

RWANDA / JUDGMENT

Re KIYIMBA

RCOMA 00007/2024/CA

COURT

Court of Appeal

DECIDED

22 November 2024

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RCOMA 00007/2024/CA

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Re KIYIMBA

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Text

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Re KIYIMBA [Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00007/2024/CA (Ngagi, P.J.) 22 Ugushyingo 2024] Amategeko agenga imiburanishirize y'ianza – Irangirizwa mu Rwanda ry'urubanza rwaciye n'Urukiko rwo mu mahanga – Umucamanza waregewe ikirego gisaba ko urubanza rwaciriye mu mahanga rurangirizwa mu Rwanda asuzuma niba icyemezo cyafashwe n'Urukiko rwo mu mahanga cyujuje ibivugwa mu ngingo ya 44, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko mu Rwanda. Incamake y'ikibazo: Kiyimba John Fred Freeman yagiranye amasezerano na sosiyete y'ubwubatsi yo kumwubakira maze iyo sosiyete iteshuka kuri izo nshingano kandi Kiyimba yari yaratse amafaranga muri Banki angana n'amashilingi ya Uganda miliyoni 30. Kiyimba yareze uhagarariye iyo sosiyete mu Rukiko Rukuru urugereko ruburanisha imanza z'ubucuruze, mu guca urubanza rutegeka Billion and M/S Guangdong gusubiza Kiyimba John amashiringi ya Uganda 3.000.000.000, Fred yahawe na Equity Bank, indishyi z'amashiringi ya Uganda 50.000.000 no kwishyura 18% yayo amashiringi 50.000.000 kugeza igihe bazishyurira. Kiyimba yatanze ikirego mu Rukiko Rukuru rwo mu Rwanda asaba icyemezo kirangirizwa mu Rwanda, urwo Rukiko ruca urubanza rwemeza ko ikirego cye nta shingiro gifite kuko nta cyemeza nta gushidikanya ko urubanza asabira

kurangirizwa mu Rwanda rwaciwe burundu hakurikijwe amategeko ya Uganda, ndetse ko nta n'icyemeza ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo hakurikijwe amategeko ya Uganda, kuko itagaragara kashi y'Urukiko rwaruciye. Kiyimba yajuririye mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rw'Ubucuruzi rutasuzumye neza inyandiko yarushyikirije bituma rwemeza ko izo nyandiko zatanze nta kashi zifite, kandi atari byo, kuko inyandiko batanze ziriho kashi electric ari nayo mpamvu kashi zitagaragara neza muri dosiye ya IECMS. Avuga kandi ko ikigaragaza ko urubanza rwageze igihe cyo kurangizwa ari inyandiko yemeza ko nta bujurire bwabayeho yatanze n'Urukiko rw'Ubujurire rwa Uganda, ko kandi iyo nyandiko nayo iteyeho kashi iri electric. Incamake y'icyemezo: Umucamanza waregawe ikirego gisaba ko urubanza rwaciriwe mu mahanga rurangirizwa mu Rwanda asuzuma niba icyemezo cyafashwe n'Urukiko rwo mu mahanga cyujuje ibivugwa mu ngingo ya 13 y'Itegeko Ngenga N° 06/2012 ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi ryakurikizwaga icyo gihe, kuri ubu akaba ari ingingo ya 44, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko mu Rwanda, kandi ibiyikubiyemo bikaba bisa n'ibikubiyemo mu ngingo ya 82 y'iri Tegeko). Ibivugwa muri iyo ngingo ni ibi bikurikira: 1° ko urubanza rwaciriwe mu mahanga rutanyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiweho n'amategeko y'u Rwanda ; 2° ko rwaciwe burundu hakurikijwe amategeko y'igihugu rwaciriwemo; 3° ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo, hakurikijwe amategeko y'Igihugu urubanza rwaciriwemo; 4° ko uburenganzira bwo kwiregura bwubahirijwe. Ubujurire bufite ishingiro.

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Amagarama ahwanye n'ibyakozwe mu rubanza. Amategeko yashingiweho: Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 8 Imanza zifashishijwe: RS/INJUST/RC 00024/2022/SC; NZANIRA Gasherebuka David vs POPPE Honorine rwaciwe n'Urukiko rw'Ikirenga ku wa 24/02/2023 RCOMA 0007/14/CS; Robert Sussman vs Mwangacucu Hizi Edouard na Umubera Mwangachuchu warugobotse rwaciwe n'Urukiko rw'Ikirenga ku wa 10/11/2017

Urubanza I. IMITERERE Y'URUBANZA [1] Kiyimba John Fred Freeman ni Umugande wagiranye na sosiyete y'ubwubatsi amasezerano yo kumwubakira, maze iyo sosiyete iteshuka ku masezerano kandi Kiyimba John Fred Freeman yari yafashe inguzanyo (credit) muri banki ya miliyoni 30 y'Amashiringi ya Uganda, aza kugwa mu gihombo, kuko sosiyete y'ubwubatsi itamwubakiye. [2] Kiyimba John Fred Freeman yatanze ikirego mu Rukiko Rukuru, Urugereko ruburanisha imanza z'ubucuruzi (Commercial Division) mu gihugu cya Uganda, arega Cuin Yiu, Billion and M/S Guangdong kutubahiriza amasezerano yo kumwubakira inzu y'ubucuruzi ifite agaciro ka 25.320.000 USD. [3] Kiyimba John Fred Freeman yasobanuriye urwo Rukiko ko yatanze ibyangombwa bye by'ubutaka ahabwa inguzayo y'amashiringi 3.000.000.000 muri Equity Bank kugira ngo Rwiyezamirimo atangire akazi ko kumwubakira; ko ikibazo cyabaye ari uko imirimo yaje guhagarara kandi n'igihe bumvikanyeho cy'amezi atandatu (6) cyararenze kandi nta mafaranga babuze, ko Rwiyezamirimo yasabye kongerwa igihe kubera ikibazo cya COVID 19 ariko irangiye habaho guhindura amasezerano (restructuring), bikomeza kwanga kuko atashoboye gukomeza akazi. Bityo Kiyimba John Fred asaba ko abaregwa bamusubiza

ibyangombwa bye n'amashiringi yose yabahaye ndetse bakamwishyura n'igihombo yagize. [4] Mu rubanza CIVIL SUIT No 615 OF 2021 rwaciwe n'Urukiko Rukuru, Urugereko ruburanisha imanza z'ubucuruzi (Commercial Divison) rwa Uganda, Urukiko rwemeje ko Bwana CUIN Yiu ntacyo yabazwa muri icyo kibazo, rutegeka Billion and M/S Guangdong gusubiza Kiyimba John amashiringi ya Uganda 3.000.000.000, Fred yahawe na Equity Bank, indishyi z'amashiringi ya Uganda 50.000.000 no kwishyura 18% yayo amashiringi 50.000.000 kugeza igihe bazishyurira. [5] Nyuma yo kunyura mu nzego zitandukanye ashaka impapuro zemeza ko inyandiko z'urubanza rwe ari ukuri, Kiyimba John Fred Freeman yaregeye Urukiko Rukuru rw'Ubucuruzi rwo mu Rwanda, asaba ko icyemezo cyafashwe na High Court of Uganda (Commercial Division) mu rubanza CIVIL SUIT No 615 OF 2021 cyarangirizwa mu Rwanda.

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[6] Mu rubanza RCOM 00012/2024/HCC rwaciwe ku wa 05/09/2024, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cya Kiyimba John Fred Freeman nta shingiro cyahabwa kuko nta cyemeza nta gushidikanya ko urubanza asabira kurangirizwa mu Rwanda rwaciwe burundu hakurikijwe amategeko ya Uganda, ndetse ko nta n'icyemeza ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo hakurikijwe amategeko ya Uganda, kuko itagaragara kashi y'Urukiko rwaruciye; bityo ko Urukiko rutagendera kuri iyo nyandiko ngo rwemeze ko urwo ari urubanza rugomba kurangirizwa mu Rwanda. [7] Kiyimba John Fred Freeman yajuririye uru Rukiko, ubujurire bwe bwandikwa kuri RCOMA 00007/2024/CA. Urubanza rwaburanishijwe mu ruhame ku wa 18/11/2024, Kiyimba John Fred Freeman ahagarariwe na Me Rwabigwi Augustin, ntawe arega. [8] Muri make Kiyimba John Fred Freeman avuga ko Urukiko Rukuru rw'Ubucuruzi rutasuzumye neza inyandiko yarushyikirije bituma rwemeza ko izo nyandiko zatanze nta kashi zifite, kandi atari byo, kuko inyandiko batanze ziriho kashi electric ari nayo mpamvu kashi zitagaragara neza muri dosiye ya IECMS. Avuga kandi ko ikigaragaza ko urubanza rwageze igihe cyo kurangirizwa ari inyandiko yemeza ko nta bujurire bwabayeho yatanze n'Urukiko rw'Ubujurire rwa Uganda, ko kandi iyo nyandiko nayo iteyeho kashi iri electric. Bityo asaba Urukiko rw'Ubujurire kwemeza ko ubujurire bwe bufite ishingiro, hanyuma rugategeka ko icyemezo cyafashwe na High Court of Uganda (Commercial Division) mu rubanza CIVIL SUIT No 615 OF 2021 cyubahirizwa, kitarangirizwa mu Rwanda. [9] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki, Urukiko rurasanga hagomba gusuzumwa ikibazo cyo kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko urubanza CIVIL SUIT No 615 OF 2021 rutarangirizwa mu Rwanda. III. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko urubanza CIVIL SUIT No 615 OF 2021 rutarangirizwa mu Rwanda [10] Uhagarariye Kiyimba John Fred Freeman avuga ko Urukiko Rukuru rw'Ubucuruzi rutasuzumye neza inyandiko yarushyikirije bituma rwemeza ko izo nyandiko zatanze nta kashi zifite, kandi atari byo, kuko inyandiko batanze ziriho kashi electric ari nayo mpamvu kashi zitagaragara neza muri dosiye ya IECMS, ko kandi kopi y'urubanza yemejwe n'Umwanditsi w'Urukiko rwaciye urwo rubanza ko ari impamo. Avuga kandi ko ikigaragaza ko urubanza rwageze igihe cyo

kurangizwa ari inyandiko yemeza ko nta bujurire bwabayeho yatanzwe n'Urukiko rw'Ubujurire rwa Uganda, ko kandi iyo nyandiko nayo iteyeho kashi iri electric. [11] Asobanura ko mu bika bya 12-15 by'urubanza rujuririrwa, Urukiko rwasuzumye inyandiko rwashyikirijwe hasabwa ko urubanza rwavuzwe rurangirizwa mu Rwanda, rwemeza ko nta kashi zifite, bityo ko ikirego cya Kiyimba nta shngiro gifite, bakaba basanga Urukiko Rukuru rw'Ubucuruza rutarashishoje neza, kuko inyandiko batanze zifite kashi electric akaba ari yo mpamvu izo kashi zitagaragara neza muri system ya IECM. Asobanura kandi ko nta kushidikanya kurimo kuko Umwanditsi w'Urukiko rwaciye urubanza muri Uganda yemeje ko ari impamo, ko kandi nta kuntu Ambassade y'u Rwanda muri Uganda ishobora gusinya kuri urwo rubanza itabanje no gushishoza, ko kandi nta nyandiko yasinywa na Minisitiri y'Ububanyi n'Amahanga y'u

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Rwanda (MINAFFET) idafite umukono na kashi. Yibaza impamvu Urukiko Rukuru rw'Ubucuruza rutasabye inyandiko ziri physique kugira ngo rutange ubutabera. Asaba Urukiko rw'Ubujurire gusuzuma neza inyandiko zose zatanzwe mu Rukiko Rukuru rw'Ubucuruza, maze rukemeza ko ubujurire bwa Kiyimba John Fred Freeman bufite ishingiro, ko icyemezo cyafashwe na High Court of Uganda (Commercial Division) mu rubanza CIVIL SUIT No 615 OF 2021 cyubahizwa, kikarangirizwa mu Rwanda. UKO URUKIKO RUBIBONA [12] Ingingo ya 82, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko Urukiko Rukuru rw'Ubucuruza ruburanisha ku rwego rwa mbere ibirego bisaba kurangiriza mu Rwanda ibyemezo n'imanza z'ubucuruza, iz'imari, iz'imisoro n'amahoro byafashwe n'inkiko zo mu mahanga. Isuzumwa ry'ibyo birego rikorwa harebwa ibi bikurikira: 1° ko urubanza rwaciriwe mu mahanga rutanyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiweho n'amategeko y'u Rwanda ; 2° ko rwaciwe burundu hakurikijwe amategeko y'igihugu rwaciriwemo; 3° ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo, hakurikijwe amategeko y'igihugu urubanza rwaciriwemo; 4° ko uburenganzira bwo kwiregura bwubahirijwe. [13] Mu rubanza RS/INJUST/RC 00024/2022/SC rwaciwe ku wa 24/02/2023, Urukiko rw'Ikirenga rwasobanuye ko urubanza RCOMA 0007/14/CS rwaciwe ku wa 10/11/2017, haburana Robert Sussman na Mwangacucu Hizi Edouard na Umubera Mwangachuchu warugobotsemo, mu gika cyarwo cya 30, urwo Rukiko rwibukije ko umucamanza waregwe ikirego gisaba ko urubanza rwaciriwe mu mahanga rurangirizwa mu Rwanda asuzuma gusa niba icyemezo cyafashwe n'Urukiko rwo mu mahanga cyujuje ibivugwa mu ngingo ya 13 y'Itegeko Ngenga N° 06/2012 ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruza ryakurikizwaga icyo gihe. Ko mu rubanza RCA 0006/13/CS rwaciwe ku wa 10/07/2015, haburana Hagengimana Athanase na Uwihoreye Dancille, Urukiko rw'Ikirenga rwasanze igisuzumwa mu rubanza rwaciriwe mu mahanga rusabirwa kurangirizwa mu Rwanda, ari ukureba gusa niba urubanza rwaciriwe mu mahanga rwujuje ibyateganywaga n'ingingo ya 91, igika cya 2, y'Itegeko Ngenga No 51/08 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'Inkiko nk'uko ryari ryarahinduwe kandi ryarujijwe kugeza ubwo urubanza rwacibwaga (Iyi ngingo ikaba yaragiye ikomeza kwandikwa uko yakabaye kugeza ku itegeko rikoreshwa ubu aho yabaye ingingo ya 44, y'Itegeko

N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko mu Rwanda, kandi ibiyikubiyemo bikaba bisa n'ibikubiye mu ngingo ya 82 y'iri Tegeko)3.

1Reba igika cya 32 cy'urubanza No RS/INJUST/RC 00024/2022/SC rwaciwe ku wa 24/02/2023, haburana NZANIRA Gasherebuka David na POPPE Honorine.

2 Ibyateganywaga muri iyo ngingo bihura n'ibiteganywa n'ingingo ya 82 y'Itegeko No 02/2018 ryo ku wa 30/06/2018 rigena ububasha bw'Inkiko mu Rwanda, kimwe n'iya 44 y'iryo Tegeko. 3 Iyo ngingo yateganyaga ibi bikurikira: Urukiko Rukuru ruburanisha ibirego bisaba kurangiza mu Rwanda imanza cyangwa ibyemezo byafashwe n'Inkiko zo mu mahanga. Isuzumwa ry'urwo rubanza rikorwa harebwa ibi bikurikira:

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[14] Ku birebana n'uru rubanza, dosiye igaragaramo kopi y'urubanza CIVIL SUIT No 615 OF 2021 rwaciwe ku wa 20/12/2022, aho Kiyimba John Fred Freedman yaburanye na CHEUG YIU TUNG, M/S BILLIONIDEAS HOLDINGS Ltd, M/S GUANGDONG HAO HE ENGINEERING na CONSTRUCTION COMPANY (U) Ltd. Iyo kopi iriho kashi ya electric n'umukono w'Umwanditsi Mukuru wunguriye w'Urugereko ruburanisha imanza z'ubucuruzi (Deputy Registrar of the Commercial Division), aho yemeje ko iyo kopi y'urubanza ari ukuri, yanemejwe na Ambassade y'u Rwanda muri Uganda ndetse na Minisiteri y'Ububanyi n'Amahanga y'u Rwanda. Dosiye igaragaramo kandi inyandiko yo ku wa 22/08/2024, y'Umwanditsi w'Urukiko rw'Ubujurire rwa Uganda witwa RUKUNDO ALLEN OWEMBABAZI (AG. REGISTRAR- COURT OF APPEAL) ivuga ko nta bujurire bwakozwe ku rubanza CIVIL SUIT No 615 OF 2021. Iyo nyandiko iriho kashi y'Urukiko, kandi yanemejwe na Ambassade y'u Rwanda muri Uganda ndetse na Minisiteri y'Ububanyi n'Amahanga y'u Rwanda. [15] Urukiko rurasanga, nk'uko byagaragajwe haruguru, urubanza CIVIL SUIT No 615 OF 2021 rwaciwe n'Urukiko Rukuru, Urugereko ruburanisha imanza z'ubucuruzi (Commercial Division) rwa Uganda, ku wa 20/12/2022, rwaciwe burundu kuko rutajuririwe nk'uko byemejwe n'Umwanditsi w'Urukiko rw'Ubujurire rwa Uganda mu nyandiko ye yo 22/08/2024, kandi ntaho runyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiyeho n'amategeko y'u Rwanda. Rurasanga kandi kopi y'urubanza rusabirwa kurangirizwa mu Rwanda yaremejwe n'Umwanditsi w'Urukiko ko ari impamo; bityo kopi y'urubanza CIVIL SUIT No 615 OF 2021 rwaciwe ku wa 20/12/2022 yujuje ibisabwa byemeza ko ari impamo. [16] Hashingiwe ku bisobanuro byatanze haruguru, Urukiko rurasanga urubanza CIVIL SUIT No 615 OF 2021 rwaciwe n'Urukiko Rukuru, Urugereko ruburanisha imanza z'ubucuruzi (Commercial Division) rwa Uganda, ku wa 20/12/2022, rwujuje ibiteganywa n'ingingo ya 82 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko; akaba mu rwego rw'amategeko, nta kibuka ko rurangirizwa mu Rwanda nk'uko Kiyimba John Fred Freeman abisaba. Bityo, Urukiko rurasanga urubanza RCOM 00012/2024/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 05/09/2024, ruhindutse mu ngingo zarwo zose. III. ICYEMEZO CY'URUKIKO [17] Rwemeje ko ubujurire bwa Kiyimba John Fred Freeman bufite ishingiro. [18] Rwemeje ko urubanza RCOM 00012/2024/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi

ku wa 05/09/2024, ruhindutse mu ngingo zarwo zose. [19] Rutegetse ko urubanza CIVIL SUIT No 615 OF 2021 rwaciwe n'Urukiko Rukuru, Urugereko ruburanisha imanza z'ubucuruzi (Commercial Division) rwa Uganda, ku wa 20/12/2022, rurangirizwa mu Rwanda.

1° ko urubanza rwaciriwe mu mahanga rutanyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiweho n'amategeko y'u Rwanda ; 2° ko rwaciwe burundu hakurikijwe amategeko y'Igihugu rwaciriwemo; 3° ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo, hakurikijwe ayo mategeko; 4° ko uburenganzira bwo kwiregura bwubahirijwe.

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[20] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakoze mu rubanza.

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