

RWANDA / JUDGMENT

SPECIAL GUARANTEE FUND V UWANYIRIGIRA

RS/REV/RC 00001/2022/CA

COURT

Court of Appeal

DECIDED

20 April 2023

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SPECIAL GUARANTEE FUND V UWANYIRIGIRA

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Text

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UWANYIRIGIRA N'ABANDI V SPECIAL GUARANTEE FUND [Rwanda URUKIKO RW'UBUJURIRE – RC 00002/2023/CA (Munyangeri, P.J.) 08 Werurwe 2023] Amategeko agenga imanza z'imbonezamubano – Irangizwa ry'urubanza – Ikirego gihatira umuyobozi kurangiza urubanza rwabaye Itegeko – Iyo uwarezwe kwanga kurangiza urubanza agaragaje ibimenyetso byuko yatangiye kururangiza kandi akavuga n'impamvu yumvikana yatumye atarurangiza ku gihe, uwamureze nawe akemera ko yatangiye kururangiza kandi yizeye ko azakomeza kururangiza, urwo rubanza rushobora rurangizwa n'ubwumvikane. Incamake y'ikibazo: uru rubanza rwatangiye Uwanyirigira mu izina rye no mu izina ry'abana yabyaranye na Harorimana, atanga ikirego mu Rukiko Rwisumbuye rwa Ngoma, barega Special Guarantee Fund, basaba indishyi zikomoka ku mpanuka yahitanye Harorimana, ubwo yaratwaye imodoka ngo agahura n'indi y'ikamyo itaramenyekanye ikamusatira akayihunga akarenga umuhanda imodoka ye ikangirika ikanamuhitana. Yasabye indishyi Special Guarantee Fund yanga kuzitanga ishingiyemo ngo ku bikubiye mu nyandikomvugo yakozwe n'Umugenzacyaha wakoze dosiye y'impanuka, wagaragaje

ko Harorimana ari we nyirabayazana w'iyi mpanuka. Urukiko Rwisumbuye rwa Ngoma rwemeje ko ikirego cyatanze na Uwanyirigira n'abana be ahagarariye, gifite ishingiro, rutegeka Special Guarantee Fund kwishyura Uwanyirigira n'abana ahagarariye Indishyi zitadukanye. Special Guarantee Fund yajuririye icyo cyemezo mu Rukiko Rukuru, isaba gusuzuma niba impanuka yahitanye Harorimana yaratewe n'ikinyabiziga kitamenyekanye, ndetse niba indishyi zategetswe zarabazwe mu buryo buteganywa n'amategeko. Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ubujurire bwa Special Guarantee Fund bufite ishingiro kuri bimwe. Uwanyirigira yajuririye icyo cyemezo mu Rukiko rw'Ubujujire, asaba kumenya niba inyandiko yiswe "Profit and loss account" ifite inenge ku buryo itagenderwaho mu kubara indishyi. Uhagarariye Uwanyirigira asobanura ko inyandiko yiswe "Profit and loss account" igaragaza amafaranga yakoreshejwe hakubiyemo n'imishahara, inyungu ku mwaka n'umusoro watanze, ko kandi nta kindi cyangombwa gitangwa na Rwanda Revenue Authority, ko kuba agaragaza inyungu nyakwigendera yakuraga mu bucuruzi yakoraga, zigashimangirwa n'imenyekanisha ry'umusoro yabaga yishyuye, Urukiko rutagombaga kubara indishyi rufashe Harorimana nk'udafite icyo yinjizaga. Uhagarariye Special Guarantee Fund avuga ko iyo nyandiko idakwiye gushingirwaho mu kubara indishyi, kubera ko ari iya sosiyete nk'igisa n'umuntu (personne morale) kandi usabirwa indishyi ari umuntu ku giti cye (personne physique). Avuga kandi ko ikigo ahagarariye kitemera ko impanuka bivugwa ko yakozwe n'imodoka itaramenyekanye yabayeho, kubera ko abatangabuhamya batanze amakuru batigeze babona iba, ko amafoto agaragaza ko imodoka ivugwa itigeze ikora kuri Harorimana. Urukiko rw'Ubujujire rwemeje mu rubanza RCAA00020/2021/CA ko nta nyandiko mpamo n'imwe abajuriye bagaragariye Urukiko igaragaza ko Harorimana yari afite akazi kamuhemba umushahara buri kwezi muri sosiyete yari afitemo imigabane, bityo ko nta kosa Urukiko Rukuru, rwakozwe mu kwemeza ko inyandiko igaragaza urwunguko rwiyo sosiyete idakwiye gushingirwaho mu kubara indishyi mbangamirabukungu, bityo ubujurire nta shingiro ifite. Uwanyirigira mu izina rye n'iryabana be yongeye gutanga ikirego mu Rukiko rw'Ubujujire asaba Urukiko gutegeka Umuyobozi Mukuru w'Ikigega Cyihariye cy'Ingoboka, (Special Guarantee Fund) kubahiriza ibyategetswe mu rubanza RCAA00020/2021/CA, no kumugenera igihano kimuhatira ubwe kubahiriza ibyategetswe mu gihe cyose urwo rubanza ruzaba rutararangizwa. Iki kirego cyarangiye ababuranyi bumvikanye kuko uregwa yari yatangiye kurangiza urubanza yaregwaga ko yanze kurangiza. Incamake y'icyemezo: Iyo uwarezwe kwanga kurangiza urubanza agaragaje ibimenyetso byuko yatangiye kurangiza kandi akavuga n'impamvu yumvikana yatumye atarurangiza ku gihe, uwamureze nawe akemera ko yatangiye kurangiza kandi yizeye ko azakomeza kurangiza, urwo rubanza rushobora rurangizwa n'ubwumvikane.

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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 9, Itegeko N° 45/2011 ryo ku wa 25/11/2011, rigenga amasezerano, Ingingo ya 64 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 11/02/2019, ubwo Harorimana Jean Baptiste yari atwaye imodoka Toyota HILUX RAB 572 T mu Mudugudu w'Amahoro, Akagari ka Nyaruhumbu,

Umurenge wa Rukira, Akarere ka Ngoma, Intara y'iburasirazuba yakoze impanuka yamuhitanye n'iyo modoka irangirika bikomeye kubera ikamyo yamusatiriye akarenga umuhanda ayihunga.

[2] Umugore wa Harorimana Jean Baptiste witwa Uwanyirigira Josée, n'abana be aribo Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave basabye muri Special Guarantee Fund indishyi zikomoka ku mpanuka yatejwe n'ikamyo itaramenyekanye, ariko Special Guarantee Fund yanga kuzitanga ivuga ko Umugenzacyaha wakoze dosiye y'impanuka, mu nyandikomvugo ye yagaragaje ko nyirabayazana w'iyo mpanuka ari Harorimana Jean Baptiste. [3] Uwanyirigira Josée mu izina rye no mu ry'abana be bavuzwe haruguru, bareze Special Guarantee Fund mu Rukiko Rwisumbuye rwa Ngoma, basaba indishyi zikomoka ku

mpanuka

yahitanye nyakwigendera. Mu rubanza RC00158/2019/TGI/NGOMA rwaciwe ku wa 05/03/2020, Urukiko Rwisumbuye rwa Ngoma rwemeje ko ikirego cyabo gifite ishingiro, rutegeka Special Guarantee Fund kwishyura Uwanyirigira Josée indishyi mbangamirabukungu zihwanye na 86,400,000Frw n'indishyi z'akababaro zihwanye na 1,080, 000 Frw, kwishyura Kirenga Manzi Loyke, Rwema Jean Luc na Wamurangwa Octave bahagarariwe na Uwanyirigira Josée indishyi z'akababaro zingana na 2,430,000Frw ni ukuvuga 810,000Frw kuri buri wese, kwishyura Uwanyirigira Josée ibyo yatanze mu ishyingurwa rya Harorimana Jean Baptiste bihwanye na 500,000Frw, 9,420,400Frw y'ibyangiritse ku modoka ye, 150, 000 Frw y'ibyakoreshejwe mu kugura dosiye, kujya kuri Polisi, mu Bushinjacyaha no mu Rukiko, 1,000,000Frw y'ikurikiranarubanza n'igihembo cy'Avoka, no kubishyura 20, 000Frw y'amagarama batanze barega. [4] Special Guarantee Fund yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Rwamagana, isaba gusuzuma niba impanuka yo ku wa 11/02/2019 yahitanye Harorimana Jean Baptiste yaratewe n'ikinyabiziga kitamenyekanye, kumenya niba ubuhamya bwashingiweho n'Urukiko bukwiye kwizerwa no kumenya niba indishyi zategetswe zarabazwe mu buryo buteganywa n'amategeko. Mu rubanza RCA00034/2020/HC/RWG rwaciwe ku wa 18/10/2021, Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ubujurire bwatanzwe na Special Guarantee Fund bufite ishingiro kuri bimwe, ko imikirize y'urubanza RC00158/2019/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 05/03/2020 ihindutse ku ndishyi mbangamirabukungu, ko Special Guarantee Fund igomba guha Uwanyirigira Josée indishyi mbangamirabukungu zingana na 6,152,569Frw, ko nta mafaranga y'indishyi z'igihembo cya Avoka n'iz'ikurikiranarubanza agomba gutangwa kuri urwo rwego, 40.000Frw yatanzweho ingwate y'amagarama ahwana n'ibyakozwe mu rubanza. [5] Ku wa 16/11/2021, Uwanyirigira Josée yajuririye urubanza mu Rukiko rw'Ubujurire, ubujurire bwandikwa kuri RCAA00020/2021/CA, asaba kumenya niba inyandiko yiswe "Profit and loss account" ifite inenge ku buryo itagenderwaho mu kubara indishyi. Ku wa 29/04/2022, Urukiko rw'Ubujurire rwaciye urubanza, rwemeza ko ubujurire bwatanzwe na Uwanyirigira Josée, Kirenga Loyke, Rwema Jean Luc na Rwamurangwa Octave, nta shingiro bufite, ko urubanza RCA00034/2020/HC/RWG rwaciwe

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n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 18/10/2021 rudahindutse, amafaranga y'ingwate y'amagarama yatanze n'abajuriye, ahwana n'ibyakoze mu rubanza. [6] Uwanyirigira Josée yongeye kuregera Urukiko rw'Ubujurire, ikirego cyandikwa kuri RC00002/2023/CA, asaba Urukiko gutegeka Umuyobozi Mukuru w'Ikigega Cyihariye cy'Ingoboka, kubahiriza ibyategetswe mu rubanza RCAA00020/2021/CA, no kumugenera igihano kimuhatira ubwe kubahiriza ibyategetswe mu gihe cyose urwo rubanza ruzaba rutararangizwa. [7] Urubanza rwaburanishijwe mu ruhamwe ku wa 08/03/2023, Uwanyirigira Josée ahagarariwe na Me Kayitare Serge, Dr Nzabonikuza Joseph yunganiwe na Me Nibakure Florence, ababuranyi bahabwa umwanya wo kugira icyo bavugaga ku kibazo kirebana no kuba barangiza ikibazo bafitanye mu bwumvikane. Urukiko rufatira icyemezo mu ntebe kuri uwo munsu. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba ikibazo ababuranyi bafitanye cyarangizwa mu bwumvikane [8] Me Kayitare Serge uhagarariye Uwanyirigira Josée yabajijwe niba abona ababuranyi batarangiza ikibazo bashyikirije Urukiko binyuze mu bwumvikane, avuga ko kugira ngo umuturage agere aho kuregera urukiko, gushaka Avoka, aba yahuye n'ikibazo kimubabaje, akamwiyambaza kugira ngo amugire inama y'icyo gukora, ko rero mu gihe uwo ahagarariye yatangaga ikirego, Umuyobozi Mukuru wa Special Guarantee Fund yari atarashyirahamwe ibaruwa yari yandikiye n'umuhesha w'inkiko w'umwuga, yamusabaga kurangiza urubanza RCAA00020/2021/CA, nyuma aho atangiye imyanzuro yo kwiregura aba ari bwo agaragaza ingengabihe y'uburyo yazarangizamo urwo rubanza kandi ko afitanye icyizere ubuyobozi bw'Ikigega, ku buryo buzayubahiriza, akaba yemera iyo ngengabihe, igisigaye akaba ari ukubimenyesha uwamutumye. [9] Dr Nzabonikuza Joseph avuga ko impamvu batinze kurangiza urubanza ku bushake, ari uko inyandiko zishyuzaga zashyikirijwe Ikigega abereye umuyobozi ibitabo by'ibaruramari byarafunzwe kubera ko umwaka w'ingengo y'imari wa 2021-2022 warimo usozwa, harimo gutegurwa raporo isoza uwo mwaka w'ingengo y'imari, biba ngombwa ko ubwishyu buteganywa mu mwaka w'ingengo y'imari ukurikiyeho, ni ukuvuga wa 2022-2023 kandi ko baba baragerageje kubahiriza amezi atandatu agenwa n'itegeko, ariko baza guhura n'imbogamizi yo kuba baratinze kubonana na Uwanyirigira Josée imbonankubone kuko yagombaga kwigaragaza kugira ngo hamenyekane neza niba izina rya banki na numero ya konti umuhesha w'inkiko yashyize mu ibaruwa yishyuzaga ari byo koko, kandi ko nyuma yo kubonana byagaragaye ko impungenge bari bafite zari zifite ishingiro, kuko Uwanyirigira Josée yabahaye numero ya konti idahuye n'iyari yatanze n'umuhesha w'inkiko. Avuga ko Uwanyirigira Josée yamaze kwishyurwa icyiciro cya mbere, kandi ko asanga nta gitutu gikwiye gushyirwa mu kwishyurwa ikigo cya Leta kubera ko na cyo kiba gicungira ku ngengo y'imari kigenerwa. [10] Me Nibakure Florence avuga ko Special Guarantee Fund na Uwanyirigira Josée bamaze kumvikana ko ubwishyu buzakorwa mu byiciro bitatu, kandi ko icyiciro cya mbere yamaze kucyishyurwa, kuko cyari giteganyijwe ku wa 14/02/2023, kwishyurwa 2.500.000Frw, icyiciro cya kabiri kikaba giteganyijwe kwishyurwa ku wa 24/03/2023 kingana na 9.126.485Frw, na ho icyiciro cya gatatu ari na cyo cya nyuma kikaba giteganyijwe kwishyurwa ku wa 20/04/2023, kingana na 9.126.484Frw. UKO URUKIKO RUBIBONA [11] Ingingo ya 9, igika cya 3 y'itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganyako" Umucamanza

ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko ari bwo buryo buboneye mu kurangiza impaka. Ashobora kubunga ubwe cyangwa akabohereza mu bwunzi, agasubika urubanza mu gihe ubwunzi burimo gukorwa”. Ingingo ya 64 y’itegeko n° 45/2011 ryo ku wa 25/11/2011, rigenga amasezerano iteganya ko “Amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye [...]”.

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[12] Dosiye y’urubanza irimo ibaruwa yo ku wa 14/02/2023, ubuyobozi bw’Ikigega Cyihariye cy’Ingoboka bwandikiye Uwanyirigira Josée, bumumenyesha gahunda yo kurangiza urubanza RCAA00020/2021/CA, hakaba harakozwe imbonerahamwe igaragaza ko ku itariki ya 14/02/2023, hazishyurwa 2.500.000Frw, mu dukubo handikwa ko yishyuwe, ku itariki ya 24/03/2023 hagomba kwishyurwa 9.126.485Frw, ku itariki ya 20/04/2023 hakishyurwa 9.126.484Frw, yose hamwe akaba 20.752.969Frw. Hari kandi inyandiko igaragaza ko 2.500.000Frw yashyizwe kuri konti n° 583127242210193 ya Uwanyirigira Josée. [13] Urukiko rurasanga, nk’uko ababuranyi bumvikanye kuri gahunda yo kurangiza urubanza ikubiye mu gika kibanziriza iki, ubwo bwumvikane bugomba gushyira iherezo ku rubanza Uwanyirigira Josée yari yaregeye uru Rukiko, asaba ko umuyobozi wa Special Guarantee Fund agenerwa ibihano kubera kutarangiza urubanza. III. ICYEMEZO CY’URUKIKO [14] Rwemeje ko urubanza RC00002/2023/CA rwari mu Rukiko rw’Ubujurire, rusojwe n’ubwumvikane ababuranyi bagiranye mu iburanisha ryo ku wa 08/03/2023 n’inyandiko yo ku wa 14/02/2023 yavuzwe haruguru. [15] Rwemeje ko ibikubiye mu nyandiko yo ku wa 14/02/2023, birebana na gahunda yo kurangiza urubanza RCAA00020/2021/CA, nk’uko byavuzwe mu gika cya 12 cy’uru rubanza, bigomba kubahirizwa uko biri. [16] Ruvuze ko amafaranga y’ingwate y’amagarama yatanzwe na Uwanyirigira Josée arega, ahwanye n’ibyakoze mu rubanza.

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