

RWANDA / JUDGMENT

BPR LTD v. NTAMPAKA

RCOMA 0053/12/CS

COURT

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BPR LTD v. NTAMPAKA

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Text

Page 1

BPR LTD v. NTAMPAKA [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0053/12/CS (Hatangimbabazi, P.J., Mukamulisa na Hitiyaremye, J.) 15 Mutarama 2016] Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Ubushobozi bwo gukora amasezerano – Iyo umwe mu bakoze amasezerano atari yujuza imyaka y'ubukure igihe bayakoraga, ayo masezerano agomba guteshwa agaciro kuko atari afite ububasha kandi bukaba ari kimwe mu bintu bimwe bya ngombwa by'iremezo bituma amasezerano agira agaciro. Amategeko agenga amasezerano – Amasezerano y'ubwishingizi – Amasezerano y'ubwishingire aba yihariye n'ubwo akorwa ashamikiye ku masezerano yandi y'inguzanyo atandukanye nayo ku buryo kuba uwishingiye adafite ubushobozi bwo gukora amasezerano bitaba impamvu itesha agaciro amasezerano y'ubwishingire mu gihe bigaragara ko uwamwishingiye afite ubushobozi – Impamvu zihariye zitesha agaciro amasezerano zishingiye ku wishingiwe nko kuba yarakoze ayo masezerano ataruzuzwa imyaka y'ubukure, bitabuza uwamwishingiye kuzuza inshingano yiyemeje zo kwishyura. Indishyi – Indishyi zo gushorwa mu manza – Nta ndishyi zihabwa uzisaba mu gihe atagaragaza akababaro yagize kuko n'ubwo nta bubasha yari afite bwo gukora amasezerano ntahakana ko yahawe umwenda. Mu gihe kandi umwishingizi yategetswe kwishyura umwenda

yishingiye nta ndishyi yahabwa. Incamake y'ikibazo: Banki y'Abaturage y'u Rwanda (BPR) yareze Ntampaka Janvier n'umwishingizi we Kayigaba Eric mu Rukiko Rukuru rw'Ubucuruzi isaba kuyishyura amafaranga yamuguriye n'inyungu zawo byose hamwe ari 20.098.816 Frw. Mw'iburanisha uwunganira abaregwa yasabye ko amasezerano y'inguzanyo ikirego gishingiyeho yateshwa agaciro ku mpamvu z'uko Ntampaka wayasinye nta bushobozi (capacité) yari afite kuko atari yujuje imyaka y'ubukure. Urwo Rukiko rwemeje ko Ntampaka yagiranye amasezerano na BPR Ltd ataragira imyaka y'ubukure bityo rutesha ayo masezerano agaciro . BPR Ltd yajuririye mu Rukiko rw'Ikirenga, itanga impamvu z'ubujurire ko ivuga ko Urukiko rubanza rwemeje ko Ntampaka Janvier yasinye amasezerano y'inguzanyo atarageza ku myaka y'ubukure nyamara rwirengagije ko muri 2008 yari yaramaze kwemererwa ubwo bukure (émancipation) akaba icyo gihe nta cyamubuzaga gukora ibikorwa bimuhuza n'abandi, ngo kandi ko Ntampaka yerekanye icyemezo cy'umwirondoro we wuzuye (Attestation d'identité complète) cyatanzwe n'ubuyobozi bubifiye ububasha cyerekana ko yavutse mu mwaka wa 1988, bivuze ko muri 2008 amasezerano akorwa yari afite imyaka 20, ariko nyuma y'imyaka 3 yagaragaje icyemezo cy'amavuko cyerekana ko yavutse muri 1991, bivuze ko amasezerano akorwa yari afite imyaka 17 bityo Banki ikaba itashoboraga kumenya icy'ukuri kandi akaba yagiye akora ibikorwa binyuranye ubusanzwe bikorwa n'abantu bakuru ikongeraho ko urukiko

Page 2

rubanza rutitaye kureba niba amasezerano y'ibanze ateshejwe agaciro, Ntampaka ataba yikungahaje mu buryo butemewe n'amategeko. BPR Ltd kandi ikavuga ko Kayigaba uwamubereye umwishingizi akaba ari nawe wareraga agomba gutegekwa kwishyura mu mwanya we kubera ko amasezerano y'ubwishingire agomba gutandukanywa n'amasezerano y'inguzanyo y'ibanze. Mu kwiregura kwe Kayigaba avuga ko mu gihe amasezerano y'ibanze adafite agaciro bihita bigira ingaruka no ku masezerano y'ubwishingire ayashamikiyeho, kandi ko Banki niyo igomba kubazwa ayo makosa. Incamake y'icyemezo:1. Iyo umwe mu bakoze amasezerano atari yujuza imyaka y'ubukure igihe bayakoraga, ayo masezerano agomba guteshwa agaciro kuko atari afite ububasha kandi bukaba ari kimwe mu bintu bimwe bya ngombwa by'iremezo bituma amasezerano agira agaciro..

2. Amasezerano y'ubwishingire aba yihariye n'ubwo akorwa ashamikiye ku masezerano yandi y'inguzanyo atandukanye nayo ku buryo kuba uwishingiwe adafite ubushobozi bwo gukora amasezerano bitaba impamvu itesha agaciro amasezerano y'ubwishingire mu gihe bigaragara ko uwamwishingiye afite ubushobozi
3. Uwishingira undi ntiyakwitwaza impamvu zihariye z'uwishingiwe ngo yange kwishyura kuko impamvu zose zishingiye ku wishingiwe ku giti cye zigira ingaruka kuri we gusa.
4. Impamvu zihariye zitesha agaciro amasezerano zishingiye ku wishingiwe nko kuba yakoze ayo masezerano ataruzuzwa imyaka y'ubukure, bitabuza uwamwishingiye kuzuza inshingano yiyemeje zo kwishyura. 5.Abaregwa nta indishyi bahabwa kuko uwahawe inguzanyo atagaragaza akababaro yagize n'ubwo kandi nta bubasha yari afite bwo gukora amasezerano ntahakana ko yahawe umwenda, bityo ntiyavugaga ko yashowe mu manza ku maherere na

banki. Mu gihe umwishingizi yategetswe kwishyura umwenda yishingiye nta ndishyi yahabwa. Ubujurire BPR Ltd bufite ishingiye kuri bimwe ; Amasezerano yakozwe hagati ya BPR Ltd na Ntampaka nta gaciro afite; Kayigaba ategetswe kwishyura umwenda Ntampaka yahawe na BPR n'inyungu zawo yishingiye ; Amagarama y'urubanza aherereye kuri Kayigaba. Amategeko yashingiweho:

Page 3

Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, ingingo 8 na 552. Itegeko n° 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'ibanze y'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, ingingo 360,426 na 430. Nta manza zifashishijwe: Urubanza I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru rw'Ubucuruzi, Banki y'Abaturage y'u Rwanda (BPR Ltd) irega Ntampaka Janvier n'umwishingizi we Kayigaba Eric kuyishyura amafaranga yaguriye Ntampaka ntayishyure. Isobanura ko kuwa 25/11/2008, yagiranye na Ntampaka amasezerano y'inguzanyo, iyo banki imuguriza 20.000.000 Frw agomba kwishyurwa bitarenze kuwa 25/02/2009, ariko iyo tariki igera Ntampaka atararangiza kwishyura umwenda wose . [2] BPR Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba kwishyurwa umwenda wose n'inyungu zawo byose uko ari 20.098.816 F. BPR Ltd yanareze Kayigaba wishingiye Ntampaka ikavuga ko atishyuye kandi uwo yishingiye yarananiwe kwishyura. Mu iburanisha ry'urubanza, Me Karangwa Jean Bosco waburaniraga abaregwa yasabye ko amasezerano y'inguzanyo ikirego gishingiyeho yateshwa agaciro ku mpamvu z'uko Ntampaka Janvier wayasinye nta bushobozi (capacité) yari afite kuko atari yujuje imyaka y'ubukure . [3] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko amasezerano BPR Ltd yagiranye na Ntampaka Janvier nta gaciro afite kuko uyu yayakoze ataruzuzwa imyaka 21 y'amavuko nk'uko bigaragazwa n'inyandiko y'ivuka yerekana ko Ntampaka Janvier yavutse kuwa 06/02/1991, agirana amasezerano y'inguzanyo na BPR Ltd kuwa 25/11/2008, afite gusa imyaka 17 y'amavuko. [4] BPR Ltd yajuririyemo urubanza mu Rukiko rw'Ikirenga ivuga ko Urukiko rubanza rwemeje ko Ntampaka Janvier yasinye amasezerano y'inguzanyo atarageza ku myaka y'ubukure nyamara rwirengagije ko muri 2008 yari yaramaze kwemererwa ubwo bukure (émancipation), ko rero nta cyamubuzaga gukora ibikorwa bimuhuza n'abandi. Ikindi itishimiye ni ukuba Urukiko rwaraciye BPR Ltd indishyi z'akababaro zidafite aho zishingiye kubera ko urubanza rwatewe na Ntampaka Janvier na Kayigaba Eric batubahirije amasezerano. [5] Iburanisha ry'urubanza ryabereye mu ruhame kuwa 19/05/2015 no kuwa 24/11/2015 ababuranyi bitabye, BPR Ltd iburanirwa na Me Basomingera Alberto na Me Muhayeyezu

Page 4

Albert, Ntampaka Janvier ahagarariwe na Me Abasa Fazili naho Kayigaba Eric ahagarariwe na Me Nubumwe Jean Bosco. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO Kumenya niba igihe Ntampaka Janvier yagiranaga amasezerano y'inguzanyo na BPR Ltd yari afite ububasha n'ubushobozi bwo kuyakora. [6] Me Muhayeyezu Albert mu myanzuro y'ubujurire yatanze mu izina rya BPR Ltd, avuga ko impamvu yatemye ijurira ari uko urukiko rwemeje ko amasezerano iyo banki yagiranye na Ntampaka nta gaciro afite ngo kuko uyu yayakoze ataruzuzwa imyaka 21

y'amavuko, kandi mu mwaka wa 2008, mukuru we Kayigaba yari yaramusabiye kwemererwa ubukure (émancipation), arabuhabwa, bityo kuva icyo gihe akaba yari yemerewe gukora ibikorwa nk'iby'umuntu mukuru, ndetse ko kuva icyo gihe yagiye ahabwa inguzanyo n'amabanki anyuranye yishingiye na mukuru we Kayigaba. [7] Anavuga ko kugira ngo amasezerano y'inguzanyo asinywe, Ntampaka yerekanye icyemezo cy'umwirondoro we wuzuye (Attestation d'identité complète) cyatanzwe n'Umurenge wa Kigarama cyerekana ko yavutse mu mwaka wa 1988, bivuze ko muri 2008 amasezerano akorwa yari afite imyaka 20, ariko nyuma y'imyaka 3 Ntampaka yagaragaje icyemezo cy'amavuko cyerekana ko yavutse muri 1991, bivuze ko amasezerano akorwa yari afite imyaka

17. Agasanga mu gihe hari ibyemezo 2 bivuguruzanya, umuntu atashobora kumenya icy'ukuri, ko gusa ikizwi ari uko Ntampaka yagiye akora ibikorwa binyuranye ubusanzwe bikorwa n'abantu bakuru kandi akabikorana na B.P.R Ltd, ibyo bikorwa akaba yarabikoze rimwe nk'umutangabuhamya ubundi Urubanza RCOMA 0053/12/CS akabikora nk'umwishingizi wa mukuru we Kayigaba Eric, bikaba bitumvikana uburyo muri 2011 yari afite imyaka 20 mu gihe muri 2009 hari ibikorwa yakoze nk'umuntu mukuru. [8] Yongeraho ko ukurikije ibikorwa Ntampaka yagiye akorana na mukuru we kandi bikanagezwa imbere ya Notaire, bigaragara ko yahawe ubukuru, ari yo mpamvu yemerewe gukora ibikorwa by'abantu bakuru hakurikijwe ingingo ya 6 y'Iteka ryo kuwa 02/08/1913 ryerekeye ibikorwa by'ubucuruzi. [9] Me Basominger Alberto nawe avuga ko amasezerano y'inguzanyo hagati ya Ntampaka na BPR Ltd yagombaga kurangira muri 2009 nyamara icyemezo cy'amavuko kikaba cyaratanze muri 2011 byerekana ko cyatanzwe amasezerano yarakozwe. [10] Akomeza avuga ko ikiburanwa ari amasezerano y'ubucuruzi ko kandi ucuruza agomba kuba afite imyaka y'ubukure, no mu bikorwa byose bya Ntampaka akaba yarabaga ahagarariye na mukuru we Kayigaba Eric ari nawe wakoreshaga konti ye, ko kubera iyo mpamvu « acte de naissance » yatanze muri 2011 ikwiye guteshwa agaciro. Asoza avuga ko Urukiko mu guteshwa agaciro amasezerano y'inguzanyo rutitaye kureba niba amasezerano y'ibanze ateshejwe agaciro,

Page 5

Ntampaka ataba yikungahaje mu buryo butemewe n'amategeko (enrichissement sans cause) kuko ariwe wakoresha ayo mafaranga. [11] Me Abasa Fasili uburanira Ntampaka, avuga ko ubujurire bwa BPR Ltd nta shingiro bufite kuko Urukiko rubanza rwatesheje agaciro amasezerano y'inguzanyo rushingiye kuri Acte de naissance, icyo cyemezo akaba ari cyo kigaragaza itariki nyakuri umuntu yavukiyeho. [12] Anavuga ko nta émancipation yigeze ibaho kuri Ntampaka nk'uko BPR Ltd ibiburanisha kuko biramutse byaranabayeho, byakorwa n'umubyeyi wa Ntampaka cyangwa Se wabo, aho kuba mukuru we hakurikijwe ibiteganywa n'ingingo za 426-430 z'Itegeko n° 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'ibanze y'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano. Asoza avuga ko nta gushidikanya ko amasezerano y'inguzanyo yo kuwa 25/11/2008 yakozwe n'utabifitiye ububasha, akaba rero agomba guteshwa agaciro nk'uko biteganywa n'ingingo ya 8 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyakurikizwaga ubwo amasezerano yakorwaga. [13]

Me Nubumwe uburanira Kayigaba avuga ko ashingiye ku ngingo ya 8 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano n'ingingo za 94, 105 na 106 z'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nawe asaba ko amasezerano yabaye hagati ya BPR na Ntampaka yateshwa agaciro kuko Ntampaka yayasinye ataragira ubushobozi (capacité). UKO URUKIKO RUBIBONA [14] Ingingo ya 8 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano iteganya ko ubushobozi bwo gukora isezerano ari kimwe mu bya ngombwa by'iremezo kugira ngo amasezerano agire agaciro. [15] Ingingo ya 360 y'Itegeko n° 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'ibanze y'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, iteganya ko ukiri muto ari umuntu w'igitsina icyo aricyo cyose utari wamara imyaka makumyabiri n'umwe avutse. [16] icyemezo kiri muri dosiye cyerekana ko Ntampaka Janvier yavutse kuwa 06/02/1991, kandi BPR Ltd ntigaragaza icyo ikinenga uretse ko ivuga gusa ko mbere Ntampaka yemezaga ko yavutse mu mwaka wa 1988, icyo cyemezo kikaba gishimangirwa n'icyemezo cy'ubuzungure cyo kuwa 24/03/2005 nacyo kiri muri dosiye, kigaragaza ko kuri icyo tariki, Ntampaka yari afite imyaka 14, naho amasezerano y'inguzanyo Ntampaka yakoranye na BPR akerekana ko yakozwe kuwa 25/11/2008, byumvikana ko yayakoze afite imyaka 17, akaba yari ataruzuzwa imyaka 21 y'ubukure, ndetse n'umwaka wa 1988 BPR ivuga, ukaba ntacyo wahindura ku kibazo cy'ubukure bwa Ntampaka, kuko niyo yaba yaravutse muri uwo mwaka, harebwe igihe yasinyiye amasezerano y'inguzanyo, yaba yari ataruzuzwa imyaka 21 iteganywa n'amategeko.

Page 6

[17] Urukiko rusanga nanone imvugo ya BPR ko Ntampaka yahawe ubukure na mukuru we Kayigaba Eric wanakunze kumujyana mu bikorwa by'ubucuruzi, nta shingiro ifite, kubera ko kugira ngo umuntu muto agirwe mukuru (émancipation) bifite uburyo bikorwamo, kandi BPR Ltd ntigaragaza uburyo Ntampaka yagizwe mukuru hashingiwe ku biteganywa mu ngingo ya 426-430 z'Itegeko n° 42/1988 ryo kuwa 27/10/1988 rishyiraho Interuro y'ibanze y'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, zigaragaza uko umwana muto ashobora kwemererwa ubukure kandi bikemezwa n'urwego cyangwa umuyobozi ubifitiye ububasha. Ahubwo ikiboneka ni uko icyo Kayigaba yahawe gusa, ari ugucunga umutungo wasizwe n'ababyeyi be akawureresha barumuna be babiri bato barimo Ntampaka, nk'uko icyemezo cy'ubuzungure cyo kuwa 24/03/2005 cyavuzwe haruguru kibigaragaza. [18] Urukiko rusanga rero nk'uko byasobanuwe n'Urukiko Rukuru rw'Ubucuruzi, amasezerano Ntampaka Janvier yakoranye na BPR Ltd agomba guteshwa agaciro kuko umwe mu bayakoranye ari we Ntampaka Janvier, atari afite ububasha bwo kuyakora kubera ko atari yujuje imyaka y'ubukure, kandi ubwo bubasha bukaba ari kimwe mu bintu bimwe bya ngombwa by'iremezo bituma amasezerano agira agaciro nk'uko biteganywa n'ingingo ya 8 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano yavuzwe haruguru. Kumenya niba Kayigaba Eric agomba gutegekwa kwishyura umwenda yishingiye mu mwanya wa Ntampaka Janvier [19] Me Basominger Alberto uburanira BPR Ltd avuga ko kuba Kayigaba Eric ari we wareraga Ntampaka akaba yaranamubereye umwishingizi ku nguzanyo yahawe, agomba gutegekwa Urubanza RCOMA

0053/12/CS kwishyura mu mwanya wa murumuna we kubera ko amasezerano y'ubwishingire agomba gutandukanywa n'amasezerano y'inguzanyo y'ibanze, umwishingizi akaba atagomba kubigira urwitwazo kubera ko yasinyiye ko mu gihe uwo yishingiye atazishyura, ari we uzishyura mu mwanya we. [20] Me Muhayeyezu Albert nawe uburanira BPR Ltd avuga ko Kayigaba Eric ariwe wagiye gusaba umwenda akoresheje murumuna we kandi abizi neza ko adakuze, ko kandi mu gihe Banki yandikiraga Ntampaka imwishyura, ari Kayigaba wasubije avuga ko azishyura, anasaba igihe cyo kwishyuramo, ko rero ubwo Kayigaba adahakana umwenda Ntampaka yahawe, ari we ukwiye kuwuryozwa. Anavuga ko ubu ku mwenda remezo wari usigaye ungana na 17.809.885 Frw hagomba kwiyongeraho inyungu zisanzwe n'iz'ubukererwe zihwanye na 34.679.923 Frw. [21] Ababuranira BPR basaba Urukiko kuzagenda ku rubanza R ComA 0102/10/CS rwaciye kuwa n'Urukiko rw'Ikirenga, aho Banki y'u Rwanda Itsura Amajyambere (BRD) yaburanye na Kayiteshonga Callixte, umwe mu bari barishingiye umwenda wahawe koperative COPROBAV, hemezwa ko amasezerano yo kwishingira aba atandukanye n'amasezerano y'umwenda, ko kandi afite agaciro.

Page 7

- [22] Me Nubumwe Jean Bosco uburanira Kayigaba Eric avuga ko abona B.P.R Ltd ntacyo inenga urubanza rwaciye kubera ko ingingo ya 8 y'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano igaragaza neza uburyo amasezerano akorwa n'ibyo agomba kuba yujuje kugira ngo agire agaciro, ko rero niba amasezerano y'ibanze adafite agaciro bihita bigira ingaruka no ku masezerano y'ubwishingire ayashamikiyeho, kandi ko kuba harakozwe amasezerano nk'ayo Banki yakoranye n'abo irega, ariyo igomba kubibazwa igakurikirana abakozi bayo kuko aribo bakoze amakosa. [23] Anavuga ko kuba uwo aburanira yaranditse yemera umwenda no kuzawishyura, iyo baruwa yanditse idasimbura ibyo amategako ateganya ku bijyanye n'amasezerano yakozwe n'umwana kubera ko nta gaciro agira. [24] Ku bijyanye n'urubanza ababuranira BPR Ltd bavuga rwabaye hagati ya BRD na Kayiteshonga Callixte, Me Nubumwe Jean Bosco avuga ko ntaho ruhuriye n'uru rujyanye n'umwana utarageza ku myaka y'ubukure, kuko muri urwo rubanza rundi, abagize Koperative yahawe umwenda idafite ubuzima gatozi, bari barayisinyiye nk'abishingizi, kandi bikaba byemewe n'amategako. UKO URUKIKO RUBIBONA [25] Ingingo ya 552 y'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano iteganya ko uwishingiye undi aba yiyemeje imbere y'ugomba kwishyurwa kuzamwishyura mu gihe ugomba kwishyura ubwe azaba atabikoze. [26] Ingingo ya 558 y'Igitabo kimaze kuvugwa iteganya ko ugomba kwishyura usabwe kugira umwishingira agomba kwerekana ufite ubushobozi bwo gukora amasezerano kandi akagira n'ibintu bihagije bishobora kuvamo ubwishyu bw'umwenda. [27] Urukiko rusanga kuba itegeko riteganya ko uwishingiye undi agomba kuba afite ubushobozi bwo gukora amasezerano hamwe n'ibintu bihagije byavamo ubwishyu, ari ikigaragaza ko amasezerano y'ubwishingire aba yihariye n'ubwo akorwa ashamikiye ku masezerano yandi y'inguzanyo atandukanye nayo, bityo kuba uwishingiye adafite ubushobozi bwo gukora amasezerano, bikaba bitaba impamvu itesha agaciro amasezerano y'ubwishingire, mu gihe bigaragara ko

uwamwishingiye afite ubushobozi buvugwa mu ngingo ya 558 yavuzwe. [28] Ibi kandi niko byemejwe mu rubanza rwaciwe n'Urukiko rusesa imanza rwo mu Bufaransa ko uwishingira undi atakwitwaza impamvu zihariye z'uwishingiwe ngo yange kwishyura, ko ahubwo impamvu zose zishingiye ku wishingiwe ku giti cye (personnelle) zigira ingaruka kuri we gusa. 1 La cour de cassation, siégeant en chambre mixte statuant sur l'arrêt rendu le 11 mars 2003, par la cour d'appel d'Aix-en-Provence (1re chambre civile A), dans le litige l'opposant à M. Antoine

Page 8

Y à M. Jean-Marie Z. : «La caution ne peut opposer les exceptions qui sont purement personnelles au débiteur principal. Dès lors, c'est à bon droit qu'une cour d'appel retient que la caution qui n'a pas été partie au contrat de vente d'un fonds de commerce, n'est pas recevable à invoquer la nullité relative tirée du dol affectant le consentement du débiteur principal, et qui, destinée à protéger ce dernier, constituait une exception purement personnelle » 2 F. Nteziryayo, le cautionnement : Etude comparative des droits belges, français et rwandais, Imprimerie Pallotti - Presse, 1994, p.19. La doctrine considère que la caution peut garantir une obligation annulable par une exception purement personnelle à l'obligé et qui cite le cas de la minorité du débiteur principal..... et doit recevoir une application chaque fois que l'engagement du débiteur principal est annulable pour cause de nullité relative.....on peut néanmoins cautionner une obligation, encore qu'elle pût être annulée par une exception purement personnelle à l'obligé ; par exemple la minorité.» [29] Ibimaze kuvugwa bihura kandi n'ibyasobanuwe n'abahanga mu mategeko bavugwa ko impamvu zihariye zitesha agaciro amasezerano zishingiye ku wishingiwe nko kuba yarakoze ayo masezerano ataruzuzwa imyaka y'ubukure, bitabuza uwamwishingiye kuzuza inshingano yiyemeje zo kwishyura.2 [30] Urukiko rusanga mu gihe Kayigaba yasinye nk'umwishingizi ku masezerano y'umwenda Ntampaka yahawe, agomba kuwishyura nk'uko ayo masezerano abiteganyaga. [31] Urukiko rusanga kandi Kayigaba akwiye kwishyura umwenda Ntampaka yahawe yishingiye hamwe n'inyungu zawo nk'uko BPR yabisobanuye mu iburanisha, yose hamwe akaba ahwanye na 52.489.808 Frw (17.809.885 Frw + 34.679.923 Frw) cyane cyane ko uhagarariye Kayigaba atigeze ahakana ibarwa ryawo, usibye kuvuga gusa ko ntacyo agomba kwishyura nk'uko byamaze gusobanurwa haruguru. Ku bijyanye n'ubujurire bwa Ntampaka na Kayigaba bwuririye ku bwa BPR Ltd [32] Ntampaka na Kayigaba basaba BPR Ltd 1.000.000 Frw y'indishyi z'akababaro, 1.000.000 Frw y'igihembo cya Avoka kuri buri wese. Ntampaka asaba kandi 500.000 Frw y'ikurikiranarubanza no kuba yarashowe mu manza ku maherere. Naho Kayigaba agasaba 1.000.000 Frw y'ikurikirana rubanza no gushorwa mu manza ku maherere. [33] Me Basominger Alberto avugaga ko indishyi ababuranira abaregwa babasabira ndetse ko n'izo BPR Ltd yaciye mu Rukiko Rukuru rw'Ubucuruzi nta shingiro zifite kubera ko kuba iyo banki yarareze ari uburenganzira bwayo, ko kandi itigiza nkana. Anavugaga ko icyo iyo banki yari igamije ari ukugaruza amafaranga yayo, bikaba bitumvikana uburyo Kayigaba ashobora gusaba indishyi mu gihe azi neza ko amakosa ari aye, kubera ko ariwe wazanaga ibyemezo by'uko asanzwe arera Ntampaka nyamara yari azi neza ko ari umwana muto, ndetse akaba

Page 9

yaramukoreshaga mu bikorwa bye bitandukanye by'ubucuruzi, akaba ariwe ahubwo ukwiye kuryozwa indishyi . UKO URUKIKO RUBIBONA [34] Urukiko rurasanga indishyi Ntampaka Janvier asaba atazikwiye kuko atagaragaza akababaro yagize. N'ubwo kandi nta bubasha yari afite bwo gukora amasezerano, ntahakana ko yahawe umwenda na BPR Ltd ku buryo byakwitwa ko yashowe mu manza ku maherere. Naho ku ndishyi zose zisabwa na Kayigaba, rusanga nawe atazikwiye mu gihe yategetswe kwishyura umwenda yishingiye. III. ICYEMEZO CY'URUKIKO [35] Rwemeje ko ikirego cya BPR Ltd gifite ishingiro kuri bimwe ; [36] Rwemeje ko amasezerano BPR Ltd yakoranye na Ntampaka Janvier nta gaciro afite kubera impamvu zasobanuwe ; [37] Rwemeje ko Kayigaba Eric agomba kwishyura umwenda Ntampaka yahawe na BPR n'inyungu zawo yishingiye ungana na 52.489.808 Frw ; [38] Rutegetse Kayigaba Eric kwishyura amagarama y'urubanza ahwanye na 100.000 Frw.

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