

RWANDA / JUDGMENT

MBONIGABA v. LETSHEGO RWANDA Ltd

RCOMAA 00016/2023/CA

COURT

Court of Appeal

DECIDED

16 April 2024

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MBONIGABA v. LETSHEGO RWANDA Ltd

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Text

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MBONIGABA v. LETSHEGO RWANDA Ltd [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00016/2023/CA (Rutazana, P.J.), 16 Mata 2024] Amategeko agenga ububasha bw'inkiko – Ububasha bw'urukiko – Kwakira ubujurire – Kuba hari amakosa yakorwa mu iburanisha ry'urubanza nko kuba urukiko rwaca urubanza rudafashe icyemezo kuri bimwe mu byo umuburanyi yasabye cyangwa ntirubihe agaciro, kuba hari ibyo urukiko rwafataho icyemezo ababuranyi batabigiyeho impaka, ntaho bihuriye no kuvuga ko urwo rubanza rwaba rwaciwe n'urukiko rudafite – Bene ayo makosa aba ashobora gukosorwa binyuze mu zindi nzira ziteganywa n'amategeko kandi zihuye na kamere yayo, ariko ntiyakosorwa binyuze mu nzira yo kuvuga ko urukiko rwaciye urubanza rutari rufite ububasha. Amategeko agenga ububasha bw'inkiko – Ibijyanye n'impamvu yo kuba urubanza rwarasomwe n'umucamanza utararuburanishije, bikwiriye kumvikana nko kuba urubanza rwahabwa umucamanza akaruburanisha hanyuma byagera igihe cyo kurusoma rugasomwa n'undi mucamanza utari wawundi waruburanishije kandi uyu wa kabiri atarigeze ahabwa ububasha bwo kuruburanisha. Incamake y'ikibazo: Uwitwa Nkundimana Login yagiranye amasezerano y'inguzanyo na sosiyete Letshego Rwanda Ltd imiguriza 5.000.000frw yagombaga kwishyurwa mu migabane 18, iyi nguzanyo yishingirwa na Mbonigaba Régis.

Uwahawe inguzanyo yananiwe kwishyura, umwishingizi we aramwishyurira, ariko uyu avuga ko yishyuye Letshego amafaranga y'umurengera kuyo yagombaga kwishyura, ibyo bituma arega Letshego Rwanda Ltd mu Rukiko rw'Ubucuruzi arusaba kuyasubizwa hamwe n'inyungu zayo. Urukiko rw'Ubucuruzi rwemeje ko ikirego nta shingiro gifite. Mbonigaba Régis yarujuriye mu Rukiko Rukuru rw'Ubucuruzi avuga ko mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso. Urukiko Rukuru rw'Ubucuruzi rwemeje ko imikirize y'urubanza rwajuririwe idahindutse, bityo ko hagumyeho icyemezo cyafashwe n'urukiko rw'ubucuruzi. Mbonigaba Régis yongeye kujuririra Urukiko rw'Ubujurire avuga ko urubanza rwajuririwe rwaciwe n'urukiko rutabifitiye ububasha, ndetse ko rwaciwe n'umucamanza utararuburanishije, avuga kandi ko Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo guca urubanza mu mizi mu gihe rwari rutaranafata icyemezo cyo gushyiraho umuhanga nk'uko rwari rwabyemeje, kandi nta n'iburanisha ryari ryabayeho. Letshego Rwanda Ltd nayo yiregura ivuga ko ibyo Mbonigaba Régis avuga atari ukuri kuko Urukiko Rukuru rw'Ubucuruzi rwari rufite bubasha bwo kuburanisha urubanza rwajuririwe, ahubwo nayo itanga inzitizi y'iburabubasha bw'uru rukiko ivuga ko Mbonigaba yatsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. Incamake y'icyemezo: 1. Kuba hari amakosa yakorwa mu iburanisha ry'urubanza nko kuba urukiko rwaca urubanza rudafashe icyemezo kuri bimwe mu byo umuburanyi yasabye cyangwa ntirubihe agaciro, kuba hari ibyo urukiko rwafataho icyemezo ababuranyi batabigiyeho impaka,

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ntaho bihuriye no kuvuga ko urwo rubanza rwaba rwaciwe n'urukiko rudafite. Bene ayo makosa aba ashobora gukosorwa binyuze mu zindi nzira ziteganywa n'amategeko kandi zihuye na kamere yayo, ariko ntiyakosorwa binyuze mu nzira yo kuvuga ko urukiko rwaciye urubanza rutari rufite ububasha. 2. Ibijyanye n'impamvu yo kuba urubanza rwarasomwe n'umucamanza utararuburanishije, bikwiriye kumvikana nko kuba urubanza rwahabwa umucamanza akaruburanisha hanyuma byagera igihe cyo kurusoma rugasomwa n'undi mucamanza utari wawundi waruburanishije kandi uyu wa kabiri atarigeze ahabwa ububasha bwo kuruburanisha. Ubujurire ntibwakiriwe kuko butari mu bubasha bw'urukiko. Amategeko yashingiweho: Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'urukiko, ingingo ya 52 niya 82. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 23/10/2013 Nkundimana Login yagiranye amasezerano y'inguzanyo na Letshego Rwanda Ltd imiguriza 5.000.000frw yagombaga kwishyurwa mu migabane 18, guhera ku wa 02/10/2013 kugeza ku wa 04/05/2015, Mbonigaba Régis aramwishyirira. Muri ayo masezerano impande zombi zumvikanye uko inyungu zisanzwe n'iz'ubukererwe zizabarwa, Nkundimana Login akaba yaragombaga kwishyura amafaranga yose hamwe angana na 7.715.316 frws. [2] Nkundimana yaje kunanirwa kwishyura iyo nguzanyo, Mbonigaba Régis nk'umwishingizi we amwishyurira umwenda wari usigaye wanganaga na 4.774.873frws, ariko ngo arenzaho 1.069.731 frw kuko yishyuye 5.734.570 frw hanyuma ayo mafaranga yarengejeho asubizwa kuri Konti y'uwigurijwe ku itariki ya 14/05/2019; Mbonigaba akavuga ko n'ubwo ayo mafaranga yarengagaho yasubijwe bitamunyuze ngo kuko yakomeje gukurikirana Letshego Rwanda Ltd kugira ngo basubire mu mibare ariko bakabyanga, bituma atanga ikirego mu Rukiko rw'Ubucuruzi arusaba gutegeka Letshego Rwanda Ltd kumusubiza 755.109frws

n'inyungu zayo zingana na 1.640.379,89 frw ndetse n'inyungu z'amafranga 1.069.731 frw ngo atarashyirijwe igihe, akanahabwa indishyi z'ikurikiranarubanza n'igihembo cy'avoka. [3] Letshego Rwanda Ltd yireguye ivuga ko ikirego cya Mbonigaba Régis nta shingiro gifite kuko amafaranga yarengejeho yishyurira uwo yishingiye yayasubijwe, kandi akaba atabasha kugaragaza ibimenyetso by'ibyo aregera bishingiye ku masezerano, inasaba guhabwa indishyi z'ikurikiranarubanza n'igihembo cya Avoka. [4] Mu rubanza RS/SCP/RCOM 00473/2021/TC rwaciwe n'Urukiko rw'Ubucuruzi kuwa 30/11/2021 rwemeje ko ikirego cya Mbonigaba Régis nta shingiro gifite, rumutegeka kwishyura Letshego Rwanda Ltd 500.000frw y'igihembo cya Avoka na 100.000frw y'ikurikiranarubanza.

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[5] Ibyo Urukiko rwabishingiye ku kuba rwarasanze ntacyo Mbonigaba Régis akwiriye guhabwa kuko aburana ashingiye ku kimenyetso cyiswe “Imbonerahamwe igaragaza imiterere y'umwenda wafashwe n'uko wagombaga kwishyurwa kimwe n'amafranga nsaba gusubizwa”, urukiko rusanga iyo mbonerahamwe Mbonigaba Régis yakoze ku giti cye nta gaciro yahabwa mu gihe itakozwe n'umuhanga ubifitemo ubumenyi kandi na Mbonigaba Régis akaba yaranze ko Urukiko rumushyiraho. [6] Urwo rubanza Mbonigaba Régis yarujuriye mu Rukiko Rukuru rw'Ubucuruzi anenga ko mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso, birimo inyandiko yo kuwa 26/04/2017 avuga ko igaragaza ko Letshego Rwanda Ltd yamwishyuye amafaranga y'umurengera iyita ayasigaye akayishyura kuko ingwate yari igiye gutezwa cyamunara, kandi ko icyo kimenyetso cyavuguruzaga ibyo Letshego Rwanda Ltd yavugaga ko Mbonigaba Régis ariwe wishyuye amafaranga menshi ku bwende bwe, ngo kikaba n'ikimenyetso kigaragaza ko Letshego Rwanda Ltd Ltd ariyo itarubahirije amasezerano. [7] Letshego Rwanda Ltd yireguye ivuga ko ubujurire bwe nta shingiro bufite, kuko nta bimenyetso byirengagijwe ahubwo byaburanweho birasuzumwa ndetse urukiko rubaza Mbonigaba Régis niba hashyirwaho umuhanga wafasha kugaragaza ukuri arabyanga; ko rero icyashyingiweho mu kugaragaza ukuri ari amasezerano y'inguzanyo ndetse n'ay'ubwishingizi ateganyijwemo uburyo bwo guhana ugurijwe mu gihe atubahirije ibyo yiyemeje; inasaba kugenerwa igihembo cya avoka n'amafranga y'ikurikiranarubanza. [8] Mu rubanza RSA/SCP/RCOM 00118/2021/HCC rwaciwe n' Urukiko Rukuru rw'Ubucuruzi ku wa 14/10/2022 rwemeje ko imikirize y'urubanza rwajuririwe idahindutse kuko nta mategeko cyangwa ibimenyetso byari kugaragaza ukuri Mbonigaba Régis yashoboye kwerekana ko byirengagijwe, mu gihe ariwe ubwe utarashatse ko ukuri kugaragazwa igihe yasabwaga ko hashyirwaho umuhanga mu by'imari akabyanga; rutegeka Mbonigaba Régis kwishyura Letshego Rwanda Ltd 1.200.000 frw agizwe na 600.000 frw y'igihembo cya avoka n'ikurikiranarubanza yagenewe ku rwego rwa mbere na 600.000 frw y'igihembo cya avoka n'ikurikiranarubanza yo ku rwego rw'ubujurire. [9] Mbonigaba Régis yongeye kujuririra Urukiko rw'Ubujurire. Mbere yo kugaragaza impamvu ze z'ubujurire ku bijyanye n'urubanza mu mizi, abanza kugaragaza ko yajuririye uru rukiko ashingiye ku mpamvu y'uko urubanza rwajuririwe rwaciwe n'Urukiko rudafite ububasha, ndetse ngo urubanza rukaba rwaraciwe n'umucamanza utaruburanishije, bityo ubujurire bwe bukaba buri mu bubasha

bw'Urukiko rw'Ubujurire. Uhagarariye Letshego Rwanda Ltd avuga ko ibyo Mbonigaba Régis avuga atari ukuri kuko Urukiko Rukuru rw'Ubucuruzi rwari rufite bubasha bwo kuburanisha urubanza rwajuririwe; ahubwo atanga inzitizi y'iburabubasha bw'uru rukiko ashingiye ku mpamvu y'uko ngo mu nkiko zombi zabanje Mbonigaba Régis yatsinzwe hashingiye ku mpamvu zimwe. [10] Iburanisha mu ruhamye ryabaye kuwa 03/04/2024, MBONIGABA Régis ahagarariwe na Me Mbituyimana Jean de Dieu naho Letshego Rwanda Ltd ihagarariwe na Me Abasa Fazili, kuri uwo munsu habanza gusuzumwa ibijyanye no kumenya niba ubujurire bwa kabiri bwakozwe na Mbonigaba Régis buri mu bubasha bw'Urukiko rw'Ubujurire. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

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Kumenya niba ubujurire bwa kabiri bwakozwe na Mbonigaba Régis buri mu bubasha bw'Urukiko rw'Ubujurire [11] Mbonigaba Régis na Me Mbituyimana Jean de Dieu umuburanira bavuga ko bajuririye uru rukiko hashingiye ku mpamvu y'uko urubanza RSA/SCP/RCOM 00118/2021/HCC rwaciwe n'urukiko rutabifitiye ububasha, ndetse ngo urwo rubanza rukaba rwaranaciwe n'umucamanza utararuburanishije. [12] Ku bijyanye no kuba bavuga ko urubanza rwaciwe n'urukiko rutabifitiye ububasha, basobanura ko kuwa 21/07/2022 mu iburanisha Urukiko Rukuru rw'Ubucuruzi rwemeje ko hashyirwaho umuhanga runavuga ko icyemezo kimushyiraho kizasomwa kuwa 16/09/2022, ngo ariko kuwa 14/10/2022 aho gufata icyo cyemezo ruca urubanza mu mizi maze rwemeza ko ubujurire bwe nta shingiro bufite, runamutegeka kwishyura Letshego Rwanda Ltd amafaranga y'ikurikiranarubanza n'igihembo cya avoka; akavuga ko Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo guca urubanza mu mizi mu gihe rwari rutaranafata icyemezo cyo gushyiraho umuhanga nk'uko rwari rwabyemeje, kandi nta n'iburanisha ryari ryabayeho. [13] Ku bijyanye no kuba bavuga ko urubanza rwajuririwe rwasomwe n'umucamanza utararuburanishije, babisobanura bavuga ko umucamanza waruciye atari yaruburanishije mu mizi. [14] Mbonigaba Régis n'umuburanira bavuga ko basaba uru Rukiko gutegeka ko imikirize y'urubanza rwajuririwe ivanyweho mu ngingo zayo zose, umuhanga Urukiko Rukuru rw'Ubucuruzi rwemeje ko ashyirwaho akabanza kujyaho agakora akazi ke hanyuma urubanza rukabona kuburanishwa mu mizi. [15] Uhagarariye Letshego Rwanda Ltd avuga ko ibyo Mbonigaba Régis n'umuburanira bavuga nta shingiro bifite kuko Urukiko Rukuru rw'Ubucuruzi rufite ububasha bwo kuburanisha imanza zaciwe ku rwego rwa mbere n'Urukiko rw'Ubucuruzi, ko urubanza rwajuririwe rwaburanishijwe nk'uko bigaragazwa n'inyandikomvugo y'iburanisha, kandi ko umucamanza waruciye ari we waruburanishije. UKO URUKIKO RUBIBONA [16] Impaka muri uru rubanza zishingiye ku kumenya niba ubujurire bwa kabiri bwakozwe na Mbonigaba Régis buri mu bubasha bw'uru rukiko hashingiye ku mpamvu y'uko urubanza rwajuririwe rwaciwe n'urukiko rutabifitiye ububasha runacibwa n'umucamanza utararuburanishije. [17] Ingingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko yerekeye imanza ziburanishwa n'Urukiko rw'Ubujurire iteganya, mu gika cyayo cya 2, ko "Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciwe n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, iyo izo manzazaciwe n'urukiko rutabifitiye ububasha (agace ka 3).....zasomwe n'umucamanza

utaraziburanishije (agace ka 6)”.

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[18] Ingingo ya 82 nayo y’iryo tegeko, iteganya mu gika cyayo cya nyuma, ko Urukiko Rukuru rw’Ubucuruzi ruburanisha mu rwego rw’Ubujurire imanza zaciwe mu rwego rwa mbere n’Inkiko z’Ubucuruzi. [19] Ku bijyanye n’urubanza rwaciwe n’urukiko rutabifitiye ububasha, izi ngingo zivuzwe haruguru zombi zisomewe hamwe, zumvikanisha ko ububasha buvugwa mu ngingo ya 52 y’Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko yavuzwe haruguru bushingirwaho hasuzumwa niba ubujurire bwa kabiri bukoze mu Rukiko rw’Ubujurire bushobora kwakirwa, ari ubuteganyijwe mu ngingo ya 82 nayo yavuzwe haruguru. [20] Urukiko rurasanga kuba hari amakosa yakorwa mu iburanisha ry’urubanza nko kuba urukiko rwaca urubanza rudafashe icyemezo kuri bimwe mu byo umuburanyi yasabye cyangwa ntirubihe agaciro, cyangwa kuba hari ibyo urukiko rwafataho icyemezo ababuranyi batabigiyeho impaka, ntaho bihuriye no kuvuga ko urwo rubanza rwaba rwaciwe n’urukiko rudafite ububasha mu buryo buteganywa n’ingingo ya 52 yavuzwe haruguru. Bene ayo makosa aba ashobora gukosorwa binyuze mu zindi nzira ziteganywa n’amategeko kandi zihuye na kamere yayo, ariko ntiyakosorwa binyuze mu nzira yo kuvuga ko urukiko rwaciye urubanza rutari rufite ububasha. [21] Ku birebana n’uru rubanza, Mbonigaba Régis yajuriye muri uru rukiko agamije kugaragaza ko urubanza yajuririye rwaciwe n’Urukiko Rukuru rw’Ubucuruzi kandi ngo rutari rubifitiye ububasha ashingiye ku kuba rwararemeje ko hazashyirwaho umuhanga ariko ntirubikore ahubwo rugaca urubanza mu mizi. [22] Uru Urukiko rurasanga urubanza RSA/SCP/RCOM 00118/2021/HCC Mbonigaba Régis yajuririye muri uru Rukiko rwaraburanishijwe n’Urukiko Rukuru rw’Ubucuruzi nyuma y’uko ajuririye muri urwo rukiko urubanza RS/SCP/ RCOM 00473/2021/TC rwaciwe n’Urukiko rw’Ubucuruzi, bityo rero hashingiwe ku biteganywa mu ngingo ya 82 n’iya 52 z’Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko zavuzwe haruguru no ku bisobanuro byatanze mu bika bibanziriza iki, hakaba nta rundi rukiko rwari rufite ububasha bwo kuburanisha urubanza RSA/SCP/RCOM 00118/2021/HCC uretse Urukiko Rukuru rw’Ubucuruzi. Ibyo Mbonigaba Régis avuga ko urwo rubanza rwaciwe n’urukiko rutabifitiye ububasha bikaba nta shingiro bifite. [23] Ku bijyanye no kuba avuga ko urubanza RSA/SCP/RCOM 00118/2021/HCC rwasomwe n’umucamanza utaraburanishije, urukiko rurasanga iyi mpamvu ikwiriye kumvikana nko kuba urubanza rwahabwa umucamanza akaruburanisha hanyuma byagera igihe cyo kurusoma rugasomwa n’undi mucamanza utari wawundi waruburanishije kandi uyu wa kabiri atarigeze ahabwa ububasha bwo kuruburanisha. [24] Ku birebana n’uru rubanza, dosiye igaragaza ko umucamanza wahawe urubanza RSA/SCP/RCOM 00118/2021/HCC ngo aruburanishe (assigned judge) ariwe waruburanishije akaba ari nawe warusomye. Mbonigaba Régis akaba nta kimenyetso atanga kigaragaza ko umucamanza warusomye atari we wari waruburanishije nk’uko abivugaga; nk’uko byasobanuwe haruguru, kuba avuga ko rwaciwe rutaburanishijwe mu mizi ngo kuko hari haburanywe gusa ku bijyanye no gushyiraho umuhanga, bikaba byaba inenge mu miburanishirize y’urubanza ishobora gukosorwa hakurikijwe inzira ziteganywa n’amategeko

zijyanye na kamere yayo, ariko bikaba

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bitavuze ko urubanza rwasomwe n'umucamanza utararuburanishije; bityo iyi ngingo Mbonigaba Régis aburanisha nayo ikaba nta shingiro ifite. [25] Hashingiwe ku bisobanuro byose byatanzwe mu bika bibanziriza iki, uru rukiko rurasanga impamvu Mbonigaba Régis ashingiraho avuga ko ubujurire bwe buri mu bubasha bw'uru rukiko zishingiye ku kuba avuga ko urubanza yajuririye rwaciwe n'urukiko rudafite ububasha runasomwa n'umucamanza utararuburanishije nta shingiro zifite. [26] Urukiko rurasanga kandi nta n'indi mpamvu n'imwe Mbonigaba Régis yagaragaje mu ziteganywa n'ingingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko yavuzwe haruguru, yashingirwaho ubujurire bwe bwa kabiri bwakirwa muri uru rukiko, bityo akaba atari na ngombwa gusuzuma inzitizi yatanze n'uhagarariye Letshego Rwanda Ltd y'uko mu nkiko zombi zabanje Mbonigaba Régis yatsinzwe ku mpamvu zimwe. [27] Hashingiwe ku bisobanuro byose byatanzwe haruguru, uru rukiko rurasanga ubujurire bwa kabiri Mbonigaba Régis yakoreye urubanza RSA/SCP/RCOM 00118/2021/HCC butari mu bubasha bw'uru rukiko bityo bukaba butagomba kwakirwa.

III. ICYEMEZO CY'URUKIKO [28] Rwemeje ko ubujurire bwa Mbonigaba Régis butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire. [29] Ruvuze ko amagarama yatanze ahwanye n'ibyakoze mu rubanza.

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