

RWANDA / JUDGMENT

RUSHOMINTWARI v FURAHA NABANDI

RCA 00210/2022/HC/KIG

COURT

High Court

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RUSHOMINTWARI v FURAHA NABANDI

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Text

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RUSHOMWINTWARI v FURAHA N'ABANDI [Rwanda URUKIKO RUKURU - RCA 00210/2022/HC/KIG (Harerimana, P.J.) 14 Nyakanga 2023] Amategeko agenga imanza z'imbonezamubano – Imiburanishirize y'imanza – Kutongera kuburanishwa ku kibazo kimwe - Ibibazo byasuzumwe mu rubanza ntibyongera kuburanishwa mu rundi rubanza iyo ababuranyi muri izo manza ari bamwe kandi bishingiye ku mpamvu zimwe. Incamake y'ikibazo: Kuwa 23/2/2012, Urukiko Rwisumbuye rwa Gasabo rwakijije urubanza RC 0419/11/TGI/GSBO, Rushomwintwari yaburanagamo na Uwamahoro, aregera kureka kubaka mu kibanza cye gifite numero 6001. Urukiko rwemeje ko ikirego cye nta shingiro gifite. Kuwa 28/4/2022, Rushomwintwari yongeye kurega Furaha n'abandi aregera icyo kibanza n'indishyi zitandukanye. Urukiko rufata icyemezo cyo kutakira ikirego kuko cyamaze kuburanishwa mu rubanza RC 0419/11/TGI/GSBO. Urega yajuririye urwo rubanza mu Rukiko Rukuru avuga Urukiko rwisumbuye rwirengagije amategeko rwanga kwakira ikirego cye. Urukiko rukuru rwakiriye icyo kirego rusuzuma niba urubanza rwarabaye itegeko. Urega avuga ko Urukiko Rwisumbuye rwirengagije amategeko, rwanga kwakira ikirego hashingiwe ko rwamaze kuba itegeko kandi ikirego cyaragombaga kwakirwa hashingiwe ku rundi rubanza rwaburanwe aho Rushomwintwari yaburanaga na Uwamahoro

gusa kandi inyito yacyo ikaba yari kubuza Uwamahoro kubaka ikibanza mu gihe muri iki kirego ho arega abantu batanu ikiburanwa akaba ari ugutesha agaciro icyangombwa cy'umutungo. Abaregwa basobanura ko ibyo aregera yari yarigeze kubiregera mu rubanza RC 0419/11/TGI/GSBO rwaciwe tariki 23/02/2012 kuko yagaragazaga ko Uwamahoro yamutwariye ikibanza gifite No 6001 ko asaba ko ibyo agikorera by'ubwubatsi byahagarikwa maze agasubizwa ikibanza cye. Incamake y'icyemezo: Ibibazo byasuzumwe mu rubanza ntibyongera kuburanishwa mu rundi rubanza iyo ababuranyi muri izo manza ari bamwe kandi bishingiye ku mpamvu zimwe bityo ibyo Furaha n'abo bareganwa bavuga bikaba nta shingiro bifite kuko muri uru rubanza abaregwa si bamwe n'abaregwaga mbere kandi n'ikiburanwa si kimwe n'icyaburanwe mbere. Ubujurire bwatanzwe bufite ishingiro kuri bimwe; Imikirize y'urubanza RC 00493/2020/TGI/GSBO irahindutse; Urubanza rwoherejwe mu Rukiko Rwisumbuye rwa Gasabo. Amategeko yashingiweho: Itegeko N° 22/2018 ryo kuwa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, umurimo n'ubutegetsi, ingingo ya 14,111 Itegeko No 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 106. Nta manza zifashishijwe

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Urubanza I. IMITERERE Y' URUBANZA [1] Kuwa 23/2/2012, Urukiko Rwisumbuye rwa Gasabo rwakijije urubanza RC 0419/11/TGI/GSBO Rushomwintwari Sylvestre yaburanagamo na Uwamahoro Honorine, aregera kureka kubaka mu kibanza cye gifite numero 6001. Urukiko rwemeje ko ikirego cye nta shingiro gifite. [2] Kuwa 28/4/2022, Urukiko Rwisumbuye rwa Gasabo rwakijije urubanza Rushomwintwari Sylvestre aho yaregaga Furaha Eugene, Rurangirwa Michel na Uwamahoro Honorine aregera ikibanza gifite numero 6001 n' indishyi zitandukanye. Urukiko rufata icyemezo cyo kutakira ikirego kuko cyamaze kuburanishwa mu rubanza RC 0419/11/TGI/GSBO. [3] Rushomwintwari Sylvestre ntiyishimiye imikirize y'urubanza ajuririra mu Rukiko Rukuru. Ku munsu w'iburanisha yitabye wenyine, ahagarariwe na Me Butare Godfroid na Me Rutarindwa Felix, abaregwa n' uwagobokeshejwe batitabye, Urukiko rufata icyemezo cyo kuburanisha urubanza badahari. [4] Rushomwintwari Sylvestre avuga ko Urukiko Rwisumbuye rwirengagije amategeko, rwanga kwakira ikirego hashingiwe ko rwamaze kuba itegeko kandi ikirego cyaragombaga kwakirwa; kuba Urukiko rwaremeje kwakira ikirego kandi rukongera rukavuga ko kitakiriwe; agasaba gukuraho indishyi yaciwe zaciwe kuko ntaho zishingiye; agasaba Urukiko gusuzuma indishyi mbonezamusaruro za 73.836.000.frw; indishyi z'akababaro za 14.000.000 frw; amafaranga y'ikurikiranarubanza 3000.000frw; n'igihembo cy'avoka no gusubizwa igarama. [5] Ku kibazo kijyanye no kuba Urukiko rwirengagije amategeko rukanga kwakira ikirego ruvuga ko urubanza rwabaye itegeko. Avuga ko iyi nzitizi yo kutakira ikirego ishingiyeye ku rubanza rwabaye itegeko yatanze na Furaha Eugene n'Umugore we Uwamahoro Honorine, abo bavugaga ko iki kirego kivugwa muri uru rubanza RC 0493/2020/TGI/GSBO ko bigeze kukiburana mu rubanza RC 0419/11/TGI/GSBO rwaciwe kuwa 23/02/2012, akavuga ko icyo kirego bavugaga cyari hagati ya Rushomintwali Sylvestre na Uwamahoro Honorine gusa, ndetse ko inyito yacyo yari kubuza Uwamahoro honorine kubaka ikibanza", bikaba bigaragara neza ko icyaburanwaga ari ukubuza kubaka,ko icyaburanwaga atari umutungo. Ibyo rero iyo ubigereranyije n'ikirego gifite

RC 0493/2020/TGI/GSBO, usanga ikiregerwa muri uru rubanza atari ukubuza kubaka ahubwo havugwamo ibitandukanye nabyo; ko rero ikiburanwa atari kimwe ndetse n'ababuranyi si bamwe kuko ababuranyi mu rubanza avuga rwabaye itegeko bari (Rushomwintwali Sylvestre na Uwamahoro Honorine, mu gihe muri uru rubanza ababuranyi bageze kuri 5. [6] Ku bijyanye no kuba Urukiko rwarakiriye ikirego rukongera rukavuga ko kitakiriwe, Rushomwintwari avuga ko ibi asanga birimo urujijo kuko ntirwari kwakira ikirego ngo nirurangiza ruvuge ko kitakiriwe, ahubwo nyuma yo kucyakira rwari kukiburanisha rukavuga ko nta shingiro gifite rumaze gusuzuma urubanza mu mizi.

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[7] Ku bijyanye n'indishyi, Rushomwintwari avuga ko nyuma yo guha agaciro inzitizi yatanzwe na Furaha Eugene n'Umugore we Uwamahoro Honorine, Rushomwintwari Sylvestre yaciwe indishyi z'amafaranga 900.000 Frw zidafite aho zishingiye bityo akaba asaba ko zakurwaho igihe Urukiko rusanze inzitizi batanze zo kutakira ikirego nta shingiro zifite. Agasaba ko yahabwa indishyi mbonezamusaruro z'igihombo yatejwe. Agasaba amafaranga y'ikurikiranarubanza angana na 300 000 frw, n'igihombo cy'avoka cya 3 000 000 frw no gusubizwa ingwate y'igarama. [8] Mu myanzuro ye Furaha avuga ko ibyo Rushomwintwari avuga nta shingiro bifite kuko ku rwego rwa mbere, Rushomwintwari Sylvestre yatanze ikirego avuga ko "Kuregera Ikibanza gifite agaciro ka 29.300.000frw gihereye Urumuri/ Rukiri / Remera, kireba cyari gifite No 6001 Remera I Suite mbere y'uko hatangwa n'indishyi zitandukanye" Ibi aregera akaba yari yarigeze kubiregera mu rubanza RC 0419/11/TGI/GSBO rwaciwe tariki 23/02/2012 aho ibyo aregera ubu ari nabyo yari yaregeye icyo gihe kuko yagaragazaga ko Madamu Uwamahoro Honorine yamutwariye ikibanza gifite No 6001 ko asaba ko ibyo agikorera by'ubwubatsi byahagarikwa maze agasubizwa ikibanza cye. [9] Ku bijyanye no kuba Urukiko rwarakiriye ikirego rwarangiza rukavuga ko kitakiriwe, avuga ko ibyo Rushomwintwari avuga nta shingiro bifite kuko nta gika cy'urubanza agaragaza anenga ndetse nta n'itegeko agaragaza ryirengagijwe ndetse uko abisobanura siko bimeze kuko ikigaragara mu cyemezo cy'urukiko ni nabyo bisobanurwa mu buryo bwimbitse mu bika bya 6 n'icya 7 cy'urubanza rwajuririwe. Akavuga ko ku bijyanye n'indishyi ko Urukiko rufite icyo rwashingiyeho ruzigena. Akavuga ko ku bijyanye n'indishyi mbonezamusaruro ko nta shingiro bifite kuko Urukiko rutigeze rwinjira mu mizi. Ku ndishyi avuga ko nta shingiro zifite kuko aregera umutungo utari uwe. [10] Uhagarariye Ikigo cy'igihugu gishinzwe ubutaka mu nama ntegurarubanza avuga ko hashingiwe ku cyaburanywe ntabwo baburanye inkomoko y'umutungo ahubwo ni ibyerekeye kuwukoresha. Kuba rero haraburanywe kubuza kubaka ntabwo haburanwaga nyir'umutungo, ko ikirego cyari kwakirwa kigasuzumwa. Ku bijyanye no kuba Urukiko rwarakiriye ikirego rukongera rukavuga ko kitakiriwe, ko iyo ngingo Urukiko rwazayisuzuma. [11] Ibibazo bigomba gusuzumwa muri uru rubanza ni ibi bikuriira : A. Kumenya nibaurubanza rwabaye itegeko. B. Kumenya niba indishyi zaciwe Rushomwintwari ku rwego rwa mbere zavanywaho. C. Kumenya niba indishyi zisabwa muri uru rubanza zatangwa.

II. ISESENGURA RY' IBIBAZO BIGIZE URUBANZA

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A. Kumenya niba urubanza rwarabaye itegeko [12] Ingingo ya 14 y' itegeko N° 22/2018 ryo kuwa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, umurimo n'ubutegetsi ivuga ko Urubanza rwaciwe ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe. Ingingo ya 106 y' itegeko numero 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko ububasha bw' urubanza rwabaye indakuka bugarukira gusa ku cyaburanywe kigakiranurwa. Ikintu cyaburanywe kigomba kuba kimwe, ikirego kigomba kuba gishingiye ku mpamvu imwe. icyo kirego kigomba kuba cyerekeye ababuranyi bamwe kandi bakiburana mu izina ryabo rya mbere. [13] Ingingo zavuzwe haruguru iyo zisomewe hamwe zumvikanisha ko ibibazo byasuzumwe mu rubanza bitakongera kuburanishwa mu rundi rubanza iyo ababuranyi muri izo manza ari bamwe kandi bishingiye ku mpamvu zimwe. [14] Mu rubanza RC 0419/11/TGI/GSBO rwaciwe kuwa 23/2/2012, ababuranyi bari Rushomwintwari Sylvestre waregaga Uwamahoro Honorine, ikiregerwa akaba ari kubuza madamu Uwamahoro Honorine kureka kubaka mu kibanza numero 6001. Mu gika cya 6, Urukiko rukaba rwarasobanuye impamvu z' icyemezo rwafashe aho rwavuze ko ikibanza Uwamahoro Honorine arimo kubakamo yagihawe mu buryo bukurikije amategeko kuko agifitiye ibyangombwa bigizwe n' inyandiko mvaho igizwe n'icyemezo cy'iyandikisha ry'ubukode bw' igihe kirekire, amasezerano y'ubukode burambye, ko igihe cyose ibyo byangombwa bigifite agaciro ntaho Rushomwintwari yahera avuga ko Uwamahoro arimo kumwubakira mu kibanza. [15] Urubanza RC 00493/2020/TGI/GSBO rwaciwe kuwa 28/4/2022, arinarwo rujururirwa Rushomwintwari Sylvestre yaregaga Furaha Eugene, Uwamahoro Honorine, na Rurangirwa Michel, mu mwanzuro utanga ikirego uri muri dosiye mu gusobanura imiterere yacyo Rushomwintwari Sylvestre akaba agaragaza ko mu biregerwa harimo gutesha agaciro icyemezo cy'ubukode burambye cyanditse kuri Furaha na Uwamahoro kuko cyakozwe mu buriganya igice cye gifatana n' igice cya Uwamahoro na Furaha. [16] Hashingiwe kuri ibyo bimaze gusobanurwa haruguru, Urukiko rusanga ababuranyi mu rubanza RC 0419/11/TGI/GSBO atari bamwe nabo mu rubanza

RC 00493/2020/TGI/GSBO, kuko mu rubanza RC 00419/11/TGI/GSBO haburanagamo gusa Rushomwintwari na Uwamahoro mu gihe mu rubanza RC 00493/2020/TGI/GSBO haburana Rushomwintwari, Uwamahoro na Furaha na Rurangirwa; ikiregerwa nacyo si kimwe kuko mu rubanza RC 00419/11/TGI/GSBO Rushomwintwari yasabaga ko Uwamahoro yareka kubaka mu kibanza, mu gihe mu rubanza RC 00493/2020/TGI/GSBO mu byo asaba harimo no gutesha agaciro ibyangombwa by'umutungo ari nabyo byashingiweho mu rubanza RC 00419/11/TGI/GSBO, Ibyo bikaba bitarigeze biburanwa mu rubanza RC 00419/11/TGI/GSBO kuko nkuko byasobanuwe haruguru, Urukiko rwavuze ko Rushomwintwari atagaragaza ko ibyo byangombwa bidafite agaciro; bityo kuba yatanze ikirego agaragaza inenge iri muri ibyo byangombwa rusanga ruramutse ruvuze ko urubanza rwabaye itegeko yaba avukijwe uburenganzira bwo gusobanura impamvu ze ashingiraho avuga ko ibyo byangombwa byatanze mu buryo bw' uburiganya nkuko

abivuga mu mwanzuro wo gutanga ikirego mu rubanza

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rujuririrwa. Urukiko rero rugasanga urubanza RC 00493/2020/TGI/GSBO rutarabaye itegeko bityo kuba Urukiko rwaranze kwakira ikirego kandi cyaragomba kwakirwa, rugasanga icyo cyemezo kigomba guteshwa agaciro, urubanza rugasubira mu Rukiko Rwisumbuye rwa Gasabo kugira ngo ruburanishijwe mu mizi yarwo nkuko biteganijwe mu ngingo ya 158 y' itegeko N° 22/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, umurimo n'ubutegetsi.¹ [17] Urukiko rugasanga ibijyanye no kuba Urukiko rwaravuze ko rwakiriye ikirego rwarangiza ntirwakira, Urukiko rusanga ibyo byakosorwa. B. Kumenya niba indishyi zaciwe Rushomwintwari ku rwego rwa mbere zavanywaho. [18] Ihame rizwi mu mategeko rivuga ko l'accessoire suit le principal²» tugenekereje mu kinyarwanda bishatse kuvuga ko ingereka rikurikiza iremezo rishamikiyeho. [19] Rushomwintwari avuga ko indishyi yaciwe ku rwego rwa mbere zitari zikwiriye. Furaha na Uwamahoro bavuga ko indishyi Urukiko rufite icyo rwashingiyeho ruzigena. [20] Urukiko ruhereye ko impamvu y' ubujurire ya Rushomwintwari rwasanze ifite ishingiro, rusanga n'indishyi yaciwe ku rwego rwa mbere zikwiriye kuvanywaho. C. Kumenya niba indishyi zisabwa zatangwa. [21] Ingingo ya 111 y' itegeko numero 22/2018 ryo kuwa 29/4/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz' ubucuruzi, umurimo n' ubutegetsi ivuga ko Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [22] Rushomwintwari asaba indishyi zitandukanye zirimo mbonezamusaruro, iz' akababaro, iz'ikurikiranarubanza n' igihembo cy' avoka. Furaha avuga ko nta shingiro zifite. [23] Urukiko rusanga ku bijyanye n' indishyi mbonezamusaruro n' iz' akababaro, ruhereye ko rutinjiye mu mizi y' urubanza rusanga zizasuzumwa mu mizi y' urubanza. [24] Ku bijyanye n' indishyi z'ikurikiranarubanza n'igihembo cy'avoka bikazasumirwa mu mizi y' urubanza. 1 Iyo ngingo ivuga ko Urukiko rwajuririwe rusanze urubanza rwari rwaregwe mu buryo bukurikije amategeko urukiko rwaruciye kurwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, Urukiko rwajuririwe rurarwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere; rukarutesha agaciro maze ruka- rusubiza Urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi, nta yindi ngwate y'amagarama itanzwe 2 <https://cours-de-droit.net/le-principe-de-l-accessoire-en-droit-a128147092/>.

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III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ubujurire bwatanzwe na RUSHOMINTWARI Sylvestre bufite ishingiro kuri bimwe. [26] Rwemeje ko imikirize y'urubanza RC 00493/2020/TGI/GSBO rwaciwe n' Urukiko Rwisumbuye rwa Gasabo kuwa 28/4/2022 ihindutse. [27] Rutegetse ko urubanza rwoherezwa mu Rukiko Rwisumbuye rwa Gasabo kugira ngo ruburanishwe mu mizi. [28] Rwemeje ko ibijyanye n' indishyi bizasuzumirwa mu rubanza mu mizi. [29] Rutegetse Furaha Eugene, Uwamahoro Honorine na Rurangirwa Michel gusubiza Rushomintwari Sylvestre amafaranga ibihumbi mirongo ine (40 000 frw) y'ingwate y'igarama yatanze mu Rukiko Rukuru.

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