

RWANDA / JUDGMENT

AGASEKE BANK v. KALINGANIRE SETH NA MUGENZI WE

RCOMA 0530/13/HCC

COURT

Commercial High Court

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AGASEKE BANK v. KALINGANIRE SETH NA MUGENZI WE

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Text**Page 1**

AGASEKE BANK v. KALINGANIRE SETH NA MUGENZI WE [Rwanda URUKO RUKURU RW'UBUCURUZI- RCOMA 0530/13/HCC (Niwemugeni , P.J.,) 24 Mutarama 2014] Amategeko agenga ubugwate ku mutungo utimukanwa – Kuregera ingwate – Ingwate ku mutungo w'urugo w'abashakanye igira agaciro iyo iriho umukono y'ubwayitanzwe n'uwo bashakanye iyo ahari – Uwakiriye iyo ngwate nawe afite ishingano zo kumenya neza niba ubwayitanzwe afite uwo bashakanye, akaba ari nawe ugomba kuyishira ho umukono – Itegeko n° 10/2009, ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 5. Amategeko agenga ibimenyetso – Kuvana inzu mu bugwate – Mu rwego rw'ubujurire, gusaba yuko urubanza rujuririrwa rwategereza ko urubanza rushinja ruburanishwa, byaba ari ukuvutsa umuburanyi amahirwe yo kujurira ibitishimiwe mu rubanza – Nta mpanvu yatuma inzu yatanzweho ubugwate itabuvanwamo mu gihe ubwayitanzwe yiyemereye yuko yakoresheje inyandikompiyimbano, agafata ideni ayitanzeho ubugwate uwobashakanye atabizi – Itegeko n° 1/2012 OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 609 n'ya 610. Incamake y'ikibazo: Kuwa

16/06/2013, hakoze amasezerano y'inguzanyo y'amafaranga angana na 16.000.000 frws hagati y'Agaseke bank na Kalinganire seth Salvador, umugore we Mpinganzima Claudia atabizi, akavuka yuko yamenye iby'iyi nguzanyo ari uko Agaseke Bank ije guteza cyamunara inzu babamo. Banki ikamwemeza ko yemeye ko inzu yabo itangwaho ingwate kuko yabisinyiye. Mpinganzima amaze kumenya ko ifoto iri ku irangamuntu ari iy'umukobwa wa Kalinganire akaba ari nawe wa sinye ku masezerano y'ubugwate bw'iyi nzu, byabaye ngombwa yuko Mpinganzima arega umugabo we hamwe n'Agaseke Bank mu Rukiko rw'ubucuruzi rwa Nyamirambo, asaba kuvana mu bugwate inzu yabo kuko kalinganire yayitanzeho ubugwate umugore we atabizi. Uru Rukiko rwemeza ko iyo nzu ivanwa mu bugwate kuko byakozwe mu buryo budakurikije amategeko, ibyangombwa byayo bigasubizwa bene yo, Kalinganire Seth hamwe n'Agaseke Bank bagaha Mpinganzima amafaranga angana na 200.000 fws y'ikurikirana rubanza hamwe n'igihembo cy'avoka. Agaseke Bank ntiyishimiye icyo cyemezo cy'urukiko, kavuga ko katagombaga kuregwa. Mpinganzima nawe yuririye kuri ubwo bujuriye asaba indishyi z'akababaro, z'ikurikirana rubanza hamwe n'igihembo cy'avoka. Ku byerekeye kumenya niba Agaseke Bank katagombaga kuregwa, Agaseke bank kavuga ko niba Mpinganzima na Kalinganire barasezeranye ivangamutungo rusange bagashyira hamwe byose, bivuze yuko iyo umwe mu bashyakanye atubahirije ibikubiye mu masezerano, niwe bibazwa. Mpinganzima we akavuga ko Agaseke karezwe muri uru rubanza kuko hari amasezerano y'inguzanyo yabaye hagati y'ako na Kalinganire, ko Agaseke ariko kari gafite inshingano yo kumenya niba ibyo kalinganire ababwira ari ukuri nk'uko amategeko y'ubugwate abiteganyaga. Ku byerekeye kumenya niba Urukiko rutaragombaga gukura iyo nzu mu bugwate koko, Agaseke bank kavuga yuko hari ikirego ubushinjacyaha bwashikirije Urukiko Rwisumbuye rwa Nyarugenge, burega Kalinganire gukora no gukoresha inyandiko mpimbano, kakavuga ko urubanza rujuriyirwa rwagombaga

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gutegereza urubanza rushinjabyaha, nyuma habone gufatwa ibindi byemezo. Mpinganzima akavuga ko kuba Agaseke gatanga inzitizi mu rwego rw'ubujuriye, katigeze kayitanga mu rwego rwa mbere, y'uko uru rubanza rwategereza urubanza nshinjabyaha hashingiwe kw'ihame ry'uko le penal tient le civil en etat, byavugaga yuko Mpinganzima yatakaza amahirwe yo kubona urundi rwego yajuririramo mu gihe icyifuzo cy'Agaseke cyahabwa ishingiro. Incamake y'icyemezo: 1.

Kuba uwakiriye ingwate atitaye kumenya niba uwasinye ku masezerano y'ubugwate ari uwashakanye n'ubuyitanzeho, iyo ngwate igasinyirwa n'ubonetse wese yiyita umugore wa Karinganire, Agaseke Bank Ltd kakabyemera, kagomba kuregwa kuko kafashe ingwate katitaye kumenya niba uwasinyiye iyo ngwate ari umugore w'ubuyitanzeho, babana muri uwo mutungo, ufite uburenganzira bwo kumenya ko inzu ye yatanzweho ingwate n'icyo yatangiye.

2. Kuba uwatanzeho ingwate yemerera mu Rukiko ko yakozwe inyandikompimbano, agafata ideni muri bank, agatanga n'inzu yabo ho ingwate umugore we atabizi, gusaba yuko urubanza rujuriyirwa rwategereza ko urubanza rushinja ruburanishwa nta shingiro byaba bifite. Ubujuriye nta shingiro bufite, Agaseke Bank na Kalinganire Seth batsinzwe, Hubahirijwe icyemezo cy'urukiko mu rubanza Rcom 0713/13/TC/Nyge. Amategeko yakoreshejwe: Itegeko no 1/2012/OL ryo kuwa 02/05/2012, rishyiraho igitabo cy'amategeko ahana, ingingo ya 609

n'iya 610, Itegeko No 10/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 5.
Nta manza zifashishijwe: Urubanza I. IMITERERE Y'URUBANZA

- [1] Kuwa 16/06/2013, hakoze amasezerano y'inguzanyo hagati y'Agaseke Bank Ltd na Kalinganire Seth Salvator, wahawe inguzanyo ya miliyoni cumi n'esheshatu (16.000.000frs). Mpinganzima Claudia, umugore wa Karinganire, yemeza ko yamenye iby'iyi nguzanyo ari uko Agaseke Bank ije guteza cyamunara inzu babamo, mu gihe yabibajije umugabo we akamubwira ko ibyo by'amadeni we ntabwo azi kuko ntayo afite. Byabaye ngombwa ko Mpinganzima ajya ku gaseke Bank kubaza impamvu bashaka guteza inzu yabo cyamunara, bamugaragariza ko umugabo we Kalinganire Seth Salvador yafashe ideni rya miliyoni cumi n'esheshatu (16.000.000frs), banamugaragariza ko we, Mpinganzima yemeye ko inzu yabo itangwaho ingwate, kuko yabisinyiye.
- [2] Amaze kubona ko ifoto iri ku irangamuntu ye atari iye ahubwo ari iy'umukobwa wa Kalinganire wasinye ku masezerano y'ubugwate bw'iyi nzu, byabaye ngombwa ko Mpinganzima arega umugabo we Karinganire Seth Salvador ndetse n'Agaseke Bank Ltd mu

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Rukiko rw'Ubucuruzi rwa Nyarugenge, asaba kuvana mu bugwate inzu iri mu kibanza no 511 iherereye mu murenge wa Nyamirambo, kuko Kalinganire Seth Salvador yayitanzeho ingwate umugore we Mpinganzima atabizi.

- [3] Mu Rukiko rw'Ubucuruzi rwa Nyarugenge, hemejwe ko inzu iri mu kibanza no 511 mu mudugudu wa Kiberinka, akagari ka Rugarama, umurenge wa Nyamirambo, akarere ka Nyarugenge umujyi wa Kigali ivanwa mu bugwate kuko byakozwe mu buryo budakurikije amategeko, ibyangombwa byayo bigasubizwa bene yo. Hemejwe kandi ko Agaseke Bank Ltd na Karinganire Seth Salvador baha Mpinganzima ibihumbi Magana abiri (200.000 frs), y'ikurikirana rubanza n'igihembo cy'avoka.
- [4] Agaseke Bank Ltd ntikishimiye icyemezo cy'Urukiko rw'Ubucuruzi rwa Nyarugenge, kajuririra uru Rukiko, Mpinganzima na we yuririra kuri ubwo bujuriye asaba indishyi z'akababaro, indishyi z'ikurikirana rubanza n'igihembo cy'avoka. Muri uru rubanza, Urukiko rugiyeye gusuzuma niba Agaseke Bank kataragombaga kuregwa koko nk'uko kabivuga, rusuzume niba inzu ivugwa muri ruriya rubanza urukiko rutaragombaga kuyikura mu bugwate koko, runasuzume kandi niba koko urubanza rujuririrwa rwaragombaga gutegereza ko haburanishwa urubanza RP 426/13/TGI/Nyge. Uru Rukiko rurasuzuma kandi niba indishyi Agaseke Bank Ltd na Mpinganzima basaba zikwiriye koko. II. ISESENGURA RY'URUBANZA
1. Ese Agaseke Bank Ltd ntikagombaga kuregwa muri uru rubanza koko?
- [5] Agaseke Bank karavugaga ko Urukiko rwafashe icyemezo rushingiye ku ngingo ya 5 y'itegeko no 10/2009, ryerekeye ubugwate ku mutungo utimukanwa. Karavugaga ko (Agaseke Bank Ltd), ko mu bijyanye no gucunga umutungo, Mpinganzima na Kalinganire basezeranye

ivangamutungo rusange, bivuze ko bashyize hamwe umutungo wabo wose, ibyimukanwa n'ibitimukanwa, hamwe n'imyenda yabo yose, bivuze na none ko umwe mu bashyingiranywe utubahirije ibikubiye muri ayo masezerano ari we bibazwa. (Ingingo ya 3 y'Itegeko no 22/99 ryo kuwa 12/11/1999). Ko niba Mpinganzima ataramenyeshwe ko iyo nzu itanzweho ingwate ngo bahabwe inguzanyo ya 16.000.000 frs, ko ari Karinganire wagombaga kubibazwa wenyine, kuko ari we ufite iyo nshingano, ko atari Agaseke Bank Ltd, hashingiwe ku ngingo ya 22 y'Itegeko no 22/99 ryo kuwa 12/11/1999.

- [6] Mpinganzima Claudia we avuga ko Agaseke karezwe muri uru rubanza kuko hari amasezerano y'inguzanyo hagati ya Karinganire n'Agaseke, ko utarega Karinganire wenyine kandi amasezerano agizwe n'impande zombi. Ko atemera ko ayo masezerano amugiraho ingaruka kandi atarayasinyiye cyangwa se ngo ayamenyeshwe, cyane ko Agaseke ari ko kari gafite inshingano yo kumenya niba ibyo Karinganire ababwira ari ukuri nk'uko amategeko y'ubugwate mu ngingo yayo ya 5 abiteganya.
- [7] Ingingo ya 5 y'itegeko ryerekeye ubugwate ku mutungo utimukanwa iteganya ko: “ Ingwate ku mutungo w'urugo rw'abashakanye igira agaciro gusa iyo inyandiko yose cyangwa ubundi buryo bwose bukoreshwe mu kuyakira biriho umukono w'uwatanze ingwate n'umukono w'uwo bashakanye babana muri uwo mutungo, cyangwa igihe hariho igihamba ko habayeho ubwumvikane hagati yabo kugira ngo iyo ngwate itangwe. Uwahawe ingwate afite inshingano

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zo gukora ibishoboka byose kugira ngo amenye neza ko utanga ingwate afite cyangwa adafite uwo bashakanye.” Uru Rukiko rurasanga atari Karinganire wenyine ugomba kuryozwa ko yahawe umwenda wa 16.000.000 frs agatanga inzu yabo ho ingwate umugore we atabizi, kuko Agaseke Bank Ltd kagombaga kubanza kumenya ko Karinganire afite uwo bashakanye babana muri uwo mutungo, agashyira umukono ku nyandiko itanga ingwate. Kuba katarabyitayeho, iyo ngwate igasinyirwa n'ubonetse wese yiyita umugore wa Karinganire Agaseke Bank Ltd kakabyemera, uru Rukiko rurasanga Agaseke Bank kagomba kuregwa kuko kafashe ingwate katitaye kumenya niba uwasinyiye iyo ngwate ari umugore wa Karinganire babana muri uwo mutungo, ufite uburenganzira bwo kumenya ko inzu ye yatanze ingwate n'icyo yatangiye.

2. Ese inzu iri mu kibanza no 511 mu mudugudu wa Kiberinka, akagari ka rugarama, umurenge wa Nyamirambo, akarere ka Nyarugenge, Umujyi wa Kigali, Urukiko ntirwagombaga kuyikura mu bugwate koko?
- [8] Agaseke Bank Ltd karavuga ko gashingiye ku ngingo ya 13 y'itegeko rigenga ibimenyetso mu manza n'itangwa ryabyo, hari ikirego ubushinjacyaha bwashyikirije Urukiko Rwisumbuye rwa Nyarugenge kuwa 30/07/2013, burega Karinganire gukora no gukoresha inyandiko mpimbano, icyaha giteganywa kandi kigahanishwa ingingo ya 609 na 610 y'itegeko no 1/2012, ryo kuwa 02/05/2012, rishyiraho igitabo cy'amategeko ahana. Urega aravuga ko urwo rubanza rwahawe no RP 426/13/TGI/Nyge, rukaba rutaraburanishwa. Urega aravuga kandi

ko ashingiye ku ihame rivuga ko : “ Le penal tient le civil en etat ” urubanza rujuririrwa rwagombaga gutegereza urubanza rushinja kugira ngo Karinganire ahamwe na kiriya cyaha, habone gufatwa ibindi byemezo.

- [9] Mpinganzima we aravuga ko gushingira ku ngingo ya 13 y’itegeko rivuzwe haruguru, byemeza ubwumvikane hagati ya Kalinganire n’Agaseke Bank. Ko gutanga iyi nzitizi mu rwego rw’ubujurire, cyane ko Agaseke Bank Ltd katigeze gatanga mu rwego rwa mbere icyo cyifuzo cy’uko uru rubanza rwategereza urubanza nshinjabyaha, hashingiwe ku ihame ry’uko: “ Le penal tient le civil en etat”; bivuga ko Mpinganzima yaba atakaje amahirwe yo kubona urundi rwego yajuririramo mu gihe icyifuzo cy’Agaseke Bank cyahabwa ishingiro.
- [10] Mu miburanire ya Karinganire Seth Salvador iri muri rusange kuko atireguye kuri buri ngingo y’ubujurire, akaba ataratanze n’imyanzuro mu Rukiko, aremeza ko yafashe ideni muri Agaseke Bank Ltd agatanga n’inzu batuyemo ho ingwate umugore we Mpinganzima Claudia atabizi, kuko yibazaga ko azayishyura kuko yari yagiye mu bucuruzi bw’amakawa ariko akaza guhomba ndetse akanarwara, akaba avuga ko na we asanga iriya nzu yava mu bugwate kuko yayitanze umugore we atabizi akoresheje inyandikompimbano, cyane ko we yemeza ko atari abanye neza n’umugore we kuko ngo yamutotezaga kuko nta kazi agira, bituma afata iriya nguzanyo atamubwiye akoresheje ifoto na sinyatire by’umukobwa we abyitirira Mpinganzima.
- [11] Kuba Agaseke Bank Ltd kiyemerera ko ikirego ubushinjacyaha buregamo Karinganire gukora no gukoresha inyandikompimbano cyarageze mu Rukiko Rwisumbuye rwa Nyarugenge, kuwa 30/07/2013, Mpinganzima akaba yararegeye Urukiko rw’Ubucuruzi kuwa 06/08/2013, rugacibwa kuwa 30/10/2013, mu gihe cyose cy’iburanisha, Agaseke Bank kakaba katarigeze gasaba ko uru rubanza rwategereza urubanza nshinjabyaha, kakabivugira mu bujurire, uru

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Rukiko rurasanga Agaseke Bank Ltd katabyemererwa kuko nk’uko Mpinganzima yabisobanuye, yaba avukijwe amahirwe yo kujuririra icyo yaba atishimiye mu rubanza, cyane ko muri rusange imanza zijuririwe mu Rukiko Rukuru rw’Ubucuruzi ari ho zirangirira. Ikindi kandi, Kalinganire Seth Salvador uregwa mu rubanza nshinjabyaha inyandikompimbano, ariyemerera muri uru Rukiko ko yakoze iyo nyandiko mpimbano koko, agafata ideni muri Bank agatanga n’inzu yabo ho ingwate umugore we Mpinganzima Claudia atabizi. Iyi mpamvu y’ubujurire y’Agaseke Bank Ltd rero ikaba nta shingiro yahabwa.

3. Ese indishyi zisabwa n’Agaseke Bank Ltd zatangwa?

- [12] Agaseke Bank Ltd karasaba indishyi za 3.000.000 frs zatangwa na Mpinganzima Claudia, kuko kemeza ko yakareze nta mpamvu, ikanasaba Mpinganzima Claudia na Kalinganire Seth Salvador indishyi z’ikurikirana rubanza n’igihembo cy’avoka za 1.000.000 frs. Haba mu myanzuro cyangwa se mu iburanisha, ntacyo Mpinganzima na Kalinganire bazivuzeho, kuko Mpinganzima we yemezaga ko ubwo bujurire nta shingiro bufite. Uru Rukiko rurasanga izo

ndishyi ntazo uwajuriye akwiriye kuko impamvu ze z'ubujurire urukiko rusanga nta shingiro zahabwa.

4. Ese indishyi zisabwa na Mpinganzima Claudia zatangwa?

[13] Mpinganzima arasaba indishyi z'akababaro za 3.000.000 frs n'iz'ikurikirana rubanza n'igihembo cy'avoka za 2.000.000 frs. Uwajuriye ntacyo yazivuzeho mu iburanisha kuko we yasabaga ko uru rubanza rwahagarara rugategereza urubanza nshinjabyaha. Karinganire na we ntacyo yazivuzeho. Uru Rukiko rurasanga izi ndishyi Mpinganzima ari buzihabwe mu bushishozi bwarwo, kuko nta kigaragaza ko ari zo akwiriye koko. III. ICYEMEZO
CY'URUKIKO

[14] Urukiko Rukuru rw'Uucuruzi:

[15] Rwemeye kwakira ubujurire rwashyikirijwe n'Agaseke Bank Ltd.

[16] Rwemeje ko nta shingiro bufite.

[17] Rukijije ko Mpinganzima Claudia atsinze, ko Agaseke Bank Ltd na Karinganire Seth Salvador batsinzwe.

[18] Rutegetse Agaseke Bank Ltd na Karinganire Seth Salvador kwishyura Mpinganzima Claudia 500.000 frs, akubiyemo ikurikirana rubanza n'igihembo cy'avoka ku rwego rw'ubujurire, bakayatanga mu gihe cy'iminsi umunani uru rubanza rubaye itegeko, batayatanga, akavanwa mu byabo ku ngufu za Leta.

[19] Rutegetse Agaseke Bank Ltd na Karinganire Seth Salvador kwishyura 4800 frs ahwanye n'ibyakozwe muri uru rubanza mu rwego rw'ubujurire, bakayatanga mu gihe cy'iminsi umunani urubanza rubaye itegeko, batayatanga akavanwa mu byabo ku ngufu za Leta.

[20] Rutegetse ko ku bindi, hubahirizwa icyemezo cy'urukiko mu rubanza RCom 0713/13/TC/Nyge.

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