

RWANDA / JUDGMENT

UWAYO v BHANJI ABDOULHAHIM

RC 00002/2023/HC/KIG

COURT

High Court

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UWAYO v BHANJI ABDOULHAHIM

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Text

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UWAYO v BHANJI ABDOULHAHIM [Rwanda URUKIKO RUKURU – RC 00002/2023/HC/KIG (Kamanzi, P.J.) 09 Werurwe 2023] Amategeko agenga imiburanishirize y’imanza z’imbenezamubano – Itambama – Itambama ryashyizwe ku mutungo w’umuntu urimo umwenda – Gusaba gukuraho itambama – Ntabwo umuburanyi yasaba Urukiko gukuraho itambama ryashyizwe ku mutungo we, mu gihe icyatumye rishyirwaho kikiriho kandi ari nawe uwufite anawubyaza umusaruro. Incamake y’Ikibazo: Uru rubanza rukomoka ku rubanza RC01095/2020/TGI/NYGE rwaciwe n’Urukiko rwisumbuye rwa Nyarugenge rwategetse ko Uwayo asubiza Bhanji Abdulhamid amafaranga angana na miliyoni 77,068,888Frw. Uwayo ajuririra urwo rubanza mu Rukiko Rukuru ruhabwa numero RCA00170/2022/HC/KIG, rukaba ruteganiywe kuburanishwa mu mizi ku wa 12/09/2023, hanyuma Uwayo ashingira kuri urwo rubanza rw’iremezo atanga ikirego cy’ihutirwa asaba Urukiko ko rutegeka Bhanji Abdulhamid gukura itambama ku mitungo ye, nk’impamvu y’ubwihitirwe avuga ko Banki igiye kumutereza icyamunara kubera kutishyura umwenda kandi ngo mbere yuko Bhanji atambamira imitungo ye yarishyuraga neza. Uwayo avuga ko yasabye inguzanyo muri Banki ya KCB mugihe yishyuraga inguzanyo yahawe neza aza kurwara bikomeye, bituma agira ibirarane by’amezi atanu atishyura Banki, none ngo Banki ikaba

igiye kumutereza cyamunara ku mutungo yari yaratanzeho ingwate kandi ngo yarashoboraga kugurisha byibuze umutungo umwe we muyo Bhanji Abdoulhahim yafatiriye cyangwa akagira uwo agwatiriza muri Banki zindi yakoranaga nazo agasaba inguzanyo aho kuja mu birarane bya Banki kugeza aho ajya kugurishirizwa imitungo. Bhanji Abdulhamid avuga ko asanga nta bwihutire buhari kuko Uwayo asaba Urukiko gutegeka Bhanji Abdulhamid gukura itambama ku mitungo ye ngo kuko agiye guterezwa cyamunara, avuga ko imitungo itambamiye ariyo yagurisha akabona ubwishyu, bavuga ko basanga nta cyo kuramira gihari kuko bigaragara ko cyamunara avuga yamaze kuba. Yongeraho kandi ko ibyo Uwayo avuga ko hari umutungo wazavamo ubwishyu bityo ko ariwo wonyine wakomeza gutambamirwa, bitahabwa ishingiro kuko basanga agaciro ku umutungo wasigara utambamiwe kari hasi y'amafaranga yatsindiwe kuko mu rubanza Uru rukiko rubona ikirego cyihutirwa cyatanzwe na Uwayo Marie Aimee nta shingiro gifite kuko ibirebana no kwisanzura mu mitungo ye bizagenwa amaze kuburana urubanza mu mizi hasobanuka amafaranga abereyemo Bhanji Abdoulhamid wasabye ko imitungo itambamirwa, ku mpamvu z'uko imitungo yose yatambamiwe ariwe uyifite, uru rukiko rubona nta cyihutirwa kirimo, bivuze ko ikirego cye cyihutirwa nta shingiro urubanza mu mizi rwazarangira Bhanji Abdulhamid akabura ubwishyu. Urukiko Rukuru mu rubanza RC00002/2023/HC/KIG rwemeje ko ikirego cyihutirwa cya Uwayo nta shingiro gifite, ko kwisanzura mu mitungo ye bizagenwa mu rubanza mu mizi, rwemeza ko nta cyihutirwa gihari kuko imitungo yose yatambamiwe ariwe uyifite.

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Incamake y'icyemezo: Ntabwo umuburanyi yasaba Urukiko gukuraho itambama ryashyizwe ku mutungo we, mu gihe icyatumye rishyirwaho kikiraho kandi ari nawe uwufite anawubyaza umusaruro. Bityo, ikirego kihutirwa gisaba Urukiko gukuraho itambama ryashyizwe ku mutungo w'umuntu wishyuzwa umwenda nta shingiro cyahabwa mu gihe urubanza mu mizi rutarafata icyemezo kuri uwo mwenda kandi nyirumutungo watambamiwe ari we uwubyaza umusaruro. Ikirego cyihutirwa nta shingiro gifite. [Amategeko yshingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, 186 Itegeko No 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 4 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza RC01095/2020/TGI/NYGE rwatangiriye mu Urukiko rwisumbuye rwa Nyarugenge aho Urukiko rwategetse ko Uwayo Marie Aime asubiza Bhanji Abdulhamid amafaranga angana na miliyoni 77,068,888Frw. Uwayo Marie Aimea ntiyishimiye imikirize y'urubanza ajurira mu rukiko rukuru maze urubanza ruhabwa numero RCA00170/2022/HC/KIG, rukaba ruteganiye kuburanishwa mu mizi ku wa 12/09/2023, akaba arirwo rubanza rw'iremezo Uwayo Marie Aimee yashingiyeho atanga ikirego cy'ihutirwa gisaba Urukiko ko rutegeka Bhanji Abdulhamid gukura itambama ku mitungo ye impamvu y'ubwihutirwe avuga ko Banki igiye kumutereza icyamunara kubera kutishyura umwenda. [2] Muri uru rubanza harasuzumwa ibirebana no kumenya niba hari impamvu zikomeye zihutirwa zatuma Urukiko rukuzaho ubugwate kuri imwe mu mitungo yafatiriwe na Bhanji Abdoulhamid ngo iramire Uwayo Marie Aimee ashobore kuva mubibazo iryo fatira ku mitungo yose ryamushyizemo. II. ISESENGURA

RY'IKIBAZO KIGIZE URUBANZA [3] Uwayo Marie Aimée na Me Ntagengwa Vital ku ruhande rw'ubwunganizi bavuga ko yasabye inguzanyo muri Banki ya KCB mugihe yishyuraga inguzanyo yahawe neza aza kurwara bikomeye amara amezi atanu mu gitanda adasohoka, Company yitwa TOMTRANSFER bari bafitanye amasezerano y'umwenda yari imufitiye bemeranya ko bazajya bamwishyura bishyura inguzanyo yahawe na Bank ya KCB nkuko bigaragara kuri Bank Statement aho iyo company yajyaga imwishyurira inguzanyo, Bhanji Abdoulhahim yafataga nk'inshuti y'Umugabo we

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warumaze kwitaba Imana aza kumuhemukira akiri mu kiriyo no muburwayi amurega mu rukiko kandi azi neza ko ibyo amuregera ataribyo, ndetse akimara kurega afatira imitungo ye yose aho iva ikagera bityo abura uko yakwishyura Banki, Uwayo Marie Aimée ubwo yaramaze guhemukirwa niyo Company yindi ya TOM TRANSFER ndetse na Bhanji Abdoulhahim kugeza ubwo yagize ibirarane by'amezi atanu atishyura Banki ntiyakumva ako kababaro yakorewe ahubwo ubu igiye kumutereza icyamunara k'umutungo yari yaratanzemo ingwate, kandi yashoboraga kugurisha byibuze umutungo umwe we muyo Bhanji Abdoulhahim yafatiriye cyangwa akagira uwo agwatiriza muri Banki zindi yakoranaga nazo kandi neza agasaba inguzanyo aho kujya mu birarane bya Banki kugeza aho ajya kugurishirizwa imitungo ku icyemezo no 1382/2022/RCV/ORG-022 - 14/2273 cyo kuwa 2/12/2022 cy'Umwanditsi Mukuru wa RDB yemerera Umuhesha w'inkiko kugurisha ingwate. Uwayo Marie Aimee n'Umupfakazi w'abana batanu ntakandi kazi afite kamufasha gutunga abana be no kubarihira amashuri kuko yashoboraga kuba yagurisha umwe mu mitungo ye ngo ashobore gusubira mu kazi ke k'ubucuruzi ubu iyo mitungo yose yafatiriwe na Bhanji Abdoulhamid. [4] Me Ngarambe Martin uburanira Bhanji Abdulhamid avuga ko basanga nta bwihutire buhari kubera impamvu zirimo kuba Uwayo Marie Aimee asaba Urukiko gutegeka Bhanji Abdulhamid gukura itambama ku mitungo ye ngo kuko agiye guterezwa cyamunara, akitwaza ko iyo mitungo itambamiye ariyo yagurisha akabona ubwishyu, bavuga ko basanga nta cyo kuramira gihari kuko bigaragara ko cyamunara avuga yamaze kuba dushingiye kuri gahunda ya cyamunara yatanze bigaragara ko cyamunara ya nyuma yabaye ku wa 06/02/2023 [5] Me Ngarambe Martin avuga ko Impamvu ya kabiri, Uwayo Marie Aimee agaragaza ko hari umutungo wazavamo ubwishyu bityo ko ariwo wakomeza gutambamirwa ndetse akagaragaza agaciro kawo, ko basanga agaciro ku umutungo wasigara utambamiye ufite agaciro kari hasi y'amafaranga yatsindiwe bityo ibi bikaba ari amayeri ya Uwayo Marie Aimee kugirango urubanza nirurangira Bhanji Abdulhamid azabure aho akura ubwishyu. [6] Impamvu ya gatatu, Uwayo Marie Aimee arashaka uburyo imitungo yose yayikuraho maze Bhanji Abdulhamid igihe azaba yatsinze urubanza ku rwego rwa nyuma akazabura ubwishyu, ibi niko asanzwe abikora kuko no ku nshuro ya mbere atanga ikirego kihutirwa asaba ko itambama ryavaho yagaragaza ko KCB Bank yamwemereye umwenda ungana na 80,000,000Frw akaba yarabahaye ingwate y'umutungo ufite UPI: 2/07/08/01/6608 ariko bitewe nuko utambamiye udashobora kwandikishwa nk'ingwate muri RDB, akavuga ko nabona uwo mwenda azahita yishyura Bhanji Abdulhamid, ibi Urukiko ntirwabyemeye ariko Uwayo Marie Aime akora uburiganya bwose ahimba inyandiko mpimbano ziri mumazina ya Huissier

watambamiye imitungo mu izina rya Bhanji Abdulhamid abeshya ikigo cy'ubutaka ko bumvikanye maze iryo tambama rivaho yewe n'umwenda barawumuha ariwo mubona yananiwe kwishyura bakaba bagiye kuwuteza cyamunara, uwo mwenda yarawubonye nubwo yawubonye mumanyaga nta faranga narimwe yigize yishyura Bhanji Abdulhamid. Iki cyaha Uwayo Marie Aimee yakoze cyo guhimba inyandiko agikurikiranweho mu manza nshinjabyaha mu rubanza RP01202/2022/TGI/GSBO mu Rukiko rwisumbuye rwa Gasabo (reba inyandiko itanga ikirego cy'ubushinjacyaha). Dushingiye kuri izo mpamvu uko ari eshatu turasaba Urukiko gutesha agaciro ikirego kihutirwa cya Uwayo Marie Aimee.

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- [7] Uru rukiko rubona ikirego cyihutirwa cyatanzwe na Uwayo Marie Aimee kigamije gusaba urukiko ko rukuzaho imwe mu mitungo yafatiriwe na Bhanji Abdoulhamid ngo iramire Uwayo Marie Aimee ashobore kuva mubibazo iryo fatira ku mitungo yose ryamushyizemo nta shingiro kuko avuga ko ifatira ryamuteje ubukene mugihe ritigeze rimwambura imitungo kuko icyakozwe n'uko imitungo yafatiriwe itagurishwa cyangwa se ngo ibeyatangwaho ingwate kubera ko hari amafaranga abereyemo Bhanji Abdoulhamid wasabye ko itambamirwa, kuvuga ko bimuteye ubukene nta bimenyetso abitangira kuko n'ubundi imitungo yose niwe uyifite, icyakozwe n'ukutayitangaho ingwate muri Bank kandi ibi bizategereza urubanza mu mizi. [8] Uru rukiko rubona ibirebana n'umutungo ubaruye kuri UPI: 2/07/08/01/6608, Uwayo Marie Aimee yatanze ikirego kihutirwa mu rubanza RC00256/2021/TGI/NYGE asaba Urukiko gutegeka Bhanji Abdulhamid gukura itambama ku mitungo harimo nuyo, aha akaba yaragaragariye urukiko inyandiko yo ku wa 19/05/2021 (Notification of approval) ya KCB Bank imwemerera umwenda ungana na 75,000,000Frw, ngo ariko Bank ikaba idashobora kwandikisha ingwate kuko utambamiye bityo agasaba ko iryo tambama ryavaho agahabwa umwenda maze agahita yishyura BHANJI Abdulhamid, Urukiko rwarabyanze rutegeka ko iryo tambama rigumaho. [9] Muri iki kirego cyihutirwa Uwayo Marie Aimee yashikirigije uru rukiko Rukuru nanone asubira kuri uyu mutungo UPI: 2/07/08/01/6608 avuga ko kuba utambamiwe bimuteza ubukene kuko bimubuza amahirwe yo gukorana na Bank, ibi ariko siko uru rukiko rubibona kuko kuba utambamiwe bitamubuza kuwubuyaza umusaruru nka nyirawo kandi nk'umuntu uwufite, icyo urukiko rwakoze n'ukubuza Uwayo Marie Aimee kuba yagurisha iyi mitungo cyangwa se kuyitangaho ingwate muri bank kuko kuwugurisha cyangwa kuwutangaho ingwate muri bank bituma Bhanji Abdoulhamid bafitanye urubanza mu mizi rutaraburanishwa mu bujurire yabura ubwishyu ku mafaranga ye, kuba Uwayo Marie Aimee avuga ko hafatirwa indi mitungo nayo yavamo amafaranga Bhanji amurega, aha hazamo ikibazo cyo kutumvikana ku gaciro kayo kuko Bhanji Abdoulhamid avuga ko indi mitungo itavamo ubwishyu bw'amafaranga amurega. [10] Uru rukiko rubona harebwe ibiteganywa n'ingingo ya 4 y'itegeko No15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganywa ko: "Urukiko ruca urubanza rwaregwe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa" n'ingingo ya 12 y'itegeko No22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kubirebana n'Ugomba

kugaragaza ibimenyetso iteganya ko: “Urega agomba kugaragaza ibimenyetso by’ibyo aregera. Iyo abibuze, uwarezwe aratsinda. “ [11] Uru rukiko rubona ikirego cyihutirwa cyatanzwe na Uwayo Marie Aimee nta shingiro gifite kuko ibirebana no kwisanzura mu mitungo ye bizagenwa amaze kuburana urubanza mu mizi hagasobanuka amafaranga abereyemo Bhanji Abdoulhamid wasabye ko imitungo itambamirwa, ku mpamvu z’uko imitungo yose yatambamiwe ariwe uyifite, uru rukiko rubona nta cyihutirwa kirimo, bivuze ko ikirego cye cyihutirwa nta shingiro hashingiwe ku biteganywa n’ingingo ya 186 y’itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko; Umucamanza uburanisha ikirego cyihutirwa afata icyemezo ku byo yaregewe ariko mu buryo butabangamiye urubanza rw’iremezo mu mizi yarwo;

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III. ICYEMEZO CY’URUKIKO [12] Rwemeje ko ikirego cy’ihutirwa cyatanzwe na Uwayo Marie Aimee nta shingiro gifite; [13] Amagarama y’urubanza Uwayo Marie Aimee yatanzeho ingwate mu kirego cyihutirwa ahwanye n’ibyakoze muri uru rubanza byose.

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