

RWANDA / JUDGMENT

UWAMARIYA v. FUMBWE SACCO

0159/15/HCC

COURT

Commercial High Court

DECIDED

29 April 2015

CASE / FILE NUMBER

0159/15/HCC

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UWAMARIYA v. FUMBWE SACCO

- Source: Amategeko
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- Date: 2015-04-29
- Case/document no.: 0159/15/HCC
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Text

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UWAMARIYA v. FUMBWE SACCO [Rwanda URUKIKO RUKURU RW'UBUCURUZI – 0159/15/HCC (Nsengiyunva, P.J.,) Kuwa 29/04/2015] Amategeko agenga ibimenyetso – Kwemera umwenda – Guhindura ikiburanwa mu bujurire – Kuba uwishyuzwa yemeye ingano y'umwenda yahawe ubwa mbere hamwe n'inyungu zawo mu rwego rwa mbere, ntibivuze ko yakwemera inyungu z'ubukererwe yaciwe ku mwenda wa kabiri mu gihe uwaziciye atagaragaza aho ziturutse kuko zitateganyijwe mu masezerano – Uwishyuzwa nawe ntiyahindura ikiburanwa mu rwego rw'ubujurire bitemewe asaba inyungu z'ubukererwe ziruta izo yasabye mu rwego rwa mbere kandi atagaragaza niba ari iziyongereye, Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gutanga igihe cyo kwishyura – Gutegeka kugurisha imitungo y'uregwa – Irangizarubanza ry'agateganyo – Uwishyuzwa ntiyahabwa igihe cyo kwishyura mu gihe atagaragaza icyo yakoreseje inguzanyo yahawe – Uwishyuzwa ntiyavuga ko gusaba kugurisha imitungo mu gihe amafaranga y'ingwate abaye make bitaregawe mu rwego rwa mbere kandi uwishyuzwa yarabisabye mu kirego yatanze gitangiza urubanza mu rwego rwa mbere, Itegeko n° 21/2012 ryo kuwa 14/06/2012, ingingo ya 196 n'iya 213. Incamake y'ikibazo: FUMBWE SACCO

yareze Uwamariya mu Rukiko Rukuru rw'ubucuruzi rwa Nyarugenge, uru rukiko rumutegeka kuyishyura 20.940.000 frws y'umwenda remezo, inyungu zawo hamwe n'indishyi. Uwamariya yajuririye mu Rukiko rukuru rw'ubucuruzi avuga ko urukiko rubanza rwemeje igiteranyo cy'imyenda rwirengagije ko uburyo abazwe harimo amakosa, anavuga ko urukiko rwemeje ko yemeye umwenda kandi atarawemeye, avuga kandi ko nta nyungu z'ubukererwe yacibwa kuko amasezerano bakoranye atagaragaza igihe ntarengwa cyo kwishyura, anavuga ko urukiko rwimye ishingiro ikirego cye aho yasabaga ko imyenda ihuzwa, agahabwa igihe cyo kwishyura kuko yarugaragariye ko impanvu yamubujije gukomeza kwishyura aruko yasahuwe imitungo ye yamufashaga kwishyura. FUMBWE SACCO yo ikavuga ko Uwamariya Atari kongererwa igihe cyo kwishyura kuko yishe amasezerano ku buryo bukabije kandi atagaragaje ubundi buryo budasanzwe bwo kwishyura yaba ari gukoresha. Akomeza avuga ko asaba ko urubanza rurangizwa by'agateganyo hagategekwa ko ingwate hamwe n'indi mitungo ya Uwamariya igurishwa. Uwamariya akomeza avuga ko yajuririye kuko urukiko rwemeje igiteranyo cy'imyenda rwirengagije ko uburyo ibazwe harimo amakosa, runavugako yemeye umwenda kandi ataribyo. FUMBWE SACCO yo ivuga ko habayeho kwibeshya mu mibare avuga kandi ko ikigaragaza ko Uwamariya yemeye umwenda n'inyungu zawo nuko yatangiye kuwishyura bikamunanira, bivuga ko umwenda awemera. Akomeza avuga ko yajuririye kuko urukiko rwatanze indishyi kandi FUMBWE SACCO yayireze itabanje kumuha integuza yo kwishyura. Iyi yo ikavuga ko Uwamariya yagombaga kuregwa nta nteguza itanzwe kuko bitari mu masezerano, kandi ko ingwate itari kugurishwa kuko itanditse muri RDB.

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FUMBWE SACCO ikomeza kuvuga ko isaba ko hategekwa ko ingwate igurishwa, hakagurishwa n'indi mitungo ya Uwamariya mu gihe amafaranga avuye mu ngwate abaye make. Uwamahoro nawe avuga ko gutegeka kugurisha imitungo bitaregwe mu rwego rwa mbere. Ikomeza ivuga isaba ko urubanza rurangizwa by'agateganyo kuko bidakozwe byayitera igihombo gikabije. Uwamahoro we akavuga ko gusaba kurangiza urubanza by'agateganyo bitaregwe mu rwego rwa mbere. Incamake y'icyemezo: 1. Uwishyuzwa agomba kwishyura umwenda remezo wa 441.578 frws n'inyungu za Frw 150.000 frws kuko nawe atakwisubiraho yarawemeye mu rwego rwa mbere ngo yishyure 574.733 frws umwenda ukangana na 591.578 frws aho kuba Frw 1.251.150frws.

2. Ingwate y'uwishyuzwa ntiyagurishwa kandi ngo hagurishwa n'indi mitungo ye mu gihe amafaranga avuye mu ngwate abaye make kuko bitaramenyekana niba atazarangiza urubanza ku bushake kandi iyo igihe cyo kururangiza kigeze hakurikizwa amategeko agenga irangiza ry'imanza.
3. Urubanza ntirwarangizwa by'agateganyo kuko uwishyura itaragaza icyo yakwingirizwa bidasubirwaho urubanza ruramutse rutarangijwe by'agateganyo uretse kubivuga mu magambo. Ubujurire bufite ishingiro kuri bimwe. Ubujurire bwuririye ku bundi nta shingiro bufite. Imikirize y'urubanza RCOM 1163/14/TC/Nyge ihindutse ku mwenda ugombakwishyurwa. Amategeko yashingiweho: Itegeko n° 15/2004 ryo kuwa 12/06/2004

ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3, Itegeko n° 21/2012 ryo kuwa 14/06/2012, ingingo ya 196 n'iya 213. Nta manza zifashishijwe: Urubanza

I. IMITERERE Y'URUBANZA [1] Uwamariya Louise yajuririye urubanza RCom 1163/14/TC/Nyge rwaciwe n'Urukiko rw'Ubucuruza rwa Nyarugenge aruregwamo na FUMBWE SACCO, rumutegeka kuyishyura Frw 20.940.000 y'umwenda remezo, inyungu n'indishyi no kuyisubiza Frw 50.000 y'ingwate y'igarama yatanze irega. Kuwa 15/04/2015 haba mu ruhamwe iburanisha, Uwamariya Louise ahagarariwe na Maître Ngirumpetse Jean Marie Vianney, FUMBWE SACCO ihagarariwe na Maître Niyibizi Diogène. Maître Ngirumpetse Jean Marie Vianney avuga ko Uwamariya Louise yajuriye kuko urukiko rwemeje igiteranyo cy'imyenda yaregewe rwirengagije ko uburyo yabazwe harimo amakosa, ruvuga ko yemeye umwenda kandi atarawemeye kuko icyo yemeye ari uko yahawe inguzanyo

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ntarangize kuyishyura. Maître Ngirumpetse Jean Marie Vianney avuga ko ku nguzanyo ya Frw 2.000.000 Uwamariya Louise yemera ko asigayemo umwenda wa Frw 574.733, ko nta nyungu z'ubukererwe yari gucibwa kuko amasezerano atagaragaza igihe ntarengwa cyo kwishyura. Maître Ngirumpetse Jean Marie Vianney avuga ko ku nguzanyo y'ingoboka ya Frw 3.000.000 Uwamariya Louise yemera ko asigayemo umwenda wa Frw 5.500.000 kuko yishyuye Frw 500.000 n'inyungu zawo zisanzwe zingana na Frw 300.000, ko anemera amande y'ubukererwe ya 100 % gusa angana na Frw 3.000.000 kuko ari byo bihano biteganyijwe mu masezerano. Maître Ngirumpetse Jean Marie Vianney avuga ko urukiko rwatanze indishyi z'ikurikiranarubanza kandi FUMBWE SACCO yarareze itabanje guha Uwamariya Louise integuza yo kwishyura cyangwa ngo yubahirize amasezerano igurisha ingwate yari yahawe, ko nawe asaba indishyi z'ikurikiranarubanza n'igihembo cya avoka. Maître Ngirumpetse Jean Marie Vianney avuga ko urukiko rwimye ishingiro ikirego cya Uwamariya Louise asaba ko imyenda ihuzwa, agahabwa igihe cyo kwishyura cy'amezi 36 kandi yararugaragarije ko impamvu yamubujije gukomeza kwishyura ari uko yasahuwe inka n'indogobe yakuragamo ubwishyu mu mata yazo. Maître Niyibizi Diogène avuga ko koko habayeho kwibeshya mu mibare kuko FUMBWE SACCO yishyura Uwamariya Louise umwenda ungana na Frw 19.368.000 aho kuba Frw 20.440.000 nk'uko bigaragara mu cyemezo cy'urukiko, ko Uwamariya Louise yemeye umwenda n'inyungu zawo mu iburanisha. Maître Niyibizi Diogène avuga ko ku nguzanyo ya Frw 2.000.000 Uwamariya Louise asigaje kwishyura umwenda wa Frw 1.251.150 ugizwe n'umwenda remezo, inyungu zisanzwe n'inyungu z'ubukererwe. Maître Niyibizi Diogène avuga ko ku nguzanyo ya Frw 3.000.000 Uwamariya Louise asigaje kwishyura umwenda wa Frw 17.000.000 ugizwe n'umwenda remezo, inyungu zisanzwe zibazwe buri kwezi n'inyungu z'ubukererwe zingana na 100 % y'umwenda remezo n'inyungu zisanzwe. Maître Niyibizi Diogène avuga ko amasezerano agaragaza ko inguzanyo ya Frw 2.000.000 igomba kwishyurwa mu gihe cy'amezi 24, ko Uwamariya Louise yagombaga kuregwa nta nteguza itanzwe kuko ntabiri mu masezerano, ko ingwate itari kugurishwa kuko itanditse muri RDB, ko indishyi z'ikurikiranarubanza zatanze kuko imyenda itishyuwe bituma FUMBWE SACCO ijya mu rukiko kandi nta zo Uwamariya Louise akwiriye kuko atashowe mu manza. Maître Niyibizi Diogène avuga ko Uwamariya Louise atari kongererwa igihe

cyo kwishyura kuko yishe amasezerano ku buryo bukabije kandi atagaragaje ubundi buryo budasanze bwo kwishyura yaba ari gukoresha. Maître Niyibizi Diogène avuga ko FUMBWE SACCO isaba ko urubanza rurangizwa by'agateganyo, ko hategekwa ko ingwate igurishwa kandi hagurishwa indi mitungo ya Uwamariya Louise mu gihe amafaranga avuye mu ngwate abaye make. Maître Ngirumpetse Jean Marie Vianney avuga ko gusaba kurangiza urubanza by'agateganyo no gutegeka kugurisha imitungo bitaregawe mu rwego rwa mbere. [2] Ibibazo urukiko rugomba gusuzuma muri uru rubanza ni ibi bikurikira : niba mu iburanisha mu rwego rwa mbere Uwamariya Louise yaremeye umwenda n'inyungu zawo ;

- niba ku nguzanyo ya Frw 2.000.000 nta nyungu z'ubukererwe ziteganyijwe ;

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- niba kuri iyo nguzanyo umwenda ari Frw 574.733 cyangwa Frw 1.251.150 ;
 - niba ku nguzanyo ya Frw 3.000.000 inyungu zisanze zigomba gutangwa ku kwezi kumwe gusa cyangwa buri kwezi, niba n'inyungu z'ubukererwe hatangwa 100 % y'inguzanyo yatanze cyangwa zabarwa buri kwezi ;
 - niba kuri iyo nguzanyo umwenda ari Frw 5.500.000 cyangwa Frw 17.000.000 ;
 - niba indishyi z'ikurikiranarubanza n'igihembo cya avoka zikwiriye ;
 - niba hatangwa igihe cyo kwishyura ;
 - niba hategekwa ko imitungo ya Uwamariya Louise igurishwa ;
 - niba urubanza rwarangizwa by'agateganyo. II. ISESENGURA RY'IBIBAZO BISUZUMWA MU RUBANZA
1. Ku byerekeye kwemera umwenda n'inyungu zawo, kudateganya inyungu z'ubukererwe ku nguzanyo ya Frw 2.000.000 no kubamo umwenda wa Frw 574.733 cyangwa Frw 1.251.150 [3] Ingingo ya 3 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo avuga, iya 110 iteganya ko ukwiyeemerera mu rubanza ari amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera kandi amutsindisha, ko adashobora kwisubiraho keretse bigaragaye ko yemejwe n'uko yagirirwaga nabi cyangwa yibeshye ku cyabaye. Ingingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye kandi agomba kubahirizwa nta buryarya. Ingingo ya 4 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujijwe kugeza ubu iteganya ko ikiburanwa kigenwa n'ibisabwa na buri muburanyi, ko kidashobora guhindurwa na gato mu rukiko rwajuririwe. [4] Maître Ngirumpetse Jean Marie Vianney avuga ko Uwamariya Louise yajuriye kuko urukiko rwemeje igiteranyo cy'inyenda yaregawe rwirengagije ko uburyo yabazwe harimo amakosa, ruvuga ko yemeye umwenda kandi

atarawemeye kuko icyo yemeye ari uko yahawe inguzanyo ntarangize kuyishyura. [5] Maître Niyibizi Diogène avuga ko koko habayeho kwibeshya mu mibare kuko FUMBWE SACCO yishyura Uwamariya Louise umwenda ungana na Frw 19.368.000 aho kuba Frw 20.440.000 nk'uko bigaragara mu cyemezo cy'urukiko, ko Uwamariya Louise yemeye umwenda n'inyungu zawo mu iburanisha kandi kuba yaratangiye kwishyura bikamunanira bivuga ko umwenda awemera. [6] Maître Ngirumpetse Jean Marie Vianney avuga ko ku nguzanyo ya Frw 2.000.000 Uwamariya Louise yemera ko asigayemo umwenda wa Frw 574.733 n'ubwo ku ifishi y'uko

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umwenda wishyurwa hasigaye Frw 441.575 kubera ko iyo yishyura neza yari kwishyura Frw 2.720.160 kandi yishyuye mu byiciro 18 yishyura Frw 113.340, akaba nta nyungu z'ubukererwe yari gucibwa kuko amasezerano atagaragaza igihe ntarengwa cyo kwishyura. [7] Maître Niyibizi Diogène avuga ko ku nguzanyo ya Frw 2.000.000 Uwamariya Louise asigaye kwishyura umwenda wa Frw 1.251.150 ugizwe n'umwenda remezo wa Frw 441.575 kuko yishyuyeho Frw 1.558.425, inyungu zisanze za Frw 320.000 kuko yishyuye Frw 570.000 n'inyungu z'ubukererwe za Frw 489.575. [8] Urukiko rusanga mu nyandikomvugo y'iburanisha ryo mu rwego rwa mbere yo kuwa 30/01/2015 Maître Niyibizi Diogène uhagarariye FUMBWE SACCO yavuze ko ku nguzanyo ya Frw 2.000.000 iregera umwenda wa Frw 651.153 ugizwe n'umwenda remezo wa Frw 441.578, inyungu za Frw 150.000 n'ibihano bya Frw 59.578, ko ku nguzanyo ya Frw 3.000.000 iregera umwenda ungana na Frw 9.240.000 y'umwenda remezo wa Frw 2.500.000, inyungu za Frw 6.300.000 n'ibihano bya Frw 440.000, UWAMARIYA Louise yashubije ko yemera umwenda wa mbere n'inyungu zawo, ko ku mwenda wa Frw 3.000.000 yishyuyeho Frw 800.000 ariko atemera inyungu zawo kuko ari nyinshi, bityo Uwamariya Louise akaba ataremeye umwenda wose uregerwa nk'uko mu rwego rwa mbere urukiko rwabisanze (kopi y'urubanza agace ka 7) ahubwo yaremeye umwenda wa Frw 651.153 ukomoka ku nguzanyo ya Frw 2.000.000 n'umwenda remezo wa Frw 2.500.000 ukomoka ku nguzanyo ya Frw 3.000.000, ariko kwisubiraho kwe kukaba gufite ishingiro kubera ko yibeshye nta nyungu z'ubukererwe zateganyijwe mu masezerano y'inguzanyo ya Frw 2.000.000 nk'uko ntaho ziri mu nyandiko yayo, akaba kuri iyo nguzanyo atakwishyura inyungu z'ubukererwe za Frw 59.578 zari zatswe na FUMBWE SACCO. [9] Urukiko rusanga FUMBWE SACCO ihindura ikiburanwa mu bujuriye kandi bitemewe kuko isaba ko ku nguzanyo ya Frw 2.000.000 Uwamariya Louise ategukwa kuyishyura inyungu zisanze za Frw 320.000 n'inyungu z'ubukererwe za Frw 489.575 kandi mu rwego rwa mbere yarasaba inyungu zisanze zingana na Frw 150.000 n'iz'ubukererwe zingana na Frw 59.578 kandi ntivuge ko ari iz'iyongereye kuva urubanza rwacibwa, bityo Uwamariya Louise akaba agomba kuyishyura umwenda remezo wa Frw 441.578 n'inyungu za Frw 150.000 kuko nawe atakwisubiraho yarawemeye mu rwego rwa mbere ngo yishyure Frw 574.733, umwenda ukangana na Frw 591.578 aho kuba 1.251.150 frws.

2. Ku byerekeye gutanga inyungu zisanze ukwezi kumwe gusa ku nguzanyo ya Frw 3.000.000 cyangwa buri kwezi, gutanga inyungu z'ubukererwe za 100 % y'inguzanyo yatanze inshuro imwe cyangwa buri kwezi no kwishyura umwenda wa Frw 5.500.000 cyangwa Frw 17.000.000 [10] Ingingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 iteganya ko amasezerano akozwe

ku buryo bukurikije amategeko aba itegeko ku bayagiranye kandi agomba kubahirizwa nta buryarya. Ingingo ya 3 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo avuga, iya 110 iteganya ko ukwiyeemerera mu rubanza ari amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera kandi amutsindisha, ko adashobora kwisubiraho keretse bigaragaye ko yemejwe n'uko yagirirwaga nabi cyangwa yibeshye ku cyabaye.

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- [11] Maître Ngirumpetse Jean Marie Vianney avuga ko ku nguzanyo y'ingoboka ya Frw 3.000.000 Uwamariya Louise yemera ko asigayemo umwenda wa Frw 5.500.000 kuko yishyuye Frw 500.000 hasigara umwenda remezo wa Frw 2.500.000, anishyura inyungu zawo zisanze zingana na Frw 300.000, ko anemera amande y'ubukererwe ya 100 % gusa angana na Frw 3.000.000 kuko ari byo bihano biteganyijwe mu masezerano. [12] Maître Niyibizi Diogène avuga ko ku nguzanyo ya Frw 3.000.000 Uwamariya Louise asigaye kwishyura umwenda wa Frw 17.000.000 ugizwe n'umwenda remezo wa Frw 2.500.000, inyungu zisanze za Frw 6.000.000 kuko yishyuye Frw 900.000 kandi yarikwishyura Frw 300.000 ku kwezi ariko amara amezi 23 atishyura n'inyungu z'ubukererwe za Frw 8.500.000 angana na 100 % y'umwenda remezo n'inyungu zisanze. [13] Urukiko rusanga mu ngingo ya 3 y'amasezerano y'inguzanyo ya Frw 3.000.000 harumvikanwe ko Uwamariya Louise azayishyura mu cyiciro kimwe mu gihe cy'ukwezi kandi akanishyura inyungu za Frw 300.000, mu ngingo ya 4 bumvikana ko narenza itariki ya 17/09/2012 azabwirwa amande angana na 100 % yayo yasabye, bityo hakaba ntaho bumvikanye ko inyungu zisanze zikomeza kubakwa nyuma y'igihe cy'ukwezi, ndetse ko n'inyungu z'ubukererwe zizabwirwa ku kwezi. [14] Urukiko rusanga FUMBWE SACCO ihindura ikiburanwa mu bujura kandi bitemewe kuko isaba ko ku nguzanyo ya Frw 3.000.000 Uwamariya Louise ategukwe kwishyura inyungu zisanze za Frw 6.000.000 n'inyungu z'ubukererwe za Frw 8.500.000 kandi mu rwego rwa mbere rwasanze yarasabaga inyungu zisanze zingana na Frw 6.300.000 n'iz'ubukererwe zingana na Frw 440.000 kandi ntivuye ko ari iz'iyongereye ku urubanza rwabwirwa. [15] Urukiko rusanga ku nguzanyo ya Frw 3.000.000 Uwamariya Louise agomba kwishyura FUMBWE SACCO umwenda remezo wa Frw 2.500.000 kuko bese bawemera, ariko nta nyungu zisanze agomba kwishyura kuko yarangije kuko yari kwishyura Frw 300.000 none FUMBWE SACCO ikavuye ko yarangije kwishyura Frw 900.000, rusanga kandi agomba kwishyura inyungu z'ubukererwe zingana na 100 % ya Frw 3.000.000 n'ubwo mu rwego rwa mbere FUMBWE SACCO yari yasabye izingana na Frw 440.000 kuko ayemera kandi adashobora kwisubiraho kuko atagaragaza ko yemejwe n'uko yagirirwaga nabi cyangwa yibeshye ku cyabaye, bityo umwenda ukangana na Frw 5.500.000 aho kuba Frw 17.000.000.
3. Ku byerekeye kwishyura indishyi z'ikurikiranarubanza n'igihembo cya avoka [16] Ingingo ya 258 y'igitabo cya mbere cy'urwunge rw'amategeko y'imbonezambano ibyerekeye imirimo nshinganwa cyangwa amasezerano iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse. Ingingo ya 167 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 iteganya ko uregwa mu rukiko rujuririrwa ashobora na we

kujurira yuririye ku bujuriye bw'urega. [17] Maître Ngirumpetse Jean Marie Vianney avuga ko Uwamariya Louise yajuriye kuko urukiko rwatanze indishyi z'ikurikiranarubanza kandi FUMBWE SACCO yarareze itabanje kumuha integuza yo kwishyura cyangwa ngo yubahirize amasezerano igurisha ingwate yari yahawe, ko nawe asaba indishyi z'ikurikiranarubanza n'igihembo cya avoka zingana na Frw 500.000.

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- [18] Maître Niyibizi Diogène avuga ko Uwamariya Louise yagombaga kuregwa nta nteguza itanzwe kuko ntabiri mu masezerano, ko ingwate itari kugurishwa kuko itanditse muri RDB, ko indishyi z'ikurikiranarubanza n'igihembo cya avoka zatanze kuko imyenda itishyurwe bituma FUMBWE SACCO ijya mu rukiko kandi nta zo Uwamariya Louise akwiriye kuko atashowe mu manza. [19] Urukiko rusanga mu masezerano FUMBWE SACCO na Uwamariya Louise barumvikanye ko hashize amezi 2 atishyura FUMBWE SACCO ishyira ingwate ku isoko ariko banavugaga ko habaye impaka bakwitabaza inkiko ariko ntibavugaga ko mbere yo kumurega babanza kumuha integuza yo kwishyura, bityo FUMBWE SACCO ikaba itari itegegetswe kubanza kugurisha ingwate no kubanza gutanga integuza, bityo indishyi z'ikurikiranarubanza zingana na Frw 200.000 Uwamariya Louise yaciwe (kopi y'urubanza agace ka 12) zikaba zari zikwiriye kuko kutubahiriza amasezerano kwe kwatumye aregwa kandi akaba nta n'igihembo cya avoka akwiriye mu bujuriye kuko rwasanze arimo umwenda FUMBWE SACCO.
4. Ku byerekeye gutanga igihe cyo kwishyura [20] Ingingo ya 3 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo avuga. [21] Maître Ngirumpetse Jean Marie Vianney avuga ko Uwamariya Louise yajuriye kuko urukiko rwimye ishingiro ikirego cye cyo kwiregura asaba ko imyenda ihuzwa, agahabwa igihe cyo kwishyura cy'amezi 36 kandi yararugaragariye ko impamvu yamubujije gukomeza kwishyura ari uko yasahuwe inka n'indogobe yakuragamo ubwishyu mu mata yazo. [22] Maître Niyibizi Diogène avuga ko Uwamariya Louise atari kongererwa igihe cyo kwishyura kuko yishe amasezerano ku buryo bukabije kandi atagaragaje ubundi buryo budasanzwe bwo kwishyura yaba ari gukoresha. [23] Urukiko rusanga Uwamariya Louise atahabwa igihe cyo kwishyura kuko amasezerano y'inguzanyo ya Frw 2.000.000 n'ya Frw 3.000.000 atagaragaza ko yayihereye kuyikoresha mu bworozi bw'inka n'indogobe atangira imanza R.C. 0093/13/TGI/NGOMA na R.CA 0060/12/HC/RGW zivugaga ko zatwawe na KOPERTIVE KOPAG kubera atari we waburanye akanatsinda muri izo manza ahubwo ari MULINDA Jean Baptiste.
5. Ku byerekeye gutegeka kugurisha imitungo ya Uwamariya Louise [24] Ingingo ya 196 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 iteganya ko habaho irangiza ry'urubanza rikorwa ku bushake iyo urimo umwenda awishyuye atagombye kubihatirwa, ko bitabaye ibyo ategewe kuwishyura ku gahato hakurikijwe amategeko yabiteganyije, iya 253 iteganya ko iyo umuburanyi watsinzwe atarangije urubanza rwe ku neza mu gihe cyategetswe rurangizwa ku gahato hafatirwa ibintu bya bigatezwa cyamunara, iya 285 iteganya ko ifatira ry'ibintu bitimukanwa ridashobora gukorwa atari uko ibintu byimukanwa by'urimo

umwenda bidashobora kuvamo amafaranga ahagije kugira ngo hishyurwe umwenda n'amagarama, keretse iyo mu masezerano harimo ko uberewemo umwenda azagurisha hatagombye urubanza (vente par voie parée), iya 168 iteganya ko ku rwego rw'ubujurire hadashobora kuregerwa ikirego gishya.

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- [25] Maître Niyibizi Diogène avuga ko FUMBWE SACCO isaba ko hategekwa ko ingwate igurishwa kandi hagurishwa indi mitungo ya Uwamariya Louise mu gihe amafaranga avuye mu ngwate abaye make. [26] Maître Ngirumpetse Jean Marie Vianney avuga ko gutegeka kugurisha imitungo bitaregawe mu rwego rwa mbere. [27] Urukiko rusanga mu nyandiko y'ikirego gitangiza urubanza mu rwego rwa mbere FUMBWE SACCO yarasabye ko hategekwa ko ingwate Uwamariya Louise yayihaye igurishwa kandi hagurishwa indi mitungo ye mu gihe amafaranga avuye mu ngwate abaye make, bityo akaba atari ikirego gishya mu bujurire. [28] Urukiko rusanga ariko rutategeka ko ingwate Uwamariya Louise yayihaye igurishwa kandi hagurishwa indi mitungo ye mu gihe amafaranga avuye mu ngwate abaye make kuko rutamenya niba atazarangiza urubanza ku bushake kandi iyo igihe cyo kururangiza kigeze hakurikizwa amategeko agenga irangiza ry'imanza.
6. Ku byerekeye kurangiza urubanza by'agateganyo [29] Ingingo ya 213 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 iteganya ko irangiza ry'urubanza ry'agateganyo ryemezwa n'urukiko bisabwe n'umwe mu baburanyi iyo basanga iryo rangiza ry'urubanza ry'agateganyo ritabaye bishobora kwangiriza ku buryo budasubirwaho umuburanyi usabye ko urubanza rurangizwa by'agateganyo. [30] Maître Niyibizi Diogène avuga ko FUMBWE SACCO isaba ko urubanza rurangizwa by'agateganyo kuko yari yabisabye ntiyabihabwa kandi bidakozwe byayitera igihombo gikabije bitewe n'uko amafaranga ikoresha ari ay'abaturage bikaba bishobora kuyiviramo gufunga imiryango mu gihe cya bugufi kuko ari ikigo cy'imari iciriritse kikiyubaka. [31] Maître Ngirumpetse Jean Marie Vianney avuga ko gusaba kurangiza urubanza by'agateganyo bitaregawe mu rwego rwa mbere. [32] Urukiko rusanga mu nyandiko y'ikirego gitangiza urubanza mu rwego rwa mbere FUMBWE SACCO yarasabye ko hategekwa ko urubanza rurangizwa by'agateganyo, bityo akaba atari ikirego gishya mu bujurire. [33] Urukiko rusanga urubanza rutarangizwa by'agateganyo kuko FUMBWE SACCO itaragaza icyo yakwingirizwa bidasubirwaho ruramutse rutarangijwe by'agateganyo uretse kubivuga mu magambo. III. ICYEMEZO CY'URUKIKO [34] RWEMEYE kwakira ubujurire bwatanzwe na Uwamariya Louise kandi rwemeje ko bufite ishingiro kuri bimwe. [35] RWEMEYE kwakira ubujurire bwuririye ku bundi bwatanzwe na FUMBWE SACCO kandi rwemeje ko nta shingiro bufite.

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- [36] RWEMEJE ko ku nguzanyo ya Frw 2.000.000 Uwamariya Louise yishyura FUMBWE SACCO umwenda ungana na Frw 591.578 aho kuba Frw 1.251.150, ko ku nguzanyo ya Frw 3.000.000 ayishyura umwenda ungana na Frw 5.500.000 aho kuba Frw 17.000.000, ko indishyi

z'ikurikiranarubanza zingana na Frw 200.000 UWAMARIYA Louise yaciwe mu rwego rwa mbere zari zikwiriye, ko agomba kuzishyura hamwe n'igihembo cya avoka cya Frw 300.000 yaciwe no kuyisubiza Frw 50.000 y'ingwate y'amagarama yatanze irega, yose hamwe akaba Frw 6.641.578. [37] RWEMEJE ko nta gihembo cya avoka Uwamariya Louise akwiriye mu bujuriye, ko atanahabwa igihe cyo kwishyura, ko rutatega ko ingwate Uwamariya Louise yahaye FUMBWE SACCO igurishwa kandi hagurishwa indi mitungo ye mu gihe amafaranga avuye mu ngwate abaye make, ko urubanza rutarangizwa by'agateganyo. [38] RWEMEJE ko imikirize y'urubanza R.Com 1163/14/TC/Nyge ihindutse ku mwenda ugomba kwishyurwa ariko indishyi z'ikurikiranarubanza n'igihembo cya avoka no gusubiza ingwate y'amagarama y'urubanza bidahindutse. [39] RUTEGETSE Uwamariya Louise kwishyura FUMBWE SACCO Frw 6.641.578. [40] RUTEGETSE ko imikirize y'urubanza R.Com 1163/14/TC/Nyge ihindutse ku mwenda ugomba kwishyurwa ariko indishyi z'ikurikiranarubanza n'igihembo cya avoka no gusubiza ingwate y'amagarama y'urubanza bidahindutse. [41] RUTEGETSE ko Frw 75.000 y'ingwate y'amagarama y'urubanza Uwamariya Louise yatanze ajurira aherera ku Isanduku ya Leta.

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Prepared on 28 October 2026 · Esheria