

RWANDA / JUDGMENT

ndamage v higiرو

RC00003/2022/CA

COURT

Court of Appeal

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Text

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NDAMANGE V HIGIRO [Rwanda URUKIKO RW'UBUJURIRE – RC00003/2022/CA (Munyangeri, P.J.) 16 Kamena 2023] Amategeko agenga imiburanishirize y'imanza – Imanza zivuguruzanya – Imanza zivuguruzanya n'imanza zitagishoboye kujuririrwa kandi ibyemezo byafashwe bikaba bidashobora kurangizwa icyarimwe hatabayeho kuvuguruzanya (décisions inconciliables). Incamake y'ikibazo: Uru rubanza rwatangiye Higiرو arega Ndamage mu Rukiko Rwisumbuye rwa Ngoma asaba Urukiko kumutegeka kumuvira mu nzu no kumuha indishyi zitandukanye kuko yamutije iyo nzu iri mu kibanza n° 358, giherereye mu Murenge wa Kibungo, Akarere ka Ngoma, kuko yari muramu we, ariko akaba atakibana na mushiki we. Ndamage avuga ko inzu Higiرو amurega itari mu kibanza n° 358, ahubwo iri mu kibanza n° 814 kandi ko ari iye. Asobanura ko icyo Higiرو yamuhaye ari ikibanza gusa, yitubakira inzu, ayituramo imyaka igera ku icumi (10) nyuma arayikodesha. Asaba ko Higiرو agaragaza amasezerano bagiranye yo kubatiza inzu. Nawe indishyi zitandukanye. Urukiko mu rubanza RC0157/12/TGI/NGOMA rwemeje ko inzu iburanwa yubatswe mu kibanza n° 814 kiri mu Mudugudu w'Amahoro, Akagari ka Karengwe, Umurenge wa Kibungo, Akarere ka Ngoma, atari iya Higiرو Prosper, ahubwo ari iya Ndamage, rutegeka Higiرو guha Ndamage indishyi zitandukanye. Higiرو yajuririye icyo cyemezo mu Rukiko Rukuru,

Urugereko rwa Rwamagana, avuga ko Urukiko Rwisumbuye rwa Ngoma rwirengagije ibimenyetso yarugaragarije bigizwe n'urubanza RC0095/10/TB/KGB, Ndamage yaburanye na Nyirabahire ubutane bwa burundu, aho umutungo uburanwa utigeze ushyirwa mu mutungo ugabanwa, n'ibindi bimenyetso bigaragaza ko Ndamage atagaragaza inkomoko y'umutungo yita uwe. Urukiko mu rubanza RCA0052/14/HC/RWG rwemeje ko ubujurire bwa Higiro Prosper nta shingiro bufite, rumutegeka guha Ndamage indishyi zitandukanye. Urukiko mu rubanza RP0352/16/TGI/NGOMA rwemeje ko ikirego cy'Ubushinjacyaha nta shingiro gifite, ko n'ikirego cy'indishyi nta shingiro gifite, rwemeza ko Ndamage adahamwa n'icyaha cyo kwihesha ibyangombwa ku bw'uburiganya. Higiro uregera indishyi yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko urukiko rubanza rwirengagije ibimenyetso yarushyikirije, ko Ndamage atagaragaje inkomoko y'umutungo uburanwa, nyamara urukiko rumuhanaguraho icyaha, kuba rwarirengagije inyandiko zatanze n'Ikigo cy'Igihugu Gishinzwe Ubutaka, no kuba rwarashingiye ku makuru yatanze n'umukuru w'Umudugudu, rwirengagije ko yanditse ibyo Ndamage yamubwiye. Ku ruhande rw'Ubushinjacyaha bwakomeje gushimangira ko Ndamage yihesheje icyangombwa cy'ubutaka butari ubwe, ko kuba atagaragaza ikimenyetso cy'aho akomora ubutaka buvugwa mu rubanza, ahamwa n'icyaha cyo kwihesha ibyangombwa ku bw'uburiganya, akaba agomba guhanishwa igihano yasabiwe mu rwego rwa mbere.

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Ndamage yavuze ko inzu atuyemo ari iye kuko Higiro yayiburanye mu manza z'imbonezamubano aratsindwa, akaba adakwiye kongera kuyiburana mu rubanza rw'inshinjabyaha, kandi ko n'ibirebana no kuba atarigeze agaragaza inkomoko y'umutungo uburanwa, nta shingiro bifite, kuko na byo byaburanyweho mu manza z'imbonezamubano, aho yatanze ibimenyetso bihagije bigaragaza ko inzu yaburanwaga ari iye. Mu rubanza RPA00049/2017/HC/RWG, Urukiko rwemeje ko ubujurire bwa Higiro uhagarariwe na Kabagwira bufite ishingiro kuri bimwe, rwemeza ko Ndamage ahamwa n'icyaha cyo kwihesha ku bw'uburiganya inyandiko zitangwa n'inzego zabigenewe, rumuhanisha igifungo cy'imyaka ibiri (2) isubitswe mu gihe cy'imyaka ibiri rumuca n'ihazabu. Nyuma yizi manza Ndamage yatanze ikirego mu Rukiko rw'Ubujurire, arusaba gukemura ikibazo cy'imanza zivuguruzanya RCA0052/14/HC/RWG na RPA00049/2017/HC/RWG zabaye itegeko. Urukiko rwabanje gusuzuma inzitizi yazamuwe n'uruhande rwa Higiro bavuga ko mbere yuko urubanza ruburanishwa mu mizi hagobokeshwa ku gahato Munyampeta kuko ariwe waguze na Ndamage umutungo uburanwa. Ndamage avuga ko uru rubanza ruramutse rwemeje ko umutungo ari uwa Higiro, uwufite ubu yaza kurutambamira bibaye bishoboka, ariko ko atagobokeshwa ku gahato muri uru Rukiko kubera ko amategeko atabyemera. Urukiko rw'Ubujurire mu rubanza RC00003/2022/CA rwanze kwemera ukugobokeshwa ku gahato Munyampeta muri uru rubanza kuko binyuranyije n'amategeko. Avuga kandi ko Higiro yashatse umuhesha w'inkiko wo kumuhesha ikibanza avuga ko yatsindiye mu rubanza nshinjabyaha, ariko ngo ntibyashoboka kuko yasabwe kugaragaza igika cy'urubanza ashingiraho aha Higiro uwo mutungo arakibura, yanzura ko urwo rubanza rudashobora kurangizwa. Abahagarariye Higiro basobanura ko urubanza nshinjabyaha rwaje rugaragaza ko ibyashingiweho mu rubanza mbonezamubano ari ibihimbano, kandi ko rutavuze ko inzu ari iya Higiro, ko ariko mu buryo

buri rusange nta vuguruzanya riri hagati y'imanza zombi, basaba ko uru Rukiko ko rwatanga umurongo mugari, rugasobanura urubanza rugomba kurangizwa, ko mu rwego rwo kugira ngo urubanza nshinjabyaha ruzarangizwe nta nkomyi, rwatanga umurongo usobanura ko urubanza nshinjabyaha rwavanyeho urubanza mbonezamubano, uwo bahagarariye agahabwa umutungo yari yarambuwe n'urubanza mbonezamubano. Urukiko rwemeje ko, hashingiwe ku bikubiye mu cyemezo cy'Urukiko mu rubanza RCA0052/14/HC/RWG ndetse n'ibikubiye mu cyemezo cy'Urukiko mu rubanza RPA00049/2017/HC/RWG, nta na hamwe ibyemezo bikubiye muri izo manza zombi bishobora kugonganira mu gihe cy'ishyirwa mu bikorwa ryabyo. Incamake y'icyemezo: 1. Imanza zivuguruzanya ari imanza zitagishoboye kujuririrwa kandi ibyemezo byafashwe bikaba bidashobora kurangizwa icyarimwe hatabayeho kuvuguruzanya (décisions inconciliables)..

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2.Indishyi zishingiye ku rubanza rwabaye Itegeko zisabwa mu rubanza rusuzuma ikirego cy'imanza zivuguruzanya ntizitangwa. 3.Indishyi zikurikiranarubanza n'igihembo cya Avoka ntizitangwa iyo imbande zombi ziburana zifite ibyo zitsindiwe. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 116, Imanza zifashishijwe: RS/SPEC/0002/13/CS rwaciwe ku wa 14/07/2017 n'Urukiko rw'Ikirenga, RCOM 00001/2016/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/07/2020, Urubanza hagati ya sosiyete Diétal na Madame X, rwaciwe n'Urukiko rusesa imanza mu Bufaransa. Urubanza I. IMITERERE Y'URUBANZA [1] Higirowo Prosper avugako yagiranye na Leta y'u Rwanda ihagarariye na Minitrape amasezerano y'ubukode burambye bw'ubutaka buri mu kibanza n° 358, gihereye mu Murenge wa Kibungo, Akarere ka Ngoma, acyubakamo inzu, ayitiza mushiki we witwaga Nyirabahire Consolée wari warashakanye na Ndamage Anthère baje gutandukana mu mwaka wa 2010, asabye Ndamage Anthère kumuvira mu nzu arabyanga, amurega mu Rukiko Rwisumbuye rwa Ngoma mu rubanza RC0157/12/TGI/NGOMA, asaba gusubizwa inzu ye, indishyi z'akababaro n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na 1.500.000Frw. [2] Ndamage Anthère avugako inzu Higirowo Prosper amurega itari mu kibanza n° 358, ahubwo iri mu kibanza n° 814 kandi ko ari iye nk'uko bigaragazwa n'icyemezo cy'ubukode burambye yahawe n'Ikigo cy'Igihugu Gishinzwe Ubutaka. Asobanura ko icyo Higirowo Prosper yamuhaye ari ikibanza gusa, atangira kwiyubakiramo inzu mu mwaka w'1997, ayitaramo guhera muri 2002, ndetse ayimaramo imyaka igera ku icumi (10) nyuma arayikodesha. Asaba ko Higirowo Prosper agaragaza amasezerano bagiranye yo kubatiza inzu kuko bitumvikana ukuntu yari kuyibatiza imyaka igera kuri makumyabiri n'ibiri (22) nta masezerano bagiranye, cyane ko yasezeranye na mushiki we ku wa 08/02/1991, akaza kumurega hashize imyaka makumyabiri n'ibiri (22), ashingiyeko kimenyetso yabonye ku wa 08/04/1997 hashize imyaka irindwi abana na mushiki we. Mu gusoza agasaba indishyi zitandukanye. [3] Mu rubanza RC0157/12/TGI/NGOMA rwaciwe ku wa 13/02/2014, Urukiko Rwisumbuye rwa Ngoma rwemeje ko inzu iburanwa yubatswe mu kibanza n° 814 kiri mu Mudugudu w'Amahoro, Akagari ka Karege, Umurenge wa Kibungo, Akarere ka Ngoma, atari iya Higirowo Prosper, ahubwo ari

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iya Ndamage Anthère, rutegeka Higirow Prosper guha Ndamage Anthère indishyi zingana na 800.000Frw zikubiyemo 300.000Frw y'indishyi z'akababaro, 300.000Frw y'igihembo cya Avoka, 150.000Frw yishyuwe umuhanga wakoze igenagaciro ry'inzu iburanwa, 50.000Frw y'ingendo n'imibiyizi, no gutanga 7.700Frw y'amagarama y'urubanza ahereye ku yo yatanze arega. [4] Higirow Prosper yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko Urukiko Rwisumbuye rwa Ngoma rwirengagije ibimenyetso yarugaragarije bigizwe n'urubanza n° RC0095/10/TB/KGB, Ndamage Anthère yaburanye na Nyirabahire Consolée ubutane bwa burundu, aho mu gace karwo ka 18, umutungo uburanwa hagati ya Higirow Prosper na Ndamage Anthère utigeze ushyirwa mu mutungo ugabanwa, ikimenyetso cya “contrat à usage résidentiel n° 074”, Urukiko rw'Ibanze rwa Kibungo rwavuze ko idahuje kamere n'ikiburanwa nyamara Ndamage Anthère atarigeze avuga ko idahuje kamere n'ikiburanwa, kandi ko nta na hamwe yigeze avuga uburyo yabonyemo ikibanza, ndetse ko atanagaragaje icyangombwa cyashingiweho kugira ngo abone ubukode burambye bw'ubutaka, kuko “Factures” za Ewasa atari zo zigaragaza inkomoko y'umutungo. [5] Mu rubanza RCA0052/14/HC/RWG rwaciwe ku wa 16/10/2014, Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ubujurire bwa Higirow Prosper nta shingiro bufite, rumutegeka guha Ndamage Anthère 300.000Frw y'indishyi z'akababaro, 300.000Frw y'igihembo cya Avoka, 150.000Frw yishyuwe umuhanga wakoze igenagaciro ry'inzu iburanwa, 50.000Frw y'ingendo n'imibiyizi yatakaje, yose hamwe akaba 800.000Frw yagenwe n'Urukiko Rwisumbuye rwa Ngoma, hiyongereyeho 400.000Frw y'igihembo cya Avoka na 30.000Frw agenwe mu rwego rw'ubujurire, rutegeka ko imikuriza y'urubanza RC0157/12/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 13/02/2014 ihindutse ku byerekeye indishyi, rutegeka Higirow Prosper gutanga 75.000Frw y'amagarama y'urubanza hakuwemo ayo yatanze ajurira. [6] Ubushinjacyaha bwareze Ndamage Anthère mu Rukiko Rwisumbuye rwa Ngoma, icyaha cyo gukoresha inyandiko yahawe ku bw'uburiganya n'inzego zabigenewe. Busobanura ko Higirow Prosper yari afite ikibanza gifite n° 358 nk'uko bigaragazwa na “Contrat de location” yo ku wa 08/04/1997, ko icyo kibanza cyaje kubakwamo inzu, ayitiza umuryango wa Ndamage Anthère kuko yari atunze mushiki we, mu gihe cyo kubaruza ubutaka Ndamage Anthère ayibaruzaho akoresheje inyandiko itavuga ukuri n'ubwo yari yaratanzwe n'ubuyobozi. Bukomeza buvuga ko mu mwaka wa 2010, ari bwo Higirow Prosper yamenye ko Ndamage Anthère yiyandikishije ubutaka bwe, atangira kwiyambaza inzego zinyuranye ngo zimurenganure. Higirow Prosper ahagarariwe n'umugore we witwa Kabagwira Lucie, yuririye ku kirego cy'Ubushinjacyaha atanga ikirego cy'indishyi, asaba Urukiko gutegeka Ndamage Anthère kumuha indishyi zingana na 15.055.000Frw akubiyemo igihembo cya Avoka, amafaranga y'ubukode bw'inzu, indishyi z'akababaro no kubasiragiza mu manza nta mpamvu. [7] Mu rubanza RP0352/16/TGI/NGOMA rwaciwe ku wa 26/01/2017, Urukiko Rwisumbuye rwa Ngoma rwemeje ko ikirego cy'Ubushinjacyaha nta shingiro gifite, ko n'ikirego cy'indishyi nta shingiro gifite, rwemeza ko Ndamage Anthère adahamwa n'icyaha cyo kwihesha ibyangombwa ku bw'uburiganya, rutegeka ko agizwe umwere kuri icyo cyaha, kandi ko nta n'indishyi zigomba gutangwa. [8] Higirow Prosper uregera indishyi yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Rwamagana, avuga ko urukiko rubanza rwirengagije ibimenyetso yarushyikirije, ko Ndamage Anthère

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ataragaraje inkomoko y'umutungo uburanwa, nyamara urukiko rumuhanaguraho icyaha, kuba rwarirengagije inyandiko zatanze n'Ikigo cy'Igihugu Gishinzwe Ubutaka, no kuba rwarashingiye ku makuru yatanze n'umukuru w'Umudugudu, rwirengagije ko yanditse ibyo Ndamage Anthère yamubwiye. [9] Ubushinjacyaha bwakomeje gushimangira ko Ndamage Anthère yihesheje icyangombwa cy'ubutaka butari ubwe, bityo ko kuba atagaragaza ikimenyetso cy'aho akomora ubutaka buvugwa mu rubanza, ahamwa n'icyaha cyo kwihesha ibyangombwa ku bw'uburiganya, akaba agomba guhanishwa igihano yasabiwe mu rwego rwa mbere. [10] Ndamage Anthère yavuze ko inzu atuyemo ari iye kuko Higirow Prosper yayiburanye mu manza z'imbonezamubano aratsindwa, akaba adakwiye kongera kuyiburana mu rubanza rw'inshinjabyaha, kandi ko n'ibirebana no kuba atarigeze agaragaza inkomoko y'umutungo uburanwa, nta shingiro bifite, kuko na byo byaburanyweho mu manza z'imbonezamubano, aho yatanze ibimenyetso bihagije bigaragaza ko inzu yaburanwaga ari iye, Higirow Prosper we akabura ikimenyetso kibivuguruza. [11] Mu rubanza RPA00049/2017/HC/RWG rwaciye ku wa 29/12/2017, Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ubujurire bwa Higirow Prosper uhagarariye na Kabagwira Lucie bufite ishingiro kuri bimwe, rwemeza ko Ndamage Anthère ahamwa n'icyaha cyo kwihesha ku bw'uburiganya inyandiko zitangwa n'inzego zabigenewe, rumuhanisha igifungo cy'imyaka ibiri (2) isubitswe mu gihe cy'imyaka ibiri (2) n'ihazabu ya 300.000Frw, rumutegeka guha Higirow Prosper 200.000 Frw y'ikurikiranarubanza ku rwego rwa mbere no mu rwego rw'ubujurire, 500.000Frw y'igihembo cya Avoka ku rwego rwa mbere na 500.000Frw mu rwego rw'ubujurire, yose hamwe akaba 1.000.000 Frw, 300.000 Frw y'indishyi z'akababaro, 50.000Frw y'amagarama y'urubanza ku rwego rwa mbere, indishyi zose hamwe zingana na 1.550.000Frw, rwemeza ko imikirize y'urubanza RP0352/16/TGI/NGOMA rwaciye n'Urukiko Rwisumbuye rwa Ngoma ku wa 26/01/2017 ihindutse, rutegeka Ndamage Anthère gusubiza Higirow Prosper 75.000Frw y'ingwate y'amagarama yatanze ajurira. [12] Ku wa 05/08/2022, Ndamage Anthère yaregeye Urukiko rw'Ubugurire, arusaba gukemura ikibazo cy'imanza zivuguruzanya RCA0052/14/HC/RWG na RPA00049/2017/HC/RWG zabaye itegeko, hagenwa uruhare rwa buri muburanyi, ikirego cye cyandikwa kuri RC00003/2022/CA. [13] Urubanza rwaburanishijwe mu ruhamwe ku wa 05/06/2023, Ndamage Anthère yunganiye na Me Gabiro David, Higirow Prosper ahagarariye na Me Nsabimana Joseph afatanyije na Me Nyirihirwe Hilaire. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO 1. Kumenya niba uwitwa MUNYAMPETA Joseph yagobokeshwa muri uru rubanza [14] Abahagarariye Higirow Prosper basaba ko uwitwa Munyampeta Joseph agobokeshwa muri uru rubanza, kuko Ndamage Anthère avuga ko ari we yagurishije umutungo ubaruye kuri UPI:5/06/05/04/814, kandi akaba ari wo izi manza zishingiyeho. Basobanura ko ibyo byakorwa mu

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rwego rwo kwirinda ko hatazavuka izindi manza zitari ngombwa, kandi ko babisaba bashingiye ku ngingo ya 115 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi no ku ngingo ya 108 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Ku bijyanye n'ibiteganywa n'ingingo ya 116 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, bavuga ko bazi neza ko iyo ngingo

ibuza igobokeshwa ku gahato mu Rukiko rw'Ubujurire, ko ariko kuba uwo mutungo uri mu maboko ya Munyampeta Joseph, bibaza uko byazagenda mu gihe urukiko rwategeka ko uhabwa Higirow Prosper kandi Munyampeta Joseph atarigeze aburana. [15] Me Gabiro David wunganira Ndamage Anthère avuga ko uru rubanza ruramutse rwemeje ko umutungo ari uwa Higirow Prosper, uwufite ubu yaza kurutambamira bibaye bishoboka, ariko ko atagobokeshwa ku gahato muri uru Rukiko kubera ko ingingo ya 116, igika cya 3 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryibukijwe itabyemera. Uko Urukiko rubibona [16] Ingingo ya 116, igika cya gatatu y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko" Kugobokeshwa ku gahato ntibyemewe mu Rukiko rw'Ubujurire cyangwa mu Rukiko rw'Ikirenga". [17] Urukiko rw'Ubujurire rurasanga rutemerewe kugobokeshwa ku gahato Munyampeta Joseph muri uru rubanza nk'uko biteganywa n'ingingo ya 116, igika cya gatatu y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa. 2.Kumenya niba hari ivuguruzanya hagati y'urubanza RCA0052/14/HC/RWG na RPA00049/2017/HC/RWG [18] Ndamage Anthère asobanura ko yaburanye na Higirow Prosper urubanza mbonezamubano, atsindira umutungo baburanaga kubera ko Higirow Prosper yabuze ibimenyetso byashingirwaho hemezwa ko ari uwe, ko yabonye atsinze imanza z'imbonezamubano, yiyambaza Ubushinjacyaha bumurega urubanza nshinjabyaha, Urukiko Rwisumbuye rwa Ngoma Rumugira umwere, urubanza rurajuririrwa Urukiko Rukuru, Urugereko rwa Rwamagana rwemeza ko Ndamage Anthère ahamwa n'icyaha cyo kwihesha ibyangombwa akoresheje uburiganya mu nzego zabimuhaye, ko ariko nta cyo rwavuze ku mutungo yatsindiye mu manza mbonezamubano, kubera iyo mpamvu akaba yumva yaraheze mu gihirahiro, kuko abona Higirow Prosper we yaricecekeye, uko guceceka kukaba gutuma we atekereza ko yaba asa n'uwumva ko yatsindiye ikibanza baburanye mu manza mbonezamubano. [19] Me Gabiro David wunganira Ndamage Anthère asobanura ko mu manza RC0157/12/TGI/NGOMA/RCA0052/14/HC/RWG zamaze kuba itegeko, Ndamage Anthère yatsindiye umutungo urimo inzu n'ikibanza nk'uko bigaragara mu gika cya 10 cy'urubanza RC0157/12/TGI/NGOMA, ndetse no mu gika cya 10 cy'urubanza RCA0052/14/HC/RWG, ko ariko mu rubanza RPA00049/2017/HC/KIG, Urukiko rutagaragaje ko izo manza zabaye itegeko zikuweho, ahubwo rwemeza ko Ndamage Anthère ahamwa n'icyaha cyo kwihesha ku bw'uburiganya inyandiko zitangwa n'inzego zabigenewe, kandi ko inyandiko zivugwa zitari impapuro mpamo z'ubutaka, ahubwo ari inyandiko zatanze n'ubuyobozi bw'Umudugudu w'Amahoro, Akagari ka Karengwe

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Umurenge wa Kibungo nk'uko bigaragara mu gika cya 22 cy'urubanza RPA00049/2017/HC/RWG, kandi ko nta n'aho rwagaragaje ko inzu ya Ndamage Anthère ibaye iya Higirow Prosper, ko ahubwo hateshejwe agaciro inyandiko z'ikibanza cyanditse kuri Ndamage Anthère, bityo ko Higirow Prosper atsindiye ikibanza nk'uko bigaragara mu gika cya 25 cy'urubanza RPA00049/2017/HC/RWG, kandi ko bigaragara ko umucamanza w'Urukiko Rukuru, Urugereko rwa Rwamagana yagarutse cyane ku kibanza nk'aho ari cyo cyaburanwaga, ntiyagira icyo avuga ku nzu uwo yunganira yubatswe muri icyo kibanza yaba yarahawe na Higirow Prosper. [20] Bavuga kandi ko kuba Higirow Prosper yaratsindiye inzu mu manza mbonemubano zabaye itegeko (par déduction

analytique), agatsinda urubanza nshinjabyaha rutesha agaciro ibyangombwa by'ubutaka, byumvikanisha ko icyataye agaciro ari impano y'ikibanza yari yaratanze, ariko ko Higirow Prosper adashobora kuvuga ko inzu iburanwa ari iye kandi atarayubatse nk'uko n'imanza z'imbozezamubano zabyemeje, zishingiye ku mvugo z'abatangabuhamya bazi ibyerekeye iyubakwa ry'iyozu ndetse n'ubayubatse, kandi ko hashingiwe kuri "présomptions", bigaragara ko Higirow Prosper na we yemera ko ikibanza ari cyo cyonyine cyabaye icye, kuko atigeze asubirishamo izo manza z'imbonezamubano ingingo nshya, cyangwa ngo aregere amafaranga y'ubukode mu gihe avuga ko Ndamage Anthère yayigabije. [21] Ku bijyanye no gusobanura buryo ki imanza bivugwa ko zivuguruzanya zidashobora kurangizwa, Me Gabiro David avuga ko Higirow Prosper yashatse umuhesha w'inkiko wo kurangiza urubanza amuhesha ikibanza avuga ko yatsindiye mu rubanza nshinjabyaha, uwo muhesha w'inkiko ageze ku kibanza asabwa kugaragaza igika cy'urubanza ashingiraho aha Higirow Prosper uwo mutungo arakibura, yanzura ko urwo rubanza rudashobora kurangizwa, Higirow Prosper ajya kuri polisi na ho bamubwira ko yakwegera urukiko rugatanga umurongo kuri izi manza. Asobanura ko mu rubanza nshinjabyaha rwaciwe nyuma n'Urukiko Rukuru, Urugereko rwa Rwamagana, Higirow Prosper yagenewe indishyi, ko nta kindi kintu rwamugeneye. [22] Ku bijyanye no kuba abahagarariye Higirow Prosper basaba uru Rukiko gutegeka ko urubanza nshinjabyaha ari rwo rugomba kurangizwa, Gabiro David wunganira Ndamage Anthère avuga ko asanga nta ho rwahera rubitegeka, kubera ko urubanza rurangizwa hashingiwe ku bikubiye mu "cyemezo cy'Urukiko" (dispositif), ko rero mu cyemezo cy'urukiko mu rubanza nshinjabyaha, nta ho rwemeje ko Higirow Prosper ahabwa umutungo waburanwe mu rubanza mbonezamubano. [23] Ashingiye ku ngingo ya 35, igika cya kabiri y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ryakoreshwaga icyo gihe, iteganya ko nyir'ikibanza ashobora gutandukana na nyir'umutungo wubatsemo, ari na ko ingingo ya 42, igika cya kabiri y'Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka mu Rwanda ibiteganya ubu, avuga ko mu manza zaciwe Ndamage Anthère atatsindaga hashingiwe ku kuba ari we wanditse ku byangombwa by'ubutaka, ko ahubwo yatsindaga kubera ko ari we rubanda rwabonye yubaka iyo nzu ubwo yakoraga ku bitaro bya Kibungo, kandi ko n'abakozi bayubatse babihamije, ndetse n'inzego z'ibanze zikaba ari we zizi nka nyir'inzu. Asaba ko Higirow Prosper yasubizwa agaciro k'ikibanza yari yaramuhaye akaba arimo kwisubiraho, kangana na 4.375.000 Frw nk'uko kagaragajwe n'umuhanga Eng. Mugabe Thomas washyizweho mu rubanza RC00173/2019/TGI/NGOMA, hashingiwe ku byemejwe mu rubanza RPA0049/2017/HC/RWG, Ndamage Anthère agasigarana inzu n'ubutaka yubatseho.

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[24] Abahagarariye Higirow Prosper basobanura ko urubanza nshinjabyaha rwaje rugaragaza ko ibyashingiweho mu rubanza mbonezamubano ari ibihimbano, kandi ko rutavuze ko inzu ari iya Higirow Prosper, ko ariko mu buryo buri rusange nta vuguruzanya riri hagati y'imanza zombi, ari yo mpamvu basaba ko uru Rukiko rwatanga umurongo mugari, rugasobanura urubanza rugomba kurangizwa hagati y'urubanza mbonezamubano n'urubanza nshinjabyaha, ko mu rwego rwo kugira ngo urubanza nshinjabyaha ruzarangizwe nta nkomyi, rwatanga umurongo usobanura ko urubanza nshinjabyaha rwavanyeho urubanza

mbonezamubano, uwo bahagarariye agahabwa umutungo yari yarambuwe n'urubanza mbonezamubano, kandi ko rwazashingira ku rubanza RC0095/10/TB/Kibungo, aho Ndamage Anthère yaburanye ubutane na Nyirabahire Consolée, rukemeza ko uwo mutungo udashyirwa mu bigabanwa. [25] Ku bijyanye no kuba Ndamage Anthère avuga ko Urukiko rwemeje ko Higiro Prosper atsindiye ubutaka, bavuga ko atari byo, ko nta rukiko na rumwe rwigeze rubyemeza, kuko mu rubanza RC00173/2019/TGI/NGOMA, Ndamage Anthère yasabye ko hagaragazwa nyir'inzu na nyir'ubutaka, mu rubanza RCA00047/2020/HC/RWG, Urukiko rwemeza ko ibyo yiifuza bidafite ishingiro, ko rero kuba yarigaruriye umutungo wa Higiro Prosper akoresheje uburiganya kandi bikemezwa n'inkiko, atabyita kuvuguruzanya kw'imanza kuko asanga urubanza rw'inshinjabyaha rwarakuyeho urubanza rw'imbonezamubano. [26] Basoza bashimangira ko nta vuguruzanya riri hagati y'imanza RCA0052/14/HC/RWG na RPA00049/2017/HC/RWG, kandi ko kuba urubanza rw'inshinjabyaha ari rwo rwaciwe nyuma y'urubanza rw'imbonezamubano, urubanza rw'imbonezamubano nta gaciro rukwiye guhabwa kuko rwagaragayemo uburiganya. Bashingiye ku ihame rivuga ko "La fraude corrompt tout", bavuga ko uwo bahagarariye asaba Urukiko rw'Ubujurire kwemeza ko nta vuguruzanya ry'ibyemezo byafashwe muri izi manza ryabayeho, kuko mu rubanza RPA00049/2017/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 29/12/2017, urwo rukiko rwemeje ko umutungo Ndamage Anthère afite yawubonye mu buryo bw'uburiganya. Uko Urukiko rubibona [27] Mu rubanza RS/SPEC/0002/13/CS rwaciwe ku wa 14/07/2017 n'Urukiko rw'Ikirenga, no mu rubanza RCOM00001/2016/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/07/2020, inkiko zombi zasobanuye ko : habaho ivuguruzanya ry'imanza iyo ibyemezo byafashwemo ku buryo budasubirwaho, bidashobora kubangikana. Urukiko rusesa imanza rwo mu gihugu cy'u Bufaransa na rwo rwasanze, kuba imanza zitakijuririrwa (non susceptibles de recours ordinaire) kandi zivuguruzanya ari byo bishingirwaho mu gusuzuma ikirego cy'ivuguruzanya hagati y'imanza. Ibi rwabigarutseho mu rubanza rwabaye hagati ya sosiyete Diétal na Madame X wari umukozi wa yo, aho rwasanze, kuba urubanza rwaciwe na "Conseil de Prud'hommes de Riom" ku wa 09/03/2000 n'urwaciwe n'Urukiko rw'Ubujurire rwa Riom ku bujurire bw'urundi rubanza, zitakijuririrwa (non susceptibles de recours ordinaire) nyamara zivuguruzanya ku birebana niba ku wa 16/10/1195 Madame X yari cyangwa atakiri umukozi wa Dietal, ko hari ivuguruzanya ry'imanza, ruvanaho urubanza rwaciwe na "Conseil de Prud'hommes de Riom", rwohereza urubanza muri "Conseil de Prud'hommes de Clement-Ferrant". Uyu murongo kandi niwo wemezwa n'abahanga mu mategeko

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bavuga ko imanza zivuguruzanya ari imanza zitagishoboye kujuririrwa kandi ibyemezo byafashwe bikaba bidashobora kurangizwa icyarimwe hatabayeho kuvuguruzanya (décisions inconciliables). [28] Dosiye y'urubanza irimo kopi y'urubanza RCA0052/14/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 16/10/2014, "ICYEMEZO CY'URUKIKO" giteye gitya: -Urukiko rwemeje ko ubujurire bwa Higiro Prosper nta shingiro bufite. -Urukiko rutegetse Higiro Prosper guha Ndamage Anthère indishyi ziteye zitya: 300.000Frw y'indishyi

z'akababaro; 300.000Frw y'igihembo cya Avoka; 150.000Frw yishyuwe umugenagaciro wakoze expertise y'inzu iburanwa; 50.000Frw y'ingendo n'imibizi ye yatakaje, yose hamwe akaba 800.000Frw yagenwe n'Urukiko Rwisumbuye rwa Ngoma, hakiyongeraho 400.000Frw y'igihembo cya Avoka na 30.000Frw y'ikurikiranarubanza agenwe mu rwego rw'ubujurire. -Urukiko rutegetse ko imikirize y'urubanza RC0157/12/TGI/Ngoma rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 13/02/2014, ihindutse ku byerekeye indishyi gusa. -Urukiko rutegetse Higirow Prosper gutanga 75.000Frw y'amagarama y'urubanza hakuwemo ayo yatanze ajurira. [29] Hari kandi kopi y'urubanza RPA00049/2017/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 29/12/2017, "ICYEMEZO CY'URUKIKO" giteye gitya: -Urukiko rwemeje ko Ndamage Anthère ahamwa n'icyaha cyo kwihesha ku bw'uburiganya inyandiko zitangwa n'inzego zabigenewe. -Urukiko ruhanishije Ndamage Anthère igifungo cy'imyaka ibiri (2) isubitswe mu gihe cy'imyaka ibiri (2) n'ihazabu ya 300.000Frw -Urukiko rutegetse Ndamage Anthère guha Higirow Prosper indishyi ziteye zitya : 200.000 Frw y'ikurikiranarubanza ku rwego rwa mbere no mu bujurire ; 500.000Frw y'igihembo cya Avoka ku rwego rwa mbere na 500.000Frw mu bujurire, yose hamwe akaba 1.200.000Frw ; 300.000Frw y'indishyi z'akababaro ; 50.000Frw y'amagarama y'urubanza ku rwego rwa mbere, indishyi zose hamwe zikaba 1.550.000Frw. -Urukiko rutegetse ko imikirize y'urubanza RP0352/16/TGI/Ngoma rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 26/01/2017, rwemeje ko Ndamage Anthère adahamwa n'icyaha cyo kwihesha ibyangombwa ku bw'uburiganya, rukamugira umwere ihindutse. -Urukiko rutegetse Ndamage Anthère gusubiza Higirow Prosper 75.000Frw y'amagarama y'urubanza yatanze ajurira. [30] Urukiko rurasanga, hashingiwe ku bikubiye mu cyemezo cy'Urukiko mu rubanza RCA0052/14/HC/RWG ndetse n'ibikubiye mu cyemezo cy'Urukiko mu rubanza

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RPA00049/2017/HC/RWG, nta na hamwe ibyemezo bikubiye muri izo manza zombi bishobora kugonganira mu gihe cy'ishyirwa mu bikorwa ryabyo, kuko mu gihe cyo kurangiza urubanza, hagomba kurebwa ibikubiye mu" ICYEMEZO CY'URUKIKO", nyamara muri izo manza nta muburanyi waba warahawe uburenganzira mu cyemezo cy'Urukiko kimwe ngo yongere abwakwe n'ikindi cyemezo cy'Urukiko. [31] Ku bijyanye n'impaka zirebana no kuba urubanza RPA00049/2017/HC/RWG rwaba rwaravanyeho urubanza RCA0052/14/HC/RWG, Urukiko rurasanga n'ubwo mu cyemezo (dispositif) cy'urubanza RPA00049/2017/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 29/12/2017, urwo Rukiko rutemeje ko umutungo utimukanwa waburanwe mu rubanza RCA0052/14/HC/RWG ubaye uwa Higirow Prosper, ariko mu bisobanuro rwatanze (motivations) rwagaragaje ko Ndamage Anthère yihesheje mu buriganya ibyangombwa bitangwa n'ubuyobozi bubifitiye ububasha kugira ngo yandikweho umutungo utimukanwa uvugwa muri uru rubanza, icyakora hakaba nta vuguruzanya riri hagati y'imanza zimaze kuvugwa, nkuko byasobanuwe mu bika bibanza kuko ibyemezo byazo (dispositifs) bishobora kurangizwa. [32] Hashingiwe ku bisobanuro bitanzwe, Urukiko rw'Ubujurire rurasanga nta vuguruzanya riri mu rubanza RCA0052/14/HC/RWG na RPA00049/2017/HC/RWG, ikirego Ndamage Anthère yatanze, kikaba nta shingiro gifite. 3.Kumenya ishingiro ry'indishyi zisabwa na HIGIRO Prosper [33] Abahagarariye Higirow Prosper

basaba ko yagenerwa indishyi kubera gusiragizwa mu nkiko, guteshwa umwanya, igihombo gikomoka ku mutungo we, zibazwe mu buryo bukurikira : 15.000.000Frw y'indishyi zinyuranye, ubukode bw'inzu bungana na 150.000Frw x 12 x 13= 23.400.000Frw, amafaranga Ndamage Anthère atatanze angana na 300.000Frw, yose hamwe akaba 38.700.000Frw. [34] Ndamage Anthère n'umwunganira bavuga ko indishyi zisabwa nta shingiro zifite, kuko uregwa ari we ntandaro y'imanza zose, akaba akwiye no kwirengera ingaruka zabyo. Uko Urukiko rubibona [35] Urukiko rurasanga indishyi Higirow Prosper asaba muri uru rubanza, nta shingiro zihawe kuko zirebana n'imanza zabaye itegeko kandi uru Rukiko rukaba rugomba gusuzuma gusa ikirego rwashyikirijwe kirebana n'ivuguruzanya ry'imanza byagaragajwe ko nta ryo. 4. Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka [36] Abahagarariye Higirow Prosper basaba amafaranga y'igihembo cya Avoka n'ayikurikiranarubanza, kimwe n'ay'ingwate y'amagarama yatanze mu manza zitandukanye yagiye aburana mu nkiko zabanje, ari zo RC0157/12/TGI/NGOMA, RCA0052/14/HC/RWG, RC00173/16/TGI/NGOMA, RCA00047/2022/HC/RWG, RP00352/16/TGI/NGOMA ; n'urubanza RPA00049/2017/HC/RWG, ayo mafaranga abaze mu buryo bukurikira : 345.000Frw y'ingwate y'amagarama na 8.250.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, yose hamwe akaba 8.595.000Frw.

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[37] Ndamage Anthère n'umwunganira bavuga ko amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka Higirow Prosper asaba nta shingiro afite, kuko ari we wabaye intandaro y'imanza zose. Uko Urukiko rubibona [38] Urukiko rurasanga nta mafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka agomba gutangwa muri uru rubanza, kubera ko hari ibyo buri muburanyi yaregeye bitahawe ishingiro. III. ICYEMEZO CY'URUKIKO [39] Rwemeje ko ikirego cyatanzwe na Ndamage Anthère, nta shingiro gifite. [40] Rwemeje ko nta vuguruzanya riri hagati y'urubanza RCA0052/14/HC/RWG rwaciwe ku wa 16/10/2014 n'urubanza RPA00049/2017/HC/RWG rwaciwe ku wa 29/12/2017 n'Urukiko Rukuru, Urugereko rwa Rwamagana. [41] Ruvuze ko amafaranga y'ingwate y'amagarama yatanzwe na Ndamage Anthère arega, ahwanye n'ibyakozwe mu rubanza.

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