

RWANDA / JUDGMENT

MUGABE v. KOMISIYO YO GUSEZERERA INGABO (RDRC)

RCOMA 00042/2019/CHC/HCC

COURT

Commercial High Court

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MUGABE v. KOMISIYO YO GUSEZERERA INGABO (RDRC)

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Text

Page 1

MUGABE v. KOMISIYO YO GUSEZERERA INGABO (RDRC) [Rwanda URUKIKO RW'UBUCURUZI – RCOMA 00042/2019/CHC/HCC (Kibuka, P.J.,) Ku wa 11 Ukwakira 2019] Amategeko agenga imiburanishirize y'imanza y'ubucuruzi – Uburyozwe ku mucuruzi ukoresha izana rye mu bucuruzi – Ibimenyetso – Ntibyavugwa ko nyiri entreprise adafite aho ahuriye n'amasezerano yakozwe na entreprise abareye umuyobozi mu gihe nta bimenyetso byashingirwaho agaragaza, mu gihe kandi ariwe washyize umukono kurayo masezerano, akaba ari nawe wari mu bucuruzi naho entreprise ye ikaba ari izina ry'ubucuruzi – Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. ingingo ya 3 Incamake y'ikibazo: Komisiyo yo gusezerera ingabo (RDRC) yareze MUGABE Thomas ufite Entreprise MUGABE Thomas mu Rukiko rw'Ubucuruzi, imurega kunanirwa kwubahiriza amasezerano bagiranye yo kwubaka amazu y'abasezerewe mu ngabo bamugariye ku rugamba, ayo masezerano araseswa, bituma Entreprise ya MUGABE Thomas

igomba gusubiza amafaranga yasigaye kuri avansi (avance) yahawe. Nyuma biza kugaragara ko ingwate yerekanye ko yahawe na BPR LTD yo kurangiza imilimo, yari y'impimbano, ndetse Mugabe aza guhamwa n'icyo cyaha. RDRC yasabye urukiko gutegeka Mugabe kwishyura ayo mafaranga yasigaye n'indishyi zo kuyishora mu manza. Mugabe hamwe na Entreprise ye MUGABE Thomas bireguye muri bavuga ko imilimo yakozwe na Entreprise yari igeze ku kigero cya 80%, bakaba batemeranya ku ngwate yishyuzwa kuko imibare idahura, bityo ko KOMISIYO igomba kugaragaza neza aho iyo mibare ishingiye, no kuyigaragariza ibimenyetso. Urwo Rukiko rwababuranishije, rwanzura ko ikirego cya KOMISIYO YO GUSEZERERA INGABO (RDRC) gifite ishingiro, rutegeka MUGABE Thomas na Entreprise MUGABE Thomas kuyisubiza amafaranga y'ingwate bayisigayemo no kuyiha indishyi z'ibyakozwe mu rubanza. MUGABE Thomas ntiyishimiye imikirize y'urubanza, ajurira uru Rukiko rw'Ubucuruzi ku mpamvu zo kuba Urukiko rw'Ubucuruzi rwirengagije ko atagomba kuregwa muri uru rubanza kubera ko ntaho ahuriye n'amasezerano yaburanwe; kuba Urukiko rw'Ubucuruzi rwemeje ko MUGABE Thomas afatanyaga na Entreprise MUGABE Thomas kwishyura umwenda kandi ntaho ahuriye nayo masezerano; no kuba urwo Rukiko rutahaye agaciro ibisobanuro yaruhaye. KOMISIYO YO GUSEZERERA INGABO (RDRC) yireguye kuri izi mpamvu, ivuga ko zidafite ishingiro, isoza yuririra ku bujurire bwa MUGABE Thomas, isaba ko uru Rukiko rukosora amakosa y'imyandikire agaragara mu rubanza rwajuririwe; rukantegeka ko MUGABE ayishyura indishyi zo gukomeza kuyikurura mu manza nta mpamvu afite. MUGABE Thomas wajuriye ntiyitabiriye iburanisha nta mpamvu, uregwa asaba ko urubanza ruburanishwa mu mizi hashingiwe ku myanzuro y'impande zombi.

Page 2

Komisiyo yo gusezerera ingabo (RDRC) yireguye kuri iyi mpamvu, ivuga ko MUGABE Thomas agomba kuregwa muri uru rubanza kubera ko afite aho ahuriye n'amasezerano yaburanwemo, ndetse n'amafaranga 13.877.123 yishyuzwa kuko ariwe wari mu bucuruzi n'aho Entreprise MUGABE Thomas ikaba izina ry'ubucuruzi, akaba ariwe washyize umukono ku masezerano, ariwe wahamwe n'icyaha cyo gukoresha inyandiko-mpimbano y'ingwate ya avansi, akaba ariwe intandaro y'uko kutishyurwa, bityo ko agomba kwishyura ibitarishyuwe kubera amakosa ye, akaba agomba kuryozwa ayo mafaranga ndetse n'indishyi zategetswe n'Urukiko rubanza. Incamake y'icyemezo: Ntibyavugwa ko nyiri entreprise adafite aho ahuriye n'amasezerano yakozwe na entreprise abareye umuyobozi mu gihe nta bimenyetso byashingirwaho agaragaza, kandi akaba ariwe washyize umukono kuriyo masezerano, akaba ari nawe wari mu bucuruzi naho entreprise ye ikaba ari izina ry'ubucuruzi. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12. Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. ingingo ya 3 Nta manza zifashishijwe: Urubanza I.IMITERERE Y'URUBANZA [1] KOMISIYO YO GUSEZERERA INGABO (RDRC) yareze MUGABE Thomas ufite Entreprise MUGABE Thomas mu Rukiko rw'Ubucuruzi, imurega kunanirwa kwubahiriza amasezerano bagiranye yo kwubaka amazu y'abasezerewe mu ngabo bamugariye ku rugamba, bituma ayo masezerano aseswa, bituma Entreprise ya MUGABE Thomas igomba gusubiza amafaranga yasigaye kuri avansi (avance) yahawe; ariko biza

kugaragara ko ingwate yerekanye ko yahawe na BPR, LTD yo kurangiza imilimo, yari y'impimbano, ndetse MUGABE Thomas aza guhamwa n'icyo cyaha. KOMISIYO YO GUSEZERERA INGABO (RDRC) yasabye rero urwo Rukiko gutegeka MUGABE Thomas kwishyura ayo mafaranga yasigaye n'indishyi zo kuyishora mu manza. [2] MUGABE Thomas na Entreprise ye bireguye muri urwo rubanza, bavuga ko imilimo yakozwe na Entreprise yari igeze ku kigero cya 80%, bakaba batemeranya ku ngwate yishyuzwa kuko imibare idahura, bityo ko KOMISIYO igomba kugaragaza neza aho iyo mibare ishingiye, no kuyigaragariza ibimenyetso. Urwo Rukiko rwababuranishije, rwanzura ko ikirego cya

Page 3

KOMISIYO YO GUSEZERERA INGABO (RDRC) gifite ishingiro, rutegeka MUGABE Thomas na Entreprise MUGABE Thomas kuyisubiza amafaranga y'ingwate bayisigayemo no kuyiha indishyi z'ibyakozwe mu rubanza. [3] MUGABE Thomas ntiyishimiye iyo mikirize y'urubanza, ayijuririra uru Rukiko ku mpamvu zo kuba Urukiko rw'Ubucuruzi rwirengagije ko atagomba kuregwa muri uru rubanza kubera ko ntaho ahuriye n'amasezerano yaburanwe; kuba Urukiko rw'Ubucuruzi rwemeje ko MUGABE Thomas afatanyaga na Entreprise MUGABE Thomas kwishyura umwenda kandi ntaho ahuriye nayo masezerano; no kuba urwo Rukiko rutahaye agaciro ibisobanuro yaruhaye. KOMISIYO YO GUSEZERERA INGABO (RDRC) yireguye kuri izi mpamvu, ivuga ko zidafite ishingiro, isoza yuririra ku bujurire bwa MUGABE Thomas, isaba ko uru Rukiko rukosora amakosa y'imyandikire agaragara mu rubanza rwajuririwe; rukanatega ko MUGABE Thomas ayishyura indishyi zo gukomeza kuyikurura mu manza nta mpamvu afite. MUGABE Thomas wajuriye, ntiyitabiriye iburanisha nta mpamvu, uregwa asaba ko urubanza ruburanishwa mu mizi hashingiwe ku myanzuro y'impande zombi. [4] Igisuzumwa kinafatweho umwanzuro muri ubu bujurire, ni (1) Kumenya niba Urukiko rw'Ubucuruzi rwirengagije ko ibisobanuro bya MUGABE Thomas by'uko atagomba kuregwa muri uru rubanza kubera ko ntaho ahuriye n'amasezerano yaburanwe, rukemeza ko afatanyaga na Entreprise MUGABE Thomas kwishyura umwenda. (2) Kumenya niba hari amakosa Urukiko rw'Ubucuruzi yakoze mu myandikire, ku buryo yakosorwa kuri uru rwego. (3) Kumenya niba hari indishyi zigenwa kuri uru rwego. II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA A) Gusuzuma niba Urukiko rw'Ubucuruzi rwirengagije ibisobanuro bya MUGABE Thomas by'uko atagomba kuregwa muri uru rubanza kubera ko ntaho ahuriye n'amasezerano yaburanwe, rukemeza ko afatanyaga na Entreprise MUGABE Thomas kwishyura umwenda. [5] MUGABE Thomas asobanura iyi mpamvu ye y'ubujurire, avuga ko Urukiko rw'Ubucuruzi rwirengagije ko atagombaga kuregwa muri uru rubanza, kubera ko ntaho ahuriye n'aya masezerano, bityo rero ko icyemezo cyafashwe cyo kwemeza ko aguma mu rubanza, cyakongera gusuzumwa. MUGABE Thomas asobanura ko Urukiko rubanza rwemeje ko afatanyaga na Entreprise kwishyura umwenda kandi ntaho ahuriye n'ayo masezerano. Ko Urukiko rubanza rutahaye agaciro ibisobanuro yatanze, bityo ko uru Rukiko rukuru rwakongera kubisuzuma, kandi ko ibisobanuro birambuye azabitanga amaze kubona copie de jugement. [6] KOMISIYO YO GUSEZERERA INGABO (RDRC) yireguye kuri iyi mpamvu, ivuga ko MUGABE Thomas agomba kuregwa muri uru rubanza kubera ko afite aho ahuriye n'amasezerano yaburanwemo, ndetse n'amafaranga 13.877.123 yishyuzwa. Ko ibi

byashimangiwe n'icyemezo cyajuririwe, ahemejwe ko "Mugabe aguma muri uru rubanza". RDRC isanga ujurira atagaragaza uburyo ntaho ahuriye n'amasezerano, nyamara RDRC yo ikagaragaza ko MUGABE Thomas ariwe wari mu bucuruzi n'aho Entreprise MUGABE Thomas

Page 4

ikaba izina ry'ubucuruzi. Ko MUGABE Thomas ariwe washyize umukono ku masezerano n° 04/W/2012-2013/RDRC/RDRP yo ku wa 11/02/2013. [7] KOMISIYO YO GUSEZERERA INGABO (RDRC) ivuga ko ikindi ni uko MUGABE Thomas agomba kuguma mu rubanza akanishyuzwa Rwf 13.877.123 kuko ariwe wahamwe n'icyaha cyo gukoresha inyandiko-mpimbano y'ingwate ya avansi. Uko kuba harakoreshejwe inyandiko-mpimbano byatumye BPR Ltd yitirirwaga ingwate yanga kwishyura, bituma RDRC ibura ubwishyu bw'ayo mafaranga; MUGABE Thomas rero, akaba ariwe intandaro y'uko kutishyurwa, akaba agomba kwishyura ibitarishyuwe kubera amakosa ye. MUGABE Thomas akaba agomba kuryozwa ayo mafaranga ndetse n'indishyi zategetswe n'Urukiko rubanza. [8] KOMISIYO YO GUSEZERERA INGABO (RDRC) ivuga kandi ko Urukiko rubanza rutari guha agaciro imvugo za MUGABE Thomas kuko nta mategeko zari zishingiyeho, kandi ntabwo byigeze byumvikanisha ko ntacyo yabazwa ukurikije uko ibintu byagenze. RDRC igasanaga kuba uwajuriye asaba Urukiko Rukuru rw'Ubucuruzi ko rwakongera kubisuzuma ari ugukomeza kwirengagiza ko ariwe ukora ubucuruzi bwitwa Entreprise Mugabe Thomas, akaba ari nawe watanze ingwate y'impimbano nk'uko yabihamijwe mu rubanza RPA 00316/16/HC/KIG rwaciye ku wa 30/06/2016. UKO URUKIKO RUBIBONA [9] Rushingiye kuri iyi mpamvu y'ubujurire ya MUGABE Thomas, na cyane cyane ku myiregurire ya RDRC; rushingiye kuba ingingo ya 12 y'Itegeko n° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, igena ko "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora yategekwe gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda." No kuba ingingo ya 3 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igena ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite." Rusanga iyi mpamvu y'ubujurire ya MUGABE Thomas idafite ishingiro, kuko uretse kuba atagaragaza aho Urukiko rubanza rwirengagije ibi avuga, kandi nyamara atigeze abigaragariza urwo Rukiko; akaba na none aterekana ibimenyetso byashingirwaho ngo hemezwe ko MUGABE Thomas adafite aho ahuriye n'amasezerano yabaye hagati ya Entreprise ye, Entreprise MUGABE Thomas; na none ikimenyimenyi ni uko icyatumye baburana ni uko iyi Entreprise yatanze ingwate y'impimbano yakozwe na MUGABE Thomas ubwe, akaba yaranabihamwe n'urubanza rw'inshinjabyaha. B) Gusuzuma niba hari amakosa Urukiko rw'Ubucuruzi yakoze mu myandikire, ku buryo yakosorwa kuri uru rwego. [10] RDRC yuririye kuri ubu bujurire bwa MUGABE Thomas, igasaba uru Rukiko ko hakosorwa amakosa y'imyandikire agaragara mu cyemezo cyajuririwe, kuko mu gice cya 3 cya kopi y'urubanza (Icyemezo cy'Urukiko), Urukiko rwanditse ko 13.177.123 FRW ariyo yasigaye ku ngwate, kandi ari 13.877.123. Ibi bikaba byatumye nyuma yo kongeraho 800.000 FRW

Page 5

y'ibyakozwe mu rubanza, Urukiko rwarategetse MUGABE Thomas na Entreprise Mugabe Thomas kwishyura 13.977.123 FRW kandi yaragombaga kuba 14.677.123 FRW. [11] Nk'uko byagaragajwe hejuru, MUGABE Thomas wajuriye, ntiyitabiriye iburanisha nta mpamvu, ngo yiregure mu iburanisha kuri ubu bujurire bwuririye ku bundi. Akaba na none atigeze anabwireguraho mu myanzuro yashyize muri system. UKO URUKIKO RUBIBONA [12] Rushingiye kuri ubu bujurire bwa RDRC bwuririye kubwa MUGABE Thomas, no kuba MUGABE Thomas atabwireguyeho; rushingiye ku mibare isanzwe yakorerwa kubyo RDRC yari yaregeye ku rwego rubanza, aribyo gusubizwa avance ya Rwf 13,877,123 aho kuba Rwf 13,178,123 uko byagaragaye mu cyemezo cya nyuma cyafashwe n'Urukiko rw'Ubucuruzi; rusanga koko harabayeho ikoza mu kwandika umubare 8, handikwa 1. Bityo rero, bikaba bikwiye ko MUGABE Thomas ategukwa gufatanya na Entreprise ye (mu izina ryayo), akishyura RDRC, Rwf 13,877,123, akaba akandi ari uyu mubare wiyongeraho indishyi y'ibyakozwe mu rubanza zemejwe ku rwego rubanza, za Rwf 800,000. Yose hamwe akaba Rwf 14,677,123 aho kuba Rwf 13,977,123. C) Gusuzuma niba hari indishyi zigenwa kuri uru rwego. [13] MUGABE Thomas yasoje ubujurire bwe, asaba ko bwakirwa, Urukiko rukemeza ko bufite ishingiro. Rukanemeza ko atangomba kuregwa muri uru rubanza. Rukemeza ko nta mafaranga Entreprise MUGABE Thomas igomba kwishyura, ahubwo MUGABE Thomas akaba ariwe ugomba kwishyurwa ibikorwa yakoze ntiyishyurwa. [14] RDRC yireguye kuri ibi bisabwa na MUGABE Thomas, ivuga ko ubu bujurire bwe budafite ishingiro, kuko MUGABE Thomas atagaragaza amategeko ashyigikira ibyo avuga. Bityo ko RDRC isaba Urukiko Rukuru kwemeza ko urubanza rwajuririwe rugumyeho, uretse ku ngano y'amafaranga MUGABE thomas/ Entreprise MUGABE Thomas agomba kwishyura nk'uko byagaragajwe akwiye gukosorwa. RDRC ivuga ko hari umwanya, imbaraga n'amafaranga byagendeye mu gutegura uru rubanza, kurukurikirana no kuruburana; bityo ikaba isaba Urukiko gutegeka MUGABE Thomas/Entreprise MUGABE Thomas kuyishyura 1.000.000 FRW y'ibyangendeye ku rubanza. RDRC isaba kandi ko MUGABE Thomas ategukwa kwishyura indishyi za 3.000.000 FRW zo kuba akomeje kuyizana mu manza, kandi nta mpamvu afite. UKO URUKIKO RUBIBONA [15] Rushingiye kuri ibi bisabwa n'ababuranyi bombi, no kubyo cyane cyane rumaze kubona mu isesengura ry'impamvu z'ubujurire zibanziriza; uko cyane cyane ubujurire bwa MUGABE Thomas budahawe ishingiro, rusanga ntacyo yagenerwa kuri uru rwego kubera impamvu imaze kuvugwa. Rusanga ahubwo ariwe ukwiye gutegekwa guha RDRC indishyi y'ibyangendeye ku rubanza, hashingiwe ku biteganwa n'ingingo ya 111 y'Itegeko n° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo

Page 6

n'iz'ubutegetsi, igena ko "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe." Kimwe n'ibiteganwa n'ingingo ya ya 26 y'Amabwiriza n° 01/2014 agenga ibihembo mbonera by'abavoka; MUGABE Thomas, mu izina rya Entreprise MUGABE Thomas, agategekwa guha KOMISIYO YO GUSEZERERA INGABO

(RDRC), indishyi zo gukomeza kuyishora mu manza za Rwf 300,000 n'igihembo cya avoka cya Rwf 1,000,000. III.ICYEMEZO CY'URUKIKO: [16] Urukiko Rukuru rw'Ubucuruzi:

- Rwemeye kwakira ubujurire bwatanzwe na MUGABE Thomas, kuko bwatanzwe mu buryo bwubahirije amategeko, rubusuzumye, rusanze nta shingiro bufite.
- Rwemeje ko imikirize y'urubanza rwajuririwe RCOM 01714/2018/TC rwaciwe n'Urukiko rw'Ubucuruzi, kuwa 17/12/2018, ihindutse gusa ku mubare w'amafaranga yategetswe kwishyurwa ku rwego rwa mbere.
- Rukijije ko umwenda wasigaye ku ngwate Entreprise MUGABE Thomas igomba KOMISIYO YO GUSEZERERA INGABO (RDRC), ari Rwf 13.877.123, akaba agomba kwiyongeraho Rwf 800,000 uko yemejwe ku rwego rubanza, yose hamwe akaba Rwf 14,677,123.
- Rukijije kandi ko, muri ubu bujurire, MUGABE Thomas, mu izina rya Entreprise MUGABE Thomas, agomba guha KOMISIYO YO GUSEZERERA INGABO (RDRC), indishyi zo gukomeza kuyishora mu manza za Rwf 300,000 n'igihembo cya avoka cya Rwf 1,000,000.
- Rutegetse ko MUGABE Thomas, mu izina rya Entreprise MUGABE Thomas, agomba guha KOMISIYO YO GUSEZERERA INGABO (RDRC), Rwf 14,677,123 na Rwf 1,300,000. Yose hamwe akaba Rwf 15,977,123.

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