

RWANDA / JUDGMENT

BPR Ltd v. KALISA

RCOMA 0021/13/CS

COURT

Supreme Court

DECIDED

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BPR Ltd v. KALISA

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Text

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BPR Ltd v. KALISA [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0021/13/CS (Mutashya, P.J., Rugabirwa na Gakwaaya, J.) 28 Novembre 2014] Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Uwahawe inguzanyo afatanya n'uwamwishingiye kuyishyura umwenda remezo n'inyungu zawo iyo bigaragaye ko batubahirije amasezerano y'inguzanyo. Itegeko rigenga amasezerano, ingingo ya 142. Incamake y'ikibazo: Uru rubanza rukomoka ku nguzanyo ingana na 79.440.560 Frws BPR Ltd yahaye Kalisa, yishingiwe n'umugore we Kantengwa. Kalisa ntiyishyuye bituma BPR Ltd imurega mu Rukiko Rukuru rw'Ubucuruzi isaba kwishyurwa 148.617.721 Frws agizwe n'umwenda remezo hamwe n'inyungu z'ubukererwe. Kalisa yireguye yemera umwenda anasaba igihe cyo kwishyura ariko akavuga ko atumva ukuntu yishyuzwa inyungu kabiri. Urukiko rwemeza ko Kalisa n'umugore bagomba kwishyura banki 68.008.715 Frws. Banki y'Abaturage y'u Rwanda Ltd yajuririye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rutitaye ku myiregurire yayo. Nyuma yahoo KALISA Michel na KANTENGWA Odette batanze ubujurire bwuririye ku bwa Banki y'Abaturage y'u Rwanda Ltd, basaba ko yategekwa kubaha indishyi zirebana no kubashora mu manza ku maherere, iz'ikurikiranarubanza n'igihembo cya avoka. BPR ivuga ko abo yishyuzwa bemera

umwenda baregwa ungana na 148.617.712 Frws ariko urukiko rwemeje ko bagomba kwishyura umwenda remezo gusa. Ikomeza ivuga ko itabaze inyungu inshuro ebyiri nk'uko Kalisa abivuga, ivuga ko icyo yakoze ari ugutandukanya ibihe kuva kalisa ahabwa inguzanyo kugeza umunsi yagaragaye ko atishyura, nyuma banki igafata icyemezo cyo kumwishyura igihe kibarwa kuva umunsi wa radiation kugeza azishyurira umwenda wose. Bityo BPR Ltd ikaba ivuga ko isaba kwishyurwa amafaranga yose hamwe angana na 149.752.030 Frw ariko agasaba ko umwenda wakomeza kwiyongera kugeza igihe urubanza ruzacibwa ndetse ko hategekwa iranginarubanza ry'agateganyo. Kalisa avuga ko bemeraga umwenda ariko bahakanaga inyungu baciwe kuko kuva bagirana amasezerano y'inguzanyo yagiye yishyura ideni kugeza ubwo ananiwe akabyandikira B.P.R. Ltd. Avuga kandi ko yategetswe kwishyura umwenda remezo n'inyungu zawo, avuga ko mu myanzuro y'ubujurire ya BPR Ltd umwenda remezo n'umwenda usanzwe "après radiation" nyamara mu rwego rwa mbere ntabyarimo, avuga ko akaba asanga bitasuzumwa mu rwego rw'ubujurire, akaba anasaba guhabwa ikindi gihe cyo kwishyura, anasaba guhabwa na BPR Ltd amafaranga angana na 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya avoka. Incamake y'icyemezo: 1. Hashingiwe ku masezerano yabaye hagati y'uwatanze inguzanyo n'uwahawe, Uwahawe inguzanyo afatanyaga n'uwamwishingiye kwishyura umwenda remezo n'inyungu zawo iyo bigaragaye ko batayubahirije. Ubujurire bufite ishingiro. Uwahawe inguzanyo n'uwamwishingizi bafatanyaga kwishyura umwenda remezo hamwe n'inyungu zawo. Amagarama y'urubanza aherereye kubarezwe.

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Amategeko yashingiweho: Itegeko rigenga amasezerano, ingingo ya 142 Nta manza zifashishijwe. Urubanza

I. IMITERERE Y'URUBANZA [1] Kuwa 24/8/2011, KALISA Michel yafashe inguzanyo ya Banki y'Abaturage y'u Rwanda, Ishami rya Kimironko, ingana na 79.440.560 Frw, agomba kuyishyura mu mezi 120, buri kwezi yishyura 1.535.234 Frw y'inyungu zisanzwe zibazwe kuri 20%, naho inyungu z'ubukererwe zibarwa kuri 4%. Iyo nguzanyo yishingiye na KANTENGWA Odette, umudamu wa KALISA Michel. [2] KALISA Michel ntiyishyuye iyo nguzanyo, Banki y'Abaturage y'u Rwanda imurega mu Rukiko Rukuru rw'Ubucuruzi, kuba yarishe amasezerano y'inguzanyo bagiranye, isaba ko imwishyura 148.617.721 Frw nk'uko agaragara hejuru mu kiburanwa. KALISA Michel yireguye yemera umwenda, asaba igihe cyo kubasha kwishyura igice gisigaye, ariko ko atumva uburyo yishyuzwa inyungu zisanzwe kabiri.

[3] Urwo Rukiko rwemeje ko KALISA Michel na KANTENGWA Odette bagomba guha Banki y'Abaturage y'u Rwanda Ltd, 68.008.715 Frw y'umwenda bayibereyemo, rubatega guhita bishyura uwo mwenda, bakanayihira 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka. [3] Banki y'Abaturage y'u Rwanda Ltd ntiyishimiye imikirize y'urwo rubanza, irujuririra mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rutitaye ku myiregurire yayo kandi ko rutubahirije ingingo ya 64 y'Itegeko 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano. ° [4] KALISA Michel na KANTENGWA Odette batanze ubujurire bwuririye ku bwa Banki y'Abaturage y'u Rwanda Ltd, basaba ko yategekwa kubaha indishyi zirebana no

kubashora mu manza ku maherere,iz'ikurikiranarubanza n'igihembo cya avoka. [5]
Urubanza rwaburanishijwe mu ruhame kuwa 28/10/2014, Banki y'Abaturage y'u Rwanda Ltd (B.P.R. Ltd) ihagarariwe na Me NTAGANDA KABERA Festo, na Me KAREGA Blaise Pascal yunganiye KALISA Michel KALISA Michel akanahagarira KANTENGWA Odette. II
ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- a. Kumenya amafaranga KALISA Michel na KANTENGWA Odettebagomba kwishyura B.P.R. Ltd hashingiwe ku masezerano bagiranye [6] Me NTAGANDA KABERA Festo avuga ko mu iburanisha mu mizi ryo kuwa 12/12/2012 ryabereye imbere y'Urukiko Rukuru rw'Ubucuruzi, KALISA Michel ndetse nuwo

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ahagarariye ariwe KANTENGWA Odette, bemeraga 148.617.712 Frw baregwa (aveu judiciaire), ariko Urukiko mu gufata icyemezo cyarwo rwabaciye gusa amafaranga y'umwenda remezo (dette principale). Akomeza avuga ko kwemeza kandi ko B.P.R Ltd yabaze inyungu zisanzwe inshuro ebyiri atari byo kuko kubibara gutyo kwari ugutandukanya ibihe (périodes) bibarwa kuva KALISA Michel yahawe inguzanyo kugeza umunsi yagaragaye ko atishyura, B.P.R. Ltd igafata icyemezo cyo kumwishyura (radiation) n'igihe kibarwa kuva umunsi wa "radiation" kugeza umunsi azishyuriraho amafarangayose ayifitiye. [7] Me NTAGANDA KABERA Festo asobanura ko inguzanyo B.P.R. Ltd yahaye KALISA Michel kuwa 24/8/2011 yari "rééchelonnement" kuko yari yananiwe kwishyura, ikamuha andi mafaranga yo kumufasha gukomeza gukora, akayishyura. Akomeza avuga ko umwenda wari umaze igihe nk'uko bigaragazwa na "historique" ya "compte" ye. [8] Me NTAGANDA KABERA Festo avuga ko mu gihe KALISA Michel yemera umwenda remezo, agomba no kwemera inyungu zisanzwe n'inyungu z'ubukererwe asabwa kwishyura, hakurikijwe ingingo ya 64 y'Itegeko n 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano kuko^o amasezerano akozwe ari itegeko ku bayagiranye. [9] Me NTAGANDA KABERA Festo asoza asaba ko abarirwa ku mwenda remezo ungana na 60.003.476 Frw inyungu zisanzwe zingana na 69.404.020 Frw n'inyungu z'ubukererwe zingana na 13.880.804 Frw, ko KALISA Michel na KANTENGWA Odette bategekwa kwishyura B.P.R.Ltd 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka na 10.000.000 Frw (demande additionnelle) zo gusiragizwa mu manza ku maherere, yose hamwe akaba 149.752.030 Frw ariko agasaba ko umwenda wakomeza kwiyongera kugeza igihe urubanza ruzacibwa ndetse ko hategekwa iranginarubanza ry'agateganyo. [10] KALISA Michel avuga ko mu Rukiko rubanza, ikiburanwa ari umwenda remezo ungana na 60.000.476 Frw, inyungu zisanzwe za 17.843.507 Frw, inyungu zisanzwe za 62.003.592 Frw, inyungu z'ubukererwe za 8.267.147 Frw, 500.000 Frw y'ikurikiranarubanza n'igihembo cya avoka, yose hamwe akaba 148.617.721 Frw. Akomeza avuga ko mu kwiregura mbere y'urwo Rukiko, bemeraga umwenda ariko bahakanaga inyungu baciwe kuko kuva bagirana amasezerano y'inguzanyo yagiye yishyura ideni kugeza ubwo ananiwe akabyandikira B.P.R. Ltd ndetse ko yayishyuye 8.000.000 Frw kuwa 10/9/2012 mbere y'uko baburana mu Rukiko Rukuru rw'Ubucuruzi. Asoza avuga ko nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje, B.P.R. Ltd yabaze inyungu zisanzwe inshuro ebyiri, kuba uyu munsi B.P.R. Ltd yongeye mu kirego cyayo mu bujurire andi magambo yise "après radiation", bitari mu kirego cy'ibanze, ishaka guhisha ibyo

Urukiko rwagaragaje, bityo bikaba byitwa guhindura ikirego ku rwego rw'ubujurire, nyamara ingingo ya 168 y'Itegeko n° 21/2012 ryo kuwa 16/07/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibibuza. [11] Me KAREGA Blaise Pascal avuga ko kuvuga ko Urukiko Rukuru rw'Ubucuruzi rwategetse gusa kwishyura umwenda remezo, atari byo kuko bigaragara mu gace ka karindwi k'urubanza rwajuririwe ko KALISA Michel na KANTENGWA Odette bategetswe kwishyura umwenda remezo n'inyungu zayo. Akomeza avuga ko kuba B.P.R. Ltd igaragaza mu myanzuro yayo y'ubujurire umwenda remezo n'umwenda usanzwe "après radiation" nyamara mu rwego rwa mbere ntabyarimo, bitari no mu byo yanenze Urukiko rutubahirije, bityo akaba asanga ko usibye ko nta n'inshingiro bifite, bikaba bitasuzumwa mu rwego rw'ubujurire.

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[12] Ku birebana n'ikirego cy'inyongera, Me KAREGA Blaise Pascal avuga ko icyo kirego kitakwemerwa mu rwego rw'ubujurire. [13] Me KAREGA Blaise Pascal avuga ko KALISA Michel yagaragaje ko yishe amasezerano kubera ikibazo yagize cyo kutishyurwa n'Ubushinjacyaha Bukuru bwa Repubulika kandi yari yabimenyesheje B.P.R. Ltd ariko ikaba yirengangiza ibivugwa n'ingingo ya 45 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano, bityo akaba asaba uru Rukiko guha KALISA Michel na KANTENGWA Odette igihe kigereranyije cyo kwishyura, hakurikijwe ingingo ya 142 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano. [14] Me KAREGA Blaise Pascal asaza asaba ko B.P.R. Ltd itegekwa kwishyura KALISA Michel na KANTENGWA Odette 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya avoka. UKO URUKIKO RUBIBONA [15] Ingingo ya 33 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano ryakoreshwaga igihe KALISA Michel na B.P.R. Ltd bagiranaga amasezerano y'inguzanyo iteganya ko "Amasezerano akozwe k'uburyo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kwubahirizwa nta buryarya". [16] Ingingo ya 2 y'amasezerano y'inguzanyo yabaye hagati ya KALISA Michel na B.P.R. Ltd yo kuwa 24/8/2011 iteganya ko "Le taux d'intérêt actuel est fixé à 20% par an, soit 1.66% par mois. Le taux moratoire est de 4% par an, soit 0.33% par mois [.....]". [17] Urukiko rw'Ikirenga rurasanga mu gace ka 7 k'urubanza rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwarasanze KALISA Michel na KANTENGWA Odette bagomba kwishyura B.P.R. Ltd umwenda remezo ungana na 60.003.476 Frw, inyungu zawo za 20% ku mwaka kuwa kuwa 29/12/2011 kugeza kuwa 10/1/2013 zingana na 6.697.332 Frw n'inyungu z'ubukererwe za 4% ku mwaka kuwa kuwa 29/12/2011 kugeza kuwa 10/1/2013 zingana na 1.308.007 Frw, yose hamwe akaba angana na 68.008.075 Frw. [18] Urukiko rw'Ikirenga rurasanga nubwo Urukiko Rukuru rw'Ubucuruzi rutagaragaje aho izo nyungu zaturutse, ariko bigaragara ko rutategetse KALISA Michel na KANTENGWA Odette kwishyura gusa umwenda remezo. [19] Urukiko rw'Ikirenga rurasanga B.P.R. Ltd isaba ko KALISA Michel na KANTENGWA Odette bategekwa kuyishyura 139.752.030 Frw kugeza kuwa 2/8/2014, hakubiyemo 60.003.476 Frw y'umwenda remezo, 9.844.534 Frw y'inyungu bita "radié", 69.404.020 Frw y'inyungu zisanzwe, 13.880.804 Frw y'inyungu z'ubukererwe na 500.000 Frw

ya“recouvrement“ ariko idasobanura aho inyungu bita “radié“ zavuye n’impamvu zayo, bityo ikaba idakwiye kuzihabwa. [20] Urukiko rw’Ikirenga rurasanga B.P.R. Ltd yarahagaritse imikoranire isanzwe na KALISA Michel kuwa 29/12/2011 kandi ko ababuranyi bemera bose ko umwenda remezo ungana ubu na 60.003.476 Frw, bityo inyungu zose zateganyijwe mu masezerano yo kuwa 24/8/2011 zikaba

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zigomba kubarwa kuwa kuwa 29/12/2011 kugeza ku munsu w’icibwa ry’urubanza, ni ukuvuga kuwa 28/11/2014. [21] Urukiko rw’Ikirenga rurasanga nk’uko bigaragazwa na “historique“ ya“compte“ ye, KALISA Michel yishyuye B.P.R. Ltd 8.000.000 Frw kuwa 10/9/2012 mbere y’uko baburana mu Rukiko Rukuru rw’Ubucuruzi. [22] Ku byerekeranye n’inyungu zisanzwe za 20% buri mwaka ku mwenda remezo, Urukiko rw’Ikirenga rurasanga hakurikijwe ingingo ya 2 y’amasezerano y’inguzanyo, izo nyungu zingana na 34.802.016 Frw ni ukuvuga 60.003.476 Frw x 20 x 1.044 iminsi (jours) 100 x 360 iminsi (jours). [23] Ku byerekeye inyungu z’ubukererwe za 4% buri mwaka ku mwenda remezo, Urukiko rw’Ikirenga rurasanga hakurikijwe ingingo ya 2 y’amasezerano y’inguzanyo, izo nyungu zingana na 6.960.403 Frw ni ukuvuga 60.003.476 Frw x 4 x 1.044 iminsi (jours)-----100 x 360 iminsi (jours) [24] Ku byerekeye 500.000 Frw y’ikurikiranarubanza n’igihembo cya avoka asabwa na B.P.R. Ltd, Urukiko rw’Ikirenga rurasanga hashingiwe ku ingingo ya 258 y’igitabo cya III cy’urwunge rw’amategoko mbonezamubano, ikwiye kuyahabwa kuko ifite ibyo yatsindiye muri rurubanza, yiyongereyeho 500.000 Frw yari yagenwe n’Urukiko Rukuru rw’Ubucuruzi, yose hamwe akaba 1.00.000 Frw. [25] Ku byerekeye 10.000.000 Frw yo gusiragizwa mu Rukiko asabwa na B.P.R. Ltd mu kirego yita icy’inyongera, Urukiko rw’Ikirenga rurasanga idakwiye guhabwa ayo mafaranga kuko byumvikana ko mu gihe KALISA Michel atishyuraga umwenda, B.P.R. Ltd yagombaga kumurega mu Rukiko ndetse ko mu gihe Urukiko rubanza rutayigeneye ibyo yasabaga byose, yari ifite uburenganzira bwo kujurira mu Rukiko rubifitiye ububasha, bityo bikaba bitumvikana uko yasaba ayo mafaranga yo gusiragizwa mu manza. [26] Ku byerekeye irangiza ry’urubanza ry’agateganyo risabwa na B.P.R.Ltd, Urukiko rw’Ikirenga rurasanga nubwo amasezerano y’inguzanyo yakorewe kwa Noteri ariko uko umwenda wose isaba wabaruwe, KALISA Michel atabyemera ndetse ko ayo masezerano y’inguzanyo bashyizeho umukono mbere ya Noteri agaragaza gusa ko B.P.R. Ltd yahaye KALISA Michel inguzanyo ya 79.440.560 Frw ku nyungu zisanzwe za 20% buri mwaka, akemeza kandi ko azishyura inyungu ya 4% buri mwaka mu gihe hazabaho ubukererwe mu kwishyura uwo mwenda, bityo ibisabwa n’ingingo ya 212 y’itegeko n° 21/2012 ryo kuwa 16/7/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi bikaba bituzuye kuko iteganywa ko “Irangiza ry’urubanza ry’agateganyo ryemezwa n’urukiko rubyibwirije ndetse nta ngwate, iyo ikimenyetso cy’ikiburanwa ari inyandikomvaho n’iyo ikiburanwa ari umwenda wemewe mu rubanza n’uregwa“. [27] Ku byerekeye ibisabwa na KALISA Michel byo kumuha igihe kigereranyije cyo kwishyura, hakurikijwe ingingo ya 142, agace ka 2 y’igitabo cya III cy’urwunge rw’amategoko mbonezamubano, Urukiko rw’Ikirenga rurasanga ibisobanuro atanga birebana n’akazi akora bidahagije ndetse atabigaragariza ibimenyetso byatuma hafatwa icyo cyemezo kuko

iyi ngingo iteganya ko “Icyakora, inkiko zitaye k’ubushobozi bw’ugomba kwishyura, kandi mu bwitonzi

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n’ubushishozi bwazo, zishobora gutanga igihe kigereraniye cyo kwishyura, no gusubika ikurikirana ry’ibirego, ibintu byose bikaguma uko byari biri“. [28] Hashingiwe ku ngingo z’amategeko zavuzwe haruguru n’ibisobanuro bimaze gutangwa, Urukiko rw’Ikirenga rurasanga KALISA Michel na KANTENGWA Odette bagomba gufatanya kwishyura B.P.R. Ltd 102.765.895 Frw, akavanwamo 8.000.000 Frw KALISA Michel yishyuye kuwa 10/9/2012, hagasigara 94.765.895 Frw. III. ICYEMEZO CY’URUKIKO [29] Rwemeje ko ubujurire bwa B.P.R. Ltd bufite ishingiro kuri bimwe. [30] Rwemeje ko urubanza RCOM 0214/12/HCC ruhindutse gusa ku birebana n’amafaranga KALISA Michel na KANTENGWA Odette bagomba kwishyura B.P.R. Ltd. [31] Rutegetse KALISA Michel na KANTENGWA Odette kwishyura B.P.R. Ltd 60.003.476 Frw y’umwenda remezo, 34.802.016 Frw y’inyungu zisanzwe, 6.960.403 Frw y’inyungu z’ubukererwe na 1.000.000 Frw y’ikurikiranarubanza n’igihembo cya avoka ku rwego rwa mbere no ku rwego rw’ubujurire, akavanwamo 8.000.000 Frw yishyuye kuwa 10/9/2012, yose hamwe akaba 94.765.895 Frw. [32] Rutegetse KALISA Michel na KANTENGWA Odette gutanga amagarama y’uru rubanza.

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