

RWANDA / JUDGMENT

MUKAMAZIMPAKA v. UNGUKA BANK Ltd

RCOMA 0038/14/HCC

COURT

Commercial High Court

DECIDED

25 February 2014

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MUKAMAZIMPAKA v. UNGUKA BANK Ltd

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Text

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MUKAMAZIMPAKA v. UNGUKA BANK Ltd [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0038/14/HCC (Niwemugeni, P.J.) 25 Gashyantare 2014] Amategeko agenga imanza z'ubucuruzi – Amasezerano y'inguzanyo – Kugira na imishyikirano hagati ya banki n'uwahawe inguzanyo bigamije koroherezwa kwishyura – Gusaba ko Urukiko rubigiramo uruhare – Ntaho Urukiko rwahera rutegeka ko impande zombi zakumvikana mu gihe ubisaba nta bushake na buke yagaragarije uwo baburana kuko ubwumvikane bukorwa ku bushake bw'abafitanye ikibazo. Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Kwishyura inyungu zumvikanyweho mu masezerano – Nta muburanyi wasaba ko akurirwaho inyungu zumvikanyweho mu masezerano mu gihe ibibazo avuga byatumye atishyura nta bimenyetso abitangira nta nagaragaze niba zaranabazwe nabi – Itegeko no 45/2011 ryo kuwa rigenga amasezerano, ingingo ya 64. Incamake y'ikibazo :UNGUKA BANK Ltd yagiranye na Mukamazimpaka n'umwishingizi we Niyibizi amasezeano y'inguzanyo ingana na 10.000.000 frw. Muri ayo masezerano bumvikanye uko umwenda uzishyurwa, igihe uzishyurirwa n'inyungu zizatangwa. UNGUKA BANK Ltd yaje gutanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba ko abahawe inguzanyo bubahiriza amasezerano bagiranye nayo. Urukiko rwememeje ko

ikirego cya UNGUKA BANK Ltd gifite ishingiro, rutegeka Mukamazimpaka kwishyura 7.824.892 frw yananirwa, ubwishyu bugatangwa na Niyibizi. Mukamazimpaka yajuririrye Urukiko Rukuru rw'Ubucuruzi avuga ko ntacyo anenga urubanza rujuririrwa ahubwo ko yagize ibibazo byatumye atishyura, akaba yemera kwishyura mu bwumvikane, agasaba ko yafatanyaga na Niyibizi kwishyura. UNGUKA BANK Ltd yavuze ko ubwo bujuriye ntashingiro bufite; ahubwo nayo itanga ubujuriye bwurirye ku bundi isaba amafaranga y'ikurikirana rubanza n'igihembo cya avoka kuri ubu bujuriye. Mukamazimpaka yavuze ko izo indishyi zitahabwa agaciro kuko byakongera ibibazo cyane ko ngo n'ubwishyu bw'umwenda bugishakishwa. Incamake y'icyemezo: 1. Ibibazo Mukamazimpaka avuga byatumye atishyura ntabitangira ibimenyetso. Niba kandi byaranabayeho, yari kuganira n'uwamuhaye inguzanyo; nabyo umuhagarariye yemeje ko atabisabye. Urukiko rero ntaho rwahera rutegeka impande zombi ko zumvikana kuko ubwumvikane bukorwa kubushake bw'abafitanye ikibazo.

2. Gusaba ko inyungu zisanze n'izubukererwe zakurwaho ntibyahabwa agaciro kuko impande zombi zazumvikanyeho mu masezerano na Mukamazimpaka akaba atagaragaza niba zarabazwe nabi. Ubujuriye nta shingiro bufite; Urubanza rwajuririrwe ruhindutse gusa kubijyanye n'indishyi z'igihembo cya avoka; Amagarama ahereye ku wajuriye.

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Amategeko yashingiweho: Itegeko no 45/2011 ryo kuwa rigenga amasezerano, ingingo ya 64. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] UNGUKA BANK Ltd yagiranye na Mukamazimpaka Spéciose amasezerano y'inguzanyo ingana na 10 000 000 fr kuwa 12/07/2012. Bumvikanye uko umwenda uzishyurwa, igihe uzishyurirwa n'inyungu zizatungwa. Niyibizi Vincent yishingiye iyo nguzanyo. UNGUKA BANK Ltd yaje gutanga ikirego mu rukiko rw'ubucuruzi rwa Nyarugenge irega Mukamazimpaka n'umwishingizi we Niyibizi, isaba ko bakwishyura umwenda, inyungu n'indishyi zitandukanye kuko amasezerano atubahirijwe. Urubanza rwaburanishijwe abaregwa badahari kuko batitabye urukiko ntampamvu babitangiye. Urukiko rwavuze ko ikirego gifite ishingiro, rutegeka Mukamazimpaka kwishyura 6.678.352 frw y'umwenda remezo, 145.138 frw y'inyungu zisanze, 801 402 frw y'inyungu z'ubukererwe na 200 000 frw y'ikurikiranarubanza no guhemba avocat, yose hamwe akaba 7.824.892 frw, yananirwa kwishyura ubwishyu bugatangwa na Niyibizi. [2] Mukamazimpaka yajuririrye icyo cyemezo, mu myanzuro y'ubujuriye yakozwe na Me Munyaneza Karo Sylvan ntacyo yagaragaje anenga urubanza rwa mbere, ahubwo avuga ko yagize ibibazo byatumye atishyura, akaba yemera kwishyura mu bwumvikane, agasaba ko yafatanyaga na Niyibizi kwishyura. UNGUKA BANK Ltd ivuga ko ubujuriye ntashingiro bufite, igatanga ubujuriye bwurirye k'ubundi isaba guhabwa 400.000 frw y'ikurikiranarubanza na 300.000 frw y'igihembo cy'avocat mu rwego rw'ubujuriye. II. IBIBAZO BIGIYE GUSUZUMWA Urukiko rugiyemo gusuzuma ibikubiye mu bujuriye bwa Mukamazimpaka, rusuzume n'indishyi zasabwa na UNGUKA BANK Ltd mu bujuriye bwurirye k'ubundi.

1. Kubijyanye n'ubujurire bwa Mukamazimpaka [3] Imyanzuro yakozwe na Me Munyaneza ajurira mu mwana wa Mukamazimpaka, yavuze ko Mukamazimpaka na Niyibizi bagize igihombo mu bucuruzi bwabo bituma batishyura neza inguzanyo bahawe. Ikindi ngo bagize ibyago bapfusha umwana, hiyongeraho ko baguze n'imodoka igakora impanuka, bityo ngo amafunga y'inyungu zisanzwe n'inyungu z'ubukererwe bategetswe kwishyura yakurwaho. Ikindi yavuze ko Mukamazimpaka yemera kwishyura ariko agasaba kumvikana na banki kandi Niyibizi agategukwa ko bafatanywa kwishyura umwenda cyane cyane ko bafatanije kuwaka no kuwukoresha ariko ubu bakaba baratandukanye. Me Gahungu Etienne waje kuburanira Mukamazimpaka mu rukiko yabajijwe niba hari icyo yongera ku myanzuro yakozwe na mugenzi, asubiza ko ntacyo uretse ko bifuza ko habaho ubwumvikane kuko ubushake bwo kwishyura burahari.

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- [4] Me Kampire Claudine uburanira UNGUKA BANK Ltd yavuze impamvu zitangwa na Mukamazimpaka ntashingiro zifite kuko yemera ko inguzanyo yahawe atashyuye, naho ibyago avuga yagize ngo ntibyashyingirwaho kuko atigeze yegera banki ngo babiganireho barebe ko yakoroherezwa kwishyura nk'uko abivugaga. Naho kuvuga ko inyungu zakurwaho nabyo ngo ntashingiro bifite kuko biri mu masezerano bagiranye. Ngo ibyo asaba by'ubwumvikane ntabwo yababwira kuko atigeze abisaba banki, kandi yaramuhaye inguzanyo ntiyishyura, amenyeshwa ko igiye kumurega aricecekeraga, ndetse no kurwego rwa mbere akaba ataritabye ntampamvu urubanza rukaburanyishyirwa adahari bigaragaza ko ntabwo ubushake nabwo bwo kwishyura afite. Naho kubijyanye na Niyonzima ngo kuba yaba yaratandukanye n'umugore we ntibimukuraho inshingano yari afite k'umwenda yishyiriyeho. [5] Urukiko rusanga ibivugwa mu bujurire bwa Mukamazimpaka bitahabwa agaciro ku mpamvu zikurikira: avuga ko atashyuye kubera ko yagize igihombo mu bucuruzi, apfusha umwana ndetse n'imodoka baguze igira impanuka, ariko ibyo avuga byose ntanakimwe atangira gihamba. Byongeye kandi niba n'ibyo bibazo byarabayeho, yagombaga kubiganira na UNGUKA BANK bakumvikana uburyo yakoroherezwa kwishyura, ariko n'umwunganira yemera ko atabisabye. Urukiko rero rukaba ntaho rwahera rutegeka ko impande zombi zumvikana kuko ubwumvikane bukorwa kubushake bw'abafatanyeho ikibazo ntabwo butegukwa n'urukiko mugihe rwo ruba rwashyikirijwe ikibazo ngo rugifatire umwanzuro kuko ubwumvikane buba bwanyanyirye. Ikindi kandi ibyo ni icyo ni ikibazo kitaburanyishyirwa ku rwego rwa mbere, ntabwo kigomba kuzanyirwa mu bujurire (art. 168 CPCCSA). [6] Ibindi yasabye byo gukuraho inyungu zisanzwe n'izubukererwe nabyo ntibyahabwa agaciro kuko impande zombi zazumvikanyeho mu masezerano, akaba atagaragaza niba zarabazwe nabi. Amasezerano rero akaba agomba kubahirizwa nkuko biteganywa n'ingingo ya 64 y'itegeko n° 45/2011 rigenga amasezerano. Naho gusaba ko Niyonzima yategukwa gufatanywa na Mukamazimpaka kwishyura umwenda kuko batandukanye, uru rukiko rusanga bitakwirirwa bisuzumwa kuko Niyonzima atigeze aregwa mu bujurire, bityo ntanicyemezo cyamufatirwa mu rubanza ataburanyirye, hakaba hagomba kugumaho icyemezo yafatiye ku rwego rwa mbere. Uretse nibyo kandi urukiko rusanga igikwiye gukurikizwa ari amasezerano bakoze

aho Niyonzima Yishingiye umwenda, akaba yaryozwa inshingano ze nk'umwishingizi. Niba baratandukanye nkuko abivuga, ubwo urukiko ruburanisha iby'ubutane ninarwo ruzagena uko bagabana umutungo ndetse n'imyenda bafite.

2. Kubijyanye n'indishyi zasabwe na UNGUKA BANK Ltd [7] Uhagarariye UNGUKA BANK Ltd yatanze ubujurire bwuririye k'ubundi asaba ko uwajuriye yategekwa gutanga 400.000 frw y'ikurikiranarubanza na 300.000 frw y'igihembo cy'avocat. [8] Uhagarariye Mukamazimpaka avuga ko izo ndishyi zitahabwa agaciro kuko byakongera ibibazo cyane cyane ko n'ubwishyu bw'umwenda bugishakishwa. [9] Urukiko rusanga kuba Mukamazimpaka yatanze iki kirego cy'ubujurire byaratumye banki yongera gushaka avocat wo kuyiburanira kandi agomba guhembwa. Izo indishyi z'ikurikiranarubanza no guhamba avocat yasabye, akwiye kuzihabwa hashingiwe ku ngingo ya 258 CCLIII ivuga ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". Urukiko rusanga ariko izo ndishyi zabarirwa hamwe maze

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gukurikirana urubanza no guhamba avocat bikagenerwa 300 000 fr, cyane cyane ko avocat uhabwa urubanza ari nawe urukurikirana akanaruburana kandi byombi abyishyurirwa hamwe. III. ICYEMEZO CY'URUKIKO [10] Rwemeje ko ubujurire bwa Mukamazimpaka ntashingiro bufite [11] Rwemeje ko urubanza rwajuririwe rudahindutse uretse indishyi z'igihembo cy'avocat kingana na 300 000 frw cyiyongereyeho mu bujurire. [12] Rutegetse ko urubanza rwaciwe kurwego rwa mbere rugumanye agaciro karwo rukaba rugomba kurangizwa uko rwaciwe. [13] Rutegetse Mukamazimpaka kwishyura UNGUKA BANK Ltd 300.000 frw y'ikurikiranarubanza no guhamba avocat mu bujurire akishyura n'amagarama y'urubanza angana na 8.800 frw.

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