MUNYABURANGA v ECOBANK Plc (yahoze yitwa BCDI)

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/RCOM 00001/2022/SC (Mukamulisa, PJ, Cyanzayire na Karimunda, J.) 15 Nyakanga 2022]

Amategeko agenga imanza z'ubucuruzi – Igihe ntarengwa cyo kuregera gusubirishamo urubanza ingingo nshya – Uburwayi bwafatwa nk'impamvu ikomeye itunguranye yatuma ibihe byo kwiyambaza inzira z'ubujurire byongerwa – Uburwayi bwafatwa nk'impamvu ikomeye itunguranye yatuma ibihe byo kwiyambaza inzira z'ubujurire byongerwa ni uko bwashyira umuntu mu mimerere (conditions) ituma atabasha gutekereza, kuvuga, kumva, kwandika, nk'igihe yaba ari muri coma, ku buryo atashobora no kugira uwo aha ububasha bwo kumutangira ikirego.

Incamake y'Ikibazo: ECOBANK Plc (yasimbuye BCDI) yareze MUNYABURANGA Jean Damascène imwishyuza umwenda yari ayibereyemo, aratsindwa, Urukiko rumumutegeka kwishyura BCDI umwenda wose hamwe ungana na 40.217.971 Frw. Nyuma y'urwo rubanza, MUNYABURANGA Jean Damascène yatanze ikirego mu Bugenzacyaha arega Umuhesha w'Inkiko MUDENGE Didace icyaha cy'inyandiko mpimbano, avuga ko inyandiko yo ku wa 02/08/2001 yamuhamagaraga kuburana mu Rukiko rwa Mbere rw'Iremezo rwa Kigali ku wa 18/12/2001 ari impimbano. Urubanza rwanditswe kuri Nº RP 0772/10/TGI/NYGE, ruburanishwa MUDENGE Didace adahari, ECOBANK Plc (yasimbuye BCDI) yahatiwe kugoboka mu rubanza nk'uryozwa indishyi yitabye, rucibwa ku wa 13/01/2012. Urukiko rwemeje ko MUDENGE Didace ahamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 50.000, rutegeka ECOBANK Plc guha MUNYABURANGA Jean Damascène indishyi zingana na 500.000 Frw.

ECOBANK Plc yajuririye urubanza mu Rukiko Rukuru, ruburanishwa ku wa 13/01/2014, rucibwa ku wa 07/02/2014. Urukiko rwemeza ko ubujurire bwa ECOBANK Plc bufite ishingiro, ko imikirize y'urubanza ihindutse gusa ku bijyanye n'indishyi zari zaciwe ECOBANK Plc zikaba zikuweho. Ku wa 07/12/2021, MUNYABURANGA Jean Damascène yatanze ikirego mu Rukiko rw'Ikirenga asaba gusubirishamo ingingo nshya urubanza Nº RCOMAA 0006/07/CS, ashingiye ku manza nshinjabyaha zemeje ko inyandiko imuhamagara kuburana mu Rukiko rwa Mbere rw'Iremezo rwa Kigali ibirebana n'umwenda yari afitiye BCDI ari impimbano, urubanza rwandikwa kuri Nº RS/REV/RCOM 00001/2022/SC.

Urukiko rwabanje gusuzuma inzitizi ijyanye no kutubahiriza ibihe byo gutanga ikirego yatanzwe na ECOBANK Plc.

Uregwa avuga ko ingingo ya 171 y'Itegeko Nº 22/20018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko igihe cyo gusubirishamo urubanza ingingo nshya ari amezi abiri; mu gika cyayo cya 2, iyo ngingo ikavuga ko icyo gihe kitabarwa ku bantu badafite ubushobozi, kandi ko ko ikimenyetso ashingiraho ari urubanza rwaciwe ku wa 07/02/2014, bivuze ko akimara kubona urwo rubanza yagombaga gutanga ikirego bitarenze ku wa 6/04/2014; kuba rero atarabikoze, ikirego cye kikaba kidakwiye kwakirwa.

Uwasubirishijemo urubanza ingingo nshya, avuga ko n'ubwo ingingo nshya igizwe n'urubanza rwaciwe n'Urukiko Rukuru ku wa 07/02/2014, yagize ibibazo by'uburwayi bwo mu mutwe kuva urwo rubanza rusomwe kugeza ku wa 03/11/2021 nk'uko byemezwa n'abaganga bamukurikiranye

bito nta bushobozi (capacité) yari afite bwo guhita atanga ikirego mu meziabiri nyuma y'uko urubanza ashingiraho asaba gusubirishamo urubanza ingingo nshya rubaye itegeko.

Incamake y'icyemezo: 1. Kugira ngo uburwayi bube bwafatwa nk'impamvu ikomeye itunguranye, yatuma ibihe byo kwiyambaza inzira z'ubujurire byongerwa, ni uko bwashyira umuntu mu mimerere (*conditions*) ituma atabasha gutekereza, kuvuga, kumva, kwandika, nk'igihe yaba ari muri *coma*, ku buryo atashobora no kugira uwo aha ububasha bwo kumutangira ikirego.

2. Kugirango uburwayi bwa diabète bube bwafatwa nk'impamvu ikomeye itunguranye yatuma ibihe byo kwiyambaza inzira z'ubujurire byongerwa, ni uko bwashyira umuntu mu mimerere (conditions) ituma atabasha gutekereza, kuvuga, kumva, kwandika, nk'igihe yaba ari muri coma, ku buryo atashobora no kugira uwo aha ububasha bwo kumutangira ikirego. .

Ikirego cyo gusubirishamo ingingo nshya urubanza, nticyatanzwe mu gihe cyemewe n'amategeko, kikaba kitakwakirwa ngo gisuzumwe;
Uwareze agomba guha uwarezwe 500.000 Frw y'igihembo cy'Avoka, na 300.000 Frw y'ikurikiranarubanza.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 171 na 278
Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, Ingingo ya 113 na 150

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 08/08/1996, MUNYABURANGA Jean Damascène yagiranye amasezerano na BCDI y'inguzanyo ingana na 10.000.000 Frw yo gukoresha mu bucuruzi bwe, atanga ingwate y'inzu iri ku Kimihurura mu kibanza Nº 1089, yongeraho n'agaciro k'ubucuruzi bwe (*Fonds de commerce*) kugeza ku rugero rwa 20.000.000 Frw; iyo nguzanyo ikaba yaragombaga kurangira kwishyurwa ku wa 13/08/1997. Ku wa 31/01/1997, yongeye guhabwa indi nguzanyo ingana na 30.000.000 Frw yo kurangiza inzu y'igorofa yubakaga i Remera-Nyarutarama mu kibanza gifite Nº 5435, atanga ingwate ho iyo nzu n'agaciro k'ubucuruzi bwe (*Fonds de commerce*) ku kigero cya 60.000.000 Frw, bumvikana ko inguzanyo igomba kurangira kwishyurwa ku wa 31/01/2000.

[2] MUNYABURANGA Jean Damascène ntiyishyuye nk'uko byari byemeranyijweho mu masezerano, bituma BCDI imwandikira amabaruwa yo kumwihanangiriza *(mise en demeure)* imusaba kwishyura umwenda wose, iya nyuma ikaba ari iyo ku wa 03/09/1998. Ku wa 16/04/1999, habayeho guhuza imyenda bemeranya ko umwenda ugomba kwishyurwa ungana na 30.686.465 Frw, ukishyurwa mu mezi 60 guhera ku wa 10/05/1999.

[3] Ku wa 24/08/1999, BCDI yandikiye MUNYABURANGA Jean Damascène imwishyuza ibyo bari bumvikanye, imusaba no kwishyura ibirarane; ku wa 31/07/2001 itanga ikirego mu Rukiko rwa Mbere rw'Iremezo rwa Kigali ivuga ko ibyo bumvikanye bitashyizwe mu bikorwa.

Urubanza rwanditswe kuri Nº RC 35.782/01, ruburanishwa MUNYABURANGA Jean Damascène adahari, rucibwa ku wa 16/01/2002. Urukiko rwemeje ko MUNYABURANGA Jean Damascène atsinzwe, rumutegeka kwishyura BCDI umwenda wose hamwe ungana na 40.217.971 Frw.

[4] MUNYABURANGA Jean Damascène yajuriye mu Rukiko rw'Ubujurire rwa Kigali, urubanza rwandikwa kuri Nº RCA 13.859/Kig, ariko nyuma y'ivugurura ry'inzego z'ubucamanza rwoherezwa mu Rukiko Rukuru rwa Repubulika rwandikwa kuri Nº RCOMA 0018/05/KIG. Rwaburanishijwe BCDI idahari, rucibwa ku wa 28/09/2007, Urukiko rwemeza ko ubujurire bwa MUNYABURANGA Jean Damascène budafite ishingiro, ko urubanza rwajuririwe rudahindutse.

[5] MUNYABURANGA Jean Damascène yajuriye mu Rukiko rw'Ikirenga, urubanza rwandikwa kuri Nº RCOMAA 0006/07/CS, rucibwa ku wa 19/06/2009, Urukiko rwemeza ko ubujurire bwe budafite ishingiro, ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[6] Nyuma y'uko urubanza rujyanye n'umwenda rurangiye, MUNYABURANGA Jean Damascène yatanze ikirego mu Bugenzacyaha arega Umuhesha w'Inkiko MUDENGE Didace icyaha cy'inyandiko mpimbano, avuga ko inyandiko yo ku wa 02/08/2001 yamuhamagaraga kuburana mu Rukiko rwa Mbere rw'Iremezo rwa Kigali ku wa 18/12/2001 ari nayo yashingiweho mu kumuburanisha adahari, ari impimbano. Urubanza rwanditswe kuri Nº RP 0772/10/TGI/NYGE, ruburanishwa MUDENGE Didace adahari, ECOBANK Plc (yasimbuye BCDI) yahatiwe kugoboka mu rubanza nk'uryozwa indishyi yitabye, rucibwa ku wa 13/01/2012. Urukiko rwemeje ko MUDENGE Didace ahamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 50.000, rutegeka ECOBANK Plc guha MUNYABURANGA Jean Damascène indishyi zingana na 500.000 Frw.

[7] ECOBANK Plc yajuririye urubanza mu Rukiko Rukuru, urubanza rwandikwa kuri Nº RPA 0196/12/HC/KIG, ruburanishwa ku wa 13/01/2014 nabwo MUDENGE Didace adahari ariko yarahamagawe byemewe n'amategeko, rucibwa ku wa 07/02/2014. Urukiko rwemeje ko ubujurire bwa ECOBANK Plc bufite ishingiro, ko imikirize y'urubanza ihindutse gusa ku bijyanye n'indishyi zari zaciwe ECOBANK Plc zikaba zikuweho.

[8] Ku wa 07/12/2021, MUNYABURANGA Jean Damascène yatanze ikirego mu Rukiko rw'Ikirenga asaba gusubirishamo ingingo nshya urubanza Nº RCOMAA 0006/07/CS, ashingiye ku manza nshinjabyaha zemeje ko inyandiko imuhamagara kuburana mu Rukiko rwa Mbere rw'Iremezo rwa Kigali ibirebana n'umwenda yari afitiye BCDI ari impimbano, urubanza rwandikwa kuri Nº RS/REV/RCOM 00001/2022/SC.

[9] Iburanisha ryashyizwe ku wa 24/05/2022, ribera mu ruhame, MUNYABURANGA Jean Damascène yunganiwe na Me MURUTASIBE Joseph, ECOBANK Plc iburanirwa na Me NSENGIYUMVA François. Urukiko rwabanje gusuzuma inzitizi ijyanye no kutubahiriza ibihe byo gutanga ikirego yatanzwe na ECOBANK Plc. Nyuma yo kumva icyo buri ruhande ribivugaho, rwamenyesheje aburanyi ko icyemezo kuri iyo nzitizi kizasomwa ku wa 15/07/2022.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. **Kumenya niba ikirego cya MUNYABURANGA Jean Damascène cyo gusubirishamo ingingo nshya urubanza Nº RCOMAA 0006/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/06/2009, cyaratanzwe mu gihe cyemewe n'amategeko**

[10] Mu myanzuro bashyikirije Urukiko, Me NSENGIYUMVA François na Me MUKAKABANDA Athanasie bahagarariye ECOBANK Plc bavuga ko ingingo ya 171 y'Itegeko Nº 22/20018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko igihe cyo gusubirishamo urubanza ingingo nshya ari amezi abiri; mu gika cyayo cya 2, iyo ngingo ikavuga ko icyo gihe kitabarwa ku bantu badafite ubushobozi. Bavuga ko ikimenyetso MUNYABURANGA Jean Damascène ashingiraho ari urubanza Nº RPA 0196/12/HC/KIG rwaciwe ku wa 07/02/2014, bivuze ko akimara kubona urwo rubanza yagombaga gutanga ikirego bitarenze ku wa 6/04/2014; kuba rero atarabikoze, ikirego cye kikaba kidakwiye kwakirwa ngo gisuzumwe kuko atubahirije ibihe biteganywa n'amategeko.

[11] Bavuga kandi ko impapuro eshatu MUNYABURANGA Jean Damascène yashyize muri *system* agaragaza ko impamvu yakererewe gutanga ikirego ari uburwayi yagize bwo mu mutwe, ntacyo zamumarira, kuko nta muganga n'umwe wemewe na Leta wigeze agaragaza ko kuva ku wa 6/04/2014 yagize ubwo burwayi. Bavuga ko abaganga babiri bemewe na Leta y'u Rwanda MUNYABURANGA Jean Damascène avuga nta n'umwe wemeza ko yagize uburwayi bwo mu mutwe, kuko uwa mbere ari Dr GASANGWA wamuhaye urupapuro ku wa 22/03/2021 yemeza ko kuva ku wa 14/05/2015 arwaye *diabète*. Uwa kabiri, Dr KAGAME Abel (*interniste* muri CHUK), yamuhaye icyemezo ku wa 20/4/2021 kivuga ko kuva mu 2000 arwaye indwara idakira, nyamara muri icyo gihe cyose akaba yaratangaga ibirego by'imanza nshinjabyaha.

[12] Ku bijyanye n'urupapuro rwa gatatu bigaragara ko rwatangiwe i Karagwe muri Tanzaniya ku wa 03/11/2021, Me NSENGIYUMVA François na Me MUKAKABANDA Athanasie bavuga ko nta muganga wigeze arutanga, rukaba nta gaciro rugomba guhabwa. Me NSENGIYUMVA François yabwiye Urukiko ko MUNYABURANGA Jean Damascène aterekana aho yanyuze cyangwa *transfer* yahawe ajya kwivuza muri Tanzaniya, kandi ko abatanze icyemezo nta bubasha bari bafite bwo kugitanga, kuko ari abafasha b'abaganga (*Assistant médical*) atari abaganga bashobora gutanga icyemezo cy'uko umuntu afite uburwayi bwo mu mutwe; ibi akaba abishingira ku bushakashatsi yakoze kuri *google*.

[13] Me NSENGIYUMVA François avuga kandi ko MUNYABURANGA Jean Damascène atagomba kwitwaza ingingo ya 278 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1], kuko *diabète* itabuza umuntu gutanga ikirego, n'ikimenyimenyi akaba yaje kuburana ntimubere inkomyi.

[14] Mu myanzuro bashyikirije Urukiko, MUNYABURANGA Jean Damascène n'umwunganira bavuga ko n'ubwo ingingo nshya igizwe n'urubanza No RP 0772/10/TGI/NYGE hamwe n'urubanza No RPA 0196/12/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 07/02/2014, yagize ibibazo by'uburwayi bwo mu mutwe kuva urwo rubanza rusomwe kugeza ku wa

[1] Igihe umuburanyi yakererewe kwiyambaza inzira z'ubujurire bitewe n'impamvu zikomeye zitunguranye kandi zidaturutse ku bushake bwe, igihe cyo kujurira kirongerwa kugeza igihe izo mpamvu zirangiriye

03/11/2021 nk'uko byemezwa n'abaganga bamukurikiranye bo mu Gihugu cya Tanzaniya. Bavuga ko nta bushobozi (*capacité*) yari afite bwo guhita atanga ikirego mu mezi abiri nyuma y'uko urubanza nshinjabyaha ashingiraho asaba gusubirishamo urubanza ingingo nshya rubaye itegeko, ko rero icyo gihe kidakwiye kubarwa nk'uko ingingo ya 171, igika cya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibiteganya[2].

[15] Mu gihe cy'iburanisha, batanze ibisobanuro bikurikira:

- MUNYABURANGA Jean Damascène yabaga muri Tanzaniya kuva 2003 ahakorera ubucuruzi, aza kurwarirayo, akaba ariyo mpamvu adakwiye kubazwa ibya *transfer*. Bongeraho ko afite *passport* na *ticket* y'indege yakoresheje ajyayo, akaba yaranaguzeyo ubutaka.
- Hashingiwe ku ngingo ya 278 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igihe cy'amezi abiri ntikigomba kubarwa guhera igihe urubanza nshinjabyaha rwaciriwe kuko yahise arwara akaremba.
- Icyemezo cyatanzwe na Dr KAGAME Abel kigaragaza ko kuva mu 2000 yari arwaye indwara idakira ya *diabète*, ko yagiraga *des périodes de déséquilibre de sa maladie*, bivuga ko yari afite *incapacité*.
- Icyemezo cyatanzwe na Dr GASANGWA kigaragaza ko afite uburwayi bwa *diabète* kuva mu 2015, ikaba ari indwara ishobora kubuza ubushobozi ubwo aribwo bwose, ku buryo umuntu atagira ubwenge bwo kurega.
- Icyemezo cyatanzwe n'ibitaro bya Nyakahanga kigaragaza ko kuva mu 2014 afite uburwayi butamwemerera kugira ubwenge. Nta burwayi bwo mu mutwe yari afite nk'uko uburanira ECOBANK Plc ashaka kubyumvikanisha, ikibazo yari afite ni ugutakaza ubushobozi bwo kugira icyo yikorera.
- Ku birebana n'uko uwatanze icyemezo mu bitaro bya Nyakahanga ari *Medical officer* atari muganga, muri Tanzaniya niko bigenda. Bongeraho ko *Medical Officer* ari *Doctor*; kandi ko atari ngombwa ko utanze icyemezo ashyiraho izina rye.
- Kuba urubanza nshinjabyaha bashingiraho nk'ingingo nshya rwarahamije MUDENGE Didace icyaha mu 2012 ntajurire, ntibahite batanga ikirego, byatewe n'uko ECOBANK Plc yari yajuriye bakaba batari gushingira ku rubanza rutaraba itegeko.

[16] Ingingo ya 171, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko *igihe ntarengwa cyo kuregera gusubirishamo urubanza ingingo nshya rwaciwe burundu ari amezi abiri (2) kuva igihe impamvu ituma urwo rubanza rusabirwa gusubirwamo yabonekeye*. Mu gika cyayo cya kabiri, iyo ngingo iteganya ko *icyo gihe kitabarwa ku bantu badafite ubushobozi bwo kwiregera (persons declared incapable to sue in court/ les incapables) mu gihe cyose baba batarabubona.*

[2] Icyo gihe ntikibarwa ku bantu badafite ubushobozi bwo kwiregera mu gihe cyose baba batarabubona

[17] Ingingo ya 278 y'Itegeko rimaze kuvugwa, iteganya ko igihe umuburanyi yakererewe kwiyambaza inzira z'ubujurire bitewe n'impamvu zikomeye zitunguranye kandi zidaturutse ku bushake bwe, igihe cyo kujurira cyongerwa kugeza igihe izo mpamvu zirangiriye.

[18] Urukiko rusanga kubura ubushobozi bwo kwiregera bivugwa mu ngingo ya 171, igika cya 2, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018, ari ibiba byaje nyuma y'uko umuntu aburana urubanza asaba ko rusubirishwamo ingingo nshya, kuko iyo bibaho mbere, atari kubasha kwiburanira adafite umuhagarariye (*tuteur*), uyu akaba ari nawe wakomeza urubanza kugeza igihe inzira zose z'ubujurire zirangiriye.

[19] Urukiko rusanga kandi ingingo ya 171, igika cya kabiri, irebana by'umwihariko no gusubirishamo urubanza ingingo nshya, n'ingingo ya 278 irebana n'inzira z'ubujurire muri rusange, zuzuzanya, kuko kutagira ubushobozi bwo kwiregera bishobora kuba imwe mu mpamvu zikomeye zitunguranye kandi zidaturutse ku bushake bw'umuntu.

[20] Nta ngingo y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itanga igisobanuro (*definition*) cy'abantu badafite ubushobozi bwo kwiregera, ariko hari ingingo zitandukanye mu Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, zisobanura abantu badafite ubushobozi bwo gukoresha uburenganzira mbonezamubano (*capacity to exercise civil rights*), harimo n'ubushobozi bwo gutanga ikirego. Ingingo ya 113[3] y' Itegeko rimaze kuvugwa, iteganya ko imyaka y'ubukure ari 18, kandi ko kuri iyo myaka aribwo umuntu agira ubushobozi bwo gukora ibintu byose bimuhuza n'abandi; bivuga ko munsi y'iyo myaka nta bushobozi umuntu aba afite, uretse igihe yemerewe ubukure (*émancipation)* hakurikijwe ibiteganywa mu ngingo ya 116[4] y'iryo Tegeko.

[21] Muri urwo rwego kandi, ingingo ya 150 y'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 iteganya ko umuntu mukuru ufite ubumuga bwo mu mutwe n'aho bwaba bujya bumuha agahenge rimwe na rimwe yamburwa ubushobozi n'urukiko rubifitiye ububasha, rukamushyiriraho umwishingizi. Ubwishingire busobanurwa mu ngingo ya 119 y'iryo Tegeko nk'uburyo bukoreshwa bwo gufasha umwana cyangwa umuntu mukuru ufite ubumuga bwo mu mutwe gukoresha uburenganzira bwemererwa buri wese muri rusange no kumufasha gucunga umutungo we igihe awufite.

[22] Hakurikijwe ibiteganywa mu ngingo z'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 zimaze kuvugwa, abantu badafite ubushobozi bwo kwiregera ni abana bataragera ku myaka y'ubukure kandi batabwemerewe mu nzira ziteganywa n'itegeko, n'abantu bakuru bafite ubumuga bwo mu mutwe.

[23] Mu iburanisha ryo ku wa 24/05/2022, MUNYABURANGA Jean Damascène yabwiye Urukiko ko nta kibazo afite cy'uburwayi bwo mu mutwe (bitandukanye n'ibyo yari yavuze mu myanzuro ye). Bikaba bivuga rero ko atari mu bantu badafite ubushobozi bwo kwiregera bavugwa mu ngingo ya 171, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe

[3] Imyaka y'ubukure ni imyaka cumi n'umunani (18) y'amavuko uretse aho iri tegeko cyangwa andi mategeko abiteganya ukundi. Kuri iyo myaka, umuntu agira ubushobozi bwo gukora ibintu byose bimuhuza n'abandi.
[4] Umwana wemerewe ubukure ashobora gukora ibintu byose bimuhuza n'abandi uretse ibiteganywa ukundi n'amategeko.

haruguru, hakurikijwe ibisobanuro bitangwa n'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango.

[24] Icyo avuga cyamubujije gutanga ikirego, ni uburwayi buvugwa mu nyandiko 3 zatanzwe n'abaganga (*medical certificates*), ikibazo kikaba ari ukumenya niba ubwo burwayi ari impamvu ikomeye kandi itunguranye yashoboraga kumubuza gutanga ikirego, ivugwa mu ngingo ya 278 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

[25] *Medical certificate* yo ku wa 03/11/2021, yatanzwe na *Medical Officer* wo muri Nyakahanga D. D. Hospital y'i Karagwe muri Tanzaniya, igaragaza ko MUNYABURANGA Jean Damascène yagize ibibazo byo mu mutwe (*mental problems*) kuva mu mwaka wa 2014, agahabwa imiti mu buryo buhoraho n'amavuriro, ko iyo uburwayi bumufashe agira ibibazo byo kuvuga no kumva, ubu akaba yarorohewe[5]. MUNYABURANGA Jean Damascène yasobanuriye Urukiko ko uburwayi buvugwa muri iyi nyandiko ari ubwa *diabète* butamwemereraga kugira ubwenge, bukamubuza kugira ubushobozi bwo kurega.

[26] Indi nyandiko ni iyo ku wa 22/03/2022 yatanzwe na Dr GASANGWA ukorera mu Bitaro bya Kacyiru, igaragaza ko MUNYABURANGA Jean Damascène akurikiranwa muri ibyo Bitaro kuva ku wa 14/05/2015 kubera uburwayi bwa *diabète*. Hari kandi inyandiko yo ku wa 20/04/2021 yatanzwe na Dr KAGAME Abel ukorera mu Bitaro bya CHUK, igaragaza ko MUNYABURANGA Jean Damascène akurikiranwa kubera uburwayi budakira kuva mu 2000, ko agira *des périodes de déséquilibre de sa maladie*. MUNYABURANGA Jean Damascène n'umwunganira bavuga ko *déséquilibre* ivugwa ari *incapacité* iterwa n'uburwayi bwa *diabète*.

[27] Ikigaragara muri izi nyandiko z'abaganga, hanashingiwe ku bisobanuro bitangwa na MUNYABURANGA Jean Damascène, ni uko uburwayi avuga bwamubujije gutanga ikirego mu gihe giteganywa n'amategeko, ari ubwa *diabète* afite kuva mu mwaka wa 2000.

[28] Uburwayi bwa *diabète*, si uburwayi butuma umuntu atagira ubushobozi buvugwa mu ngingo ya 171, igika cya 2, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 yavuzwe haruguru, kuko idatera ubumuga bwo mu mutwe, na MUNYABURANGA Jean Damascène akaba yivugira ko nta kibazo cy'ubumuga bwo mu mutwe yagize.

[29] Kugirango kandi uburwayi bwa *diabète* bube bwafatwa *nk'impamvu ikomeye itunguranye* ivugwa mu ngingo ya *278* y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 yibukijwe haruguru, yatuma ibihe byo kwiyambaza inzira z'ubujurire byongerwa, ni uko bwashyira umuntu mu mimerere (*conditions*) ituma atabasha gutekereza, kuvuga, kumva, kwandika, nk'igihe yaba ari muri *coma*, ku buryo atashobora no kugira uwo aha ububasha bwo kumutangira ikirego. Ibi byaba bihura n'ibyo mu mategeko ya *New South Wales* bita *incommunicate person*[6].

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[5] *A client that had mental problems from the year 2014 on regular medication from hospitals up to date and now is improving, once on attack had difficult in hearing and speaking with difficulties, now slight improved. Need special consideration.*

[6] *Section 3 of the CPA defines a person under a legal incapacity as: any person who is under a legal incapacity in relation to the conduct of legal proceedings (other than an incapacity arising under section 4 of the Felons (Civil Proceedings) Act 1981 and, in particular, includes:*
(a) a child under the age of 18 years, and
(b) an involuntary patient or forensic patient within the meaning of the Mental Health Act 2007, and
(c) a person under guardianship within the meaning of the Guardianship Act 1987, and

[30] Urukiko rusanga *Medical certificates* MUNYABURANGA Jean Damascène yatanze, zitagaragaza ko yigeze ajya muri iyo mimerere. Iyatanzwe na Dr GASANGWA, ivuga ko afite *diabète* kuva mu 2015, kandi urubanza agaragaza nk'ikimenyetso gishya rwaraciwe mu 2014, ikaba ntacyo yamufasha mu rubanza. Iyatanzwe na Dr KAGAME Abel, ivuga ko afite uburwayi budakira (urega yabwiye Urukiko ko ari *diabète*) kuva 2000, ko agira *des pèriodes de déséquilibre de sa maladie*.

[31] Kuva mu 2000, MUNYABURANGA Jean Damascène yaburanye imanza zinyuranye, zirimo urubanza Nº RC 35.782/01 rwaciwe ku wa 16/01/2002, urubanza Nº RCOMA 0018/05/KIG rwaciwe ku wa 28/09/2007, urubanza Nº RCOMAA 0006/07/CS rwaciwe ku wa 19/06/2009, urubanza Nº RP 0772/10/TGI/NYGE rwaciwe ku wa 13/01/2012, n'urubanza Nº RPA 0196/12/HC/KIG rwaciwe ku wa 07/02/2014; bivuga ko atari kunanirwa no gutanga ikirego gisaba gusubirishamo urubanza ingingo nshya. *Périodes de déséquibre de sa maladie* muganga avuga n'ubwo atazisobanuye, ntiyigeze anavuga ko yazigize mu buryo buhoraho kuva aho urubanza akoresha nk'ikimenyetso gishya ruciriwe (kuva 2014), kugeza igihe yatangiye ikirego.

[32] *Medical certificate* yatanzwe *na Medical Officer* wo muri Nyakahanga D. D. Hospital y'i Karagwe, ntigaragaza izina ry'uwayitanze kugirango Urukiko rube rwagenzura ko yari afite ububasha bwo kuyitanga. Uretse ibyo kandi, igaragaza ko yagize ibibazo byo mutwe (*mental problems*) kuva 2014, ko iyo bimufashe agira ibibazo byo kuvuga no kumva, bikaba bitandukanye n'ibyo MUNYABURANGA Jean Damascène yabwiye Urukiko ko nta burwayi bwo mu mutwe yagize. Ahubwo yabwiye Urukiko ko uburwayi buvugwa muri iyo *Medical certificate* ari ubwa *diabète* yivurizaga no mu Rwanda. Ubwo burwayi kandi nk'uko byasobanuwe haruguru, ntibwari kumubuza gutanga ikirego, cyangwa guha ububasha Avoka ngo akimutangire kuko n'izindi manza yaziburanye abufite.

[33] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ikirego cya MUNYABURANGA Jean Damascène cyo gusubirishamo ingingo nshya urubanza Nº RCOMAA 0006/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/06/2009, kitaratanzwe mu gihe giteganywa n'amategeko, bityo kikaba kidashobora kwakirwa ngo gisuzumwe.

Gusuzuma ibijyanye n'indishyi

[34] MUNYABURANGA Jean Damascène na Me MURUTASIBE Joseph umwunganira bavuga ko kubera imyaka ishize avukijwe uburenganzira ku mutungo we, asaba indishyi z'akababaro zingana na 10.000.000 Frw, kuko kuva yakwamburwa umutungo we yahungabanye ndetse bikamuviramo uburwayi butandukanye harimo n'ubwo mu mutwe. Asaba kandi 5.000.000 Frw y'igihembo cy'Avoka na 1.000.000 Frw y'ikurikiranarubanza.

[35] Me NSENGIYUMVA François na Me MUKAKABANDA Athanasie bahagarariye ECOBANK Plc bavuga ko indishyi MUNYABURANGA Jean Damascène asaba nta shingiro zifite kuko ariwe utarubahirije inshingano zo kwishyura umwenda. Bavuga ko ahubwo kuba

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(d) a protected person within the meaning of the NSW Trustee and Guardian Act 2009, and
(e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs; *Civil Trials Bench Book — Procedure generally, last updated*: **CTBB 47, MAR 22, Judicial Commission of New South Wales, https://www.judcom.nsw.gov.au,** *accessed June* 6, 2022.

yarakuruye ECOBANK Plc mu nkiko nta mpamvu, bigatuma yitabaza umunyamategeko, Urukiko rwamutegeka kwishyura 1.500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[36] Urukiko rusanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka MUNYABURANGA Jean Damascène asaba atayahabwa kuko atsinzwe urubanza.

[37] Urukiko rusanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asabwa na ECOBANK Plc yayagenerwa kuko byabaye ngombwa gukurikirana urubanza no gushaka umunyamategeko wo kuyunganira. Rusanga ariko 1.500.000 Frw y'igihembo cy'Avoka isaba ari menshi kandi itayatangira ibimenyetso, ikaba igenewe mu bushishozi bw'Urukiko 500.000 Frw, naho 300.000 Frw y'ikurikiranarubanza ikaba yayahabwa uko yayasabye kuko ari mu rugero.

III. ICYEMEZO CY'URUKIKO

[38] Rwemeje ko ikirego cya MUNYABURANGA Jean Damascène cyo gusubirishamo ingingo nshya urubanza Nº RCOMAA 0006/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/06/2009, kitatanzwe mu gihe cyemewe n'amategeko, kikaba kitakwakirwa ngo gisuzumwe;

[39] Rutegetse MUNYABURANGA Jean Damascène guha ECOBANK Plc 500.000 Frw y'igihembo cy'Avoka, na 300.000 Frw y'ikurikiranarubanza.