

RWANDA / JUDGMENT

KAYIRANGA v. I&MBANK

RCOMA 0118/11/CS

COURT

Supreme Court

DECIDED

15 January 2016

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KAYIRANGA v. I&MBANK

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Text

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KAYIRANGA v. I&MBANK [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0118/11/CS (Mugenzi, P.J., Munyangeri na Gatete, J.) 15 Janvier 2016] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kwishyura wa banki umwenda n'inyungu zawo – Urega agomba kugaragaza ibimenyetso by'ibyo aregera, atabibonye uwarezwe aramutsinda – Kuba uwahawe inguzanyo na banki avuga ko hari amafaranga yagiye yishyura uwayimuhaye ntibyafatwa nk'ukuri mu gihe atabitangira ibimenyetso bivuguruza ibyagaragajwe na banki. Itegeko No 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9. Incamake y'ikibazo: Uru rubanza rukomoka ku nguzanyo ingana na 22.000.000 Frws I&MBANK ivuga ko yahaye Kayiranga. Uyu ntiyishyuye maze imurega hamwe n'umugore we akaba n'umwishingizi we mu Rukiko Rukuru rw'Ubucuruzi isaba ko bafatanywa kwishyura umwenda remezo hamwe n'inyungu zawo, inasaba ko inyungu zikomeza kubarwa kugeza barangije kwishyura umwenda wose, inasaba ko bakwishyura indishyi hamwe n'igihembo cy'Avoka. Urukiko rwemeje ko Kayiranga n'umugore we wamwishingiye bafatanywa kwishyura amafaranga angana na 29.999.889 Frw. Urukiko rwakomeje rusobanura ko amafaranga angana na 43.627.813 Frws BCR isaba kwishyurwa itayahabwa kuko yo yakomeje kubara inyungu kandi

bitumvikanyeho mu masezerano impande zombi zakoze, gusa rwemeza ko yahabwa amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka kuko yumvikanyweho mu masezerano. Nyuma yahoo KAYIRANGA ntiyishimiye imikirize y'urubanza maze ajurira mu Rukiko rw'Ikirenga, avuga ko atagombaga kwishyuzwa umwenda wose muri rusange kandi hari amafaranga yawishyuyeho, ndetse ko nta n'inyungu agomba gucibwa kuko Banki ari yo yadindije igurishwa ry'inzu yari yaratanzweho ingwate maze ikanga kwishyurwa. I&MBANK nayo yatanze ubujurire bwuririye ku bundi isaba kwishyurwa inyungu ku mafaranga yatsindiye, asaba ko zakomeza zikabarwa kugeza umwenda wose wishyuwe. Kubera ko Kayiranga n'umugore we akaba n'umwishingizi we batitabye, uwarubahagarariye yatanze imyanzuro ivuga ko Kayiranga atagaragaje historique yerekana ko hari amafaranga yishyuye banki, bituma yishyuzwa umwenda wose muri rusange. I&M BANK ivuga ko yemera ko hari amafaranga Kayiranga yagiye yishyura ariko kubera ko nyuma itakomeje kubahiriza amasezerano kandi ntagaragaze ibimenyetso bigizwe na historique by'uko yishyuye koko, inyungu zakomeje kwiyongera. Mu izina rya Kayibanda, mu myanzuro y'ubarumuhagarariye yavugaga ko I&MBANK yanze kwakira amafaranga yavuye mu igurishyirwa ingwate nk'uko babyumvikanye, avuga ko nta nyungu ikwiye gusaba kuko yashyize amananiza kumuntu wari waguze iyo ngwate, banki ikabyanga. I&M BANK ivuga ko Kayiranga agomba kwishyura amafaranga y'umwenda wose utishyuye mu guhabwa inguzanyo kuko atubahirije amasezerano ivuga Kayiranga yatanze ingwate ku nzu

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ebiyi, ariko atanga ibyangombwa by'inzu imwe yonyine nayo aza kuyigurisha. Ikomeza ivuga ko isaba kugenerwa inyungu nk'uko zikubiye mu masezerano inasaba ko yagenerwa amafaranga y'ikurikiranarubanza ahwanye na 10% y'umwenda wose. Incamake y'icyemezo: Kuba uwahawe inguzanyo na banki avuga ko hari amafaranga yagiye yishyura uwayimuhaye ntibyafatwa nk'ukuri mu gihe atabitangira ibimenyetso bivuguruzwa ibyagaragajwe na banki.. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro. Amagarama y'urubanza aherereye kuwareze. Amategeko yashyirahweho: Itegeko No 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 9.,. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Mu Rukiko Rukuru rw'Ubucuruza, BCR SA (yaje guhinduka I&M BANK), yareze KAYIRANGA Jean Bosco kuba atarubahirije amasezerano y'inguzanyo ya 22 000 000 Frw yamuguriye ku wa 08/09/2005, irega kandi MUKAMURENZI umugore we nk'umwishingizi. Banki yasabaga ko we n'umugore bafatanyaga kwishyura umwenda remezo wa 22.000. 000 Frw, n'inyungu zawo bihwaye na 29.999.889 Frw, ariko zigakomeza kubarwa kugeza umwenda wose ayibereyemo wishyuwe n'inyungu kuri 19% kuwa kuwa 01/11/2009 kugeza arangije kwishyura umwenda wose, bikaba 43 627 813 Frw, bakishyura n'indishyi za 2. 999. 990 Frw zihwaye na 10% y'amafaranga yose yishyuzwa, zikubiyemo igihembo cya Avoka n'amafaranga y'ikurikiranarubanza. [2] Mu rubanza RCOM 0021/10/HCC rwaciwe kuwa 7/09/2011, Urukiko rwemeje ko KAYIRANGA agomba kwishyura umwenda abereyemo BCR SA wa 29.999.889 Frw, afatanyije na MUKAMURENZI wamwishingiye, banategekwa kwishyura 2.999.990 Frw y'ikurikiranarubanza n'igihembo cya avoka. [3] Urukiko rwasobanuye ko hari ibimenyetso bigaragaza ko KAYIRANGA yishyujwe, MUKAMURENZI

akagenerwa kopi ariko bakaba batagaragaza ikimenyetso cy'uko bishyuye. Rwasobanuye ko 43.627.813 Frw BCR isaba itayahabwa, kuko ariyo yakomeje kubara inyungu na nyuma y'uko KAYIRANGA agaragaje ko nta bushake bwo kwishyura agifite kandi uko gukomeza kubara inyungu bikaba bitarumvikanyweho mu masezerano. Ku bijyanye n'igihembo cya avoka n'amafaranga y'ikurikiranarubanza, Urukiko rwasobanuye ko akwiye gutangwa kuko yumvikanyweho mu masezerano.

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- [4] KAYIRANGA yajuririye Urukiko rw'Ikirenga, avuga ko atagombaga kwishyuzwa umwenda wose muri rusange kandi hari amafaranga yawishyuyeho, ndetse ko nta n'inyungu agomba gucibwa kuko Banki ari yo yadindiye igurishwa ry'inzu yari yaratanzweho ingwate maze ikanga kwishyurwa. [5] Mu bujurire bwuririye ku bundi, I&M BANK isaba kwishyurwa inyungu ku mafaranga yatsindiye, zizabarwa kugeza umwenda wose wishyuwe, ikavuga ko ku wa 02/05/2013, zari zimaze kugera kuri 5.849.978 Frw, zakongerwa ku mwenda remezo wa 29.999.889 Frw, bikaba 35.849.867 Frw. [6] Urubanza rwaburanishijwe mu ruhame ku wa 08/12/2015 I&M BANK ihagarariwe na Me NKURUNZIZA François Xavier, KAYIRANGA na MUKAMURENZI batitabye kandi badahagarariwe kuko Me NSABAYEZU Evariste wababuraniraga yanditse avuga ko atagihagarariye MUKAMURENZI kuko yamwambuye ububasha, na KAYIRANGA bakaba badaherukana, ahubwo afite amakuru ko KAYIRANGA afungiyiye i Kinshasa. [7] Urukiko, rumaze kumva uhagarariye I&M BANK asaba ko urubanza rwaburanishwa KAYIRANGA adahari, runashingiye ku ngingo ya 57 y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets1 rwafashe icyemezo cyo kuburanisha urubanza KAYIRANGA adahari kuko yahamagajwe mu buryo buteganywa n'amategeko, ntiyitabe kandi nta mpamvu yagaragaje. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO [8] Urukiko rurasuzuma ibyerekeranye no kuba KAYIRANGA yaba yarishyujwe umwenda wose hatitawe ku mafaranga yishyuye mbere, ikibazo cyo kumenya niba hari inyungu agomba kwishyuzwa, n'ibijyanye n'indishyi z'ikurikiranarubanza zasabwe na I&M BANK.
- a) Kumenya niba I&M BANK yarishyuje umwenda wose yirengagije ko hari amafaranga yishyuwe [9] Mu mwanzuro wari watanze na Me NSABAYEZU Evariste, mu izina rya KAYIRANGA, yavuze ko I&M BANK itagaragaje "historique" yagombaga kwerekana ko hari amafaranga KAYIRANGA yagiye yishyura, bituma yishyuzwa umwenda wose muri rusange. [10] Me NKURUNZIZA Francois Xavier uburanira I&M BANK avuga ko nk'uko bigaragara mu mwanzuro, KAYIRANGA ariwe ufite inshingano zo kugaragaza ibimenyetso by'amafaranga avuga ko yishyuye, kugira ngo avuguruzwe ibimenyetso byatanze, bigizwe na "historique" bigaragaza ko ku wa 28/9/2007 yari asigayemo 19.342. 934 Frw kandi akerekana 1 Iyo ngingo ya 57 igira iti: " iyo urega atitabye Urukiko nta mpamvu, uregwa ashobora gusaba ko urubanza rusibwa cyangwa agasaba ko ruburanishwa mu mizi yarwo, urubanza ruciwe rukazafatwa nk'aho rwaburanishijwe ababuranyi bahari, keretse iyo Urukiko, ku nyungu z'ubutabera, rusanze ari ngombwa ko urubanza rwimurirwa ku yindi tariki kugira ngo urega yongere ahamagarwe".

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niba kuva kiriya gihe yarishyuye. Yemera koko ko hari amafaranga KAYIRANGA yagiye yishyura I&M BANK ariko nyuma aza kutubahiriza amasezerano inyungu zikomeza kwiyongera. UKO URUKIKO RUBIBONA [11] Ingingo ya 9, al 2 y'Itegeko No 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ko urega ari we ugaragaza ibimenyetso by'ibyo aregera, atabibona uwarezwe agatsinda. Urukiko rusanga KAYIRANGA uvuga ko hari amafaranga yishyuye I&M BANK yagombye kubigaragariza ibimenyetso byavuguruzaga "historique" yagaragajwe na Banki yerekana ko ku wa 28/09/2007 umwenda yari asigayemo wari 19.342.934 Frw. [12] Urukiko rurasanga rero, ingingo y'ubujurire bwa KAYIRANGA igamije kugaragaza ko atigeze yerekwa "historique" yerekana umwenda asigaje, n'amafaranga yishyuye nta shingiro ifite

- b) Ku kibazo cyo kumenya niba hari inyungu I&M BANK igomba kwishyurwa. [13] Mu mwanzuro wari watanzwe na Me NSABAYEZU mu izina rya KAYIRANGA yavugaga ko uyu yumvikanye na I&M BANK (BCR) ko yagurisha ingwate hakaboneka ubwishyu, ariko nyuma yanga kwakira 10.000.000 Frw yari avuye mu igurisha ry'ingwate ahubwo iramurega. Avuga ko kubera iyo mpamvu, nta nyungu I&M BANK ikwiye gusaba kuko yashyize amananiza kuri NGABONZIZA wari waguze ingwate ashaka kwishyura 10.000.000 Frw Banki ikabyanga. [14] Uburanira I&M BANK avuga ko mu guhabwa inguzanyo, KAYIRANGA yatanze ingwate ku nzu ebyiri imwe iherereye i Kigali indi iri mu Karere ka RUSIZI, ariko atanga ibyangombwa by'inzu y'i Kigali byonyine. Akomeza avuga ko yaje gusaba uburenganzira bwo kugurisha inzu y'i Kigali ashaka kwishyura igice cy'umwenda, I&M BANK iramwemerera ariko imusaba ko abanza kuyishyikiriza ibyangombwa by'ikibanza cy'i Rusizi atari yatanze, ntiyabyubahiriza ahubwo yumvikana n'uwagombaga kugura inzu, ashatse kwishyura I&M BANK 10.000.000 Frw, ntiyabyemera. [15] Avuga ko ibyo bisobanuro bigaragaza ko nta ruhare I&M BANK yagize mu kutubahiriza amasezerano kwa KAYIRANGA, akaba rero agomba kwishyura amafaranga y'umwenda wose utishyuwe. [16] Mu bujurire bwuririye ku bundi, avuga ko Urukiko Rukuru rw'Ubucuruza rutagombaga kwanga ko inyungu zikomeza kubarwa kandi biri mu masezerano y'inguzanyo, agasaba ko Banki yagererwa inyungu nk'uko zikubiye mu masezerano kandi zikabarwa kugeza igihe urubanza ruzacibwa.

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UKO URUKIKO RUBIBONA [17] Urukiko rusanga imiburanire ya KAYIRANGA yemeza ko ari I&M BANK yatumye atishyurira igihe nta shingiro ifite, kuko adasobanura impamvu atubahirije ibyo yasabwaga byo kubanza gutanga icyangombwa cy'umutungo w'ingwate iri i Rusizi, ngo abone kwemererwa kugurisha ingwate iherereye i Kigali, kandi azi neza ko uko gutanga ibya ngombwa by'umutungo byari mu nshingano ze nk'uwahawe umwenda. [18] Urukiko rurasanga rero iyo mpamvu aburanisha itaba urwitwazo rwo kutishyura inyungu nk'uko yabyemeye mu masezerano, kandi ingingo ya 33 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano iteganya ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko

ku bayagiranye. [19] Ku byerekeye umubare w'amafaranga y'inyungu, bigaragara mu masezerano y'inguzanyo yo ku wa 08/09/2005 KAYIRANGA yagiranye na BCR, ko yahawe inguzanyo ya 22.000.000 Frw ku nyungu ya 17% ku mwaka, haba ubukererwe zikaba 19%, naho ibaruwa yo ku wa 18/10/2007 yandikiwe na Banki ikaba yaramumenyesheje ko atubahirije amasezerano akaba yararengeje igihe cyo kwishyura, kandi ko asigayemo umwenda ungana na 19.324.934 Frw, akaba atarigeze ayivuguruza. [20] Urukiko rusanga hashingiwe ku ngingo ya 33 y'Igitabo cya gatatu cy'Urwunge rw'amategako mbonezamubano, kandi nk'uko byasezeranywe, KAYIRANGA agomba kwishyura umwenda asigayemo uhwanyeye na 19.342.934 Frw nk'uko yawugaragarijwe kuri "historique" ya Banki, n'inyungu zibariwe kuri 19%, kuva ku wa 18/10/2007, itariki yamenyesherejweho umwenda asigayemo kandi amenyeshwa ko hagiye gukoreshwa inzira z'inkiko, kugeza ku wa 15/1/2016, umunsi w'isomwa ry'urubanza² (imyaka umunani, amezi abiri n'iminsi 26, bityo, inyungu ku mafaranga yari asigayemo zikaba zihwanyeye na $19.342.934 \text{ Frw} \times 19 \times 2968 = 30.299.631 \text{ Frw}$ 100×360

[21] Igiteranyo rero cy'umwenda n'inyungu KAYIRANGA agomba kwishyura I&M BANK kingana 49 624 565 Frw (=19.324.934 + 30.299.631 Frw)

- c) Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka I&M BANK isaba [22] Uburanira I&M BANK asaba ko yagenerwa amafaranga y'ikurikiranarubanza ahwanyeye na 10% y'umwenda wose n'inyungu nk'uko bikubiye mu masezerano. Mu mwanzuro washyikirijwe Urukiko rw'Ikirenga, ku ruhande rwa KAYIRANGA ntacyo bashubijwe kuri iyo ngingo. 2 Ibisobanuro nk'ibi byo kwishyura inyungu z'ubukererwe kugera urubanza ruciwe, byatananzwe kandi mu rubanza RCOMA0117/12/CS rwo kuwa 05/12/014 UWERA vs BPR, p.9 agace ka 26; RCOMA0049/13/CS rwo kuwa 25/4/2014, p.15-16 agace ka 36

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UKO URUKIKO RUBIBONA [23] Urukiko rurasanga, nyuma y'uko Urukiko Rukuru rw'Ubucuruzi rwemeje ko inyungu z'ikurikiranarubanza zigomba kwishyurwa na KAYIRANGA afatanyije na MUKAMURENZI hakurikijwe amasezerano y'inguzanyo, bakaba batarabijuririye, nta cyabuza ko bishyura izo ndishyi za 10% z'amafaranga yose bagomba kwishyura, ubu rero zikaba zihwanyeye na 4.964.565 Frw (= 49.624.565 FrwX10%). [24] Amafara yose hamwe I&M Bank igomba kwishyurwa ni miliyoni mirongo itanu n'enyeye, ibihumbi magana atandatu na birindwi n'ijana na mirongo itatu, ateranyijwe mu buryo bukurikira: $19.342.934 \text{ Frw} + 30.299.631 \text{ Frw} + 4.964.565 \text{ Frw} = 54.607.130 \text{ Frw}$, aya mafaranga akaba agomba kwishyurwa na KAYIRANGA afatanyije na MUKAMURENZI wamwishingiye kuzishyura umwenda n'inyungu, nk'uko ubwo bufatanye bwemejwe n'Urukiko Rukuru rw'Ubucuruzi, bikaba bitarajuririwe. III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ubujurire bwatanzwe na KAYIRANGA Jean Bosco nta shingiro bufite; [26] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na I&M BANK bufite ishingiro; [27] Rutegetse KAYIRANGA Jean Bosco gufatanya na MUKAMURENZI Aurélie kwishyura I&M BANK igiteranyo cy'amafaranga 54.607.130 Frw nk'uko yasobanuwe mu gika cya 24.

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