

RWANDA / JUDGMENT

MUHIREv. KCSD

R COMA 0065/14/HCC

COURT

Commercial High Court

DECIDED

22 February 2014

CASE / FILE NUMBER

R COMA 0065/14/HCC

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MUHIREv. KCSD

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- Date: 2014-02-22
- Case/document no.: R COMA 0065/14/HCC
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Text

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MUHIREv. KCSD [Rwanda URUKIKO RUKURU RW'UBUCURUZI- R COMA 0065/14/HCC (Mukamurera, J.) 28 Gashyantare 2014] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Abatangabuhamya – Niba harabaye gutirura amakaziye – Abatangabuhamya bemeza ko amakaziye yatiruwe baba bagomba kugaragaza niba koko yashikirijwe uwo yari agenewe iyo batabashije kubigaragaza bifatwa ko ataturuwe. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ibimenyetso by'ibiciro nyakuri by'amakaziye – Uvuga ko ibiciro byatanze atari ibyukuri aba agomba kugaragaza ibimenyetso by'ibiciro nyakuri iyo atabigaragaje aratsindwa – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 9. Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Indishyi z'ikurikirana rubanza –Iyo bigaragaye ko uwatsinze urubanza hari ibyo yatakaje kubera gusiragizwa mu manza Urukiko rumugenera Indishyi z'ikurikirana rubanza – Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano ,ingingo ya 258. Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Kujuririra indishyi – Ujuririra indishyi zitatanze mu rwego rwambere aba agomba kugaragaza icyo yaneze mubyo urukiko rwa mbere rwashingiyeho ruzimwima. Incamake y'ikibazo: MUHIRE

Bernard yaranguye ibinyobwa bya BRALIRWA mu bubiko bwa KCSD ariko atizwa amakaziye 17 n'amavide yayo,umukozi wa KCSD agiye kuyatirura MUHIRE aramuhakanira ngo yaraturuye.KCSD yaje kuregera Urukiko rw'ubucuruza rwa Musanze isaba ko MUHIRE ategukwa kugarura ayo mavide ndetse n'inyungu.Urukiko rwategetse MUHIRE kwishyura 170 000 frw ahwanye n'amakaziye 17, hamwe n'igihembo cy'avocat kingana na 250 000 frw. MUHIRE yajuririye Urukiko Rukuru rw'ubucuruza, mu myanzuro yashikirije Urukiko, asobanura ko urukiko rwirengagije ibimenyetso yatanze bigizwe n'abatangabuhamya bakaba baragaragaje ko ayo makaziye yatiruwe, ikindi ngo ni uko ibiciro by'amakaziye babihanitse kuburyo bitandukanye nibya BRALIRWA. Ku mpamvu ya mbere y'ubujurire KCSD yasubije ko abo bavugwa ko bahawe amakaziye uretse kubivuga ntakigaragaza ko bigeze bayahageza naho kuberekeye ibiciro by'amakaziye KCSD yemeje ko ibyo biciro aribyo bikoreshwa ko batabihanitse. KCSD yatanze ubujurire bwuririye k'ubundi asaba indishyi urukiko rwa mbere rutatanze, anasaba n'izindi zo mu bujurire kubera gukomezwa gushorwa mu manza na MUHIRE. Incamake y'icyemezo: 1. Mu gihe hari abatangabuhamya bemeza ko bahawe amakaziye bakayaturirira nyirayo ariko ntibagaragaze ko ayo makaziye yagejejwe kuwo yagombaga gutirurirwa, nyirikubatuma aba agomba kubikurikiranira kuko biba bigaragara ko atigeze agezwa kuwayamutije bityo ubwo buhamya bwabo batanga muhamya nta shingiro buba bufite.

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2. Kuvuga ko ibiciro by'amakaziye bihanitse ntabwo biba bihagije kugira ngo bigire agaciro ni uko ubivuga aba agomba kugaragaza ibiciro nyakuri by'amakaziye ngo urukiko rubone aho ruhera rusuzuma niba ibyatanzwe mbere biri mukuri cyagwa niba bihanitse.
3. Mu gihe ikurikirana rubanza ryatumye uwari n'ubundi yatsinze yarakomeje gutakaza umwanya biruka mu nkiko kubera ubujurire bw'urundi ruhande, ,iyo yatse indishyi z'ikurikirana rubanza arazihabwa kubera yuko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse", Uwatse indishyi mu rwego rwa mbere ntazihabwe akazijuririra, kugira ngo azihabwe mu bujurire aba agomba kugaragaza icyo yaneze mubyo urukiko rwa mbere rwashingiyeho ruzimwima. Ubujurire nta shingiro bufite; Urubanza rwajuririwe ntiruhindutse, uretse igihembo cya avoka cyazamuwe; Amagarama y'urubanza aherereye k'Uwajuriye. Amategeko yashingiyeho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 9; Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano ,ingingo ya 258. Nta manza zashingiyeho. Urubanza INCAMAKE Y'IKIBAZO [1] MUHIRE Bernard asanzwe ari umucuruza w'ibinyobwa bya BRALIRWA. Kuwa 23/03/2013 yaranguye ibyo bicuruzwa muri dépot ya KCSD, yishyura ibinyobwa ariko atizwa amakaziye 17 n'amavide yayo bumvikana ko azayagarura. Ikibazo cyavutse ubwo umukozi wa KCSD witwa DUFITUMUKIZA Rose wari wamutije yagiye gutirura MUHIRE aramuhakanira ngo yaraturuye. Nibwo rero KCSD yaregeye urukiko rw'ubucuruza rwa Musanze isaba ko MUHIRE yategukwa kugarura ayo mavide ndetse n'inyungu. Urukiko rwavuze ko ikirego gifite ishingiro, rutegeka MUHIRE kwishyura 170 000 frw ahwanye n'amakaziye 17, hamwe

n'igihembo cy'avocat kingana na 250 000 frw. [2] MUHIRE ntiyishimiye icyo cyemezo ajurira muri uru rukiko avuga ko urukiko rutitayekubimenyetso yatanze, ngo ntirwitaye no ku mvugo z'abatangabuhamya, ikindi ngo ibiciro by'amakaziye barabihanitse. Uhagarariye KCSD avuga ko ubwo bujuriye ntashingiro bufite, agatanga ubujuriye bwuririye k'ubundi asaba indishyi urukiko rwa mbere rutatanze, agasaba n'izindi zo mu bujuriye. Urubanza rwaburanishijwe MUHIRE adahari bisabwe n'uregwa arabyemererwa hashingiwe ku ngingo ya 57 CPCCSA kuko yamenyeshejwe itariki y'urubanza ku buryo bukurikije amateko ariko ntiyitaba kandi ntampamvu yamenyesheje urukiko.

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IBIBAZO BIGIYE GUSUZUMWA Urukiko rugiye gusuzuma niba hari ibimenyetso by'irengagijwe ndetse n'imvugo z'abatangabuhamya, rusuzume n'ibijyanye n'igiciro cy'amakaziye, hasuzumwe kandi ibijyanye n'indishyi zatanze ku rwego rwa mbere n'izisabwa mu bujuriye. I. Kubijyanye n'ibimenyetso n'imvugo z'abatangabuhamya [3] Mu myanzuro yatanze na MUHIRE yavuze ko urukiko rwirengagije ibimenyetso bigizwe n'abatangabuhamya kandi baragaragaje ko ayo makaziye yatiruwe barimo ndetse n'abakozi bayajyanye. Ikindi ngo ni uko DUFITUMUKIZA wahawe ayo makaziye atigeze avuguruzwa ko hari amakaziye ya KCSD yanyerejwe kandi ko hari abakozi bafunzwe bazize kwiba ayo makaziye. Ikindi ngo urukiko rwirengagije ko amakaziye yayahawe ntanyandiko ikozwe bityo ko no kuyasubiza ntayari ikenewe. [4] Uhagarariye KCSD avuga ko abo bavugwa ko yahaye amakaziye uretse kubivuga ntakigaragaza ko bigeze bayahageza. Naho kubijyanye n'amakaziye yaba yaribwe, ibyo koko ngo byabayeho hari n'ababifungirwe ariko ngo ntaho bihuriye n'ayatijwe MUHIRE kubera ko ibyo byabereye kuri dépôts zitandukanye, ngo dépôt yibiweho ntabwo ariyo MUHIRE yatirijweho amakaziye. [5] Urukiko rusanga kuba hari abatangabuhamya bemeza ko MUHIRE habahaye amakaziye bakayaturira ntabwo bigaragaza ko bayagejeje aho yagombaga kujya, kandi niba bemera ko yayabahaye ngo bayatirure uwagombaga kuyashyikirizwa ntamugereho, ubwo MUHIRE abishatse yayabakurikiranaho bakamwereka irengero ryayo. Naho kuvuga ko bayashubije DUFITUMUKIZA ntabwo byafatwaho ukuri kuko nawe ubwe yaje kuyishyura. Ntabwo yari kumara kuyakira ngo hanyuma abakurikire agiye kuyasaba. Ikindi kandi yarahageze MUHIRE abanza kwemera ko hari amakaziye icumi gusa. None se icyo aza kuba yayatiruye ayo icumi yemeraga mbere yari kuba aturutsehe? Ibi byose bigaragaza ko ayo makaziye atigeze asubizwa abari bayatijwe, bityo ubujuriye bwa MUHIRE bushingiye kuri iyi ngingo ntashingiro bufite, kubera ko ibyo yita ibimenyetso n'imvugo z'abatangabuhamya ngo byaba byarirengagijwe n'urukiko, byo ubwabyo ntibigaragaza kuburyo budasubirwaho ko ayo makaziye yagejwe kwa nyirayo. Naho iby'ubujura yavuze, ntakigaragaza ko ayo yatijwe ariyo yibwe cyane ko nyirayo avuga ko ubwo bujura bwabereye kuyindi dépôt ntihagire ubivuguruzwa. II. Kubijyanye n'ibiciro by'amakaziye [6] MUHIRE kandi yavuze mu myanzuro ye ko urukiko rwemeye ibiciro by'amakaziye byatanze n'urega kandi yarashyizeho ibiciro bihanitse kuko ataribwo bitangwa na BRALIRWA. Uregwa avuga ko ibyo biciro aribyo bikorehwa ko batabihanitse. [7] Urukiko rusanga ibyo biciro uretse kuvuga ngo birahanitse ntakindi kimenyetso MUHIRE yigeze atanga kigaragaza ibiciro nyakuri by'amakaziye ngo urukiko rubone aho ruhera rusuzuma niba ibyatanze mbere biri mukuri cyangwa niba bihanitse. Ingingo ya 9

CPCCSA ivuga ko “urega agomba kugaragaza ibimenyetso by’ibyo aregera, iyo abibuze uregwa aratsinda”, bityo kuba ntakimenyetso MUHIRE yatanze gishyigikira ibyo avuga, iyo ngingo ye y’ubujurire nayo ikaba ntagaciro yahabwa. III. Kubijyanye n’indishyi

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[8] Uhagarariye KCSD yavuze ko MUHIRE akomeje kubashora mu manza , bityo bakaba basaba ko amafanga y’ikurikiranarubanza bari bagenewe ku rwego rwambere yakongerwa, kandi bagahabwa n’izindi ndishyi bari basabye ku rwego rwa mbere ntibazihabwe. [9] Urukiko rusanga ibyo uhagarariye KCSD asaba ku mafanga y’ikurikirana rubanza ari ukuri kuko kuba MUHIRE yarajuriye byatumye bakomeza guta umwanya biruka mu nkiko kandi batishyurwa vuba amafanga bari batsindiye, bityo nkuko biteganywa n’ingingo ya 258 CCLIII ivuga ko “Igikorwa cyose cy’umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse”, bakaba bagomba kongererwa indishyi z’ibyo batakaje mugukurikirana urubanza mu bujurire, urukiko rukaba rubagenewe 100 000 frw yiyongera kuri 250 000 frw bari bagenewe ku rwego rwa mbere, bityo akaba 350 000 frw aho kuba 250 000 frw yatanzwe mbere. Naho kubijyanye n’izindi ndishyi basaba kuko bazisabye ku rwego rwambere ntibazihabwe, uru rukiko narwo rusanga rutagomba kuzibaha kuko ntacyo bagaragaje banenze ibyo urukiko rwambere rwashingiyeho ruzibima. ICYEMEZO CY’URUKIKO [10] RWEMEJE ko ubujurire bwa MUHIRE Bernard ntashingiro bufite. [11] RWEMEJE ko urubanza rwajuririwe rudahindutse uretse indishyi z’igihembo cy’avocat gikuwe kuri 250 000 fr kigashyirwa kuri 350 000 frw. [12] RUTEGETSE MUHIRE kwishyura KCSD 170 000 y’agaciro k’amakaziye, akishyura na 350 000 frw y’ikurikiranarubanza no guhamba avocat abariwe hamwe ku rwego rwa mbere no mubujurire, yose hamwe akaba 520 000 frw, akishyura n’amagarama y’urubanza angana na 9 150 frw.

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Prepared on 23 October 2026 · Esheria