VALOIS JEAN FÉLIX N'ABANDI v DUSABE

[Rwanda URUKIKO RW'UBUJURIRE – RC 00005/2022/CA (Kaliwabo, P.J.) 14 Ukuboza 2022]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Kurangiza urubanza – Guhagarika kurangiza urubanza – Kuba umutungo utarandikwa k'uwawuguze muri cyamunara ntibyafatwa nkaho irangiza rubanza rigikomeje.

Incamake y'ikibazo: Uru rubanza rwatangiye Dusabe arega abazungura ba Kaptula mu Rukiko Rwisumbuye rwa Rubavu asaba Urukiko ko rutegeka ko imitungo ibabaruyeho, igurishwa kugira ngo uruhare rwa Valois Jean Marie ruvemo ubwishyu amugomba, kuko hari urubanza nshinjabyaha rwamutegetse kwimwishyura 61.420 $ na 400.000Frw y'indishyi z'akababaro kubera gutanga sheki itazigamiwe.

Maze mu rubanza RC00035/2019/TGI/RBV Urukiko rutegeka ko aho kugurisha uwo mutungo, ahubwo ugabanywa, uruhare rwa Valois Jean Marie akaba arirwo ashakamo ubwishyu.

Dusabe ntiyanyuzwe n'icyo cyemezo, akijuririra mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko urukiko rwaciye urubanza ku kitararegewe, kuko yareze asaba ko umutungo ugurishwa maze amafaranga avuyemo akagabanywa abazungura ba Kaptula ku buryo bungana, bityo uruhare rwa Valois Jean Marie rushobore kuvamo ubwishyu ,

Urukiko Mu rubanza RCA00041/2019/HC/MUS - RCA00043/2019/HC/MUS rw, rwategetse ko uwo mutungo wose ugurishwa, agaciro kavuyemo kakagabanywa abazungura bose ba kaptula, umugabane wa Valois Jean Marie ukavamo ubwishyu bwa Dusabe.

valois Jean Marie n'abavandimwe be, bajuriye Urukiko Rukuru Urugereko rwa Musanze bavuga ko, mbere y'uko urubanza rucibwa bashyikirije urukiko inyandiko igaragaza ko bamaze kugabana uwo mutungo, ariko urukiko rukaba rwarabirenzeho rugategeka ko n'abatarebwa n'ikibazo cya valois Jean Marie na Dusabe imitungo yabo igurishwa. Ku ruhande rwe,Valois Jean Marie yavuze ko Urukiko rukwiye gusuzuma amasezerano yo ku wa 02/02/2018 yerekana aho yavana ubwishyu bityo akaba ariyo yagombye kubahirizwa

Urukiko mu Rubanza Mu rubanza RCA00041/2019/HC/MUS - RCA00043/2019/HC/MUS rwategetse ko uwo mutungo wose ugurishwa, agaciro kavuyemo kakagabanywa abazungura bose ba Kaptula , umugabane wa Valois Jean Marie ukavamo ubwishyu bwa Dusabe.

Valois Jean Marie n'abavandimwe be bajuririye Urukiko rw'Ubujurire bavuga ko, mbere y'uko urubanza rucibwa bashyikirije urukiko inyandiko igaragaza ko bamaze kugabana uwo mutungo, ariko urukiko Rukuru rukaba rwarabirenzeho rugategeka ko n'abatarebwa n'ikibazo cya Valois Jean Marie na Dusabe, imitungo yabo igurishwa. Ku ruhande rwe,Valois Jean Marie yavuze ko Urukiko rukwiye gusuzuma amasezerano yo ku wa 02/02/2018 yerekana aho yavana ubwishyu bityo akaba ariyo yagombye kubahirizwa.

Urukiko rw'Ubujurire mu rubanza RCAA00017/2019/CA rwemeje ko ubujurire bwa Valois Jean Marie n'abavandimwe be nta shingiro bufite, ko urubanza rwajuririwe, rudahindutse, rutegeka abajuriye bose gufatanya kwishyura Dusabe amafaranga y'igihembo cya Avoka nay'ikurikirana rubanza.

Abazungura ba Kaptula basubirishijemo ingingo nshya urubanza RCAA00017/2019/CA, mu gihe urwo rubanza rutaracibwa, batanga ikirego cyihutirwa gisaba guhagarika irangizwa ry'urubanza RCAA00017/2019/CA, ku mpamvu yuko urubanza nshinjabyaha rwashingiweho hatangwa indishyi zishyuzwa, rwavuyeho. Valois Jean Marie avuga ko hari amasezerano y'ubwumvikane agena uburyo azishyura Dusabe kandi ko ariyo akwiye kubahirizwa. Abajuriye bose basabye ko umutungo

waguzwe mu cyamunara utakwandikwa k'uwawuguze ndetse ko nta n'irangizarubanza rindi ryakorwa ku mutungo wa Valois Jean Marie.

Dusabe we yisobanuye avuga ko indishyi yagenewe mu rubanza RPAA0017/14/HC/KIG ari nazo yagenewe mu rubanza RSAA/REV/RP 00001/2021/HC/KIG rusubirishamo ingingo nshya bityo ko nta rubanza rwavanyeho indishyi yishyuza. Yavuze kandi ko ntacyo yavuga ku iyandikisha ry'imitungo yaguzwe mu cyamunara kuko iyo cyamunara yarangiye, ikibazo kikaba kireba abayiguze.

Urukiko rw'Ubujurire rwemeje mu rubanza RC00005/2022/CA, ko ubusabe bw'abazungura ba Kaptula bugamije guhagarika by'agateganyo irangizwa ry'urubanza RCAA00017/2019/CA nta shingiro bufite kuko uyu mutungo wamaze kugurishwa ndetse Dusabe akaba yarishyuwee ku mugabane wa Valois Jean Marie. Urukiko rwemeje kandi ko kuba uwaguze umutungo mu cyamunara, atarawandikwaho, ntibigomba gufatwa nk'aho irangizwa ry'urubanza rigikomeje ku buryo ryasabirwa guhagarikwa.

Incamake y'icyemezo: 1. Kuba umutungo utarandikwa k'uwawuguze muri cyamunara ntibyafatwa nkaho irangiza rubanza rigikomeje. Bityo, ntabwo hatangwa ikirego cyo gusaba guhagarika irangizwa ry'urubanza mu gihe cyamunara yarangiye hasigaye gusa ko uwawuguze awandikwaho.

2.Urukiko rufata icyemezo ku kibazo kiriho ntabwo rufata icyemezo ku kibazo kizaza. Bityo, kuba mu gihe nta rangizwa ry'urubanza riri gukorwa ku gahato, nta n'icyemezo cyo kurihagarika cyabaho kandi ntirwanafata icyemezo ku irangizwa ry'urubanza rishobora kuzabaho mu gihe kizaza.

Ikirego kihutirwa nta shingiro bufite.

Amategeko yashingiweho:
Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 261, 266

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'IKIBAZO

[1] Mu rubanza rw'inshinjabyaha RP020/14/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru, Valois Jean Marie yahamwe n'icyaha cyo gutanga sheki itazigamiwe, ategekwa kwishyura Dusabe Fazil 61.420 $ na 400.000Frw y'indishyi z'akababaro. Valois Jean Marie yajuririye Urukiko Rwisumbuye rwa Gasabo, mu rubanza RPA0359/14/TGI/GSBO, urwo Rukiko rutegeka ko urubanza rujuririrwa rugumana agaciro karwo, rwongeraho 500.000Frw y'indishyi zaciwe Valois Jean Marie. Yajuriye kandi mu Rukiko Rukuru, mu rubanza RPAA0017/14/HC/KIG, urwo Rukiko narwo rwemeza ko nta gihindutse ku rubanza rwajuririwe.

[2] Mu rwego rwo kwishyuza indishyi yatsindiye, Dusabe Fazil yahawe amakuru n'ikigo cy'Igihugu cy'Ubutaka ko imitungo Nº UPI 3/03/04/05/1837, UPI 3/03/04/05/1852, UPI 3/03/04/05/1853, UPI 3/03/04/05/1838, ibaruye ku bazungura ba Kaptula Félix harimo na Valois Jean Marie. Dusabe Fazil yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu asaba Urukiko ko rutegeka ko iyo mitungo igurishwa kugira ngo uruhare rwa Valois Jean Marie ruvemo ubwishyu

amugomba, maze mu rubanza RC00035/2019/TGI/RBV rwaciwe ku wa 05/04/2019, Urukiko rutegeka ko aho kugurisha uwo mutungo, ahubwo ugabanywa, uruhare rwa Valois Jean Marie akaba arirwo ashakamo ubwishyu.

[3] Dusabe Fazil ntiyanyuzwe n'icyo cyemezo, ajuririra mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko urukiko rwaciye urubanza ku kitararegewe, kuko we yatanze ikirego asaba urukiko gutegeka ko umutungo ugurishwa maze amafaranga avuyemo akagabanywa abazungura ba Kaptula Félix ku buryo bungana, bityo uruhare rwa Valois Jean Marie rushobore kuvamo ubwishyu bwa Dusabe Fazil, ariko ngo Urukiko rwategetse ko ugabanywa hagati y'abazungura kandi atari byo yaregeye. Mu rubanza RCA00041/2019/HC/MUS - RCA00043/2019/HC/MUS rwaciwe ku wa 31/07/2019, Urukiko Rukuru rwategetse ko uwo mutungo wose ugurishwa, agaciro kavuyemo kakagabanywa abazungura bose ba Kaptula Félix, umugabane wa Valois Jean Marie ukavamo ubwishyu bwa Dusabe Fazil.

[4] Valois Jean Marie n'abavandimwe be aribo, Valois Jean Félix, Valois Jean Paul, Valois Jean Pierre na Valois Marie Rose bajuririye uru Rukiko bavuga ko, mbere y'uko urubanza rucibwa bashyikirije urukiko inyandiko igaragaza ko bamaze kugabana uwo mutungo, ariko urukiko rukaba rwarabirenzeho rugategeka ko n'abatarebwa n'ikibazo cya Valois Jean Marie na Dusabe Fazil imitungo yabo igurishwa. Ku ruhande rwe,Valois Jean Marie yavuze ko Urukiko rukwiye gusuzuma amasezerano yo ku wa 02/02/2018 yerekana aho yavana ubwishyu bityo akaba ariyo yagombye kubahirizwa.

[5] Mu Rubanza RCAA00017/2019/CA rwaciwe kuwa 03/10/2019, Urukiko rw'Ubujurire rwemeje ko ubujurire rwashyikirijwe nta shingiro bufite, ko urubanza RCA00041/2019/HC/MUS - RCA00043/2019/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 31/07/2019, rudahindutse, rutegeka abajuriye bose gufatanya kwishyura Dusabe Fazil 1.000.000Frw y'igihembo cya Avoka na 600.000Frw y'ikurikirana rubanza.

[6] Abazungura ba Kaptula Félix basubirishijemo ingingo nshya urubanza RCAA00017/2019/CA, mu gihe urwo rubanza rutaracibwa, batanga ikirego cyihutirwa gisaba guhagarikisha irangizwa ry'urubanza RCAA00017/2019/CA, ku mpamvu yuko urubanza nshinjabyaha rwashingiweho hatangwa indishyi zishyuzwa, rwavuyeho. Valois Jean Marie avuga ko hari amasezerano y'ubwumvikane agena uburyo azishyura Dusabe Fazil kandi ko ariyo akwiye kubahirizwa. Abajuriye bose basabye ko umutungo waguzwe mu cyamunara utakwandikwa k'uwawuguze ndetse ko nta n'irangizarubanza rindi ryakorwa ku mutungo wa Valois Jean Marie

[7] Dusabe Fazil we yisobanuye avuga ko indishyi yagenewe mu rubanza RPAA0017/14/HC/KIG ari nazo yagenewe mu rubanza RSAA/REV/RP 00001/2021/HC/KIG rusubirishamo ingingo nshya bityo ko nta rubanza rwavanyeho indishyi yishyuza. Yavuze kandi ko yumvikanye na Valois Jean Marie uburyo azagenda amwishyura amafaranga asigaye, akaba atumva irangizwa ry'urubanza uyu asabira guhagarika. Yavuze kandi ko ntacyo yavuga ku iyandikisha ry'imitungo yaguzwe mu cyamunara kuko iyo cyamunara yarangiye, ikibazo kikaba kireba abayiguze.

II. ISESENGURWA RY'IBIBAZO BIGIZE URUBANZA

A.Ku birebana no guhagarika irangizwa ry'urubanza ku mutungo wagurishijwe mu cyamunara

[8] Me Abasa Fazil uhagarariye Valois Jean Marie, Valois Jean Paul, Valois Jean Pierre na Valois Marie Rose akanunganira Valois Jean Félix, yaburanye avuga ko imitungo y'abazungura ba Kaptula Félix yagurishijwe mu cyamunara cyari gishingiye ku rubanza RCAA00017/2019/CA

rwaciwe n'uru Rukiko, kuri ubu akaba yararusubirishijemo ingingo nshya kandi ko hari ubwihutirwe kuko uru rubanza ruramutse ruhinduwe byazatera izindi manza zo kugaruza umutungo wagurishijwe. Yavuze ko kuba umutungo wagurishijwe mu cyamunara utarandikwa ku muntu wawuguze bivuze ko inzira y'irangizwa ry'urubanza itararangira, bityo ko yaba ihagaze kugeza urubanza rusubirishamo ingingo nshya ruciwe.

[9] Valois Jean Félix wunganirwa na Me Abasa Fazil yasobanuye ko umutungo wagurishijwe ari wo warusanzwe utunze abakomoka kuri Kaptula Félix, ko bagizweho ingaruka n'igikorwa cy'umuvandimwe wabo kandi nta ruhare babifitemo, asaba ko bakomeza gucunga uyu mutungo kugeza urubanza rusubirishwamo ingingo nshya ruciwe.

[10] Me Nishimwe Claudine uburanira Dusabe Fazil yasubije kuri iyi ngingo avuga ko imitungo y'abazungura ba Kaptula Félix yagurishijwe mu cyamunara harangizwa urubanza RCAA00017/2019/CA kandi ko uwo ahagarariye yashyikirijwe 20.412.465Frw nk'umugabane wa Valois Jean Marie, ko cyamunara yarangiye akaba ntacyo yavuga ku iyandikishwa ry'umutungo ufite uwawuguze.

Uko Urukiko rubibona

[11] Ingingo ya 266 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko nyuma yo guteza cyamunara, umuhesha w'inkiko akora raporo isoza cyamunara, raporo igaragaza umutungo wagurishijwe n'igiciro wagurishijwe, umwirondoro w'uwegukanye umutungo, igihe yishyuriye n'igihe uwishyuza yahererewe ubwishyu bwe. Ibivuzwe muri iyi ngingo, Urukiko rurasanga byarakozwe muri raporo yakozwe n'umuhesha w'inkiko Niyonshuti Iddi Ibrahim kuwa 17/12/2021, uyu kandi akaba yarashyikirije Dusabe Fazil ubwishyu bwa 20.412.465Frw kuwa 23/12/2021.

[12] Ingingo ya 261 y'Itegeko N° 22/2018 ryavuzwe haruguru, mu gika cyayo cya 2, ivuga ko uwaguze umutungo mu cyamunara awegukana amaze kwishyura kandi ashobora kuwandikisha ku izina rye amaze kugeza ku rwego rubishinzwe kopi y'inyandikomvaho yemeza ubugure.

[13] Urukiko rurasanga, ubusabe bw'abazungura ba Kaptula Félix bugamije guhagarika by'agateganyo irangizwa ry'urubanza RCAA00017/2019/CA rikorerwa ku mutungo wa Kaptula Félix, nta shingiro bufite kuko uyu mutungo wamaze kugurishwa ndetse Dusabe Fazil akaba yaramaze gushyikirizwa ubwishyu buhwanye n'umugabane wa Valois Jean Marie. Urukiko rurasanga, kuba Bucyensenge Mende Claude waguze umutungo mu cyamunara, atarawandikwaho, ntibigomba gufatwa nk'aho irangizwa ry'urubanza rigikomeje kuri uyu mutungo ku buryo ryasabirwa guhagarikwa.

[14] Urukiko rurasanga imiburanire ya Valois Jean Félix y'uko umutungo wagurishijwe mu cyamunara ari wo utunze abazungura ba Kaptula Félix kandi ko ukiri mu maboko yabo, iyi miburanire ntacyo yungura kuri uru rubanza rugamije guhagarika by'agateganyo irangizwa ry'urubanza kuko, nubwo baba bakiri muri iyi mitungo, bitavanaho ko iyo mitungo yamaze gutezwa cyamunara, ndetse n'impaka ku kumenya niba iyo mitungo yaragombaga kugurishwa zaciriweho urubanza RCAA00017/2019/CA rwabaye itegeko, bityo iki kibazo kikaba kitagaruka ku buryo bw'ikirego cyihutirwa.

Ku birbana n'irangizwa ry'urubanza rikomeza

[15] Me Abasa Fazil yaburanye avuga ko hari ubwumvikane bwabaye hagati ya Dusabe Fazil na Valois Jean Marie ku buryo bwo kwishyura umwenda usigaye kandi ko uyu yatangiye kwishyura, avuga ko raporo y'umuhesha w'inkiko Niyonshuti Iddi Ibrahim yo ku 23/12/2021 ivuga ko

amafaranga asigaye ku bwishyu azakomeza gushakishwa mu mutungo wa Valois Jean Marie, bivuze ko igihe icyo aricyo cyose irangizwa ry'urubanza rishobora gukorwa ariyo mpamvu asaba ko ryahagarikwa hakubahirizwa amasezerano y'ubwumvikane yabaye hagati y'impande zombi.

[16] Me Nishimwe Claudine yasubije kuri iyi ngingo avuga ko nta rindi rangizwa ry'urubanza Dusabe Fazil akora uretse iryo Valois Jean Marie akora hashingiwe ku masezerano y'ubwumvikane bagiranye.

Uko Urukiko rubibona

[17] Urukiko rurasanga ababuranyi bose bemeranywa ko kuri ubu nta rangizwa ry'urubanza riri gukorwa uretse irishingiye ku masezerano y'ubwumvikane yabaye hagati ya Dusabe Fazil na Valois Jean Marie kandi bakaba bemeranywa ko ayo masezerano akwiye gukomeza. Urukiko rurasanga, mu gihe nta rangizwa ry'urubanza riri gukorwa ku gahato, nta n'icyemezo cyo kurihagarika cyabaho, nanone rukaba rutafatira icyemezo irangizwa ry'urubanza rishobora kuzabaho mu gihe kizaza kuko Urukiko rufata icyemezo ku kibazo kiriho (la Cour statue sur un litige né et non sur un litige hypothétique).

B. Ku birebana n'urubanza nshinjabyaha irangizarubanzarishingiyeho

[18] Me Abasa Fazil uburanira abazungura ba Kaptula Félix avuga ko irangizwa ry'urubanza rigomba guhagarikwa by'agateganyo kuko rishingiye ku rubanza RPAA0017/14/HC/KIG kandi uru rukaba rwaravanywe n'urubanza RSAA/REV/RP00001/2021/HC/KIG rwo ku wa 02/06/2022 rwarusubirishijemo ingingo nshya.

[19] Me Nishimwe Fazil uburanira Dusabe Fazil yavuze ko, ku birebana n'indishyi yagenewe urubanza RSAA/REV/RP00001/2021/HC/KIG ntacyo rwigeze ruhindura ku rubanza RPAA0017/14/HC/KIG rwasubirishijemo ingingo nshya bityo ko nta nenge iboneka mu irangizwa ry'urubanza ryakozwe.

[20] Urukiko rwabajije Me Abasa Fazil niba hari icyo urubanza RSAA/REV/RP00001/2021/HC/KIG rwahinduye ku rubanza RPAA0017/14/HC/KIG ku byerekeranye n'indishyi zagenewe Dusabe Fazil, asubiza ko nta cyahindutse, abajijwe impamvu avuga ko irangizwa ry'urubanza rishingira ku rubanza rwavuyeho avuga ko aruko mu rubanza rusobanura urundi bivugwa ko urubanza RPAA0017/14/HC/KIG rwasimbuwe n'urubanza RSAA/REV/RP00001/2021/HC/KIG.

Uko Urukiko rubbona

[21] Urukiko rurasanga, nk'uko byasobanuwe mu bika bibanziriza iki, uretse irangizwa ry'urubanza riri gukorwa hashingiwe ku masezerano y'ubwumvikane ababuranyi bombi bemeranywaho, nta rindi rangizwa ry'urubanza riri gukorwa ku buryo ryasabirwa ko rihagarikwa by'agateganyo. Rurasanga kandi, n'ingingo abazungura ba Kaptula bashingiraho yo kuba urubanza RPAA0017/14/HC rwarasimbuwe n'urubanza RSAA/REV/RP 00001/2021/HC/KIG rwarusubirishijemo ingingo nshya nayo ubwayo nta shingiro ifite kuko ubwabo bemera ko indishyi zagenwe mu rubanza RPAA0017/14/HC zikarangirizwaho urubanza kuwa 17/12/2021 ari nazo zagumishijweho mu rubanza RSAA/REV/RP 00001/2021/HC/KIG rwaciwe ku wa 02/06/2022.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko ikirego RC00005/2022/CA cyatanzwe na Valois Jean Marie, Valois Jean Félix, Valois Jean Paul, Valois Jean Pierre na Valois Marie Rose nta shingiro gifite.

[23] Rutegetse ko ingwate y'amagarama yatanzwe ihera mu Isanduku ya Leta kuko ihwanye n'ibyakozwe ku rubanza.