

RWANDA / JUDGMENT

KYAMAZIMA v UMWANDITSI MUKURU(BRD) N'UNDI

RADA 0003/13/CS

COURT

Supreme Court

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KYAMAZIMA v UMWANDITSI MUKURU(BRD) N'UNDI

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Text

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KYAMAZIMA v UMWANDITSI MUKURU(BRD) N'UNDI [Rwanda URUKIKO RW'IKIRENGA – RADA 0003/13/CS – (Hatangimbabazi, J. P., Karimunda na Gakwaya, J.) 03 Kamena 2016] Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Ingwate – Cyamunara – Ni imihango y'irangiza ry'urubanza rwaciwe burundu (procédure d'exécution d'une décision judiciaire devenue définitive) cyangwa irangiza ry'amasezerano y'inguzanyo ateganya cyamunara (vente par voie parée), ikorwa n'umuhesha w'inkiko cyangwa n'uwahawe gucunga ingwate (administrateur d'hypothèque). Amategeko agenga ububasha bw'inkiko – Ububasha bushingiye ku mpaka zishingiye ku irangiza ry'amasezerano ateganya cyamunara – Ikirego cyose kirebana n'impaka zishingiye ku irangiza ry'amasezerano y'inguzanyo ateganya cyamunara mu gihe cyamunara yakozwe n'uwashinzwe gucunga ingwate, kigomba gusuzumwa n'inkiko ziburanisha imanza z'ubucuruzi kuko amasezerano y'ubugwate ateganya cyamunara akomoka ku mwenda w'ubucuruzi. Incamake y'ikibazo: Kyamazima yahawe na Banki ya Kigali inguzanyo nawe ayiha ingwate yaje kwandikisha mu biro by'Umwanditsi Mukuru, igizwe n'inzu iri mu Kagari ka

Nyagatare, Umurenge wa Nyagatare, mu Ntara y'Iburasirazuba. Mu masezerano y'inguzanyo hateganyijwe ko mu gihe ananiwe kwishyura uwo mwenda, iyo nzu izagurishwa mu buryo bwa "vente par voie parée". Urega yananiwe kwishyura uwo mwenda biba ngombwa ko hasabwa uburenganzira ko ingwate igurishwa mu cyamunara hashyirwaho Me Rutembesa wari ushinze kuyicunga. Yareze mu Rukiko Rwisumbuye rwa Nyagatare asaba guhakarika iyo cyamunara ariko ikirego cye ntacyakirwa. Ibi byatumye ejuririra Urukiko Rukuru, Urugereko rwa Rwamagana maze hafatwa icyemezo ko iyo cyamunara igomba gushyirwa mu bikorwa kuko cyafashwe hakurikijwe amategeko. Urega yongeye atanga ikindi kirego muri urwo Rukiko Rukuru arega Umwanditsi Mukuru ariko ntacyakirwa, arujuririra mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ububasha ruhabwa bwo kuvanaho ibyemezo byafashwe mu buryo budakurikije amategeko n'ubwo kuburanisha ibirego bishingiye ku buryozwe bukomoka ku zindi mpamvu zitari iza kontaro cyangwa amasezerano. Uru Rukiko rwabanje gusuzuma niba cyamunara yavanwaho kuko yakozwe mu buryo budakurikije amategeko, aho Urega asaba gutesha agaciro icyemezo cy'Umwanditsi Mukuru cyatanze uburenganzira bwo kugurisha umutungo we, asaba kandi ko hasuzumwa igihe amasezerano yagiranye na BK Ltd yatangiriye, igihe yarangiriye n'amategeko yayagengaga. Asobanura ko uburyozwe bw'Umwanditsi Mukuru bushingiye ku kuba yarahaye BK Ltd uburenganzira bwo kugurisha ingwate, cyamunara ikaba yari ishingiyeye kuri icyo cyemezo cye kuko iyo kitahabwa ibya itarakozwe, bityo akaba asanga Me Rutembesa yaragurishije inzu agendeye ku cyemezo kitariho kuko ubundi hagombaga kubaho icyemezo cy'Urukiko. Umwanditsi Mukuru asobanura ko icyemezo cy'Urukiko Rukuru, gifite ishingiro kuko nta bubasha rwari rufite bwo guca urubanza, kubera ko uru rubanza rukomoka ku iyubahirizwa ry'amasezerano y'ubucuruzi abantu bagirana n'ibigo by'imari. Akomeza asobanura ko urubanza

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rushingiye ku ishyirwa mu bikorwa ry'amasezerano y'ingwate yabaye hagati ye na Banki ya Kigali aho yateganyaga ko umwenda n'utishyurwa ingwate izagurishwa mu cyamunara bitanyuze mu manza. Avuga kandi ko ububasha ahabwa n'Itegeko budashobora kwitwa icyemezo cy'ubutegetsi kugira ngo kiregerwe Inkiko ziburanisha imanza z'ubutegetsi, ahubwo ko ari "acte de procédure" iteganyijwe mu Itegeko. Me Rutembesa wari ushinze gucunga ingwate, avuga ko ubujurire bw'Urega nta shingiro bufite kuko atagaragaza icyo anenga icyemezo cy'Umwanditsi Mukuru gishyiraho cyamunara. Kuba cyamunara yarakozwe hashingiye ku cyemezo cy'umwanditsi mukuru bidahagije kugirango kitwe ikirego cy'ubutegetsi. Banki ya Kigali na yo yisobanura ivuga ko ubujurire bw'Uregwa nta shingiro bufite kubera ko ibyo asaba byafashweho icyemezo mu rubanza rwabaye itegeko rwaciye n'Urukiko Rukuru, Urugereko rwa Rwamagana, aho rwemeje ko icyemezo cy'Umwanditsi Mukuru cyahereweho hagurishwa umutungo wa Kyamazima nta nenge gifite, ko gikwiye gushyirwa mu bikorwa, ikaba isanga bitagomba kugarukwaho muri uru rubanza. Incamake y'icyemezo: 1. Cyamunara ni imihango y'irangiza ry'urubanza rwaciye burundu (procédure d'exécution d'une décision judiciaire devenue définitive) cyangwa irangiza ry'amasezerano y'inguzanyo ateganyije cyamunara (vente par voie parée), ikorwa n'umuhesha w'inkiko cyangwa n'uwahawe gucunga ingwate (administrateur d'hypothèque).

2. Ikirego cyose kirebana n'impaka zishingiye ku irangiza ry'amasezerano y'inguzanyo ateganya cyamunara mu gihe cyamunara yakozwe n'uwashinzwe gucunga ingwate, kigomba gusuzumwa n'inkiko ziburanisha imanza z'ubucuruzi kuko amasezerano y'ubugwate ateganya cyamunara akomoka ku mwenda w'ubucuruzi.
3. Ikirego cyo gutesha agaciro cyamunara yakozwe n'uwahawe gucunga ingwate si ikirego cyerekeranye n'uburyozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa andi masezerano, imyitwarire y'ubutegetsi cyangwa imirimo rusange kuko cyamunara idakorwa n'ubutegetsi (administration). Ubujurire nta shingiro bufite. Nta gihindutse mu mikirize y'urubanza rwaciwe n'Urukiko Rukuru. Amagarama aherera ku Urega. Amategeko yashingiweho: Itegeko Ngenga N° 51/2008 ryo ku wa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko, ingingo ya 93. Itegeko N° 06/2012/OL ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'Inkiko z'Ubucuruzi, ingingo ya 12. Itegeko N° 21/2012 ryo ku wa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 162. Itegeko N° 13/10 ryo ku wa 07/5/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4. Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 24, 26 n'ya 28. Itegeko ryo ku wa 15/5/1922 ryerekeye ubugwate ku bintu bitimukanwa hamwe, ingingo ya 16.

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Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, ingingo ya 258. Iteka ry'Umwami (Arrêté-Royal) ryo ku wa 21/11/1925 ryerekeye amategeko agenga ubugwate ku bitimukanwa-cyamunara iteganywa n'amasezerano, ingingo ya 16. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 14/04/2008, Kyamazima Françoise yahawe na Banki ya Kigali Ltd (BK Ltd) inguzanyo ingana na 80.000.000 Frw, nawe ayiha ingwate igizwe n'inzu ye iri mu kibanza nimeru 2007 kiri mu Kagari ka Nyagatare, Umurenge wa Nyagatare, mu Ntara y'Iburasirazuba. Mu masezerano y'inguzanyo hateganyijwe ko mu gihe Kyamazima Françoise ananiwe kwishyura uwo mwenda, iyo nzu izagurishwa mu buryo bwa "vente par voie parée" nk'uko biteganywa n'ingingo ya 16 y'Itegeko ryo ku wa 15/5/1922 ryerekeye ubugwate ku bintu bitimukanwa hamwe n'Iteka ry'Umwami (Arrêté-Royal) ryo ku wa 21/11/1925 ryerekeye amategeko agenga ubugwate ku bitimukanwa - cyamunara iteganywa n'amasezerano. [2] Ku wa 23/03/2010, Kyamazima Françoise yandikishije iyo ngwate mu biro by'Umwanditsi Mukuru (Registraire Général) kugira ngo igire agaciro. [3] Kyamazima Françoise yananiwe kwishyura uwo mwenda yahawe, bituma BK Ltd isaba "Registraire Général" uburenganzira bwo kugurisha iyo ngwate. "Registraire Général" yahaye BK Ltd icyemezo RDB/3/RG/0376/07/11 cyo ku wa 12/07/2011 kugira ngo iyo ngwate igurishwe muri cyamunara, maze Me Rutembesa Phocas ashingwa gucunga iyo ngwate. [4] Nyuma yaho, Kyamazima Françoise yareze "d'office" mu Rukiko Rwisumbuye rwa Nyarugenge, anagobokesha ku gahato Me Rutembesa Phocas washinzwe gucunga ingwate mu Rukiko Rwisumbuye rwa Nyagatare, asaba ko cyamunara iteganyijwe ku wa 12/8/2011 yahagarikwa. Urwo Rukiko rwaciye urubanza RC 0068/011/TGI/NYG ku wa 19/8/2011 rwemeza kutakira ikirego cya Kyamazima Françoise. [5] Kyamazima Françoise ntiyishimiye

imikirize y'urwo rubanza, ajuririra mu Rukiko Rukuru, Urugereko rwa Rwamagana. Ku wa 9/9/2011, urwo Rukiko rwaciye urubanza RCA 0053/11/HC/RWG, rwemeza ko icyemezo RDB/3/RG/0376/07/11 cyo ku wa 12/7/2011, Umwanditsi Mukuru (Registraire Général) yahaye BK Ltd kugira ngo ingwate yatanze na Kyamazima Françoise igurishwe, kigomba gushyirwa mu bikorwa kuko cyubahirije amategeko. [6] Nyuma yaho, Kyamazima Françoise yatanze ikindi kirego mu Rukiko Rukuru, arega Umuwanditsi Mukuru (Registraire Général), Me Rutembesa Phocas na BK Ltd, asaba kvanaho cyamunara yakozwe ku wa 21/10/2011, kubera ko itubahirije amategeko, anasaba gusubizwa uburenganzira bwe no guhabwa indishyi zinyuranye z'igihombo yatejwe n'yo cyamunara. [7] Urwo Rukiko rwaciye urubanza RAD 0011/12/HC/KIG ku wa 14/12/2012, rwemeza kutakira ngo rusuzume ikirego cyatanzwe na Kyamazima Françoise kuko arega Umwanditsi

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Mukuru nta mpamvu, ko kandi ikirego yatanze ku bandi kitari mu bubasha bw'Urukiko Rukuru ruburanisha imanza z'ubutegetsi. [8] Kyamazima Françoise ntiyishimiye imikirize y'urwo rubanza, ajuririra mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwirengagije ibiteganywa n'ingingo ya 93,1° na 3° y'Itegeko Ngenga N° 51/2008 ryo ku wa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko iha urwo Rukiko ububasha bwo kvanaho ibyemezo byafashwe mu buryo budakurikije amategeko n'ubwo kuburanisha ibirego bishingiye ku buryozwe bukomoka ku zindi mpamvu zitari iza kontaro cyangwa amasezerano. Avuga kandi ko Urukiko Rukuru rwirengagije ibiteganywa n'ingingo ya 4, igice cya 2 y'Itegeko N° 13/10 ryo ku wa 07/5/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa n'ibiteganywa n'amasezerano y'inguzanyo yabaye hagati ya Kyamazima Françoise na BK Ltd ndetse ko rwivugurujye, rwemeza ko ikirego cye kuri BK Ltd, Me Rutembesa Phocas na Murekatete kitari mu bubasha bwarwo. [9] Iburanisha mu ruhamye ryabaye ku wa 17/11/2015, Kyamazima Françoise ahagarariwe na Me Nkuba Milton, BK Ltd ihagarariwe na Me Rusanganwa Jean-Bosco, Umwanditsi Mukuru (Registraire général) ahagarariwe na Me Sangano Yves naho Me Rutembesa Phocas ahagarariwe na Me Buzayire Angèle. Iburanisha rigitangira, Me Nkuba Milton yasabye uru Rukiko kubanza guhatira kugobokesha Murekatete muri uru rubanza. [10] Ku wa 8/1/2016, uru Rukiko rwaciye urubanza rubanziriza urundi, rwemeza ko Murekatete Jacqueline atagomba guhatirwa kugoboka muri uru rubanza mu rwego rw'ubujurire, runemeza ko iburanisha mu mizi ry'urwo rubanza rizakomeza ku wa 16/2/2016. [11] Ku wa 16/2/2016, Urukiko ntirwashoboye kuburanisha uru rubanza kuko Kyamazima Françoise atari afite avoka, uwo yari afite mbere yari yamusubije dosiye ye. Urubanza rwarasubitswe, rwimurirwa ku wa 12/4/2016 kugira ngo ashobore kubona undi avoka. [12] Iburanisha mu ruhamye ryabaye ku wa 12/4/2016, Kyamazima Françoise ahagarariwe na Me Musore Gakunzi Valéry na Me Kayigire François, Umwanditsi Mukuru (Registraire Général) ahagarariwe na Me Sangano Yves, naho BK Ltd ihagarariwe na Me Rusanganwa Jean-Bosco, akaba yunganira na Me Rutembesa Phocas. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba cyamunara yo ku wa 21/10/2011 yavanwaho kuko yakozwe mu buryo budakurikije amategeko [13] Kyamazima Françoise avuga ko yajuriye asaba Urukiko gutesha agaciro icyemezo cy'Umwanditsi Mukuru (Registraire Général) cyatanze uburenganzira bwo kugurisha umutungo we wari i Nyagatare, asaba kandi ko hasuzumwa igihe amasezerano yagiranye na BK Ltd yatangiriye, igihe yarangiriye, n'amategeko yayagengaga. [14] Me Musore Gakunzi Valéry avuga ko uru rubanza rwari mu bubasha bw'Urukiko Rukuru hashingiwe ku ngingo ya 93, igika cya mbere, agace ka mbere y'Itegeko Ngenga N° 58/2008 ryo ku wa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko, iteganya ko Urukiko Rukuru

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rufite ububasha bwo kuvanaho ibyemezo byafashwe mu buryo budakurikije amategeko. Avuga kandi ko rwari mu bubasha bw'urwo Rukiko hashingiwe ku ngingo ya 93, igika cya mbere, agace ka gatatu y'iryo Tegeko-Ngenga, iteganya ko urwo Rukiko rufite ububasha bwo kuburanisha ibirego bishingiye ku buryozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa amasezerano. Asobanura ko uburyozwe bw'Umwanditsi Mukuru (Registraire Général) bushingiye ku kuba yarahaye BK Ltd uburenganzira bwo kugurisha ingwate Kyamazima Françoise yari yatanze, cyamunara ikaba yari ishingiyeye kuri icyo cyemezo cye kuko iyo kitahababazwye, bityo akaba asanga Me Rutembesa Phocas yaragurishije inzu agendeye ku cyemezo kitariho kuko ubundi hagombaga kubaho icyemezo (ordonnance) cy'Urukiko. [15] Me Musore Gakunzi Valéry avuga kandi ko ingingo ya 4, igika cya kabiri y'Itegeko N° 13/10 ryo ku wa 07/5/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, iteganya ko amasezerano yose y'ubugwate yakozwe mbere y'uko iri tegeko ritangira gukurikizwa akomeza kugira agaciro kayo kugeza igihe arangiriye. Asobanura ko amasezerano y'inguzanyo yabaye hagati ya Kyamazima Françoise na BK Ltd yateganyaga ko mu gihe Kyamazima Françoise atishyuye inguzanyo yahawe, ingwate yari yatanze izagurishwa hakoreshejwe "vente par voie parée" nk'uko biteganywa n'ingingo ya 16 y'Itegeko ryo ku wa 15/5/1922 hamwe n'Iteka ry'Umwami (Arrêté-Royal) ryo ku wa 21/11/1925 zahaga Urukiko rwa Mbere rw'Iremezo ububasha bwo gufata icyemezo cyo kugurisha ingwate muri cyamunara, bityo akaba asanga nta bubasha Umwanditsi Mukuru (Registraire Général) yari afite bwo gutanga icyemezo giteza ingwate ye cyamunara, ahubwo ko ubwo bubasha bufitwe n'Urukiko hashingiwe kuri ayo mategeko. [16] Me Musore Gakunzi Valéry avuga ko ikindi kimenyetso kigaragaza ko hagombaga gufatwa icyemezo cy'Urukiko giteza cyamunara, aho kuba icyemezo cya "Registraire Général", ari uko ingingo ya 24 y'Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, iteganya ko mu gihe habaye impaka ku bijyanye n'itambamira iryo ari ryo ryose ku bijyanye n'ikorwa ry'amasezerano y'ubugwate n'igurishwa ry'ingwate, ubifitemo inyungu wese yitabaza Inkiko zibifitiye ububasha. Asobanura ko mbere ya cyamunara na nyuma yacyo, Kyamazima Françoise yari yagaragariye Umwanditsi Mukuru (Registraire Général) ko cyamunara iriho ikorwa mu buryo butubahirije amategeko, ariko ntiyabihaga agaciro, ahubwo ahitamo guha uwatsindiye cyamunara ibyangombwa bimwegurira burundu umutungo we wagurishijwe, Urukiko rwaregewe rutarabifataho umwanzuro. [17] Me Sangano Yves avuga ko,

ashingiye ku ngingo ya 12 y'Itegeko N° 06/2012/OL ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'Inkiko z'Ubucuruzi, asanga icyemezo RAD 0011/12/HC/KIG cy'Urukiko Rukuru, gifite ishingiro kuko nta bubasha rwari rufite bwo guca urubanza, kubera ko uru rubanza rukomoka ku iyubahirizwa ry'amasezerano y'ubucuruzi abantu bagirana n'ibigo by'imari. Asobanura ko urubanza rushingiye ku ishyirwa mu bikorwa ry'amasezerano y'ingwate yabaye hagati ya BK Ltd na Kyamazima Françoise, yateganyaga ko mu gihe umwenda watanzwe utishyuwe, umutungo watanzweho ingwate utezwa cyamunara bidaciye mu manza hakurikijwe ibiteganyijwe n'Itegeko rigenga ingwate ku mutungo utimukanwa; bisobanuye ko n'impaka zose zakomoka ku ishyirwa mu bikorwa ry'ayo masezerano zigomba gukemurwa n'Inkiko z'Ubucuruzi. Avuga kandi ko mu gihe umwenda utishyuwe, hitabazwa Itegeko rigenga ingwate ku mutungo utimukanwa mu bikorwa byose bijyanye no kugurisha umutungo. Asobanura ko ububasha Umwanditsi Mukuru (Registraire Général) ahabwa n'Itegeko

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budashobora kwitwa icyemezo cy'ubutegetsi kugira ngo kiregerwe Inkiko ziburanisha imanza z'ubutegetsi, ahubwo ko ari "acte de procédure" iteganyijwe mu Itegeko. [18] Me Sangano Yves avuga kandi ko Itegeko ryo ku wa 15/5/1922 ryateganyaga "vente par voie parée" hamwe n'Iteka ry'Umwami (Arrêté-Royal) ryo ku wa 21/11/1925, atari byo byashingirwaho muri uru rubanza kuko ingwate yatanzwe byaravanweho, ko ahubwo hagomba gukoreshwa Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, kuko Kyamazima Françoise yandikishije ingwate ye mu biro by'Umwanditsi Mukuru (Registraire Général) kugira ngo igire agaciro, ashingiye ku ngingo yaryo ya kane, akaba asanga ari naryo Tegeko rikwiye gurikizwa mu gihe uwafashe umwenda atawishyuye. [19] Me Rutembesa Phocas avuga ko ubujurire bwa Kyamazima Françoise nta shingiro bufite kuko atagaragaza icyo anenga icyemezo cy'Umwanditsi Mukuru (Registraire Général) gishyiraho cyamunara. Asobanura ko n'ubwo Kyamazima Françoise avuga ko cyamunara yakozwe hashingiwe kuri icyo cyemezo cy'Umwanditsi Mukuru (Registraire Général), bidahagije kugira ngo ikirego cyitwe icy'ubutegetsi mu gihe kitujuje ibiteganywa n'ingingo ya 93 y'Itegeko Ngenga N° 58/2008 ryo ku wa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko yavuzwe haruguru. Akomeza avuga ko kuba Kyamazima Françoise yaranenze icyemezo cy'Umwanditsi Mukuru (Registraire Général), bitagarukwaho muri uru rubanza kubera ko byafashweho icyemezo ndakuka mu rubanza RCA 0053/11/HC/RWG rwavuzwe haruguru, ko rero kugarura icyo kirego muri uru rubanza kwaba ari ugutanga ikirego gishya mu rwego rw'ubujurire, kandi bitemewe n'amategeko. [20] Me Rutembesa Phocas avuga kandi ko Kyamazima Françoise yandikishije ingwate ye mu biro by'Umwanditsi Mukuru (Registraire Général) ku wa 23/3/2010 kugira ngo amasezerano y'ingwate agire agaciro nk'uko biteganywa n'ingingo ya 4 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa; ingingo ya 4 y'Itegeko N° 13/2010 ryo ku wa 07/5/2013 ririhindura rikanaryuzuzwa, zikaba zarujijwe n'Amabwiriza N° 03/2010 yo ku wa 16/11/2010 ya "Registraire Général" agenga ibyerekeranye no gukodesha, kugurisha muri cyamunara no kwegukana ingwate. Akaba asanga mu gihe Kyamazima Françoise atishyuye umwenda yahawe hagomba gukurikizwa ingingo z'ayo mategeko n'Amabwiriza, aho gushingira ku Itegeko ryo ku wa

15/05/1922 ryateganyaga “vente par voie parée” hamwe n’Iteka ry’Umwami (Arrêté-Royal) ryo ku wa 21/11/1925 ryavanyweho n’amategeko amaze kuvugwa. [21] Me Rusanganwa Jean-Bosco avuga ko asanga ubujurire bwa Kyamazima Françoise nta shingiro bufite kubera ko ibyo asaba byafashweho icyemezo mu rubanza rwabaye itegeko rwaciwe n’Urukiko Rukuru, Urugereko rwa Rwamagana, aho rwemeje ko icyemezo cy’Umwanditsi Mukuru (Registraire Général) cyahereweho hagurishwa umutungo wa Kyamazima Françoise nta nenge gifite, ko gikwiye gushyirwa mu bikorwa, akaba asanga bitagomba kugarukwaho muri uru rubanza. [22] Me Rusanganwa Jean Bosco asoza avuga ko ku byerekeye amategeko agomba gukurikizwa muri uru rubanza, hakwiye gukurikizwa Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk’uko ryahinduwe kandi rikuzuzwa n’Itegeko N° 13/2010 ryo ku wa 07/05/2013 hamwe n’Amabwiriza N° 03/2010 yo ku wa 16/11/2010 y’Umwanditsi Mukuru (Registraire Général) agenga ibyerekeranye no gukodesha, kugurisha muri cyamunara no kwegukana ingwate, aho gukurikiza amateka yavanyweho yavuzwe haruguru.

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UKO URUKIKO RUBIBONA [23] Ingingo ya 93, igika cya mbere, agace ka 1° y’Itegeko Ngenga N°51/2008 ryo ku wa 9/9/2008 rigena imiterere, imikorere n’ububasha by’Inkiko iteganya ko Urukiko Rukuru ruburanisha ibirego bijyanye n’imanza z’ubutegetsi kuva ku rwego rw’Intara n’urw’Umujyi wa Kigali kugeza ku rwego rwa Perezida wa Repubulika, bisaba ivanwaho ry’ibyemezo byafashwe hadakurikijwe amategeko, ibyafashwe n’abatabifitiye ububasha bahawe, ibyo byemezo bikaba byarafashwe mu rwego rwa nyuma n’abayobozi. Naho agace kayo ka gatatu gateganya ko Urukiko Rukuru ruburanisha ibirego byerekeye uburyozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa andi masezerano, iyo ibyangijwe byatewe n’igikorwa cyangwa imyitwarire y’ubutegetsi cyangwa se bikaba byarangijwe n’ibikorwa by’imirimo rusange. [24] Ingingo ya 4, igika cya mbere y’Itegeko N° 13/2010 ryo ku wa 7/5/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa iteganya ko ingingo ya 26 y’ Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa yujujwe ku buryo bukurikira: amasezerano yose y’ubugwate yakozwe mbere y’uko iri Tegeko ritangira gukurikizwa akomeza kugira agaciro kayo kugeza igihe arangiriye. [25] Ingingo ya 24 y’Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa iteganya ko haramutse habaye itambamira iryo ariryo ryose mu bijyane n’ikorwa ry’amasezerano y’ubugwate n’igurishwa ry’ingwate, ubifitemo inyungu wese yitabaza Inkiko zibifitiye ububasha. [26] Nk’uko bigaragara mu gace ka cumi k’urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko Kyamazima Françoise yareze avuga ko cyamunara yakozwe na Me Rutembesa Phocas yabaye mu buryo bunyuranije n’amategeko ariko atagaragaza aho igikorwa cya Me Rutembesa Phocas gihuriye n’ububasha bw’Umwanditsi Mukuru (Registraire Général) kuko aterekanye ko yakozwe ibyo Umwanditsi Mukuru (Registraire Général) yagombaga gukora mu gihe yaba ashaka kunenga igikorwa ashingiye ku bubasha mu rwego rw’Ubutegetsi cyangwa ngo agaragaze ko ibyo Me Rutembesa Phocas yakwangiza mu cyamunara byaryozwa Umwanditsi Mukuru (Registraire Général) nk’umutegetsi. [27] Mu rubanza rujuririrwa, Urukiko Rukuru rwasobanuye mu gace karwo ka cumi na kamwe ko nubwo Kyamazima Françoise avuga ko

Urukiko Rukuru rufite ububasha bwo kuburanisha ikirego cye kuko cyamunara cyashingiye ku cyemezo cy'Umwanditsi Mukuru (Registraire Général), ariko kuba atabiregeye muri uru rubanza, kandi akaba atagaragaza icyo anenga icyo cyemezo ndetse no kuba Urukiko Rukuru, Urugereko rwa Rwamagana rwaraciye urubanza RCA 0053/11/HC/RWG, ubu rwabaye Itegeko, rwemeza ko icyemezo RDB/3/RG/0376/07/11 cyafashwe n'Umwanditsi Mukuru (Registraire Général) cyubahirije amategeko ku buryo kigomba gushyirwa mu bikorwa, nta mpamvu n'inyungu Kyamazima Françoise afite zo kugaruka, muri uru rubanza, kuri icyo kibazo mu gihe hemejwe ko icyemezo cy'Umwanditsi Mukuru cyubahirije amategeko. [28] Urukiko rw'Ikirenga rurasanga hashingiwe ku ngingo ya 93, igika cya mbere, agace ka mbere y'Itegeko Ngenga N° 51/2008 ryo ku wa 9/9/2008 ryavuzwe haruguru, iburanishwa na Kyamazima Françoise, ikirego cye cyo gutesha agaciro cyamunara cyakozwe na Me Rutembesa

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Phocas ku wa 21/10/2011 atari ikirego cy'ubutegetsi kuko uwakoresheje iyo cyamunara atari Umuyobozi (autorité administrative) kandi ibyo yakoze bikaba bitari mu rwego rw'ibyemezo bifatwa n'abayobozi (autorité administrative). Rurasanga kandi hashingiwe ku gace ka gatatu k'iyi ngingo, ikirego cya Kyamazima Françoise cyo gutesha agaciro cyamunara yakozwe na Me Rutembesa Phocas atari ikirego cyerekeranye n'uburyozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa andi masezerano, imyitwarire y'ubutegetsi cyangwa imirimo rusange kuko cyamunara idakorwa n'Ubutegetsi (administration). [29] Urukiko rw'Ikirenga rurasanga ahubwo cyamunara ari imihango y'irangiza ry'urubanza rwaciwe burundu (procédure d'exécution d'une décision judiciaire devenue définitive) cyangwa irangiza ry'amasezerano y'inguzanyo ateganya cyamunara (vente par voie parée), iyo mihango ikorwa n'Umuhesha w'Inkiko cyangwa n'Uwahawe gucunga ingwate (administrateur d'hypothèque) ku buryo muri uru rubanza, ikirego cyose kirebana n'impaka zishingiye ku irangiza ry'amasezerano y'inguzanyo ateganya cyamunara mu gihe cyamunara yakozwe n'uwashinzwe gucunga ingwate, kigomba gusuzumwa n'Inkiko ziburanisha imanza z'ubucuruzi kuko amasezerano y'ubugwate ateganya cyamunara akomoka ku mwenda w'ubucuruzi. [30] Ku birebana n'ibivugwa na Kyamazima Françoise by'uko hashingiwe ku biteganywa n'ingingo ya 4, igika cya mbere y'Itegeko N° 13/2010 ryo ku wa 7/5/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, ikirego cye ari ikirego cy'ubutegetsi kuko nta bubasha Umwanditsi Mukuru (Registraire Général) yari afite bwo gutanga icyemezo giteza ingwate ye cyamunara, Urukiko rw'Ikirenga rurasanga ibivugwa na Kyamazima Françoise nta gaciro byahabwa mu gihe bigaragara ko mu rubanza RCA 0053/11/HC/RWG rwaciwe ku wa 9/9/2001, rwabaye ndakuka, Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko icyemezo RDB/3/RG/0376/07/11 cyo ku wa 12/7/2011, Umwanditsi Mukuru (Registraire Général) yahaye BK Ltd kugira ngo ingwate yatanze na Kyamazima Françoise igurishwe, cyubahirije amategeko. [31] Byongeye kandi Kyamazima Françoise avugisha ingingo ya 4, igika cya mbere, y'Itegeko N° 13/2010 ryo ku wa 7/5/2010 ryavuzwe haruguru ibyo itavugaga kuko Umushingamategeko, muri iyo ngingo, yashatse kuvugaga ko amasezerano y'ubugwate yakozwe mbere akomeza kugira agaciro kayo ku birebana n'ingwate yatanze kugeza igihe arangiriye ariko nk'uko bigaragara mu ngingo ya 28 y'Itegeko N°

10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, Umushingamategeko ntiyavuze ko mu kurangiza amasezerano y'inguzanyo ateganywa cyamunara (vente par voie parée) yakozwe mbere y'iryo Tegeko, hagomba gukurikizwa ibiteganywa n'Itegeko ryo ku wa 15/5/1922 ryerekeranye n'ingwate ku mutungo utimukanwa n'Iteka ry'Umwami ryo ku wa 21/11/1925 rigenga ubugwate ku bitimukanwa-cyamunara iteganywa n'amasezerano, kuko iryo Tegeko ryo ku wa 15/5/1922, harimo n'Iteka ry'Umwami ryo ku wa 21/11/1925 ririshyira mu bikorwa ndetse n'ingingo zose z'amategeko, zibanziriza kandi zinyuranyije n'Itegeko N° 10/2009 ryo ku wa 14/5/2009 byavanyweho. [32] Ku birebana n'ingingo ya 24 y'Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, Kyamazima Françoise avuga ko igaragaza ko cyamunara yakozwe na Me Rutembesa Phocas igomba kuvanwaho kuko atari Umwanditsi Mukuru (Registiaire Général) wagombaga gufata icyemezo cyo kugurisha ingwate yari yatanze, Urukiko rw'Ikirenga rurasanga iyo ngingo itakoreshwa muri uru rubanza kuko irebana n'umuntu uwo ariwe wese, ubifitemo inyungu, utishimiye amasezerano y'ubugwate yakozwe hagati y'uwahawe

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ingwate (créancier hypothécaire) n'uwatanze ingwate (débiteur hypothécaire) cyangwa igurishwa ry'ingwate, akaba yakwitabaza Urukiko ubifitiye ububasha abitambamira. [33] Hashingiwe ku ngingo za mategeko zavuzwe haruguru no ku bisobanuro byatanzwe mu bika bibanziriza iki, Urukiko rw'Ikirenga rurasanga ubujurire bwa Kyamazima Françoise nta shingiro bufite.

2. Kumenya niba abaregwa bakwiye guhabwa indishyi basaba [34] Me Rutembesa Phocas avuga ko asaba Urukiko gutegeka Kyamazima Françoise kumuha 2.000.000 Frw y'indishyi z'akababaro zo gushorwa mu manza ku maherere, na 1.500.000 Frw y'igihembo cya avoka. [35] Me Rusanganwa Jean-Bosco avuga ko BK Ltd isaba Urukiko gutegeka Kyamazima Françoise kuyiha 2.000.000 Frw y'indishyi kubera kuyishora mu manza nta mpamvu na 1.000.000 Frw y'igihembo cya Avoka. [36] Ku birebana n'ibisabwa na Me Rutembesa Phocas, Me Musore Gakunzi Valéry avuga ko Me Rutembesa Phocas adakwiye guhabwa indishyi asaba kuko yiburaniye. UKO URUKIKO RUBIBONA [37] Ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganywa ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse. [38] Ingingo ya 162, agace ka 1, y'Itegeko N° 21/2012 ryo ku wa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganywa ko umuntu wese wabaye umuburanyi mu rubanza ku rwego rwa mbere ashobora kurujuririra iyo abifitemo inyungu, keretse iyo amategeko abigena ukundi. [39] Ku birebana n'indishyi zisabwa na Me Rutembesa Phocas kubera gushorwa mu manza nta mpamvu, nubwo Kyamazima Françoise ntacyo azivugaho, Urukiko rw'Ikirenga rurasanga nta shingiro zifite kuko ari uburenganzira bw'umuburanyi kujuririra urubanza mu gihe atishimiye imikirize yarwo, bityo akaba adakwiye guhabwa izo ndishyi. [40] Ku bijyanye n'amafaranga y'igihembo cy'avoka Me Rutembesa Phocas asaba, Urukiko rw'Ikirenga rurasanga agomba kuyahabwa kuko yunganiwe muri uru rubanza, ariko kubera ko ayo asaba ari ikirenga, mu bushishozi bwarwo rukaba rumugeneye 800.000 Frw. [41] Ku birebana n'indishyi zisabwa na

BK Ltd kubera gushorwa mu manza nta mpamvu, nubwo Kyamazima Françoise ntacyo azivugaho, Urukiko rw'Ikirenga rurasanga nta shingiro zifite kuko ari uburenganzira bw'umuburanyi kujuririra urubanza mu gihe atishimiye imikirize yarwo, bityo ikaba idakwiye guhabwa izo ndishyi. [42] Ku birebana n'amafaranga y'igihembo cy'avoka BK Ltd isaba, usibye ko Kyamazima Françoise ntacyo ayavugaho, Urukiko rw'Ikirenga rurasanga igomba kuyahabwa ariko kubera ko ayo isaba ari ikirenga, mu bushishozi bwarwo rukaba ruyigeneye 800.000 Frw.

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III. ICYEMEZO CY'URUKIKO [43] Rwemeje ko ubujurire bwa Kyamazima Françoise nta shingiro bufite. [44] Rwemeje ko nta gihindutse mu mikirize y'urubanza RAD 0214/11/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 14/12/2012. [45] Rutegetse Kyamazima Françoise kwishyura Me Rutembesa Phocas 800.000 Frw y'igihembo cy'avoka. [46] Rutegetse Kyamazima Françoise kwishyura BK Ltd 800.000 Frw y'igihembo cy'avoka. [47] Rutegetse Kyamazima Françoise kwishyura amagarama y'uru rubanza angana na 100.000 Frw.

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