

RWANDA / JUDGMENT

RUSAGARA v. MUKAKIGERI

RCOMAA 0033/14/CS

COURT

Supreme Court

DECIDED

7 November 2014

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RCOMAA 0033/14/CS

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RUSAGARA v. MUKAKIGERI

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Text

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RUSAGARA v. MUKAKIGERI [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0033/14/CS (Mukanyundo, P.J., Rugabirwa na Hitiyaremye, J.) 7 Ugushyingo 2014] Amategeko agenga ububasha bw'Inkiko z'Ubucuruzi – Amasezerano y'ubucuruzi cyangwa agamije igikorwa cy'ubucuruzi – Impaka zivutse ku masezerano cyagwa kubikorwa by'ubucuruzi hagati y'abantu ku giti cyabo – Iyo amasezerano yabaye hagati y'ababuranyi agamije igikorwa cy'ubucuruzi nko kongera inyungu n'umutungo by'uruganda cyangwa sisoyeti biba bihagije kwemeza ko ayo masezerano ari ay'ubucuruzi kuko ububasha bwazo bushingira ku miterere y'ikiregerwa – Itegeko ngenga no 06/2012/OL ryo kuwa 14/09/2012 rigena imiterere n'ububasha by'inkiko z'ubucuruzi, ingingo ya 2 agace ka 1. Amategeko agenga ububasha bw'Urukiko rw'Ikirenga – Imanza zaciwe n'inkiko z'ubucuruzi – Iyakinwa ryazo mu Rukiko rw'Ikirenga hashingiwe kw'iburabubasha bw'inkiko z'ubucuruzi zaziciye – Iyo bijuririwe mu Rukiko rw'Ikirenga hashingiwe ko inkiko z'ubucuruzi zaruciye nta bubasha zari zifite kandi ataribyoye, icyo kirego ntacyakirwa – Itegeko ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28, igika cya 2, agace ka 2. Incamake y'Ikibazo: Mukakigeri Zahara yareze Rusagara Gad mu Rukiko rw'Ubucuruzi rwa Nyarugenge ibirego

bijyanye no kumwishyura umwenda amubereyemo, inyungu zayo, indishyi z'akababaro, amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka n'imigabane yari afite muri sosiyeti MAWESA FACTORY. Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya Mukakigeri Zahara kidafite ishingiro ku byerekeye imigabane ya sosiyeti MAWESA FACTORY rutegeka Rusagara Gad kumwishyura 25.153.400 frs agizwe n'umwenda amubereyemo, inyungu zawo, indishyi z'akababaro, amafaranga y'ikurikirana rubanza n'igihembo cya Avoka. Rusagara Gad yajuririje Urukiko rw'ubucuruzi rwemeza ko ubujurire bwe bufite ishingiro kuri bimwe maze rumutegeka kwishyura Mukakigeri Zahara 23.088.500frs bitewe n'ibara ry'inyungu ryahindutse, ikurwaho ry'indishyi z'akababaro n'indishyi z'ubukererwe zahise zimanuka. Rusagara Gad yarongeye ajuririra Urukiko rw'Ikirenga avuga ko Inkiko z'Ubucuruzi zaburanishije ikirego cyatanze na Mukakigeri Zahara nta bubasha zari zifite. Asaba ko Urukiko rw'Ikirenga rwakohereza urubanza ruburanwa mu Rukiko rwisumbuye rwa Nyarugenge. Mukakigeri Zahara we yavuze ko Inkiko z'ubucuruzi arizo zifite ububasha bwo kuburanisha urwo rubanza hashingiwe ku miterere y'iburanwa. Incamake y'icyemezo: 1. Mu bibazo by'ubucuruzi, ububasha bw'Inkiko bwo guca urubanza bushingiye ku kiburanwa bugaragazwa n'imiterere y'Ikiregerwa. Ibikorwa birebana n'imikorere ya sosiyeti cyangwa kuyiteza imbere ni igikorwa cy'ubucuruzi. Inkiko z'ubucuruzi zifite ububasha bwo kuburanisha impaka zivutse ku masezerano cyangwa kubikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi. Impaka zishingiye ku mafaranga RUSAGARA

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Gad yagurijwe na Mukakigeri Zahara ziri mu bubasha bw'Inkiko z'ubucuruzi kuko yari ayo kugura imashini iyungurura amamesa no kugura inkono yo kuyateka.

2. Urukiko rw'ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciye ku rwego rwa kabiri n'Urukiko Rukuru rw'Ubucuruzi, iyo izo manza zaciye zitabifitiye ububasha. Mugihe amasezerano ababuranyi bashingiraho, Urukiko rw'Ikirenga rusanze ari ay'ubucuruzi, ikirego cyatanze mu Rukiko rw'Ikirenga gishingiye ku iburabubasha ry'Inkiko z'Ubucuruzi, nticyakirwa. Ubujurire bwa Rusagara Gad bukaba butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ikirenga. Ubujurire ntibwakiriwe. Urubanza ntiruhinduwe. Amagarama aherereye ku uwajuriye. Amategeko yashingiweho: Itegeko ngenga no 06/2012/OL ryo kuwa 14/09/2012 rigena imiterere n'ububasha by'inkiko z'ubucuruzi, ingingo ya 2 agace ka 1. Itegeko ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28, igika cya 2, agace ka 2. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'IKIBAZO [1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge MUKAKIGERI Zahara aregamo RUSAGARA Gad ibi byavuzwe haruguru. Uru Rukiko rwaciye urubanza rwemeza ko ikirego cya MUKAKIGERI Zahara kidafite ishingiro ku byerekeye imigabane ya sosiyete MAWESA FACTORY, rutegeka RUSAGARA Gad kumwishyura 25.153.400 agizwe na 18.700.000 Frw y'umwenda amubereyemo, 5.753.400 Frw y'inyungu zayo, 200.000 Frw y'indishyi z'akababaro, 500.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka, kwishyura 1% ya 24.153.400 Frw buri kwezi ku bukererwe kuva urubanza rutakijurirwe no kumusubiza

amafaranga ibihumbi bitanu (5000 Frw) yatanzeho ingwate y'amagarama arega. [2] RUSAGARA Gad ntiyishimiye iki cyemezo maze akijurira mu Rukiko Rukuru rw'Ubucuruzi, uru Rukiko ruca urubanza RCOMA 0293/14/HCC kuwa 27/06/2014 rwemeza ko ubujurire bwa RUSAGARA Gad bufite ishingiro kuri bimwe, ko ubujurire bwuririye ku bundi bwa MUKAKIGERI Zahara nta shingiro bufite, rwemeza ko uru rubanza rutarangizwa by'agateganyo.

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- [3] Rwemeje ko imikirize y'urubanza RCOM 0240/14/TC/Nyge ihindutse ku byerekeye inyungu zigomba kuba 3.888.500 Frw aho kuba 5.753.400 Frw, indishyi z'akababaro za 200.000 Frw zikuweho n'indishyi z'ubukererwe zigomba kuba Frw 230.885 Frw buri kwezi. [4] Rwategetse RUSAGARA Gad kwishyura MUKAKIGERI Zahara umwenda amafaranga 18.700.000, inyungu zawo zingana na 3.888.500 Frw indishyi z'ikurikiranarubanza n'igihembo cya avoka zingaana na 500.000 Frw yose hamwe akaba 23.088.500 Frw no kwishyura indishyi z'ubukererwe zingana na 230.885 Frw buri kwezi mu gihe azaba atubahirije imikiriye y'urubanza. Rwategetse MUKAKIGERI Zahara kwishyura RUSAGARA Gad, ibihumbi birindwi magana atanu (7.500 Frw) yatanzeho ingwate y'amagarama ajurira. [5] RUSAGARA Gad yajuririye imikirize y'urubanza mu Rukiko rw'Ikirenga avuga ko impamvu y'ubujurire afite ari imwe rukumbi irebana n'uko Urukiko Rukuru rw'Ubucuruzi ndetse n'Urukiko rw'Ubucuruzi zaburanishije ikirego cyatanzwe na MUKAKIGERI Zahara kandi zitabifitiye ububasha, ibyo akaba abishingira ku biteganywa n'ingingo ya 28, igika cya kabiri, agace ka 2^o, y'Itegeko Ngenga n° 03/2012OL ryo kuwa 13/06/2012 ryerekeye imitunganyirize, imikorere n'ububasha bw'Urukiko rw'Ikirenga. [6] Asaba Urukiko rw'Ikirenga ko rwategeka ko uru rubanza rwoherezwa mu Rukiko Rwisumbuye rwa Nyarugenge akaba arirwo ruburanisha ku rwego rwa mbere. Me Ndutiye Yussuf mu myanzuro yo kwiregura yatanze mu izina rya MUKAKIGERI Zahara yerekana ko Inkiko z'ubucuruzi arizo zari zifite ububasha bwo kuburanisha uru rubanza ashingiye ku miterere y'ikiburanwa. [7] Iburanisha ry'urubanza ryabereye mu ruhamwe kuwa 07/10/2014, RUSAGARA Gad yunganiwe na Me Hakizimana John naho MUKAKIGERI Zahara yunganiwe na Me Ndutiye Yussuf. II. IKIBAZO KIRI MU RUBAZA N'ISESENGURA RYACYO Kumenya niba urubanza rwajuririwe rwaraciwe n'Urukiko rutabifitiye ububasha [8] Me Hakizimana John uburanira RUSAGARA Gad avuga ko impamvu yatumye ajurira ari uko Urukiko rw'Ubucuruzi ndetse n'Urukiko Rukuru rw'Ubucuruzi zaburanishije ikirego cyatanzwe na MUKAKIGERI Zahara kandi zitabifitiye ububasha, ibyo akaba abishingira ku biteganywa n'ingingo ya 28, igika cya kabiri, agace ka 2^o, y'Itegeko Ngenga n° 03/2012OL ryo kuwa 13/06/2012 ryerekeye imitunganyirize, imikorere n'ububasha bw'Urukiko rw'Ikirenga. [9] Asobanura ko Urukiko rw'Ubucuruzi rwa Nyarugenge rumaze kubona ko amafaranga aburanwa atari imigabane MUKAKIGERI yashyize muri Sosiyete MAWESA FACTORY Ltd ngo kuko iyo migabane itaregwa RUSAGARA Gad, ko ahubwo yaregwa Sosiyete MAWESA FACTORY Ltd akitaba mu izina ryayo, akavuga ko rwagombaga kwiambura ububasha maze rukohereza urubanza mu Rukiko Rwisumbuye rwa Nyarugenge ruburanisha imanza z'imbonezamubano, kubera ko amafaranga 18.700.000 yemejwe

nk'umwenda usanzwe ataburanwa mu Nkiko z'Ubucuruzi.

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[10] Akomeza asobanura ko ingingo ya 2 y'Itegeko n° 06/2012 OL ryo kuwa 14/09/2012 rigena imiterere, imikorere n'ububasha by'Inkiko z'Ubucuruzi, cyane cyane mu gace kayo ka mbere ivuga ko „ muri iri tegeko ibibazo by'ubucuruzi bivuga imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro n'ibindi bibazo bifitanye isano byerekeye impaka zivutse ku masezerano cyangwa ku bikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi, ko rero iyo arebye ibibazo by'ubucuruzi bivugwa muri iyo ngingo, asanga ntaho ibijyanye n'imyenda abantu bagirana ku giti cyabo itajyanye cyangwa idafitanye isano n'ubucuruzi bw'abayagiranye iyo atari abacuruzi. Avuga ko amafaranga RUSAGARA yahawe atari ayo gukoresha mu bucuruzi bwe kandi ko na MUKAKIGERI wayamuhaye atari umucuruzi, bityo impaka zavutse ku masezerano bagiranye zikaba zitagomba gukemurwa n'Inkiko z'Ubucuruzi. [11] Me Ndutuye Yussuf wunganira MUKAKIGERI Zahara avuga ko RUSAGARA GAD yashingiye ububasha bw'Urukiko rw'Ikirenga bwo kuburanisha ubujurire bwe ku ngingo ya 28, igika cya kabiri, agace ka 2°, y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 ryerekeye imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, ivuga ko « Urukiko rw'Ikirenga rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare, iyo izo manza : 2° zashingiye ku itegeko ritariho cyangwa ingingo z'amategeko zitakiriho cyangwa zaciwe n'Urukiko rutabifitiye ububasha”. [12] Akomeza avuga ko RUSAGARA Gad mu bujurire bwe bigaragara ko atasobanukiwe neza imikirize y'urubanza RCOM 0240/10/TC/Nyge kuko MUKAKIGELI Zahara arega bwa mbere, yareze RUSAGARA Gad ibirego byinshi harimo kumusubiza amafaranga yashyize muri sosiyete MAWESA FACTORY Ltd bafatanyije no kumwishyura amafaranga 18.700.000 yamuguriye. Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko mu birego byarezwe RUSAGARA Gad kimwe kizaregwa MAWESA FACTORY Ltd ukwacyo, rufata icyemezo cyo gukomeza kuburanisha ibindi harimo icyo MUKAKIGERI Zahara yishyura RUSAGARA Gad ku giti cye amafaranga yamuguriye angana na 18.700.000 Frw, n'ibindi birebana n'indishyi zinyuranye yasabaga. [13] Asobanura ko kuba Urukiko rw'Ubucuruzi rwa Nyarugenge ndetse n'Urukiko Rukuru rw'Ubucuruzi zose zaremeje ko zifite ububasha muri rusange ari uko ububasha bw'izo Nkiko bugaragarira buri wese kuko ingingo ya 12 y'Itegeko Ngenga n° 06/2012/OL ryo kuwa 14/09/2012 rigena imiterere, imikorere n'ububasha by'Inkiko z'Ubucuruzi iteganya ko “Inkiko z'Ubucuruzi ziburanisha mu rwego rwa mbere imanza zose z'ubucuruzi, iz'imari, iz'imisoro n'ibindi bibazo bifitanye isano , nkuko bisobanurwa mu ngingo ya 2 y'iri Tegeko Ngenga” ivuga ko muri iri Tegeko Ngenga, ibibazo by'ubucuruzi “ bivuga imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro n'ibindi bibazo bifitanye isano byerekeye : Impaka zivutse ku masezerano cyangwa ku bikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi”. [14] Me Ndutiye Yussuf avuga ko hashingiye ku ngingo imaze kuvugwa haruguru, asanga ku birebana n'uru rubanza impaka zirimo zaravutse hagati y'abantu ku giti cyabo kuko nkuko RUSAGARA Gad abyivugira amafaranga

MUKAKIGERI Zahara yamuguriye yayakoresheje muri “enrichissement de la Société”, bityo akaba yari agamije ubucuruzi. Yongeraho ko mu gace ka 8° k’iriya ngingo, havugwamo ko Inkiko z’Ubucuruzi ziburanisha n’impaka zose zishobora kuvuka hagati y’abantu bagize cyangwa bashinzwe sosiyete zanditse n’ibindi bigo by’ubucuruzi ari bo....c) abafite imigabane.

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- [15] Avuga ko kuba RUSAGARA Gad na MUKAKIGERI Zahara bari abanyamigabane muri MAWESA FACTORY Ltd ariko RUSAGARA Gad mu myiregurire ye imbere y’Inkiko zose akaba yaragiye avuga ko umwenda wa 18.700.000 Frw ari inguzanyo yahawe MAWESA FACTORY Ltd naho MUKAKIGERI Zahara akavuga ko uyu mwenda yawumuhaye ku giti cye ariko ashaka kugura imashini z’uruganda, asanga Inkiko z’Ubucuruzi arizo zifite ububasha bwo gukemura iki kibazo kiri hagati y’abanyamigabane, bityo rero ubujurire bwa kabiri bwa RUSAGARA Gad bukaba butagomba kwakirwa. Mu gusoza, MUKAKIGERI Zahara yabwiye uru Rukiko ko yakorana ubucuruzi na RUSAGARA Gad ajya kurangura amasabune ku ruganda rwe, ko bombi bari abacuruza nubwo RUSAGARA Gad abihakana, ko ariko we icyo gihe yari afite TIN yahawe na RRA uretse ko ubu yabaye ahagaritse ibyo gucuruza. UKO URUKIKO RUBIBONA [16] Ingingo ya 28, igika cya kabiri, agace ka 2°, y’Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga, RUSAGARA yashingiyeho ububasha bw’Urukiko rw’Ikirenga bwo kuburanisha ubujurire bwe mu rwego rwa kabiri, iteganya ko «Urukiko rw’Ikirenga rufite kandi ububasha bwo kuburanisha mu rwego rw’ubujurire imanza zaciwe ku rwego rwa kabiri n’Urukiko Rukuru, Urukiko Rukuru rw’Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare, iyo izo manza zaciwe n’Urukiko rutabifitiye ububasha». [17] Ku birebana n’ububasha bw’inkiko z’ubucuruzi, ingingo ya 2, agace ka 1°, y’Itegeko Ngenga n° 06/2012/OL ryo kuwa 14/9/2012 rigena imiterere, imikorere n’ububasha by’Inkiko z’Ubucuruzi, iteganya ko izo Nkiko zifite ububasha bwo kuburanisha impaka zivutse ku masezerano cyangwa ku bikorwa by’ubucuruzi hagati y’abantu cyangwa ibigo by’ubucuruzi, naho ingingo ya 14, igateganya ko „ mu kibazo by’ubucuruzi, ububasha bw’inkiko bwo guca urubanza bushingiye ku kiburanwa bugaragazwa n’imiterere y’ikiregerwa. [18] Ku kibazo cyo kumenya niba RUSAGARA Gad na MUKAKIGERI Zahara bari abacuruza igihe bagiranaga amasezerano y’iguriza yo kuwa 25/09/2012, MUKAKIGERI Zahara yagejeje ku Rukiko ikimenyetso kigizwe n’inyandiko yitwa „ Imenyeshwa ryo kwiyandikisha“ (Notice d’Enregistrement) cyatanzwe na Rwanda Revenue Authority kuwa 01/06/2006, akaba afite TIN 101374055, bityo akaba nta gushidikanya ku mwuga w’ubucuruzi avuga yakoraga igihe amasezerano yakorwaga. MUKAKIGERI yatanze nanone ikindi kimenyetso kigizwe n’inyandiko yatanze na Rwanda Development Board (RDB) yerekana ko RUSAGARA ariwe munyamigabane rukumbi wa Sosiyete MASAKA SOAP FACTORY Ltd ikora amasabune no kuyacuruza. [19] Urukiko rusanga igihe MUKAKIGERI Zahara na RUSAGARA Gad bagiranaga amasezerano y’iguriza, nibura MUKAKIGERI yari umucuruzi naho RUSAGARA ari umunyamigabane rukumbi muri Sosiyete MASAKA SOAP FACTORY Ltd avuga ko yari abereye umuyobozi mukuru

anayihagarariye mu rwego rw'amategeko, byumvikane ko ari nawe wayicungaga umunsi ku wundi. [20] Ku kibazo cyo kumenya niba ariya masezerano y'iguriza yabaye hagati ya RUSAGARA Gad na MUKAKIGERI Zahara yakwitwa cyangwa atakwitwa amasezerano

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y'ubucuruzi cyangwa se niba yari agamije igikorwa cy'ubucuruzi, n'ubwo umunyamigabane wa Sosiyete aba atagomba kuba ari umucuruzi byanze bikunze, Urukiko rusanga igikorwa RUSAGARA Gad nk'umuyobozi mukuru wa Sosiyete MASAKA SOAP FACTORY Ltd yashakiraga ariya mafaranga kigamije inyungu zo kongera umutungo w'uruganda rwe kugira ngo rurushaho gukora neza, iyi ngingo ubwayo ikaba ihagije mu kwerekana ko amasezerano yabaye hagati y'ababuranyi bombi ari ay'ubucuruzi bitewe n'icyari kigamijwe cyasobanuwemo, hakiyongeraho ko n'umwe mu bayagiranye ariwe MUKAKIGERI Zahara yari umucuruzi n'ubwo yabwiye uru Rukiko ko ubu yabaye abihagaritse. [21] Na none mu rwego rwo kumenya kamere y'igikorwa cyari kigamijwe mu masezerano aburanwa, umuhanga mu mategeko yerekeranye n'ubucuruzi, DIMITRI HOUTCIEFF mu gitabo cye "Droit commercial", asobanura ko ibikorwa birebana no gushinga Sosiyete y'ubucuruzi, imikorere yayo ndetse n'ibijyanye no kuyisesa, ari ibikorwa by'ubucuruzi kabone n'ubwo byaba byakozwe n'abatari abacuruzi, ko kandi igikorwa cyose (acte juridique) gifitanye isano na "Fonds de commerce" ari igikorwa cy'ubucuruzi. [22] Hashingiwe ku byasobanuwe byose haruguru, Urukiko rusanga kuba amafaranga RUSAGARA yagurijwe na MUKAKIGERI yari ayo kugura imashini iyungurura amamesa ndetse no kugura inkono yo kuyateka, byumvikana ko kiriya gikorwa yakoze cyari kigamije guteza imbere uruganda rwe arugurira ibikoresho (imashini ni kimwe mu bigize "Fonds de commerce" y'uruganda), ko rero impaka zishingiye ku masezerano y'igurizwa ry'amafaranga yo kugura ibikoresho by'uruganda zigomba kwitwa iz'ubucuruzi nk'uko biteganywa n'ingingo ya 2, agace ka 1°, y'Itegeko Ngenga n° 06/2012/OL ryo kuwa 14/9/2012 ryavuzwe haruguru, zikaburanishwa n'Inkiko z'ubucuruzi hakurikijwe ibiteganywa n'ingingo ya 12 y'iri tegeko, bityo ubujurire bwa RUSAGARA Gad bukaba butagomba kwakirwa kuko butari mu bubasha bw'Urukiko rw'Ikirenga. III. ICYEMEZO CY'URUKIKO [23] Rwemeje kutakira ubujurire bwatanzwe na Rusagara Gad kuko butari mu bubasha bw'Urukiko rw'Ikirenga; [24] Rwemeje ko ikirego MUKAKIGERI Zahara yashyikirije Inkiko arega RUSAGARA Gad kiri mu bubasha bw'Inkiko z'ubucuruzi; [25] Rwemeje ko urubanza n° RCOMA 0293/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 27/06/2014 rudahindutse; [26] Rutegetse RUSAGARA Gad kwishyura amagarama y'urubanza angana na 100.000 Frw. 1 DIMITRI HOUTCIEFF, Droit commercial, Actes de commerce, commerçants, Fonds de commerce, Instruments de paiement et de crédit : "Les actes relatifs à la création, au fonctionnement ou à la dissolution de la société, sont en principe considérés comme des actes de commerce, même si les personnes physiques participant à ces actes ne sont pas des commerçants", page 52, n° 107. L'auteur renchérit en disant "qu'il faut considérer que tout acte juridique portant sur un fonds de commerce est un acte de commerce", page 62, n° 139 .

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