

RWANDA / JUDGMENT

BCR Ltd v. SICA

RCOMA 0006/10/CS

COURT

Supreme Court

DECIDED

1 April 2013

CASE / FILE NUMBER

RCOMA 0006/10/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

BCR Ltd v. SICA

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2013-04-01
- Case/document no.: RCOMA 0006/10/CS
- Collection: Supreme Court

Text

Page 1

BCR LTD v. SICA [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0006/10/CS (Mugenzi, P.J., Mukamulisa na Mugenzi, J.) 01 Mata 2013] Amategeko agenga ubucuruzi – Inshingano y'umwishingizi – Kureka kuba umunyamuryango ntibibuza uwishingiye sosiyete ku giti cye gukomeza inshingano yari yafashe z'ubwishingizi.. Amategeko agenga imiburanishirije y'imanza z'ubucuruzi – Ibidashingirwaho mu guca urubanza – Umucamanza ntashobora gushingira icyemezo cye ku bitagaragajwe mu iburanisha; ntashobora kandi no guca urubanza ashingiye ku byo aruziho ku giti cye – Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, izubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 8. Incamake y'Ikibazo: SICA yahawe inguzanyo na Banki y'Ubucuruzi y'u Rwanda, (BCR Ltd) yishingirwa n'abanyamuryango bayo. Nyuma yuko SICA itabashije kwishura neza uwo mwenda BCR yarayireze mu nkiko hamwe n'abishingizi bayo isaba kwishurwa 84.891.819 frw n'inyungu. Urukiko Rukuru rw'Ubucuruzi rwategetse SICA gufatanya n'abishingizi bayo bakishura BCR amafaranga 17.454.187 Frw, icyo cyemezo bagishingiye ku kuba BCR itaritwaye nk'umunyamuga mu micungire ya dosiye ya SICA. BCR yajuririye Urukiko rw'Ikirenga ivuga ko urukiko rubanza rwaratandukiranye rushingira icyemezo cyarwo ku kitaburanywe ho, rukanatanga ibitasabwe mu

rubanza kubera ko rwemeje ko SICA itari ifite ubushobozi bwo kwishyura mu 1994 kandi bitaburanweho, kandi ko rwategetse SICA kwishyura umwenda wayo mu gihe cy'amezi icumi n'abiri rutabisabwe. Mu kwiregura kwabo abaregwa bavugaga ko bagaragarije rubanza ko SICA yasahuwe igasigara iheruheru ku buryo kwishyura bitari bigishoboka muri icyo gihe cya jenocide yo muri 1994, bityo Urukiko rukaba rwaciriye urubanza ku cyari cyaburanweho kandi ko urubanza rwaciye hashingiwe ku miburanire y'impande zombi Ngirumpatse yatanze bujirire bwuririye ku bwa BCR avugaga ko akwiye gukurwa muri uru rubanza kuko yari yarayivuyemo iburanisha rigakomeza haburana BCR, SICA n'abayifitemo imigabane ari nabo bishingizi bayo. BCR ikavugaga ko Ngirumpatse atigeze yandika asaba kuva muri SICA Incamake y'Icyemezo: 1. Kuba uwishyuzwa yasobanuriye urukiko rubanza ko itarishyuye bitewe ni bihe bibi bya jenocide na banki yamuhaye inguzanyo ikagira icyo ibivugaho, bituma impamvu y'ubujirire bwayo buvugaga ko urubanza rwashingiye ku bitaraburanweho itagira ishingiro.

Page 2

2. Kureka kuba umunyamuryango ntibibuza uwishingiye sosiyete ku giti cye gukomeza inshingano yari yafashe z'ubwishingizi. Ubujirire nta shingiro bufite;. Ubujirire bwuririye ku bundi nta shingiro bufite. Amagarama y'urubanza aherereye ku wa juriye. Amategeko yashingiweho: Itegeko n 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, izubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 8.. Urubanza I. IMITERERE Y'URUBANZA. [1] SICA (Société pour l'Industrie et le Commerce en Afrique), yahawe inguzanyo mu bihe bitandukanye na Banki y'Ubucuruzi y'u Rwanda, kuwa 17/07/1989 abanyamuryango b'iyo sosiyete biyemeza kuba abishingizi bayo (cautions solidaires et indivisibles). [2] SICA ntiyashoboye kwishyura neza umwenda yahawe bituma BCR iyirega mu nkiko hamwe n'abishingizi bayo, isaba kwishyurwa 84.891.819 frw n'inyungu. [3] Urukiko Rukuru rw'Ubucuruzi rwategetse SICA gufatanya n'abishingizi bayo kwishyura BCR mu gihe cy'amezi cumi n'abiri umwenda bayibereyemo ungana na miliyoni cumi n'indwi n'ibihumbi magana ane mirongo itanu na bine n'ijana na mirongo inane n'arindwi (17.454.187 frw), harebwe umwenda wa 26.436.191 frw wongeweho inyungu za 18% zihwanye na 2.379.257 frw, ukaba 28.815.545 frw hakuwemo 11.361.261 frw yari muri BNR atabarirwa inyungu. [4] Mu kwemeza ibikubiye mu gika kibanziriza iki, urukiko rwashingiye ku kuba BCR itaritwaye nk'umunyamwuga mu micungire ya dosiye ya SICA, kuko yamaranye amafaranga yayo imyaka irenga itanu afungiyemo muri BNR atabyazwa inyungu mbere yo kuyirega mu nkiko; ko yabitewe n'uko agaciro k'amazu yayo yari ifiteho ingwate karenze kure umwenda yari ifitiye BCR. [5] BCR yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko SICA itari ifite ubushobozi bwo kwishyura kandi bitaburanwe, ruyitegeka kwishyura mu gihe cy'amezi 12 rutabisabwe, ndetse rwanga no gutegeka irangiza rubanza ry'agateganyo ryasabwe.

Page 3

BCR isaba kwishyurwa 231.180.645 frw y'umwenda remezo na 23.118.084 frw y'ikurikiranarubanza. NGIRUMPATSE, umwe mu bishingizi ba SICA yatanze ubujurire bwuririye ku bwa BCR asaba ko yakurwa mu rubanza, agahabwa n'indishyi za 5.000.000 frw zo gushorwa mu manza ku maherere. [6] Urubanza rwaburanishijwe kuwa 31/01/2013 BCR ihagarariwe na Me Gakwaya Etienne, SICA, Nshunguyinka François na Rugenera Marc baburanirwa na Me Ruzindana Ignace, Ngirumpatse Pascal aburanirwa na Me Munyeshema Napoléon, Succession Seth Sendashonga iburanirwa na Me Nsabayezu Evariste, naho Bagaragaza Thaddée, Nyandwi Charles, Kazungu Isaac batitabye ariko barahamagawe ahatazwi mu buryo bukurikije amategeko. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

1. Kumenya niba urukiko rwaratandukiriye rugashingira icyemezo cyarwo kubitaragarajwe mu iburanisha, rukanatanga ibitasabwe. [7] BCR ivuga ko yajurijwe n'uko Urukiko Rukuru rw'Ubucuruzi rwanyuranyije n'ibiteganywa n'ingingo ya 8 y'Itegeko n 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, izubucuruzi, iz'umurimo n'iz'ubutegets, rukemeza ko SICA itari ifite ubushobozi bwo kwishyura mu 1994 kandi bitaburanweho. [8] Ivuga kandi ko rwategetse SICA kwishyura umwenda wayo mu gihe cy'amezi icumi n'abiri rutabisabwe (statuer ultra petita), ibyo bikaba binyuranyije n'ingingo ya 7 y'Itegeko n 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, kuko rwatanze ibyo rutasabwe. [9] Ku byerekeranye n'uko Urukiko Rukuru rw'Ubucuruzi rwemeje ko SICA itari ifite ubushobozi bwo kwishyura kandi bitaburanwe, abaregwa bavuga ko iyo mpamvu y'ubujurire nta shingiro ifite kuko ntaho urukiko rubanza rwigeze rutandukira ngo rugire ibyo ruvuga mu cyemezo cyarwo byaba bitandukanye n'imiterere y'ibiburanwa. Bavuga ko bagaragarije Urukiko Rukuru rw'Ubucuruzi ko SICA yasahuwe igasigara iheruheru ku buryo kwishyura bitari bigishoboka muri icyo gihe cya jenocide yo muri 1994, ko rero rwaciriye urubanza ku cyari cyaburanweho nk'uko amategeko abiteganyaga. [10] Ku mpamvu y'ubujurire ijyanye n'uko urukiko rwatanze ibyo rutasabwe, abaregwa bavuga ko nayo nta shingiro yababwira kuko urubanza rwajuririwe rwaciye hashingiye ku miburanire y'impande zombi, icyemezo cy'urukiko rubanza rero kikaba kitafatwa nk'icyatandukiriye kuko gisubiza ibibazo byagaragajwe mu iburanisha ry'urubanza, bijyanye n'uko SICA yasahuwe mu 1994. [11] Ingingo ya 8 y'Itegeko n 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, izubucuruzi, iz'umurimo n'iz'ubutegets iteganyaga ko umucamanza adashobora gushingira icyemezo cye ku bitagarajwe mu iburanisha.

Page 4

- [12] Bigaragara mu nyandiko y'urubanza rwajuririye ko Me Ruzindana Ignace yasobanuriye urukiko ko kuba SICA itarishyuye byatewe n'ibihe bibi bya jenocide yo mu 1994 kandi n'uwaburaniraga BCR icyo gihe akaba yaragize icyo abisubizaho mu gika cya cumi na kane cy'urwo rubanza, avuga ko SICA itigeze iyigaragariza ko icyayinaniye kwishyura ari impamvu itunguranye itashoboye kwigobotora (cas de force majeure). [13] Iby'uko SICA yananiye kwishyura bitewe na jenocide kandi Me Ruzindana yabisobanuye mu mwanzuro yashyikirije

Urukiko Rukuru nk'uko bigaragara ku gika cya cyenda cy'uko mwanzuro. [14] Urukiko rurasanga, ibyo BCR ivuga ko urubanza rujuririrwa rwashingiye ku bitaraburanweho nta shingiro bifite kuko nk'uko bigaragajwe haruguru, Urukiko Rukuru rwagaragarijwe ko mu gihe cya jenocide yo muri 1994 SICA yasahuwe igasigara iheruheru ku buryo kwishyura bitari bigishoboka. [15] Naho ibyo kuvuga ko Urukiko Rukuru rw'Ubucuruzi rwategetse SICA kwishyura mu gihe cy'amezi cumi n'abiri rutabisabwe, Urukiko rurasanga nta shingiro bifite kuko abaregwa bagaragarije Urukiko Rukuru ko bari baragize ibibazo byo kwishyura kandi banerekana ko BCR yagize ubushake buke bwo kwishyura ku gihe. [16] Indi mpamvu yateye BCR kujurira ni ukuba urukiko rutarategetse irangiza rubanza ry'agateganyo, nyamara ingwate yahawe BCR zifatwa nk'inyandikompamo (actes authentiques), naho abaregwa bagasubiza ko BCR itagombaga gusaba irangizarubanza ry'agateganyo kuko bagerageje kuyishyura umwenda wayo ku bushake bayiha amasheke ikanga kuyakira, bikaba bigaragara ko bananjwe na BCR kwishyura. [17] Ku byerekeranye no kuba bari barasabye irangizarubanza ry'agateganyo ariko ntibarihabwe, Me Gakwaya uhagarariye BCR yabajijwe niba bakirikurikiranye kuri uru rwego, avuga ko batakirikiranye kuko ribaho mu gihe ubujurire bwaba bushoboka, kandi bukaba nta bubaho mu Rukiko rw'Ikirenga.

2. Ubujurire bwa Ngirumpatse Pascal bwuririye ku bwa BCR. [18] Mu bujurire bwuririye ku bwa BCR Ngirumpatse Pascal umwe mu bari bagize SICA, avuga ko yari akwiye gukurwa muri uru rubanza nk'uko byakorewe mugenzi we Mhoranyi Charles, kuko yari yarayivuyemo nk'uko bigaragazwa n'inyandiko mvugo y'ibyemezo by'inteko rusange ya SICA, bityo iburanisha rigakomeza haburana BCR, SICA n'abayifitemo imigabane ari nabo bishingizi bayo. [19] Avuga ko kuba Mhoranyi atarigeze aregwa na BCR ari uko atari akiri umunyamuryango wa SICA, na we akaba asanga ari ko byagombaga kumugendekera, cyane ko SICA yari ifite imitungo ihagije yo gukuramo ubwishyu bw'umwenda yari ibereyemo BCR, akaba yaka BCR 5.000.000 frw z'uko yamushoye mu manza ku maherere.

Page 5

- [20] BCR ivuga ko Ngirumpatse Pascal atigeze yandika asaba kuva muri SICA kandi ko ingingo ya kane y'amasezerano y'ubwishingizi iteganya uko umunyamuryango ava mu bwishingizi, nyamara akaba atari byo yakozwe. [21] Urukiko rurasanga ibyo Ngirumpatse Pascal asaba ko yakurwa mu rubanza nta shingiro byahabwa kuko kureka kuba umunyamuryango bitabuza uwishingiye ku giti cye gukomeza inshingano yari yafashe z'ubwishingizi. III. ICYEMEZO CY'URUKIKO. [22] Rwemeje ko ubujurire bwa BCR nta shingiro bufite. [23] Rwemeje ko ubujurire bwa Ngirumpatse Pascal bubwuriyeho nta shingiro bufite. [24] Rutegetse BCR gutanga 42.500 frw y'amagarama y'urubanza, itayatanga ku bushake agakurwa mu byayo ku ngufu za Leta.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7359/7637>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/bcr-ltd-v-sica-societe-pour-lindustrie-et-le-commerce-en-afrique-guaranteeobligations-supreme-court-2013>

Prepared on 13 October 2026 · Esheria