

RWANDA / JUDGMENT

SIKUBWABO v RWANDA DEVELOPMENT BOARD (RDB) N'ABANDI (ADD 2)

RLR V.3-2023

COURT

Supreme Court

DECIDED

15 July 2022

CASE / FILE NUMBER

RS/INJUST/RCOM 00007/2021/SC

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SIKUBWABO v RWANDA DEVELOPMENT BOARD (RDB) N'ABANDI (ADD 2)

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Text

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SIKUBWABO v RWANDA DEVELOPMENT BOARD (RDB) N'ABANDI (ADD 2) [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00007/2021/SC (Cyanzayire, PJ, Nyirinkwaya na Hitiyaremye, J.) 15 Nyakanga 2022] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'inkiko – Ubusobekerane bw'imanza – Ingingo za 94, 98, 100 z'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko – Ibiteganyijwe mu ngingo ya 100 y' Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ku bireba uburegeke, ni nabyo byakoreshwa ku bireba ubusobekerane. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'inkiko – Ubusobekerane bw'imanza – Mu gihe hari ubusobekerane bw'imanza ziburanishwa mu nkiko zitandukanye zitari ku rwego rumwe, urukiko ruri ku rwego rwo hasi nirwo rugomba kohereza urubanza ururi ku rwego rwo hejuru – Umuburanyi usaba ko imanza zihuzwa, ashikiraniza ubusabe bwe urukiko ruri ku rwego rwo hasi rugomba kohereza urubanza. Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Ubusobekerane bw'imanza – Urubanza rwaregwe mu rwego rw'akarengane –

Urubanza rwaregewe binyuze mu nzira zisanzwe – Guhuza urubanza rwaregewe mu rwego rwo gusubirishamo urubanza ku mpamvu z’akarengane n’urubanza rwaregewe binyuze mu nzira zisanzwe – Urubanza rwaregewe mu rwego rw’akarengane ari urubanza ruba rwararangije inzira z’ubujurire, rushobora no kuba rwararangijwe, rukaba rudashobora guhuzwa n’urubanza rugifite inzira zisanzwe z’ubujurire – Inkiko zaregewe mu nzira zisanzwe zitegereza icyemezo cy’inkiko zaregewe mu rwego rw’akarengane Incamake y’ikibazo: Mu rwego rwo kugirango hishyurwe umwenda Sikubwabo yari abereyemo Bank of Africa, Umwanditsi Mukuru muri RDB yatanze impushya zo kugurisha ingwate, abanza gutanga uruhushya rwo kugurisha umutungo ufite UPI: 1/02/09/01/844. Nyuma ya cyamunara yakozwe kuri uwo mutungo, Sikubwabo yatanze ikirego gifite No RCOM 01971/2017/TC/NYGE mu Rukiko rw’Ubucuruza rwa Nyarugenge asaba kuyitesha agaciro, arega Bank of Africa, hagobokeshwamo RDB na Umugiraneza wari ushinze kugurisha ingwate. Mu gihe urubanza rwari rutaracibwa, Umwanditsi Mukuru yatanze uruhushya rwo kugurisha umutungo ufite UPI: 1/02/13/03/115, bituma Sikubwabo atanga ikirego cyihutirwa asaba guhagarikisha cyamunara kuri uyu mutungo. Mu rubanza No RCOMA 00793/2017/CHC/HCC rwaciwe ku rwego rw’ubujurire, Urukiko Rukuru rw’Ubucuruza rwemeje ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by’agateganyo, hakabanza gutegerezwa icyemezo cy’urukiko ku rubanza No RCOM 01971/2017/TC/NYGE.2 Urubanza No RCOM 01971/2017/TC/NYGE rwarangije inzira z’ubujurire ku wa 06/05/2020, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara ku mutungo ufite UPI: 1/02/09/01/844. Ku wa 08/05/2020, Sikubwabo yahise yandikira Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 kuko hatagaragajwe umwenda watumye ikorwa; ku wa 20/05/2020 atanga ikirego mu Rukiko rw’Ubucuruza. Urubanza rwanditswe kuri No RCOM 00767/2020/TC, Murego waguze uwo mutungo muri

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cyamunara na Umugiraneza wari ushinze kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda. Murego yatanze inzitizi asaba ko ikirego cya Sikubwabo kitakwagirwa kuko yagitanze ibihe biteganywa n’amategako byararenze, iyo nzitizi ntiyakirwa mu rwego rwa mbere ariko mu bujurire bwa mbere n’ubwa kabiri ihabwa ishingiro. Mu rubanza N° RCOMAA 00061/2020/CA rwaciwe ku wa 18/12/2020, Urukiko rw’Ubujurire rwagumishijeho icyemezo cyari cyafashwe n’Urukiko Rukuru rw’Ubucuruza, rusobanura ko ikirego cyagombaga gutangwa mu minsi 15 ibazwe kuva igihe urundi rubanza No RCOM 00577/2019/TC rwemeje ingano y’umwenda rwabereye itegeko, ni ukuvuga ku wa 20/06/2019, rushingiye ku biteganywa n’ingingo ya 260, igika cya kane, y’ Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruza, iz’umurimo n’iz’ubutegets. Uru rubanza nirwo Sikubwabo yasabye ko rusubirwamo ku mpamvu z’akarengane. Uru Rukiko rwasuzumye niba koko ikirego cya Sikubwabo kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyaratanzwe impitagihe, hakurikijwe ibiteganywa n’ ingingo ya 260 y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. Nyuma yo gusesengura ibiteganywa n’iyi ngingo, Urukiko rwasanze ibihe bivugwa mu gika cyayo cya 6 byarubahirijwe na SIKUBWABO Raphaël, rwemeza ko ikirego cye cyari cyatanzwe mu gihe

giteganywa n'amategako. Rwemeje ko urubanza No RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA 00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020 zivanyweho, hakagumaho urubanza No RCOM 00767/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 22/06/2020. Rukiko rwemeje ko arirwo rugomba gusuzuma ingingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi. Mu gihe urubanza rwari rutegereje kuburanishwa, SIKUBWABO Raphaël yanditse asaba ko urubanza N° RCOMAA 00024/2022/CA ruri mu Rukiko rw'Ubujurire, rujyanye n'ikindi kirego yatanze asaba gutesha agaciro cyamunara ku mutungo ufite UPI: 1/02/13/03/115, rwahamagazwa rugahuzwa n'uru kugirango hatazabaho kuvuguruzanya kubera isano zifitanye. Avuga ko impamvu asaba ko uru rubanza rwahuzwa n'urubanza N° RCOMAA 00024/2022/CA rwahagaze kuburanishwa mu Rukiko rw'Ubujurire, zishingiye ku cyemezo cyafashwe n'uru Rukiko mu rubanza rubanziriza urundi, aho rwavuze ko ibibazo byose birebana n'iki kibazo bikwiye gukemurirwa hamwe kugira ngo hatazavuka izindi manza zikazagera nazo mu karengane. Asobanura ko kuba urubanza ruri mu Rukiko rw'Ubujurire rurebana n'icyemezo cyafashwe n'Umwanditsi Mukuru wa RDB cyo kwemeza burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, kandi aricyo kiburanwa muri uru rubanza, izo manza zombi zikwiye guhuzwa kubera isano zifitanye. RDB avuga ko asanga imanza zitahuzwa kubera ko nta sano zifitanye, ko kandi nta bindi bintu Sikubwabo yagombye kuzana bitari ibyo yavuze mu nama ntegururubanza. Naho abandi bo bavuga ko n'ubwo mbere bari basabye ko imanza zitahuzwa, nyuma yo gusuzuma neza bisubiyeho bakaba basanga zahuzwa kuko zifitanye isano. Incamake y'icyemezo: 1. Ibiteganyijwe mu ngingo ya 100 y' Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ku bireba uburegeke, ni nabyo byakoreshwa ku bireba ubusobekerane.

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2. Mu gihe hari ubusobekerane bw'imanza ziburanishwa mu nkiko zitandukanye zitari ku rwego rumwe, urukiko ruri ku rwego rwo hasi nirwo rugomba koherereza urubanza ururi ku rwego rwo hejuru
3. Umuburanyi usaba ko imanza zihuzwa, ashyikiriza ubusabe bwe urukiko ruri ku rwego rwo hasi rugomba koherereza urubanza.
4. Urubanza rwaregowe mu rwego rw'akarengane ari urubanza ruba rwararangije inzira z'ubujurire, rushobora no kuba rwararangijwe, rukaba rudashobora guhuzwa n'urubanza rugifite inzira zisanzwe z'ubujurire
5. Iyo hari ubusobekeranye bw'imanza, inkiko zaregowe mu nzira zisanzwe zitegereza icyemezo cy'inkiko zaregowe mu rwego rw'akarengane kugirango hataba ivuguruzanya ry'imanza. Ubusabe bwo guhamagaza urubanza ruburanishwa n'Urukiko rw'Ubujurire rugahuzwa n'uru rubanza, ntibukwiye kwakirwa ngo busuzumwe, kuko yabutanze mu nzira zidakurikije amategako; Iburanisha ry'urubanza rizakomeza. Amategako yashingiweho: Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, Ingingo ya 94 na 100 Imanza zifashishijwe: Urubanza N° RS/INJUST/RCOM 00005/2019/SC, haburanamo Kigali Ceramica & Furniture Ltd na Guaranty Trust Bank (Rwanda) Plc Urubanza I. IMITERERE

Y'URUBANZA [1] Uru rubanza rukomoka ku ruhushya rwo guteza cyamunara (permit to sell N° 017- 074833) umutungo ufite UPI: 1/02/13/03/115 rwatanzwe n'Umwanditsi Mukuru muri RDB ku wa 06/11/2017, kugirango hishyurwe umwenda Sikubwabo Raphaël yari abereyemo Bank of Africa. Iyo cyamunara yakurikiraga indi yakozwe ku wa 09/06/2017 ku mutungo ubaruye kuri UPI: 1/02/09/01/844 nabwo hishyurwa uwo mwenda. [2] Nyuma y'iyi cyamunara yo ku wa 09/06/2017, Sikubwabo Raphaël yatanze ikirego mu Rukiko rw'Ubucuruza rwa Nyarugenge arusaba kuyitesha agaciro, umwenda ukishyurwa hakurikijwe ibindi biteganyijwe mu masezerano y'inguzanyo. Ikirego cyanditswe kuri No RCOM 01971/2017/TC/NYGE, uregwa ari Bank of Africa, hagobokeshwamo RDB na Umugiraneza Jean Michel wari ushinze kugurisha ingwate. Nyuma yo gutanga iki kirego, urubanza rutaracibwa, nibwo Sikubwabo Raphaël yahawe n'Umwanditsi Mukuru permit to sell N° 017- 074833 yo ku wa 06/11/2017 yavuzwe haruguru, ndetse n'amabwiriza ya cyamunara, birebana n'ingwate ku mutungo ufite UPI: 1/02/13/03/115. [3] Igihe iyi cyamunara ya kabiri yari itaremezwa n'Umwanditsi Mukuru, Sikubwabo Raphaël wavugaga ko atigeze amenyeshwa umwenda wari usigaye nyuma y'ubwishyu bwavuye

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muri cyamunara ya mbere, yahise atanga ikirego cyihutirwa asaba guhagarika by'agateganyo cyamunara ku ngwate ya kabiri irebana n'umutungo ufite UPI: 1/02/13/03/115, kugirango habanze gusuzumwa ibyasabwe mu rubanza rw'iremezo. Ikirego cyanditswe kuri No RCOM 02265/2017/TC/NYGE, urubanza rucibwa ku wa 04/12/2017, Urukiko rwemeza ko nta mpamvu yo guhagarika cyamunara yari iteganyijwe ku wa 05/12/2017. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruza kuri No RCOMA 00793/2017/CHC/HCC, rucibwa ku wa 21/12/2017, hemezwa ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza No RCOM 01971/2017/TC/NYGE. [4] Nyuma y'icibwa ry'uru rubanza No RCOMA 00793/2017/CHC/HCC, Sikubwabo Raphaël yatanze ikirego mu Rukiko Rukuru rw'Ubucuruza, asaba guhamagaza Umwanditsi Mukuru agasobanura impamvu atarurangiza¹, MUREGO Paulin waguze mu cyamunara yahagaritswe agasubizwa amafaranga yatanze. Ikirego cyanditswe kuri No RCOM 00024/2019/HCC, urubanza rucibwa ku wa 04/10/2019, Urukiko rwemeza ko rudafite ububasha bwo kuburanisha bene ibyo birego kuko birebana n'imanza z'ubutegets. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruza kuri No RCOMA 01016/2018/HCC, rucibwa ku wa 14/02/2020, hemezwa ko ikirego cyakiriwe ariko ko ibyo Umwanditsi Mukuru yagombaga gukora mu gushyira mu bikorwa urubanza No RCOMA 00793/2017/CHC/HCC yabikoze kuko yahagaritse by'agateganyo iyemezwa rya raporo ya cyamunara kuri UPI: 1/02/13/03/115. [5] Urubanza No RCOM 01971/2017/TC/NYGE (rurebana no gutesha agaciro cyamunara yabaye ku wa 09/06/2017 kuri UPI: 1/02/09/01/844) rwari rwatumye cyamunara kuri UPI: 1/02/13/03/115 ihagarikwa by'agateganyo rwaciwe ku wa 16/05/2018, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruza kuri No RCOMA 00443/2018/CHC/HCC, rucibwa ku wa 14/12/2018, hemezwa ko urubanza rwajuririwe rudahindutse. SIKUBWABO Raphaël yajuriye bwa kabiri mu Rukiko rw'Ubujurire kuri No RCOMAA 00039/2019/CA, urubanza rucibwa ku wa

06/05/2020, hemezwa ko ubwo bujuriye butakiriwe kuko bwatanzwe bukererewe. [6] Nyuma y'uko urubanza No RCOM 01971/2017/TC/NYGE rurangije inzira zose z'ubujuriye, ku wa 08/05/2020 SIKUBWABO Raphaël yandikiye Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115. Ku wa 20/05/2020, yatanze ikirego mu Rukiko rw'Ubucuruzi, asaba guhagarika burundu cyamunara ku mutungo we ufite UPI: 1/02/13/03/115, kuko hatagaragajwe umwenda watumye ikorwa. Urubanza rwanditswe kuri No RCOM 00767/2020/TC, Murego Paulin waguze uwo mutungo muri cyamunara na Umugiraneza Jean Michel wari ushinze kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda. [7] Muri urwo rubanza, Sikubwabo Raphaël yatanze inzitizi asaba Urukiko kutakira ibirego by'abagobotse ku bushake kuko nta nyungu bafite. Murego Paulin nawe yatanze inzitizi asaba ko ikirego cya SIKUBWABO Raphaël kitakwagirwa kuko yagitanze ibihe biteganywa n'amategeko byo kuba yaregera gutesha agaciro cyamunara byararenze. 1 Yatanze ikirego ashingiye ku ngingo ya 184 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 (CPCCSA), ivuga ku bihano bihabwa umuyobozi wanze gushyira mu bikorwa icyemezo cy'urukiko.

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[8] Urubanza rwaciye ku wa 22/06/2020, Urukiko rwemeza ko inzitizi yatanze na SIKUBWABO Raphaël nta shingiro ifite kuri Murego Paulin kuko ariwe waguze umutungo uburanwa muri cyamunara, amategeko akaba amwemerera kuba yagoboka muri urwo rubanza. Rwemeje ko inzitizi yo kutakira ukugoboka ku bushake kwa Umugiraneza Jean Michel ifite ishingiro kuko hatagaragajwe ko hari amakosa ajyanye n'imihango (procédure) yaba yarakozwe mu kugurisha muri cyamunara umutungo uburanwa, kandi ko nta nyungu ze bwite zibangamiye mu rubanza. Ku bijyanye n'inzitizi yo kutakira ikirego bitewe n'uko cyatanze impitagihe, Urukiko rwemeje ko cyakirwa kigasuzumwa mu mizi. Ku birebana n'urubanza mu mizi, Urukiko rwemeje ko ikirego cya Sikubwabo Raphaël nta shingiro gifite, rutegeka ko cyamunara yakozwe ku mutungo ufite UPI: 1/02/13/03/115 igumaho. [9] Sikubwabo Raphaël yajuririyeye imikirize y'urubanza mu Rukiko Rukuru rw'Ubucuruzi, urubanza rwandikwa kuri N° RCOMA 00398/2020/HCC, avuga ko yajurijwe no kuba Urukiko rw'Ubucuruzi rutarahagaritse cyamunara yavuzwe kandi hari impamvu zituma ihagarikwa. Yanasabaga Urukiko gusuzuma niba imanza N° RCOMA 00793/2017/CHC2 na RCOM 01971/2017/TC/NYGE3 hari ingaruka zagize kuri icyo cyamunara. Muri urwo rubanza Murego Paulin yatanze inzitizi agaragaza ko ikirego cyakiriwe ku rwego rwa mbere kitaragombaga kwakirwa kuko Sikubwabo Raphaël yareze impitagihe. Umugiraneza Jean Michel yatanze ubujuriye bwuririye ku bundi asaba ko hasuzumwa niba urukiko rwa mbere rutaracye urubanza ku byo rutaregewe, anasaba indishyi zinyuranye. Bank of Africa nayo yatanze ubujuriye bwuririye ku bundi isaba indishyi z'ibyakozwe mu rubanza ku rwego rw'ubujuriye. [10] Urubanza rwaciye ku wa 16/07/2020, Urukiko Rukuru rw'Ubucuruzi rwemeza ko inzitizi yatanze na MUREGO Paulin ifite ishingiro, ko ikirego cyatanze na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kitagombaga kwakirwa ngo gisuzumwe mu mizi, kuko cyatanze impitagihe. Urukiko rwasobanuye ko niba mu gutanga ikirego, urega yarashingiye ku byemejwe mu rubanza No RCOM 00577/2019/TC rwaciye ku wa 20/06/2019 rukagaragaza

umwenda yishyuzwaga, byumvikana ko cyamunara yari yarahagaritswe n'imanza zinyuranye yagombaga guhita ikomeza kuva igihe urwo rubanza rusomewe. Kuba rero Sikubwabo Raphaël yatanze ikirego mu Rukiko rw'Ubucuruzi ku wa 20/05/2020, amezi 11 nyuma y'uko cyamunara yemerewe gukomeza, bigaragaza ko yatanze ikirego impitagihe, kikaba kitari gikwiye kwakirwa ngo gisuzumwe mu mizi. [11] Urukiko Rukuru rw'Ubucuruzi rwemeje kandi ko ubujurire bwuririye ku bundi bwatanzwe na Bank of Africa n'ubwa Umugiraneza Jean Michel bufite ishingiro, rwemeza ko urubanza N° RCOM 00767/2020/TC rwaciwe ku wa 22/06/2020 n'Urukiko rw'Ubucuruzi ruteshejwe agaciro, rutegeka Sikubwabo Raphaël guha Bank of Africa na Umugiraneza Jean Michel 500.000 Frw y'indishyi zo gusiragizwa mu nkiko, 500.000 Frw y'igihembo cy' Avoka, 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 1.300.000 Frw kuri buri wese. [12] Sikubwabo Raphaël yajuririye imikirize y'urubanza mu Rukiko rw'Ubujurire, asaba gusuzuma niba ikirego cye cyaratanzwe impitagihe nk'uko Urukiko Rukuru rw'Ubucuruzi 2 Urubanza rwemeje ko cyamunara iteganyijwe ku mutungo ufite UPI: 1/02/13/03/115 ihagarara by'agateganyo hagategerezwa icyemezo kizafatwa mu rubanza N° RCOM 01971/2017/TC/NYG. 3 Urubanza SIKUBWABO Raphaël yasabyemo gutesha agaciro cyamunara yabaye ku wa 09/06/2017 ku mutungo ufite UPI: 1/02/09/01/844, hakemezwa ko nta mpamvu yagaragaje yatuma iteshwa agaciro, mu bujurire Urukiko Rukuru rukemeza ko nta gihindutse.

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rwabyemeje, kandi urubanza N° RCOMA 00793/2017/HCC rwaciwe ku wa 21/12/2017 rwarategetse ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'Urukiko ku rubanza N° RCOM 01971/2017/TC/NYGE. Mu rubanza N° RCOMAA 00061/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, hemejwe ko ubujurire bwa SIKUBWABO Raphaël budafite shingiro, ko imikirize y'urubanza rwajuririwe idahindutse. [13] Sikubwabo Raphaël yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza N° RCOMAA 00061/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020 rwasubirwamo ku mpamvu z'akarengane, avuga ko mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso. Perezida w'Urukiko rw'Ikirenga yafashe icyemezo ko urwo rubanza rwongera kuburanishwa n'Urukiko rw'Ikirenga, rwandikwa mu bitabo byabugenewe, ruhabwa No RS/INJUST/RCOM 00007/2021/SC. [14] Iburanisha ryabereye mu ruhamu ku wa 13/04/2022, RDB iburanirwa na Me Nkusi Fred, Bank of Africa iburanirwa na Me Kayiranga Cyrille, Murego Paulin aburanirwa na Me Munderere Léopold, Umugiraneza Jean Michel aburanirwa na Me Matimbano Barton, naho Sikubwabo Raphaël yunganirwa na Me Uwizeyimana Vénuste. Kuri iyo tariki, Urukiko rwabanje kuburanisha ku kibazo cyo kumenya niba ikirego cyo guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi, cyaratanzwe impitagihe. Rwamenyesheje ababuranyi ko icyemezo kuri icyo kibazo kizasomwa ku wa 29/04/2022. [15] Ku wa 29/04/2022, Urukiko rwasomye urubanza rubanziriza urundi, rwemeza ko:

- a. Ikirego cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyagombaga kwakirwa;
- b. Urubanza No RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA 00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020, zivanyweho;
- c. Iburanisha ry'urubanza ku ngingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi rizakomeza ku munsu Ubwanditsi bw'Urukiko buzamenyesha ababuranyi. [16] Urubanza rwongeye gushyirwa kuri gahunda y'iburanisha ku wa 13/06/2022, ababuranyi bose baritaba bahagarariwe cyangwa bunganiwe nka mbere. Urukiko rwamenyesheje ababuranyi ibaruwa Sikubwabo Raphaël yarushyikirije ku wa 17/05/2022, asaba ko urubanza N° RCOMAA 00024/2022/CA ruri mu Rukiko rw'Ubujurire4, rwahamagazwa rugahuzwa n'uru kubera isano zifitanye. [17] Nyuma yo kumva icyo buri muburanyi avuga ku cyifuzo cya Sikubwabo Raphaël, Urukiko rwapfundikiye iburanisha kuri icyo kibazo, rubamenyesha ko icyemezo kizasomwa ku wa 15/07/2022. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO. 4 Uru rubanza rwahagaze kuburanishwa hategerejwe icyemezo kizafatwa n'uru Rukiko

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- a. Kumenya niba urubanza N° RCOMAA 00024/2022/CA ruburanishwa n'Urukiko rw'Ubujurire rwahamagazwa rugahuzwa n'urubanza N° RS/INJUST/RCOM 00007/2021/SC [18] Sikubwabo Raphaël avuga ko impamvu asaba ko uru rubanza rwahuzwa n'urubanza N° RCOMAA 00024/2022/CA rwahagaze kuburanishwa mu Rukiko rw'Ubujurire, zishingiye ku cyemezo cyafashwe n'uru Rukiko mu rubanza rubanziriza urundi, aho rwavuze ko ibibazo byose birebana n'iki kibazo bikwiye gukemurirwa hamwe kugira ngo hatazavuka izindi manza zikazagera nazo mu karengane. Asobanura ko kuba urubanza ruri mu Rukiko rw'Ubujurire rurebana n'icyemezo cyafashwe n'Umwanditsi Mukuru wa RDB cyo kwemeza burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, kandi aricyo kiburanwa muri uru rubanza, izo manza zombi zikwiye guhuzwa kubera isano zifitanye. [19] Me Uwizeyimana Vénuste wunganira Sikubwabo Raphaël avuga ko imanza zikwiye guhuzwa kubera ko zifitanye isano, ku buryo rumwe rwagira ingaruka ku rundi ziramutse ziciwe mu buryo bunyuranye. Avuga ko ashingiye ku gika cya 35 cy'urubanza rubanziriza urundi, asanga kuburanisha uru rubanza rudahujwe n'ururi mu Rukiko rw'Ubujurire haba hari igice kimwe cyarwo gisigaye gishobora kuzagaruka mu Rukiko rw'Ikirenga mu karengane; ibyiza rero akaba ari uko izo manza zahuzwa ikibazo kigakemurira rimwe. [20] Me Nkusi Fred uburanira RDB avuga ko asanga imanza zitahuzwa kubera ko nta sano zifitanye, ko kandi nta bindi bintu Sikubwabo Raphaël yagombye kuzana bitari ibyo yavuze mu nama ntegururubanza. [21] Umugiraneza Jean Michel n'umwunganira bavuga ko n'ubwo mbere bari basabye ko imanza zitahuzwa, nyuma yo gusuzuma neza bisubiyeho bakaba basanga zahuzwa kuko zifitanye isano. Bavuga ko hamwe Sikubwabo Raphaël asaba guhagarika cyamunara ahandi agasaba kuyitesha agaciro, akaba ari amagambo agenda ahindura ariko ikibazo ari kimwe, ko rero bashingiye

ku ngingo ya 94 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, basanga izo manza zigomba guhuzwa kabone n'ubwo zidahuje kamere kuko rumwe ruri mu karengane urundi rukaba ari ubujurire busanzwe. Bongeraho ko kuba ntacyo itegeko rivuga ku bijyanye n'uburyo byagenda mu gihe imanza zidahuje kamere ariko ikiburanwa ari kimwe, Urukiko rw'Ikirenga arirwo rukwiye gutanga umurongo. [22] Bavuga kandi ko n'ubwo mu kirego cya Sikubwabo Raphaël kiri mu Rukiko rw'Ubujujire harimo ibice bibiri, aribyo gutesha agaciro cyamunara ku mutungo ufite UPI: 1/02/13/03/115 no gusubizwa amafaranga yasagutse ku ngwate ya mbere, imanza zifitanye isano ya hafi kuko iby'ibanze ari ugutesha agaciro cyamunara hanyuma ibyo gusubiza amafaranga bigashamikiraho, bikaba rero bitabuza ko imanza zombi zihuzwa. [23] Me Munderere Léopold uburanira Murego Paulin avuga ko n'ubwo mbere yari yasabye ko imanza zitahuzwa, nyuma yaje gusanga zahuzwa kuko ibirego bisa, Sikubwabo Raphaël akaba yarahinduye gusa amagambo hamwe agasaba gutesha agaciro cyamunara ahandi akaregera kuyihagarika burundu. Asobanura ko ibyiza ari uko imanza zaburanishirizwa hamwe kugira ngo zihutishwe, kuko inzu yaguzwe muri cyamunara mu 2017 ariko uwayiguze akaba atarayihabwa. [24] Avuga kandi ko kuba urubanza rumwe ruri mu rwego rw'akarengane, urundi rukaba ari ubujurire busanzwe, atari ikibazo kuko igisubizo cyatanze mu rubanza rubanziriza urundi

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rwasomwe ku wa 29/04/2022 mu gika cyarwo cya 35, hakomezwa ko Urukiko rw'Ikirenga rugomba gukemura ibibazo byose birebana n'uru rubanza. Ku birebana n'amafaranga SIKUBWABO Raphaël asaba gusubizwa mu kirego kiri mu Rukiko rw'ubujurire, avuga ko asanga ari inkurikizi y'ikirego kirebana na cyamunara atari ikirego ukwacyo. [25] Me Kayiranga Cyrille uhagarariye Bank of Africa avuga ko yabanje gusaba ko imanza zitahuzwa kubera ko ababuranyi atari bamwe, ariko ko nyuma yo gusuzuma agasanga ibirego byose bisa, asaba ko zahuzwa kuko ntacyo byakwangiza. UKO URUKIKO RUBIBONA [26] Ingingo ya 94 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko habaho imanza zisobekeranye, iyo imanza nyinshi, zifitanye isano ku buryo ikemurwa rya rumwe, rigira ingaruka ku rundi kandi ku buryo ziramutse ziciwe, rumwe ukwarwo, urundi ukwarwo, imikuriza yazo ishobora kuvuguruzanya. [27] Ingingo ya 98 y'Itegeko rimaze kuvugwa, yerekeye ibirego bisobekeranye mu nkiko zitandukanye, iteganya ko ibirego byinshi cyangwa ibiburanwa byinshi, byagombye kuburanishwa mu nkiko zitandukanye, bishobora, ku cyemezo cyanditse cya Perezida w'Urukiko cyangwa Perezida w'Inteko iburanisha, kuburanishirizwa mu rubanza rumwe iyo hari ubusobekerane bwabyo. Iyi ngingo ariko ntisobanura ari Perezida w'Inteko y'uruhe rukiko mu zaregwe ufite ububasha bwo gufata icyemezo cyo kuburanishiriza imanza zose mu rubanza rumwe. [28] Mu Itegeko Ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'inkiko nk'uko ryahinduwe kandi ryujujwe, ryasimbuwe n'irikoreshwa ubu, ingingo ya 1535 yagenaga urukiko rwoherereza urundi urubanza, bisabwe n'umwe mu baburanyi, mu gihe hari uburegeke cyangwa ubusobekerane bw'imanza ziburanishwa mu nkiko zitandukanye. Mu Itegeko rishya N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, habayeho gutandukanya ingingo zivuga ku buregeke n'izivuga ku busobekerane bw'imanza, hanyuma

ibyataganywaga n'ingingo ya 153 y'Itegeko Ngenga N° 51/2008 ryo ku wa 09/09/2008 bigaruka ku bireba gusa uburegeke⁶, ntihagira igiteganywa ku bijyanye n'ubusobekerane. 5 Ingingo ya 153 igira iti: Iyo imanza zifite ikiburanwa kimwe kandi zikomoka ku mpamvu imwe, ziburanwa n'ababuranyi bamwe ziri mu nkiko zitandukanye, cyangwa se iyo hari imanza nyinshi zifitanye isano hagati yazo ku buryo ikemurwa rya rumwe ryagira ingaruka ku icibwa ry'urundi, ziri mu nkiko zitandukanye, urukiko rumwe muri izo, bisabwe n'umwe mu baburanyi, ruzohereza urundi rukurikije uburyo bukurikira kandi hubahirijwe uko bukurikirana: 1° urukiko rwagize icyemezo rufata mu rubanza kitari kuruca mu mizi yarwo, ni rwo bahitamo ku rutaragira icyemezo rufata mu rubanza; 2° bahitamo urukiko rwisumbuye k'urwo hasi yarwo; 3° bahitamo urukiko rwaregewe mbere, ku rwaregewe nyuma; 4° bahitamo urukiko rusanze ku rukiko rwihariye. 6 Ingingo ya 100 y' Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko igira iti: Iyo inkiko zitandukanye ziregewe urubanza rumwe kandi zose zirufitiye ububasha, rumwe muri zo ruzohereza urundi. Bahitamo: 1° urukiko rwihariye ku rukiko rusanze; 2° urukiko rwaregewe mu rwego rw'ubujurire ku rukiko rwo mu rwego rwa mbere; 3° urukiko rwisumbuyeho ku rukiko rwo hasi;

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Urukiko rusanga ibyo byarabaye kwibagirwa, kuko nta cyari gutuma umushingamategeko atagaragaza urukiko rwoherereza urundi urubanza iyo hari ibirego bisobekeranye byaregewe mu nkiko zitandukanye. Niyo mpamvu Urukiko rusanga ibiteganyijwe mu ngingo ya 100 y' Itegeko N°30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru ku bireba uburegeke, ari nabyo byakoreshwa ku bireba ubusobekerane. [29] Ingingo ya 100 yavuzwe hejuru iteganya ko rumwe mu nkiko zaregewe rwoherereza urundi urubanza, mu gace kayo ka gatatu (3°) ikagaragaza ko urukiko rwisumbuyeho ku rwo hasi ari rwo rutoranywa kohererezwa urubanza; bivuga ko urukiko ruri ku rwego rwo hasi arirwo rugomba koherereza ururi ku rwego rwo hejuru urubanza igihe hari ubusobekerane bw'imanza zaregewe mu nkiko zombi. Ibi kandi byumvikanisha ko umuburanyi usaba ko imanza zihuzwa, ashidikiriza ubusabe bwe urukiko rugomba koherereza urubanza, ni ukuvuga urukiko ruri ku rwego rwo hasi. Urukiko rusanga ubusabe buramutse bushidikirijwe urukiko ruri ku rwego rwo hejuru, byasaba ko arirwo rwoherereza urubanza, kandi atari byo biteganyijwe mu gace ka 3° k'ingingo ya 100 yavuzwe haruguru. [30] Urukiko rusanga ibimaze kuvugwa mu gika kibanza atari umwihariko w'u Rwanda, nk'uko bigaragara mu ngingo za 1017 na 1028 z'Igitabo cy'amategeko agenga imiburanishirize y'imanza mbonezamubano cy'abafaransa, ziteganya ko igihe inkiko zitandukanye zaregewe imanza zifitanye isano, ku buryo zagombye kuburanishirizwa hamwe mu nyungu z'ubutabera, urukiko rumwe rushobora gusabwa koherereza urundi urubanza. Mu gihe inkiko zaregewe zitari ku rwego rumwe, ubusabe bushidikirizwa urukiko ruri ku rwego rwo hasi. [31] Ku bijyanye n'uru rubanza, Sikubwabo Raphaël yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 13/05/2022, asaba guhamagaza urubanza No RCOMAA 00024/2021/CA rugahuzwa n'urubanza No RS/INJUST/RCOM 00007/2021/SC, kubera ko zifitanye isano. Ikigaragara muri iyi baruwa, ni uko urega yasabye uru Rukiko guhamagaza urubanza ruri mu Rukiko rw'Ubuujurire, kandi nyamara nk'uko byasobanuwe mu bika bibanza, yaragombaga gusaba urukiko ruri ku rwego rwo hasi, ni ukuvuga Urukiko

rw'Ubujurire, kohereza urubanza. [32] Urukiko rusanga ibivugwa na Sikubwabo Raphaël ko ashingira ubusabe bwe ku byasobanuye n'uru Rukiko mu gika cya 35 cy'urubanza rubanziriza urundi rwaciye ku wa 29/04/2022, ko ibibazo byose biri mu rubanza bikwiye gukemurirwa mu rukiko ruri ku rwego rwo hejuru kugirango hatabaho imanza zishobora kuzongera kugaruka mu karengane, ari imyumvire itari yo y'ibyavuzwe muri icyo gika, kuko kidashobora gusomwa cyonyine kitarebwe hamwe n'ibyavuzwe mu bindi bika bikibanziriza. Icyo Urukiko rwashatse kugaragaza muri urwo rubanza, ni uko igihe urukiko rwashyikirijwe ikibazo cy'akarengane kirebana no kuba inkiko zibanza zaranze kwakira ikirego, rugasanga cyaragombaga kwakirwa, ruvunaho imanza zanze kucyakira, rugahita runasuzuma ikirego mu mizi cyari cyashyikirijwe urukiko rwo hasi. Mu gika cya 35, Urukiko rwasobanuye impamvu rufashe uwo murongo⁹, bikaba ntaho bihuriye no kuba izindi manza zose Sikubwabo Raphaël afite mu zindi nkiko, ^{4°} urukiko rwagize icyo rukora ku rubanza kurusha urutaragira icyo rurukoraho; ^{5°} urukiko rwaregwe mbere y'urundi. 7 S'il existe entre des affaires portées devant deux juridictions distinctes un lien tel qu'il soit de l'intérêt d'une bonne administration de la justice de les faire instruire et juger ensemble, il peut être demandé à l'une de ces juridictions de se dessaisir et de renvoyer en l'état la connaissance de l'affaire à l'autre juridiction. 8 Lorsque les juridictions saisies ne sont pas de même degré, l'exception de litispendance ou de connexité ne peut être soulevée que devant la juridiction du degré inférieur.

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zifitanye isano n'ikiburanwa, zazanwa zigahuzwa n'uru rubanza, nk'uko ashaka kubyumvikanisha. [33] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rurasanga ubusabe bwa Sikubwabo Raphaël bwo guhamagaza urubanza N° RCOMAA 00024/2022/CA ruburanishwa n'Urukiko rw'Ubujurire rugahuzwa n'urubanza N° RS/INJUST/RC 00007/2021/SC kubera isano zifitanye, budakwiye kwakirwa ngo busuzumwe, kuko yabutanze mu nzira zidakurikije amategeko. [34] Urukiko rurasanga, mu rwego rwo gutanga umurongo wafasha izindi nkiko, ari ngombwa no kugira icyo ruvuga ku bijyanye no kumenya niba imanza ziburanishwa hashingiwe ku birego byashyikirijwe inkiko binyuze mu nzira yo gusubirishamo urubanza ku mpamvu z'akarengane, zishobora guhuzwa n'imanza zaregwe inkiko binyuze mu nzira zisanze. [35] Ibirego bishyikirizwa inkiko binyuze mu nzira yo gusubirishamo urubanza ku mpamvu z'akarengane, bitangwa ku manza ziba zamaze kuba itegeko, kandi bikagira inzira yihariye binyuramo kugirango biburanishwe, isobanurwa kuva ku ngingo ya 53 kugeza ku ya 62 z'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Bimwe mu biteganywa muri izo ngingo, ni uko hari isuzuma ribanza gukorwa n'Abayobozi b'Inkiko cyangwa Ubugenzuzi Bukuru bw'Inkiko, bashingiye ku mpamvu zigenwa n'Itegeko, icyemezo cya nyuma kigafatwa na Perezida w'Urukiko rw'Ikirenga. [36] Urukiko rusanga guhuza imanza ziburanishwa hashingiwe ku birego byatanze binyuze muri icyo nzira, n'imanza zirimo kuburanishwa ku birego byatanze binyuze mu nzira zisanze (bitanyujijwe mu nzira yateganyijwe ku manza z'akarengane), bishobora no kuba birimo kuburanishwa ku rwego rwa mbere, byaba bibangamiye imigendekere myiza y'ubutabera. Ibi birahura n'ibyemejwe n'uru Rukiko mu cyemezo cyafatiwe mu ntebe mu rubanza N° RS/INJUST/RCOM 00005/2019/SC10, haburanamo Kigali Ceramica & Furniture Ltd na

Guaranty Trust Bank (Rwanda) Plc. Muri urwo rubanza, Urukiko rwasobanuye ko urubanza rwaregwe mu rwego rw'akarengane ari urubanza ruba rwararangije inzira z'ubujurire, rushobora no kuba rwararangijwe, rukaba rudashobora guhuzwa n'urubanza rugifite inzira zisanzwe z'ubujurire. [37] Urukiko rusanga uburyo bwiza bwo gukuraho impungenge z'uko hashobora kubaho ivuguruzanya hagati y'imanza zaregwe mu rwego rw'akarengane n'izaregwe binyuze mu nzira zisanzwe, ari uko inkiko zaregwe mu nzira zisanzwe zategereza icyemezo cyafatwa n'inkiko zaregwe mu rwego rw'akarengane. III. ICYEMEZO CY'URUKIKO 9 Urukiko rwasobanuye ko : inzira yo gusubirishamo urubanza ku mpamvu z'akarengane ishyirwaho, igitekerezo cy'Umushingamategeko cyari uko urukiko rwaregwe biciye muri iyo nzira, rukemura ibibazo byose biri mu rubanza umuburanyi yarugejejeho, aho kugirango rukemure igice kimwe, ikindi gisubire mu nkiko ziri hasi yarwo, bitume habaho imanza zishobora kuzongera kugaruka mu karengane kandi byashobokaga ko ibibazo birangirizwa rimwe n'urukiko ruri ku rwego rwo hejuru. 10 Reba inyandikomvugo y'iburanisha ryo ku wa 22/06/2020, p. 11

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[38] Rwemeje ko ubusabe bwa SIKUBWABO Raphaël bwo guhamagaza urubanza N° RCOMAA 00024/2022/CA ruburanishwa n'Urukiko rw'Ubugurire rugahuzwa n'urubanza N° RS/INJUST/RC 00007/2021/SC, budakwiye kwakirwa ngo busuzumwe, kuko yabutanze mu nzira zidakurikije amategeko; [39] Rwemeje ko iburanisha ry'urubanza rizakomeza ku munsu Ubwanditsi bw'Urukiko buzamenyesha ababuranyi.

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