

RWANDA / JUDGMENT

MUSHENDIMU NSANZE v. MUNYARIBANJE KAVUNJA

RCOMA 0109/14/HCC

COURT

Commercial High Court

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MUSHENDIMU NSANZE v. MUNYARIBANJE KAVUNJA

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Text

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MUSHENDIMU NSANZE v. MUNYARIBANJE KAVUNJA [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0109/14/HCC (Niwemugeni, P.J.,) Kuwa 11/04/2014] Amategeko agenga amasezerano – Agaciro k'amasezerano – Amasezerano areba abayashyizeho umukono – Nta gaciro amasezerano yagira mu gihe atagaragaye ho umukono w'umwe mu bayagize. Umuburanyi ntiyavuga ko umucamanza yirengagije ibikubiye mu masezerano mu gihe yasinyweho n'abandi bantu batanzwe kandi badafite urwandiko rubahesha uburenganzira bwo kuyasinyaho – Amategeko agenga amasezerano – Indishyi zituruka mu kutubahiriza amasezerano – Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanze n'urundi ruhande rutubahirije ibisabwa mu masezerano – Umwe mu bagize amasezerano ntiyakwanga gutanga indishyi mu gihe atubahirije ibyuvikanwe mu amasezerano, ateza mugenzi we ihungabana mu bucuruzi bwe no mu mibereho ye. Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 137. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Irangizarubanza ry'agateganyo – Irangizarubanza ry'agateganyo ritangwa icyo kiburanywa ari umwenda wemewe

n'uregwa – Kuba ufite umwenda muri uru rubanza yemera ko agomba kwishyura mugenzi we amafaranga amurimo, bigaragara ko yemeye uwo mwenda, Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 212. Incamake y'ikibazo: Munyaribanje kavunja yunvikanye na Mushendimu Nsanze Edmond ko bakora ubucuruzi bw'imbaho za libuyu bakazivana muri congo. Munyaribanje yashize kuri konti ya Mushendimu amadolari ibihumbi bitanu na Magana atanu 5.500\$ y'igishoro. Akomeza avuga ko mu bwunikane bagiranye, ayo madolari yari kugura imbaho 115, rumwe rukagira ikigali ruhagaze kuri 28.000 frws, rukagurishwa 32.000 frws. Mushendimu amaze kubona ayo mafaranga arabura, niyongera kuboneka, bituma Munyaribanje amurega mu Rukiko rw'Ubucuruzi rwa Musanze asaba yuko yamusubiza amafaranga yamuhaye, inyungu ziyakomoka ho hamwe n'indishyi. Urukiko rutegeka Mushendimu kumwishyura 5.500\$ y'umwenda, 1.319.293 frws y'inyungu na 1.000.000 frws y'indishyi, runategeka irangizarubanza ry'agateganyo kuri 5.475\$. Mushendimu ntiyishimiye imikirize y'urubanza, maze ajurira mu Rukiko Rukuru rw'Ubucuruzi avuga ko umucamanza yirengagije ibikubiye muri acte de ceder ihesha Munyaribanze ibiti yaguze, agategeka ko asubizwa n'amadolari yatanze abigura kandi atabanje gusubiza ibiti, ibyo Mushendimu akavuga ko ari enrichissement sans cause kuko Munyaribanje atagomba guhabwa byombi, n'ukuvuga ibiti n'amadolari. Munyaribanje avuga ko ayo masezerano yitwa acte de cession atirengagijwe, asaba ko atahabwa ishingiro ku mpanvu zitandukanye yagiye agaragaza mu rubanza. Mushendimu akomeza avuga ko nta gikorwa kibyara inyungu cyari cyagatangiyeye kuko impande zombi ntaho zigeze zunvikana inyungu, kandi ko Munyaribanje yahawe ibiti ariko bikaba

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bitarashoboye kubyazwa inyungu kubera intambara yo muri Congo, kandi Munyaribanze akaba atarashoboye kubikurikirana. Uyu we avuga ko impanvu y'ubujurire bwa Mushendimu nta shingiro ifite kuko amasezerano yabaye hagati yabo ari amasezerano y'ubucuruzi agamije inyungu. Akomeza avuga ko ntaho Mushendimu yahera avuga ko amafaranga yahawe atari yatangiyeye kubyara inyungu mu kuko yamuhaye amafaranga angana na 950.000 frws y'inyungu atabarirwa kuri capital. Mushendimu avuga ko Urukiko rwirengagije nkana aya mafaranga yahaye Munyaribanje ayita inguzanyo kandi atari yo. Akomeza avuga ko atagomba gutanga indishyi kuko nta ruhare yagize mu guteza munyaribanje igihombo kuko yamuhaye ibiti yari yamutumye. Munyaribanje we akavuga ko Mushendimu akwiye gutanga izo ndishyi kubera ko atubahirije amasezerano. Ku birebana n'irangizarubanza ry'agateganyo, Mushendimu avuga ko umucamanza yashingiyeye kw'itegeko rivuga ko irangizarubanza ritangwa iyo ikiburanwa ari umwenda wemewe n'uregwa mu rubanza mu gihe muri uru rubanza ikiburanwa atari umwenda hubwo ko ari 5500\$ Munyaribanje yashize kuri konti ya Mushendimu nk'igishoro. Munyaribanje we akavuga ko nta tegeko umucamanza yishe kuko Mushendimu yemera ko amugomba ayo mafaranga. Mu bujurire bwuririye ku bundi bwatanzwe na Munyaribanje, asaba ko inyungu zitabarirwa kuri 18% ko hubwo zabarirwa kuri 4.000 frws kuri buri rubaho ku nshuro zose bakagombye kuba baragemuye, igihe cyose Mushendimu ataramusubiza igishoro cye, akamuha yose hamwe amafaranga angana na 19.130.000 frws y'inyungu. Incamake y'icyemezo: 1. Kuba

Mushendimu agaragaza amasezerano yitwa aya cession ubwa mbere ariko arezwe, ntiyavuga ko ayo masezerano areba Munyaribanje kuko atayasinyeho cyangwa ngo abe yarohereje uwayamusinyira hakoreshejwe procurement.

2. Kuba uwakiriye amafaranga n'ubuyatanzwe bunvikanye ko ayo madolari yari kugura imbaho 115, nyuma uwagomba guzigura ntabyubahirize, akwiye gutanga indishyi kubwo kutubahirizwa kw'ayo masezerano.
3. Kubera ko Mushendimu yemera ko agomba Munyaribanje amafaranga, byiyongereye ko yamwandikiye amwemerera ko azayamwishyura, Mushendimu agomba kuyamusubiza mu irangizarubanza ry'agateganyo ryategetswe mu rubanza . Ubujurire bwakiriwe ariko nta shingiro bufite. Uwareze yatsinzwe, uwarezwe yatsinze. Amategeko yashingiweho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 212, Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 137. Nta manza zifashishijwe:

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Urubanza I. IMITERERE Y'URUBANZA [1] Munyaribanje Kavunja Appolinaire avuga ko yumvikanye na Mushendimu Nsanze Edmond ko bafatanyaga ubucuruzi bw'imbaho za libuyu bazivana muri Congo. Avuga ko bamaze kumvikana yashyize kuri konti ya Mushendimu iri muri Coopec La Bonne Moisson y' i Goma amadolari ibihumbi bitanu na Magana atanu y'igishoro nk'uko yari yabimusabye. Avuga ko mu bwumvikane bagiranye ayo madolari yari kugura imbaho 115 rumwe rukagera i Kigali ruhagaze ku giciro cya 28.000 frs (hakubiyemo ikiguzi, transport n'imisoro), rukagurishwa 32.000 frs mu Gakinjoro. Akomeza avuga ko Mushendimu amaze kubona ayo madolari yicecekeye, yamushakira ntamubone kugeza ubwo yiyambaye uwitwaga Sekageme kugira ngo abahuze ariko na byo ntibyangira icyo bitanga. Munyaribanje yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Musanze, asaba gusubizwa amafaranga ye n'inyungu zayo ndetse n'indishyi. [2] Urukiko rw'Ubucuruzi rwa Musanze rwategetse Mushendimu Nsanze Edmond kwishyura Munyaribanje Kavunja Appolinaire 5.500\$ y'umwenda no kumuha 1.319.293frs y'inyungu na 1.000.000 frws y'indishyi, runategeka irangiza rubanza ry'agateganyo kuri 5.475\$ gusa. Mushendimu ntiyishimiye iyo mikirize, ayijuririra muri uru Rukiko ku mpamvu z'uko umucamanza yirengagije ibikubiye muri acte de ceder ihesha Munyaribanje ibiti yaguze; ku mpamvu y'uko umucamanza yirengagije ko nta gikorwa kibyara inyungu cyari cyagatangiyeye; ku mpamvu y'uko urukiko rwirengagije nkana 950\$ Munyaribanje na we yemera ko yamuhaye, ku mpamvu y'uko urukiko rwamuciyeye indishyi z'akababaro kandi nta ruhare yagize rwo guteza igihombo Munyaribanje; ndetse no ku mpamvu y'irangiza rubanza ry'agateganyo ryatanze. Muri uru rubanza, uru Rukiko rugiyeye gusuzuma niba izo mpamvu z'ubujurire zifite ishingiro, ndetse runasuzume ubujurire bwuririye ku bundi bwa Munyaribanje Kavunja Appolinaire. II. ISESENGURA RY'URUBANZA

1. Ku mpamvu y'ubujurire y'uko umucamanza yirengagije ibikubiye muri acte de Ceder [3] Mushendimu avuga ko umucamanza yirengagije ibikubiye muri acte de ceder ihesha Munyaribanje Kavunja Appolinaire ibiti yaguze, agategeka ko asubizwa n'amadolari yatanze

abigura kandi atabanje kubisubiza, bikaba ari “enrichissement sans cause” kuko Munyaribanje atagomba guhabwa byombi, ni ukuvuga ibiti n’amadolari. Ko akwiye guhitamo ko asubizwa amadolari yatanze ariko na we agakora acte de ceder ku biti yahawe cyangwa se agumane ibiti bye ariko ntasubizwe amafaranga yabitanzeho. [4] Munyaribanje Kavunja Appolinaire avuga ko iyo acte de ceder itirengagijwe ahubwo ko itahawe ishingiro nk’uko bigaragara mugace ka 16 k’urubanza rujuririrwa. Avuga ko iyo nyandiko itahabwa agaciro kubera ko: *Ayo masezerano ya cession Munyaribanje ntiyagaragayemo ngo anayasinyeho kandi byitwa ko ari we yakorerwaga. Ko ahubwo yasinywe n’abantu atazi na Mushendimu ubwe. Ko muri bose, nta n’umwe wari ufite procuration ye yo kuyamuhagarariramo.

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*Avuga ko bidashoboka ko yari gutanga 5500\$ aho kumuha inyandiko y’ubugure (acte de vente), ahubwo bikitwa ko ahawe “cession”. *Avuga kandi ko bidashoboka ko ari iye yaba ifitwe na Mushendimu kandi arabonanye inshuro nyinshi ntayimushyikirize cyangwa ngo anagire icyo ayimubwiraho, ahubwo akayigaragaza mu Rukiko nyuma y’imyaka ibiri ari uko yarezwe. Ko rero ibyo Mushendimu avuga ko Munyaribanje atunze ishyamba atari ko biri, ko niba ayo masezerano yaranabayeho atareba Munyaribanje, ko ahubwo areba abayashyizeho umukono. [5] Nk’uko bigaragazwa na “acte de ceder” ivugwa muri uru rubanza, Munyaribanje yahawe ibiti 32 harimo 12 bya muvula na 20 bya Libuyu. Mu iburanisha ryo kuwa 11/03/2014, Mushendimu yabwiye urukiko ko igiti kimwe bya libuyu kigura hagati ya 1500\$ na 1800\$, bivuga ko amafaranga yahawe yari kugura ibiti bitatu bya libuyu gusa aho kuba 20. Ikindi kigaragara ni uko Mushendimu atagaragaza procuration yahawe na Munyaribanje yo kumugurira ishyamba ku buryo n’abarigurishije bayigenderaho bamuha ibiti 32 avuga ko yamuguriye. Ntibinuvikana kandi ukuntu yaba yaraguze ishyamba ntabibwire uwo yariguriye ndetse ngo anamuhe iyo acte de ceder, agategereza kuyitanga ari uko yarezwe. Hashingiwe ku ngingo ya 14 y’itegeko reyerereye ibimenyetso mu manza n’itangwa ryabyo iteganywa ko: “Inyandiko bwite ari urwandiko rufite umukono w’umwe cyangwa benshi mu barwanditse cyangwa se hakabaho ibikumwe byabo. Amasezerano arukubiyemo abera inshingano abayagiranye gusa.” Uru Rukiko rurasanga iriya acte de ceder itareba Munyaribanje kuko ntayo yasinye cyangwa se ngo abe yarohereje uwayamusinyira hakoreshejwe procuration. Nta n’aho bigaragara ko yariyatumye kugurirwa ishyamba kuko ibyo impande zombi zumvikanyeho nk’uko zibiyivugira ni uko yari kugurirwa imbaho za libuyu. Iyi mpamvu y’ubujurire rero ikaba nta shingiro yahabwa.

2. Ku mpamvu y’ubujurire y’uko umucamanza yirengagije ko nta gikorwa kibyara inyungu cyari cyagatangiyeye. [6] Mushendimu avuga ko nta gikorwa kibyara inyungu cyari cyagatangiyeye, ko kandi impande zombi ntaho zigeze zumvikana inyungu Mushendimu azamwungukira. Ko kandi kuva aho yatangiye ariya mafaranga ibiti yabihawe bikava kuri Muhindo Mutahwa bikajya kuri Munyaribanje, ibyo biti bikaba bitarashoboye kubyzwa inyungu kubera intambara muri Kongo, gufungwa kwa Mushendimu ndetse no kuba na Munyaribanje na we yari afite ikiraka muri statistique ntashobore kubikurikirana. [7] Munyaribanje we aravuga ko iyi mpamvu y’ubujurire nta shingiro ifite kuko amasezerano

yabaye hagati yabo ari amasezerano y'ubucuruza kandi iteka akaba aba agamije inyungu. Ko ayo masezerano yatangiye gushyirwa mubikorwa ubwo Munyaribanje yari amaze kuzuza inshingano imureba, agaha Mushendimu 5500\$, akaba ataranagumye muri Banki ahubwo yarahise ajya mu kazi yari agenewe. Ko kandi Mushendimu ubwe yahaye Munyaribanje 950.000frs y'inyungu atabarirwa kuri Capital. Ko ntaho Mushendimu yahera avuga ko ayo mafaranga atari yatangiye kubyara inyungu.

3. Ku mpamvu y'ubujurire y'uko umucamanza yirengagije nkana 950.000 frws Munyaribanje yemera ko yahawe na Mushendimu. [8] Mushendimu aravuga ko ayo mafaranga urukiko rwayirengagije nk'aho atigeze abaho kandi impande zombi ziyemera n'ubwo Munyaribanje ayita inyungu mu gihe Mushendimu ayita

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inguzanyo. Mu iburanisha ryo kuwa 11/03/2014, Munyaribanje yabwiye urukiko ko 950.000 frs yoherezwe na Mushendimu kuri mobile money ari inyungu yamuhaga kuko bavuganaga kuri telefoni akamubwira ko akazi kagenda neza. Ibyo Mushendimu avuga ko ari inguzanyo yabaga amahuha ibi urukiko rurasanga nta shingiro rwabiha kuko atagaragaza icyo yayamuhera kuva kuwa 23/11/2011 kugera kuwa 10/02/2013 nk'uko bigaragazwa na historique yatanze na Munyaribanje mu Rukiko.

4. Ku mpamvu y'ubujurire irebana n'indishyi. [9] Mushendimu aravuga ko nta ruhare yagize mu guteza igihombo Munyaribanje, akaba atagomba kubitangira indishyi. Ko umucamanza yirengagiza ko Mushendimu nta mwenda afitiye Munyaribanje, kuko ibiti yamutumye yabimuguriye hakaba hasigaye kubibyaza umusaruro. Ko ntaho rero umucamanza yahereye amuca indishyi zingana na 1.000.000 frs. Munyaribanje we avuga ko izo ndishyi azikwiriye kubera ihungabana yatejwe no kutubahirizwa kw'ayo masezerano haba mu bukungu ndetse no mu yindimibereho ye. Hashingiwe ku ngingo ya 137 y'Itegeko Rigenga Amasezerano iteganya ko : « Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanze n'urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyaravuyeho. » Uru Rukiko rurasanga rero Mushendimu agomba guha Munyaribanje izo ndishyi ziteganywa n'iyi ngingo.
5. Ku mpamvu y'ubujurire ishingiye ku irangiza rubanza ry'agateganyo ryemejwe n'Urukiko [10] Mushendimu aravuga ko umucamanza yashingiye ku ngingo ya 212 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi mu gika cyayo cya 2 ivuga ko : « Irangizary'agateganyo ritangwa iyo ikiburanwa ari umwenda wemewe mu rubanza n'uregwa. » Ko muri uru rubanza, ikiburanwa ari 5500\$ Munyaribanje yashyize kuri konti ya Mushendimu nk'igishoro, ntabwo ari umwenda yamuguriye ku buryo umucamanza yashingira kuri iriya ngingo ngo agene irangiza rubanza ry'agateganyo kandi nta mwenda wabayeho. Munyaribanje we avuga ko umucamanza nta tegeko yishe kuko kugeza n'ubu Mushendimu yemera ko ayo madolari ayagomba Munyaribanje nk'uko abyivugira mu mwanzuro we w'ubujurire ku rupapuro rwa 3 aho avuga ko yiteguye gushyikiriza Munyaribanje Appolinaire ibiti yaguze cyangwa amafaranga ye

5475\$,byiyongera ku nyandiko yandikiye Munyaribanje kuwa 14/02/2013 amwemerera ko azamwishyura amadolari ye. [11] Hashingiwe kuri iyi ngingo ya 212 ivuzwe haruguru, uru Rukiko rurasanga Mushendimu adahakana ko ayo madolari ya Munyaribanje atayafite, cyane ko byagaragaye ko yari yayamuhereye kumugurira imbaho za libuyu atari ukumugurira ishyamba, akaba agomba kuyamusubiza mu irangiza rubanza ry'agateganyo ryategetswe mu rubanza rujuririrwa.

6. Ku bujuriye bwuririye ku bundi bwatanzwe na Munyaribanje Appolinaire. [12] Munyaribanje Appolinaire arasaba ko inyungu zitabarwa kuri 18% ko ahubwo zibarirwa kuri 4000 frs kuri buri rubaho ku nshuro bakagombye kuba baragemuye igihe cyose Mushendimu atarasubiza Munyaribanje igishoro cye.Ko rero agomba kumuha 19.130.000 frs. Uru rukiko rurasanga Munyaribanje atagaragaza ku buryo bufatika ko ayo mafaranga ari yo yagombaga kunguka koko, bityo akaba agomba kugenerwa ayari yarabazwe mu rubanza rujuririrwa ariko

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abariwe ku giciro cy'idolari uko irihagaze uyu muni kuri 687frs. Akaba rero agomba kugenerwa: [13] 5500\$ x 687 x18 x2

/ 100 = 1.360.260 frws nk'inyungu yagombaga kunguka. Naho kuri 400.000 frs y'igihembo cy'avoka ku rwego rw'ubujurire, uru Rukiko rurasanga yayahabwa nk'uko yayasabye mu bushishozi bwarwo. III. ICYEMEZO CY'URUKIKO Urukiko Rukuru rw'Ubucuruzi : Rwemeye kwakira ubujurire rwashyikirijwe na Mushendimu Nsanze Edmond.Rwemeje ko nta shingiro bufite. Rukijije ko Munyaribanje Kavunja Appolinaire atsinze, ko Mushendimu Nsanze Edmond atsinzwe. Rutegetse Mushendimu Nsanze Edmond kwishyura Munyaribanje Kavunja Appolinaire 1.360.260 frs ahwanye n'inyungu yagombaga kubona zibariwe kuri 18%, akayamuha mu gihe cy'iminsi 15 uru rubanza rubaye itegeko, atayatanga akavanwa mu byo ku ngufu za Leta. Rutegetse Mushendimu Nsanze Edmond kwishyura Munyaribanje Kavunja Appolinaire 400.000 frs ahwanye n'igihembo cy'avoka ku rwego rw'ubujurire, akayamuha mu gihe cy'iminsi 15 uru rubanza rubaye itegeko, atayatanga akavanwa mu byo ku ngufu za Leta. Rutegetse Mushendimu Nsanze Edmond kwishyura 9700 frs ahwanye n'ibyakozwe muri uru rubanza, akayatanga mu gihe cy'iminsi 15 uru rubanza rubaye itegeko, atayatanga akavanwa mu byo ku ngufu za Leta.Rutegetse ko ku bindi hubahirizwa icyemezo cy'urukiko mu rubanza 0459/13/TC/Mus rwaciwe kuwa 13/01/2013 n'Urukiko rw'Ubucuruzi rwa Musanze.

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