

RWANDA / JUDGMENT

UBUSHINJACYAHA vs UWIMANIHAYE

RLR V.4-2025

COURT

High Court

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RS/INJUST/RP 00001/2022/HC/KIG

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UBUSHINJACYAHA vs UWIMANIHAYE

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Text

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UBUSHINJACYAHA v UWIMANIHAYE [Rwanda URUKIKO RUKURU - RS/INJUST/RP 00001/2022/HC/KIG (Juru, P.J., Byakatonda, Mukakarisa, J.) 09 Mata 2024] Amategeko agenga imiburanishirize y'imanza - Gusubirishamo urubanza ku mpamvu z'akarengane -Ikirego gisaba gusubirishamo urubanza ingingo nshya - Ihamagazwa ry'ababuranyi - Ababuranyi bose bari mu rubanza rusabirwa gusubirishwamo ingingo nshya bagomba guhamagazwa mu rubanza rurusubirishamo ingingo nshya. Incamake y'ikibazo: Uwimanihaye Pierre Celestin yatanze ikirego cyo gusubirishamo ingingo nshya urubanza No RP 01088/2018/TGI/NYGE rwamuhamije icyaha, avuga ko yashinzwaga kugurisha mu buriganya imodoka RAV4 RAD 615P kandi hari urubanza No RP 00759/2018/TGI/NYGE na No RPA 01524- RP1525/2019/HC/KIG muri izi manza Ntihemuka Emmanuel na Hakizimana Daniel bahamijwe icyaha cyo kugurisha mu buriganya iyo modoka hamwe n'izindi, avuga ko yahamijwe icyaha cyakozwe n'abandi, ndetse bakaba baranagihaniwe. Urukiko rwahaye ishingiro ingingo nshya yatanze, rwemeza ko ibyaha yari yahamijwe bitamuhama. Ntabahejeje Théogène waregeraga indishyi mu rubanza rwasubirishijwemo ingingo nshya, yasanze yaragombaga kuba yaratumijwe mu rubanza rusubirishamo ingingo nshya rwagize umwere Uwimanihaye Pierre Celestin maze asubirishamo

urwo rubanza ku mpamvu z'akarengane, avuga ko akarengane ari uko atatumijwe mu rubanza kandi yaragombaga gutumizwamo, ko kandi urukiko Rwisumbuye rutagombaga kwemera ingingo nshya. Incamake y'icyemezo: Urubanza rusubirishamo urundi ingingo nshya ntiruburanishwa abarurimo nk'ababuranyi badahamagajwe bose, bityo kuba mu rubanza No RP 01112/2021/TGI/NYGE rwasubirishagamo urubanza No RP 01088/2018/TGI/NYGE ingingo nshya rwaruburanishijwe Ntabahejeje Théogène atatumijwe kandi yari umuburanyi mu rubanza rusubirishwamo ingingo nshya, ni akarengane. Habaye akarengane mu rubanza rusubirishwamo. Amategeko yashingiweho: Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 195; Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko, ingingo ya 55. Imanza zifashishijwe: RS/REV/RC 00001/2022/CA, Special Guarantee Fund (SGF) na Uwanyirigira Josée n'undi, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/04/2023. Urubanza

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IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwatanze ikirego mu rukiko Rwisumbuye burega Gasangwa Innocent na Uwimanihayе Pierre Celestin na Hakizimana Daniel gukora no gukoresha inyandikomimbano, no kwambura ikintu cy'undi hakoreshejwe amayeri, buvuga ko incuro nyinshi Gasangwa Innocent yagiye akodesha imodoka akaziha abantu bakorana ubujura bw'imodoka bakazigurisha cyangwa se bakazitangaho ingwate muri "Lambert", bakoresheje ibyangombwa by'ibihimbano, hanyuma Gasangwa agahindukira agakoresha "avis de recherche" agaragaza ko imodoka yibwe kandi azi neza ko atari byo. [2] Ngo Gasangwa yacuze umugambi wo kwambura abantu afatanyije na bagenzi be Hakizimana Daniel na Uwimanihayе Pierre Celestin bagurisha imodoka ya RAV4 RAD 615P, y'uwitwa Ntabahejeje Theogene, babikora bakoresheje indangamuntu y'impimbano mu mazina ya Uwimanihayе Pierre Celestin ariko ifoto itari iye, ndetse banakorera Ntabahejeje "mutation" kubera ko imodoka ari Uwimanihayе yari yanditseho, bakoresha ibyo byangombwa bitavugishije ukuri, Uwimanihayе akaba yarajyanye na Hakizimana Daniel kuyigurisha i Musanze dore ko bari mu bo Gasangwa akoresha muri ibyo bikorwa. Nyuma yo kugurisha imodoka na Ntabahejeje Theogene, Gasangwa yihutiye kujya kuri Rwanda Revenue Authority/RRA na polisi kumenyesha ko imodoka ye yibwe n'abantu atazi kandi yarayigurishije. Igihe cy'iburanisha Ubushinjacyaha bwavuze ko Hakizimana akurwa mu kirego kuko ibikorwa biregerwa yabihaniwe mu rundi rubanza RP 00759/2018/TGI/NYGE, maze urukiko Rwisumbuye rwemera ko ava mu rubanza. [3] Urukiko Rwisumbuye rushingiye ku mvugo z'abatangabuhamya barimo Isimbi na Rwamakambiza rwahamije ko Uwimanihayе Pierre Celestin yakoze ibyaha byo gukora no gukoresha inyandiko n'impapuro bitangwa n'inzego zabigenewe ndetse n'icyaha cyo kwambura ikintu cy'undi hakoreshejwe amayeri maze rumuhanisha igihano cy'igifungo cy'imyaka irindwi n'ihazabu ya miriyoni eshatu. [4] Gasangwa Innocent na Uwimanihayе Pierre Celestin bajuriye mu Rukiko Rukuru, urubanza rwabo ruhahwa numero RPA 00028/2020/HC/KIG, rwemeza ko rusanga ubujurire bwa Uwimanimpaye Pierre Celestin butakwagirwa ngo busuzumwe kuko atatanze amagarama y'urubanza. Rwemeza ko ubujurire bwa Gasangwa Innocent bufite ishingiro kuri bimwe, rwemeza ko urubanza yajuririye ruhindutse kuri bimwe, ko igihano yari yahawe kigabanywa agahanishwa igihano cy'igifungo cy'imyaka itatu (3 ans)

n'ihazabu ya 3.000.000Frw, ko amafaranga Ntabahejeje Théogène yari yagenewe mu rwego rwa mbere 3 450 000 frw y'ubukode bw'imodoka, 60.000Frw yo kugura batterie n'amafaranga 200.000Frw yo kugura amapine, avanyweho, rutegeka ko Gasangwa Innocent guha Ntabahejeje Théogène amafaranga 500.000Frw y'igihembo cy'avoka yo mu rwego rw'ubujurire. [5] Urubanza rumaze kuba itegeko Uwimanihayе Pierre Celestin yatanze ikirego cyo gusubirishamo ingingo nshya urubanza RP 01088/2018/TGI/NYGE rwamuhamije icyaha avuga ko yashinzwaga kugurisha mu buriganya imodoka RAV4 RAD 615P kandi hari urubanza RP 00759/2018/TGI/NYGE na RPA 01524- RP1525/2019/HC/KIG muri izi manza Ntihemuka Emmanuel na Hakizimana Daniel bahamijwe icyaha cyo kugurisha mu buriganya imodoka RAV4 RAD 615P hamwe n'izindi, bivuze ko ngo yahamijwe icyaha cyakozwe n'abandi, ndetse bakaba baranagihaniwe, ubwo ikirego gisubirishamo urubanza ingingo nshya cyahawe numero RP 01112/2021/TGI/NYGE.

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[6] Mu rubanza RP 01112/2021/TGI/NYGE rusubirishamo urubanza RP 01088/2018/TGI/NYGE ingingo nshya, urukiko Rwisumbuye rwemeye ingingo nshya ya Uwimanihayе Pierre Celestin maze rwemeza ko kuba Uwimanihayе Pierre Celestin yarashinzwaga kugurisha mu buriganya imodoka RAD 615 P, none hakaba haragaragaye abandi bantu bemera ko aribo bagurishije imodoka z'abandi muri ubwo buryo harimo n'imodoka RAD 615 P, bakaba barasobanuye uburyo babikoraga, ko byumvikana ko ari nabo bahimbye indangamuntu ya Uwimanihayе Pierre Celestin bagashyiraho indi foto kugira ngo babone uko bagurisha imodoka RAD 615 P, kuko iyi modoka ubusanze yari yanditswe kuri Uwimanihayе Pierre Celestin, ko ibyaha Uwimanihayе Pierre Celestin yashinzwaga mu rubanza RP 01088/2018/TGI/NYGE bitamuhama. [7] Ntabahejeje Théogène waregeraga indishyi mu rubanza RP 01088/2018/TGI/NYGE yasanze yaragombaga kuba yaratumijwe mu rubanza RP 01112/2021/TGI/NYGE rusubirishamo urubanza RP 01088/2018/TGI/NYGE ingingo nshya rwagize umwere Uwimanihayе Pierre Celestin maze asubirishamo urwo rubanza RP 01112/2021/TGI/NYGE ku mpamvu z'akarengane, avuga ko akarengane ke ni uko atatumijwe mu rubanza RP 01112/2021/TGI/NYGE kandi yaragombaga gutumizwamo, ko kandi urukiko Rwisumbuye rutagombaga kwemera ingingo nshya yuko hari urubanza RP 00759/2018/TGI/NYGE na RPA 01524- RP1525/2019/HC/KIG, Ntihemuka Emmanuel na Hakizimana Daniel bahamijwe icyaha cyo kugurisha mu buriganya imodoka RAV4 RAD 615P hamwe n'izindi, kuko Uwimanihayе Pierre Celestin yari asanzwe azi ibyanavuzweho mu rubanza RP 01088/2018/TGI/NYGE rwasubirishijwemo ingingo nshya, asaba urukiko Rukuru kwemeza ko ikirego gisubirishamo urubanza RP 01088/2018/TGI/NYGE ingingo nshya kitagombaga kwakirwa, gutegeka kumuha amafaranga y'igihembo cy'avoka n'ikurikirana rubanza. [8] Ubushinjacyaha buvuga ko mu rubanza RP 01088/2018/TGI/NYGE Ntabahejeje Théogène yaregeraga indishyi, ko habayeho akarengane kutamutumiza mu rubanza RP 01112/2021/TGI/NYGE rwasubirishagamo urubanza RP 01088/2018/TGI/NYGE ingingo nshya, ko kandi n'ibyatwa ingingo nshya ataribyo kuko Uwimanihayе Pierre Celestin yari azi ko hari imanza RP 00759/2018/TGI/NYGE na RPA 01524- RP1525/2019/HC/KIG Ntihemuka Emmanuel na Hakizimana Daniel bahamijwe ibyaha, mu gihe haburanwaga urubanza RP 01088/2018/TGI/

NYGE rwasubirishijwemo ingingo nshya. [9] Uwimanihaye Pierre Celestin n'abamwunganira bavuga ko Ntabahejeje Théogène yari akwiriye guhamagazwa mu rubanza RP 01112/2021/TGI/NYGE, kuko yaregeraga indishyi mu rubanza RP 01088/2018/TGI/NYGE, ariko kuvuga ko Uwimanihaye Pierre Celestin yari azi imanza RP 00759/2018/TGI/NYGE na RPA 01524-RP1525/2019/HC/KIG Ntihemuka Emmanuel na Hakizimana Daniel bahamijwe ibyaha, Uwimanihaye Pierre Celestin yashinjawaga sibyo. [10] Urubanza rwaburanishijwe ubushinjacyaha buhagarariwe, uregera indishyi ahagarariwe na Me Kwizera Bernard, ushinjwa Uwimanihaye Pierre Celestin yunganirwa na Me Kananga Protegene na Me Kayitana Evode. [11] Ibibazo bigomba gusuzumwa ni kumenya niba kudatumiza uregera indishyi mu rubanza rusubirishwamo ingingo nshya byafatwa nk'akarengane, no kumenya niba kuba hari urubanza RP 00759/2018/TGI/NYGE na RPA 01524- RP1525/2019/HC/KIG Ntihemuka Emmanuel na

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Hakizimana Daniel bahamijwemo ibyaha Uwimanihaye Pierre Celestin yashinjawaga byari kwemerwa nk'ingingo nshya no kumenya niba amafaranga y'igihembo cy'avoka n'ikurikirana rubanza asabwa akwiye gutangwa. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA I. Kumenya niba kudatumiza uregera indishyi mu rubanza rusubirishwamo ingingo nshya byafatwa nk'akarengane [12] Ingingo ya 195 y'itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, nkuko ryavuguruwe kugeza ubu, iteganya ko gusubirishamo urubanza ingingo nshya ni ugushaka ko urubanza rwaciwe burundu ruvanwaho rukongera gusuzumwa bundi bushya hubahirijwe impamvu ziteganywa n'iri tegeko. Iyi ngingo yumvikanisha ko iyo ngingo nshya yemewe, urubanza ruburanishwa bundi bushya, bivuze ko abantu bose barubayemo ababuranyi bagomba gutumizwa. Ntibyashoboka kuburanisha urubanza rusubirishamo ingingo nshya hadatumijwe abantu bose bari ababuranyi mu rubanza rusubirishwamo ingingo nshya. [13] Ingingo ya 55, igika cya mbere, agace ka 2°, y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko iteganya impamvu zishobora gutuma urubanza rusubirishwamo ku mpamvu z'akarengane, harimo no kuba mu icibwa ryarwo harirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese. [14] Uwimanihaye Pierre Celestin n'abamwunganira bavuga ko kubera ko Ntabahejeje Théogène yaregeraga indishyi mu rubanza RP 01088/2018/TGI/NYGE ko byari bikwiye ko ahamagazwa mu rubanza RP 01112/2021/TGI/NYGE rwasubirishagamo urubanza RP 01088/2018/TGI/NYGE. [15] Ubushinjacyaha na Me Kwizera Bernard uhagarariye uregera indishyi avuga ko byari bikwiye Ntabahejeje Théogène atumizwa mu rubanza mu rubanza RP 01112/2021/TGI/NYGE rwasubirishagamo urubanza RP 01088/2018/TGI/NYGE, Ntabahejeje Théogène yaregeragamo indishyi UKO URUKIKO RUBIBONA [16] Urukiko rurasanga kuba bitemewe ko urubanza rusubirishamo urundi ingingo nshya rutaburanishwa abarurimo nk'ababuranyi badahamagajwe bose, nkuko biteganywa n'ingingo ya 195 y'itegeko N° 027/2019 ryo ku wa 19/09/2019 yavuzwe hejuru, bivuze ko niba mu rubanza RP 01112/2021/TGI/NYGE rwasubirishagamo urubanza RP 01088/2018/TGI/NYGE ingingo nshya rwaraburanishijwe Ntabahejeje Théogène atatumijwe kandi yari umuburanyi mu rubanza RP 01088/2018/TGI/NYGE rusubirishwamo ingingo nshya, birumvikana ko hishwe itegeko muburyo

bugaragarira buri wese, bityo nkuko biteganywa n'ingingo ya 55, igika cya mbere, agace ka 2°, y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 ryavuzwe, habayeho akarengane, birakwiye rero kwemeza ko habayeho akarengane. II. Kumenya niba kuba hari urubanza RP 00759/2018/TGI/NYGE na RPA 01524- RP1525/2019/HC/KIG Ntihemuka Emmanuel na Hakizimana Daniel

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bahamijwemo ibyaha byashinjawaga Uwimanihayе Pierre Celestin byari kwemerwa nk'ingingo nshya [17] Urubanza N° RS/REV/RC 00001/2022/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 20/04/2023, urukiko rw'Ubujurire rwafashe umurongo ko ikimenyetso gishya ni ikimenyetso cyari gihari mu gihe urubanza rwaburanwaga ariko umuburanyi akaba atashoboraga kumenya ko gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga. Uyu murongo w'urukiko rw'ubujurire wumvikanisha ko iyo umuburanyi yari azi ikimenyetso kandi icyo kimenyetso ashobora kukibona maze ntagikoreshe mu rubanza, ntashobora narimwe kuzana icyo kimenyetso nk'ingingo nshya. [18] Uwimanihayе Pierre Celestin n'abamwunganira bavuga ko Uwimanihayе Pierre Celestin atamenye urubanza RP 00759/2018/TGI/NYGE na RPA 01524- RP1525/2019/HC/KIG nkuko ubushinjacyaha n'uregera indishyi babivuga ko izo manza yazimenye kuwa 08/06/2021. [19] Ubushinjacyaha n'uhagarariye uregera indishyi bavuga ko mu rubanza RP 01112/2021/TGI/NYGE rusubirishamo urubanza RP 01088/2018/TGI/NYGE ingingo nshya, urukiko Rwisumbuye rutagombaga kwemera ko ar'ingingo nshya kubera ko mu rubanza RP 01088/2018/TGI/NYGE rusubirishwamo ingingo nshya havuzwe ibijyanye n'urubanza RP 00759/2018/TGI/NYGE mu gihe havugwaga ko Hakizimana Daniel atakongera kuburana urubanza yaburanye agahamwa n'ibyaha. [20] Mu gika cya 3 by'urubanza RP 01088/2018/TGI/NYGE rusubirishwamo ingingo nshya, Ubushinjacyaha bwavuze ko Hakizimana akurwa mu kirego kuko ibikorwa biregerwa yabihaniwe mu rubanza RP 00759/2018/TGI/NYGE, maze mu gika cya 44 by'urwo rubanza urukiko Rwisumbuye rwemeje ko hari urubanza RP 00759/2018/TGI/NYGE Hakizimana Daniel yahaniwe ibikorwa biregerwa maze akurwa mu rubanza, Uwimanihayе Pierre Celestin ntaho yasabye ko adakwiye gukurikiranwa kubera ko ibyo bamushinja bibonye ababikoze. UKO URUKIKO RUBIBONA [21] Urukiko rurasanga mu rubanza RP 01088/2018/TGI/NYGE havuzwe ko uwitwa Hakizimana Daniel mu rubanza RP 00759/2018/TGI/NYGE yahaniwe icyaha yakurikiranwaga mu rubanza RP 01088/2018/TGI/NYGE arikumwe na Uwimanihayе Pierre Celestin, bivuze ko Uwimanihayе Pierre Celestin yahise amenya ko Hakizimana Daniel yahaniwe icyaha yakurikiranwagaho kuburyo iyo abishaka yari gusaba urukiko Rwisumbuye ko agirwa umwere kubera ko icyaha bamushinja kibonye uwagikoze, bikaba bikwiye kumvikana rero ko kuva igihe, ubushinjacyaha bwavuze ko Hakizimana Daniel avanwa mu rubanza RP 01088/2018/TGI/NYGE yaburanaga arikumwe na Uwimanihayе Pierre Celestin, nibwo Uwimanihayе Pierre Celestin yamenye urubanza RP 00759/2018/TGI/NYGE, nibwo yari gusaba urukiko Rwisumbuye kutamuhamba icyaha kuko habonetse Hakizimana Daniel wagikoze aranagihanirwa, nkuko rero byafashweho umurongo mu rubanza N° RS/REV/RC 00001/2022/CA rwavuzwe, ko ikimenyetso gishya ar'ikimenyetso cyari gihari mu gihe urubanza rwaburanwaga ariko umuburanyi akaba atashoboraga kumenya ko gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga, niba urubanza RP 00759/2018/TGI/NYGE rwari ruhari ndetse Uwimanihayе

Pierre Celestin aruzi, anazi ko muri urwo rubanza Hakizimana Daniel yahamijwe icyaha gisa neza n'icyo

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yashinjwaga, birumvikana ko ikimenyetso avuga ko ari gishya yari akizi, icyo kimenyetso ntibishoboka kwemerwa nk'ingingo nshya. [22] Urukiko rusanga Uwimanihayeho Pierre Celestin abazwa mu bugenzacyaha yabagijwe niba azi Hakizimana Daniel avuga ko atamuzi, bivuze ko amubonye mu rubanza RP 01088/2018/TGI/NYGE yareganagwamo na Hakizimana Daniel, yarangiza akumva ko hari urubanza RP 00759/2018/TGI/NYGE yahamijwemo icyaha gisa neza n'icyo ashinjwa, yagombaga kumva ko habonetse umunyacyaha maze agahita yuririraho akabigaragariza umucamanza, ariko kubera ko nawe mu bugenzacyaha yari yaremeye ko yagiye Musanze kugurisha imodoka, hari n'abatangabuhamya bamushinja yumvise ko kabone niyo hari urubanza RP 00759/2018/TGI/NYGE Hakizimana Daniel yahamijwemo icyaha bitamuvanaho kumukurikirana kuko mubugenzacyaha abazwa bamubazaga nkaho yakoranaga na Hakizimana Daniel ibyaha, uru rukiko Rukuru rubona bitari bikwiye ko urukiko Rwisumbuye rwemera ko kugaragaza imanza RP 00759/2018/TGI/NYGE na RPA 01524- RP1525/2019/HC/KIG, ari ingingo nshya, kubera ko Uwimanihayeho Pierre Celestin yari azi ko zabayeho ni uko Hakizimana Daniel wareganagwa nawe yazihamijwemo ibyaha bisa n'ibyo yashinjwaga mu rubanza RP 01088/2018/TGI/NYGE rwasubirishijwemo ingingo nshya. [23] Kubijyanye n'amafaranga y'igihembo cy'avoka asabwa na Ntabahejeje Théogène, rubona kubera ko Ntabahejeje Théogène yahagarariwe n'avoka birumvikana ko akwiye guhabwa amafaranga y'igihembo cy'avoka, ahwanye n'ibihumbi magana atanu [500,000frw] kuko atamuhagarariye ku buntu. III. ICYEMEZO CY'URUKIKO [24] Rwemeje ko habaye akarengane mu rubanza 01112/2021/TGI/NYGE. [25] Rwemeje ko ikirego gisubirishamo urubanza RP 01088/2018/TGI/NYGE ingingo nshya kitagombaga kwakirwa. [26] Rwemeje ko urubanza RP 01088/2018/TGI/NYGE rugumanye agaciro karwo. [27] Rwemeje ko Uwimanihayeho Pierre Celestin aha Ntabahejeje Théogène ibihumbi magana atanu[500,000frw] y'igihembo cy'avoka. [28] Rwemeje ko amagarama y'urubanza yatanzwe ahwanye n'ibyakozwe mu rubanza. [29] Uru rubanza rwagombaga gusomwa kuwa 08/04/2024, ariko kubera ko habayeho konji rusomwe 09/04/2024.

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