

RWANDA / JUDGMENT

UMUTESI et al. v. FINA BANK

RCOM 0009/11/CS

COURT

Supreme Court

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UMUTESI et al. v. FINA BANK

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Text

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UMUTESI N'UNDI v. FINA BANK [Rwanda URUKIKO RW'IKIRENGA – RCOM 0009/11/CS (Mukanyundo, P.J., Kayitesi na Mukandamage, J.) 23 Ugushyingo 2011] Amategeko agenga imiburanishirize y'imanza z'ubucuruza – Irangiza ry'urubanza ry'agateganyo – Impamvu zishingirwaho mu kwemeza irangiza ry'urubanza ry'agateganyo – Kugira ngo irangiza ry'urubanza ry'agateganyo ribeho ni uko ikimenyetso cy'ikiburanwa aba ari inyandikomvaho kandi ikiburanwa akaba ari umwenda wemewe mu rukiko n'uregwa – Si ngombwa gukomatanya izi mpamvu zose ahubwo iyo hujujwe imwe muri zo irangiza ry'urubanza riremewe – Mukwemera umwenda mu irangiza ry'urubanza ry'agateganyo singombwa ko uregwa aba yemera ingano yawo – Itegeko N° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, Ingingo ya 210. Incamake y'ikibazo: Umutesi Kaberuka na Runyange Médard wari umwishingizi we, bagiranye amasezerano y'inguzanyo na Fina Bank, asinyirwa imbere ya Noteri. Umutesi ntiyubahirije ayo masezerano bituma Fina Bank itanga ikirego mu Rukiko Rukuru rw'Ubucuruza. Uru Rukiko rwemeje ko ikirego cya Fina Bank gifite ishingiro rutegeka abarezwe kwishyura 63.836.391 frw n'andi mafaranga atandukanye. Rwategetse kandi irangiza ry'urubanza

ry'agateganyo kubera ko ikiburanwa cyari gishingiye ku kimenyetso cy'inyandiko-mvaho yerekeye amasezerano yasinyiwe imbere ya Noteri, ndetse n'uko uregwa yemeye umwenda mu rubanza. Umutesi na Runyange bajuririye mu Rukiko rw'Ikirenga ariko mbere y'uko ubujurire buburanishwa batanga ikirego kigamije guhagarika irangiza ry'urubanza kuko ryatanzwe mu buryo bunyuranyije n'amategeko kandi ko ryabangamira mu mizi ku bijyanye n'igihe Umutesi yagombaga kurangiza kwishyura umwenda. Fina bank yo ikavuga ko ibyo abajuriye basaba nta shingiro bifite kuko ikiburanwa gishingiye ku kimenyetso cy'inyandiko-mvaho yerekeye amasezerano y'inguzanyo, akaba yarasinyiwe imbere ya Noteri, ndetse Umutesi akaba yaremeye umwenda mu rubanza. Ikindi kandi ni uko Umutesi atashoboye kwishyura inguzanyo yahawe muri 2008, ahubwo mu mwaka wa 2010 akaba yarasabaga kongererwa igihe cyo kwishyura kingana n'umwaka. Incamake y'icyemezo: 1. Irangiza ry'urubanza ry'agateganyo ryemezwa n'urukiko rubyibwirije ndetse nta ngwate iyo ikimenyetso cy'ikiburanwa ari inyandikomvaho n'ikiburanwa ari umwenda wemewe mu rukiko n'uregwa. Kugira ngo irangizarubanza ry'agateganyo ryemezwe n'Urukiko, haba hujujwe nibura imwe muri izo mpamvu ebyiri, izo mpamvu rero zikaba ziba zitagomba gukomatanywa. Irangizarubanza ry'agateganyo risabirwa guhagarikwa rikaba ryarakozwe mu buryo bukurikije amategeko.

2. Iyo irangiza ry'urubanza ryategetswe hashingiwe ku mwenda kandi uwahawe umwenda atemera ingano yawo, nta shingiro bihabwa kuko itegeko ntaho rivuga ko uwemeye umwenda aba agomba no kuba yemera ingano yawo.

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Ikirego nta shingiro gifite. Urubanza rwaciye n'Urukiko Rukuru rw'Ubucuruzi ntiruhindutse. Amagarama aherereye kubareze. Amategeko yashingiweho: Itegeko N° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujijwe kugeza ubu, Ingingo ya 210, Iri tegeko ryakoreshwaga igihe ikirego cyatangwaga. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Umutesi Kaberuka Espérance yahawe na Fina Bank inguzanyo (ligne de crédit), yishingirwa n'umugabo we Runyange Médard nka ``caution solidaire``, amasezerano y'iyo nguzanyo ashyirwaho umukono imbere ya Noteri. [2] Umutesi ntiyashoboye kwishyura inguzanyo mu buryo bwumvikanyweho muri ayo masezerano, bigera aho FINA BANK imuha ``mise en demeure`` yo kwishyura 50.309.701 frw, nabyo ntibyashoboka, bituma Banki itanga ikirego mu Rukiko Rukuru rw'Ubucuruzi. [3] Urukiko rwaciye urubanza, rwemeza ko ikirego cya FINA BANK gifite ishingiro, rutegeka Umutesi Kaberuka Espérance na Runyange Médard kuyishyura 63.836.391 frw, 300.000 frw y'ikurikiranarubanza, 300.000 frw y'igihembo cya Avoka no gutanga 4% angana na 300.000 frw y'umusogongerwa wa Leta. Urukiko rwategetse kandi ko urubanza rurangizwa by'agateganyo kubera ko ikiburanwa gishingiye ku kimenyetso cy'inyandiko-mvaho yerekeye amasezerano yasinyiwe imbere ya Noteri, ndetse n'uko uregwa yemeye umwenda mu rubanza. [4] Umutesi na Runyange bajuririye urwo rubanza mu Rukiko rw'Ikirenga, ariko mbere y'uko ubujurire buburanishwa, batanga ikirego kigamije guhagarikisha irangiza-rubanza ry'agateganyo ku mpamvu y'uko ryatanzwe mu buryo bunyuranyije n'amategeko kandi ko ryabangamira urubanza mu mizi ku bijyanye n'igihe Umutesi agomba kurangiza

kwishyura umwenda. [5] Urubanza rwaburanishijwe kuwa 15/11/2011 Umutesi na Runyange bunganirwa na Me Ingabire Solange, naho FINA BANK iburanirwa na Me Rusanganwa Jean Bosco. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Irangizarubanza ry'agateganyo ryemejwe n'Urukiko Rukuru ryaba rinyuranyije n'amategako? [6] Me Ingabire Solange uburanira abarega (Umutesi Kaberuka na Runyange) avuga ko abo aburanira bemera ko Umutesi yahawe inguzanyo ariko ntibemera ingano yayo, bakaba rero

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batemeranya n'imvugo y'umucamanza y'uko umwenda wemewe mu Rukiko. Akomeza avuga ko kandi irangiza rubanza ry'agateganyo ryabangamira urubanza rw'ubujurire mu mizi ku bijyanye no gusuzuma igihe Umutesi agomba kuba yarangirije kwishyura ngo kuko Banki yatangiye kumwishyura umwenda wose hashize ukwezi kumwe ahawe inguzanyo. [7] Me Rusanganwa Jean Bosco uburanira FINA BANK avuga ko ubujurire bw'abo baburana nta shingiro bufite kuko ikiburanwa gishingiye ku kimenyetso cy'inyandiko-mvaho yerekeye amasezerano y'inguzanyo, akaba yarasinyiwe imbere ya Noteri, ndetse Umutesi akaba yaremeye umwenda mu rubanza. [8] Ku bijyanye n'uko irangiza-rubanza ry'agateganyo ryabangamira urubanza mu mizi ku byerekeye isuzuma ry'igihe Umutesi agomba kurangiriza kwishyura, Me Rusanganwa avuga ko nabyo bitahabwa agaciro, kuko Umutesi atashoboye kwishyura inguzanyo yahawe muri 2008, ahubwo mu mwaka wa 2010 akaba yarasabaga kongererwa igihe cyo kwishyura kingana n'umwaka, ubu akaba ageze muri 2011 atarishyura. [9] Ku byerekeranye n'irangiza-rubanza ry'agateganyo, ingingo ya 210 y'Itegeko N° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ivuga ko irangiza-rubanza ry'agateganyo ryemezwa n'urukiko rubyibwirije ndetse nta ngwate iyo :

- 1o ikimenyetso cy'ikiburanwa ari inyandikomvaho,
- 2o ikiburanwa ari umwenda wemewe mu rukiko n'uregwa. [10] Iyi ngingo y'itegeko yumvikanisha ko kugira ngo irangizarubanza ry'agateganyo ryemezwe n'Urukiko, haba hujijwe nibura imwe muri izo mpamvu ebyiri iteganywa, izo mpamvu rero zikaba zitagomba gukomatanywa, nkuko uburanira Umutesi abishingiraho ashaka kugaragaza ko irangiza-rubanza ryategetswe ridakurije amategako, kuko impamvu ya 2^o y'uko ikiburanwa kigomba kuba ari umwenda wemewe ituzuye ngo kuko atemera ingano yawo. [11] Urukiko rurasanga nyamara irangizarubanza ry'agateganyo risabirwa guhagarikwa ryarakozwe mu buryo bukurikije amategako kuko ryategetswe hashingiwe ku kimenyetso cy'umwenda cy'inyandikomvaho cyerekeye amasezerano y'inguzanyo FINA BANK yagiranye na Umutesi agaragaraho imikono n'imihango byakorewe kwa Noteri kuwa 04/08/2008. Ikirego rero gisaba ko ryahagarikwa kuko ridakurikije amategako kikaba nta shingiro gifite. [12] Naho ku bijyanye n'uko irangizarubanza ryategetswe na none hashingiwe ku mwenda kandi Umutesi atemera ingano yawo, Uru Rukiko rurasanga nabyo nta shingiro ryabyo, kuko kuba Umutesi atemera ingano y'umwenda akurikiranyweho ntacyo bihindura mu gihe muri rusange bigaragara ko yawemereye mu Rukiko Rukuru rw'Ubucuruza, nk'uko byasobanuwe

haruguru, itegeko rikaba ntaho rivuga ko uwemeye umwenda agomba no kuba yemera ingano yawo. [13] Urukiko rusanga irangiza-rubanza ry'agateganyo ryategetswe n'Urukiko Rukuru rw'Ubucuruzi rigomba kugumaho, kuko hari impamvu ebyiri rwashingiyeho nk'uko ziteganyijwe mu ngingo ya 210 y'Itegeko N° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru, uretse ko rwashoboraga no gushingira gusa kuri imwe muri zo, nkuko byasobanuwe.

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III. ICYEMEZO CY'URUKIKO [14] Rwemeje ko ikirego cyihutirwa cyatanzwe n'Umutesi Kaberuka Espérance na Runyange Médard nta shingiro gifite. [15] Ruvuze ko nta gihindutse ku rubanza rwaciwe n'Urukiko Rukuru. [16] Rutegetse Umutesi Kaberuka Espérance na Runyange Médard gutanga amagarama y'urubanza angana na 10.500, ni ukuvuga 5.250 Frw buri wese, batayatanga mu gihe cy'iminsi munani, ayo mafaranga akavanwa mu byabo ku ngufu za Leta.

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