

RWANDA / JUDGMENT

AATM CONSTRUCTION Ltd v. TUYAERTS

RCOMA 0005/15/CS

COURT

Supreme Court

DECIDED

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AATM CONSTRUCTION Ltd v. TUYAERTS

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Text

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ATM CONSTRUCTION Ltd v. TUYAERTS [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0005/15/CS (Hatangimbabazi, P.J., Mukamulisa na Karimunda, J.) 22 Mutarama 2016] Amategeko agenga ububasha bw'inkiko – Ubujurire – Ibirego by'irangizwa ry'imanza zaciwe n'inkiko zo mu mahanga – Ingaruka zo kuba urubanza rusabirwa kurangirizwa mu Rwanda hararezwe utaragomba kuregwa – Kuba urubanza rusabirwa kurangirizwa mu Rwanda rwaciwe n'inkiko zo mu mahanga rugaragaza ko harezwe utaragombaga kuregwa bituma rutemerwa kurangirizwa mu Rwanda kuko icyo icyemezo gisabirwa kurangirizwa mu Rwanda kinyuranyije n'amahame ashingiweho n'amategeko y'u Rwanda – Itegeko Ngenga n° 06/2012/OL ryo kuwa 14/09/2012 rigenga imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi, ingingo ya 13. Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Indishyi – Ingaruka zo kuba hagenwa ry'indishyi mu manza ziba kurangirizwa mu Rwanda – Amafaranga agenwa mu manza ntashobora guhindura urubanza cyangwa icyemezo cyafatiwe ahandi ahubwo agenwa hitawe kureba icyo uyasaba yangirijwe – Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa , ingingo ya 258. Incamake y'icyemezo: ATM Construction Ltd yareze

TUYAERTS mu Rukiko rw'Ubucuruzi rwa Bukavu isaba ko yamwishyura umwenda ivuga ayibereyemo. Perezida wurwo Rukiko yategetse TUYAERTS kwishyura uwo umwenda ungana na USD 612.764. Nyuma yaho ATM Construction Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi irusaba ko icyo icyemezo kirangirizwa mu Rwanda (exequatur) ivuga ko cyubahirije amategeko y'igihugu cyafatiwemo (DRC) ndetse n'amategeko ndemyagihugu y'u Rwanda. TUYAERTS yasabye Urukiko ko ikirego cye kitakwagirwa kubera ko kitubahirije ibiteganywa n'amategeko y'u Rwanda, ko ndetse n'iyo cyakwagirwa, Urukiko rwakwemeza ko nta shingiro gifite. Maze urukiko rwemeza ko icyo kirego cyakirwa ariko nta shingiro gifite; rutegeka ATM Construction Ltd guha TUYAERTS indishyi z'akababaro, igihembo cy'Avoka ndetse n'amafaranga y'ikurikiranarubanza. ATM Construction Ltd yajuririye iyo imikirize muri Urukiko avuga ko Urukiko Rukuru rw'Ubucuruzi rwarengereye rugaca urubanza mu mizi kandi rwari rwasabwe gutegeka ishyirwa mu bikorwa ry'icyemezo cy'urubanza rwamaze gucibwa ndetse ko ibyo kuba rwaremeje ko amasezerano yabaye hagati ya ATM CONSTRUCTION Ltd na ATN CONSTRUCTION Sprl ariyo yagombaga kohererezwa inyemezabwishyu aho kuzoherereza Tuyaerts, asanga bitari bikwiye ko umucamanza ariwe ubigaragaza kandi bitaravuzwe n'umuburanyi. Ivuga kandi ko impamvu yareze Tuyaerts nuko ariyo bagiranye amasezerano kugiti cye ashingiye ku icyizere bari bafitanye. Ivuga ko inenga umucamanza kuko yavuze ko Tuyaerts ari umunyamigabane w'iyo sosiyete hashingiwe kuri sitati za ATM Construction Ltd utaragombagwa kuregwa muri RDC cyane ko ababuranyi bombi babarizwa mu Rwanda. Ivuga kandi ko itaramureze nk'umunyamigabane ahubwo yaramureze kimwe nk'abandi bafatabuguzi bose, ko impamvu yatumye amurega muri RDC aruko ariho hari imashini zagombaga gutanga umusaruro wagombaga kuvamo ubwishyu kandi akaba atuye Kinshasa.

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Tuyaerts avuga ko ibisobanuro byatanze n'Urukiko Rukuru rw'Ubucuruzi kuri iki kibazo bihagije ko ahubwo bitangaje kubona kubona ATM Construction Ltd yamureze kandi bose batuye mu Rwanda na sosiyete imurega ikaba ari inyarwanda nk'aho mu Rwanda nta nkiko zihari. Avuga kandi ko ibimenyetso aregesha birimo Bordereaux d'Expédition zigaragaza ko imashini zohererejwe sosiyete yo muri RDC, akaba rero Tuyaerts atari kuregwa ku giti cye kuko atariwe munyamigabane wenyine wiyo sosiyete. Akomeza yiregura avuga ko ashingiye kuri raporo igaragaza uko imali ATM Construction Ltd ihagaze igaragaza ko nta mwenda ayifitiye. Kubijyanye n'indishyi zajyewe mu rubanza rujuririrwa ATM Construction Ltd ivuga ko yanenze uburyo umucamanza yafashe icyemezo ku ndishyi nka accessoire kandi bitabaho ku birego bijyanye no gusaba gushyira mu bikorwa ibyemezo byafatiwe ahandi kuko byatuma urubanza rusabirwa gusubirwamo ruhinduka. Avuga kandi ko urukiko rwageneye Tuyaerts indishyi adakwiye kubera ko atashowe mu manza ku maherere, ko ahubwo ariwe ukwiye guha ATM Construction Ltd indishyi kubera ko yatumye ijya mu manza. Tuyaerts nawe yasabye urukiko gutegeka ATM Construction Ltd kumuha indishyi z'akababaro, igihembo cy'Avoka n'amafaranga y'ikurikiranarubanza. Incamake y'icyemezo: 1. Kuba urubanza rusabirwa kurangirizwa mu Rwanda rwaciwe n'inkiko zo mu mahanga rugaragaza ko harezwe utaragombaga kuregwa bituma rutemerwa kurangirizwa mu Rwanda kuko icyo icyemezo gisabirwa kurangirizwa mu Rwanda

kinyuranyije n'amahame ashingiweho n'amategoko y'u Rwanda.

2. Uwishyuzwa nta mwenda afite kuko inyemezabwishyu umwishyuzwa ivuga ko ari ikimenyetso zitavuguruzwa impapuro zohereje imashini zikanaca ku imipaka.
3. icyemezo gisabirwa kurangirizwa mu rwanda nticabyemererwa igihe ibiburanwa atariho biri. Uwareze ntiyasaba ko icyemezo cy'urukiko rw'ibukavu cyarangirizwa mu Rwanda kandi atariho ubwishyu bugomba kuva kuko izo mashini zivugwa zihereye muri RDC.
4. Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse. Kuba hararezwe utaragombaga kuregwa bituma agenerwa indishyi mu bushishozi bw'urukiko kuko amafaranga yatse atayatangira ibimenyetso.
5. Amafaranga agenwa mu manza ntashobora guhindura urubanza cyangwa icyemezo cyafatiwe ahandi ahubwo agenwa hitawe kureba icyo uyasaba yangirijwe. Ubujurire nta shingiro bufite. Amagarama y'urubanza herereye ku uwajuriye. Amategoko yashingiweho: Itegeko Ngenga n° 06/2012/OL ryo kuwa 14/09/2012 rigenga imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi, ingingo ya 13 Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa , ingingo ya 258

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Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Bukavu, muri Repubulika iharanira Demokarasi ya Congo (DRC), ATM Construction Ltd ihagarariwe na Mazimpaka Augustin irega Etienne Tuyaerts Joseph Marie Ghislain, isaba icyemezo cy'urukiko kimuhatira kuyishyura umwenda ivuga ko ayibereyemo. Perezida w'urwo Rukiko yafashe icyemezo kimutegeka kuyishyura USD 612.764. [2] Ishingiye kuri icyo cyemezo, ATM Construction Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi irusaba gutegeka ko icyo cyemezo kirangirizwa mu Rwanda (exequatur) ivuga ko cyubahirije amategoko y'igihugu cyafatiwemo (DRC) ndetse n'amategoko ndemyagihugu y'u Rwanda. Etienne Tuyaerts Joseph Marie Ghislain ku ruhande rwe, yasabye ko ikirego kitakwagirwa kubera ko kitubahirije ibiteganywa n'amategoko y'u Rwanda, ko ndetse n'iyi cyakwagirwa, Urukiko rwakwemeza ko nta shingiro gifite. [3] Urukiko Rukuru rw'Ubucuruzi rwasanze ikirego gikwiye kwakirwa ariko rugisuzumye rwemeza ko nta shingiro gifite, rutegeka ko icyemezo gisabirwa kurangirizwa mu Rwanda kitahangirizwa, rutegeka ATM Construction Ltd guha Etienne Tuyaerts Joseph Marie Ghislain indishyi z'akababaro zihwanye na 150.000 Frw, 150.000 Frw y'ikurikiranarubanza hamwe n'amafaranga y'igihembo cya Avoka ahwanye na 500.000 Frw. [4] ATM Construction Ltd ntiyishimiye imikirize y'urubanza mu Rukiko Rukuru rw'Ubucuruzi maze ijuririra mu Rukiko rw'Ikirenga. Iburanisha ry'urubanza ryabereye mu ruhamwe kuwa 01/12/2015 ATM Construction Ltd ihagarariwe na Mazimpaka Augustin wari witabye aburanirwa na Me Masumbuko Nde Emile naho Etienne Joseph Tuyaerts Marie Ghislain ahagarariwe na Me Rutagengwa Jean Damascène.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

- a) Kumenya niba icyemezo n°028/2014 cyafashwe n'Urukiko rw'Ubucuruzi rwa Bukavu, Kivu y'Amajyepfo ho muri Repubulika iharanira Demokarasi ya Congo (DRC) cyarangirizwa mu Rwanda. [5] Me Masumbuko Nde Emile uburanira ATM Construction Ltd avuga ko Urukiko Rukuru rw'Ubucuruzi rwarengereye ruca urubanza mu mizi kandi rwari rwasabwe gutegeka ishyingira mu bikorwa ry'icyemezo cy'urubanza rwamaze gucibwa. Anavuga ko kuba rwaremeje ko amasezerano yabaye hagati ya ATM Construction Ltd na ATN Construction Sprl bityo ko ariyo yagombaga kohererezwa factures aho kuzoherereza Etienne Joseph Tuyaerts Marie Ghislain, asanga bitari bikwiye ko umucamanza ariwe ubigaragaza kandi bitaravuzwe n'umuburanyi. Yongeraho ko amasezerano yabaye hagati ya ATM Construction Ltd na Etienne Joseph Tuyaerts Marie Ghislain ashingiye ku cyizere abayagiranye bari bafitanye kandi ko Etienne Joseph Tuyaerts Marie Ghislain yayakoze ku giti cye, ari nayo mpamvu ari nawe warezwe.

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- [6] Anenga kandi umucamanza kuba yaravuze ko hashingiye kuri statuts za ATM Construction Ltd, Etienne Joseph Tuyaerts Marie Ghislain nk'umunyamigabane w'iyi Sosiyete atagombaga kuregwa muri DRC cyane cyane ko ari urega n'uregwa babarizwaga mu Rwanda, ko urwo Rukiko rwanirengagije ko Etienne Joseph Tuyaerts Marie Ghislain atarezwe nk'umunyamigabane ahubwo yarezwe nk'umufatabuguzi kimwe n'abandi bose. Anavuga ko Etienne Joseph Tuyaerts Marie Ghislain yarezwe muri DRC kubera ko imashini yari yarahawe ariho ziri, akaba ari naho yakoreraga imirimo ndetse n'umusaruro wagombaga kuvamo ubwishyu ukaba ariho wacungirwaga kuko sosiyete ATN Construction Sprl, Etienne Tuyaerts Joseph Marie Ghislain abereye umuyobozi mukuru yakoze iyo mirimo ariho ifite icyicaro kandi nawe afite residence muri DRC, Kinshasa. [7] Me Rutagengwa uburanira Etienne Tuyaerts Joseph Marie Ghislain asubiza ko usibye kuba ibisobanuro byatanze n'Urukiko Rukuru rw'Ubucuruzi kuri iki kibazo bihagije, asanga bitangaje kubona ATM Construction Ltd yaragiye kurega Etienne Joseph Tuyaerts Marie Ghislain muri DRC kandi bose batuye mu Rwanda na Sosiyete imurega ari inyarwanda nk'aho mu Rwanda nta nkiko zihari. Asanga ahubwo ari ikigaragaza ko Mazimpaka Augustin uyobora ATM Construction Ltd ahunga ukuri kuko n'ibimenyetso aregesha birimo bordereaux d'expédition bigaragaza neza ko imashini zohererejwe Sosiyete yo muri DRC, kandi akaba atari Etienne Joseph Tuyaerts Marie Ghislain munyamigabane wenyine wayo ku buryo ariwe wari kuregwa ku giti cye. [8] Me Rutagengwa Jean Damascène akomeza avuga ko nta masezerano uwo aburanira yigeze agirana na ATM Construction Ltd kuko hari impapuro zigaragaza ko ibintu byohererejwe ATN Construction Sprl nkuko ATM Construction Ltd yivugiyemo mu iburanisha mu rubanza rujuririrwa aho yemeje ko yagiranye amasezerano na ATN Construction Sprl. Avuga ko kuba ubu abo baburana bahindura imvugo bakavuga ko nta masezerano izo sosiyete zagiranye, ari ukwivuguruza. [9] Akomeza avuga ko kuba Mazimpaka Augustin yaragiye gushaka ordonnance muri DRC abiterwa no kutumvikana bagiranye dore ko baburanye imanza zigera kuri 5 mu Rwanda kandi zose azitsindwa. Anasanga factures Mazimpaka Augustin avuga ko zigaragaza ko bumvikanye azigaragaje mu bujirire, bityo ko

nta gaciro zahabwa kuko ari izo yihimbiye. Anongeraho ko nta n'inyungu yihariye Mazimpaka afite kuri ATM Construction kurusha Etienne Tuyaerts Joseph Marie Ghislain n'abandi banyamigabane. [10] Akomeza asobanura ko ikindi kigaragaza ko nta mwenda Etienne Tuyaerts Joseph Marie Ghislain afitiye ATM Construction ari uko hari raporo igaragaza uko imari ya ATM construction ihagaze (Rapport sur l'Etat financier) Etienne Tuyaerts Joseph Marie Ghislain nk'umunyamigabane yashyikirijwe na Mazimpaka Augustin (umuyobozi wa ATM) ikaba itagaragaza ko hari umwenda afitiye iyo sosiyete. [11] Me Masumbuko Nde Emile uburanira ATM Construction Ltd yasobanuye ko nyuma yo kumvikana na Etienne Joseph Tuyaerts Marie Ghislain, yohereje imashani muri DR Congo mu izina rya ATM Construction Ltd aba ari nawe ushinzwe nk'umuyobozi wayo (Administrateur) kandi nta burenganzira abihereye, ko ATM Construction Ltd yabisuzumye ikabirekera uko kuko yabonaga ntacyo biyitwaje cyane ko hari hakiri ubwumvikane hagati yabo.

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- [12] Me Rutagengwa Jean Damascène nawe asanga ibyo ATM Construction Ltd ivuga nta bimenyetso ibitangira. Ko ibimenyetso biri muri dosiye ari bordereaux d'expédition ko kandi zigaragaza ko ibintu byoherejwe na ATM Construction Ltd byoherezwe na ATN Construction Bukavu. Arangiza avuga ko icyemezo gisabirwa gushyirwa mu bikorwa kitagaragaza icyashyingiweho gifatwa ndetse we agasanga kitakwizwa ashingiye aho cyatangiye ko uwagishakaga wese yakibona. UKO URUKIKO RUBIBONA [13] Ingingo ya 13 y'Itegeko Ngenga n° 06/2012/OL ryo kuwa 14/09/2012 rigenga imiterere, imikorere n'ububasha by'inkiko z'ubucuruze iteganywa ko „Urukiko Rukuru rw'Ubucuruze ruburanisha ku rwego rwa mbere ibirego bisaba kurangiza mu Rwanda ibyemezo n'imanza z'ubucuruze, iz'imari, iz'imisoro n'amahoro zafashwe n'inkiko zo mu mahanga. Isuzumwa ry'urwo rubanza rikorwa harebwa ko urubanza rwaciriye mu mahanga rutanyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiyeho n'amategeko y'u Rwanda“. [14] Dosiye igaragaza ko ATM Construction Ltd yareze Etienne Tuyaerts Joseph Marie Ghislain nk'umuntu ku giti cye nyamara nk'uko umucamanza wo mu Rukiko Rukuru rw'Ubucuruze yabisobanuye, imashini zivugwa zoherejwe na ATM Construction Sprl zoherejwe na ATN Construction Sprl nkuko bigaragazwa na bordereaux d'expédition, ku bw'izo mpamvu, ATM Construction Ltd yareze Etienne Tuyaerts Joseph Marie Ghislain nk'umuntu ku giti cye, aho kurega uwoherejwe ibintu, ikaba yarareze uwo itagombaga kurega, ari yo mpamvu icyemezo yasabiye kurangirizwa mu Rwanda kinyuranyije n'amahame ashingiyeho n'amategeko y'u Rwanda avugwa mu ngingo ya 13 y'Itegeko n° 06/2012/OL ryavuzwe haruguru, nk'uko Urukiko Rukuru rw'ubucuruze rwabisobanuye aho rwagaragaje ko urega agomba kwerekana ko yareze ugomba kuregwa koko, ibyo isaba ikaba itabyemererwa. [15] Byongeye kandi, factures ATM Construction Ltd ivuga ko ari zo zigaragaza umwenda uwarezwe ayibereyemo ubwazo ntizafatwaho nk'ikimenyetso kivuguruzwa impapuro zohereje imashini zanafatwa ku mipaka. [16] Urukiko rusanga nanone icyemezo gisabirwa kurangirizwa mu Rwanda kigaragaza ko Etienne Tuyaerts Joseph Marie Ghislain warezwe ndetse na ATM Construction Ltd irega bose baherereye mu Rwanda. Mu miburanire ya ATM Construction Ltd ikavugaga ko

yamureze muri DRC kubera ko ariho imashini ziri ndetse ko ariho hagombaga kuva n'ubwishyu, bikaba bitumvikana na none impamvu ATM Construction Ltd igaruka igasaba ko icyo cyemezo kirangirizwa mu Rwanda mu gihe atariho ubwishyu bugomba kuva.

- b) Ku bijyanye n'indishyi zisabwa na buri ruhande. [17] Me Masumbuko Nde Emile avuga ko anenga na none umucamanza kuba yarafashe icyemezo ku ndishyi nka accessoire kandi bitabaho ku birego bijyanye no gusaba gushyira mu bikorwa ibyemezo byafatiwe ahandi "exequatur", kuko byatuma urubanza rusabirwa gusubirwamo ruhinduka. Anavuga ko Urukiko rwageneye Etienne Tuyaerts Joseph Marie Ghislain indishyi adakwiye kubera ko atashowe mu manza ku maherere, ko ahubwo ariwe ukwiye guha ATM Construction Ltd indishyi kubera ko yatumye ijya mu manza, indishyi zose agomba kuyiha nk'uko yazisabye zikaba zihwanye na 8.550.000 Frw.

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- [18] Me Rutagengwa Jean Damascène uburanira Etienne Tuyaerts Joseph Marie Ghislain nawe yasabye ko Urukiko rwategeka ATM Construction Ltd kumuha indishyi z'akababaro kubera gusiragizwa mu manza zihwanye na 5.000.000 Frw, amafaranga y'ikurikiranarubanza ahwanye na 800.000 Frw ndetse na 5.000.000 Frw y'igihembo cya Avoka. UKO URUKIKO RUBIBONA [19] Ingingo ya 258 y'igitabo cy'urwunge rw'amategako mbonezamubano iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse. [20] Urukiko rusanga indishyi z'akababaro Etienne Tuyaerts Joseph Marie Ghislain asaba azikwiye mu gihe byagaragaye ko ATM Construction Ltd itagombaga kumurega, ariko kuko umubare w'amafaranga asaba atawutangira ibimenyetso, yagenerwa 150.000 Frw nk'uko yemejwe n'Urukiko Rukuru rw'Ubucuruzi. Ku bijyanye n'andi mafaranga, akwiye nanone kugenerwa ayategetswe n'Urukiko Rukuru rw'Ubucuruzi, ni ukuvuga 150.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka kuko ari mu rugero rukwiye, hakiyongeraho amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego gihwanye na 500.000 Frw agenwe mu bushishozi bw'Urukiko. Amafaranga yose ATM Construction Ltd igomba guha Etienne Tuyaerts Joseph Marie Ghislain akaba ahwanye na 1.300.000 Frw. [21] Urukiko rusanga nanone imvugo ya ATM Construction Ltd ko nta ndishyi zikwiye kugenwa mu manza nk'izi nta gaciro yahabwa, kubera ko ntaho amafaranga yagenwe ahindura urubanza cyangwa icyemezo cyafatiwe ahandi, ahubwo nk'uko byasobanuwe, yagenwe hitawe kureba ko hari ibyo Etienne Tuyaerts Joseph Marie Ghislain warezwe atagombaga akwiye guhabwa kubera imanza zabaye. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ubujurire bwa ATM Construction Ltd nta shingiro bufite; [23] Rutegetse ko imikirize y'urubanza RCOM 001/15/HCC rwajuririwe idahindutse usibye ku bijyanye n'indishyi zarugenwemo (800.000 Frw) ziyongereyeho 500.000 Frw y'igihembo cya Avoka ku rwego rw'ubujurire; [24] Rutegetse ATM Construction Ltd guha Etienne Tuyaerts Joseph Marie Ghislain indishyi zose hamwe zihwanye na miliyoni imwe n'ibihumbi magana atatu (1.300.000 Frw) nkuko yasobanuwe hejuru; [25] Rutegetse ATM Construction Ltd gutanga amagarama y'urubanza ahwanye na 100.000 Frw.

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