MUSHINZIMANA v. RUTARINDWA

[Rwanda URUKIKO RW'IKIRENGA– RCAA 0026/12/CS (Kayitesi R., P.J Rugabirwa, na Mukandamage, J.) 21 Gashyantare 2014]

Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga – Agaciro gashingirwaho mu kugena ububasha bw'Urukiko– Agaciro kagenwe mu cyemezo cy'iyandikisha ry'ingwate ntabwo ariko kashingirwaho mu kwemeza ko ubujurire buri mu bubasha bw'Urukikoigihe atariko kagaragajwe ikirego gitangwa cyangwa se ngo kabe karagenwe n'umucamanza habaye impaka –Itegeko - Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 43(7).

Incamake y'ikibazo: Rutarindwa yareze Mushinzimana mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko amasezerano y'ubugure bw'inzu yabaye hagati ye n'umugore we aseswa kubera ko yakozwe mu buryo bunyuranyije n'amategeko kuko uwo mugore we yagurishije nta burenganzira abimuhereye. Urukiko rwemeza ko ikirego cye nta shingiro gifite kuko atarugaragarije ubwoko bw'icungamutungo yari afitanye n'umugore we kugira ngo rumenye niba inzu yagurishijwe yari ayifiteho uburenganzira, runamutegeka guha Mushinzimana igihembo cy'Avoka hamwe n'amafaranga y'ikurikiranarubanza.

Rutarindwa yajuririye icyo cyemezo mu Rukiko Rukuru maze rwemeza ko ayo masezerano y'ubugure asheshwe kubera ko nta kigaragariza Urukiko ko Rutarindwa yemeye ubwo bugure kuko umugore we yahise acikira muri Malawi akimara kugurisha inzu, kandi ko rutasuzuma ibyo Mushinzimana arusaba by'uko yasubizwa amafaranga y'ikiguzi cy'inzu kubera ko bitaburanweho mu rwego rwa mbere, runamutegeka guha Rutarindwa igihembo cy'Avoka.

Mushinzimana yajuririye Urukiko rw'Ikirenga maze ubujurire bwe bubanza bukorerwa ibanzirizasuzuma umucamanza yemeza ko buri mu bubasha bwarwo.

Rutarindwa yatanze inzitizi yo kutakira ubujurire bwa Mushinzimana kuko agaciro k'ikiburanwa katageze kuri 20.000.000Frw nk'uko itegeko ryakurikizwaga igihe Mushinzimana yajuriraga ryabiteganyaga naho Mushinzimana we akavuga ko ubujurire bwe buri mu bubasha bw'urukiko rw'ikirenga kuko agaciro k'ikiburanwa ari 34.178.815Frw nk'uko bigaragazwa n'icyemezo cy'iyandikisha ry'ingwate.

Incamake y'icyemezo: Agaciro kagenwe mu cyemezo cy'iyandikisha ry'ingwate si ko kashingirwaho mu kwemeza ko ubujurire buri mu bubasha bw'Urukiko igihe atariko kagaragajwe ikirego gitangwa cyangwa se ngo kabe karagenwe n'umucamanza habaye impaka.

Inzitizi y'iburabubasha bw'Urukiko ifite ishingiro.
Icyemezo cy'ibanzirizasuzuma kirahindutse.
amagarama y'urubanza aherereye kuwajuriye.

Amategeko yakoreshejwe:

Itegeko - Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 43(7).

Imanza zifashishijwe:

Nyirantambara v. Mukasa n'undi, RCAA 0032/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/12/2012.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Rutarindwa Isaïe yareze Mushinzimana Emmanuel mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko amasezerano y'ubugure bw'inzu yagiranye n'umugore we Mukankuranga Agnès yaseswa kubera ko yakozwe mu buryo bunyuranyije n'amategeko kuko yayigurishije nta burenganzira abimuhereye.

[2] Urwo Rukiko rwemeje ko ikirego cya Rutarindwa Isaïe nta shingiro gifite kubera ko atarugaragarije ubwoko bw'icungamutungo yari afitanye n'umugore we kugira ngo rumenye niba inzu yagurishijwe yari ayifiteho uburenganzira, rutegeka Rutarindwa Isaïe guha Mushinzimana Emmanuel 700.000Frw y'igihembo cya avoka na 150.000Frw y'ikurikiranarubanza.

[3] Rutarindwa Isaïe yajuririye Urukiko Rukuru rwemeza ko urubanza rwajuririwe ruhindutse mu ngingo zarwo zose, ko ayo masezerano y'ubugure asheshwe, rutegeka Mushinzimana guha Rutarindwa 200.000Frw y'igihembo cya avoka.

[4] Urwo Rukiko rwasobanuye ko amasezerano y'ubugure asheshwe kubera ko nta kirugaragariza ko Rutarindwa Isaïe yemeye ubwo bugure kuko umugore we yahise acikira muri Malawi akimara kugurisha inzu, kandi ko rutasuzuma ibyo Mushinzimana arusaba by'uko yasubizwa 4.500.000Frw y'ikiguzi cy'inzu kubera ko bitaburanweho mu rwego rwa mbere.

[5] Mushinzimana Emmanuel yajuririye Urukiko rw'Ikirenga, ubujurire bwe bukorerwa ibanzirizasuzuma, umucamanza wabishinzwe yemeza ko buri mu bubasha bwarwo.

[6] Rutarindwa Isaïe yatanze inzitizi igamije kutakira ubujurire bwa Mushinzimana Emmanuel kubera ko agaciro k'ikiburanwa katageze kuri 20.000.000Frw, naho Mushinzimana Emmanuel we akavuga ko ubujurire bwe buri mu bubasha bw'Urukiko rw'Ikirenga kubera ko agaciro k'ikiburanwa ari 34.178.815Frw nk'uko bigaragazwa n'icyemezo cy'iyandikisha ry'ingwate (Certification for registration of mortgage) yarushyikirije.

[7] Urubanza rwaburanishijwe mu ruhame kuri iyo nzitizi kuwa 21/01/2014, Mushinzimana Emmanuel ahagarariwe na Me Mutabazi Abayo Claude, naho Rutarindwa Isaïe ahagarariwe na Me Bimenyimana Eric.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO:

Kumenya niba ubujurire bwa Mushinzimana Emmanuel buri mu bubasha bw'Urukiko rw'Ikirenga.

[8] Uburanira Rutarindwa Isaïe avuga ko hakurikijwe ibyateganywaga n'ingingo ya 43, agace ka 7° y'Itegeko - Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakurikizwaga igihe Mushinzimana Emmanuel yajuriraga, asanga ubujurire bwe butari mu bubasha bw'Urukiko rw'Ikirenga kubera ko agaciro k'ikiburanwa katageze kuri 20.000.000Frw kuko inzu ye yaguzwe 4.500.000Frw.

[9] Avuga kandi ko Urukiko rw'Ikirenga rutashingira ku Cyemezo cy'iyandikisha ry'ingwate (Certification for registration of mortgage) Mushinzimana Emmanuel yahawe na Rwanda Developement Board (RDB) kigaragaza ko iyo nzu ifite agaciro kangana na 34.178.815Frw kugira ngo rwemeze ko ubujurire bwe buri mu bubasha bwarwo kuko akiburanishije bwa mbere muri uru Rukiko kubera ko icyaburanweho mu rwego rwa mbere n'urwa kabiri ari iseswa ry'amasezerano y'ubugure yavuzwe haruguru.

[10] Uburanira Mushinzimana Emmanuel avuga ko ubujurire bwe buri mu bubasha bw'Urukiko rw'Ikirenga hakurikijwe ibyateganywaga n'ingingo ya 43, agace ka 7° y'Itegeko - Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryavuzwe haruguru, kubera ko agaciro k'ikiburanwa karenze 20.000.000Frw kuko iyo nzu ifite agaciro kangana na 34.178.815Frw nk'uko bigaragazwa n'icyemezo cy'iyandikisha ry'ingwate cyavuzwe haruguru.

[11] Asobanura ko yaguze inzu yavuzwe haruguru ku gaciro kangana na 4.500.000Frw mu mwaka wa 1998, ariko ko Mushinzimana Emmanuel yayivuguruye ku buryo mu mwaka wa 2014 ifite agaciro kangana na 34.178.815Frw nk'uko bigaragazwa n'icyemezo cy'iyandikisha ry'ingwate cyavuzwe haruguru, ko rero Urukiko rw'Ikirenga rwashingira kuri iki cyemezo rukemeza ko ubujurire bwe buri mu bubasha bwarwo, aho gushingira ku gaciro kavugwa mu masezerano y'ubugure yavuzwe haruguru.

UKO URUKIKO RUBIBONA

[12] Ku byerekeye ububasha bw'Urukiko rw'Ikirenga bushingiye ku gaciro k'ikiburanwa, ingingo ya 43, agace ka 7° y'Itegeko - Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakurikizwaga igihe Mushinzimana Emmanuel yajuriraga, iteganya ko "Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire, imanza zaciwe n'Urukiko Rukuru rwa Repubulika mu rwego rwa kabiri, iyo izo manza zagenwemo n'urukiko indishyi zingana cyangwa zirenze amafaranga 20.000.000 hatitawe ku bwoko bwazo cyangwa se zifite agaciro kagenwe n'urega mu nyandiko itanga ikirego cyangwa kemejwe n'umucamanza igihe habaye impaka kangana cyangwa karenze 20.000.000Frw".

[13] Ku birebana n'uru rubanza, inyandiko itanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge yo kuwa 23/09/2008 igaragaza ko Rutarindwa Isaïe yasabaga iseswa ry'amasezerano y'ubugure bw'inzu ku giciro cya 4.500.000Frw yabaye hagati y'umugore we Mukankuranga Agnès na Mushinzimana Emmanuel kuwa 19/07/2005 nta burenganzira yabitangiye.

[14] Bigaragara muri dosiye ko iyo nzu yaje kugenerwa agaciro kangana na 34.178.815Frw mu cyemezo cy'iyandikisha ry'ingwate (Certification for registration of mortgage) cyo kuwa 10/11/2011 cyashyikirijwe bwa mbere Urukiko rw'Ikirenga na Mushinzimana Emmanuel asaba ko ariko gaciro kashingirwaho kugira ngo rwemeze ko ubujurire bwe buri mu bubasha bwarwo.

[15] Urukiko rurasanga agaciro kangana na 34.178.815Frw kagenwe mu Cyemezo cy'iyandikisha ry'ingwate atariko kashingirwaho mu kwemeza ko ubujurire bwa Mushinzimana Emmanuel buri mu bubasha bw'Urukiko rw'Ikirenga kuko atariko kagaragajwe igihe ikirego cyatangwaga cyangwa se ngo kabe karagenwe n'umucamanza habaye impaka hakurikijwe ibiteganywa n'ingingo ya 43, agace ka 7° y'Itegeko - Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryavuzwe haruguru.

[16] Urukiko rurasanga kandi ako gaciro gatangiwe bwa mbere mu Rukiko rw'Ikirenga kakaba katashingirwaho mu kugena ububasha bwarwo, ibyo bikaba bihuje kandi n'ibyemejwe mu rubanza n° RCAA 0032/11/CS, Nyirantambara Marina yaburanye na Mukasa Gonzalve na Twagirimana Viateur rwaciwe kuwa 14/12/2012, aho Urukiko rw'Ikirenga rwemeje ko ubujurire bwa Nyirantambara Marina butari mu bubasha bwarwo kubera ko agaciro kangana na 51.760.500 Frw kagenwe muri "expertise" itangiwe bwa mbere mu Rukiko Rukuru.

[17] Urukiko rurasanga agaciro k'ikiburanwa kagomba gushingirwaho ari agaciro k'inzu kangana na 4.500.000Frw kagaragara mu masezerano y'ubugure bw'inzu yo kuwa 19/07/2005 kuko ariko gaciro inzu yari afite igihe hatangwaga ikirego mu rwego rwa mbere. Kuba ariko ako gaciro k'ikiburanwa katageze kuri 20.000.000Frw, Urukiko rurasanga ubujurire bwa Mushinzimana Emmanuel butari mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku byateganywaga n'ingingo ya 43, agace ka 7° y'Itegeko - Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryavuzwe haruguru, bityoicyemezo cy'ibanzirizasuzuma kikaba kigomba guhinduka.

III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yatanzwe na Rutarindwa Isaïe ifite ishingiro;

[19] Rwemeje ko ubujurire bwa Mushinzimana Emmanuel ku rubanza RCA 0090/08/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 27/01/20012 butari mu bubasha bw'Urukiko rw'Ikirenga;

[20] Rwemeje ko icyemezo cy'ibanzirizasuzuma gihindutse;

[21] Rutegetse Mushinzimana Emmanuel gutanga amagarama y'uru rubanza angana na 44.600Frw, habariwemo n'ayo yaciwe mu Rukiko Rukuru, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu bye ku ngufu za Leta.