

RWANDA / JUDGMENT

UMAZEKABIRI v MUKAGATANA

RCA 00007/2024/CA

COURT

Court of Appeal

DECIDED

13 January 2025

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UMAZEKABIRI v MUKAGATANA

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Text

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UMAZEKABIRI v MUKAGATANA [Rwanda URUKIKO RW'UBUJURIRE - RCA 00007/2024/CA (Ngagi, P.J.) 13 Mutarama 2025] Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Kureka urubanza - Kureka urubanza ni uburenganzira umuburanyi afite bwo kuvuga ko aretse urubanza yari yaregeye, uwo yaregaga akabyemera. Amategeko agenga imiburanishirize y'imanza mbonezamubano – Ikirego kihutirwa – Igihembo cy'avoka - Nta gihembo cya Avoka gitangwa mu gihe ikiburanwa mu rubanza ari ikirego cyihutirwa gishamikiye ku rubanza rw'iremezo, rufatwamo icyemezo cy'agateganyo kuko icyo gihembo gisabwa mu rubanza rw'iremezo. Incamake y'ikibazo: Umazekabiri yatanze ikirego mu Rukiko Rukuru atambamira irangizwa ry'urubanza RCA 00004/2023/HC/KIG aho yasabaga ko riba rihagaze kugeza haciwe urubanza RC 00170/2024/HC/KIG kuko kururangiza byagira ingaruka ku mutungo uhuriweho, kuko nubwo UPI zitandukanye ariko imwe igwa mu yindi kandi hakaba hari n' ibihuriweho nk'ibikoni, imisarani n'ibindi dore ko ari umutungo uri mu gipangu kimwe. Mukagatana we yavugaga ko ibuvugwa n'urega ari ugushaka gukomeza kumwima ibyo yatsindiye bityo bikaba bitahabwa ishingiro. Urukiko rwemeje ko ikirego cyatanzwe nta shingiro gifite. Umazekabiri yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, umunsi w'iburanisha avuga ko yaretse

urubanza. Uru rukiko rwasuzumye niba Umazekabiri yakwemererwa kureka urubanza aho yasobanuye ko aretse urubanza, kuko icyo yaregeraga kitakiriho, ko kandi yabimenyesheje Me Nsengiyumva uburanira Nkundabagenzi. Mukagatana avuga ko kureka urubanza ari uburenganzira bw'umuburanyi ariko ko akwiye kumwishyura indishyi z'igihembo cy'avoka. Incamake y'icyemezo: 1. Kureka urubanza ni uburenganzira umuburanyi afite bwo kuvuga ko aretse urubanza yari yaregeye, uwo yaregaga akabyemera. 2. Nta gihembo cya Avoka gitangwa mu gihe ikiburanwa mu rubanza ari ikirego cyihutirwa gishamikiye ku rubanza rw'iremezo, rufatwamo icyemezo cy'agateganyo kuko icyo gihembo gisabwa mu rubanza rw'iremezo. Urukiko rwemeye ukureka urubanza. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 123. Imanza zifashishijwe: RCOM 00001/2019/SC, Umurungi Umwizerwa n'Ikigo cy'Imisoro n'Amahôro rwaciwe n'Urukiko rw'Ikirenga ku wa 22/02/2019; RCOM 00003/2022/CA, TOP TOWER HOTEL Ltd n'abandi na BPR ATLAS MARA Plc, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/05/2022;

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RCOMA 00006/2022/CA, Nziroera Cyprien na Muhimpundu Rosine rwaciwe n'Urukiko rw'Ikirenga ku wa 23/05/2022. Urubanza I. IMITERERE Y'URUBANZA [1] Umazekabiri Nathan Edison yatanze ikirego cyihutirwa mu Rukiko Rukuru gishamikiye k'urubanza No RC 00170/2024/HC/KIG gisaba ko irangizwa ry'urubanza rwatambamiwe No RCA 00004/2023/HC/KIG ryaba rihagaze by'agateganyo kugeza urubanza No RC 00170/2024/HC/KIG ruciwe burundu. [2] Abamuhagarariye basobanuye ko Nkundabagenzi Isaya yamenyesheje Umazekabiri Nathan Edison ko irangiza ry'urubanza rizagira ingaruka no ku mutungo usigaye muri icyo gipangu, kuko nubwo UPI zitandukanye ariko amazu y'abaregwa ari mu gipangu kimwe, gifite amarembo amwe, toilette imwe, douche imwe, igikari kimwe n'igikoni kimwe, igice cy'ubwo butaka kibaruye kuri UPI:1/01/10/03/303 akaba ari cyo cyahawe Mukagatana Béatrice; ko Nkundabagenzi Isaya asobanura ko ishyingirwa mu bikorwa ry'icyo cyemezo risaba ko hari ibigomba guzasenywa kugira ngo ubutaka bugabanywemo kabiri. Basobanura kandi ko ibyo byose bitabura kugira ingaruka k'uwagurishije ubwo butaka, ari we Umazekabiri Nathan Edson nk'umuntu ufite inshingano zo kurinda uwaguze kugira ngo atunge icyaguzwe mu mudendeko, ko ndetse Nkundabagenzi yamaze kumwandikira amubwira ko mu gihe atabasha kumurinda kwamburwa umutungo bageze, yakwitegura kumusubiza agaciro k'uwo mutungo kangana na 30,000,000 Frw, akaba ari yo mpamvu yahisemo gutanga ikirego cyihutirwa asaba ko irangizwa ry'urubanza No RCA 00004/2023/HC/KIG riba rihagaze kugeza urubanza rw'iremezo rucibwe burundu. [3] Nkundabagenzi Isaya yavuze ko utanze ikirego cyihutirwa aba agira ngo agire ibyo arengera, avuga kandi ko iyo upimye izi UPI: 303 na 5011 zombi imwe igwa mu yindi, ko usanga ubu butaka busobekeranye; akaba asanga iyo ari mpamvu ya mbere yatuma irangizwa ry'urubanza rihagarara kugira ngo urubanza ruzacibwa ruzabisobanure neza. Akomeza avuga ko ikindi ari uko iyi mitungo yombi iri mu gipangu kimwe, ko irangizwa ry'urubanza rigomba kuzagira ingaruka ku mutungo usangiwe urugero: ibikoni, toilettes n'ibindi, akaba asanga mu kurangiza urubanza hari ibigomba kwangirika, ko rero byaba byiza irangizwa ry'urubanza No RCA

00004/2023/HC/KIG ribaye rihagaze, ibintu bikaguma uko biri ubu maze ibintu bikazasobanuka neza ari uko urubanza No RC 00170/2024/HC/KIG ruciwe burundu. [4] Mukagatana Béatrice yireguye avuga ko asanga ibyo urega avuga nta shingiro byahabwa kubera ko aho hantu yahatsindiye kandi ahafitiye ibimenyetso; ku bijyanye nuko irangizwa ry'urubanza ryahagarara ngo kubera ko hari ibikorwa bizasenywa avuga ko nabyo bitahabwa ishingiro ngo kubera ko niba basangiye toilette, umuriro, douche n'ibindi ngo nta kibazo gihari ngo babaye babisenye Mukagatana afite ubutaka azishakira ibye, ko ahubwo kubera ko ari bo bafite umutungo we icyo bagamije ari ukuwumuhezaho bagakomeza kuwubuyaza umusaruro kugira ngo we akomeze ahangayike abure epfo na ruguru, abure ikimutunga, bityo ko ubusabe bwa Umazekabiri Nathan Edison budakwiye guhabwa ishingiro.

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- [5] Mu rubanza No RC 00016/2024/HC/KIG rwaciwe ku wa 24/07/2024, Urukiko Rukuru rwasanze ibyo Umazekabiri Nathan Edison avuga ko irangizwa ry'urubanza hari ibyo ryakwangiza nta shingiro byahabwa kubera ko nta na hamwe yigeze awuburana kandi n'ibyakwangizwa atari we bireba ku ruhande rwe kuko kugeza ubu ntaho ahuriye nawo, ko n'ibyakwangizwa nabyo bibaye bihari bitamubuza gukomeza ikirego cye yatanze cyo gutambamira urubanza No RCA 00004/2023/HC/KIG, maze rwemeza ko ikirego cya Umazekabiri Nathan Edison nta shingiro gifite, ko irangizwa ry'urubanza No RCA 00004/2023/HC/KIG ridahagaritswe by'agateganyo. [6] Umazekabiri Nathan Edison yajuririye uru Rukiko, ubujurire bwe bwandikwa kuri No RCA 00007/2024/CA. Urubanza rwaburanishijwe mu ruhamwe ku wa 08/01/2025, Umazekabiri Nathan Edison ahagarariwe na Me Nkeza Sempundu Clément, Mukagatana Béatrice ahagarariwe na Me Nambajimana Jean Baptiste, naho Nkundabagenzi Isaya atitabye nta n'impamvu yagaragagaje yatumye atitaba, maze Urukiko rushingiye ku ngingo ya 57 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu rwemeje ko urubanza ruburanishwa adahari, rugafatwa nk'aho bose bari bahari. [7] Me Nkeza S. Clément, ashingiye ku ngingo ya 123 y'Itegeko ryibukijwe haruguru, yamenyesheje Urukiko ko Umazekabiri Nathan Edison aretse urubanza, ko kandi yabimenyesheje Me Nsengiyumva Colette uburanira Nkundabagenzi Isaya, Me Nambajimana Jean Baptiste, uhagarariye Mukagatana Béatrice, yavuze ko ari uburenganzira bwa Umazekabiri Nathan Edison kureka urubanza, asaba igihembo cya Avoka, hasuzumwa niba Umazekabiri Nathan Edison yakwemererwa kureka urubanza, ndetse n'ibijyanye n'igihembo cya Avoka Mukagatana Béatrice asaba. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO
1. 1. Kumenya niba Umazekabiri Nathan Edison yakwemererwa kureka urubanza [8] Me Nkeza S. Clément avuga ko Umazekabiri Nathan Edison ahagarariye, ashingiye ku ngingo ya 123 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, aretse urubanza, kuko icyo yaregeraga kitakiriho, ko kandi yabimenyesheje Me Nsengiyumva Colette uburanira Nkundabagenzi Isaya. [9] Me Nambajimana Jean Baptiste, uhagarariye Mukagatana Béatrice, avuga ko ari uburenganzira bwa Umazekabiri Nathan Edison kureka urubanza, ariko ashingiye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru,

asaba ko Mukagatana Béatrice yahabwa ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka, kuko uru rubanza rwatumye ashaka Avoka. UKO URUKIKO RUBIBONA [10] Ingingo ya 123 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ibukurikira: "Kureka urubanza ni uburenganzira umuburanyi afite bwo kuvuga ko aretse urubanza yari yaregeye, uwo yaregaga akabyemera".

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- [11] Nk'uko byibukijwe haruguru, mu iburanisha ryabaye ku wa 18/01/2025, Me Nkeza S. Clément yamenyesheje Urukiko ko Umazekabiri Nathan Edison aretse urubanza yari afite mu Rukiko rw'Ubujurire kuko icyo yaregeraga kitakiriho, hanyuma uhagarariye Mukagatana Béatrice arabyemera. [12] Hashingiwe ku biteganywa n'ingingo ya 123 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, Urukiko rurasanga nta cyabuza Umazekabiri Nathan Edison kwemererwa ukureka urubanza, cyane cyane ko n'uregwa witabye Urukiko avuga ko ari uburenganzira bwe kureka urubanza.
2. Kumenya niba Mukagatana Béatrice yagenerwa amafaranga y'igihembo cya Avoka asaba [13] Nk'uko byavuzwe haruguru, Mukagatana Béatrice asaba guhabwa ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka, kuko uru rubanza rwatumye ashaka Avoka. [14] Urukiko rurasanga amafaranga y'igihembo cya Avoka Mukagatana Béatrice asaba atagomba kuyahabwa, kuko ikiburanishwa muri uru rubanza ari ikirego cyihutirwa gishamikiye ku rubanza rw'iremezo No RC 00170/2024/HC/KIG ruri mu Rukiko Rukuru, ku buryo icyemezo gifatwa ari icyemezo cy'agateganyo mu gihe hategerejwe icyemezo cya burundu kizafatwa mu iburanisha ry'urwo rubanza rw'iremezo. Ibi ni nako Urukiko rw'Ikirenga rwabibonye mu rubanza N° RCOM 00001/2019/SC rwaciwe ku wa 22/02/2019, haburana Umurungi Umwizerwa n'Ikigo cy'Imisoro n'Amahôro, ndetse n'uru Rukiko mu rubanza N° RCOM 00003/2022/CA rwaciwe ku wa 11/05/2022, TOP TOWER HOTEL Ltd n'abandi baburana na BPR ATLAS MARA Plc, ndetse no mu rubanza No RCOMA 00006/2022/CA rwaciwe ku wa 23/05/2022, haburana Nzirodera Cyprien na Muhimpundu Rosine¹. III. ICYEMEZO CY'URUKIKO [15] Rwemeye ukureka urubanza byasabwe na Umazekabiri Nathan Edison. [16] Ruvuze ko ingwate y'amagarama yatanze na Umazekabiri Nathan Edison ihwanye n'ibyakozwe mu rubanza.

1 Reba igika cya 26.

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