

RWANDA / JUDGMENT

REAL CONTRACTORS v HARINDINTWARI v HARINDINTWARI

RSOCA 00245/2020/HC/KIG

COURT

High Court

DECIDED

3 February 2023

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RSOCA 00245/2020/HC/KIG

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REAL CONTRACTORS v HARINDINTWARI v HARINDINTWARI

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Text

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REAL CONTRACTORS v HARINDINTWARI [Rwanda URUKIKO RUKURU – RSOCA 00245/2020/HC/KIG – (Ngabire, P.J.) 03 Gashyantare 2023] Amategeko agenga imiburanishirize y’imanza z’umurimo – Kureka ikirego – Ni ukwiyambura ububasha bwo kuburana, bikaba bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Incamake y’ikibazo: Harindintwari yareze Real Contractors Ltd mu Rukiko Rwisumbuye rwa Gasabo asaba indishyi zo kwirukanwa mu kazi binyuranyije n’amategeko, indishyi zo kudatanga integuza, amafaranga nsimburakiruhuko y’imyaka ibiri, indishyi zo kudahabwa icyemezo cy’imirimo yakozwe, asaba gutangirwa imisanzu ya RSSB atatangiwe n’umukoresha we, amafaranga y’insimburakiruhuko cya buri cyumweru atahawe, amafaranga y’ikurikiranarubanza, n’igihembo cya Avoka, akanasubizwa igarama yatanze arega. Urukiko Rwisumbuye rwemeje ko Uregwa aha Urega amafaranga y’icyemezo cy’umurimo, y’ikurikiranarubanza n’amafaranga y’igihembo cya Avoka, runamutegeka kumusubiza amafaranga y’amagarama. Ibi byatumye Uregwa ajuririra Urukiko Rukuru avuga ko Urukiko rwabanje rwirengagije ibyo yarugaragarije bijyanye n’uko

Urega ariwe ubwe wanze kwakira icyemezo cy'umurimo, ko rero atabiryoza, asaba ko indishyi zijyanye n'igihembo cya Avoka, ikurikiranarubanza n'igarama zivanwaho. Iki kirego cyo mu bujurire ntabwo cyakomeje kuberako impande zombi zaje kumvikana, ko Uregwa yemera ko Urega ahabwa ibyo yari yajuririye no kureka ubujurire bwe, ko n'urundi ruhande rudasaba igihembo cya Avoka; ko rero aretse ikirego cye cy'ubujurire, urundi ruhande na rwo rwemeza ko ari ukuri, basaba Urukiko kwemeza ko urubanza rurangiye burundu. Incamake y'icyemezo: Kureka ikirego ni ukwiyambura ububasha bwo kuburana, bikaba bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Bityo, urega cyangwa uwajuriye yemerewe kureka ikirego cye no kumvikana n'uwo baburana igihe cyose urubanza rutarasomwa, ndetse uregwa nawe akaba afite uburenganzira bwo kumvikana n'uwo baburana igihe cyose urubanza rutarasomwa. Kureka ikirego kuremewe. Amagarama aherera ku isanduku ya Leta. Amategako yashingiweho: Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 4, 5, 122 n'ya 124. Nta manza zifashishijwe. Urubanza

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I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo Harindintwari Jean Damascène arega Real Contractors Ltd indishyi zo kwirukanwa mu kazi binyuranyije n'amategako zingana na $210,000 \times 6 = 1,260,000$ Frw, indishyi zo kudatanga integuza zingana n'ukwezi kumwe = 210,000 Frw, amafaranga nsimburakiruhuko y'imyaka ibiri 2016/2017 (36 jours) $\times 7.000$ Frw (y'umunsi) = 252,000 Frw, indishyi zo kudahabwa icyemezo cy'imirimo yakozwe = 210,000 Frw, asaba gutangirwa imisanzu ya RSSB atatangiwe n'umukoresha we, amafaranga y'insimburakiruhuko cya buri cyumweru atahawe, amafaranga y'ikurikirana-rubanza 500,000 Frw, n'igihembo cya Avoka kingana na 1,000,000 Frw, akanasubizwa igarama ry'amafaranga ibihumbi makumyabiri (20.000 Frw). [2] Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza rwemeza ko Real Contractors Ltd igomba guha Harindintwari Jean Damascène amafaranga 210.000 Frw y'icyemezo cy'umurimo, 200.000 Frw y'ikurikiranarubanza, n'amafaranga ibihumbi magana atanu 500.000 Frw y'igihembo cya Avoka, runayitegeka gusubiza Harindintwari Jean Damascène amafaranga ibihumbi makumyabiri (20.000 Frw) yatanzeho ingwate y'amagarama arega. [3] Real Contractors Ltd yajuririye Urukiko Rukuru ivuga ko Urukiko Rwisumbuye rwa Gasabo rwirengagije ibyo yarugaragariye bijyanye n'uko Harindintwari Jean Damascène ariwe ubwe wanze kwakira icyemezo cy'umurimo, kuba ataragisabye cyangwa se ngo ajye kugifata acyimwe, ko ahubwo yakimuhaye aracyanga, ko rero itabiryoza, isaba ko indishyi zijyanye n'igihembo cya Avoka, ikurikiranarubanza n'igarama zivanwaho. [4] Mu iburanisha ryo ku wa 03/02/2023 Me Kalinda Steven waburaniye Real Contractors Ltd yabwiye Urukiko ko mbere y'uko we n'uregwa bagera mu Rukiko babanje kuganira bumvikana ko bahabwa ibyo bajuririye no kureka ubujurire bwayo, n'uregwa ntasabe igihembo cya Avoka; ko rero iretse ikirego cyayo cy'ubujurire. Me Ingenzi Jean Félix n'uwo yunganira bemeje ko ibivuzwe na mugenzi we Me Kalinda Steven ari ukuri, basaba Urukiko kwemeza ko urubanza rurangiye burundu. [5] Muri uru rubanza hasuzumwe ikibazo cyo kumenya niba urega / uwajuriye yemerewe kureka ikirego, no kumenya ingaruka z'ibyo impande zombi ziburana zumvikanyeho. II. ISESENGURA RY'IBIBAZO

BIGIZE URUBANZA

1. Ku byerekeye ikibazo cyo kumenya niba urega / uwajuriye yemerewe kureka ikirego, no kumenya ingaruka z'ibyo impande zombi ziburana zumvikanyeho - Imiburanire [6] Nk'uko byagaragajwe haruguru mu gika cya kane, nyuma y'aho Real Contractors Ltd ijuriye urubanza rwavuzwe haruguru rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 29/9/2020, mu iburanisha ryo ku wa 03/02/2023 Me Kalinda Steven waburaniye Real Contractors Ltd yabwiye Urukiko ko mbere yuko we n'uregwa bagera mu Rukiko babanje kuganira bumvikana ko bahabwa ibyo bajuririyemo no kureka ubujurire bwayo, n'uregwa ntasabe igihembo cya Avoka; ko rero iretse ikirego cyayo cy'ubujurire. Me Ingenzi Jean Félix n'uwo yunganira bemeje ko ibivuzwe na mugenzi we Me Kalinda Steven ari ukuri, basaba Urukiko kwemeza ko urubanza rurangiye burundu.

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UKO URUKIKO RUBIBONA [7] Ingingo ya 4 y'itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza ° z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko uretse iyo itegeko ribiteganyaga ukundi, urega afite uburenganzira ku kirego cye bukurikira: 2° guhagarika ikirego igihe cyose urubanza rutarasomwa cyangwa ngo kizime ku bw'itegeko; 3° Kumvikana n'uwo baburana igihe cyose urubanza rutarasomwa. Ingingo ya 5 y'iri tegeko nayo igateganyaga ko uretse iyo itegeko ribiteganyaga ukundi, uregwa afite uburenganzira ku byo aregwa bukurikira: 2° gusaba kumvikana n'uwo baburana igihe cyose urubanza rutarasomwa. [8] Ingingo ya 122 y'Itegeko rivuzwe haruguru iteganya ko kureka ikirego ni ukwiyambura ububasha bwo kuburana. Bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemera k'undi muburanyi si ngombwa. Ingingo ya 124 al. 2 y'iri tegeko nayo igateganyaga ko kureka ikirego no kureka urubanza bituma ibintu bisubira uko byari bimeze ku mpande zombi mbere y'uko Urukiko ruregerwa. [9] Ingingo z'itegeko zivuzwe haruguru zerekana ko urega / uwajuriye yemerewe kureka ikirego cye no kumvikana n'uwo baburana igihe cyose urubanza rutarasomwa, ndetse uregwa nawe akaba afite uburenganzira bwo kumvikana n'uwo baburana igihe cyose urubanza rutarasomwa. [10] Nanone, kureka ikirego ni ukwiyambura ububasha bwo kuburana, bikaba bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. [11] Bityo rero, kuba uwajuriye yibwiriye Urukiko ko aretse ikirego cye cy'ubujurire, hamwe n'uregwa basaba Urukiko kwemeza ko urubanza rurangiye burundu, Urukiko rurasanga ukureka ikirego kwa Real Contractors Ltd gukwiye kwemerwa kuko ari uburenganzira bwayo kukireka, bivuze nanone ko urubanza rurangiye burundu nk'uko impande zombi zabyumvikanyeho mu iburanisha; ibintu bikaba bigomba gusubira uko byari bimeze ku mpande zombi mbere y'uko Urukiko ruregerwa. III. ICYEMEZO CY'URUKIKO [12] Rwemeje ukureka ikirego kwa Real Contractors Ltd. [13] Rutegetse ko ibintu bisubira uko byari bimeze ku mpande zombi mbere y'uko Urukiko ruregerwa. [14] Rutegetse ko 40.000 RWF Real Contractors Ltd yatanzeho ingwate y'amagarama ijurira ahwanye n'amagarama y'Urukiko muri uru rubanza.

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