MANISHIMWE v NSENGIYUMVA

[Rwanda URUKIKO RWISUMBUYE– RC 00845/2020/TGI/NYGE (Sibomana; P.J.) 25 Kamena 2022]

Itegeko rigenga ingwate – ingwate ku mutungo utimukanwa – Umutungo utimukanwa umaze gushyirwa mu bugwate uba ubaye umutungo ushinganye nta bundi burenganzira uba ukwiye gutangwaho.

Imiterere y'Urubanza: Uru rubanza rwatangiye Manishimwe arega Nsengiyumva mu Rukiko Rwisumbuye rwa Nyarugenge asaba Urukiko gutegeka ko itambama ryashyizwe ku mutungo yaguze na Gatete abyemerewe na banki yari uwufiteho ingwate ryakurwaho ndetse uwo mutungo ukamwandikwaho ngo kuko uwo mutungo wari ingwate ya BK kandi ikaba ariyo yamuhaye uburenganzira bwo kuwugura kandi awugua mu buryo bukurikije Amategeko.bityo asaba ko itambama trawushyizweho na Nsengiyumva ashingiye k'urubanza RC00405/2020/TGI/NYGE yarezemo umwenda rikurwaho.

Nsengiyumva we avuga ko yagurije Gatete amafaranga maze ngo ntiyubahiriza amasezerano biba ngombwa ko amurega ndetse atambamira umutungo we ariko ngo yatunguwe no kubona yararezwe hashingiwe ku buriganya Manishimwe yakoranye Gatete, asaba ko itambama ritakurwa ku mutungo wa Gatete kugirango atazabura ubwishyu.

Urukiko rwemeje mu rubanza. ko amasezerano y'ubugure yabaye hagati ya Gatete na Manishimwe y'umutungo wari mu bugwate bwa Bank kandi hagakorwa n'inyandiko y'ihererekanya ry'umutungo ryakorewe imbere ya Noteri w'Ubutaka, ayo masezerano agomba kugumana agaciro kayo ndetse itambama ryashyizwe ku mutungo uburanwa rigomba gukurwaho kuko uwo mutungo gatete atakiwufiteho uburenganzira ku buryo watambamirwa. Urukiko rwashingiye ku Itegeko ryerekeye ubugwate ku mutungo utimukanwa, riteganya ko Umutungo utimukanwa umaze gushyirwa mu bugwate uba ubaye umutungo ushinganye. Uwatanze ingwate n'uwahawe ingwate ntibemerewe kugira ubundi burenganzira batanga ku ngwate.

Urukiko rwemeje kandi ko kuba hari amasezerano yakozwe mu buryo bukurikije amategeko yabaye hagati ya Manishimwe na Gatetete, Manishimwe agomba kwandikwaho ubwo butaka.

Incamake y'icyemezo: Umutungo utimukanwa umaze gushyirwa mu bugwate uba ubaye umutungo ushinganye. Bityo, Uwatanze ingwate n'uwahawe ingwate ntibemerewe kugira ubundi burenganzira batanga ku ngwate mu gihe kivugwa mu masezerano y'ubugwate.

Ikirego gifite ishingiro
Itambama ryashyizwe ku mutungo ubaruye kuri UPI 1/01/06/02/166 rikuweho.

Amategeko yashingiweho:
Itegeko N° 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe, Ingingo ya 7
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64
Itegeko N°43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, Ingingo ya 10
Iteka rya Minisitiri N° 002/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa, Ingingo ya 58

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Company yitwa CLECO-Invest Ltd ihagarariwe na Gatete Clement yahawe inguzanyo na Bk maze itanga ingwate y'inzu iri mu kibanza gifite UPI 1/01/06/02/166. Iyo company yaje kunanirwa kwishyura umwenda maze RDB ibisabwe na BK itangiza inzira zo kugurisha uwo mutungo mu cyamunara. Gatete Clément yatangiye inzira zo gushaka umuguzi wagura uwo mutungo kugira ngo hagabanywe umwenda wa BK, bitabaye ngombwa guteza cyamunara. Uwo mutungo wari wanditswe kuri Gatete Clément n'umugore we Umutoni Goloria. Gatete Clément yandikiye BK ayisaba uburenganzira bwo kugurisha. Gatete Clément yari asanzwe afite Procuration générale yahawe n'umugore we yo kugurisha uwo mutungo, dore ko iyo Company bari bayisangiye n'umugore we nk'abanyamigabane babiri. Kuwa 31/1/2020, BK yandikiye Company CLECO-Invest Ltd ihagarariwe na Gatete Clement imwemerera kugurisha iyo nzu kuri Manishimwe Francois kugiciro cya 250.000.000Frw.

[2] Nyuma y'uko Manishimwe Francois aguze uwo mutungo ndetse hagakorwa n'amasezerano y'ubugure yakorewe imbere y'inzego zibishinzwe asanga uwo mutungo wari mu bugwate bwa BK, asanga uwitwa Nsengiyumva Thierry yarashyizeho itambama ashingiye k'urubanza RC00405/2020/TGI/NYGE yareze Gatete Clément umwenda wa 60.000.000Frw. None Manishimwe Francois yatanze ikirego asaba gutegeka ko itambama ryashyizwe kuri uwo mutungo ryakurwaho ndetse uwo mutungo ukamwandikwaho ngo kuko uwo mutungo wari ingwate ya BK kandi ngo niyo yamuhaye uburenganzira bwo kuwugura. Urubanza rwaburanishijwe Gatete Clément atitabye kandi iburanisha ryari ryabanje yari ahari ndetse azi n'itariki y'iburanisha.

[3] Nsengiyumva Thierry we avuga ko yagurije Gatete Clément amafaranga maze ngo ntiyubahiriza amasezerano biba ngombwa ko amurega ndetse atambamira umutungo we ariko ngo yatunguwe no kubona yararezwe hashingiwe ku buriganya Manishimwe Francois yakoranye Gatete Clément, asaba ko itambama ritakurwa ku mutungo wa Gatete Clément kugirango atazabura ubwishyu.

[4] Ibibazo bigomba gusuzumwa ni ukumenya niba itambama ryakurwa ku mutungo UPI 1/01/06/02/166 wari mu bugwate bwa Bank maze Bank ikemera ko ugurishwa kugirango yishyurwe umwenda no kumenya niba umutungo UPI 1/01/06/02/166 wakwandikwa kuri Manishimwe Francois.

II. ISESENGURA RY'IKIBAZO

Kumenya niba itambama ryakurwa ku mutungo UPI 1/01/06/02/166 wari mu bugwate bwa Bank maze Bank ikemera ko ugurishwa kugirango yishyurwe umwenda

[5] Manishimwe Francois n'umwunganizi we bavuga ko umutungo yaguze na Gatete Clément wakurwaho itambama ngo kuko yawuguze uvuye mu bugwate ndetse ngo Bank yari ifite iyo ngwate akaba ariyo yemeye ko uwo mutungo awugura, asoza asaba ko itambama ryashyizwe kuri uwo mutungo na Nsengiyumva Thierry ryakurwaho ngo kuko uwo mutungo wari usanzwe ushinganye.

[6] Nsengiyumva Thierry n'umwunganizi we bavuga ko ibyo Manishimwe Francois asaba nta shingiro byahabwa ngo kuko yakoranye na Gatete Clément uburiganya kugirango umutungo we awikureho ndetse bigatuma Nsengiyumva Thierry atabasha kubona ubwishyu, bakomeza bavuga ko Gatete Clement abereyemo Nsengiyumva Thierry umwenda ungana na 60.000.000Frw kandi ngo yabonye nta kundi azabona amafaranga ye ahitamo kuregera Urukiko asaba kwishyurwa umwenda aberewemo na Gatete Clement ungana na 60.000.000Frw urubanza ruhabwa RC 00405/2020/TGI/NYGE anafatira umuntungo wa Gatete Clement ubaruye kuri UPI 1/01/06/02/166 ngo abe ariwo uzavamo ubwishyu, avuga ko yatangajwe no kubona yarezwe mu rubanza RC 00845/2020/TGI/NYGE ikirego gisaba gutegeka ko itambama ryashyizwe ku inzu iri mukibanza gifite UPI 1/01/06/02/166 rikurwaho. Akaba asanga ubu ari uburiganya Gatete Clement ashaka kumukorera ngo amwambure burundu kuko amasezerano y'ubugure bw'agateganyo Manishimwe Francois agaragaza yabaye kuwa 31/01/2020 mugihe icyiciro cya mbere cy'umwenda Gatete Clement yari afitiye Nsengiyumva Thierry yagomba kugitanga bitarenze kuwa 15/01/2020, wanareba sheki yamuhaye amwishyura umwenda igasangwa itazigamiwe yari iyo kuwa 15/01/2020 kandi ngo batambamiye uwo mutungo bashingiye ku ngingo ya 213 ya CPCCSA.

[7] Urukiko rurasanga kuba hari amasezerano y'ubugure yabaye hagati ya Gatetete Clement na Manishimwe Francois kandi umutungo baguze ukaba wari mu bugwate bwa Bank kandi kuba hari inyandiko y'ihererekanya yakorewe imbere ya Noteri w'Ubutaka mu Murenge wa Muhima, Urukiko rurasanga umutungo UPI 1/01/06/02/166 wari mu maboko ya BK kuko wari mu bugwate kandi umutungo uri mu bugwate ukaba wari ushinganye nkuko biteganywa mu ngingo 7 y'itegeko N° 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe iteganya ko Umutungo utimukanwa umaze gushyirwa mu bugwate uba ubaye umutungo ushinganye. Uwatanze ingwate n'uwahawe ingwate ntibemerewe kugira ubundi burenganzira batanga ku ngwate ivugwa mu gika cya mbere cy'iyi ngingo mu gihe kivugwa mu masezerano y'ubugwate. Urukiko rurasanga itambama ryashyizwe ku mutungo UPI 1/01/06/02/166 rigomba gukurwaho kuko uwo mutungo Gatete Clement atari akiwufiteho uburenganzira ku buryo watambamirwa kandi Manishimwe Francois akaba yarawuguze mu buryo bukurikije amategeko kuko yabanje kwishyura ideni rya BK.

Kumenya niba umutungo UPI 1/01/06/02/166 wakwandikwa kuri ManishimweFrancois.

[8] Manishimwe Francois n'umwunganizi we bavuga ko umutungo yaguze wa mwandikwaho ngo kuko yishyuye amafaranga yose kandi ngo hakaba hari amasezerano y'ubugure. Nsengiyumva Thierry we avuga ko uwo mutungo wakomeza gutambamanirwa kugirango azabone ubwishyu.

[9] Urukiko rurasanga kuba hari amasezerano yakozwe mu buryo bukurikije amategeko yabaye hagati ya Manishimwe Francois na Gatete Clement. Urukiko rurasanga Manishimwe Francois agomba kwandikwaho ubwo butaka kuko amasezerano yakoranye na Gatetet Clement afite ishingiro kandi akaba ari itegeko rigomba gushyirwa mu bikorwa kuko ingingo ya 64 y'itegeko no 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ivuga ko amasezerano akozwe muburyo bukurikije amategeko aba itegeko ku bayagiranye, kubw'ibyo impande zombi zikaba zigomba kuyashyira mu bikorwa maze ubutaka bukandikwa kuri Manishimwe Francois.

[10] Ingingo ya 10 y'itegeko N°43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda iteganya ko Ubutaka bw'umuntu ku giti cye bugizwe n'ubutaka atunze ku buryo bw'umuco cyangwa ubw'amategeko yanditse. Ubwo butaka abutunze yarabuhawe n'ubuyobozi bubifitiye ububasha, ubwo yaguze, yahaweho impano, umurage, izungura, umunani, ingurane cyangwa isaranganya. Urukiko rurasanga ubutaka UPI 1/01/06/02/166 bugomba kwegukanwa na Manishimwe Francois kuko abutunze hashingiwe ku bugure kandi bukaba bwemewe muri iyi ngingo bityo akaba agomba kubwandikwaho hashingiwe ku ngingo ya 58 y'iteka rya Minisitiri N° 002/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa iteganya ko Umubitsi ashobora gukosora i Rejisitiri y'ibyemezo by'ubutaka cyangwa icyemezo icyo ari cyo cyose kimugejejweho ku mpamvu z'ukwandika: mu gihe hari icyemezo cy'Urukiko.

III. ICYEMEZO CY'URUKIKO

[11] Rwemeje ko ikirego rwaregewe na Manishimwe Francois gifite ishingiro.

[12] Rutegetse ko itambama ryashyizwe ku mutungo ubaruye kuri UPI 1/01/06/02/166 rikurwaho.

[13] Rutegetse ko umutungo ubaruye kuri UPI 1/01/06/02/166 wandikwa kuri Manishimwe Francois

[14] Rutegetse amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.