RCC 11259

AMAJAMBO MAKURU MAKURU

Gusambuza urubanza – ingingo ya 25 CPC – isambuza ridashemeye - kuburanira uwundi - kwanka kwakira iyunguruza – kwunguruza urubanza atari rwawe.

URUBANZA

- 1 -

RCC 11259

SENTARE NTAHINYUZWA ISHASHE MU GISATA CA GASAMBURAMANZA YACIYE URUBANZA RUKURIKIRA :INTAHE Y'ICESE YO KU WA 31.07. 2006.

UWITWARA :N.: Umusozi Burarana, Komine Bururi, Province Bururi

UWITWARIRWA :Y. (ND.) : Umusozi Burarana, Komine Bururi, Province Bururi

Twihweje ikete ririmwo ibirego bijanye no gusambuza urubanza RCA 3220 rwaciwe na Sentare Nkuru y'Igihugu ya Bururi N. yandikiye umukuru wa Sentare Ntahinyuzwa rigaheza rigashika mw'iyandikiro ry'imanza ry'iyo Sentare kw'igenekerezo ryo ku wa 01.06.2004 .

Twihweje urubanza rusambuzwa RCA 3220 narwo rukaba ruvuga ibi bikurikira :

- Sentare ntiyakiriye urubanza rwungurujwe na N. kuko yunguruje urubanza rutari rwiwe kandi na nyenerwo ariwe NI. atamutumye kurumuburanira ;
- Hakomejwe urubanza n°RC 2907/96 rwaciwe na Sentare y'Intango ya Bururi kandi niyo nyene izorukurikiza ;
- Amagarama yose y'urubanza uko ari 14.200 atangwa na N. mu ndagano y'iminsi 8, aharenze afatiwe ikiyaciye kigurishwe arihwe».

Twihweje ivyireguro vya ND. Gilbert ;

Twihweje ivyivyumviro vyanditswe vyashikirijwe n'umucamanza hamwe n'umushikirizamanza vyo ku ma genekerezo yo ku wa 19.10.2004 na 02.01.2006 ;

Twihweje ingingo y'umukuru wa Sentare Ntahinyuzwa yo ku wa 30.01.2006 ishinga ko uru rubanza rwohamagarwa mu ntahe y'icese yo ku wa 18.05.2006 ;

Twihweje ko iyo ngingo y'umukuru wa Sentare Ntahinyuzwa yamenyeshejwe ababurana kw'igenekerezo rya 30.01.2006 ;

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Twihweje ihamagarwa ry'urubanza mu ntahe y'icese yo ku wa 18.05.2006 aho ababuranyi bose barenguka, bakaburana bahinyuzanya, hanyuma Sentare imaze kumviriza iciyumviro canditse c'umushikirizamanza igaca ishira urubanza mu mwiherero w'abacamanza kugira ngo hacike uru rukurikira ;

Kubera ko N. Gérard anegura Sentare Nkuru y'Igihugu y'I Bururi ivuga yuko itakiriye urubanza ngo kandi yararwakiriye ngo kubera yaciye irushira mu mwiherero ngo igatako ikanaruca kandi rutaburanishijwe ;

Ko avuga ko bitumvikana ingene iyo Sentare yashize mu mwiherero urubanza rudakwije ibisabwa n'amategeko ngo nk'uko yo yabibona yari kumutuma kurondera ibisabwa n'amategeko vyose kugirango urubanza rwiwe rwakirwe ;

Ko yemeza ko vyibonekeza ko icibwa ry'urwo rubanza ritisunze amategeko ngo kuko iyo Sentare yakiriye urubanza rudakwije ibisabwa n'amategeko ;

Ko intahe z'icese zivugwa mw'ikopi y'urwo rubanza rwaciwe ataco zamaze ngo kubera zitigeze zimuha uburenganzira bwo gushikiriza ingorane ziwe zerekeye itongo ;

Ko yarangije asaba Sentare Ntahinyuzwa ko yosambura urwo rubanza rwaciwe na Sentare Nkuru y'Igihugu ya Bururi ngo kubera yaruciye idafise ibikwiye,ko rero ivyo vyotuma aronswa uburenganzira bwo gusubira gushinga urubanza rwiwe muri Sentare i Bururi afise ibisabwa n'amategeko vyose ;

Kubera ko ND. Gilbert aserukira Y. muri runo rubanza yashikirije ivyireguro vyiwe avuga ko ibirego vya N. bidashemeye na buhoro buhoro ;

Ko abandanya avuga ko ata kirego na kimwe gishemeye yatanze cotuma urubanza rusambuka ;

Kubera ko kubijanye no gutohoza urubanza, ND. yemeza ko Sentare, mugihe iriko iratohoza urubanza, niyo yonyene ibona ko rukwiye kuja mu mwiherero ;

Ko noneho we yemeza ko Sentare yarutohoje bihagije ngo ari naco gituma yaciye irushira mu mwiherero igaheza igaca urubanza ;

Kubera ko ND. Gilbert yarangije ivyireguro vyiwe avuga ko imburano z'uwusambuza urubanza zidafashe na gato, ko rero urubanza rudakwiye guca no muri Sentare ;

Kubera ko N. asaba isambuza ry'urubanza RCA 3220 rwaciwe na Sentare Nkuru y'Igihugu ya Bururi narwo rukaba rwari rwamenyeshejwe umuburanyi NI. Evariste ku wa 30.04.2004 ;

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Kubera ko N. yashikanye ibirego vyiwe mw'iyandikiro ry'imanza rya Sentare Ntahinyuzwa ku wa 01.06.2004, bigaragara ko yari akiri mu ndagano zitegekanijwe n'amategeko, yokwakirwa rero ;

Kubera ko ku kirego ca N. kijanye nuko Sentare Nkuru y'Igihugu ya Bururi yaciye urubanza RCA 3220 ivuga ko itakiriye urubanza ngo kandi yararwakiriye, irarushira mu mwiherero ngo itako iranaruca mugabo rutaburanishijwe, ico N. yomenya ni uko ico kibazo kijanye n'amategeko agenga ingene imanza zitohozwa, ziburanishwa zikongera zigacibwa (Code de Procédure Civile) ;

Kubera ko N. Gérard adahakana ko urubanza yunguruje muri Sentare Nkuru y'Igihugu ya Bururi rwari rwaciwe na Sentare y'Intango ya Bururi hakaba haburana NI. na Y. kiretse ko N. yari yahawe uruhusha na NI. kugira ngo ashobore kumuburanira ;

Kubera ko N. yaciye afata imigabo n'imigambi yo kunguruza urubanza muri Sentare Nkuru y'Igihugu ya Bururi kw'izina ryiwe ;

Ko mubisanzwe, igihe umuntu aserukira uwundi mu rubanza, izina ryiwe siryo ryandikwa mu kibanza c'umuburanyi ;

Kubera ko kuvyerekeye aho N. avuga ko bitumvikana ingene iyo Sentare yashize mu mwiherero urubanza rudakwije ibisabwa n'amategeko, ico yomenya ni uko ariwe yunguruje urubanza, amategeko nayo akaba avuga ko umucamanza ategerezwa kwihweza ko uwushinze urubanza abifitiye ububasha (ingingo ya 25 agace ka 2 y'igitabu c'amategeko agenga ingene imanza z'amatati ziburanishwa ;

Ko rero umucamanza mu guca urubanza yisunze iyo ngingo ihejeje kuvugwa aho hejuru, ica ibona ko N. ata bubasha yari afise bwo kunguruza urubanza rutari rwiwe ;

Ko ari naco gituma yanse kwakira iyunguruza ryiwe, urubanza rero rwacitse mu kuri ;

Ko rero Sentare Ntahinyuzwa ata mvo n'imwe ibona yotuma urubanza RCA 3220 rusambuka.

KUBERA IZO MVO ZOSE

Sentare Ntahinyuzwa, igisata ca Gasamburamanza ;

Yihweje ibwirizwa n°1/010 ryo ku wa 18.03.2005 ryerekeye ibwirizwa nshingiro rya Republika y'Uburundi ;

Yihweje ibwirizwa n°1/07 ryo ku wa 25.02.2005 ryerekeye iringanizwa rya Sentare Ntahinyuzwa ;

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Yihweje ibwirizwa n°1/08 ryo ku wa 17.03.2005 ryerekeye iringanizwa ry'ama Sentare n'ububasha bwazo ;

Yihweje ibwirizwa n°1/010 ryo ku wa 13.05.2004 ryerekeye amategeko agenga imanza z'amatati ;

Ic'imanza imbona nkubone ibanje kuva mu mwiherero w'abacamanza ;

ISHINZE KO :

- Yakiriye isambuza ry'urubanza nkuko ryagizwe na N. Gérard ariko ivuze ko ridashemeye.
- Irahakanye gusambura urubanza RCA 3220 rwaciwe na Sentare Nkuru y'Igihugu ya Bururi,
- Iyi ngingo yandikwe mu bitabu vy'iyo sentare hambavu y'urubanza rudasambuwe ;
- Amagarama atangwa na N. uko ari 13.000FBU.

Uko niko ruciwe kandi rusomwe i Bujumbura mu ntahe y'icese yo ku wa 31.07.2006.Hashashe umukuru w'intahe, abacamanza bafashijwe n'umushikirizamanza mukuru n'umwanditsi w'imanza.

KWIHWEZA URUBANZA

Uru rubanza ruburana N. ne Y. (ND.) ruturuka k'uruhusha NI. Yahaye N. rwo kumuburanira muri Sentare y'intango ya Bururi.

N. yararushijwe muri iyo Sentare y'intango,(bigaca vyumvikana ko harushijwe NI. we yari yamutumye). N. yaciye yiha uburenganzira bwo kwunguruza urwo rubanza, kandi ataburenganzira yahawe ubugira kabiri.

Ntivyatevye ni ho Sentare Nkuru y'Igihugu yaca imukura ku nzira, yanka kwakira urubanza, kuko yari yunguruje urubanza rutari rwiwe.

N.ntiyashizwe ariko guca aja muri Gasamburamanza kurusambuza.

Imvo rero nazo atanga akaba ari izi zikurikira :

- Iya mbere ngo ni uko Sentare yashize urubanza mu mwiherero rudakwije ivyangombwa ;
- Iya kabiri ngo ntiyigeze aronka uburenganzira bwo gushikiriza ingorane ziwe.

Kuvyerekeye imvo ya mbere umucamanza niwe wenyene ashobora kubona ko agororokewe maze akabona gushira urubanza mu mwiherero, nkuko ingingo ya 122[1] ibisigura, ikanavuga ko atabindi bikenewe. Ni ukuvuga ko umucamanza amaze kubona ko agororokewe, ashobora ubwonyene guca ashira urubanza mu mwiherero.

Ingingo nayo ya 25 CPC[2] irategeka umucamanza kuraba ko umuburanyi afise uruhusha rwo kuburana, ari naco gituma Sentare Ntahinywuzwa yaciye yanka gusambura urwo rubanza.

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[1] Article 122 CPC:
Il appartient aux juges devant lesquels la cause a été débattue d'en délibérer.

[2] Article 25 CPC :
Les fins de non-recevoir doivent être relevées d'office lorsqu'elles ont un caractère d'ordre public, notamment lorsqu'elles résultent de l'inobservation des délais dans lesquels doivent être exercées les voies de recours.

Le juge peut relever d'office la fin de non-recevoir tirée du défaut d'intérêt.