kwiregura wa Murihano biregura kuri izo mpamvu z'akarengane, bavuga ko nta karengane kakozwe muri cyamunara kubera ko amatangazo yamenyeshejwe Havugimana ndetse aranatangazwa ku ma radiyo akaba nta mpamvu yari gutuma cyamunara idakorwa. Incamake y'icyemezo: Gutangaza cyamunara si umuhango gusa, ahubwo ni uburyo bwo kumenyesha nyir'umutungo, ushobora kuba atari kumwe nawo, kumenyesha abandi baba bafite inyungu mu kurengera uwo mutungo, kumenyesha uberewemo umwenda wasabye ko uwo mutungo ugurishwa, abandi nyir'umutungo yaba abereyemo imyenda, abaguzi cyangwa uwo ariwe wese ufite icyo yabaza kuri uwo mutungo, washyizwe ku isoko kugira ngo habanze hishyurwe umwenda runaka.

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Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro. Amagarama aherera ku isanduku ya Leta. Amategeko yashingiweho: Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imaza zimbinezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10, 253, 254, 256 n'ya 260. Imanza zifashishijwe: RCOMAA00064/2019/CA, Kayumba v. Simaco Ltd n'Abandi, rwaciwe n'urukiko rw'ubujurire kuwa 03/10/2019. Inyandiko z'abahanga zifashishijwe: Jacques Flouer, Jean – Luc Aubert na Eric Savaux, Droit Civil Les obligations, fait juridique, 12ème édition, Dalloz, 2007, P. 97. Urubanza I. IMITERERE Y'URUBANZA [1] [1]. Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyamata, Havugimana Placide arega Gategeko Aimable na Indatsikira Sacco Kimihurura, asaba urwo rukiko guhagarika no gutesha agaciro

cyamunara yakorewe ku mutungo ubaruye kuri UPI :5/07/10/04/1712 kuwa 01/10/2019, urwo rubanza rwagobotsemo Murihano Innocent, icyo kirego kikaba cyaranditswe kuri RC00422/2019/TB/NYMTA, mu ica ry'urwo rubanza hemejwe ko Havugimana Placide atashoboye kugaragaza ibimenyetso bigaragaza ko cyamunara yakozwe n'umuhesha w'inkiko Gategeko Aimable ku mutungo ubaruye kuri UPI:5/07/10/04/1712 Uherereye mu Mudugudu wa Gataraga, Akagari ka Murama, Umurege wa Nyamata, Akarere ka Bugesera, Intara y'Iburasirazuba hari imihango itubahirijwe, rutegetseka ko cyamunara yakozwe ku wa 01/10/2019 kuri uwo mutungo igumana agaciro kayo, Rutegeka Havugimana Placide gusubiza Gategeko Aimable amafaranga ibihumbi magana arindwi (700.000Frw) arimo ibihumbi ijana (100.000Frw) yakoresheje akurikirana urubanza, ibihumbi ijana (100.000Frw) yo gushorwa mu manza n'ibihumbi magana atanu (500.000Frw) y'igihembo cy'uwamwunganiye, Rutegeka Havugimana Placide gusubiza Indatsikira Sacco Kimihurura amafaranga ibihumbi magana arindwi (700.000Frw) arimo ibihumbi ijana (100.000Frw) yakoresheje ikurikirana urubanza, ibihumbi ijana (100.000Frw) yo gushorwa mu manza n'ibihumbi magana atanu (500.000Frw) y'igihembo cy'uwamwunganiye, rutegetse amafaranga ibihumbi cumi (10.000Frw) Havugimana Placide yatanzeho ingwate arega ahwana n'ibyakozwe muri urwo rubanza. [2] Havugimana Placide yajuririye icyemezo cyafashwe mu rubanza RC00422/2019/TB/NYMTA avuga ko urukiko rwirengagije ko hari imihango ya cyamunara itarubahirijwe n'umuhesha w'inkiko ariyo mpamvu iyo cyamunara yagombaga guseswa iyo urukiko rwibanze rubigenzura neza. [3] Mu iburanisha ryo kuwa 13/01/2020 Indatsikira Sacco Kimihurura na Gategeko Aimable basabye urukiko ko Murihano Innocent yagobokeshwa mu rubanza, kuko mu rukiko rw'Ibanze yari umuburanyi, kandi nabwo bari basabye ko agobokeshwa cyane ko ari nawe waguze umutungo watejwe cyamunara. [4] Mu kwiregura ku bujurire Indatsikira Sacco Kimihurura na Gategeko Aimable bavuga ko ibivugwa byose na Havugimana Placide basanga nta shingiro bifite kuko ibyakozwe byose yagiye abimenyeshwa haba inyandiko zifatira, igenagaciro ndetse akazisinyira, ko yagiye amenyeshwa n'amatangazo kuri Radio, ko byakozwe no mu binyakuru kandi ko byamenyeshejwe ku kagari ka Murama aho umutungo ubarizwa, bakaba basanga ibiteganywa n'amategeko agenga icyamunara byarubahirijwe, basaba ko icyemezo cyafashwe n'urukiko rw'Ibanze rwa Nyamata kitahinduka.

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- [5] Urukiko rwisumbuye kuwa 02/09/2021 rwaciye urwo rubanza rwemeza ko icyemezo cyafashwe mu rubanza RC000422/2019/TB/NYMTA kuwa 29/11/2019 kidahindutse, ruvuga ko amafaranga y'amagarama y'urubanza ahwanye n'ibyarukozwemo. [6] [6]. Nyuma yo gutsindwa izo manza, Havugimana Placide yandikiye asaba ko urubanza RCA 00264/2019/TGI/Gsbo rwasubirwamo ku mpamvu z'akarengane, uko kwemeza ko rusubirishwamo ku mpamvu z'akarengane byaje kwemerwa Perezida w'Urukiko rw'Ikirenga akena ko Urukiko Rukuru arirwo rukwiye kuburanisha uru rubanza rugasuzuma niba imanza zabanje harimo akarengane, urubanza rwaburanishijwe kuwa 19/11/2024 hitabye Havugimana Placide uregera gusubirishamo urubanza ku mpamvu z'akarengane na Gategeko Aimable umuhesha w'inkiko w'umwuga bitabye kandi buri wese yiburanira naho Indatsikira Sacco Kimihurura na Murihano Innocent nabo barezwe ariko uwo munsu bakaba bataritabiriye iburanisha

nyamara bigaragara ko bamenyeshejwe umunsi w'iburana ry'urubanza, urukiko rusanga barahamagajwe mu buryo bukurikije amategeko, ruburanishwa badahari. [7] Mu gusobanura akarengane ke, Havugimana Placide avuga ko yaba urukiko rwibanze rwa Nyamata ndetse n'urukiko rwisumbuye zirengagije ko imenyekanisha ry'amatangazo ya cyamunara byatumaga cyamunara idakorwa kubera ko ritubahirije amategeko, ikindi ko yari yaramaze kwishyura umwenda wa Sacco nta mpamvu bari kongera kumugurishiriza inzu, ikindi ko atagombaga gucibwa igihembo cy'umuhesha w'inkiko kirenze icyo amategeko yateganyaga, agasaba kurenganurwa imanza asubirishamo ku mpamvu z'akarengane zikavanwaho. [8] Mu myanzuro ya Indatsikira Sacco Kimihurura ndetse n'ibyavuzwe na Gategeko Aimable aburana n'ibigaragara mu mwanzuro wo kwiregura wa Murihano Innocent biregura kuri izo mpamvu z'akarengane bavuga ko nta karengane kakozwe muri cyamunara kubera ko amatangazo yamenyeshejwe ndetse arangatangazwa ku ma radiyo akaba nta mpamvu yari gutuma cyamunara idakorwa, naho igihembo cy'umuhesha w'inkiko ko uwarangirizwagaho urubanza yagombaga kwishyura umuhesha w'inkiko kubera ko atari yishyuye ku neza. [9] Urukiko rurasuzuma ibibazo bikurikira: kumenya niba hari umwenda Havugimana Placide yarakibereyemo Indatsikira Sacco Kimihurura kuburyo umutungo we wagombaga gutezwa cyamunara kuwa 01/10/2019 niba kandi amatangazo ya cyamunara yarubahirije amategeko, kumenya niba indishyi zategetswe mu rubanza rusabirwa gusubirishamo ku mpamvu z'akarengane zikwiye kuvanwaho cyangwa niba zagumaho no kumenya niba kandi hari indishyi zagenwa muri uru rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Ku byerekeye kumenya niba hari umwenda Havugimana Placide yarakibereyemo Indatsikira Sacco kuburyo umutungo we wagombaga gutezwa cyamunara tariki ya 01/10/2019 niba kandi amatangazo ya cyamunara yarubahirije amategeko [10] Havugimana Placide avuga ko yaba Indatsikira Sacco Kimihurura, Gategeko Aimable ndetse na Murihano Innocent, bagiranye amayeri akomeye bagamije kumujyana umutungo we, banyuranyije n'ibiteganywa n'ingingo za 253-254 n'ya 256 z'itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imaza zimbinezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ku birebana no gutangaza icyamunara aho muri raporo ya Cyamunara Me Gategeko Aimable avuga ko icyamunara cyakozwe kuwa 01/10/2019, ko yagaragarije urukiko itangazo ryakozwe kuwa 25/10/2019 ryari itangazo rigamije iki, ko aha banasobanuye uburyo bagurishije umutungo ufite UPI: 5/07/10/04/1712 uherereye mu Kagari ka Murama mu Murenge wa Nyamata, mu Karere ka Bugesera, ko wagurshijwe kuwuhwe mwenda cyane ko bari baramaze kugurisha inzu ifite UPI:1/02/08/02/816 yari iherereye mu Karere ka Gasabo mu murenge wa Kimihurura, Akagari ka Kimihurura, mu Mudugudu wa Rugarama, ko iki kibazo gikwiriye gusuzumwa maze bakagaragaza aho bashingiye bajya kugurisha inzu ebyiri zose nyamara nta mwenda yari akibereyemo Indatsikira Sacco Kimihurura. [11] Mu kuburana kwa Havugimana Placide akomeza avuga ko Indatsikira Sacco Kimihurura na Me Aimable baragiye bagurisha imitungo ye mu buryo bunyuranyije n'amategeko, ko Gategeko Aimable nta tangazo na rimwe

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rya cyamunara yigeze amushyikiriza, icya kabiri aruko yagurishije umutungo udafatiriye kandi amategeko ateganya ko umuhesha w'imkiko afatira umutungo nibura nyirawo cyangwa uwo bafitanye isano bahari bakanashikirizwa raporo, ariko ibi ntibyakozwe, ikindi aruko ibyamunara uko ari bitatu (3) byarangiye nta muguzi ubonetse, amatangazo yagombaga kuyanyuza ku maradiyo ariko ibyo byose ntibyigeze bikorwa, ko kuwa 01/10/2019 aribwo Umuhesha w'inkiko yateje cyamunara kandi kuwa 25/10/2019 aribwo yamanitse itangazo ku Kagari, akaba yibaza uburyo itangazo ryamanitswe cyamunara yaramaze gukorwa, ko n'amafaranga bavuga bamwishyuzaga yayishyuye kuwa 11/09/2019 kuri konte ye ko hariho ahwanye na 2.701.000Frw bayakuyeho hasigaraho 1000Frw, ikindi nuko ririya tangazo ryamanitswe kuwa 25/10/2019 naryo yagombaga kurimenyesha akaricisha kuri radiyo no mu kinyamakuru, ko iki cyari icyiciro cya 4 kandi itangazo ryanyuze mu kinyamakuru rimwe gusa, agasaba kurenganurwa. [12] Mu kuburana kwa Me Gategeko Aimable yiregura avuga ko ibivugwa na Havugimana Placide avuga nta shingiro bifite, kubera ko avuga ko yatanze amatangazo incuro 4 kandi muri systeme yagaragaje uko amatangazo yatanzwe, ko ibyo avuga abeshya, ko ariko abisobanura, ko itangazo yarishikirije abadafite ububasha nuko gitifu akora "accuse de reception" nyuma, ntabwo ari ku Kagari gusa bamanika itangazo kuko ryanyuze no mu binyamakuru kandi arabyishyurira, akibaza ati ese ku Kagari ko batishyura ni gute atari kuriyanayo akereye, icya kabiri cyerekeye umwenda Havugimana Placide yari abereyemo Indatsikira Sacco Kimihurura, yibaza niba Havugimana Placide atemera ko yaburanye niyi SACCO, ko we yahawe kurangiza urubanza kandi nta access yari afite kuri konti ya Havugimana Placide, ko ibi bireba SACCO kuko ariyo yamuhaye umubare w'amafaranga yishyura, ko ari icyemezo cy'urukiko, habaye urubanza Havugimana Placide yarimo umwenda wa banki (Sacco), umutungo wa mbere uri Kimihurura waratejwe ariko amafaranga ntiyaboneka yose, bituma umuhesha w'inkiko ajya no guteza umutungo yari afite i Nyamata, ko ibyo Havugimana Placide avuga ko nta mwenda yari agifitiye Indatsikira Sacco Kimihurura ntabwo aribyo kuko SACCO ari ikigo cy'imari, nticyamwishyura kabiri, ibyo Havugimana Placide avuga ko nta tangazo yigeze amenyeshwa, ntaho itegeko rivuga ko agomba kumenyeshwa kandi izindi nyandiko zose yarazimenyeshwe. [13] Gategeko Aimable akomeza avuga ko yemera ko umutungo wa Havugimana Placide uherereye Kimihurura watejwe cyamunara ndetse Indatsikira Sacco Kimihurura ikishyurwa ariko amafaranga y'ubwishyu akaba makeya, ko raporo y'iyi cyamunara iri muri dosiye mu manza baburanye mbere, ko amafaranga yayashyize kuri compte ya Havugimana Placide kandi bordereau ishobora kuba iri muri dosiye y'urukiko rwisumbuye cyangwa se iy'urukiko rw'ibanze (TGI na TB), kandi ko SACCO idahakana ko ayo mafaranga itayakiriye. [14] Mu mwanzuro wa Indatsikira Sacco Kimihurura, nubwo ititabiriye iburanisha kandi yari yamenyeshejwe mu buryo bukurikije amategeko, yiregura ivuga ko Havugimana Placide uvuga ko cyamunara itatangajwe ariko ko yatangajwe nk'uko bigaragazwa n'itangazo rya cyamunara ryo ku itariki ya 01/10/2019, ndetse byanashimangiwe n'urukiko mu rubanza rusubirishwamo ku mpamvu z'akarengane ku rupapuro rwa 7 agace ka 27 urega mu bujurire atagaragaza ibimenyetso ashingiraho avuga ko urukiko rw'Ibanze rutasuzumye niba imenyeshwa rya cyamunara ritubahirije umuhango ukorwa mbere yo guteza cyamunara, kuko yashoboraga guhagarikisha cyamunara itararangiza gukorwa mu gihe yaba abifitemo inyungu

cyane ko yagiye isubikwa, kuba Havugimana Placide avuga ko urubanza rurimo akarengane kandi mu kirego yatanze yasabye urukiko guhagarikisha cyamunara kandi yararangije gukorwa, byumvikane ko urukiko rutari guhagarika cyamunara yamaze gukorwa, ahubwo Havugimana Placide yagombaga gutanga ikirego cyo gutesha agaciro cyamunara kuko yarayimenyeshejwe kugira ngo urukiko ruce urubanza ku kintu gishoboka aricyo gutesha agaciro cyamunara kandi amategeko ateganya ko urukiko ruca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine nk'uko biteganywa n'ingingo ya 10 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imaza zimbinezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. [15] Indatsikira Sacco Kimihurura ikomeza yiregura ivuga ko isanga ibyo Havugimana Placide avuga ko urubanza rurimo akarengane nta shingiro bifite kuko nta karengane gashobora kugaragarira mu kirego gitanzwe mu buryo bunyuranije n'amategeko, ko amatangazo avugwa na Havugimana Placide ko atubahirije amategeko nabyo nta shingiro bifite kuko amatangazo yatananzwe kandi atangwa mu buryo bukurikije amategeko nk'uko

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byagaragajwe n'urukiko mu rubanza rusubirishwamo ku rupapuro rwa 7 agace ka 27 kugeza ku rwa munani agace ka 28, ko isanga rero nta karengane kari muri urubanza nk'uko imaze kubisobanura haruguru. [16] Murihano Innocent wagobokeshejwe mu rubanza nawe yiregura avuga ko asanga nta karengane Placide yabashije kugaragaza kuko ubusanzwe urubanza asubirishamo akarengane rwatangiriye mu rukiko rwibanze rwa Nyamata mu rubanza RC00422/2019/TB/Nymta arirwo rwajuririye mu rukiko rwisumbuye rwa Gasabo kuko ikirego cyatanzwe mu buryo no mu nzira zidakurikije amategeko, aho yasabaga urukiko guhagarika no gutesha agaciro cyamunara mu kirego kimwe kandi kuri cyamunara yarangiye, ibyo bikaba binyuranyije n'amategeko kuko iyo cyamunara yarangiye hatangwa ikirego cyo kuyitesha agaciro ariko ntiyahagarikwa kandi yarangiye, ko ashingiye ku ngingo ya 260 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imaza zimbinezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, asanga rero nta karengane Havugimana Placide yagiriye kuko ikirego cye cyatanzwe mu buryo budakurije amategeko ndetse n'amatangazo avugwa yatananzwe nkuko amategeko abiteganywa. [17] Murihano Innocent akomeza avuga ko ikindi kandi Havugimana Placide avuga ko nta mwenda yarabereyemo Sacco ariyangagiza ko hari urubanza rwaciye mu rukiko rw'ubucuruzi rwemeza ko Placide afitiye Sacco umwenda ugera kuri 2,570,000Frw Havugimana Placide mu kirego cye cyo guhagarika cyamunara akavuga ko urwo rubanza atarumenye nyamara ibyo ntabwo bisuzumwa mu kirego cyo guhagarika cyamunara kuko iyo aba afite ikibazo kuri urwo rubanza yagombaga gusaba ko rukurwaho ariko kuba atarabisabye bivuze ko rugomba kurangizwa akaba ari no muri urwo rwego Sacco yateje cyamunara maze Murihano Innocent nawe aza kugura uwo mutungo akaba asanga nta mategeko yishwe. UKO URUKIKO RUBIBONA [18] Urukiko rusanga impaka ziri muri uru rubanza zishingiye ku kumenya niba imihango ya cyamunara ku mutungo utimukanwa wa Havugimana Placide ufite UPI: 5/07/10/04/1712 yaba yarubahirije amategeko no kumenya niba hari umwenda Havugimana Placide yaba yarafitiye Sacco yasabye umuhesha w'inkiko guteza cyamunara uwo mutungo. [19] Ingingo ya 253 y'itegeko n° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imazna

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ivuga ko mu gihe cy'amasaha mironko ine n'umunani (48) kuwa Umuhesha w'Inkiko yemeje igiciro cy'umutungo ugomba kugurishwa, akora itangazo rya cyamunara rigaragaza umutungo ugomba gutezwa cyamunara, umwirondoro wa nyirawo, umwirondoro w'ugomba kwishyurwa, impamvu ya cyamunara, aho umutungo uherereye, itariki cyamunara izaberaho n'isaha izatangiriraho. Itangazo rya cyamunara rishyirwa ku rubuga rw'imanza zirangizwa, hariho ifoto y'umutungo ugurishwa n'icyemezo gihamya ko nyir'umutungo. Rigomba kandi gushyikirizwa nyir'umutungo ugurishwa, ugomba kwishyurwa, umunyamabanga nshingwabikorwa w'Akagari k'aho umutungo uherereye, rikanatangazwa kuri Radio cyangwa Televiziyo n'ikinyamakuru cyandika bikorera mu Rwanda. Iyo ari umutungo utimukanwa itangazo rya cyamunara rimanikwa ku Biro by'Akagali k'aho uwo mutungo uherereye. Ibintu byafatiriwe ntibishobora kugurishwa muri cyamunara mbere y'iminsi itanu (5) cyamunara itangajwe. [20] Mu gika cya 23 kugeza kucya 24 cy'Urubanza RCOMAA00064/2019/CA rwaciwe n'urukiko rw'ubujurire kuwa 03/10/2019, rwafashe umurongo ko gutangaza cyamunara atari umuhango gusa, uhubwo ari uburyo bwo kumenyesha nyir'umutungo, ushobora kuba atari kumwe nawo, kumenyesha abandi baba bafite inyungu mu kurengera uwo mutungo, kumenyesha uberewemo umwenda wasabye ko uwo mutungo ugurishwa, abandi nyir'umutungo yaba abereyemo imyenda, abaguzi cyangwa uwo ariwe wese ufite icyo yabaza kuri uwo mutungo, ko washyizwe ku isoko kugirango habanze hishyurwe umwenda runaka. [21] Uru rukiko ruhuje uyu murongo wemejwe n'urukiko rw'ubujurire umaze kuvugwa mu gika kibanziriza iki, n'ibigaragazwa muri uru rubanza ndetse n'ibiteganywa n'ingingo yavuzwe haruguru cyane igika cya 2 cy'ingingo ya 253 y'Itegeko ryavuzwe, aho ivuga ko itangazo rya cyamunara rigomba gushyikirizwa nyir'umutungo ugurishwa, ugomba kwishyurwa, umunyamabanga nshingwabikorwa w'Akagari k'aho umutungo

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uherereye, rusanga uwo muhango ari ngombwa, rwabihuza n'inyandiko y'itangazo rya cyamunara yo kuwa 01/10/2019 ryakozwe n'umuhesha w'inkiko w'umwuga Me Gategeko Aimable, aho ubwe yanditse n'ikaramu kuri iryo tangazo ryo guteza cyamunara umutungo wa Havugimana Placide ugizwe n'inzu iri mu kibanza UPI: 5/07/10/04/1712 akandikaho n'ikaramu ati: none kuwa 25/10/2019, Njyewe Me Gategeko Aimable, umuhesha w'inkiko w'umwuga ngeze ku Kagali ka Murama nsanze Umuyobozi w'Akagali adahari ngo yagiye kuriterre itangazo ndarimanitse mpasanze umuyobozi w'umudugudu nawe arabyemeje, uwo muyobozi w'umudugudu arabisinyira. [22] Uru rukiko rwasuzuma inyandiko yiswe inyandiko mvugo ya cyamunara, aho umuhesha w'inkiko Me Gategeko Aimable yemeje ko yateje cyamunara umutungo utimukanwa ugizwe n'inzu iri muri UPI: 5/07/10/04/1712 wa Havugimana Placide tariki ya 01/10/2019, uwo mutungo ukegukanwa na Murihano Innocent ku giciro cya 3.000.000Frw akaba yararangizaga urubanza Indatsikira Sacco Kimihurura yatsindiye Havugimana arirwo rubanza RCOM 01705/2017/TC/Nyge rwaciwe n'Urukiko rw'Ubucuruzi kuwa 23/02/2018. [23] Uru rukiko rusanga kuba Me Gategeko Aimable yaramanitse amatangazo ya cyamunara ku kagali ka Karama nkuko ubwe yabyanditse kuri iryo tangazo kuwa 25/10/2019 ndetse iryo tangazo rikaba ritaranashyikirijwe umuyobozi w'akagali, akaba aburana yemeza ko yabikoze kuwa 25/10/2019

kandi cyamunara yarabaye mbere hashize imindi 24 kuko yabaye kuwa 01/10/20019 nkuko iyo nyandiko mvugo ya cyamunara ubwe ibigaragaza rusanga, rukaba rusanga ibi byakozwe byo kumanika amatangazo nyuma y'uko cyamunara ibaye cyangwa kutayashyikiriza Umunyamabanga nshingwabikorwa w'akagali ndetse ni nyiri umutungo akaba atarabimenyeshejwe nkuko Me Gategako ubwe abyemeza ko nta tegeko rimuhatira kumenyesha amatangazo nyiri umutungo nyamara ingingo yavuzwe haruguru isobanura abamenyeshwa iby'ayo matangazo ya cyamunara, ko rusanga ibi ari ibigaragaza ko uwo muhango uteganyijwe n'itegeko utubahirije ibiteganywa n'ingingo yavuzwe haruguru cyane ko nta nitangazo na rimwe ubwe agaragaza ko yaba yaramenyeshwe nyiri umutungo ngo ayisinyeho cyangwa se yange kurisinye abyandike abigaragaza nk'umuhesha w'inkiko, rukaba rusanga kuba cyamunara yarakozwe nta tangazo rimanitswe ahabugenewe ku gihe giteganywa n'ingingo yavuzwe cyangwa ngo rishyikirijwe umunyamabanga nshingwabikorwa w'akagali mbere y'ibihe biteganywa n'ingingo ya 253 y'Itegeko ryavuzwe haruguru cyangwa ngo rishyikirizwe nyiri umutungo utezwa cyamunara ari icyemeza ko imihango ibanziriza itezwa rya cyamunara itubahirije amategeko, akaba nta mpamvu iyo cyamunara yagombaga kubaho. [24] Uru rukiko rusanga kandi urubanza RCOM01705/2017/TC/Nyge Umuhesha w'inkiko yashingiragaho avuga ko agurisha mu cyamunara umutungo wa Havugimana Placide ugizwe n'inzu iri mu kibanza UPI: 5/07/10/04/1712 muri urwo rubanza rwaciwe kuwa 23/02/2018 bigaragara ko Havugimana Placide yatsindiwe amafaranga ahwanye na 2.022.520Frw ajyanye n'umwenda abereyemo Indatsikira Sacco Kimihurura, atsindirwa kandi ahwanye na 500.000Frw y'igihembo cya avocat, ndetse n'ahwanye na 100.000Frw y'ikurikirana rubanza n'ahwanye na 50.000Frw y'amagarama yagombaga gusubizwa Indatsikira Sacco Kimihurura, rusanga ariko kugeza ku kimenyetso ubwe agaragaza kandi kidahakanwa cyangwa ngo kivuguruzwa na Indatsikira Sacco Kimihurura kigizwe n'agatabo ka historique ya banki ndetse n'ifishi yo kuzigama bya Havugimana Placide, bigaragara ko kuri konti ye muri iyo Sacco ifite 00204, ku tariki ya 01/09/2018 hashyizweho amafaranga ahwanye na 201.000Frw ndetse kuwa 11/09/2018 hakorwa icyo Sacco yise transfer hashyirwaho ahwanye na 2.500.000Frw yose hamwe aba ahwanye na 2.701.000Frw, bigeze kuwa 12/09/2018 Sacco yandika kuri iyo fishi ndetse n'agatabo iti "Remb credit" itwara ahwanye na 2.700.000Frw kuri konti ya Havugimana Placide hasigara ahwanye na 1.000Frw, bivuze ko yishyuye umwenda uhwanye na 2.700.000Frw, rukaba rusanga kandi aya Sacco yatwaye ari hejuru y'ayo Havugimana Placide yatsindiwe mu rubanza RCOM011705/2017/TC/Nyge ahwanye yose hamwe na (2.022.520Frw + 500.000Frw + 100.000Frw + 50.000Frw)= 2.672520Frw, bityo rukaba rusanga ubwo bwishyu bwarakozwe kandi yaba Indatsikira Sacco Kimihurura ndetse na Me Gategeko Aimable bakaba batagaragaza buryo ki tariki ya 01/10/2019 bongeye kujya kugurisha undi mutungo wa Havugimana Placide kandi bigaragara ko hari umwenda yishyuye Sacco kuwa 12/09/2018, mu kuburana uru rubanza Indatsikira Sacco kimwe na Me Gategeko bakaba batarashoboye gusobanurira urukiko undi mwenda watumaga umutungo wa Havugimana Placide utezwa cyamunara tariki ya 01/10/2019 kandi haramaze kuba ubwishyu bushingiye ku mafaranga yatsindiwe mu rubanza RCOM 01705/2017/TC/Nyge.

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[25] Uru rukiko rushingiye ku bimaze gusobanurwa rusanga kudatangaza mu buryo bukurikije amategeko yavuzwe haruguru amatangazo ya cyamunara ndetse ngo unayamenyeshe nyiri umutungo utezwa cyamunara, ukanayamenyesha umunyamabanga nshingwabikorwa w'akagali mbere ya cyamunara, dore ko n'ibyakozwe nyuma by'iminsi 24 cyamunara ibaye, kuba kandi nta bimenyetso byemeza undi mwenda watumaga umutungo utezwa cyamunara waba wari ufitwe na Havugimana Placide abereyemo Indatsikira Sacco Kimihurura utandukanye n'uwo yaba yariyishyuye kuwa 12/09/2018 ko ari ikigaragaza ko umutungo wa Havugimana Placide ugizwe na UPI: 5/07/10/04/1712 utagombaga gutezwa cyamunara, iyo cyamunara yo kuwa 01/10/2019 ku mutungo umaze kuvugwa ikaba iteshejwe agaciro, kuba mu manza RCA00264/2019/TGI/Gsbo kimwe n'urubanza rwarubanjirije zaremeje ko cyamunara yakozwe kuwa 01/10/2019 igumana agaciro kayo ko zirengagije ko yakozwe mu buryo bunyuranye n'amategeko ndetse nta n'undi mwenda watumaga utezwa cyamunara, akaba ari akarengane Havugimana Placide yagiriwe muri izo manza ariyo mpamvu rwakwemeza ko akwiye gusubizwa umutungo we ndetse Murihano Innocent nawe waguze ibyatejwe cyamunara mu buryo butubahirije itegeko n'umuhesha w'inkiko agasubizwa ibyo yatanze agura ariko akabibaza uwo yahaye icyo kiguzi. Ku byerekeye kumenya niba indishyi zategetswe mu rubanza rusabirwa gusubirishamo ku mpamvu z'akarengane zikwiye kuvanwaho cyangwa niba zagumaho [26] [26]. Havugimana Placide avuga ko mu kurangiza urubanza, buri mutungo wose umuhesha w'inkiko yihembye ibihumbi magana atanu (500.000Frw) mu gihe igihembo cye kitari kurenga ibihumbi magana atatu (300.000F) dore ko igihembo ku mutungo wose yabaraga ahwanye na 5% yari kubona ibihumbi ijana na mirongo itatu na bitatu (133.000Frws), ibi byose kandi bigasanga ibihumbi magana abiri na kimwe (201.000Frw) ndetse n'ibindi ijana na mirongo itatu (130.000Frw) yabaga kuri konti ye nayo bakaba barayajyanye mu buryo bunyuranije n'amategeko, ko aha asanga yarenganurwa nkuko babisobanuye ariko urukiko rwibanze rwa Nyamata ndetse n'urukiko rwisumbuye rwa Gasabo zigakomeza kumurenganya. [27] Indatsikira Sacco Kimihurura yiregura ku bijyanye n'uko Umuhesha w'Inkiko yihembye igihembo cy'umurengera, nubwo ataribyo ariko nta karengane karimo nk'uko babisobanuye kuko amafaranga y'umuhesha w'inkiko ari umurengera, ibi nabyo nta shingiro bifite kuko urukiko rutari guha ishingiro iki kibazo kandi icyaregewe ari uguhagarikisha cyamunara cyaramaze kurangira, bityo iyi mpamvu nayo ikaba nta shingiro ifite. [28] Murihano Innocent avuga ko asanga iyi ngingo itasuzumwa nk'impamvu y'akarengane kuko iki kibazo (issue) itari mu bibazo (issues) zaburanweho mu rubanza rusabirwa gusubirishwamo arirwo RCA00264/2019/TGI/Gsbo, kandi ntabwo hasuzumwa issue nshya zitigize ziburanwaho mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane. [29] Gategeko Aimable ntacyo yavuze kuri iki kibazo cyo kwihemba umurengera kuvugwa na Havugimana Placide. UKO URUKIKO RUBIBONA [30] Uru rukiko ruhuje ibyasobanuwe haruguru ko umuhesha w'inkiko yateje cyamunara umutungo wa Havugimana Placide ariko atamenyesheje nyiri umutungo cyangwa ubuyobozi bw'akagali bw'aho umutungo uherereye, cyangwa ngo amanye amatangazo ku gihe cyateganyijwe n'amategeko ndetse rukanashingira ko nta mwenda Indatsikira Sacco Kimihurura igaragaza

urenze uwo yiyishyuye kuwa 12/09/2018 nkuko fishi yo Kuzigama y'ikigo cya Indatsikira Sacco Kimihurura kuri konti ya Havugimana Placide ko yamaze kwiwishyura umwenda yari ayifitiye, ko nta bimenyetso yaba Indatsikira Sacco Kimihurura cyangwa Gategeko Aimable bagaragariza urukiko ko ariwo warenze kuyo yiyishyuye ngo bitume bagurisha mu cyamunara imitungo ya Havugimana Placide, ko nta n'impamvu umuhesha w'inkiko yagombaga kwihemba mu cyamunara yakozwe ku mutungo wa Havugimana ikaba itarikwiye kubaho mu gihe agaragaza ko yari yaramaze kwishyura ndetse n'iyi cyamunara igakorwa mu buryo bunyuranye n'amategeko.

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- [31] Ku bivugwa na Murihano Innocent ko ikijyanye n'ibihembo by'umuhesha w'inkiko bitasuzumwa muri uru rubanza rw'akarengane kubera ko bitaregewe mu manza zisabirwa gusubirishwamo ku mpamvu z'akarengane, ariko ibi avuga nta shingiro bifite kubera ko iyo rusuzumye urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane RCA00264/2019/TGI/GSBO ku gace k'ibibazo bisuzumwa (Issues to be analysed), aho Havugimana Placide yasabye ko urukiko rwasuzuma ikibazo kivuga kiti: "Gusuzuma ibyo dusaba urukiko", muri icyo kibazo yasobanuye ibyacyo asoza avuga ati: "Iyo mihango yombi ikaba itarakurikije amategeko ndetse kandi hakazanarebwa iteka rya mininisitiri twabagaragarije kuko niryo ryari gushingirwaho mukwishyura umuhesha w'inkiko agahabwa ibihumbi magana atatu gusa (300.000Frws) aho kuba magana atanu (500.000Frws), agasaba ko iki kirego cyakwagirwa kandi urukiko rukemeza ko gifite ishingiro, icyamunara kigateshwa agaciro. Kwemeza ko indishyi twasabye twazihabwa", rukaba rusanga iki kibazo cyaratanzwe mu manza zisabirwa gusubirishwamo ku mpamvu z'akarengane, bityo ibivugwa na Murihano Innocent ko ikibazo cyo kwihemba umurengera k'umuhesha w'inkiko kitaregewe muri izo manza bikaba nta shingiro byahabwa kubera ko rusanga byararegewe nubwo uwabiregeye atabihawe ariko ntabwo byabuza ko uru rukiko rubisuzuma niba bifite ishingiro. Gusuzuma niba hari indishyi z'akababaro, iz'ikurikiranarubanza n'igihembo cya avocat byatangwa muri uru rubanza ndetse no gusuzuma ubujurire bwuririye ku bundi [32] [32]. Havugimana Placide avuga ko mu busesenguzi urukiko ruzabone ko yakomeje gukurikirana uburenganzira bwe, ari nako yatakaje ibintu byinshi akaba asaba ko urukiko rumaze kubona ko yarenganijwe rwatesha agaciro icyamunara cyakozwe ku mutungo we ufite UPI: 5/07/10/04/1712 Uherereye mu Kagari ka Murama mu Murenge wa Nyamata akaba yawusubizwa kuko wagurishijwe binyuranyije n'amategeko, akagenerwa amafaranga y'ikurikiranarubanza angana na miliyoni imwe n'ibihumbi magana atanu (1.500.000F), igihembo cy'avoka kingana na miliyoni imwe (1.000.000Frw), amagarama yatanze angana n'ibihumbi mirongo itatu (10.000Frw ya TB nyamata + 20.000Frw ya TGI Gasabo) akanagenerwa indishyi y'akababaro z'ibihumbi magana atanu (500.000Frw). [33] Indatsikira Sacco Kimihurura yiregura kuri izo ndishyi zisabwa na Havugimana Placide ivuga ko nta shingiro zifite kuko ntacyo Indatsikira Sacco Kimihurura yamwangirije cyane ko nawe ubwe yemera ko atishyuye umwenda yafashe, kuba Indatsikira Sacco Kimihurura yaramureze isaba uburenganzira bwayo nta kosa yakoze, ahubwo Indatsikira Sacco Kimihurura ishingiyeye

ku ngingo ya 110 CPCCSA itanze ikirego kiregera kwiregura isaba indishyi ku buryo bukurikira: - 3.000.000Frw zo gushorwa mu manza nta mpamvu, - 1.000.000Frw y'igihembo cy'Avoka - 500.000Frw. [34] Murihano Innocent avuga ko yakomeje gushorwa mu manza na Havugimana Placide bigatuma akurikirana urubanza ndetse ashiraho na avocat (Law firm) yo kuruburana akaba asaba indishyi zikurikirana rubanza n'igihembo cya Avoka angana na 1,500,000Frw, naho izisabwa na Havugimana akaba asanga nta shingiro zahabwa cyane ko atavugaga n'uwo azisaba. UKO URUKIKO RUBIBONA [35] Ku byerekeye indishyi z'ikurikirana rubanza n'igihembo cya avocat, uru rukiko rushingiye ku mvugo z'umwanditsi witwa Jacques Flouer, Jean – Luc Aubert na Eric Savaux ivuga ko: “Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer”¹, mu Kinyarwanda bisobanuye ko: “Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri gukora ikosa rigikomokaho kuriha ibyangiritse”, kuba Indatsikira Sacco Kimihurura na Me Gategeko Aimable batumye ajya mu manza nyuma yo kwiwishyura kwa Indatsikira Sacco Kimihurura ariko ikanga ikamutereza cyamunara umutungo bitari ngombwa kandi nabyo bigakorwa mu buryo bunyurnaye n'amategeko, rusanga Indatsikira Sacco Kimihurura na Me Gategeko Aimable bacibwa indishyi z'ikurikirana rubanza n'igihembo cya avocat bakazishyura bafatanije zihwanye na 1.000.000Frw zikishyurwa Havugimana Placide kuko rusanga

1 Jacques Flouer, Jean – Luc Aubert na Eric Savaux, Droit Civil Les obligations, fait juridique, 12ème édition, Dalloz, 2007, P. 97.

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yararenganyijwe n'ibikorwa byabo, ariko zikaba zitanze mu bushishozi bw'urukiko kuko izo asaba ari umurengerwa. [36] Rusanga ibivugwa na Murihano Innocent nawe usaba ko Havugimana Placide amwishyura indishyi zinyuranye ariko akaba azisaba uwarenganyijwe n'abamugurishije umutungo bitari bikwiye nyamara nta kosa we yamukoreye kuburyo byatuma acibwa indishyi, akaba atazigenerwa muri uru rubanza naho izisabwa na Indatsikira Sacco Kimihurura ari nayo yabaye nyirabayazana w'izo manza ikaba itazikwiye kuko itsindwa urubanza. III. ICYEMEZO CY'URUKIKO [37] Rwemeje ko ikirego cyatanzwe na Havugimana Placide gisaba gusubirishamo urubanza RCA00264/2019/TGI/GSBO ku mpamvu z'akarengane gifite ishingiro. [38] Rwemeje ko urubanza RCA00264/2019/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, ku wa 02/09/2021, rwasubirishijwemo ku mpamvu z'akarengane ruhindutse mu ngingo zarwo zose. [39] Rutegetse ko icyemezo cy'umuhesha w'inkiko Me Gategeko Aimable cyo kuwa 01/10/2019 cyo guteza cyamunara umutungo utimukanwa wa Havugimana Placide ugizwe n'inzu iri mu kibanza gifite UPI: 5/07/10/04/1712 uherereye mu Mudugudu wa Gatagara, Akagali ka Murama, Umurenge wa Nyamata, Akarere ka Bugesera, Intara y'Iburasirazuba, giteshejwe agaciro, Havugimana Placide agasubizwa umutungo we wari wagurishijwe, uwawuguze Murihano Innocent agasubizwa n'uwo yahaye ikiguzi amafaranga yatanze agura. [40] Rutegetse Indatsikira Sacco Kimihurura gufatanya na Me Gategeko Aimable kwishyura Havugimana Placide indishyi zikurikirana rubanza n'igihembo cya avocat bihwaye byose na miliyoni imwe (1.000.000Frw). [41] Rwemeje ko amagarama y'urubanza aherera mu isanduku ya Leta.

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