

SIMPUNGA v. NYIRAMANA

[Rwanda URUKIKO RW'UBUCURUZI – RCOM 00468/2022/TC (Rwigema, P.J.) 29
Nyakanga 2022]

Amategeko agenga ibimenyetso – Urega agomba kugaragaza ibimenyetso by'ibyo aregera kugira ngo atsinde urubanza rwe, akaba afite inshingano zo kugaragaza ibyo bimenyetso ku kigero kiri hejuru y'icyo uregwa asabwa kubigaragazaho.

Incamake y'ikibazo: Uwitwa Simpunga avugako yagemuriye Nyiramana inyama mu bihe bitandukanye ntiyamwishyura umwenda ukaba warugeze ku 20 000 000 Frw, akaba yaratanzé ikirego mu Rukiko rw'ubucuruzi arusaba kumutegeka kuwumwishyura n'inyungu zavo, indishyi n'igihembo cya Avoka.

Nyiramana yiregura avugako yabaranye na Simpunga umwenda amusigayemo kuwa 23/09/2020, basanga wari ugeze kuri miliyoni zirindwi n'ibihumbi maganarindwi na mirongo itanu na bitanu magana abiri (7,755,200Frw), akaba yaragiye ayishyura kuri telephone ariko yose ntiyashiramo akavugako amusigayemo 540,350 Frw ndetse akongeraho ko mu gihe urega yaba atemera ko umwenda asigawemo ari uwo, wakongerwa kuri 7,755,200 Frw ukaba 8,905,750Frw bityo Urukiko akaba ariyo rwategeka ko amwisyura.

Hakizimana Vedaste yabajije mu Rukiko rw'ubucuruzi nk'umutangabuhanya muri uru rubanza, avugako yatumwe na Simpunga kugemurira Nyiramana inyama mu bihe bya Covid 19 ndetse yoherezaga umushoferi ndetse amafaranga akishyurwa cash, ubundi akishyurwa Simpunga kuri telephone, akavugako habayeho kubarana mbere ya Korona ariko atazi uko byagenze.

Simpunga avugako ubuhamya butahabwa agaciro kuko burimo kwivuruza.

Incamake y'icyemezo: Urega agomba kugaragaza ibimenyetso by'ibyo aregera kugira ngo atsinde urubanza rwe, akaba afite inshingano zo kugaragaza ibyo bimenyetso ku kigero kiri hejuru y'icyo uregwa asabwa kubigaragazaho.

Ikirego gifite ishingiro kuri bimwe.

Amategeko yifashishijwe:

Itegeko N° 15/2004 yo kuwa 19/07/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'iya 62.

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 12

Imanza zifashishijwe:

Nta manza zifashishijwe

Urubanza

I.IMITERERE Y'URUBANZA

[1] Simpunga Samuel avuga ko yagemuriye Nyiramana Therese inyama mu bihe bitandukanye ntiyamwisyura akaba umubereyemo umwenda ungana na 20,000,000Frw, bityo agasaba urukiko kumutegeka kuwisyura n'inyungu zaho, indishyi z'ikurikiranarubanza n'ighembo cya Avoka.

[2] Nyiramana Therese avuga ko umwenda asigaje kwishyura ari 540,350Frw, bityo ko ikirego cya Simpunga kidafite ishingiro, agasaba indishyi z'akababaro n'iz'ikurikiranarubanza.

[3] Muri uru rubanza, urukiko rurasuzuma:

- Umwenda usigaye Simpunga aberewemo na Nyiramana;
- Niba Simpunga akwiye kwishyurwa inyungu z'umwenda;
- Indishyi n'ighembo cya Avoka.

II. ISEENGURA RY'URUBANZA

▲ Gusuzuma umwenda usigaye Simpunga aberewemo na Nyiramana

[4] Simpunga Samuel avuga ko mu bihe bitandukanye yagiye agemurira inyama Nyiramana Therese ntamwisyure amafaranga yose icyarimwe, kugeza ubwo amusigayemo miliyoni makumyabiri (20,000,000Frw).

[5] Me. Yankurije Dativa umwunganira akomeza avuga ko Nyiramana yizezaga Simpunga kuzamwisyura mu biganiro bagiranaga kuri telefoni, ndetse n'imbonankubone, ariko ntiyamwisyura ahubwo akamwoherereza ubutumwa bugufi amubwira ko aho gushaka kumuujyana mu nkiko, yashaka umuguzi w'umutungo we wamara kugurwa akamwisyura, bityo ashingiye ku ngingo ya 64 y'itegeko rigenga amasezerano, agasaba urukiko kumutegeka kwishyura uwo mwenda.

[6] Nshimiyyimana Innocent uhagarariye Nyiramana Therese avuga ko uyu yabaranye na Simpunga umwenda amusigayemo kuwa 23/09/2020, basanga wari ugeze kuri miliyoni zirindwi n'ibihumbi maganarindwi na mirongo itanu na bitanu magana abiri (7,755,200Frw). Akomeza avuga ko guhera ku wa 24/09/2020 Nyiramana yatangiye kumwisyura akoresheje telephone, aho yamwisyuye amafaranga yose ageze kuri miliyoni zirindwi n'ibihumbi magana abiri na cumi na bine na magana inani na mirongo itanu (7,214,850Frw) nk'uko bigaragazwa na "*historique ya mobile money*", hakaba hasigaye 540,350Frw, ariwo mwenda Nyiramana yemera.

[7] Me. Yankurije avuga ko Nyiramana yandikiye Simpunga urwandiko rugaragaza ko amufitiye umwenda wageraga kuri 7,214,850Frw kandi ko nyuma y'aho bakomeje gukorana no mu bihe bya Covid-19, aho Simpunga yoherezaga imodoka izanye inyama, Nyiramana amafaranga akayohereza kuri telefone ye, ariyo "*historique*" iri muri dosiye. Akomeza avuga

ko mu bucuruzi habamo icyizera, ariko ko Nyiramana mu gihe yahakana umwenda aregwa, urukiko rwashingira kuwo yemeye ungana na 7,755,200Frw ndetse na 540,350Frw umuhagarariye yemera mu iburanisha, yose hamwe agategekwa kwishyura Simpunga 8,905,750Frw.

[8] Nshimiyimana avuga ko ibyo Simpunga yagemuye nyuma yohereza abashoferi akabaha ikayi, abo bagemuriye bakayisinyamo bakamwishura “*cash*”, bityo ko akwiye kugaragaza iyo kayi. Akomeza avuga ko Simpunga agenda yivuguruza kuko yaregeye 25,000,000Frw, mu iburanisha avuga 20,000,000Frw nyuma akaba avuga 8,905,750 Frw.

[9] Umutangabuhama witwa Hakizimana Vedaste avuga ko yatumwaga na Simpunga yamutumaga kumushyirira inyama Nyiramana, mu bihe bya Covid-19 Simpunga akaba yaroheresa umushoferi wenyine yagerayo bagapima ibiro azanye akagaruka. Akomeza avuga ko mbere ya Covid ibyagemuwe byishyurwaga “*cash*”, muri Covid bikishyurwa kuri telefone.

[10] Akomeza avuga ko mu gihe cya Covid Simpunga yagize ibibazo, amusaba kujya agemurira Nyiramana inyama, akajya abikora mu izina rya Simpunga, amafaranga yazo agacishwa kuri Simpunga akamwisyura, ibyo bikaba byarabaye nko mu kwezi kwa 10,11 na 12 mu 2020, naho ko mu mwaka wa 2021 Nyiramana yagiye amutuma inyama bisanzwe akamwiyyishyurira, akaba yarahagaze kuzimugemurira kuwa 15/09/2021. Asoza avuga ko Simpunga yagemuriraga inyama Nyiramana, bigeze igihe amafaranga abona ntigenda neza, aragenda barabarana ibyo bikaba byarabaye mbere ya Korona, ko ibya nyuma atazi uko byagenze.

[11] Simpunga avuga ko yakwishyurwa amafaranga aregera, naho Nshimiyimana akavuga ko ibyo umutangabuhama yavuze byateshwa agaciro kuko yivuguruza.

Uko Urukiko rubibona

[12] Ingingo ya 62 y’Itegeko N° 15/2004 yo kuwa 19/07/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo ivuga iti “Ubuhamya ni ibivugwa mu rukiko bivuzwe n’umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa.” Ingingo ya 65 y’iri tegeko ivuga iti “Urukiko ni rwo rwonyine rupima ko imikirize y’abatangabuhama ihuye n’ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w’abatangabuhama. Rwita cyane cyane ku bumenyi bwabo bw’ibyabaye, no ku buryo babivuga uko byagenze nta cyo biimbira.”

[13] Kubyerekeranye n’ubuhama bwa Hakizimana Vedaste, Urukiko rusanga ntacyo bufasha mu kugaragaza ukuri kubyabaye kuko hari aho avuga ko yatumwaga na Simpunga kugemurira inyama Simpunga, ahandi akavuga ko hagemuraga abashoferi gusa, akongera akavuga ko hari aho yishyurwaga, ahandi amafaranga akanyuzwa kuri Simpunga, agasoza avuga ko ati “*Nziko uyu mugabo yamugemuriraga inyama, bigeze igihe amafaranga abona ntigenda neza, aragenda barabarana ibyo bikaba byarabaye mbere ya Korona ko, ibya nyuma sinzi uko byagenze.*” ubuhama nk’ubu bukaba butuzuye ku buryo bwagira icyo bufasha urukiko, bityo ahakaba hakwiye gusuzumwa ibindi bimenyetso.

[14] Ingingo ya 12 y'itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igice cya 1 ivuga iti: “*Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda.*”

[15] Urukiko rurasanga mu bimenyetso biri muri dosiye Simpunga agaragaza, harimo inyandiko ababuranyi bemeranywaho ko ari iyo kuwa 23/09/2020, igaragaza ko umwenda yari aberewemo na Nyiramana wari ugeze kuri miliyoni zirindwi n'ibihumbi magana arindwi na mirongo itanu na bitanu magana abiri (7,755,200Frw).¹

[16] Ku rundi ruhande iningo ya 12 y'itegeko ryavuzwe haruguru ryerekeye imiburanishirize y'imanza, igice cya 2 ivuga iti: “Naho uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda.

[17] Urukiko rurasanga Nshimiymana Innocent uhagarariye Nyiramana agaragaza imbonerahamwe y'amafaranga yoherereje Simpunga mu bihe bitandukanye kuva 24/09/2020, angana na miliyoni zirindwi n'ibihumbi magana abiri na cumi na bine na magana inani na mirongo itanu (7,214,850Frw),² akavuga ko yagabanyije umwenda uvugwa haruguru hagasigara ungana na 540,350Frw, ariwo mwenda Nyiramana yemera; naho Simpunga akavuga ko ayo mafaranga yishyuwe aciye kuri telephone ye yari ay'inyama zagemuwe nyuma.

[18] Ingingo ya 3 y'itegeko ryerekeye ibimenyetso ryavuzwe haruguru, igika cya 1 ivuga iti: “*Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.*” Urukiko rushingiye kuri iyi ngingo, rurasanga nta kimenyetso nta kimwe muri dosiye kigaragaza inyama SIMPUNGA avuga yagemuriye Nyiramana nyuma yo kuwa 23/09/2020, ko yazakiriye mu bihe bitandukanye kuva icyo gihe ubwo handikwaga inyandiko igaragaza umwenda yari amubereyemo ku buryo uwo mwenda waba warahindutse.

[19] Rurasanga urega agomba kugaragaza ibimenyetso by'ibyo aregera nk'uko biteganywa n'ingingo ya 12 yavuzwe haruguru, bigashimangirwa n'inyandiko y'umuhanga mu mategeko Peter Gabriel ati “*The plaintiff always has to discharge the legal burden in order to succeed in its case.*”³ Bisobanuye ko urega agomba kugaragaza ibimenyetso by'ibyo aregera kugira ngo atsinde urubanza rwe, bityo akaba afite inshingano zo kugaragaza ibyo bimenyetso ku kigero kiri hejuru y'icyo uregwaa asabwa kubigaragazaho nk'uko ihame rya “*Balance of probabilities*” cyangwa “*a preponderance of the evidence*”

1 Inyandiko ya Nyiramana yemera umwenda/ IECMS attachment no.002.

2 MTN Rwanda MOMO statement/ IECMS attachment no.012.

3 Peter GABRIEL, LLM (Australian National University); « BURDEN OF PROOF AND STANDARD OF PROOF IN CIVIL LITIGATION », Singapore Academy of Law, 2013, p.134. Reba urubuga,

<https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal/e->

Archive/ctl/eFirstSALPDFJournalView/mid/495/ArticleId/517/Citation/JournalsOnlinePDF, rwasuwe kuwa 24/07/2022.

ribiteganya, aho urega atsinda urubanza iyo agaragaje ko ibyo aregera byabayeho kurusha kuba byaba bitarabaye.⁴

[20] Urukiko rurasanga uretse amafaranga ibihumbi magana atanu na mirongo ine, magana atatu na mirongo itanu (540,350Frw), Nyiramana yemera ko ariwo mwenda usigaye abereyemo Simpunga, nta wundi mwenda ugaragarizwa ibimenyetso amubereyemo nk'uko byasobantuwe haruguru, bityo hashingiwe ku ngingo ya 110 y'itegeko ryavuzwe haruguru ryerekeye ibimenyetso mu manza n'itangwa ryabyo,⁵ Nyiramana akaba ategetswe kwishyura Simpunga uwo mwenda usigaye.

➤ **Gusuzuma inyungu z'umwenda**

[21] Me. Yankurije avuga ko kuba Nyiramana atarishyuriye Simpunga ku gihe byamuteye ighombo, kugeza ubwo akazi ke gahagaze bitewe no kubura igishoro, bityo ashingiye ku ngingo ya 136 y'itegeko rigenga amasezerano, agasaba urukiko gutegeka Nyiramana kumuha inyungu z'umwenda zibariwe kuri 18% mu gihe cy'amezi ayamaranye.

[22] Nshimiyimana ntacyo yigeze avuga ku nyungu zisabwa.

Uko urukiko rubibona

[23] Iningo ya 144 y'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano ivuga ko: "Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi cyangwa ashobora kumenyekana, inyungu zibarwa uhoreye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira."

[24] Urukiko rushingiye ku ngingo imaze kuvugwa, rurasanga kwica amasezerano birebana no kutishyura umwenda (540,350Frw), bityo inyungu zawo zikaba zikwiye kubarwa uhoreye kuwa 04/12/2021 (igihe Nyiramana aherukira kwishyura Simpunga kuri telefone⁵) kugeza uyu munsi, hakaba hashize amezi (8).

[25] Kubyerekanye n'igipimo cyabarirwaho inyungu, urukiko rurasanga mu gihe nta cyo ababuranyi bumvikanyeho mu masezerano, gikwiye gushingira ku gipimo cy'ibitsa (deposite rate) nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza RCOMA 0148/11/CS rwaciwe kuwa

⁴ "This standard requires the jury to return a judgment in favor of the plaintiff if the plaintiff is able to show that a particular fact or event was more likely than not to have occurred." Available online at <https://www.justia.com/trials litigation/lawsuits-and-the-court-process/evidentiary-standards-and-burdens-of-proof/>, rwasuwe kuwa 24/07/2022. ⁵ Ivuga ko "Ukwiyemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera." Kandi ko "Ayo magambo atsindisha uwayavuze."

5 MTN Rwanda MOMO statement/ IECMS attachment no.012.

23 Gicurasi 2014,⁶ ndetse n'urubanza RCOMAA 0032/15/CS rwaciwe narwo n'urwo Rukiko ku wa 22/09/2017.⁷

[26] Urukiko rushingiye kubimaze gusobanurwa, rurasanga igipimo cy'ibitsa kuwa 04/12/2021 cyari 8.094 %⁸ bityo inyungu z'umwenda SIMPUNGA akwiye guhabwa na NYIRAMANA zikaba zingana n'amafaranga ibihumbi makumyabiri n'icyenda, ijana na mirongo itanu n'arindwi (29,157Frw) abazwe mu buryo bukurikira: 540,350Frw $\times 8.094\% = 43,735.9\text{Frw}$ (ku mwaka) $\div 12 = 3,644.6\text{Frw}$ (ku kwezi) $\times 8 = \underline{\underline{29,157\text{Frw}}}$.

➤ **Gusuzuma indishyi n'igihembo cya Avoka**

[27] Me. Yankurije asaba urukiko gutegeka Nyiramana kwishyura Simpunga 3,000,000Frw y'indishyi z'akababaro na 3,000,000Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[28] Nshimiyimana avuga ko Nyiramana yandikiye Simpunga amusaba kureka kumucuragiza mu manza ku maherere anamwibutsa amafaranga amurimo, akanamusaba kureka ikirego akaza akamwisyura asigaye ariko ntiyaza, bityo agasaba urukiko kumutegeka kwishyura NYIRAMANA 1,300,000Frw y'indishyi z'akababaro zingana na 600,000Frw y'ikurikiranarubanza.

Uko urukiko rubibona

[29] Kubijanye n'indishyi z'akababaro Simpunga na Nyiramana basaba urukiko rurasanga ntabimenyetso bazitangira, bityo zikaba nta shingiro zifite.

[30] Kubijanye n'indishyi z'ibyakoreshejwe ku rubanza, ingingo ya 111 y'Itegeko No.22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, igika cya 1 ivuga iti: “*Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyusa ibyakoreshejwe mu rubanza.*”

[31] Urukiko rurasanga Simpunga yararegeye uru rubanza kubera umwenda afitiwe na Nyiramana, uyu akaba atakwitwaza ko yabuze uko amwisyura kuko iyo agira ubushake bwo kumwisyura yari kubikora yifashishiye na telefone ye na mbere y'uko aregwa; bityo hashingiwe ku ngingo imaze kuvugwa haruguru, Simpunga akaba agomba kwishyurwa ibyo yakoresheje ku rubanza, mu bushishozi bw'urukiko Nyiramana akumuriha ibihumbi mirongo itanu (50,000Frw) y'indishyi z'ikurikiranarubanza n'ibihumbi magana atanu (500,000Frw) y'igihembo cya Avoka kuko andi asaba nta bimenyetso ayatangira ndetse akumusubiza 20,000Frw y'amagarama y'urubanza.

6 Urubanza RCOMA 0148/11/CS rwaciwe ku wa 23/05/2014 haburana SORAS Ltd C/ ITEX Sarl, igika cya 25

(rwatangajwe mu Cyegeranyo cy'ibyemezo by'inkiko V 2-2015.

7 Urubanza N° RCOMAA 0032/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 22/09/2017, haburana Raha Trading Ltd na Bakresa Grain Milling Rwanda Ltd (BGM), igika cya 42.

8 Reba “*Deposit rate*” Sep-2021. <https://www.bnr.rw/browse-in/financial-market/money-market-interestrates/monthly-interest-rates/>, rwasuwe kuwa 12/12/2021.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ikirego RCOM 00468/2022/TC cya Simpunga Samuel gifite ishingiro kuri bimwe.

[33] Rutegetse Nyiramana Therese kwishyura Simpunga Samuel umwenda usigaye amubereyemo ungana n'amafaranga ibihumbi magana atanu na mirongo ine, magana atatu na mirongo itanu (540,350Frw).

[34] Rutegetse Nyiramana Therese kwishyura Simpunga Samuel amafaranga ibihumbi makumyabiri n'icyenda, ijana na mirongo itanu n'arindwi (29,157 Frw) y'inyungu z'umwenda.

[35] Rutegetse Nyiramana Therese kwishyura Simpunga Samuel amafaranga ibihumbi magana atanu na mirongo itanu (550,000Frw) y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka.

[36] Rutegetse Nyiramana Therese gusubiza Simpunga Samuel amafaranga ibihumbi makumyabiri (20,000Frw) y'amagarama y'urubanza.