

RWANDA / JUDGMENT

MURAYIRE v SINDIKUBWABO

RS/REV/INJUST/CIV 0029/16/CS

COURT

Supreme Court

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MURAYIRE v SINDIKUBWABO

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Text

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MURAYIRE v SINDIKUBWABO [Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV 0029/16/CS (Mugenzi, P.J, Nyirandabaruta na Gakwaya, J.) 01 Kamena 2018] Amategeko agena umuryango – Ubutane – Impamvu z'ubutane – Abashakanye bafitanye imibanire mibi – Ibyemezo bifatwa mu rwego rw'amategeko agenga umuryango, bigomba kuganisha ku mibanire myiza y'abashakanye, mu gihe bigaragara nta gushidikanya ko iyo mibanire itagishoboka kandi hari usaba ubutane, ubwo butane bugomba gutangwa kuko abashakanye batatsindagirwa kubana, mugihe bafitanye imibanire mibi. Incamake y'ikibazo: Murayire yatanze ikirego cy'ubutane mu Rukiko rw'Ibanze rwa Kacyiru arega Sindikubwabo ku mpamvu zuko amuhaza ku nkenke amukubita, amubwira ko atabyara kandi ko adatanga ibitunga urugo. Urukiko rwaciye urubanza rwemeza ko ikirego cye ntashingiro gifite kubera ko ntabimenyetso atanga bigaragaza ko umugabo we hari amakosa yamukoreye ahubwo ko ariwe wakoze amakosa yataye urugo akanarusahura ndetse akabyara numwana hanze. Murayire yajuririye Urukiko Rwisumbuye rwa Gasabo avuga ko Urukiko rw'Ibanze rwanze ku mutandukanya na Sindikubwabo, rukirengagiza ko yamuhaza ku nkeke amuhora ko atabyara. Urukiko rwaciye urubanza rwemeza ko ubujurire bwe ntashingiro bufite kuko nta mpamvu yemewe n'amategeko yirengagijwe cyangwa agaragaza, yatuma urubanza

rwajuririwe ruhinduka. Urega na none ntiyishimiye imikirize, yandikira Urwego rw'Umuvunyi asaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane. Urwo Rwego rwarabisuzumye rusanga harabaye akarengane kuko Urukiko rwanze gutanga ubutane, nyamara bararetse kubana hakaba hashize imyaka 3 no kugeza ubu bakaba batabana, ko kandi uru rubanza rudashobora kurangizwa ngo bategekwe kongera kubana, uko kudashobora kurangizwa k'urubanza akaba ari imwe mu mpamvu ituma urubanza rusubirwamo ku mpamvu z'akarengane. Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urubanza rusubirwamoo kumpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga nawe yemeza ko ruburanishwa mu Rukiko rw'Ikirenga. Murayire avuga ko akarengane gashingiye ku buryo Urukiko Rwisumbuye rwa Gasabo rwemeje ko ikirego cye nta shingiro gifite, rushingiye ku mpamvu zidafite aho zihuriye n'impamvu y'ubutane, rukemeza ko nta guhoza ku nkeke kwabayeho kuko Sindikubwabo yamwishyuriye n'imyenda kandi ibyo yarabyishyuye mu mutungo bafatanyije, ndetse akaba yari afite akazi katumaga agira ubushobozi buruta ubw'umugabo we. Avuga ko ikindi urwo Rukiko rwashingiyeho ari uko Sindikubwabo yahaye sebukwe inka, ariko bikaba ntaho bihuriye n'urukundo cyangwa ubwuzu (affection) bw'abashakanye kuko bitagaragaza ko umugore abayeho neza. Avuga kandi ko Urukiko rwategetse ko bakomeza kubana mu bitabo gusa kandi batabana ku mubiri ari byo by'agaciro, iyi ngingo akaba ari nayo yagarutsweho n'Urwego rw'Umuvunyi aho rwagaragaje ko urubanza rutarangizwa kuko badashobora kubana. Sindikubwabo avuga ko Urukiko rutatega Murayire kubana nawe atabishaka, ko niba atakimukunda rutabahambiranya, ko ariko Urukiko rusanze ari ngombwa ko batandukana rwamugenera indishyi. Avuga ko nta cyahindutse kugira ngo noneho yemere ubutane, ariko ko Murayire abitsimbarayeho abisaba kuko yamuzinutswe, ko rero abimwemereye. Incamake y'icyemezo: 1. Ibyemezo bifatwa mu rwego rw'amategeko agenga umuryango, bigomba kuganisha ku mibanire myiza y'abashakanye, mu gihe bigaragara nta gushidikanya ko iyo mibanire itagishoboka kandi hari usaba ubutane, ubwo butane bugomba gutangwa kuko abashakanye batatsindagirwa kubana, mugihe bafitanye imibanire mibi.

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Gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro kuri bimwe, Urukiko rwemeje ubutane bwashabwemo. Amategeko yashyimgiyeho: Itegeko no 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 242 Itegeko no 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 8 Itegeko no 15/2004 ryo ku wa 20/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 Nta manza zifashishijwe Nta nyandiko z'abahanga zifashishijwe: Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Kacyiru Murayire Marie Aimable arega Sindikubwabo Louis ashaka ubutane ku mpamvu yuko ngo amuhora ku nkeke amukubita, amubwira ko atabyara kandi akaba adatanga ibitunga urugo. [2] Urukiko rw'Ibanze rwa Kacyiru rwaciye urubanza RC 0770/11/TB/KCY ku wa 07/02/2013, rwemeza ko ikirego cya Murayire Marie Aimable nta shingiro gifite kubera ko nta kimenyetso atanga cy'uko umugabo we Sindikubwabo Louis hari amakosa yamukoreye cyangwa atakimukunda, ko ahubwo ariwe ugaragaraho amakosa yo kuva mu rugo amaze kurusahura nta n'umuturanyi yeretse ko hari ikibazo yagiranye

n’umugabo we, akaba kandi asaba ubutane ashingiye ku makosa ye yo kuba yarabyaye umwana hanze. [3] Murayire Marie Aimable yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Gasabo, avuga ko Urukiko rwanze kumutandukanya na Sindikubwabo Louis, rukemeza ko akimukunda kandi atari byo kuko atigeze aza no kumucyura mu gihe cy’imyaka itatu (3) amaze yarahukanye, rukaba rwaremeje ko yabyaye umwana hanze babyumvikanyeho kandi atari ko biri, ndetse rwirengagiza ko yamuhozaga ku nkeke amuhora ko atabyara. [4] Ku wa 21/06/2013, Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza RCA 0117/13/TGI/GSBO, rwemeza ko ubujurire bwa Murayire Marie Aimable nta shingiro bufite kuko nta mpamvu yemewe n’amategeko yirengagijwe cyangwa agaragaza, yatuma urubanza rwajuririwe ruhinduka. [5] Murayire Marie Aimable abonye yongeye gutsindwa, yandikiye Urwego rw’Umuvunyi asaba gusubirishamo urubanza RCA 0117/13/TGI/GSBO ku mpamvu z’akarengane. Urwo Rwego rwarabisuzumye rusanga harabaye akarengane kuko Urukiko rwanze gutanga ubutane, nyamara Murayire Marie Aimable n’umugabo we Sindikubwabo Louis bararetse kubana guhera mu mwaka wa 2010, bakaburana muri 2013 nabwo batabana no kugeza ubu bakaba batabana, ko kandi uru rubanza rudashobora kurangizwa ngo Murayire Marie Aimable na Sindikubwabo Louis bategekwe kongera kubana, uko kudashobora kurangizwa k’urubanza akaba ari imwe mu mpamvu ituma urubanza rusubirwamo ku mpamvu z’akarengane.

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- [6] Urwego rw’Umuvunyi rwandikiye Perezida w’Urukiko rw’Ikirenga ibaruwa numero OMB 03/1937/06.15/NLF ku wa 23/06/2015, rusaba ko urwo rubanza rusubirwamo ku mpamvu z’akarengane, nyuma yo gusuzuma raporo y’Ubugenzuzi Bukuru bw’Inkiko, Perezida w’Urukiko rw’Ikirenga yemeza ko dosiye ishyikirizwa Ubwanditsi bw’Urukiko kugira ngo urubanza ruburanishwe. [7] Iburanisha ryabereye mu ruhamwe ku wa 19/09/2017, Murayire Marie Aimable yunganiwe na Me Manirakiza Claude, naho Sindikubwabo Louis yunganiwe na Me Ndayambaje Iyamuremye Simon, nyuma rwimurirwa ku matariki atandukanye harimo iyo ku wa 18/10/2017 no ku wa 24/04/2018, ku mpamvu zo kugira ngo hashyirweho umuhanga wo kugena agaciro k’imitungo y’ababuranyi no kugira ngo ubwabo bagire icyo bavuga kuri raporo y’umuhanga. II.IBIBAZO BIRI MU RUBANZA N’ISESENGURWA RYABYO
1. Kumenya niba hari akarengane kagaragara mu rubanza RCA 0117/13/TGI/GSBO katewe no kudatanga ubutane [8] Murayire Marie Aimable na Me Manirakiza Claude umwunganira bavuga ko akarengane kari mu rubanza RCA 0117/13/TGI/GSBO gashingiye ku buryo Urukiko Rwisumbuye rwa Gasabo rwemeje ko ikirego cya Murayire Marie Aimable gisaba ubutane nta shingiro gifite, rushingiye ku mpamvu zidafite aho zihuriye n’impamvu y’ubutane, rukemeza ko nta guhoza ku nkeke kwabayeho kuko Sindikubwabo Louis yishyuriye Murayire Marie Aimable ishuri akamwishyurira imyenda kandi ibyo yarabyishyuye mu mutungo bafatanyije, ndetse Murayire Marie Aimable akaba yari afite akazi katumaga agira ubushobozi buruta ubw’umugabo we. Bavuga ko ikindi urwo Rukiko rwashingiyeho ari uko Sindikubwabo Louis yahaye sebukwe inka, ariko bikaba ntaho bihuriye n’urukundo cyangwa ubwuzu (affection) bw’abashakanye kuko bitagaragaza ko umugore abayeho neza. [9] Bavuga kandi ko Urukiko rwategetse ko abantu bakomeza kubana mu bitabo gusa kandi batabana

ku mubiri ari byo by'agaciro, iyi ngingo akaba ari nayo yagarutsweho n'Urwego rw'Umuvunyi aho rwagaragaje ko urubanza rutarangizwa kuko Murayire Marie Aimable na Sindikubwabo Louis badashobora kubana. [10] Bakomeza bavuga ko Urukiko Rwisumbuye rwa Gasabo rwirengagije ingingo ya 237 y'Itegeko N0 42/1988 ryo ku wa 27/10/1988 rishyiraho interuro y'Ibanze n'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, mu gace ka "C" na "F"; ko Sindikubwabo Louis yahozaga Murayire Marie Aimable ku nkeke amubwira ko aciye umuryango kugeza ubwo bagiye kwa muganga kwipimisha, atungurwa no kuba ahubwo Sindikubwabo Louis ari we ufite ikibazo gituma batabyara, akaba ari cyo cyamuteye ipfunwe bakomeza kunaniranwa kugeza ubwo Murayire Marie Aimable yahukanye ahungisha amagara ye mu mwaka wa 2010, ari nabyo byatumye atakariza umugabo we urukundo n'icyizere, ko Nyiraneza Daphrose na Mukansanga Rose Urukiko rwirengagije kubaza ari abatangabuhamya babyemeza, basaba uru Rukiko kwemeza ko impamvu z'ubutane zifite ishingiro, cyane ko mu nama ntegurarubanza Sindikubwabo Louis yavuze ko yemera ubutane, igisigaye akaba ari ukureba ibijyanye n'imitungo bafatanyije. [11] Sindikubwabo Louis avuga ko Urukiko rutatega Murayire Marie Aimable kubana nawe atabishaka, ko niba atakimukunda rutabahambiranya, ko ariko Urukiko rusanze ari ngombwa ko batandukana rwamugenera indishyi. Avuga ko nta cyahindutse kugira ngo noneho yemere ubutane, ariko ko Mura yire Marie Aimable abitsimbarayeho abisaba kuko yamuzinutswe, ko rero abimwemereye.

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- [12] Me Ndayambaje Simon, wunganira Sindikubwabo Louis, avuga ko ibyo Urukiko Rwisumbuye rwa Gasabo rwemeje rutibeshye kuko Murayire Marie Aimable atagaragaje ibimenyetso by'ibyo aregera nk'uko ingingo ya 9 y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibiteganyaga, kuko kuba Murayire Marie Aimable yarabyaye umwana hanze, umugabo akamwihanganira, bitakwitwa guhoza ku nkeke. UKO URUKIKO RUBIBONA [13] Ingingo ya 81, 1o na 3o z' Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganyaga ko « Urubanza rwaciye ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira:2° yo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese; 3° yo urubanza rudashobora kurangizwa,... ». [14] Ingingo ya 237 y'Itegeko N° 42/1988 ryo ku wa 27 /10/1988 rishyiraho interuro y'Ibanze n'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, ryakoreshwaga igihe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rwacibwaga, iteganyaga, ko umwe mu bashakanye ashobora gusaba ubutane, ku mpamvu zikurikira : « 1o ubusambanyi, 2o guta urugo nibura igihe cy' amezi cumi n'abiri (12) akurikiranye, 3o igihano cy'icyaha gisebeje, 4o kwanga gutanga ibitunga urugo, 5o guhoza ku nkeke, 6o ihohoterwa rishingiye ku gitsina, 7o kumara nibura imyaka ibiri (2) batabana ku bushake bwabo (séparation de fait), 8o kutabana mu gihe cy'amezi cumi n'abiri akurikirana uherye igihe habereye ishyingirwa nta mpamvu zifite ishingiro ». [15] Murayire Marie Aimable aburana mu Rukiko Rwisumbuye rwa Gasabo

mu mwaka wa 2013, yarugaragarije ko hashize imyaka itatu (3) yaravuye mu rugo rwe n'umugabo we Sindikubwabo Louis kuko yagiye mu mwaka wa 2010 ku mpamvu y'uko Sindikubwabo Louis yamuhozaga ku nkeke amubwira ko atabyara, no ku mpamvu yo kwanga gutanga ibitunga urugo, akanenga Urukiko rw'Ibanze rwa Kacyiru kuba rwaranze kubaha ubutane rushingiye ku mpamvu y'uko Sindikubwabo Louis avuga ko akimukunda kandi iyo myaka yose atarigeze ajya kumucyura, agaragaza ko nawe yamuzinutswe. Sindikubwabo Louis yireguye avuga ko ibyo umugore we avuga atari byo, ko ahubwo ari we wataye urugo kandi akagenda amusahuye. [16] Urwo Rukiko nyuma yo gusuzuma ukuri kw'imvugo y'ababuranyi bombi, rwagaragaje ko Murayire Marie Aimable ari we ufite amakosa yo kuba yarikuye mu rugo kandi akagenda arusahuye, nyuma akitangurana ajya kuvuga ko umugabo amuhohotera, kuba Sindikubwabo Louis yaramenyeshije Ubuyobozi bw'Akagari batuyemo ko Murayire Marie Aimable yavuye mu rugo arusahuye no kuba atarashoboye kuvuguruza imvugo ya Sindikubwabo Louis y'uko yamurihiye amashuri n'imyenda, runerekana ko atavuguruje umubano uri hagati ya Sindikubwabo Louis na se wa Murayire Marie Aimable, rubishingiraho rwemeza ko nta gihundutse ku rubanza RC 0770/11/TB/KACY rwabimye ubutane. [17] Urukiko rurasanga kuba Umucamanza yari amaze kwemeza ko Murayire Marie Aimable yataye urugo, n'ubwo Sindikubwabo Louis yagaragaje ko atifuzaga ubutane, nta cyamubuzaga (umucamanza) kubutanga, kandi yagaragarijwe imwe mu mpamvu ziteganywa n'amategeko ubwo butane bwashingiraho. [18] Ku bijyanye n'imibanire ya Sindikubwabo Louis n'umugore we Murayire Marie Aimable, dosiye y'urubanza igaragaza icyemezo cy'uwashyingiwe numero 006828 cyo ku wa 28/11/2012 cyemeza ko ku wa 11/09/2004, Sindikubwabo Louis na Murayire Marie Aimable bagiranye

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amasezerano y'ubushyingiranwe, yakorewe imbere y'Umunyamabanga Nshingwabikorwa w'Umurenge wa Kibungo, Nyarihama S. Philippe. Dosiye igaragaza kandi inyandiko yo ku wa 06/06/2011, Umunyamabanga Nshingwabikorwa w'Akagari k'Agateko yanditse yemeza ko Murayire Marie Aimable yagiye kumureba amubwira ko umugabo yamumenesheje, bigatuma yibuka ko umugabo we Sindikubwabo Louis yigeze kumugeraho amumenyesha ko yabuze umugore we kandi yagiye amusahuye, anavuga ko yishinganisha kubera ko isaha iyo ariyo yose abona uwo mugore we yamuhungabanyiriza umutekano. Hari kandi inyandiko yo ku wa 06/10/2010, Sindikubwabo Louis yandikiye Ubuyobozi bwa Polisi Station ya Gatsata yishinganisha, avuga ko umugore we atazi aho yagiye kandi yagiye amusahuye, akaba yishinganisha kuko yumva nta mutekano afite. [19] Urukiko rurasanga, nk'uko Urukiko Rwisumbuye rwa Gasabo rwabibonye, nta bimenyetso Murayire Marie Aimable agaragaza byo kuba yaratotejwe na Sindikubwabo Louis, ahubwo ariwe ugaragaraho kuba yarataye urugo kuko yaruvuyemo mu gihe kirenze amezi cumi n'abiri akurikiranye (guhera mu mwaka wa 2010 kugeza ubu) nta mpamvu agaragarije Ubuyobozi cyangwa Umuryango. [20] Urukiko rurasanga rero, n'ubwo Murayire Marie Aimable yifuzaga ko ubutane asaba bwatangwa ku makosa y'umugabo we Sindikubwabo Louis, bigaragarira Urukiko ko ahubwo ari we ubonekaho amakosa ateganywa mu mpamvu z'ubutane, ubwo butane bukaba bugomba gutangwa, ariko ku makosa ya Murayire

Marie Aimable. [21] Urukiko rurasanga, muri iyo myumvire y'Itegeko, ibyemezo bifatwa mu rwego rw'amategeko agenga umuryango, byagombye kuganisha ku mibanire myiza y'abashakanye, mu gihe rero byagaragara nta gushidikanya ko iyo mibanire itagishoboka kandi hari n'usaba ubutane, bikaba bitakumvikana ko batsindirwa kubana, mu buryo bw'imibanire mibi. [22] Urukiko rurasanga rero usibye ko ubu noneho Sindikubwabo Louis nawe yemera ko ubutane bwatangwa, rushingiye ku ngingo ya ingingo ya 214 y'Itegeko N0 32/2016 ryo ku wa 28/08/2016, rigenga abantu n'umuryango, iteganya ko ishyingirwa riseswa gusa kubera gutana burundu kw'abashyiranywe cyangwa kubera urupfu, no ku ngingo yaryo ya 218, iteganya ko « Buri wese mu bashyiranywe ashobora gusaba gutana burundu kubera imwe mu mpamvu zikurikira: 2o guta urugo nibura igihe cy'amezi cumi n'abiri (12) akurikiranye, no ku bisobanuro byose byagaragajwe haruguru, uru Rukiko rugomba kwemera ubutane bwashabwaga na MURAYIRE Marie Aimable, ariko ku makosa ye. 2. Kumenya imitungo Murebwayire Marie Aimable na Sindikubwabo Louis bafitanye n'uburyo bayigabana [23] Murayire Marie Aimable n'umwunganira basaba Urukiko ko nyuma yo kwemeza ubutane bwabo rwazemeza ko agabana na Sindikubwabo Louis imitungo yabo ku buryo bungana, akavuga ko iyo mitungo igizwe n'ibi bikurikira: 1o Ubutaka bwubatsheho inzu bubaruye kuri numero UPI 5/06/05/04/1566, buherereye mu Mudugudu w' Isangano, Akagari ka Karenge, Umurenge wa Kibungo, Akarere ka Ngoma, Intara y'Iburasirazuba; 2o Inzu y'ubucuruze iri ku butaka bubaruye kuri n0 UPI 2/08/10/04/1537, iherereye mu Kagari ka Nyarubuye, Umurenge wa Rugarika, Akarere ka Kamonyi, Intara y'Amajepfo; 3o Iduka ry'imiti n'ibiryo by'amatungo byari bifite agaciro ka 1.500.000 Frw, (nk'uko byemezwaga n'inyandiko yo ku wa 28/01/2012), ko mu gihe cy'imyaka itanu

- (5) ayo mafaranga abariwe inyungu kuri 18% ku mwaka mu gihe cy'imyaka itanu (5) ubu ageze kuri 16.200.000 Frw, ngo keretse Sindikubwabo Louis abashije kugaragaza ko hari igihombo yagize, ko ariko abaye atakigaragaje ayo mafaranga yagabanywamo kabiri. [24] Murayire Marie Aimable avuga ko amazu yavuzwe haruguru akodeshwa, imwe 15.000 Frw, indi 35.000 Frw buri kwezi, hakaba hashize imyaka itanu ayo mafaranga y'ubukode yose ahabwaga

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Sindikubwabo Louis ; inzu ya mbere ikaba yarinjije 900.000 Frw, naho iya kabiri yinjiza 2.100.000 Frw, ko rero yose uko ari 3.000.000 Frw bagomba kuyagabana ku buryo bungana. [25] Ku kibazo cy'inzu yo ku Rugarika, Sindikubwabo Louis avuga ko yahawe ingwate Urwego Opportunity Bank Ltd ku mwenda ungana na 5.057.273 Frw, Murayire Marie Aimable avuga ko uwo mwenda atawuzi, ko wahererezwa kuri Sindikubwabo Louis wenyine. Naho ku byerekeye amafaranga y'ubukode bw'inzu ya kabiri (2) y'i Kibungo, avuga ko mu mwaka wa 2009 aribwo Banki yabahaye umwenda ungana na 3.000.000 Frw, akaba yaravuye mu rugo mu mwaka wa 2010, hasigaye 800.000 Frw atarishyurwa, ariko atibuka ayo bishyuraga buri kwezi. [26] Murayire Marie Aimable avuga kandi ko habaye hari imisoro itishyuye yahererezwa kuri Sindikubwabo Louis, kuko ariwe wasigaye afata amafaranga y'ubukode bw'amazu muri iyo myaka yose, naho ku gihembo cy'umuhanga avuga ko kingana na 70.000 Frw, bakaba bagomba kuyagabana na Sindikubwabo Louis, buri wese agatanga 35.000 Frw, ariko kuko Murayire Marie Aimable yahaye umuhanga 50.000 Frw, asaba ko Sindikubwabo Louis yategekwe gutanga 20.000 Frw azavamo 5.000 Frw

y'umuhanga na 15.000 Frw azasubizwa Murayire Marie Aimable. [27] Sindikubwabo Louis n'umwunganira bavuga ko ku byerekeye umutungo utimukanwa ubaruye kuri n0 UPI 5/06/05/04/1566 uri i Ngoma mu Mudugudu w'Isangano, Akagari ka Karengye, Umurenge wa Kibungo, Akarere ka Ngoma, Intara y'Iburasirazuba, nyuma yo kugena agaciro nyakuri k'uwo mutungo hagabanwa ku buryo bungana, ahafite agaciro kanini umwe agasubiza undi ikinyuranyo kubera ko ubu SINDIKUBWABO Louis nta kazi afite, akaba akeneye inzu yo kubamo. [28] Ku byerekeye inzu yo ku Rugarika, Sindikubwabo Louis n'umwunganira bavuga ko iyi nzu iri mu bugwate yahaye Urwego Opportunity Bank Ltd ku mwenda ungana na 5.057.273 Frw, n'icyangombwa cy'iyi nzu kikaba gifitwe n'iyi Banki, Sindikubwabo Louis akaba yifuza ko uyu mwenda washyirwa mu bizagabanwa hashingiwe ku ngingo ya 7 y'itegeko n032/2016 ryo ku wa 28/08/2016 rigena imicungire y'imitungo y'abashyingiranwe, kandi ko iyi nzu yo ku Rugarika atayisangiye na Murayire Marie Aimable kuko ari iy'umuryango. [29] Ku bijyanye n'iduka rigizwe n'imiti n'ibyo kurya by'amatungo, Sindikubwabo Louis n'umwunganira bavuga ko mbere ryari rifite agaciro kangana na 1.485.200 Frw, mu mwaka wa 2010, Murayire Marie Aimable agenda arisahuye, inyandiko yo ku wa 28/01/2012 ikaba nta gaciro yahabwa kuko Murayire Marie Aimable yagarutse azanye n'Abayobozi b'inzego z'ibanze bakamusaba ko yemera ko agaruka agasubiza ibintu mu iduka, akabikorera inyandiko atazi ko ari amayeri Murayire Marie Aimable akoresha ngo abone inyandiko azajyana mu Rukiko. [30] Ku bijyanye n'amafaranga y'ubukode bw'inzu, Sindikubwabo Louis avuga ko amafaranga y'ubwo bucode bayabonye guhera mu mwaka wa 2008 kugeza mu mwaka wa 2010, icyo gihe bakaba barabanaga na Murayire Marie Aimable, kandi ko yayakoresheje amwishyurira (yishyurira Murayire) Université i Kibungo, kuva icyo gihe akaba nta wigeze azikodesha, usibye murumuna we waharongoreye, akaba nta mafaranga y'ubukode yigeze amuha usibye 90.000 Frw yakoresheje ahasana, ko ahaba nk'ucunga ayo mazu atahaba nk'ukodesha; inzu ya kabiri, avuga ko nayo hari undi murumuna we wo kwa se wabo wayicunguye Banki igiye kuyigurisha, wabishyuriye umwenda ungana na 1.500.000 Frw, kandi ko n'ubwo Murayire Marie Aimable abyirengagiza, iby'uwo mwenda bari barabyumvikanyeho, asoza avuga ko bemeranyaga na Murayire Marie Aimable ku byerekeye igihembo cy'umuhanga. [31] Ku wa 15/02/2018, Ir. Sebakwiye Théophile, washyizweho n'Urukiko ku wa 18/10/2017, yarushyikirije raporo zigaragaza agaciro k'imitungo ya Sindikubwabo Louis na Murayire Marie Aimable, yerekana ko ikibanza no UPI 2/08/10/04/1537, kiri mu Mudugudu wa Samuduha, Akagari

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ka Nyarubuye, Umurenge wa Rugarika, Akarere ka Kamonyi, Intara y'Amajyepfo, gifite agaciro kangana na 1.106.998 Frw (igihe nyiracyo yaba yigurishirije) n'agaciro katajya muni ya 774.898 Frw (ibaye igurishijwe mu cyamunara). Naho ikibanza no UPI 5/06/05/04/1566 kiri mu Mudugudu w'Isango, Akagari ka Karengye, Umurenge wa Kibungo, Akarere ka Ngoma, Intara y'Iburasirazuba, gifite agaciro ka 10.314.344 Frw (igihe nyiracyo yaba yigurishirije) n'agaciro katajya muni ya 7.220.040 Frw (kibaye kigurishijwe mu cyamunara). [32] Kuri raporo z'umuhanga, mu iburanisha ryo ku wa 24/04/2018, Murayire Marie Aimable yavuze ko ibyo umuhanga yakoze nta kibazo abifiteho, naho Sindikubwabo Louis avuga ko agaciro kagenwe ku nzu zo mu Murenge wa Kibungo atakemera, ko amafoto umuhanga yafashe ku itariki ya

15/04/2018, atagaragaza ibyumba bitatu by'inzu yo haruguru n'icyumba kimwe cy'inzu yo hepfo byaguye nyuma y'aho umuhanga afatiye amafoto, ko we asanga agaciro izo nzu zifite ubu ari 700.000 Frw. Ku bijyanye n'izo nzu, n'ubwo Murayire Marie Aimable atemeranya na Sindikubwabo Louis ku gaciro aziha, nawe yemera ko nyuma y'aho umuhanga akoreye raporo y'uwo mutungo, hari ahasenyutse kubera ibiza byagaragaye mu Gihugu muri iyo minsi. [33] Umuhanga Ir. Sebakwiye Théophile yasobanuriye Urukiko ko amafoto Sindikubwabo Louis yerekana hashize icyumweru kimwe gusa ayafashe, mu gihe aye yayafashe mbere, ku itariki ya 08/02/2018, ko rero ntacyo yirengagije, ariko ko ashingiye ku buryo bwo kugena agaciro, asanga n'ubwo hari aho izo nzu zasenyutse, zishobora gusanwa kuko ari ibiti byaguye, akaba asanga imirimo yo gusana ikozwe neza bitari nk'uko byari bimezemere, itarenza 1.500.000 Frw. UKO URUKIKO RUBIBONA [34] Ingingo ya 242 y'Itegeko no 32/2016 ryo ku wa 28/08/2016 ryavuzwe haruguru iteganya ko « Ubutane busesa ishyingirwa n'amasezerano agenga imicungire y'umutungo w'abashyingiranywe. Igabana ry'umutungo rikorwa hakurikijwe amategeko abigenga ». Naho ingingo ya 8, igika cya mbere, y'Itegeko no 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko "Iyo uburyo bw'ivangamutungo rusange busheshwe ku mpamvu z'ubutane cyangwa guhindura uburyo bw'imicungire y'umutungo, abari barashyingiranywe kuvanga umutungo bagabana ku buryo bungana cyangwa mu bundi buryo bumvikanyeho imitungo n'imyenda. Icyakora, Urukiko rushobora gutegeka ko agaciro k'ibyangijwe n'umwe mu bashyingiranywe gakurwa mu mugabane we ». [35] Dosiye y'urubanza igaragaza amasezerano y'ubukode burambye numero 1566/NGO/KIB yo ku wa 12/05/2012, y'ubutaka bubaruye kuri no UPI 5/06/04/1566, Urwego rw'Umubitsi w'Impapurompamo z'Ubutaka yagiranye na Sindikubwabo Louis na Murayire Marie Aimable, buherereye mu Ntara y'Iburasirazuba, Akarere ka Ngoma, Umurenge wa Kibungo, Akagari ka Kibungo, Umudugudu w'Isango, amazu yubatse kuri ubwo butaka hamwe n'ikibanza, umuhanga akaba yarabihaye agaciro ka 10.314.344 Frw (igihe nyirabyo yaba yigurishirije) n'agaciro katajya muni ya 7.220.040 Frw (igihe byagurisha mu cyamunara). Dosiye y'urubanza igaragaza kandi ko hari andi masezerano urwo Rwego rwagiranye na Sindikubwabo Louis wenyine, ku butaka bubaruye kuri no UPI 2/08/10/04/1537, buherereye mu Kagari ka Nyarubuye, Umurenge wa Rugarika, Akarere ka Kamonyi, Intara y'Amajyepfo, bwubatsemo inzu, nabwo umuhanga akaba yarabuhaye agaciro ka 1.106.998 Frw (igihe nyiracyo yaba yigurishirije) n'agaciro katajya muni ya 774.898 Frw (ibaye igurishijwe mu cyamunara). [36] Ku byerekeye ubukode bw'izo nzu, dosiye y'urubanza igaragaza inyandiko yo ku wa 25/05/2017, yanditswe na Kamanzi Norbet, byemezwa n'Umuyobozi w'Umudugudu w'Isangano, yemeza ko guhera ku wa 19/11/2016 kugeza ubu akodesha inzu ya Sindikubwabo Louis na Murayire

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Marie Aimable iri muri uwo Mudugudu, kandi yishyura 15.000 Frw buri kwezi. Hari kandi inyandiko y'ubuyobozi bwa EAR Paruwasi ya Musamvu yahoze yitwa (paruwasi ya Kibungo kugeza 2010), bwanditse bwemeza ko bwakodesheje inzu ya Sindikubwabo Louis guhera mu kwezi kwa gatanu (5) 2008 kugeza mu kwezi kwa gatandatu (6) 2011, yasinyweho na Mwalimu Niyotwizera Eliezer, na Pasotori wa EAR Musamvu, Rév. Mazimpaka Daniel. Iyo nyandiko iri

kumwe n'indi, aho Sindikubwabo Louis yemeje ko akodesheje inzu ye EAR Paruwasi ya Kibungo kuri 35.000 Frw buri kwezi, yerekana amafaranga ahawe n'asigaye ku mafaranga y'amezi atandatu n'igihe azishyurirwa, n'uburyo imirimo y'isanwa izakorwa n'uko izishyurwa; n'indi nyandiko yo muri Mutarama 2009, yerekana ko Sindikubwabo Louis akodesheje EAR Paruwasi ya Kibungo, inzu ye iri mu Mudugudu w'Isangano, Akagari ka Karengye, guhera ku wa 01/12/2008 kugeza ku wa 28/02/2009, kandi ko yishyuye 105.000 Frw ako kanya. [37] Ku byerekeye iduka rivugwa muri uru rubanza, dosiye y'urubanza igaragaza inyandiko yo ku wa 28/01/2012, yashyizweho umukono na Sindikubwabo Louis, Murayire Marie Aimable na Komite Nyobozi y'Umudugudu w'Akimihigo, Akagari ka Gateko, Umurenge wa Jali, aho Sindikubwabo Louis yanditse agira ati : « Njyewe Sindikubwabo Louis, ndemera ko mfite iduka mu Mudugudu w'Akimihigo ricuruza imiti n'ibyo kurya by'amatungo, rifite agaciro ka miliyoni imwe n'igice (1.500.000 Frw). Hakabaho numero y'ipatante ya 2011 yanditseho amazina y'umudamu Murayire Marie Aimable ». Hari kandi inyandiko zinyuranye, yitwa « situation de versement période du 10/12/2009-02/11 n'iyi ku wa 28/1/2008 yitwa « rapport de versement », na « situation de vente du 20/07/2010 n'iyi ku wa 08/10/2010, ndetse n'inyemezabwishyu zinyuranye, zose zitariho umukono w'uwasikozwe cyangwa abahawe amafaranga. [38] Dosiye y'urubanza igaragaza kandi nanone inyandiko zinyuranye zerekana amafaranga y'ishuri yishyuriwe Murayire Marie Aimable, n'izindi zigaragaza imirimo inyuranye Murayire Marie Aimable yakoze guhera mu mwaka wa 2002 kugeza mu mwaka wa 2012. [39] Urukiko rurasanga imitungo itimukanwa Sindikubwabo Louis na Murayire Marie Aimable bagomba kugabana, ari iyavuzwe mu gika cya [35] cy'uru rubanza, ibaruwe kuri no UPI 5/06/04/1566 no kuri no UPI 2/08/04/1537, iyo mitungo ikaba igomba kugurishwa amafaranga avuyemo bakayagabana ku buryo bungana nk'uko ingingo ya 8, igika cya mbere, y'Itegeko no 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru ibiteganywa. [40] Rurasanga ibyo Sindikubwabo Louis asaba ko yahabwa inzu ifite agaciro kanini mu mazu ari mu kibanza no UPI 5/06/04/1566, gihereye mu Ntara y'Iburasirazuba, Akarere ka Ngoma, Umurenge wa Kibungo, Akagari ka Kibungo, Umudugudu w'Isango, byaba ngombwa akishyura Murayire Marie Aimable ikinyuranyo cy'amafaranga agomba guhabwa bagabanye ku buryo bungana, kubera ko akeneye inzu yo kubamo, nta shingiro byahabwa, ku mpamvu y'uko iyo nzu yifuza, nk'uko raporo y'umuhanga Ir. Sebakwiye Théophile ibyerekanaga, ariyo ifite agaciro kagaragara, ku buryo kubagabanywa mu buryo yifuza haba habuze ugushyira mu gaciro. Ikindi kandi, iyo nzu iri mu kibanza kimwe n'indi zibaruwe hamwe, bikaba bishobora gukurura izindi mpaka mu gihe umwe muri bo yaba atemeye korohereza mugenzi we, Urukiko rukaba rudashobora gufata icyemezo, ubwarwo rubona ko gishobora guteza impaka, bityo amazu yose yo muri icyo kibanza akaba agomba kugurishwa, bakagabana ku buryo bungana. [41] Rurasanga ibyo Sindikubwabo Louis avuga ko inzu yo mu kibanza no UPI 2/08/04/1537 mu Kagari ka Nyarubuye, Umurenge wa Rugarika, Akarere ka Kamonyi, Intara y'Amajepfo, atari iye ahubwo ari iy'umuryango wabo akomokamo atari byo, kuko iyo nzu ari we ibaruyeho, ari nayo mpamvu yayitanzeho ingwate mu Urwego Opportunity Bank Ltd, ikaba igomba kubarwa mu mutungo rusange w'umuryango we na Murayire Marie Aimable, nayo ikagurishwa bakagabana ku buryo bungana.

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[42] Ku bijyanye n'umwenda wa 5.000.000 Frw Sindikubwabo Louis yatsindiwe mu rubanza yaburanye na Urwego Oppotunity Bank Ltd, Urukiko rurasanga Murayire Marie Aimable ari ntaho ahuriye nawo kuko avuga ko atawuzi atawusinyiye ari nayo mpamvu atari mu bawurezwe, kandi Sindikubwabo Louis uvuga ko bagomba gufatanya kuwishyura akaba atarashoboye kugaragaza ko yawufashe babyumvikanyeho, akaba rero igihe cy'igabana uwo mwenda ugomba guhererezwa kuri Sindikubwabo Louis wenyine. [43] Ku byerekeye amafaranga y'ubukode bw'amazu y'i Kibungo mu Karere ka Ngoma, Intara y'Iburasirazuba, Urukiko rurasanga ibimenyetso byose Murayire Marie Aimable yashyikirije uru Rukiko agamije kurugaragariza ko ayo mazu akodeshwa, nk'uko byagaragajwe haruguru, usibye inyandiko imwe gusa yerekana inzu yakodeshwaga 15.000 Frw buri kwezi guhera muri Gicurasi 2016 kugeza muri Gicurasi 2017, izindi zose ari izigaragaza ubukode bwakirwaga mu myaka ya 2008 - 2010, igihe yari akibana na Sindikubwabo Louis, akaba nta kimenyetso na kimwe yatanze kigaragaza umusaruro nyakuri waba waraturutse muri ubwo bukode. [44] Kuba rero Sindikubwabo Louis wasigaranye ayo mazu avuga ko nta faranga ry'ubukode yongeye kubona, ko abari mu mazu ye batayakodesha, rurasanga Murayire Marie Aimable uvuga ko hari ubukode bwatanzwe ariwe ugomba kubitangira ibimenyetso, hashingiwe ku ngingo ya 3 y'Itegeko no 15/2004 ryo ku wa 20/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko « urega agomba kugaragaza ibimenyetso by'ibyo aregera yabibura agatsindwa », bigaragariza Urukiko umusaruro nyakuri wavuye muri ubwo bukode. Urukiko rurasanga kandi kuba Murayire Marie Aimable yemera ko hari umwenda wa 3.000.000 Frw Banki yari yarabahaye, akavuga ko ubwo yavaga mu rugo bari batararangiza kuwishyura kuko hari hasigaye umwenda utishyuye ugera kuri 800.000 Frw kandi akaba atagaragaza uko wishyuwe nyuma y'aho agendeye, ntaho yagera ahakana imvugo ya Sindikubwabo Louis, uvuga ko hari murumuna we uba mu nzu atishyura kubera ko yacunguye umwenda wa 1,500.000 Frw yabishyuriye. [45] Urukiko rurasanga kandi Murayire Marie Aimable wataye urugo akigendera, atagaragaza imirimo nawe ubwe yakoze kuva 2010 kugeza ubu, ngo anagaragaze uruhare umugabo we Sindikubwabo Louis yaba yarabonye kubyo yaronse muri icyo gihe, ndetse akaba atanerekana ibindi bikorwa umugabo we yaba yarakoresheje imitungo yabo byaba byaravuyemo umusaruro ugaragara, akaba rero adakwiriye gukurikirana amafaranga make umugabo yaba yarabonye mu bukode by'ayo nzu, kuko atagaragaza umusaruro yabyaye arenze ibyatunga umuntu. Bityo rero amafaranga avuga y'ubukode bw'inzu bagabana akaba ari ntayo. [46] Urukiko rurasanga ku bijyanye n'amafaranga y'iduka, Sindikubwabo Louis yaremeye mu nyandiko yavuzwe haruguru yo ku wa 28/01/2012, ko afite iduka rifite agaciro ka 1.500. 000 Frw, ryanditse kuri MURAYIRE Marie Aimable, ibyo uyu munsu avuga ko ntaryo ngo kubera ko Murayire Marie Aimable yagiye arisahuye mu mwaka wa 2010 bikaba nta shingiro bifite. Rurasanga ariko kuba nta genzura ryigeze rikorwa ngo hamenyekane niba iryo duka ryarungutse cyangwa ryarahombye, hatashingirwa gusa ku mvugo ya Murayire Marie Aimable uvuga ko ayo mafaranga yungutse ubu akaba ageze kuri 16.200.000 Frw atagaragaza uburyo yungutse, bityo bakaba bagomba kugabana 1.500. 000 Frw Sindikubwabo Louis yemeye ko afite. [47]

Urukiko rurasanga nta misoro itarishyuwe yagaragajwe muri uru rubanza, ariko mu gihe byazagaragara ko hari ihari, ikaba yazakurikiranwa hakurikijwe uko amategeko abiteganywa. [48] Rusanga kandi Sindikubwabo Louis agomba kwishyura 20.000 Frw nk'uko nawe abiyemerera, azakurwamo 5.000 Frw yasigaye ku yagombaga guhabwa umuhanga Ir. Sebakwiye Théophile akayahabwa, na 15.000 Frw agomba gusubizwa Murayire Marie Aimable kuko yatanze arenze ayo yagombaga gutanga.

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3. Ku bijyanye n'indishyi zasabwe mu rubanza [49] Me Ndayambaje Simon wunganira Sindikubwabo Louis, avuga ko basaba indishyi nk'uko zikubiye mu mwanzuro wabo, izo ndishyi zikaba zirimo igihembo cya Avoka ku nzego eshatu zihwanye na 2.000.000 Frw (500.000 Frw ku rwego rwa mbere, 500.000 Frw ku rwego rwa kabiri na 1.000.000 Frw mu Rukiko rw'Ikirenga), 3.000.000 Frw y'indishyi z'akababaro yatewe nk'uko Murayire Marie Aimable yamutaye kandi yari akeneye ko bakomeza kubana, yose hamwe akaba 5.000.000 Frw. [50] Murayire Marie Aimable n'umwunganira bavuga ko nta ndishyi zikwiye muri uru rubanza kuko ababurana bombi ari uburenganzira bwabo bwo gusaba kugabana ibyo bashakanye. UKO URUKIKO RUBIBONA [51] Urukiko rurasanga Murayire Marie Aimable na Sindikubwabo Louis, bose bemera ko bakwiye gutana. Kuba rero buri wese afite uburenganzira bwo gukurikirana uruhare rwe ku mitungo bashakanye, Urukiko rurasanga ntawe ukwiye guha undi indishyi muri uru rubanza. III. ICYEMEZO CY'URUKIKO [52] Rwemeje ko ikirego cyatanze na Murayire Marie Aimable gisaba gusubirishamo urubanza RCA 0117/13/TGI/GSBO ku mpamvu z'akarengane gifite ishingiro kuri bimwe ; [53] Rwemeje ubutane hagati ya Murayire Marie Aimable na Sindikubwabo Louis, amasezerano y'ubushyingiranwe bagiranye kuwa 11/09/2004 asheshwe ; [54] Rutegetse ko imitungo itimukanwa ya Sindikubwabo Louis na Murayire Marie Aimable iri mu kibanza no UPI 5/06/04/1566, gihereye mu Ntara y'Iburasirazuba, Akarere ka Ngoma, Umurenge wa Kibungo, Akagari ka Kibungo, Umudugudu w'Isango, no mu kibanza no UPI 2/08/04/1537 gihereye mu Kagari ka Nyarubuye, Umurenge wa Rugarika, Akarere ka Kamonyi, Intara y'Amajyepfo, igurishwa bakagabana ku buryo bungana amafaranga y'ikiguzi cyayo ; [55] Rutegetse Sindikubwabo Louis kugarura mu mutungo ugomba kugabanwa 1.500.000 Frw y'iduka ryabo, bakayagabana na Murayire Marie Aimable ku buryo bungana ; [56] Rutegetse ko Sindikubwabo Louis ahererewaho wenyine 5.000.000 Frw y'umwenda afitiye Urwego Opportunity Bank Ltd ; [57] Rumutegetse kwishyura 20.000 Frw, azavanwaho 5.000 Frw agomba guhabwa Ir. Sebakwiye Théophile, na 15.000 Frw azasubizwa Murayire Marie Aimable ; [58] Ruvuze ko nta ndishyi zigenwe kubera impamvu zasobanuwe ; [59] Rutegetse ko ababuranyi bombi bafatanyaga kwishyura amagarama y'urubanza angana na 100.000 Frw ; [60] Rutegetse ko imikirize y'uru rubanza imenyeshwa umwanditsi w'irangamimerere, nk'uko biteganywa mu ngingo ya 239 y'Itegeko no 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango.

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