

RWANDA / JUDGMENT

RUBAYIZA v. MICROFINANCE INKINGI

R.COMA 0025/15/HCC

COURT

Commercial High Court

DECIDED

15 May 2015

CASE / FILE NUMBER

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RUBAYIZA v. MICROFINANCE INKINGI

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Text

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RUBAYIZA v. MICROFINANCE INKINGI [Rwanda URUKIKO RUKURU RW'UBUCURUZI – R.COMA 0025/15/HCC (NSENIGIYUMVA, P.J.) 15 Gicirasi 2015] Amategeko agenga amaseserano – Gusaba kugabanya urwunguko bikozwe n'umwishingizi – Ntizagabanyuka kuko uwatse inguzanyo yemera umwenda kuko atazijurirye kandi umwishingizi akaba yaremeye kwishingira umwenda azi neza inyungu ziwurimo – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 167, Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo za 64 na 113 n'Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 556. Indishyi – Indishyi z'ikurikiranarubanza – Kuba batarishyuye umwenda nk'abingiz nyamara bari bahawe integuza byumvikanisha ko indishyi zatanze zifite ishingiro – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 556. Indishyi – Indishyi z;akababaro n'igihembo cy'Avoka – Nta ndishyi zitangwa iyo zitatangiwe ibisobanura. Ariko ubujurire butanzwe n'urundi ruhande butuma hatangwa igihembo cy'avoka iyo budafite ishingiro – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 250. Amategeko agenga ingwate – Ikirego gishingiye ku ngwate – Ntigisuzumwa iyo nta

kigaragaza ko iyo yanditswe mu buryo bukurikije amategeko – Itegeko n° 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4. Incamake y'ikibazo: Mu rubanza R.Com 0181/14/TC/Nyge MICROFINANCE INKINGI Ltd yaregagamo Rubayiza Médard, Urukiko rw'Ubucuruza rwa Nyarugenge rwamutegetse afatanyije n'abandi kwishyura 20.433.124 y'umwenda na Frw 250.000 y'ikurikiranarubanza no kwishyura Frw 5.300 y'amagarama y'urubanza. Yajuririye Urukiko Rukuru rw'Ubucuruza asaba ko ijanisha ry'urwunguko ryabariweho umwenda ryagabanywa rigashyirwa kuri 18% ku mwaka kubera guhendwa mu gukora amasezerano kubera integer nke. ubushobozi cyangwa ubumenyi buke hakwa inyungu z'ikirenga kandi na RUBAYIZA Médard na MUKAMFIZI Anastasie bamwishingiye bari bafite icyizere cyo gusanirwa inzu bitewe n'intege nke z'ikibazo barimo n'ubumenyi buke mu bijyanye n'imyenda baramwishingira ariko ntiyigera asana inzu. Yavuze kandi ko MICROFINANCE INKINGI Ltd yagenewe indishyi nyamara ariyo yagize uruhare mu kutishyurwa. Uhagarariye MICROFINANCE INKINGI Ltd avuga ko inyungu zitagabanywa kuko Rubayiza Médard Atari we wahawe inguzanyo ahubwo uwazihawe akaba ayari uko zibarwa. Yasabye indishyi z'akababro n'igihembo cy'Avoka. Abagobotse nabo basabye igabanyuka ry'ijanisha ry'urwunguko kuko umutungo watanze ingwate bawufiteho uruhare. MICROFINANCE INKINGI Ltd yasubije ko ubwo bujire nta shingiro bufite.

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Incamake y'icyemezo: Inyungu ntizagabanyuka kuko uwafashe yemeye umwenda bigaragazwa n'uko atazajuririye kandi usaba ko zigabanyuka akaba yaramwishingiye agasinjya ku masezerano azi neza inyungu zirimo. Ntihasabwa ko inyungu zigabanywa kuko batashyize umukono ku amasezerano y'inguzanyo bityo bakaba nta nyungu bafite mu rubanza kuko. Indishyi z'ikurikiranarubanza zatanze mu rubanza rujuriyirwa zifite ishingiro kuko uwafashe umwenda wanaziciwe atawishyuye n'abamwishingiye bakaba batarishyuye nyuma yo guhabwa integuza bigatuma ahaba urubanza. Indishyi z'akababaro zisabwa MICROFINANCE INKINGI Ltd na ntizatanga kuko zitasobanuwe; ariko igomba guabwa amafaranga y'igihembo cy'Avoka kuko ubujurire bwatumye yiyambaza avoka. Ubujurire busaba gukurikirana ingwate gusa ku ruhare RUBAYIZA Médard na MUKAMFIZI Anastasie bafite mu izungura ntibwasuzumwa kuko nta kigaragaza ko iyo ingwate yanditswe mu buryo buteganywa n'amategeko ngo ibe ifite agaciro uretse kuba amasezerano ateganywa ko hatanzwe ingwate dore ko ingwate itari mu kiburanwa mu rubanza. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bwa MICROFINANCE INKINGI Ltd bufite ishingiro kuri bimwe. Ubujurire bwuririye ku bundi ntibusizumwe. Urubanza rwajuririye ntiruhindutse uretse igihembo cy'Avoka kiyongereye. Uwajuririye ategatswe kwishyura uwarezwe igihembo cy'Avoka. Amategeko yashyigirweho Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 167. Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo za 64 na 113. Itegeko n° 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4. Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258, 560 na 556. Nta manza zifashishijwe

Urubanza I. IMITERERE Y'URUBANZA

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[1] RUBAYIZA Médard yajuririye R.Com 0181/14/TC/Nyge rwaciwe n'Urukiko rw'Ubucuruza rwa Nyarugenge MICROFINANCE INKINGI Ltd irumuregamo hamwe na RWIGEMA Baudouin na MUKAMFIZI Anastasie umwenda n'indishyi, BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane barugobokamo. Urukiko rutegeka RWIGEMA Baudouin, RUBAYIZA Médard na MUKAMFIZI Anastasie kwishyura MICROFINANCE INKINGI Ltd Frw 20.433.124 y'umwenda na Frw 250.000 y'ikurikiranarubanza no kwishyura Frw 5.300 y'amagarama y'urubanza. Kuwa 06/05/2015 haba mu ruhamye iburanisha, RUBAYIZA Médard yiburanira, MICROFINANCE INKINGI Ltd ihagarariwe na Maître RUZINDANA Ignace, RWIGEMA Baudouin, MUKAMFIZI Anastasie, BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane bahagarariwe na Maître KAYITANA Dominique Savio. RUBAYIZA Médard avuga ko yajuriye kugira ngo urukiko rugabanye inyungu zibarirwe kuri 18 % ku mwaka kuko habayeho guhenda RWIGEMA Baudouin wakoze amasezerano kubera intege nke, ubushobozi cyangwa ubumenyi buke hakwa inyungu z'ikirenga kandi na RUBAYIZA Médard na MUKAMFIZI Anastasie bamwishingiye bari bafite icyizere cyo gusanirwa inzu bitewe n'intege nke z'ikibazo barimo n'ubumenyi buke mu bijyanye n'imyenda baramwishingira ariko ntiyigera asana inzu. RUBAYIZA Médard avuga ko yajuriye kuko MICROFINANCE INKINGI Ltd yahawe indishyi kandi ari yo yagize uruhare mu kutishyurwa kuko itamenyesheje abishingizi ko umukozi wayo RWIGEMA Baudouin atishyura kugira ngo bishyure bituma inyungu ziba nyinshi. Maître RUZINDANA Ignace avuga ko inyungu zitagabanywa kuko RUBAYIZA Médard atari we wahawe inguzanyo kuko yahawe RWIGEMA Baudouin wari mu buyobozi bwa MICROFINANCE INKINGI Ltd azi uko zibarwa kandi RUBAYIZA Médard yamwishingiye azi igipimo cy'inyungu kiri mu masezerano kuko yayashyizeho umukono. Maître RUZINDANA Ignace avuga ko RUBAYIZA Médard na MUKAMFIZI Anastasie nk'abishingizi ari bo bari bafite inshingano zo kumenya niba umwenda wishyurirwa igihe no kwishyura mu gihe RWIGEMA Baudouin atawishyuye. Maître RUZINDANA Ignace avuga ko mu bujurire MICROFINANCE INKINGI Ltd isaba indishyi z'akababaro n'igihembo cya avoka. Maître KAYITANA Dominique Savio avuga ko BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane batanga ubujurire bwuririye ku bundi basaba ko inyungu zagabanuka kuko umutungo watanzweho ingwate bawufiteho uruhare kuko ari inzu y'umuryango bafite uburenganzira bwo kuyizungura, ko mu gukurikirana ingwate MICROFINANCE INKINGI Ltd yazakurikira uruhare rwa RUBAYIZA Médard na MUKAMFIZI Anastasie gusa. Maître RUZINDANA Ignace avuga ko ubujurire bwabo nta shingiro bufite kuko hataregewe ingwate, haregewe umwenda. [2] Ibibazo urukiko rugomba gusuzuma muri uru rubanza ni ibi bikurikira :

- niba inyungu zagabanurwa zigashyirwa kuri 18 % ku mwaka ;

- niba indishyi zitari zikwiriye ;
 - niba mu bujurire indishyi z'akababaro n'igihembo cya avoka zikwiriye ;
 - niba mu gukurikirana ingwate MICROFINANCE INKINGI Ltd yazakurikira gusa uruhare RUBAYIZA Médard na MUKAMFIZI Anastasie bafite mu izungura. II. ISESENGURA RY'IBIBAZO BISUZUMWA MU RUBANZA
1. Ku byerekeye kugabanya inyungu zigashyirwa kuri 18 % ku mwaka

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- [3] Ingingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye kandi agomba kubahirizwa nta buryarya, iya 113 iteganya ko amasezerano agira inkurikizi ku bayagiranye gusa. Ingingo ya 560 y'igitabo cya mbere cy'urwunge rw'amategeko y'imbonezamubano ibyerekeye imirimo nshinganwa cyangwa amasezerano (Code Civil Livre III) iteganya ko uwishingiye undi ashinzwe kwishyura ugomba kwishyurwa iyo ugomba kwishyura atashoboye kubikora. Ingingo ya 167 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe kandi ryujijwe kugeza ubu iteganya ko uregwa mu rukiko rujuririrwa ashobora na we kujurira yuririye ku bujurire bw'urega. [4] RUBAYIZA Médard avuga ko yajuriye kugira ngo urukiko rugabanye inyungu zibarirwe kuri 18 % ku mwaka kuko habayeho guhenda RWIGEMA Baudouin wakoze amasezerano kubera intege nke, ubushobozi cyangwa ubumenyi buke hakwa inyungu z'ikirenga kandi na RUBAYIZA Médard na MUKAMFIZI Anastasie bamwishingiye bari bafite icyizere cyo gusanirwa inzu bitewe n'intege nke z'ikibazo barimo n'ubumenyi buke mu bijyanye n'imyenda baramwishingira ariko ntiyigera asana inzu. [5] Maître RUZINDANA Ignace avuga ko inyungu zitagabanywa kuko RUBAYIZA Médard atari we wahawe inguzanyo kuko yahawe RWIGEMA Baudouin wari mu buyobozi bwa MICROFINANCE INKINGI Ltd aza uko zibarwa kandi RUBAYIZA Médard yamwishingiye aza igipimo cy'inyungu kiri mu masezerano kuko yayashyizeho umukono. [6] Maître KAYITANA Dominique Savio avuga ko BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane batanga ubujurire bwuririye ku bundi basaba ko inyungu zagabanuka kuko umutungo watanze ingwate bawufiteho uruhare kuko ari inzu y'umuryango bafite uburenganzira bwo kuyizungura kandi batemeye ko itangwaho ingwate. [7] Urukiko rusanga inyungu zaciwe zitagabanuka kubera ko RWIGEMA Baudouin wahawe umwenda atazijuririye, bivuga ko yemeye umwenda kandi RUBAYIZA Médard ari umwishingizi we wanashyize umukono ku masezerano y'inguzanyo aza ko inyungu zirimo kubera ko umwishingizi yishyura hashingiwe ku mwenda w'iremezo wafashwe n'uwo yishingiye. [8] Urukiko rusanga ubujurire bwa BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane bwo kugabanya inyungu ku nguzanyo yafashwe na RWIGEMA Baudouin butasuzumwa kuko nta nyungu bafite zo kubiregera kuko nta masezerano y'inguzanyo bashyizeho umukono.

2. Ku byerekeye kudatanga indishyi [9] Ingingo ya 556 ya Code Civil Livre III iteganya ko ubwishingire bw'umwenda w'ibanze busesuye bugera no ku ngereka zose z'uwo mwenda, ndetse no ku magarama y'urukiko yerekeye ikirego cya mbere, kimwe n'andi yose azatangwa mu nkiko kuva igihe uwishingiye undi yamenyeshejwe ko ugomba kwishyura atishyuye umwenda we.

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- [10] RUBAYIZA Médard avuga ko yajuriye kuko MICROFINANCE INKINGI Ltd yahawe indishyi kandi ari yo yagize uruhare mu kutishyurwa kuko itamenyesheje kare abishingizi ko umukozi wayo RWIGEMA Baudouin atishyura kugira ngo bishyure bituma inyungu ziba nyinshi. [11] Maître RUZINDANA Ignace avuga ko RUBAYIZA Médard na MUKAMFIZI Anastasie nk'abishingizi ari bo bari bafite inshingano zo kumenya niba umwenda wishyurirwa igihe no kwishyura mu gihe RWIGEMA Baudouin atawishyuye. [12] Urukiko rusanga indishyi z'ikurikiranarubanza zaciwe zingana na Frw 250.000 zari zikwiriye kuko RWIGEMA Baudouin atishyuye umwenda kandi na RUBAYIZA Médard na MUKAMFIZI Anastasie nk'abishingizi be ntibawishyura kandi barahawe integuza mu mwaka wa 2013, bigatuma haba urubanza.
3. Ku byerekeye kwishyura indishyi z'akababaro n'igihembo cya avoka [13] Ingingo ya 258 ya Code Civil Livre III iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse. [14] Maître RUZINDANA Ignace avuga ko mu bujuriye MICROFINANCE INKINGI Ltd isaba ko RUBAYIZA Médard ategakwa kuyishyura indishyi z'akababaro zingana na Frw 1.000.000 n'igihembo cya avoka kingana na Frw 700.000. [15] Urukiko rusanga indishyi z'akababaro MICROFINANCE INKINGI Ltd isaba itazihabwa kuko itazisobanuye, rusanga ariko RUBAYIZA Médard agomba kuyishyura igihembo cya avoka wayiburaniye mu bujuriye kingana na Frw 500.000 kuko kujurira kwe kwatumye yiyambaza avoka kandi imirimo ye irabihemberwa, ariko akaba agenwe mu bushishozi bwayo kuko ayatswe ari menshi.
 4. Ku byerekeye gukurikirana ingwate gusa ku ruhare RUBAYIZA Médard na MUKAMFIZI Anastasie bafite mu izungura [16] Ingingo ya 4 y'Itegeko n° 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko ubugwate bufite agaciro iyo bwanditswe mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru. Ingingo ya 3 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo avuga. [17] Maître KAYITANA Dominique Savio avuga ko BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane nk'abana ba MUKAMFIZI Anastasie na RUBAYIZA Gérard hamwe n'umwuzukuru wabo batanga ubujurire bwuririye ku bundi basaba ko mu gukurikirana ingwate y'inzu yatanzwe hatangwa inguzanyo MICROFINANCE INKINGI Ltd yazakurikirana gusa uruhare rwa RUBAYIZA Médard na MUKAMFIZI Anastasie mu izungura kuko bayitanze nta ruhare bo babigizemo kandi bayifatanyije. [18] Maître RUZINDANA

Ignace avuga ko ubujurire bwabo nta shingiro bufite kuko hataregewe ingwate, haregewe umwenda.

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[19] Urukiko rusanga rutasuzuma ubujurire bwuririye ku bundi bwa BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane bwerekeye itangwa ry'ingwate kubera ko nta kigaragaza ko yanditswe mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru kugira ngo ubugwate bube bufite agaciro uretse kuba mu masezerano handitse ko hatanzwe ingwate y'inzu iri Nyarusange, byongeye ikaba itarimo kuburanwa muri uru rubanza, ibyo bikaba bitatuma hemezwa ko ubugwate buriho kugira ngo hasuzumwe niba yaratanzwe mu buryo bukurikije amategeko. III. ICYEMEZO CY'URUKIKO [20] RWEMEYE kwakira ubujurire bwatanzwe na RUBAYIZA Médard ariko rwemeje ko nta shingiro bufite. [21] RWEMEYE kwakira ubujurire bwuririye ku bundi bwatanzwe na MICROFINANCE INKINGI Ltd kandi rwemeje ko bufite ishingiro kuri bimwe. [22] RWEMEJE ko ubujurire bwuririye ku bundi bwatanzwe na BAMURANGE Gerardine, MUBERARUGO Delphine, INGABIRE Germaine, ISHIMWE Alice na RUBAYIZA M.Diane budasuzumwe. [23] RWEMEJE ko inyungu zaciwe zitagabanuka, ko indishyi z'ikurikiranarubanza zaciwe zari zikwiriye, ko nta ndishyi z'akababaro MICROFINANCE INKINGI Ltd ikwiriye, ko ariko RUBAYIZA Médard agomba kuyishyura igihembo cya avoka wayiburaniye mu bujurire kingana na Frw 500.000. [24] RWEMEJE ko imikirize y'urubanza R.Com 0181/14/TC/Nyge idahindutse uretse igihembo cya avoka kiyongereyeho mu bujurire. [25] RUTEGETSE RUBAYIZA Médard kwishyura MICROFINANCE INKINGI Ltd igihembo cya avoka wayiburaniye mu bujurire kingana na Frw 500.000. [26] RUTEGETSE ko imikirize y'urubanza R.Com 0181/14/TC/Nyge idahindutse uretse igihembo cya avoka kiyongereyeho mu bujurire. [27] RUTEGETSE ko Frw 75.000 RUBAYIZA Médard yatanze ajurira aherera ku Isanduku ya Leta.

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