

RWANDA / JUDGMENT

MPAWENIMANA v MUTETERI NABANDI

RS/INJUST/RC 00013/2022/SC

COURT

Supreme Court

DECIDED

9 August 2023

CASE / FILE NUMBER

RS/INJUST/RC 00013/2022/SC

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MPAWENIMANA v MUTETERI NABANDI

- Source: Amategeko
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- Date: 2023-08-09
- Case/document no.: RS/INJUST/RC 00013/2022/SC
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Text

Page 1

MPAWENIMANA v MUTETERI N'ABANDI [Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00013/2022/SC (Cyanzayire, P.J., Muhumuza, Karimunda, J.) 09 Kamena 2023] Amategeko agenga imiburanishirize y'imanza – Gusubirishamo urubanza ingingo – Ikimenyetso gishya kimara impaka – Uburanisha ikimenyetso gishya, agomba kugaragariza Urukiko ko icyo kimenyetso cyari gisanzwe kiriho igihe yaburanaga, ariko akaba atarigeze amenya ko gihari – Ashobora kandi kugaragariza Urukiko ko yari azi ko ikimenyetso gihari cyangwa gishobora gushakwa igihe yaburanaga ariko akaba atarashoboraga kukibona kubera impamvu zumvikana yasobanurira Urukiko. Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Inzitizi y'ukutakira ikirego - Iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rusubirishwamo ku mpamvu z'akarengane, nta zindi nzitizi zitangwa zatumye urubanza rutaburanishwa uretse inzitizi ndemyagihugu. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Muteteli na Rudacyahwa bavuga ko umuvandimwe wabo Rwamucyo yibarujeho mu buriganya inzu y'abazungura ba Mubiligi ibaruye kuri UPI 1/01/08/01/582 hanyuma aza kuyigurisha Mpawenimana nawe aza kuyibaruzaho, bakaba barasabaga urukiko gutesha agaciro ubwo bugure iyo nzu igasubira mu mutungo uzungurwa.

Mpawenimana yajuririyeye Urukiko Rukuru avuga ko amasezerano y'ubugure atagombaga guseswa kuko ntawabiregeye kandi ko n'abaregaga batashoboraga kubisaba kuko nta ruhare bayagizemo. Urukiko rwasanze nta makosa yabayeho mu gutesha agaciro icyangombwa cy'umutungo uburanwa kandi ko abazungura ba Mubirigi bari bafite uburenganzira bwo gukurikirana uwo mutungo. Nyuma haje kubaho imanza zitandukanye harimo urwo Uwimana, umugore wa Mpawenimana yareze asaba ko Urukiko rwakwemeza ko umugabane wa Rwamucyo ku mutungo uzungurwa wagurishwa hakavamo ikiguzi cy'inzu bari baramuhaye. Mpawenimana ashingiye ku nyandiko yatanze n'umubitsi w'inyandiko mpamo z'ubutaka yagaragazaga ko umutungo uburanwa wari wanditse kuri Rwamucyo igihe yawuguraga, urukiko rusanga icyo kimenyetso atari gishya kandi ibyo bikaba bidakuraho ko yiyandikishijeho umutungo asangiye n'abandi batabizi ndetse anawugurisha nkaho ari uwe ku giti cye nyamara ari uw'abazungura ba Mubiligi. Mpawenimana yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza No RCA 00250/2020/HC/KIG rusubirwamo ku mpamvu z'akarengane ruza guhabwa Urukiko rw'Ikirenga kugira ngo rwongere kuburanishwa. Urukiko rwasuzumye ikibazo cyo kumenya niba ikirego gisubirishamo urubanza No RCA 0186/14/HC/KIG ingingo nshya cyaragombaga kwakirwa n'Urukiko Rukuru. Mpawenimana avuga ko ibaruwa yo ku wa 03/06/2020 igaragaza mu buryo burangiza impaka inkomoko y'umutungo uburanwa kandi ko ntaho yigeze iburanishwa mu manza zabanje ariyo mpamvu ikirego gisubirishamo urubanza rwe ingingo nshya cyagombaga kwakirwa. Akomeza avuga ko nta cyamwihutishaga gushaka icyo kimenyetso kuko igihe yaburanaga yari azi ko yaguguze uwo mutungo na nyirawo.

Page 2

Abaregwa bavugaga ko ibaruwa urega ashingiraho itahabwa agaciro nk'ikimenyetso gishya kuko amakuru ayikubiyemo asanzwe ari mu rubanza No RC 0290/13/TGI/NYGE rwaciye ku wa 21/03/2014 aho ubuyobozi bw'Umurenge wa Nyamirambo bwamenyesheje Urukiko ko umutungo uburanwa wanditswe kuri Rwamucyo hashingiye ku makuru y'ibinyoma uyu yatanze, ko bwemeye ko bwakoze amakosa busezeranya kuyakosora. Incamake y'icyemezo: 1. Usaba ko urubanza rusubirishwamo ingingo nshya kuko yabonye ikimenyetso gishya, agomba kugaragariza Urukiko ko icyo kimenyetso cyari gisanze kiriho igihe yaburanaga, ariko akaba atarigeze amenya ko gihari. Ashobora kandi kugaragariza Urukiko ko yari azi ko ikimenyetso gihari cyangwa gishobora gushakwa igihe yaburanaga ariko akaba atarashoboraga kukibona kubera impamvu zumvikana yasobanurira Urukiko;

2. Inyandiko itari iriho umukono w'umuyobozi yakoreshejwe n'ababuranyi mu rukiko rubanza ntihabwe agaciro ntiyafatwa nk'ikimenyetso gishya cya kamarampaka bitewe gusa n'uko noneho umuyobozi yayisinye;
3. Ikirego gisubirishamo urubanza ingingo nshya nticyakirwa iyo impamvu gishingiyeho zari zisanze zizwi n'ugitanga, kandi no mu mpamvu umuburanyi yari azi hakwiye gushyirwamo n'ibimenyetso atashatse urubanza rusabirwa gusubirishwamo rutaraba ndakuka kandi yarashoboraga kubibona nko mu gihe umuburanyi yirengagije kwiyambaza urwego rwa Leta ngo rumuhe amakuru yari akenewe mu rubanza;

4. Ntibyihagije kuba ikimenyetso cyarabonetse nyuma y'icibwa ry'uburanza rusabirwa gusubirishwamo ingingo nshya cyangwa kuba ugishingiraho atari asanzwe akizi, adashobora kukibona cyangwa kukigeraho. Icyo kimenyetso kigomba no kuba ari kamarampaka, bivuze ko icyo kimenyetso kigomba kuba cyatuma umucamanza afata icyemezo gitandukanye n'icyo yari yarafashe.
5. Kuba ibaruwa ishingirwaho n'utanga ikirego yaranditswe nyuma y'icibwa ry'urubanza rusabirwa gusubirishwamo ingingo nshya, ntabwo ubwabyo biyigira ikimenyetso gishya cyatuma urubanza rusubirishwamo ingingo nshya kandi ibyo ivuga byari bisanzwe biri muri dosiye y'urubanza, byaraburanishijweho ndetse n'inkiko zarabifasheho icyemezo Ikirego gisubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 75, 111, 170. Imanza zifashishijwe: RS/INJUST/RC 00011/2019/SC; Mukamasoni Pétronille v Nkundimana Edison, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/02/2021,

Page 3

RS/INJUST/RC 00007/2020/SC, Twagirayezu Alice n'abandi v Twagirayezu Albert n'undi rwaciwe n'Urukiko rw'Ikirenga ku wa 25/06/2021; RS/INJUST/RC 00022/2018/SC, Busoro Gervais v Busoro Mugunga Désiré n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019; RS/INJUST/PEN 00001/2020/SC, Magara Gahakwa John n'abandi vs Ubushinjacyaha rwaciwe n'Urukiko rw'Ikirenga ku wa 23/12/2020; RS/INJUST/RCOM 00010/2021/SC, Elyon Expert International Ltd vs Fantastic Investment Group Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 14/04/2022; RS/REV/CIV 0001/15/CS, Nyamaswa Ephron vs Mukamasoni Ephronie rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017; RS/REV/COM 0001/13/CS, Brasseries et Limonaderies du Rwanda (BRALIRWA) Ltd vs SINDIKUBWABO Cyprien rwaciwe n'Urukiko rw'Ikirenga ku wa 26/02/2016; RS/INJUST/RCOM 00010/2021/SC, Elyon Expert International Ltd vs Fantastic Investment Group Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 14/04/2022; RS/REV/CIV 002/12/CS, Mulindahabi Fidèle yaburanaga na ATRACO n'Undi, rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019; RS/REV/RCOM 00001/2018/SC, Shema Charles na Bashangire Grace vs I & M Bank Rwanda Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 24/07/2020. Urubanza I. IMITERERE Y'URUBANZA. [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Muteteli Spéciose na Rudacyahwa Alfred bavugaga ko umuvandimwe wabo Rwamucyo Aimable yibarujeho mu buriganya inzu y'abazungura ba Mubiligi Fidèle ibaruye kuri UPI 1/01/08/01/582, iherereye mu Mudugudu wa Rugero, Akagari ka Cyivugiza, Umurenge wa Nyamirambo, Akarere ka Nyarugenge hanyuma ayigurisha Mpawenimana Fulgence, uyu nawe ahita ayiyandikishaho. Basabye Urukiko gutegeka ko ubwo bugure buseswa n'ibyangombwa by'umutungo byanditse kuri Mpawenimana Fulgence bigateshwa agaciro, inzu ikagarurwa mu mutungo w'abazungura bose. [2] Mpawenimana Fulgence yavuze ko amasezerano y'ubugure yari ashingiye ku cyangombwa cy'umutungo cyari cyanditse kuri Rwamucyo Aimable, bityo ko mugihe icyo cyangombwa cyari gifite agaciro n'amasezerano y'ubugure agikomokaho afite agaciro. Asaba Urukiko kubona ko abarega nta bubasha bafite bwo gusaba iseswa ry'amasezerano batagizemo uruhare, rukemeza ko ikirego nta

shingiro gifite. [3] Urubanza No RC 0290/13/TGI/NYGE rwaburanishijwe Rwamucyo Aimable adahari, rucibwa ku wa 21/03/2014, Urukiko Rwisumbuye rwa Nyarugenge rusanga:

Page 4

- i. icyemezo cy'umutungo cyatanze n'Umurenge wa Nyamirambo ku wa 25/05/2012, inyandikomvugo y'inama yabaye ku wa 23/10/2012, yo gukemura amakimbirane hagati ya Rwamucyo Aimable n'umuryango we n'ibaruwa y'Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyamirambo yo ku wa 30/01/2013, bigaragaza ko inzu ari iy'abazungura ba Mubiligi Fidèle kandi ko Rwamucyo Aimable yayiyandikishije mu buriganya; ii. Hashingiwe ku ihame ry'amategeko ry'uko ibikozwe mu buriganya ari impfabusa (fraus omnia corrumpit) n'umurongo watanze n'Urukiko rw'Ikirenga mu rubanza Nyirabizimana Zilipa yaburanaga na Musoni Ndamage rwaciye ku wa 29/04/2011, amasezerano y'ubugure hagati ya Rwamucyo Aimable na Mpawenimana Fulgence agomba guseswa, icyangombwa cy'umutungo cyanditswe kuri Mpawenimana Fulgence kigateshwa agaciro, umutungo uburanwa ugasubizwa abazungura ba Mubiligi Fidèle. [4] Urukiko rwanzuye ko ikirego cya Muteteli Spéciose na Rudacyahwa Alfred gifite ishingiro, rutegeka ko inzu iburanwa igarurwa mu mutungo usangiwe n'abazungura ba Mubiligi Fidèle, Rwamucyo Aimable ategukwa kwishyura Muteteli Spéciose na Rudacyahwa Alfred 200.000 Frw y'indishyi z'akababaro, 300.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza. [5] Mpawenimana Fulgence yajurirye Urukiko Rukuru avuga ko amasezerano y'ubugure atagombaga guseswa kuko ntawabiregeye ndetse ko Muteteli Spéciose na Rudacyahwa Alfred batashoboraga kubisaba kuko nta ruhare bayagizemo. Yavuze kandi ko mbere y'uko Urukiko rutegeka ko inzu yaguzwe isubizwa mu mutungo usangiwe n'abazungura ba Mubiligi Fidèle, rwagombaga gusuzuma uburiganya abo bazungura bakoze rugafata n'icyemezo ku mafaranga yatanze agura iyo nzu. Muteteli Spéciose na Rudacyahwa Alfred batanze ubujurire bwurirye ku bundi basaba guhabwa indishyi zihwanye na 35.580.000 Frw. [6] Mu rubanza No RCA 0186/14/HC/KIG rwaciye ku wa 24/04/2015, Urukiko Rukuru rwasanze: i. Nta makosa Urukiko Rwisumbuye rwa Nyarugenge rwakoze rutesha agaciro icyangombwa cy'umutungo uburanwa kuko Mpawenimana Fulgence atagaragaza gihamya y'uko Rwamucyo Aimable yayiyandikishije anagurisha inzu asangiye n'abazungura ba Mubiligi Fidèle babyumvikanyeho; ii. Amasezerano y'ubugure hatagi ya Rwamucyo Aimable na Mpawenimana Fulgence atarazitiraga abazungura ba Mubiligi Fidèle gukurikirana ibyabo, Mpawenimana Fulgence akaba atagaragaza ibimenyetso bihamya uburiganya yitirira abazungura ba Mubiligi Fidèle;
- iii. Nta cyari gutuma Muteteli Spéciose na Rudacyahwa Alfred bategekwa gusubiza Mpawenimana Fulgence ikiguzi yatanze ku nzu iburanwa kuko ataribo bayahawe, icyakora ko agomba gusubizwa 1.894.240 Frw ahwanye n'agaciro k'ibyo yongereye kuri iyo nzu. 1 Reba urubanza n° RCAA 0015/09/CS.

Page 5

- [7] Urukiko rwanzuye ko ubujurire bwa Mpawenimana Fulgence bufite ishingiro kuri bimwe naho ubwa Muteteli Spéciose na Rudacyahwa Alfred bwuririye ku bundi nta shingiro bufite, rwemeza ko urubanza No RC 0290/13/TGI/NYGE ruhindutse kuri bimwe, rutegeka abazungura ba Mubiligi Fidèle guha Mpawenimana Fulgence 1.894.240 Frw. [8] Mu mwaka wa 2017, Mpawenimana Fulgence yongeye kuregera Urukiko Rwisumbuye rwa Nyarugenge, arusaba gutegeka Rwamucyo Aimable kumusubiza ikiguzi cy'inzu yamuhaye n'indishyi z'akababaro. icyo kirego cyanditswe kuri No RC 00660/2017/TGI/NYGE, Urukiko rusanga gifite ishingiro, rutegeka Rwamucyo Aimable kwishyura Mpawenimana Fulgence 21.250.000 Frw akubiyemo amafaranga y'ubugure bw'inzu n'indishyi zitandukanye. Ku wa 21/12/2021, Uwimana Veneranda, umugore wa Mpawenimana Fulgence, yatanze ikindi kirego mu Rukiko Rwisumbuye rwa Nyarugenge, cyandikwa kuri No RC 00833/2021/TGI/NYGE, asaba ko inzu ibaruye kuri UPI 1/01/08/01/582 ku bazungura ba Mubiligi Fidèle harimo na Rwamucyo Aimable yagurishwa, umugabane we ukavamo ubwishyu yatsindiwe. [9] Ku wa 15/03/2022, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Uwimana Veneranda gifite ishingiro; rutegeka ko uruhare rwa Rwamucyo Aimable ku nzu iri mu kibanza kibaruye kuri UPI 1/01/08/01/582 y'abazungura ba Mubiligi Fidèle, rungana na 1/11, rwishyurwa Uwimana Veneranda; Rutegeka abazungura ba Mubiligi Fidèle gufatanya kwishyura Uwimana Veneranda 3.575.483 Frw, ahwanye n'umugabane wa Rwamucyo Aimable afite ku nzu. [10] Ku wa 05/03/2020, Mpawenimana Fulgence yandikiye Umubitsi w'Inyandiko Mpamo z'Ubutaka asaba kugaragarizwa inkomoko y'ubutaka bubaruwe kuri UPI 1/01/08/01/582. Ku wa 03/06/2020, yamusubije avuga ko ubwo butaka bwanditswe kuri Rwamucyo Aimable hashingiwe ku cyemezo cy'umutungo yahawe n'ubuyobozi bw'Umurenge wa Nyamirambo. [11] Ku wa 23/07/2020, Mpawenimana Fulgence yasubirishijemo urubanza No RCA 0186/14/HC/KIG ingingo nshya, avuga ko ashingiye ku biteganywa n'ingingo ya 170, agace ka 32, y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asanga ibaruwa yandikiwe n'Umubitsi w'Inyandiko Mpamo z'Ubutaka ku wa 03/06/2020 ari ikimenyetso gishya cya kamarampaka kigaragaza akarengane kabaye muri urwo rubanza. [12] Muteteli Spéciose na Rudacyahwa Alfred basabye Urukiko kutakira ikirego cya Mpawenimana Fulgence kuko ibaruwa y'Umubitsi w'Inyandiko Mpamo z'Ubutaka atari ikimenyetso kirangiza impaka zari mu rubanza kandi hakaba ntaho kigaragaza ko haba harabaye uburiganya bwatumye urubanza rucibwa uko rutari gucibwa. [13] Mu rubanza No RCA 00250/2020/HC/KIG rwaciwe ku wa 25/06/2021, Urukiko Rukuru rwasanze inzitizi yo kutakira ikirego yatanzwe na Muteteli Spéciose na Rudacyahwa Alfred ifite ishingiro kuko mu rubanza No RCA 0186/14/HC/KIG rusabirwa gusubirishwamo ingingo nshya icyasuzumwaga cyari ukumenya niba Rwamucyo Aimable yaragurishije inzu asangiye n'abazungura ba Mubiligi Fidèle, batabizi. Urukiko rwasanze kuba urwandiko rw'Umubitsi 2 Iyo ngingo iteganya ko "urubanza rushobora gusubirishwamo ingingo nshya iyo, kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo."

Page 6

w'Inyandiko Mpamo z'Ubutaka rwo ku wa 03/06/2020 ruvuga ko iyo nzu yari yanditswe kuri Rwamucyo Aimable bidakuraho ko yiyandikishijeho umutungo asangiye n'abandi batabizi ndetse anawugurisha nkaho ari uwe ku giti cye nyamara ari uw'abazungura ba Mubiligi Fidèle, bityo uretse kuba icyo kimenyetso atari gishya kikaba kitamara impaka zari mu rubanza, rutegeka Mpawenimana Fulgence guha Muteteli Spéciose na Rudacyahwa Alfred 500.000 Frw y'igihembo cya Avoka. [14] Ku wa 21/07/2021, Mpawenimana Fulgence yandikiye Perezida w'Urukiko rw'Ubujuje asaba ko urubanza N° RCA 00250/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 25/06/2021 rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujuje amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo. Mu cyemezo No 129/CJ/2022 cyo ku wa 22/08/2022, Perezida w'Urukiko rw'Ikirenga yategetse ko urwo rubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe. [15] Iburanisha mu ruhame ryabaye ku wa 29/05/2023, Mpawenimana Fulgence yunganiwe na Me Ruhanga Nsengiyumva Prince na Me Bahizi Johnson, Muteteli Spéciose na Rudacyahwa Alfred bahagarariwe na Me Mukesha David, naho Rwamucyo Aimable, wahamagajwe ahatazwi, atitabye. [16] Urukiko rwabanje kumenyesha ababuranyi ko hashingiwe ku biteganywa n'ingingo ya 753, igika cya 1, y'Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, inyandiko zatanze na Me Mukesha David nyuma y'inama ntegururubanza zitakiriwe. Rufatiye icyemezo mu ntebe, Urukiko rwasanze kandi inzitizi yatanze na Muteteli Spéciose na Rudacyahwa Alfred y'uko ikirego cya Mpawenimana Fulgence kidakwiye kwakirwa kuko nta mpamvu z'akarengane yagaragaje, nta shingiro ifite kubera ko umurongo watanze n'uru Rukiko mu manza zitandukanye ari uko iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rusubirishwamo ku mpamvu z'akarengane, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa uretse inzitizi ndemyagihugu. [17] Iburanisha ryakomereje ku kibazo cyo kumenya niba ikirego gisubirishamo urubanza No RCA 0186/14/HC/KIG ingingo nshya cyaragombaga kwakirwa n'Urukiko Rukuru ndetse n'icyo kumenya niba hari amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka agomba gutangwa muri uru rubanza, naho ibijyanye no kumenya niba amasezerano y'ubugure bw'inzu yabaye hagati ya Rwamucyo Aimable na Mpawenimana Fulgence agombaga guseswa n'iby'indishyi z'akababaro zisabwa na Mpawenimana Fulgence bikazasuzumwa ari uko uru Rukiko rusanze ikirego gisubirishamo urubanza No RCA 0186/14/HC/KIG ingingo nshya cyaragombaga kwakirwa. 3 Iyo ngingo iteganywa ko "muri rusange nta nyandiko, imyanzuro y'urubanza cyangwa inyandiko ikubiyemo ingingo ziburanishwa bishobora kohererezwa urukiko nyuma y'inama ntegururubanza. [...]" 4Reba urubanza No RS/INJUST/RC 00011/2019/SC haburana Mukamusoni Pétronille na Nkundimana Edison, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/02/2021, igika cya 40, urubanza rubanziriza urundi mu rubanza no RS/INJUST/RC 00007/2020/SC, Twagirayezu Alice n'abandi baburana na Twagirayezu Albert n'undi rwaciwe n'Urukiko rw'Ikirenga ku wa 25/06/2021, igika cya 11, urubanza no RS/INJUST/RC 00022/2018/SC, Busoro Gervais aburana na Busoro Mugunga Désiré n'abandi, rwaciwe ku wa 28/06/2019, igika cya 18, urubanza No RS/INJUST/PEN 00001/2020/SC, Magara Gahakwa John n'abandi baburanagamo n'Ubushinjacyaha rwaciwe n'Urukiko rw'Ikirenga

ku wa 23/12/2020, igika cya 39.

Page 7

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO. II.1. Kumenya niba ikirego gisubirishamo urubanza No RCA 0186/14/HC/KIG ingingo nshya cyaragombaga kwakirwa n'Urukiko Rukuru. [18] Mpawenimana Fulgence yunganiwe na Me Ruhanga Nsengiyumva Prince na Me Bahizi Johnson, bavuga ko ibaruwa yo ku wa 03/06/2020 igaragaza mu buryo burangiza impaka inkomoko y'umutungo uburanwa kandi ko ntaho yigeze iburanishwa mu manza zabanje ariyo mpamvu ikirego gisubirishamo urubanza No RCA 0186/14/HC/KIG ingingo nshya cyagombaga kwakirwa. Basobanura ko ntacyihutishaga Mpawenimana Fulgence gushaka icyo kimenyetso kuko ubwo yari mu Nkiko yari azi ko yaguze umutungo uburanwa na nyirawo kuko abandi bazungura ba Mubiligi Fidèle batigeze bagaragaza ko umutungo wabo wavogerewe, ko kugeza n'ubu ntacyo bakoze kugira ngo uwo mutungo ubandikweho. Basanga kubona umutungo uburanwa usubiye mu maboko y'abazungura ba Mubiligi Fidèle biri no mu nyungu za Rwamucyo Aimable, ari nacyo cyatumye afatanyaga n'abavandimwe be kugambanira kuvutsa Mpawenimana Fulgence ibye, ko ibi bigaragazwa n'uko Muteteli Spéciose na Rudacyahwa Alfred bagiye babeshya aho Rwamucyo Aimable aherereye bagamije kumuhisha amakuru y'imanza ziburanwa. [19] Me Mukesha David uhagarariye Muteteli Spéciose na Rudacyahwa Alfred avuga ko igihari ari uko Mpawenimana Fulgence atemeranyaga n'isesengura ry'Urukiko Rukuru ku ngingo y'Itegeko cyangwa ikimenyetso avuga ko ari gishya, kandi ko ibyo bitaba impamvu yo gusubirishamo urubanza ku mpamvu z'akarengane. Avuga ko amakuru akubiye mu ibaruwa yo ku wa 03/06/2020 asanzwe ari mu rubanza No RC 0290/13/TGI/NYGE rwaciwe ku wa 21/03/2014 aho ubuyobozi bw'Umurenge wa Nyamirambo bwamenyesheje Urukiko ko umutungo uburanwa wanditswe kuri Rwamucyo Aimable hashingiwe ku makuru y'ibinyoma uyu yatanze, ko bwemeye ko bwakoze amakosa, busezeranya kuyakosora. Asaba uru Rukiko kwemeza ko nta makosa Urukiko Rukuru rwakoze mu kwemeza ko inyandiko yo ku wa 03/06/2020 atari ikimenyetso gishya cya kamarampaka hagati y'ababuranyi bari mu rubanza. UKO URUKIKO RUBIBONA [20] Ingingo ya 170 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igaragaza urutonde rw'impamvu zituma urubanza rushobora gusubirishwamo ingingo nshya. Mu gace kayo ka 3°, iyi ngingo iteganya ko urubanza rushobora gusubirwamo iyo kuva aho ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo. Mu gika cya kabiri cy'iyi ngingo, hateganyijwe ko ikimenyetso gishya ari ikimenyetso umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga. [21] Mu rubanza Elyon Expert International Ltd yaburanaga na Fantastic Investment Group Ltd, uru Rukiko rwasanze ingingo imaze kuvugwa haruguru yumvikanisha neza ko uburanisha ikimenyetso gishya, agomba kugaragariza Urukiko ko icyo kimenyetso cyari gisanzwe kiriho

Page 8

igihe yaburanaga, ariko akaba atarigeze amenya ko gihari. Ashobora kandi kugaragariza Urukiko ko yari azi ko ikimenyetso gihari cyangwa gishobora gushakwa igihe yaburanaga, ariko akaba atarashoboraga kukibona kubera impamvu zumvikana yasobanurira Urukiko.⁵ [22] Naho mu rubanza Nyamaswa Ephron yaburanaga na Mukamusoni Ephronie, uru Rukiko rwasanze inyandiko itari iriho umukono w'umuyobozi yakoreshejwe n'ababuranyi mu Rukiko Rwisumbuye ntihabwe agaciro itafatwa nk'ikimenyetso gishya cya kamarampaka bitewe gusa n'uko noneho umuyobozi yayisinye.⁶ [23] Na none mu rubanza Elyon Expert International Ltd yaburanaga na Fantastic Investment Group Ltd rwavuzwe haruguru, uru Rukiko rwibukije umurongo rwari rwaratanze mu rubanza Brasseries et Limonaderies du Rwanda (BRALIRWA) Ltd yaburanaga na SINDIKUBWABO Cyprien⁷, aho rwasanze ikirego gisubirishamo urubanza ingingo nshya kitakirwa iyo impamvu gishingiraho zari zisanze zizwi n'ugitanga, kandi ko no mu mpamvu umuburanyi yari azi hakwiye gushyirwamo n'ibimenyetso atashatse urubanza rusabirwa gusubirishwamo rutaraba ndakuka kandi yarashoboraga kukibona nko mu gihe umuburanyi yirengagije kwiyambaza urwego rwa Leta ngo rumuhe amakuru yari akenewe mu rubanza.⁸ [24] Naho mu rubanza Mulindahabi Fidèle yaburanaga na ATRACO n'Undi,⁹ ndetse n'urwa Shema Charles na Bashangire Grace yaburanagamo na I & M Bank Rwanda Plc,¹⁰ uru Rukiko rwasanze bitihagije kuba ikimenyetso cyarabonetse nyuma y'icibwa ry'ubanza rusabirwa gusubirishwamo ingingo nshya cyangwa kuba ugishingiraho atari asanzwe akizi, adashobora kukibona cyangwa kukigeraho. icyo kimenyetso kigomba no kuba ari kamarampaka, bivuze ko icyo kimenyetso kigomba kuba cyatuma umucamanza afata icyemezo gitandukanye n'icyo yari yarafashe. [25] Ku bijyanye n'uru rubanza, Mpawenimana Fulgence n'abamwunganira bavuga ko ibaruwa yo ku wa 03/06/2020 ari ikimenyetso gishya kuko kitaburanishijwe mu manza zabanje. Bavuga kandi ko kirangiza impaka kuko kigaragaza inkomoko nyakuri y'umutungo uburanwa. [26] Dosiye y'urubanza igaragaza ko ibaruwa yo ku wa 03/06/2020, igira iti: "Mpereye ku ibaruwa yanyu yo ku wa 06/03/2020 mwanditse musaba kubamenyeshwa icyashingiweho mu kwandika umutungo utimukanwa uri mu kibanza gifite UPI: 1/01/08/01/582 kuri Rwamucyo Aimable; mbandikiye mbamenyesha ko hifashishijwe amakuru agaragara muri Rejisitiri y'ubutaka (Land Administration Information System); ikibanza cyavuzwe haruguru cyamwanditsweho hashingiwe ku cyemezo cy'Umutungo yahawe n'Ubuyobozi bw'Umurenge wa Nyamirambo." 5Reba urubanza n° RS/INJUST/RCOM 00010/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 14/04/2022, igika cya 27. 6Reba urubanza n° RS/REV/CIV 0001/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017, igika cya 20. 7Reba urubanza N° RS/REV/COM 0001/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/02/2016, igika cya 27. 8Reba urubanza N° RS/INJUST/RCOM 00010/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 14/04/2022, igika cya 28. 9Reba urubanza N° RS/REV/CIV 002/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/01/2019, igika cya 29. 10Reba urubanza No RS/REV/RCOM 00001/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/07/2020, igika cya 22.

Page 9

[27] Urukiko rurasanga ibijyanye n'inkomoko y'umutungo uburanwa byaragarutsweho mu gika cya 5 cy'urubanza N° RC 0290/13/TGI/NYGE rwaciwe ku wa 21/03/2014 aho Urukiko Rwisumbuye rwa Nyarugenge rwasanze "imvugo ya Maître Muhikira Jean Claude y'uburiganya bwakoreshejwe na Rwamucyo Aimable mu kwiandikishaho inzu yahoze yanditse kuri Succession Mubirigi Fidèle ifite ishingiro kuko igaragazwa n'ibimenyetso bishingiye ku cyemezo cy'umutungo cyatanze ku wa 25/05/2012 n'ubuyobozi bw'Umurenge wa Nyamirambo cyerekana ko iyo nzu yanditse kuri Succession Mubirigi Fidèle ndetse muri dosiye hakaba harimo na none ibaruwa yo ku wa 23/10/2012 ivuga ko Rwamucyo Aimable yari afitanye ikibazo n'umuryango we ku nzu y'umubyeyi wabo Mubirigi Fidèle...Harimo na none ibaruwa yo ku wa 30/01/2013 yanditswe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyamirambo isobanura uburyo Rwamucyo Aimable yabanje gushaka icyangombwa cy'iyi nzu cyanditse kuri Succession Mubirigi Fidèle, nyuma yaho aza kongera kugaruka ajijisha ubuyobozi avuga ko icyangombwa asaba ari icy'ubutaka bwe, aragihabwa, inzu arayigurisha, ariko ubuyobozi bw'Akagari bubimenye busaba Ubuyobozi bw'Ubutaka kuba buhagaritse gukora mutation y'iyi nzu ku wo Rwamucyo Aimable yari yayigurishije..." [28] Urukiko rurasanga kandi mu myanzuro ye mu Rukiko Rukuru, mu rubanza N° RCA 186/14/HC/KIG rusabirwa gusubirishwamo ingingo nshya, Rwamucyo Aimable yaravuze ko "Abatanze ikirego ...barega umuvandimwe wabo Rwamucyo Aimable ko yagurishije inzu y'umuryango bahuriyeho nk'abazungura ba Mubiligi Fidèle na Mukamuligo Dorothee. Rwamucyo Aimable ntabihakana, ariko avuga ko yabitewe n'uko yabonaga kuyitaho bigoranye, cyane ko bose bibera muri Canada. Ku bijyanye n'uburiganya abarega bavuga ko yakoresheje kugira ngo agurishe iriya nzu, avuga ko nta buriganya yakoreye Mpawenimana Fulgence, kuko yayiguze azi neza ko iriya nzu yasizwe n'ababyeyi ba Rwamucyo Aimable, kandi yari azi neza ko Rwamucyo Aimable afite abandi bavandimwe bavukana baba hanze. Rwamucyo Aimable yemera ko habaye ukwibeshya kubera kutamenya amategeko..." [29] Urukiko rurasanga ibikubiye mu ibaruwa yo ku wa 03/06/2020 by'uko inzu iburanwa yigeze kwandikwa kuri Rwamucyo Aimable ari nabyo Mpawenimana Fulgence ashingiraho ikirego cye, bisanzwe biri mu bimenyetso biri muri dosiye y'urubanza N° RC 0290/13/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 21/03/2014 n'iy'urubanza No RCA 0186/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 24/04/2015 rusabirwa gusubirishwamo ingingo nshya, kandi ibyo bimenyetso byarasuzumwe, izo Nkiko zibifataho icyemezo. Kuba rero ibivugwa muri ibyo bimenyetso byaragarutsweho muri iyo baruwa yanditswe nyuma y'icibwa ry'urubanza rusabirwa gusubirishwamo ingingo nshya, ntabwo aribyo biyigira ubwayo kuba ikimenyetso gishya cyatuma urubanza rusubirishwamo ingingo nshya kandi ibyo ivuga byari bisanzwe biri muri dosiye y'urubanza, byaraburanishijweho ndetse n'inkiko zikabifataho icyemezo. [30] Urukiko rurasanga ibimaze kuvugwa haruguru byumvikanisha ko nubwo Mpawenimana Fulgence yari kuba yarabonye ibaruwa aburanisha mu gihe cy'iburanisha ry'urubanza No RCA 0186/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 24/04/2015, ntacyo yari kumumarira kuko ntibyari guhindura icyemezo cyafashwe. [31] Hashingiwe ku bisobanuro bimaze gutangwa mu bika

bibanza, Urukiko rurasanga ibaruwa yo ku wa 03/06/2020, uretse kuba atari ikimenyetso gishya, ntabwo ari kamarampaka kuko ntakiyirimo cyari gutuma urubanza No RCA 0186/14/HC/KIG rucibwa ukundi, bityo

Page 10

Urukiko Rukuru rukaba nta kosa rwakoze mu rubanza N° RCA 00250/2020/HC/KIG rwaciwe ku wa 25/06/2021 ubwo rwemezaga ko ikirego cya Mpawenimana Fulgence kitakiriwe. II. 2. Kumenya ukwiye guhabwa amafaranga y'ikurikirana rubanza n'ay'igihembo cya Avoka. [32] Me Ruhanga Nsengiyumva Prince na Me Bahizi Johnson bunganira Mpawenimana Fulgence basaba uru Rukiko gutegeka abaregwa kumuha 500.000 Frw y'ikurikiranarubanza, 2.000.000 Frw y'igihembo cya Avoka no kumusubiza 40.000 Frw y'igarama yatanze mu Rukiko Rukuru. [33] Me Mukesha David, uburanira Muteteli Spéciose na Rudacyahwa Alfred, avuga ko indishyi zisabwa na Mpawenimana Fulgence nta shingiro zifite, ahubwo ko abo aburanira aribo bakwiye guhabwa 2.000.000 Frw y'igihembo cya Avoka kuko bashowe mu manza nta mpamvu. UKO URUKIKO RUBIBONA [34] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ko "ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe." [35] Ku bijyanye n'amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka ndetse n'ay'igarama byasabwe na Mpawenimana Fulgence, Urukiko rurasanga ntayo akwiriye kuko ntacyo atsindiye muri uru rubanza. Naho ku mafaranga y'igihembo cya Avoka asabwa na Muteteli Spéciose na Rudacyahwa Alphred, Urukiko rurasanga bagomba kuyahabwa kuko bashatse Avoka ubaburanira, bakayishyurwa na Mpawenimana Fulgence. icyakora, Urukiko rurasanga 2.000.000 Frw basaba ari umurengera, mu bushishozi bwarwo, bombi bakaba bagenewe 500.000 Frw y'igihembo cya Avoka. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ikirego cya Mpawenimana Fulgence gisubirishamo ku mpamvu z'akarengane urubanza No RCA 00250/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 25/06/2021, nta shingiro gifite; [37] Rwemeje ko nta gihindutse ku mikirize y'urubanza N° RCA 00250/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 25/06/2021; [38] Rutegetse Mpawenimana Fulgence guha Muteteli Spéciose na Rudacyahwa Alphred 500.000 Frw y'igihembo cya Avoka kuri bombi.

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Prepared on 11 October 2026 · Esheria