

RWANDA / JUDGMENT

MINOR METALS MINING COMPANY Ltd (MMMC Ltd) v. MUPENZI

RCOMAA 0006/14/CS

COURT

Supreme Court

DECIDED

15 January 2016

CASE / FILE NUMBER

RCOMAA 0006/14/CS

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MINOR METALS MINING COMPANY Ltd (MMMC Ltd) v. MUPENZI

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- Date: 2016-01-15
- Case/document no.: RCOMAA 0006/14/CS
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MINOR METALS MINING COMPANY Ltd (MMMC Ltd) v. MUPENZI [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0006/14/CS (Mugenzi, P.J., Gatete na Mutashya, J.) 15 Mutarama 2016]

Amategego agenga ibimenyetso – Itangwa ry'ibimenyetso – Umuburanyi agomba kugaragaza ukuri kw'ibyo aburana – Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Amategeko agenga amasezerano – Amasezerano y'imikoranire – Iseswa ry'amasezerano ridakurikije amategeko – Indishyi – Uwasheshe amasezerano mu buryo budakurikije amategeko agomba kubiryoza abitangira indishyi zigenwa mu bushishozi bw'urukiko – Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 135(1), 137 niya 138. Incamake y'ikibazo: Uru rubanza rukomaka ku amasezerano yabaye kuwa 13/12/2012 hagati ya MMMC Ltd, WAYCOR Ltd na Mupenzi yateganyaga ko Mupenzi azakorana na MMMC Ltd mu bucuruzi bw'amabuye y'agaciro mu gihe cy'imyaka itanu; ndetse n'igurwa ry'ibikoresho bya MUPENZI yakoreshaga muri WAYCOR Ltd birimo imashini zitandukanye. Kuwa 28/02/2013, MMMC Ltd yasheshe amasezerano bari bafitanye maze Mupenzi

aregera Urukiko rw'Ubucuruzi rwa Nyarugenge, WAYCOR Ltd nayo iraruregera mu urwo rubanza MMMC Ltd nayo yatanze ikirego kiregera kwiregura; rwemeje ko ikirego cya WAYCOR Ltd n'icya MMMC Ltd bidafite ishingiro, naho icya Mupenzi gifite ishingiro kuri bimwe, agenerwa indishyi kubera ko MMMC Ltd itubahirije amasezerano bagiranye . MMMC Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi haregwa Mupenzi wenyine, rwemeza ko ubujurire bwayo bufite ishingiro kuri bimwe bijyanye na royalties zagombaga guhabwa Mupenzi, ruyitegeka kumuha royalties yatakaje zingana na USD 25.000 aho kuba USD 144.000 yagenewe ku rwego rwa mbere; rwemeje kandi ko ubujurire bwa Mupenzi bwuririye ku bwa MMMC Ltd bufite ishingiro kuri bimwe, ni ukuvuga ku bijyanye n'umwenda MMMC Ltd yari ikimubereyemo, ruyitegeka kuwumwishyura ndetse ikumuha amafaranga y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka. MMMC Ltd ivuga ko yagaragariye urukiko ko Mupenzi ariwe wishe amasezerano, rubirengaho ahubwo ruyitegeka kumuha indishyi zitandukanye, rumugenera kandi royalties mu bushishozi bwawo, kandi nyamara zaragombaga gutangwa hagize ibishingiweho, ko kandi urukiko rwategetse ko agenerwa indishyi zihwanye na USD 30.000 zibariye ku mezi icumi (10) yari asigaye kugirango amasezerano arangire, nyamara yari yagaragaje ko Mupenzi ariwe wishe ayo masezerano. Ikomeza ivuga ko Mupenzi yarenze ku amasezerano bagiranye maze hakaba andi masezerano hagati Mining and Mineral Solution ahagarariye na Calliane Mines ihagarariye na Rubazinda; Irindi kosa akaba aruko Mupenzi yakoresheje amahugurwa MMMC Ltd itamuhaye uburenganzira kandi itanabizi. Avuga kandi ko Mupenzi yakoraga ibikorwa by'ubucuruzi byo gupimira amabuye y'agaciro sosiyete yitwa Kamstra Mining Company Ltd kandi iri mukeba wa MMMC Ltd; ananengwa igikorwa cyo kugurisha imashini yari yarahawe nk'inguzanyo

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atabimenyesheje MMMC Ltd, kandi binyuranyije n'amasezerano bagiranye. Mupenzi kandi aryoze igikorwa cyo kwandikisha muri RDB MMMC Ltd mu mazina ye. Mupenzi nawe yajuririye uru Rukiko avuga ko ndishyi zerekeranye na "royalties" Urukiko Rukuru rw'Ubucuruzi rwagabanyije yari yagenewe ku rwego rwa mbere ntacyo rushingiyeho, kandi nyamara yari yasabye umucamanza ko mu gihe yabona ko bigoye kubara ayo mafaranga hakurikijwe ijanisha ry'ibyagombaga gucuruzwa bitabonetse, byibura yamubarira kuri USD 5.000 ku kwezi mu gihe cy'imyaka itanu (5) nkuko ubuyobozi bwa MMMC Ltd bwari bwabyifuje. Mupenzi yiregura kubyo MMMC Ltd imurega avuga ko atari we washeshe amasezerano, ko ahubwo ari MMMC Ltd yayasheshe kuko n'ibaruwa yo kuwa 01/3/2013 yayo ibyerekana; ikindi kandi asobanura ko amahugurwa MMMC Ltd yavugaga ko yakoresheje itabimusabye yayakoresheje abakozi bayo kandi ni nayo yayishyuye naho ibyo kandi yavugaga ko muri ayo mahugurwa harimo abandi bantu batari abakozi bayo ntabo yagaragaje; avuga kandi ko atagurishije MMMC Ltd imashini avanye mu yindi sosiyete, kuko yari iye yakoreye akayihabwa mu buryo buzwi. Asoza asaba indishyi zingana na 10% zikubiyemo igihembo cya Avoka n'indishyi zo gushorwa mu manza nazo zingana na 10%, zose zibariwe ku mafaranga yatsindira mu rubanza, hanyuma MMMC Ltd ikavuga ko atagenerwa izo ndishyi kuko ariwe wishe amasezerano. Incamake y'icyemezo: 1. kuba isosiyete uregwa yari hagarariye yaragiranye amasezerano n'iyindi sosiyete ntibyafatwa nk'ikimenyetso cyuko uregwa yakoranye n'indi sosiyete yiyibagije ko hari amasezerano

y'imikoranire yagiranye na MMMC Ltd mu gihe ariya masezerano ye na Calliane Mines yabaye mbere y'ayo yagiranye na MMMC Ltd.

2. Kuba Mupenzi yaratanze ikimenyetso kigaragaza ko yandikiye ibaruwa MMMC Ltd igaragaza ko yayibutsaga iby'amahugurwa y'abakozi kandi bari banaherutse kuvugana hakoreshejwe email bituma ibyo MMMC Ltd ivuga ko Mupenzi yakoresheje amahugurwa itamuhaye uburenganzira kandi atanabizi nta shingiro bihabwa kuko itabashije kuvuguruza inyandiko ya Mupenzi kandi hakaba nta kimenyetso yerekana gishyigikira ibyuko yahuguye abakozi itabizi.
3. Kuba MMMC Ltd itabasha kuvuguruza ikimenyetso Mupenzi yatanze kijyanye nuko Kamstra Mining Company Ltd itari mukeba wayo ahubwo ikorera mukwaha kwayo bituma iyi ngingo idahabwa ishingiro. 4. kuba Mupenzi adahakana ikimenyetso MMMC Ltd yatanze cy'uko yagurishije imashini yari yarahawe nk'inguzanyo ariko Mupenzi akaza kwererekana indi baruwa yemeza ko nta mwenda afite bituma iyi ngingo idahabwa ishingiro.
5. Ku bijyanye na "registration certificate" ya MMMC Ltd itangwa na RDB igaragaza ko Mupenzi yasinye mu mazina ye bitahabwa ishingiro kuko ariyo yabimusabye.
6. Mupenzi ntiyagenerwa royalties zishingiye kuri kwijanisha ry'umusaruro wagombaga kuboneka mu gihe nta wigeze ugaragara bitewe nuko MMMC Ltd yari itaratangira gucukura no kugurisha amabuye y'agaciro kubwibyo rero akaba agenewe 30.000 USD ahwanye n'amezi 10 yari asigaye guhembwa, kabone nubwo umusaruro wari uteganyijwe utari wakabonetse nkuko amasezerano abiteganyaga.

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7. Kuba MMMC Ltd yarasheshe amasezerano nta kosa igaragaje Mupenzi yaba yarakoze igomba kubiryoza ikabimuhera indishyi zigenwa mu bushishozi bw'urukiko kuko yavukijwe inyungu yabashaga kubona iyo amasezerano adaseswa, kandi yari yaremeye kureka imirimo yakoraga yari imufitiye akamaro.
8. kuba MMMC Ltd yasheshe amasezerano mu buryo butemewe n'amategeko bigatuma Mupenzi yiyambaza inkiko kugirango arenganurwe, ikwiye kubimuhera indishyi z'ikurikiranarubanza n'igihembo cy'Avoka zigenwe mu bushishozi bw'urukiko. Ubujurire bwa Minor Metals Mining Company Ltd nta shingiro bufite. Ubujurire bwa Mupenzi bufite ishingiro kuri bimwe Amagarama y'urubanza aherereye kuri Minor Metals Mining Company Ltd. Amategeko yashingiweho: Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 135(1), 137 niya 138. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 13/12/2012, hagati ya MMMC Ltd, WAYCOR Ltd (ihagarariwe na Mupenzi Albert) na Mupenzi Albert habaye amasezerano bise "Project and asset purchase agreement", akaba yarateganyaga ko Mupenzi azakorana na MMMC Ltd mu bucuruzi bw'amabuye y'agaciro mu gihe cy'imyaka itanu. Yari yerekeranye kandi n'igurwa ry'ibikoreshe bya Mupenzi Albert yakoreshe muri WAYCOR Ltd birimo

imashini zitandukanye. [2] Ku itariki ya 28/02/2013, MMMC Ltd yamenyesheje Mupenzi ko isheshe amasezerano bagiranye, uyu aregera Urukiko rw'Ubucuruzi rwa Nyarugenge, WAYCOR Ltd nayo iraruregera¹. Muri urwo rubanza, MMMC Ltd nayo yatanze ikirego kiregera kwiregura, urwo rukiko rwemeza ko ikirego cya WAYCOR Ltd n'icya MMMC Ltd bidafite ishingiro, naho icya Mupenzi gifite ishingiro kuri bimwe, agenerwa indishyi zingana na USD 174.000 kubera ko MMMC Ltd itubahirije amasezerano bagiranye. [3] MMMC Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi² haregwa Mupenzi wenyine, urwo rukiko rwemeza ko ubujurire bwayo bufite ishingiro kuri bimwe, ni ukuvuga ku bijyanye na royalties zagombaga guhabwa Mupenzi, ruyitegeka kumuha royalties yatakaje zingana na USD 25.000 aho kuba USD 144.000 yagenewe ku rwego rwa mbere; rwemeje kandi ko ubujurire bwa Mupenzi bwuririye ku bwa MMMC Ltd bufite ishingiro kuri bimwe, ni ukuvuga ku bijyanye 1 RCOM 0294/13/TC/Nyge 2 RCOMA 0259/13/HCC

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n'umwenda MMMC Ltd yari ikimubereyemo, rutegeka ko imwishyura USD 11.519, na frw 600.000 akubiyemo indishyi z'ikurikiranarubanza n'igihembo cya Avoka. [4] MMMC Ltd yajuririye Urukiko rw'Ikirenga ivuga ko yagaragarije urukiko ko Mupenzi ariwe wishe amasezerano, rubirengaho ahubwo ruyitegeka kumuha indishyi zitandukanye, rumugenera kandi royalties mu bushishozi bwawo, kandi nyamara zaragombaga gutangwa hagize ibishingiweho, ko kandi urukiko rwategetse ko agenerwa indishyi zihwanye na USD 30.000 zibariye ku mezi icumi (10) yari asigaye kugirango amasezerano arangire, nyamara yari yagaragaje ko Mupenzi ariwe wishe ayo masezerano. [5] Mupenzi nawe yajuririye avuga ko ubujurire bwe bushingiye ku ndishyi zerekeranye na "royalties" Urukiko Rukuru rw'Ubucuruzi rwagabanyije yari yagenewe ku rwego rwa mbere zingana na USD 144.000, ruzigeza ku USD 30.000 ntacyo rushingiyeho, kandi nyamara yari yasabye umucamanza ko mu gihe yabona ko bigoye kubara ayo mafaranga hakurikijwe ijanisha ry'ibyangombaga gucuruzwa bitabonetse, byibura yamubarira kuri USD 5.000 ku kwezi mu gihe cy'inyaka itanu (5) nkuko ubuyobozi bwa MMMC Ltd bwari bwabyifuje. [6] Urubanza rwaburanishijwe mu ruhamwe kuwa 18/11/2015, MMMC Ltd ititabye ariko yarahamagajwe mu buryo amategeko ateganya, Mupenzi yitabye kandi yunganiwe na Me Bigaraba John. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA. Kumenya niba hari ibimenyetso bifatika MMMC Ltd yatanze bigaragaza ko Mupenzi ariwe wishe amasezerano yo kuwa 13/12/2012. [7] Mu myanzuro y'ubujurire Me Shema G. Charles uhagarariye MMMC Ltd 33 yashyikirije Urukiko, agaragaza ko umucamanza yirengagije nkana ibisobanuro yatanze ku byo amasezerano yateganyaga Mupenzi akayarengaho⁴, ibyo bikagaragazwa n'amasezerano yabaye hagati ya Mining and Mineral Solution ihagarariwe na Mupenzi na Calliane Mines ihagarariwe na Rubazinda Callixte. Irindi kosa akaba aruko Mupenzi yakoresheje amahugurwa MMMC Ltd itamuhaye uburenganzira kandi itanabizi. Avuga kandi ko Mupenzi yakoraga ibikorwa by'ubucuruzi byo gupimira amabuye y'agaciro sosiyete yitwa Kamstra Mining Company Ltd, akananengwa igikorwa cyo kugurisha imashini yari yarahawe nk'inguzanyo atabimenyesheje MMMC Ltd, kandi binyuranyije n'amasezerano bagiranye. Mupenzi kandi aryoze igikorwa cyo kwandikisha muri RDB MMMC Ltd (Registration Certificate) mu mazina ye kandi agasinya

akoresheje ijambo “FOR”, Urukiko rukaba rwaravuze ko ntaho byabangamiye amasezerano hagati y’impande zombi, kandi bigaragara ko asa naho yiyitiriye ubuyobozi bwa sosiyete. [8] Me Bigaraba John wunganira Mupenzi avuga ko uyu atari we washeshe amasezerano, ko ahubwo ari MMMC Ltd yayasheshe kuko n’ibaruwa yo kuwa 01/3/2013 yayo ibyerekanaga. Asanga kandi nta makosa yigeze akora, ibyo MMMC Ltd imurega ikaba nta bimenyetso yabitangiye. Asobanura ko amahugurwa MMMC Ltd yavugaga ko yakoresheje itabimusabye yayakoresheje abakozi bayo kandi ni nayo yayishyuye. Ibyo kandi yavugaga ko muri ayo 3 Mu rubanza MMMC Ltd ntiyitabye nyuma yo guhamagarwa mu buryo bukurikije amategako 4 Anengwa ibikorwa byo kwica “contrat d’exclusivité”

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mahugurwa harimo abandi bantu batari abakozi bayo ntabwo yagaragaje. Asobanura kandi ko Mupenzi atagurishije MMMC Ltd imashini avanye mu yindi sosiyete, kuko yari iye yakoreye akayihabwa mu buryo buzwi⁵. UKO URUKIKO RUBIBONA [9] Nkuko bigaragara muri dosiye y’urubanza rujuririrwa⁶, MMMC Ltd yemera ko yasheshe amasezerano yagiranye na Mupenzi kubera ko atayubahirije, ikavuga ko kuyasesa byatewe n’amakosa Mupenzi yakozwe, ikagaragaza ko iyo itayasesa byari kuyigiraho ingaruka zikomeye. [10] Ku bijyanye n’amasezerano Mining and Mineral Solution (ihagarariwe na Mupenzi) yagiranye na Calliane Mines (ihagarariwe na Rubazinda Callixte), Urukiko rusanga aya masezerano⁷ hagati y’izi sosiyete yarabayeho koko, ariko akaba yarasinywe n’impande zombi kuwa 26/03/2012 nkuko bigaragara, akaba rero atafatwa nk’ikimenyetso cyuko Mupenzi yakoranye n’indi sosiyete yiyibagije ko hari amasezerano y’imikoranye⁸ yagiranye na MMMC Ltd mu gihe ariya masezerano ye na Calliane Mines yabaye mbere y’ayo yagiranye na MMMC Ltd, kuko yo yabaye kuwa 13/12/2012, kandi MMMC Ltd ikaba itarerekanye ko nyuma imaze gusinyana na Mupenzi aya masezerano, uyu yaba yarakomeje gukorana na Calliane Mines. [11] Ku byerekeye amahugurwa Mupenzi yakoresheje MMMC Ltd itamuhaye uburenganzira kandi itanabizi, Urukiko rurasanga ababuranyi bombi bemeranywa ko hari amahugurwa Mupenzi yakoresheje koko, icyo batumvikanaho kikaba aruko yaba yarayakoresheje MMMC Ltd itabizi, ikavuga ko yayakoresheje mu nyungu ze. [12] Urukiko rurasanga iki kimenyetso Mupenzi yaracyireguyeho yerekana ibarwa yandikiye Tim Wiford⁹ igaragaza ko yamwibutsaga iby’amahugurwa y’abakozi bagaragara muri iyo nyandiko, bari baherutse kuvuganaho hakoreshejwe email, uhagarariye MMMC Ltd akaba atarabashije kuvuguruza iyo nyandiko ya Mupenzi, akaba nta kimenyetso yerekanye gishyigikira ibyo avuga byerekeranye nuko yahuguye abakozi itabizi. [13] Ku bijyanye n’ibikorwa by’ubucuruzi byo gupimira amabuye y’agaciro Kamstra Mining Company Ltd, Urukiko rurasanga ababuranyi bombi nabwo baremeranyijwe mu Nkiko zabanje ko Mupenzi yakoreye iriya sosiyete, icyo batumvikanaho akaba aruko uhagarariye MMMC Ltd avuga ko iyo sosiyete ari mukeba¹⁰ wayo, mu gihe Mupenzi n’umwunganira bo bavugaga ko Kamstra Mining Company Ltd ikorera mu kwaha kwa MMMC Ltd atari mukeba wayo, Mupenzi n’umwunganira bakaba baremeranyije email Franco BALESTRA¹¹ yandikiye Mupenzi amusaba 5 Me Bigaraba ntiyasubije ku ngingo zose z’ubujurire bwa MMMC Ltd zikubiye mu mwanzuro 6 Reba urupapuro rwa 4 rw’imyanzuro ya MMMC Ltd 7 Reba C50 ya dosiye ya HCC 8 Contrat d’exclusivité 9 Deputy Managing Director wa MMMC Ltd 10

competitor 11 Managing Director wa MMMC Ltd nkuko bigaragara ku nyandiko yo kuwa 22/2/2013 y'inama yakoreshejwe uwo munsu na MMMC Ltd; reba annexe 4 iri ku rupapuro rwa 45 dosiye ya HCC, n'iyi kuwa 14/12/2012, ku

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gukora “impression” y'inyandiko (documents) yoherereje Minisitiri asaba “transfert” ya “licence” ya Kamu Mining Ltd mu izina rya Kamstra Mining Company Ltd, MMMC Ltd ikaba itavuguruzwa iki kimenyetso cya Mupenzi yireguza. [14] Ku bijyanye nuko Mupenzi yagurishije MMMC Ltd imashini yari yarahawe nk'inguzanyo atabimenyesheje MMMC Ltd, Urukiko rusanga ikimenyetso uhagarariye MMMC Ltd yatanze kuri iyi ngingo ari inyandiko yo kuwa 07/08/2012 igaragara ku rupapuro rwa 67 rwa dosiye y'Urukiko Rukuru rw'Ubucuruzi, General Administrator wa MMR Sprl yandikiye Mupenzi ku birebana n'inguzanyo y'imashini NITON ANALYZER, iyi nyandiko ikaba igaragaza ko iyi Sosiyete yahaye Mupenzi iyo mashini ku nguzanyo y'amezi 6, Mupenzi akaba adahakana icyo kimenyetso, ariko akagaragaza ko hari indi nyandiko yo kuwa 05/03/2013 yerekana ko yayeguriwe nta wundi mwenda afite. [15] Ku bijyanye na “registration certificate” ya MMMC Ltd itangwa na RDB igaragaza ko Mupenzi yasinye mu mazina ye, Urukiko rusanga ikimenyetso MMMC Ltd yatanze ari inyandiko zo kuwa 05/12/2012 (C3 na C4), zerekana ko Mupenzi yazisinye mu mazina ya Franco BALESTRA (“For Mr Franco Balestra”), ko kandi yabikoze ariwe ubimusabye. [16] Hashingiwe rero ku biteganywa n'ingingo ya 3 y'itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko umuburanyi agomba kugaragaza ukuri kw'ibyo aburana, urukiko rurasanga MMMC Ltd idashobora kugaragaza ibimenyetso byuko ari Mupenzi wishe amasezerano bari baragiranye, ku bw'izo mpamvu ubujurire bwayo bukaba nta shingiro bufite.

- b. Kumenya niba hari “royalties” zagombaga kugenerwa MUPENZI hashingiwe ku masezerano y'impande zombi. [17] Me Bigaraba John wunganira Mupenzi asobanura ko hari ijanisha (pourcentage) ryari ryumvikanyweho n'impande zombi mu mirimo y'ubucukuzi n'igurisha ry'amabuye y'agaciro, Urukiko Rukuru rwanga gushingira ku biteganywa n'amasezerano arebana na toni 20 ku kwezi, bakaba barerekanye ko MMMC Ltd yumvikanye na Mupenzi ko izajya imuhemba USD 5.000 ku kwezi, ko kandi berekanye ko MMMC Ltd yatangiye akazi kayo ku byo Mupenzi Albert yari amaze kugeraho mu bucukuzi no mu igurisha ry'amabuye y'agaciro, uyu akaba ariwe wakoze “démarches” zose mu izina ryayo, yizeye inyungu azajya akuramo. Avuga ko ubu basaba Urukiko kwemeza ko MMMC Ltd yishyura Mupenzi iza ndishyi (USD 5.000). [18] Ku kibazo cyo kumenya niba hari umusaruro wabashije kugaragara ku byo bari bemeranyijweho, Me Bigaraba avuga ko nta musaruro wari wakaboneka kuko MMMC Ltd yari itarahabwa uruhushya rwo gutangira gukora, kandi niyo yagombaga gutanga amafaranga yo gutangira akazi. Mupenzi avuga kandi ko bagombaga kubanza gushaka ibirombe, bakaba bari bamaze kubona bitatu (3), imirimo iza guhagarikwa n'inguzanyo yari itaraboneka, muri icyo gihe akaba ariho haje ibyo kumuhagarika. [19] MMMC Ltd nayo yajuriye ivuga ko Urukiko rutari kugenera Mupenzi Albert royalties kandi nta musaruro wabonetse zari gushingiraho. rupapuro rwa 49 - dosiye ya HCC 12 Reba annexe ya 5 – C. 14 13 Reba inyandiko yo kuwa 12/1/2012, C3 y'ibimenyetso bya MUPENZI

Albert

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UKO URUKIKO RUBIBONA [20] Urukiko rusanga umucamanza atari gushingira kuri “pourcentage” y’umusaruro wagombaga kuboneka mu gihe nta wigeze ugaragara bitewe nuko MMMC Ltd yari itaratangira gucukura no kugurisha amabuye y’agaciro. [21] Rusanga kandi umucamanza atari kuzigena ashingiye no ku USD 5.000 Umuyobozi wa MMMC Ltd Franco BALESTRA yifuzaga ko Mupenzi yajya ahabwa mu gihe amasezerano yateganyaga ko yahembwa USD 3.000 buri kwezi mu gihe cy’amezi 12 ubucukuzi bw’amabuye butaratangira. Uru Rukiko rukaba rusanga ahubwo Mupenzi yari kugenerwa USD 30.000, uyavunje mu mafaranga y’u Rwanda akaba frw 22.507.49615 ahwanye n’amezi 10 yari asigaye guhembwa, kabone nubwo umusaruro wari uteganyijwe utari wakabonetse nkuko amasezerano abiteganyaga. [22] Urukiko rurasanga kandi kuba MMMC Ltd yarasheshe amasezerano nta kosa igaragaje MUPENZI yakoze, igomba kubiryoza akagenerwa indishyi mu bushishozi zihwanye n’amadolari (USD) 20.000 angana na frw 15.004.997 hashingiye ku biteganywa n’ingingo za 135.1°, 137 na 138 z’Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, igenwa ryazo rikaba rishingiye ku mpamvu yuko Mupenzi yavukijwe inyungu yabashaga kubona iyo amasezerano adaseswa, kandi yari yaremeye kureka imirimo yakoraga yari imufitiye akamaro, akaba na none ariko atagenerwa USD 300.00016 asaba kubera ko nta cyemeza byanze bikunze ko hari kuboneka umusaruro wo kubariraho royalties yagombaga kugenerwa. Ku bijyanye n’indishyi z’ikurikiranarubanza n’igihembo cya Avoka. [23] Mupenzi asaba kwishyurwa indishyi zingana na 10% zikubiyemo igihembo cya Avoka n’indishyi zo gushorwa mu manza nazo zingana na 10%, zose zibariwe ku mafaranga yatsindira mu rubanza. [24] MMMC Ltd ivuga ko izo ndishyi Mupenzi atazigenerwa kubera ko yemeza ko ariwe wishe amasezerano. UKO URUKIKO RUBIBONA [25] Nkuko hagaragajwe ko MMMC Ltd ariyo yasheshe amasezerano mu buryo butemewe n’amategeko bigatuma Mupenzi yiyambaza inkiko kugirango arenganurwe, Urukiko rusanga bikwiye ko yagenerwa indishyi hashingiye ku biteganywa n’ingingo ya 258 y’igitabo cya III cy’urwunge rw’amategeko mbonezamubano, kuko MMMC Ltd ariyo yabaye nyirabayazana wo gusesa amasezerano kandi nta kosa ry’uwo bayagiranye, ikaba yaramuteje igihombo. Rusanga ariko izi ndishyi zikwiye kugenwa mu bushishozi bw’urukiko kuko izasabwe ari ikirenga, akagenerwa izingana na frw 1.500.000 ku nzego eshatu z’inkiko yaburaniyemo. 14 Ingingo ya 3.3 & 64 y’Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano 15 1 usd = frw 750.249873 (cours moyen BNR du 14/01/2016) 16 Reba imyanzuro yo ku wa 10/10/2013 : asaba ko indishyi zabarirwa kuri USD 5.000 ku kwezi mu gihe cy’imyaka 5

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III. ICYEMEZO CY’URUKIKO [26] Rwemeje ko ubujurire bwa MINOR METALS MINING COMPANY Ltd nta shingiro bufite; [27] Rwemeje ko ubujurire bwa Mupenzi Albert bufite ishingiro kuri bimwe; [28]

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28. Rutegetse MINOR METALS MINING COMPANY Ltd kwishyura Mupenzi Albert frw 39.012.493 nkuko byasobanuwe; [29] Ruvuze ko imikirize y'urubanza rwajuririwe R COM A 0259/13/HCC ihindutse; [30] Rutegetse MINOR METALS MINING COMPANY Ltd kwishyura amagarama y'urubanza ahwanye na frw 100.000.
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Prepared on 9 October 2026 · Esheria