Re KAYOMBYA

[Rwanda URUKIKO RW'IKIRENGA – RS/RECUS/RCOM 00001/2019/SC (Kayitesi Z., P.J., Mutashya na Cyanzayire, J.) 15 Gashyantare 2019]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kwihana Umucamanza – Umucamanza wafashe icyemezo cy'ibanzirizasuzuma akongera akaburanisha urubanza rushingiye ku kiburanwa gishingiye ku kintu kimwe – Kwihana Umucamanza witwaje ko yafashe icyemezo cy'ibanzirizasuzuma ku kintu cy'ingenzi kiburanwa mu rundi rubanza aburanisha ntibishobora gusuzumwa ngo byakirwe mu gihe muri kamere y'izo manza zombi icyaburanwaga atari kimwe kandi n'ababuranyi atari bamwe n'ubwo byaba bishingiye ku kiburanwa kimwe kuko aba adashobora guhindura umurongo w'icyemezo atarafata.

Incamake y'ikibazo: Kayombya yaburanye imanza ebyiri mu Rukiko rw'Ikirenga aho urwa mbere yaburanaga na BCR asaba kwandikwaho (mutation) inzu iri mu kibanza N° 1874. Urwa kabiri rwo yaruburanaga na BCR (I&M Bank) na IMEX aho yasabaga gusesa amasezerano y'ubugwate yakozwe ku nzu iri mu kibanza N° 1874, no gutegeka ko iyo nzu ikurwa mu bugwate.

Urubanza rwa mbere rwari urujyanye n'ibanzirizasuzuma aho hari abacamanza barusuzumye bongeye kugaruka mu rubanza rwa kabiri. Avuga ko rero batakagombye kuburanisha ikirego cyijyanye no gusesa amasezerano y'ubugwate yakozwe ku nzu iri mu kibanza N° 1874, no gutegeka ko iyo nzu ikurwa mu bugwate ngo kuko ikiburanwa imanza zishingiyeho ari kimwe.

Kayombya nyuma yo kwihana Abacamanza yavugaga, ku munsi ukurikira uwo yabihaniyemo yahise atanga ibisobanuro ku kirego cye cyo kwihana abacamanza maze Inteko yindi y'abacamanza isuzuma ubwihane bwe.

Incamake y'icyemezo: Abacamanza baba baraburanishije urubanza ku rwego rw'ibanzirizasuzuma ntibashobora kwihanwa mu rundi rubanza baburanisha rushingiye ku cyasuzumwaga mu rubanza rw'ibanzirizasuzuma kandi ababuranyi n'ikiburanwa bitandukanye kuko nta murongo cyangwa icyemezo baba barafashe mu rubanza rw'ubwihane.

Ubwihane ntibwakiriwe.
Amagarama arasubitswe.

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 103 agace ka 6.

Imanza zifashishijwe:

Urubanza N° RCOMA 0061/09/CS hagati ya CORAR na FREIGHT LINERS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/05/2011.

Urubanza N° RADA 0022/09/CS hagati ya NGIRIYUMVA na RECO RWASCO(ex ELECTROGAZ) rwaciwe n'Urukiko rw'Ikirenga ku wa 11/02/2011.

Urubanza

I. IMITERERE Y’IKIBAZO

[1] Mu rubanza N° RCOMAA 00026/2016/SC Kayombya Robert aburanamo na I&M BANK Ltd na IMEX Sarl, Me NSABIYUMVA Jean Damascene uburanira Kayombya Robert yihannye abacamanza 2 muri 3 bagize Inteko iburanisha. Ubwihane bwakorewe mu iburanisha mu ruhame ryo ku wa 29/01/2019, iburanisha rirahagarara kugirango hazabanze gusuzumwa ubwihane bwatanzwe. Urukiko rwibukije ababuranyi ko bagomba kwandika ubwihane bwabo hashingiwe ku biteganywa n’ingingo ya 106 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ikibazo kikazasuzumwa n’indi Nteko.

[2] Me Nsabiyumva Jean Damascene uburanira Kayombya Robert yanditse ku wa 30/01/2019 abinyujije muri IECMS. Ikibazo cyasuzumiwe mu Nama y’Abacamanza ku wa 12/01/2019, hagendewe ku myanzuro y’uwihannye nk’uko biteganywa n’ingingo ya 107 igika cya 5 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ivuga ko mu gusuzuma iyakirwa ry’ikirego cy’ubwihane hashingirwa gusa ku nyandiko zashyikirijwe Urukiko, bitabaye ngombwa ko ababuranyi bahamagazwa.

II. IKIBAZO KIGOMBA GUSUZUMWA N’ISESENGURA RYACYO

[3] Ingingo za 106,107 na 108 z’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ziteganya uburyo imihango yo kwihana no gusuzuma ubwihane bw’Umucamanza ikorwa. Isesengura ry’izo ngingo uko ari eshatu zirebewe hamwe, rigaragaza ko gusuzuma ubwihane bikorwa n’Urukiko, ni ukuvuga Inteko y’Abacamanza, kandi bigakorwa mu byiciro bibiri. Icyiciro cya mbere kijyanye no gusuzuma iyakirwa ry’ubwihane (ingingo ya 107), naho ikiciro cya kabiri kikarebana n’icibwa ry’urubanza ku kirego cy’ubwihane, ni ukuvuga gusuzuma ishingiro ryabwo (ingingo ya 108), igihe bwaba bwakiriwe. Niyo mpamvu, ikigiye guzuzumwa ubu ari ibijyanye n’iyakirwa ry’ubwihane.

- **Kumenya niba ubwihane bwakozwe na Kayombya Robert bwakwakirwa**

[4] Me Nsabiyumva Jean Damascene uburanira Kayombya Robert avuga ko kw’ikubitiro, habayeho urubanza N° RCOMAA 0031/09/CS rwaciwe kuwa 28/05/2010, mu bacamanza baruciye hakaba harimo uwitwa Mugenzi Louis Marie ndetse na Kayitesi R. Emily, kandi icyaburanwaga cy’ingenzi muri urwo rubanza yari inzu iri mu kibanza Nº 1874 Kayombya Robert yaguze na IMEX Sarl.

[5] Avuga ko haje kubaho kandi urubanza N° RCOMAA 00026/2016/SC (ubu ruri kuburanishwa mu Rukiko rw’Ikirenga), na none iriya nzu iri mu kibanza Nº 1874 KAYOMBYA Robert yaguze na IMEX Sarl ikaba ari yo iburanwa. Avuga ko abacamanza bavuzwe bari muri uru rubanza, ari nabo bari mu rubanza N° RCOMAA 0031/09/CS rwaciwe ku wa 28/05/2010, abari

ababuranyi icyo gihe bakaba bari bamwe aribo Kayombya Robert na I&M BANK Ltd, n'ubwo haje kuzamo IMEX Sarl ariko bikaba ntacyo bihindura ku miterere y'ikibazo nyamukuru.

[6] Avuga ko rero ashingiye ku biteganyijwe mu ngingo ya 103 agace ka 6 y'Itegeko N^{o} 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1], asaba ko abacamanza 2 muri 3 barimo kuburanisha urwo rubanza aribo Mugenzi Louis Marie na Kayitesi R. Emily baruvamo. Asobanura ko kuba icyemezo bafashe mu rubanza N° RCOMAA 0031/09/CS cyararebanaga n'icyemezo cy'ibanzirizasuzuma mu rubanza rufite numero itandukanye na N° RCOMAA 00026/2016/SC iburanwa ubu, bitaba impamvu yo kubagumisha mu rubanza kuko muri izi manza zombi ababuranyi ari bamwe ndetse n'ikiburanwa ari kimwe, ari cyo inzu Kayombya Robert yaguze na IMEX.

[7] Avuga kandi ko hari undi mucamanza wigeze kwikura muri uru rubanza N° RCOMAA 00026/2016/SC, abyibwirije, ntawe ubimusabye, ashingiye gusa ko yigeze kuburanisha icyo kiburanwa (Inzu iri muri parcelle N^{o} 1874) ndetse no kuba yarafashe icyemezo kuri iyo nzu Kayombya Robert yaguze na IMEX Sarl, kandi icyo gihe nabwo numero z'imanza zikaba zari zitandukanye.

UKO URUKIKO RUBIBONA

[8] Ingingo ya 103 agace ka 6 y'Itegeko N^{o} 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko bashobora kwihana umucamanza iyo yigeze kuba mu rubanza ari umucamanza. Urubanza ruvugwa aha, ni uruba ruburanishwa igihe hatangwa ikirego cy'ubwihane, umuntu ashobora kuba yaragiyemo nk'umucamanza mbere, akarufatamo icyemezo ku buryo habaho gutinya ko atahindura umurongo yari yafashe.

[9] Muri iyi dosiye, urubanza rwaregewe rurebana no gusesa amasezerano y'ubugwate yakozwe ku nzu iri mu kibanza N^{o} 1874, no gutegeka ko iyo nzu ikurwa mu bugwate, ruri hagati ya Kayombya Robert, I&M Bank na IMEX Sarl. Urubanza KayombyaA Robert avuga ko abacamanza yihannye bafashemo icyemezo, bwari ubujurire ku cyemezo cy'ibanzirizasuzuma mu rubanza N° RCOMAA 0031/09/CS rwarebanaga no kwandikwaho (mutation) inzu iri mu kibanza N^{o} 1874, rwari hagati ya Kayombya Robert na BCR yahindutse I&M Bank.

[10] Urukiko rurasanga rero izi manza zombi atari zimwe nk'uko uburanira Kayombya ashaka kubyunvikanisha, kuko ibiburanwa bitandukanye n'ubwo hose bishingiye ku nzu iri mu kibanza N^{o} 1874; ndetse n'ababuranyi si bamwe. Mu rubanza N° RCOMAA 0031/09/CS, haburanwaga kwandikwaho inzu, naho mu rubanza N° RCOMAA 00026/2016/SC haburanwa gusesa amasezerano y'ubugwate.

[11] Urukiko rusanga kandi urubanza N° RCOMAA 0031/09/CS rwari ubujurire ku cyemezo cy'ibanzirizasuzuma, hagomba kwemezwa niba Urukiko rufite ububasha bwo gusuzuma ikirego.

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[1] Umucamanza bashobora kumwihana iyo:
6° yigeze kuba mu rubanza ari umucamanza, umwunzi, umushinjacyaha, umugenzacyaha, umuburanyi, umutangabuhamya, , umusemuzi, inzobere cyangwa umukozi wo mu butegetsi bwa Leta

Mu ibanzirizasuzuma, ntabwo abacamanza basuzumaga urubanza mu mizi yarwo, bagarukiraga ku kwemeza niba Urukiko rufite ububasha bwo kwinjira mu mizi, no kwemeza niba ikirego kigomba kwakirwa. Nta cyabuzaga Umucamanza w'ibanzirizasuzuma, kuba yajya mu Nteko iburanisha urubanza mu mizi, n'ubwo ikiburanwa cyaba ari kimwe, ndetse n'ababuranyi ari bamwe. Urukiko rurasanga hari izindi manza zagiye ziburanishwa n'Umucamanza wazigiyemo mu ibanzirizasuzuma. Ingero zatangwa, ni nk'urubanza N° RCOMA 0061/09/CS hagati ya CORAR na FREIGHT LINERS rwaciwe ku wa 13/05/2011 n'Abacamanza barimo uwarufashemo icyemezo cy'ibanzirizasuzuma. Ni kimwe n'urubanza N° RADA 0022/09/CS hagati ya NGIRIYUMVA na RECO RWASCO (ex ELECTROGAZ) rwaciwe ku wa 11/02/2011.

[12] Ku bijyanye no kuba hari Umucamanza wigeze kwikura muri uru rubanza, Urukiko rurasanga ntacyo byafasha umuburanyi kuko yarwikuyemo urubanza rugitangira, hatarasuzumwa inzitizi y'iburabubasha yari yatanzwe na I & M Bank. Mu gusuzuma iyo nzitizi, byari ngombwa kureba agaciro k'inzu ivugwa mu kiburanwa, kandi ni nabyo byari byakozwe mu rubanza rw'ubujurire ku ibanzirizasuzuma uwo Mucamanza yari arimo; mu gihe mu rubanza ruburanishwa ubu, ikibazo cy'ububasha kitagarukwaho. Impamvu yarwikuyemo ikaba yumvikana rero hashingiwe ku bisobanuro byatanzwe mu bika bibanza.

[13] Urukiko rurasanga, hashingiwe ku bisobanuro bimaze gutangwa, nta kibuza ko Abacamanza Mugenzi Louis Marie na Kayitesi Rusera Emily, bagiye mu rubanza N° RCOMAA 0031/09/CS mu rwego rw'ibanzirizasuzuma, baburanisha urubanza N° RCOMAA 00026/2016/SC. Urukiko rurasanga rero, ubwihane bwakozwe na Kayombya Robert budakwiye kwakirwa kuko ibyo ashingiraho yihana abacamanza bidahuye n'ibiteganyijwe mu ngingo ya 103 agace ka 6 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

III. ICYEMEZO CY'URUKIKO

[14] Rwemeje ko ubwihane bwakozwe na Kayombya Robert butakiriwe;

[15] Rwemeje ko amagarama y'urubanza asubitswe.