

RWANDA / JUDGMENT

SANLAM AG PLC v NYIRANEZA N'UNDI

RLR V.1-2025

COURT

Court of Appeal

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SANLAM AG PLC v NYIRANEZA N'UNDI

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Text

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RUTAZIBWA v MUKANDUTIYE N'ABANDI [Rwanda URUKIKO RW'IKIRENGA- RS/REV/RAD00001/2021/SC (Mukamulisa, J.P., Muhumuza na Kazungu, J.) 22 Gashyantare 2024]

Amategeko agenga imiburanishirize y'imanza – Ubuhuza – Inyandiko y'ubuhuza – Isozwa ry'urubanza – Nta y'indi mihango, urubanza rusozwa n'ibikubiye mu mwanzuro w'ubuhuza akaba aribyo bishyirwa mu bikorwa. Incamake y'ikibazo: Rutazibwa umwana wa Nyakwigendera Fundi, yakusanyije imitungo yose yasizwe na Se, ikaba igomba kuzungurwa n'abana bose ba Nyakwigendera, ikaba igizwe n'ubutaka buherereye mu Karere ka Nyamasheke, aka Rutsiro n'aka Karongi. Nyuma yo gukusanya iyo mitungo yashatse kuyimurikira abana bose maze barabyanga kuko batashakaga ko aba umutware w'umuryango wa Fundi, ndetse bo bagashaka ko ½ cy'iyo mitungo ari cyo bazungura ikindi gice ntikizungurwe ahubwo kigahabwa umugore w'isezerano wa Nyakwigendera Mukandutiye. Izo mpaka n'izo zatumye Rutazibwa atanga ikirego mu Rukiko Rwisumbuye rwa Karongi asaba kumurika uwo mutungo wasizwe na Fundi yegeranyije, guhabwa umugabane we ukavanwa mu bufatanyamutungo no gusubizwa amafaranga yakoresheje muri icyo gikorwa cyo kwegeranya umutungo uzungurwa.

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Mbere y'uko Urukiko Rwisumbuye rufata icyemezo, Mukandutiye yiyandikishijeho imwe mu mitungo igomba kuzungurwa, ahabwa n'ibyangombwa bya burundu byayo ariko Rutazibwa arabimurega maze Urukiko rwemeza ko igaruka mu mitungo y'umuryango wa Fundi. Ikibazo cy'amasambu Urega yari yaregeye avuga ko yanditse kuri MINIRENA hamwe n'amasambu atagaragara ku rutonde rw'amasambu rwatanzwe n'Umubitsi w'Impapurompamo z'Ubutaka, Urukiko rwemej ko aguma kubo yanditseho. Urega yajuririye mu Rukiko Rukuru, urugereko rwa Rusizi, icyo cyemezo cyafashwe n'Urukiko Rwisumbuye, maze ruca urwo rubanza RADA00001/2016/HC/RSZK rwemeza ko ikirego cy'Urega nta shingiro gifite. Iki cyemezo yakijuririye mu Rukiko rw'Ikirenga, naho Mukandutiye atanga ubujurire bwuririye k'ubundi ariko urwo Rukiko na rwo rwemeza ko ubujurire bwabo nta shingiro bufite. Rutazibwa yatanze ikirego cyo gusubirishamo ingingo nshya urubanza RADAA00004/2017/SC muri uru Rukiko rw'Ikirenga ariko nticyahabwa ishingiro maze bituma yongera bwa kabiri kugisubirishamo ingingo nshya avuga ko iyo ingingo itandukanye n'iya suzumwe mbere. Muri urwo rubanza, Ababuranyi bose bemeye ko ikibazo cyabo gicyemuka hiyambajwe inzira y'ubuhuza, bose bahitamo guhuzwa na Me Butare, Urukiko rurabyemeza, anahabwa igihe cyo gukora iyo mirimo no kurushyikiriza raporo y'ibyavuye mu buhuza. Nyuma y'uko impande zombi zumvikanye ku kibazo bari bafitanye bijyanye n'umutungo uburanwa, uru Rukiko rwasuzumye niba umwanzuro w'ubuhuza ugomba kwemezwa kuko muri uwo mwanzuro impande zombi

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zemeranyijwe ko ubutaka bwari kuri Leta bwandikwa ku bazungura ba Fundi n'ubundi butaka butanditse ku bazungura bugaragara mu rubanza rusubirishwamo ingingo nshya, abazungura ba Fundi bakazashyikiriza Ikigo cy'Igihugu gishinzwe ubutaka ibisabwa bigenwa n'amategeko bukabandikwaho mu gihe nta makimbirane arimo. Naho ku kibazo cy'amasambu afitwe n'abaturage aherereye mu Karere ka Rutsiro, Ababuranyi bose bemeranyijwe ko yandikwa ku bazungura ba Fundi. Bityo, Ababuranyi bakaba basaba uru Rukiko kwemeza ko uwo mwanzuro w'ubuhuza waba ariwo ushyirwa mu bikorwa, dore ko nta kindi kibazo bagifitanye. Incamake y'icyemezo: Nta y'indi mihango, urubanza rusozwa n'ibikubiye mu mwanzuro w'ubuhuza akaba aribyo bishyirwa mu bikorwa. Ikirego cyo gusubirishamo urubanza ingingo nshya, gikemuwe nk'uko ababuranyi babyemeranyijweho mu mwanzuro w'ubuhuza. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurirno n'iz'ubutegetsi, ingingo ya 241. Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Fundi Project yapfuye ku wa 23/01/1997, asiga umugore we w'isezerano witwa Mukandutiye Bellancille n'abana babyaranye, asiga n'abandi bana yabyaye ku bandi bagore batandukanye. Rutazibwa Alexandre, umwe mu bana ba Fundi Project, avuga ko yaje gushakisha imitungo yasizwe na se igomba kuzungurwa, igizwe n'ubutaka buherereye mu

Karere ka Nyamasheke, aka Rutsiro n'aka Karongi, ko nyuma yo kuyegeranya yashatse kuyimurikira umuryango ariko ahura n'ingorane za bamwe mu bavandimwe be batamushakaga nk'umutware wo kwa se Fundi Project, bakaba barifuzaga ko 1/2 cy'uwo mutungo kitazungurwa ahubwo cyahabwa Mukandutiye Bellancille, umugore w'isezerano wa Fundi Project. [2] Izo mpaka zatumye Rutazibwa Alexandre atanga ikirego mu Rukiko Rwisumbuye rwa Karongi, asaba kumurika umutungo yegeranyije wasizwe na nyakwigendera Fundi Project, anasaba guhabwa umugabane we ukava mu bufatanyamutungo, gusubizwa amafaranga yatanze mu gushakisha no kwegeranya uwo mutungo uzungurwa. Ikirego cyanditswe kuri RC211/13/TGI/KRGI. [3] Mbere y'uko Urukiko Rwisumbuye rwa Karongi rufata icyemezo, Mukandutiye Bellancille yiyandikishijeho imwe mu mitungo igomba kuzungurwa, maze ahabwa ibyangombwa bya burundu by'ubwo

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butaka.

Ibyo byatumye Rutazibwa Alexandre abimuregera mu Rukiko Rwisumbuye rwa Karongi, asaba ko ubutaka bwanditswe kuri Mukandutiye Bellancille busubizwa abazungu•a be. Fundi Project kimwe n'amasambu ataboneka ku rutonde rw'arnasambu rwatanzwe n'Umubitsi w'Impapurompamo z'Ubutaka ndetse n'ubwanditswe kuri MINIRENA. Icyo kirego cyanditswe kuri RAD0039/14/TGI/KRGI. [4] Urukiko Rwisumbuye rwa Karongi rwaciye urubanza RAD0039/14/TGI/KRGI, ku wa 14/07/2016, rwemeza ko ubutaka bufite UPI 03/07/4/5439, 03/07/4/5442, 03/07/4/5452, 03/07/4/5482, 03/07/4/5489, 03/07/4/5490, 03/07/4/5491, 03/07/4/5493, 03/07/4/5501, 03/07/4/5509, 03/07/4/5516, 03/07/4/5534, 03/07/4/5506, bukurwa kuri Mukandutiye Bellancille bwari bwanditsweho bukagarurwa mu muryango wa Fundi Project ugizwe n'abazungura be, bakabwandikwaho. Rwemeza kandi ko ubutaka bwanditswe kuri MINIRENA ibugumana, naho ubwo Rutazibwa Alexandre yasabye Ikigo gishinzwe umutungo kamere (RNRA) gushyira ku rutonde rw'amasambu agornba kugarurwa mu muryango wa Fundi Project bukaba butagomba kugarurwa ahubwo bugomba kuguma kubo bwanditseho. [5] Rutazibwa Alexandre yajuririye Urukiko Rukuru, Urugereko rwa Rusizi ruri i Karongi; ku wa 17/03/2017, urwo rukiko rwaciye urubanza RADA00001/2016/HC/RSZK, rwemeza ko ubujunire bwe nta shingiro bufite, ko imikirize y'urubanza

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RAD0039/14/TGI/KGI rwaciye n'Urukiko Rwisumbuye rwa Karongi idahindutse mu ngingo zayo zose. [6] Rutazibwa Alexandre yajuririye urwo rubanza mu Rukiko rw'Ikirenga, Mukandutiye Bellancille nawe atanga ubujurire bwuririye ku bundi, ku wa 02/02/2018 Urukiko rw'Ikirenga ruca urubanza RADAA00004/2017/SC, rwemeza ko ubujurire bwa Rutazibwa Alexandre n'ubujurire bwuririye ku bundi bwa Mukandutiye Bellancille nta shingiro bufite, rutegeka Rutazibwa Alexandre kwishyura MINIRENA na RNRA, buri wese 400.000Frw y'ikurikiranarubanza. [7] Ku wa 18/04/2018, Rutazibwa Alexandre yatanze ikirego gisubirishamo urubanza RADAA00004/2017/SC rwaciye ku wa 02/02/2018 ingingo nshya avuga ko habaye uburiganya mu icibwa ry'urubanza

asubirishamo; ku wa 27/09/2019, Urukiko rw'Ikirenga mu rubanza RS/REV/RAD 00001/2018/SC, rwemeje ko icyo kirego kitakiriwe ngo gisuzumwe. [8] Ku wa 27/11/2020, Rutazibwa Alexandre yongeye gutanga ikirego gisaba gusubirishamo urubanza RADAA00004/2017/SC ingingo nshya, avuga ko ashingira ku mpamvu itandukanye n'iyi yari yashinyeho mu rubanza RS/REV/RAD00001/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 27/09/2019, ikirego cyandikwa mu gitabo cy'ibirego cy'Urukiko rw'Ikirenga kuri RS/REV/RAD00001/2021/SC. [9] Uru rubanza rwagombaga kuburanishwa ku wa 09/02/2022 ariko rurasubikwa kuko Rutazibwa Alexandre na Mukandutiye Bellancille batitabye kandi nta mpamvu.

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Urukiko rwabaciye ihazabu mbonezamubano y'ibihumbi ijana (100.000Frw) buri were kubera gutinza urubanza. [10] Ku wa 19/04/2022 urubanza rwaburanishijwe mu ruhamwe Rutazibwa Alexandre yunganiwe na Me Mutembe Protais, Mukandutiye Bellancille ahagarariwe na Iribaza Rose, akunganirwa na Me Rugemintwaza Jean Marie Vianney, Leta y'u Rwanda MINIRENA mu Izina ry'Intumwa Nkuru. ya Leta ihagarariwe na Me Cyubahiro Fiat, Ikigo cy'Igihugu gishinzwe ubutaka gihagarariwe na Me Habiyambere Clement. [11] Muri iryo buranisha ababuranyi bose bemeye ko ikibazo cyabo cyakernuka hiyambajwe inzira y'ubuhuza, bose bahitamo guhuzwa na Me Butare Emmanuel, Urukiko rurabyemeza, anahabwa igihe cyo gukora icyo mirimo no kurushyikiriza raporo y'ibyavuye mu buhuza. Ku wa 29/08/2022, umuhuzwa. yohereje Urukiko umwanzuro w'ubuhuza washyizweho umukono n'ababuranyi bose. [12] Iburanisha ryo kwemeza umwanzuro w'ubuhuza ryabaye ku wa 10/10/2022, ababuranyi bose bitabye, kandi bahagarariwe nka mbere. [13] Urukiko rwabanje kwibutsa ababuranyi aho urubanza rugeze harimo no kubamenyesha ko rwabonye umwanzuro w'ubuhuza impande zashyizeho umukono, basabwa kugira icyo babivugaho. Me Mutembe Protais yavuze ko ubuhuza bwakernuye ikibazo kirebana n'amasambu ya Fundi Project yari yanditswe kuri Leta y'u Rwanda kuko byavugwaga ko ari ibishanga kandi ataribyoye, ko ayo masambu yegukanyeho bene Fundi Project,

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ikibazo kitacyemutse akaba ari icy'arnasambu yasaranganyijwe hagati ya bene Fundi Project n'abaturage, ko abo baturage bemera ko nta makimbirane bafitanye na bene Fundi Project, ko rero ikitararangira ari ukubasinyisha, asaba ko urubanza rwasubikwa igikorwa cyo kubasinyisha kitarangira, kugira ngo ayo masambu nayo azandikwe ku bazungura ba Fundi Project. [14] Me Cyubahiro Fiat uhagarariye Leta y'u Rwanda yavuze ko ubuhuza bwakozwe ku kibazo cy'isambu Rutazibwa Alexandre yari afitanye na Leta bwarangije icyo kibazo, ko nawe yemera ko ubwo butaka ari ubw'abazungura ba Fundi Project bakaba. Banabwandikwaho. Yakomeje avuga ko nta mpamvu yo gusubika iburanisha kugira ngo urega akomeze gusinyisha abaturage kuko iby'ayo masambu bitari mu biburanwa muri uru rubanza. [15] Me Habiyambere Clement uhagarariye Ikigo cy'Igihugu gishinzwe Ubutaka yavuze ko ubuhuza bwanzuye ko hari formalites abazungura ba Fundi Project bagomba kuzuzwa kugira ngo Ikigo cy'Igihugu gishinzwe Ubutaka kibandikeho ubutaka bwabo bavugaga ko bufitwe n'abandi bantu, ko nawe asatiga nta mpamvu yo gusubika iburanisha cyane cyane ko ibyo Rutazibwa asaba bari babyumvikanyeho mu buhuza. [16] Nyuma

yo kubona inyandiko igaragaza ko ababuranyi bumvikanye ariko uruhande rwa Rutazibwa Alexandre rukifuza guhabwa igihe kugira ngo rukemure ikibazo cy'amasambu atarandikwa kuri "Succession Fundi Project", Urukiko rwemeye gusubika urubanza,

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rumuha igihe cy'ukwezi kumwe cyo gukemura icyo kibazo. [17] Uru rubanza rwongeye kuburanishwa ku wa 19/12/2022 no ku wa 24/04/2023, harebwa niba ibyasabwe byaragezweho, Urukiko rusanga bitaragerwaho kuko urega yavugaga ko nta kibazo afitanye n'abaturage, ko ahubwo imbogamizi bagifite ari ukubabonera rimwe kugira ngo basinye. Urukiko rwarwongeye igihe cya nyuma cy'amezi abiri, nyuma y'aho ikibazo cyaba kitarakemuka, rukazafata icyemezo. [18] Iburanisha ryongeye gufungurwa ku wa. 13/02/2024, hitaba Me Mutembe Protais ahagarariye Rutazibwa Alexandre, Leta y'u Rwanda mu izina ry'Intumwa Nkuru ya Leta ihagarariwe na Me Cyubahiro Fiat, Ikigo cy'Igihugu gishinzwe ubutaka gihagarariwe na Me Habiyambere Clement, Mukandutiye Bellancille na Iribagiza Rose umuhagarariye batitabye. [19] Nyuma yo kubona ko Mukandutiye Bellancille uhagarariwe na Iribagiza Rose atitabye kandi yaramenyeshajwe itariki y'urubanza muri "system", hemejwe ko urubanza ruburanishwa adahari. [20] Me Habiyambere Clement uhagarariye Ikigo cy'Igihugu gishinzwe ubutaka yahawe ijamba ngo asobanure inyandiko yashyize muri system, avuga ko Ikigo aburanira cyakoze ibyo Urukiko rwari rwategetse, abazungura ba Fundi Project bakaba baranditsweho ubutaka buherereye mu Karere ka Karongi na Nyamasheke, ubutaka busigaye batarandikwaho akaba ari ubuherereye mu Karere ka Rutsiro, ko ariko naho

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abaturage bole bemeye ko ari ubw'abazungura ba Fundi Project, ko rero igisigaye gusa ari uko bubandikwaho. [21] Me Mutembe Protais uhagarariye Rutazibwa Alexandre avuga ko abazungura ba Fundi Project bamaze gutanga ibikenewe byose kugira ngo bandikweho ubutaka buri mu Karere ka Rutsiro, ko asanga igisigaye ari "formalites administratives" bazakurikirana, ko nta mpungenge agifite kuva uhagarariye Ikigo cy'ubutaka avuga ko bamaze kwakira inyandiko zose zikenewe kugira ngo bikorwe, asaza avuga ko yemeye ibyavuye mu buhuza, ko nta n'impamvu yindi ihari yatuma uru rubanza rudapfundikirwa. Asaba Urukiko kuzemeza ibikubiye mu nyandiko y'ubuhuza. [22] Me Habiyambere Clement na Me Cyubahiro Fiat nabo bemeje ko nta gisigaye gusuzumwa muri uru rubanza, kuko impaka zose zakemutse, ko Urukiko rwakwemeza ubuhuza, Rutazibwa Alexandre agasigara akurikirana "formalites administratives" zo kwandikisha ubutaka busigaye bwo mu Karere ka Rutsiro. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

1. Kumenya niba umwanzuro w'ubuhuza ugomba kwemezwa [23] Nk'uko bikubiye mu mwanzuro w'ubuhuza wo ku wa 29/08/2022, biragaragara ko ababuranyi bemeranyijwe ko ubutaka bufite UPI: 3/07/04/02/5447 na UPI: 3/07/04/02/5448 buvanwa kuri Leta bukandilma ku

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bazungura ba Fundi Project, ko ubundi butaka bufite UPI:3/07/04/02/5449, UPI:3/07/04/02/5445 na UPI: 3/07/04/02/5444 atari ubw'abazungura ba Fundi Project, ko butagize ikiburanwa. Ababuranyi hose banemeranyijwe ko ubundi butaka butanditse ku bazungura ba Fundi Project bugaragara mu rubanza rusubirishwamo ingingo nshya, abazungura ba Fundi Project bazashyikiriza Ikigo cy'Igihugu gishinzwe ubutaka ibisabwa bigenwa n'arnategeko bakabandikwaho mu gihe nta makimbirane arimo. Ababuranyi bose bemeje ko baretse indishyi n'igihembo cy'avoka byasabwe muri uru rubanza. [24] Nk'uko byavuzwe haruguru, ku bijyariye n'amasambu afitwe n'abaturage mu Karere ka Rutsiro, Rutazibwa Alexandre yari yasabye mbere ko Urukiko rwategereza akandikwa ku bazungura ba Fundi Project mbere yo kwemeza ubuhuza, mu iburanisha ryo ku wa 13/02/2024, ababuranyi bose bemeranyijwe ko ubwo ibyangombwa Rutazibwa Alexandre yasabwaga kuzuza yabikoze, nayo izandikwa ku bazungura ba Fundi Project, basaba bose ko ubwo nta kindi kibazo, urubanza rwarangizwa nk'uko byejwe niumuhuza. [25] Urukiko rurasanga uru rubanza rugomba gusozwa nta yindi mihango, ibikubiye mu mwanzuro w'ubuhuza wo ku wa 29/08/2022 akaba aribyo bishyirwa mu bikorwa nk'uko biteganywa n'ingingo ya 241, 7° y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezarnubano, iziubucuruzi, iz'umurirno n'iz'ubutegetsi, ivuga ko inyandiko y'ubwumvikane iriho

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umukono w'impande zombi n'ubwunzi byakorewe hanze y'Urukiko, ari inyandikompesha. III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko ikirego Urukiko rwari rwarashyikirijwe na Rutazibwa Alexandre cyo gusubirishamo ingingo nshya urubanza RADAA00004/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/02/2018, gikernuwe nk'uko ababuranyi babyemeranyijweho mu mwanzuro w'ubuhuza wo ku wa 29/08/2022 uri ku mugereka w'uru rubanza. [27] Rutegetse ko umwanzuro w'ubuhuza urangizwa uko wanditse.

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