

RWANDA / JUDGMENT

AGABA v. KAMANA

RCOMA 0470/13/HCC

COURT

Commercial High Court

DECIDED

7 February 2014

CASE / FILE NUMBER

RCOMA 0470/13/HCC

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AGABA v. KAMANA

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- Date: 2014-02-07
- Case/document no.: RCOMA 0470/13/HCC
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Text

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AGABA v. KAMANA [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0470/13/HCC (Niwemugeni, P.J.) 7 Gashyantare 2014] Amategeko agenga ibimenyetso – Ukwiyemerera k'umuburanyi – Ibimenyetso bigaragajwe mu buryo bw'ikorana buhanga – Iyo umwe mu baburanyi agaragirije Urukiko inyandiko yagiranye na mugenzi we binyuze mu nzira y'ikoranabuhanga, akanagaragaza amafoto n'ibiranga icyaseranyijwe mu maserano, bikanakubitiraho ko n'uwo mugenzi we yabiyemereye mu Rukiko, bihita bitsindisha uwohereje ibyo bimenyetso wanabiyemereye – Itegeko no 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 110. Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Gusesa amasezerano – Amasezerano y'itumiza ry'imodoka hanze – Mu masezerano yo gutumiza imodoka, iyo uwemeye kuyitumiza hanze anyuranyije n'amasezerano yagiranye n'uwayimutumye araseswa akanasubiza amafaranga yari yatanze ayitumiza bikubitiyeho n'indishyi iyo zasabwe kuko aba agomba kuyubahiriza nta buryarya – Itegeko no 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64. Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Gusubizwa amafaranga – Iyo umuburanyi asabye gusubizwa andi mafaranga agize aho ahurira n'ayari ateganyijwe mu masezerano yari yarahaye

urundi ruhande, arayahabwa. Incamake y'ikibazo: Kamana Jean Damascene, nyuma yo kohererezwa amafoto na Agaba Silver, yagiranye amasezerano nawe yo kumutumiriza imodoka yo mu bwoko bwa Toyota Land Cruiser ku giciro kingana n'ama euro 8000. Imodoka igeze Dar-Es-Salaam, Agaba yaje kongera gusaba Kamana kumwishyura andi mafaranga ya transport y'imodoka yo kuyigeza i Kigali n'ay'umushoferi wayo. Imodoka igeze Magerwa, Kamana yabwiwe na Agaba kuza kuyifata ariko asanga imodoka yamutumye itandukanye n'iyi yamugaragariye mu mafoto. Agaba we avuga ko imodoka Kamana yamutumye igaragara kuri Bill of loading, ndetse no ku masezerano impande zombi zasinye kuwa 6/5/2013. Kamana yaregeye Urukiko rw'Ubucuruza rwa Nyarugenge asaba ko amasezerano yagiranye na Agaba yaseswa, akanasubizwa amafaranga yatanze no kwishyurwa indishyi zitandukanye. Urukiko rwemeje ko amasezerano hagati yabo asheshwe kubera ko imodoka Agaba yatumiye idahuye n'iyi impande zumvikanyeho, runamutegeka kwishyura Kamana 9.516.100 frs. Agaba yajurirye Urukiko Rukuru rw'Ubucuruza avuga ko Urukiko rw'Ubucuruza rwa Nyarugenge rwirengagije amasezerano impande zombi zagiranye, ko kandi Urukiko rwitiraniye no ya serie na no ya chassis kandi chassis igaragara mu masezerano bagiranye ndetse no kuri bill of loading; ko ndetse rwageneye Kamana indishyi kandi nta makosa yakoze kuko ibyo bumvikanye yabyubahirije uko byakabaye. Kamana we avuga ko ibyo Agaba avuga atari ukuri kuko numero za chassis Agaba yitangira zitandukanye n'izikubiye mu nyandiko yo kuri internet yamwandikiye yariho n'amafoto y'imodoka yagombaga kumutumiriza; ko rero amasezerano Agaba yitwaza ajyanye n'amafaranga y'inyongera yagombaga gukura imodoka Dar-Es-Salaam igera i Kigali, ari ho yashyizemo izindi numero za chassis zidahuye n'iza mbere. Yanasabye mu bujurire bwurirye

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kubundi guhabwa amafaranga y'urwunguko imodoka yagombaga kuba yarakoreye ndetse no gusubizwa 715\$ yahaye Agaba amubwira ko agiye kuzana imodoka yamutumye. Incamake y'icyemezo: 1. Mu masezerano y'itumiza ry'imodoka hanze, iyo umwe mu baburanyi yiyemereye e-mail na attachement yayo biranga imodoka ko ari we wabyohereje mugenzi we, kandi bikaza kugaragara ko imodoka mugenzi we yari yamutumye itandukanye n'iyi yamuzaniye, biba bivuze ko yishe amasezerano impande zombi zagiranye. Bityo ingingo y'ubujurire ya agaba akaba nta shingiro ifite.

2. Mu isabwa ry'indishyi, amafaranga y'ikurikirana rubanza n'igihembo cy'Avoka, ntatangwa nk'uko yasabwe n'umuburanyi mu gihe nta kimenyetso cyangwa ikindi ashingiraho ayasaba; muri icyo gihe Urukiko ruyagena mu bushishozi bwarwo.
3. Iyo umuburanyi agaragaje ko hari andi mafaranga yahaye uwo bagiranye amasezerano agize aho ahurira n'ayari ateganyijwe mu masezerano yasheshwe, iyo ayasabye arayahabwa. Bityo Agaba akaba agomba gusubiza Kamana 715\$ kuko atari mu masezerano impande zombi zagiranye Ubujurire nta shingiro bufite. icyemezo cy'Urukiko rubanza kigomba kubahirizwa ku bisigaye. Amagarama aherereye ku uwajuriye. Amategako yashingiweho: Itegeko no 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64. Itegeko no 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 110. Nta

manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Mu ntangiriro za 2012, Kamana Jean Damascene yagiranye amasezerano atanditse na Agaba Silver amusaba kumutumiriza imodoka yo mu bwoko bwa Toyota Land Cruiser, yari ifite plaque BA Z 3851 na no de chassis JT 90LC01820399, akaba yarohererejwe amafoto yayo na mugenzi wa Agaba witwa Mwizerwa Aimable. Kamana akomeza avuga ko kuwa 16/08/2012, yishyuye amayero (euros) 8000, ahwanye na 6.080.000frs. Imodoka igeze Dar- Es-Salaam, Agaba yamusabye kongera amafaranga yo kwishyura umuchaufeur uyivana yo akayigeza i Kigali, ndetse na transport yayo, maze amuha 1.936.100 frs. Avuga ko icyamutunguye ari uko Agaba yamutumyeho amubwira ko imodoka yageze Magerwa, yahagera agasanga imodoka yamuzaniye itandukanye cyane n'iyi yamutumye bari bamugaragarije ku mafoto. Agaba we avuga ko imodoka Kamana yamutumye igaragara kuri Bill of loading, ndetse no ku masezerano impande zombi zasinye kuwa 6/5/2013.

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[2] Mu rubanza rwaciwe n'Urukiko rw'Ubucuruza rwa Nyarugenge kuwa 02/10/2013, Urukiko rwemeje ko amasezerano yabaye hagati ya Agaba K. Silver na Kamana Jean Damascene yo gutumiza imodoka yo mu bwoko bwa Toyota Landcruiser (imodoka yakoze y'I Burayi), asheshwe kubera imodoka Agaba yatumije idahuye na commande yatanze. Rwemeje ko Agaba K Silver agumana imodoka Toyota Landcruiser iri Magerwa nubwo yanditse kuri Kamana J. Damascene (ifite no ya chassis JT 111GJ9500059089). Rwemeje kandi ko Agaba K. Silver agumana imodoka Toyota Landcruiser, ifite no ya chassis JT111GJ9500059089, kandi akishyura Kamana J. Damascene 9.516.100 frs. [3] Agaba Silver ntiyishimiye imikirize y'uru rubanza, arujuririra muri uru Rukiko, ku mpamvu z'uko urukiko rwirengagije amasezerano impande zombi zagiranye, rukavuga ko imodoka Agaba yazaniye Kamana itandukanye n'iyi bari bemeranyijweho; ko kandi Urukiko rwitiranije no ya serie na no ya chassis kandi chassis igaragara mu masezerano bagiranye ndetse no kuri bill of loading; Ko ndetse rwageneye Kamana indishyi zingana na 1.500.000frs kandi nta makosa Agaba yakoze kuko ibyo bumvikanye yabyubahirije uko byakabaye. Muri uru rubanza, uru Rukiko rugiyeye gusuzuma niba imodoka bumvikanye ari yo Agaba yazaniye Kamana koko, rusuzume niba indishyi zatanzwe zari zikwiye koko ndetse runasuzume niba indishyi zisabwa mu rubanza rw'ubujurire zifite ishingiro koko. II. ISESENGURA RY'URUBANZA

1. Ese imodoka yazanywe na Agaba Silver iri muri Magerwa ni yo impande zombi zari bumvikanye koko? [4] Mu iburanisha ryo kuwa 07/01/2013, Agaba yabwiye urukiko ko urukiko rwirengagije amasezerano impande zombi zagiranye, rukagendera ku mafoto Kamana yagaragaje kandi imodoka itarangwa n'amafoto ahubwo irangwa na numero de chassis igaragara mu masezerano bagiranye. Akomeza avuga ko Urukiko rwavuze ko imodoka yazanywe inyuranyije n'iri kuri bon de commande, ko iyo yabonye muri dosiye atazi uwayikoze, kuko we, aho yatumije imodoka nta bon de commande bamuhaye. [5] Kamana we avuga ko ibyo Agaba avuga atari ukuri, kuko contrat yo kuwa 6/05/2013 igaragaramo numero de chassis zitangwa na Agaba, yaje nyuma y'amasezerano atanditse yo kuwa 16/08/2012, aho Agaba yabwiye Kamana ko yamuhaye 6.080.000 frs ahwanye n'amayero 8000,

akamuzanira imodoka mu gihe cya vuba. Kamana atangiye kumwishyuza, Agaba yandikiye Kamana kuri internet kuwa 17/12/12 amugaragariza ibiranga imodoka ifite no de chassis JT 90 RC 01820399, bagaragaza ko igiciro cyayo ari amayero 8000, aza no kumwoherereza amafoto y'imodoka Toyota Land cruiser ifite plaque BA Z 3851, bigahura n'ibiri muri attachement Agaba ahakana ko atari we wayohereje, biranga imodoka. Iyo attachment bayeretse Urukiko). Kamana akomeza avuga ko kuwa 6/5/2013, Agaba yamusinyishije amasezerano yanditse ku mafaranga y'inyongera yagombaga gukura imodoka Dar-Es-Salaam iyigeza i Kigali, ko muri ayo masezerano ari ho Agaba yashyizemo izindi numero za chassis zidahuye n'iza mbere. Urukiko rwaje gufata umwanya wo gushaka kuri internet email Agaba yohereje Kamana iriho attachement igaragaza ibiranga imodoka, ariko we akaba ayihakana. Rumaze kuyibona, Agaba yemeye ko iyo attachment ari we wayohereje Kamana koko, asaba kureka urubanza ashingiye ku ngingo ya 131 CPCCSA, ariko Kamana arabimwangira, ashingiye ku ngingo ya 133 CPCCSA.

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- [6] Ingingo ya 110 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko: "Ukwiyeemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo atsindisha uwayavuze." Kuba mu iburanisha ry'uru rubanza, Agaba Silver yaragezaho akemera ko e-mail na attachement yayo biranga imodoka Kamana yari yashimye ko ari we wayimwoherereje, ikaba itandukanye cyane n'iyi yamuzaniye iri muri Magerwa, uru Rukiko rurasanga Agaba yemera ko imodoka yari yumvikanye na Kamana atari yo yamuzaniye, bivuga ko yishe amasezerano impande zombi zagiranye hashingiwe ku ngingo ya 64 y'Itegeko rigenga amasezerano, iteganya ko: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Agomba kubahirizwa nta buryarya." Impamvu y'ubujurire Agaba ashingiraho ko urukiko rwirengagije amasezerano impande zombi zagiranye rero, ikaba nta shingiro ifite.
2. Ese indishyi zatanzwe zari ngombwa koko? [7] Agaba Silver aravuga ko indishyi z'ikurikirana rubanza n'igihembo cy'avoka zatanzwe mu rubanza rujuririrwa nta kibazo azifiteho. Hashingiwe ku ngingo ya 110 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo yavuzwe haruguru, uru Rukiko rurasanga indishyi z'ikurikirana rubanza n'igihembo cy'avoka zatanzwe ku rwego rwa mbere Agaba azemera akaba agomba kuzitanga, na ho indishyi za 10.950.000 frs zikaba ziri busuzumwe mu bujurire bwuririye ku bundi kuko ariho Kamana yazisabiye.
3. Ese indishyi Kamana asaba mu bujurire bwuririye ku bundi zifite ishingiro? [8] Kamana aravuga ko Urukiko rwanze kumugenera 10.950.000 frs y'urwunguko aba yarabonye kuri iriya modoka yari yatumiye ngo kuko atashoboraga kugaragaza ibikorwa by'ubucuruzi yagombaga gushoramo iyo modoka, rukirengagiza ko atuye mu karere k'ibirunga aho ubukerarugendo bwateye imbere, ari na cyo gitekerezo gikomeye cyatumye atumiza iyi modoka, aho yagombaga kujya ikorera byibura 30.000 frs ku muni, ikaba irengeje umwaka ntayo abonye, akaba atari gutumiza imodoka nk'iriya yo kugenderamo gusa. Ku mwaka wose

ushize ikaba yagombaga kuba imaze gukorera 30.000 frs x 365 jrs= 10.950.000 frs, ubu akaba angana n'igihombo yatejwe. Agaba we avuga ko indishyi za 10.950.000 frs atazemera kuko Kamana nta kimenyetso yazigaragarije kandi akaba nta transport akora. Uru Rukiko rurasanga izo ndishyi zikwiriye gutangwa, ariko zigatangwa mu bushishozi bw'Urukiko kuko nta kigaragaza ko iyo modoka yari kuba ifite akazi iminsi yose y'umwaka. [9] Kamana avuga kandi ko yagaragaje ndetse n'amadorari 715 yatangiye imbere ya polisi Agaba amubwira ko agiye kuzana imodoka yamutumye, akayasinyira imbere ya polisi, ariko urukiko ntiruyiteho, ko agomba kuyasubizwa kuko imodoka yamutumye na we ubwe yiyemerera ko atari yo yamuzaniye, kandi akaba ayo madolari atari mu masezerano. Agaba we ntacyo yavuze kuri aya madolari, bityo uru Rukiko rukaba rusanga agomba kuyasubiza Kamana kuko atari mu masezerano impande zombi zagiranye. [10] Kamana arasaba kandi indishyi z'akababaro za 2.000.000 frs kubera gukomeza gushorwa mu manza nta mpamvu, na 1.000.000frs y'igihombo cy'avoka ku rwego rw'ubujurire. Uru Rukiko rurasanga ruri buyagene mu bushishozi bwawo, kuko nta kigaragaza ko Kamana ari yo akwiriye koko.

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III. ICYEMEZO CY'URUKIKO [11] Urukiko Rukuru rw'Ubucuruzi: Rwemeye kwakira ubujurire rwashyikirijwe na Agaba Silver. Rwemeje ko nta shingiro bufite. Rukijije ko Kamana Jean Damascene atsinze, ko Agaba Silver atsinzwe. Rutegetse Agaba Silver kwishyura Kamana Jean Damascene 500.000frs buri kwezi mu mezi cumi n'atanu ashize ataramuha imodoka ye, akamuha 500.000 frsx15=7.500.000frs iyo modoka iba imaze gukorera, akayatanga mu gihe cy'ukwezi kumwe uru rubanza rubaye itegeko, atayatanga akavanwa mu bye ku ngufu za Leta. Rutegetse Agaba Silver kwishyura Kamana Jean Damascene 1.500.000frs akubiyemo indishyi z'akababaro n'igihombo cy'avoka ku rwego rw'ubujurire, akayatanga mu gihe cy'ukwezi kumwe uru rubanza rubaye itegeko, atayatanga akavanwa mu bye ku ngufu za Leta. Rutegetse Agaba Silver gusubiza Kamana Jean Damascene 715\$ yasinyiye ko ayamuhaye imbere ya polisi, akayatanga mu gihe cy'ukwezi kumwe uru rubanza rubaye itegeko, atayatanga akavanwa mu bye ku ngufu za Leta. Rutegetse Agaba Silver kwishyura 10.600frs ahwanye n'ibyakozwe muri uru rubanza, akayatanga mu gihe cy'ukwezi kumwe uru rubanza rubaye itegeko, atayatanga akavanwa mu bye ku ngufu za Leta. Rutegetse ko ku bindi hubahirizwa icyemezo cy'Urukiko mu rubanza R Com 0565/13/TC/Nyge.

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Prepared on 11 October 2026 · Esheria