

RWANDA / JUDGMENT

COGEBANQUE Ltd v. GAHITIRA

RLR V.2-2016

COURT

Supreme Court

DECIDED

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COGEBANQUE Ltd v. GAHITIRA

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Text

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COGEBANQUE Ltd v. GAHITIRA [Rwanda URUKIKO RW'IKIRENGA – RCOM 009/15/CS (Mukanyundo, P.J., Ngagi na Rugabirwa, J.) 31Nyakanga 2015] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Igihano gihatira kurangiza urubanza – Igihano gihatira kurangiza urubanza gishobora kvanwaho mu gihe uwagihawe agaragaje ko atanze kururangiza. Itegeko n° 12/2013 ryo kuwa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko, ingingo ya 38. Incamake y'ikibazo: COGEBANQUE Ltd yahaye sosiyete yitwa DALBIT PETROLEUM inguzanyo. Iyi inanirwa kwishyura iyo nguzanyo bituma COGEBANQUE Ltd ifatira ingwate y'inzu ya Gahitira cyusa Richard wari utaruzuzwa imyaka y'ubukure kubera ko iyi ngwate yatanzwe na se w'umwana watanze ikirego mw'izina ry'umwana we, asaba ko ingwate yateshwa agaciro. Urukiko rwemeza ko amasezerano y'ingwate ateshejwe agaciro kubera ko hagwatirijwe inzu y'umwana muto nta burenganzira bw'urukiko bahawe. Impaka zavutse hagati yababuranyi kubijyanye n'ugomba gusubizwa ibyangombwa by'inzu byari bigifitwe na banki. Ise w'umwana avuga ko ariwe ugomba guhabwa ibyangombwa by'inzu, COGEBANQUE Ltd yo ikavuga ko bigomba guhabwa DALBIT PETROLEUM kubera ko ariyo yahawe umwenda. Urukiko rw'Ikirenga rwemaza ko ari ise w'umwana ugomba gusubizwa ibyangombwa kandi ko itabikoze mu minsi 30 izacibwa ibihano

bihatira kwishyura bingana na 50.000 frws ku munsu. Uwaburaniraga Gahitira ariwe ise w'umwana yakomeje gusaba ibyangombwa by'inzu banki, iyi nayo ikamusaba procuration iriho umukono wa noteri cyangwa andi masezerano yanditse bagiranye na Gahitira kubera ko banki yari ifite amakuru ko umuryango wa Gahitira wose usigaye uba iburayi. Umuhesha w'inkiko nawe yakoze icyemezo gihatira banki kwishyura 12.000.000 frws, afatira ndetse n'imodoka ya banki kugirango itezwe cyamunara ivemo amafaranga y'ubwishyu. COGEBANQUE Ltd nayo yahise itanga ikirego cyihutirwa mu rukiko rw'ikirenga isaba gukurirwaho igihano gihatira kurangiza urubanza. Uburanira Gahitira nawe atanga inzitizi isaba kutakira ikirego cya banki kubera ko ikirego cyihutirwa gitangwa mu rukiko rwaregawe ikirego cy'iremezo kitaraburanishwa. Urukiko rwemeza ko inzitizi nta shingiro ifite maze iburanisha mu mizi rirakomeza. Uhagarariye Gahitira avuga ko banki ariyo yashyizeho amananiza isaba procuration biba ngombwa ko biyambaza umuhesha w'inkiko kugirango banki itange ibyangombwa kugahato kubera ko nta tegeko risaba umuhesha w'inkiko kwitwaza procuration mu irangizarubanza. Incamake y'icyemezo: 1. Ikirego kigamije kvanaho igihano gihatira kurangiza urubanza gifite ishingiro mu gihe uwagihawe atanze kururangiza kuko kuba yarasabye avoka kuzana procuration iriho umukono wa noteri ikanasaba umuhesha w'inkiko kugaragaza amasezerano yanditse yahawe n'uwamutumye kurangiza urubanza bitafatwa nk'amananiza. Bityo iki gihano kikaba kigomba kvanwaho. Ikirego cyihutirwa gifite ishingiro.

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Igihano gihatira kurangiza urubanza kivanyweho. Amagarama y'urubanza aherereye kuwarezwe. Amategeko yashyirahwe Itegeko n° 12/2013 ryo kuwa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko, ingingo ya 38. Nta manza zifashishijwe Urubanza I. IMITERERE Y'URUBANZA [1] COGEBANQUE Ltd yahaye Sosiyete DALBIT PETROLEUM inguzanyo. DALBIT PETROLEUM yananiwe kwishyura iyi nguzanyo, bituma COGEBANQUE Ltd ifatira ingwate y'inzu iri Nyarutarama ya GAHITIRA Cyusa Richard wari utaruzuzwa imyaka y'ubukure. Iyi ngwate yari yatanze na se GAHITIRA Bishumba Raymond waje no gutanga ikirego mu izina ry'uyu mwana we cyo gutesha agaciro iyo ngwate. [2] Urwo rubanza rwo gutesha agaciro ingwate, rwarangiriye mu Rukiko rw'Ikirenga kuwa 13/09/2013, kuri n° RCOMA 0121/11/CS hemezwa ko amasezerano y'ubugwate ateshejwe agaciro kuko GAHITIRA Bishumba Raymond yagwatirije inzu y'umwana we muto kandi atabihereye uburenganzira n'Urukiko. [3] Nyuma y'urwo rubanza havutse impaka hagati y'ababuranyi ku bijyanye n'ugomba gusubizwa ibyangombwa by'inzu byari bifatwe na COGEBANQUE Ltd. GAHITIRA B. Raymond avuga ko ariwe ugomba kubihabwa nka se w'umwana, COGEBANQUE Ltd yo ikavuga ko bigomba gusubizwa DALBIT PETROLEUM, kuko ariyo yari yarahawe umwenda. [4] GAHITIRA Cyusa Richard uhagarariye na se yatanze ikirego mu Rukiko rw'Ikirenga kigamije gukemura izo mpaka. Uru Rukiko rwemeza mu rubanza RCOMA 0004/14/CS- RCOMA 0121/11/CS ko GAHITIRA Bishumba Raymond nka se w'umwana ariwe ugomba guhabwa ibyo byangombwa by'inzu yari yatanze ingwate hishingirwa umwenda wahawe DALBIT PETROLEUM. Rutegeka kandi ko COGEBANQUE Ltd iramutse itabikoze mu gihe cy'iminsi 30 guhera isomwa ry'urubanza, izacibwa igihano gihatira kurangiza urubanza cya 50.000 Frw ku munsu. [5] COGEBANQUE Ltd ivuga ko Me MUTEMBE Protais waburaniraga

GAHITIRA Cyusa Richard yayisabye kumuha ibyo byangombwa nayo imusaba “procuration” iriho umukono wa Noteri cyane ko yari ifite amakuru ko Gahitira n’umuryango we basigaye baba i Burayi, ariko Me MUTEMBE ntiyayitanga. Nyuma ngo Umuhesha w’Inkiko w’umwuga KANYANA Bibiane nawe yaje gusaba icyo cyangombwa ariko Banki imusaba “procuration” iriho umukono wa Noteri cyangwa amasezerano yanditse yaba yaragiranye na GAHITIRA Bishumba Raymond. [6] Nyuma, Umuhesha w’Inkiko w’umwuga KANYANA Bibiane yakozwe icyemezo gihatira kwishyura kibanziriza ifatira-bwishyu, muri icyo cyemezo akaba yarahatiraga COGEBANQUE Ltd kwishyura 12,000,000 Frw zabazwe hashingiwe ku rubanza RCOMA 0004/14/CS-RCOMA

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0121/11/CS no gusubiza GAHITIRA Raymond ibyangombwa by’inzu. Yaje no gufatira imodoka ya COGEBANQUE yo mu bwoko bwa Ford ifite plaque n° RAB 779 V kugira ngo itezwe cyamunara ivemo amafaranga ahatira COGEBANQUE kwishyura ahwanye na 12.000.000 Frw. Iyo cyamunara y’iyo modoka yari iteganyijwe kuwa 21/07/2015. [7] COGEBANQUE Ltd yatanze ikirego cyihutirwa mu Rukiko rw’Ikirenga isaba ko havanwaho igihano gihatira kurangiza urubanza (astreinte) cyatanzwe mu rubanza RCOMA 0004/14/CS-RCOMA 0121/11/CS kubera ko itanze kurangiza urubanza, ko ahubwo yashyizweho amananiza yatumye itabasha kururangiza. [8] Urubanza rwaburanishijwe mu ruhamwe kuwa 28/07/2015, COGEBANQUE Ltd iburanirwa na Me KAYITARE Serge, GAHITIRA Cyusa Richard ahagaririwe na Me MUTEMBE Protais. [9] Me MUTEMBE Protais, ashingiye ku ngingo ya 316 y’Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, yatanze inzitizi yo kutakira ikirego cyatanzwe na COGEBANQUE Ltd avuga ko ikirego cyihutirwa gitangwa mu rukiko rwaregewe ikindi kirego cy’iremezo kitaraburanishwa, ko rero iki kirego kidakwiye kwakirwa. [10] Me KAYITARE Serge avuga ko ingingo ya 220 y’Itegeko n° 21/2012 ryavuzwe haruguru iteganya ko bisabwe n’uwahawe igihano gihatira kurangiza urubanza, urukiko rushobora, ruregewe mu buryo bw’ikirego cyihutirwa, kukivanaho, kugihagarika by’agateganyo mu gihe rugenye cyangwa kukigabanya, iyo uwagihawe atagishoboye burundu cyangwa se mu gihe iki n’iki kubahiriza imikirize y’urubanza rw’ibanze, atagishoboye kuyubahiriza yose cyangwa igice cyayo. Bityo akaba abona nta mpamvu iki kirego cyihutirwa kitakwagirwa n’Urukiko bitewe n’imiterere yacyo. [11] Nyuma yo kwiherera, Urukiko rushingiye ku ngingo ya 220 y’Itegeko n° 21/2012 ryavuzwe haruguru, rurasanga inzitizi yatanze na Me MUTEMBE Protais nta shingiro ifite, maze iburanisha mu mizi rirakomeza. II. IKIBAZO KIRI MU RUBANZA N’ISESENGURWA RYACYO Kumenya niba igihano gihatira kurangiza urubanza COGEBANQUE Ltd yategetswe gikwiye kvanwaho [12] Me KAYITARE Serge avuga ko COGEBANQUE Ltd itigeze yanga gutanga « titre de propriété », ko ahubwo yasabye Me MUTEMBE kuyizana « procuration » iriho umukono wa Noteri ahawe na GAHITIRA Bishumba Raymond cyangwa se yatanze na Ambassade, nkuko biteganywa n’ingingo ya 52 y’Itegeko n° 13 bis 2014 ryo kuwa 21/05/2014 rigena umurimo wa Noteri w’umwuga. Avuga ko ntayo Me MUTEMBE yigeze yerekana. Nyuma y’aho haje umuhesha w’inkiko KANYANA Bibiane nawe COGEBANQUE imubaza iyo « procuration » cyangwa amasezerano yaba yaragiranye na GAHITIRA Bishumba Raymond, nawe ntiyabizana.

Icyakurikiyeho nuko kuwa 11/5/2015, KANYANA yakoze icyemezo gihatira kwishyura kibanziriza ifatira-bwishyu, muri icyo cyemezo akaba yarahatiraga COGEBANQUE Ltd kwishyura 12,000,000 Frw, y'igihano gihatira kurangiza urubanza no gusubiza GAHITIRA B.

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Raymond ibyangombwa by'inzu. Ku itariki ya 10/7/2015, KANYANA Bibiane yafatiriye imodoka ya COGEBANQUE Ltd yo mu bwoko bwa FORD ifite plaque RAB 779 V kugira ngo itezwe cyamunara ivemo amafaranga yavuzwe haruguru. Me KAYITARE Serge avuga ko atabona aho gufatira imodoka bihuriye na « titre de propriété ». Yibaza impamvu Me MUTEMBE na KANYANA batubahiriza ibyo amategako ateganya nyuma ngo babone guhabwa ibyo bifuzwa. Asanga babikora nkana kugira ngo icyo gihano gikomeze kwiyongera. Ari yo mpamvu COGEBANQUE Ltd isaba ko iki gihano kivanywaho kuko itigeze yanga kurangiza urubanza, ahubwo yananijwe nkuko byasobanuwe. [13] Me KAYITARE Serge akomeza avuga ko kuva urubanza rwasomwe kuwa 06/08/2014 irangiza rubanza ryakozwe na Me MUTEMBE Protais, naho Umuhesha w'Inkiko KANYANA Bibiane, Banki yamubonye igihe yazanaga ibaruwa ye itegeka "astreinte" mu kwezi kwa gatanu

2015. Asobanura ko KANYANA Bibiane yaje asaba amafaranga, aho kuza asaba ibyangombwa by'inzu ya GAHITIRA C. Richard; COGEBANQUE Ltd imubajije amasezerano yanditse yagiranye na GAHITIRA Bishumba Raymond ntiyayatanga, imusubiza ko yazazana ayo masezerano, ikazamuha ibyangombwa by'inzu. [14] Me KAYITARE Serge asaza avuga ko Banki itigeze yanga gutanga ibyo yasabwe ahubwo yagiye ishyirwaho amananza. Akomeza avuga ko GAHITIRA Bishumba Raymond aramutse yiyiziye cyangwa agatanga "procuration" iriho umukono wa Noteri, yahabwa ibyo byangombwa nta mananza. Asaba uru Rukiko gukuraho iki gihano cya "astreinte" cyangwa kukigabanya kuko nabyo biteganywa n'ingingo ya 220 y'Itegeko n° 21/2012 ryavuzwe haruguru. [15] Me MUTEMBE Protais avuga ko COGEBANQUE Ltd ariyo yashyize amananza kuri GAHITIRA Bishumba Raymond imusaba "procuration" iriho umukono wa Noteri. Akomeza avuga ko kuba Banki yariyanze gutanga ibyo byangombwa by'inzu ku bwende, byabaye ngombwa ko GAHITIRA Bishumba Raymond yiyambaza Umuhesha w'Inkiko kugirango Banki ibitange ku gahato. Na none avuga ko Banki yagombaga guha KANYANA Bibiane ibyo byangombwa kuko nta tegeko risaba Umuhesha w'inkiko kwitwaza "procuration" mu irangiza rubanza. [16] Me MUTEMBE Protais avuga ko kuba KANYANA Bibiane yaraje asaba amafaranga aho gusaba ibyangombwa by'inzu byatewe nuko Banki yabaruhije, babona binaniranye bagahitamo gukoresha inzira y'agahato. UKO URUKIKO RUBIBONA [17] Ku bijyanye na "procuration" iriho umukono wa Noteri COGEBANQUE Ltd isaba, Me MUTEMBE Protais uhagarariye GAHITIRA Cyusa Richard, Ingingo ya 52, igika cya mbere y'Itegeko n°13bis/2014 ryo kuwa 21/05/2014 rigenga umurimo w'Ubunoteri ivuga ko Umunoteri ubifitiye ububasha yemerewe kwemeza ko inyandiko y'iheshabubasha yo gukora mu izina ry'undi muntu umwe cyangwa benshi yahawe umuntu umwe cyangwa benshi ari ukuri. [18] Urukiko, rushingiye ku ingingo ya 52 ivuzwe haruguru, rusanga Noteri ariwe wemerewe kwemeza ko inyandiko y'iheshabubasha yo gukora mu izina ry'undi muntu ari ukuri. Nubwo ihame ari

uko ubutumwa ari igikorwa gikomoka ku bwiyeemerere bwonyine bw'abagiranye amasezerano, ariko hashingiwe kuri kamere y'ubutumwa biba ngombwa ko umuntu utari muri

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ubwo butumwa asaba ko bwaba bufite umukono wa Noteri. Ibi ndetse bikaba bishimangirwa na Michel Beauchamp, umuhanga mu mategeko uvuga ko, kugira ngo harusheho kuba umutekano, ari uko inyandiko y'iheshabubasha yo gukora mu izina ry'undi muntu yakorerwa imbere ya Noteri. Ibyo biyihesha agaciro, kuko Noteri yemeza ko uwatanze ubutumwa yifuza koko kugira inshingano aha intumwa, kandi ko niyo ntumwa yemeye izo nshingano¹. Kuba COGEBANQUE Ltd yarashatse kumenya ukuri kw'inyandiko y'iheshabubasha GAHITIRA Bishumba Raymond yahaye Me MUTEMBE Protais, igasaba ko iyo nyandiko yemezwa na Noteri ntabwo byafatwa nk'amananza yashyizweho na Banki. Urukiko rusanga Banki nk'umunyamwuga itari gutanga ibyangombwa by'inzu ishingiyeye kuri "procuration" itariho umukono wa Noteri kabone nubwo yaba izanywe na Avoka. Kuba Banki yaragize amakenga igasaba "procuration" iriho umukono wa Noteri ntabwo byafatwa nk'amananza, cyane cyane ko na Me MUTEMBE Protais nta mpamvu atanga yatumye iyo "procuration" idashyikirizwa Banki. [19] Ku bijyanye no kuba Banki yarashyize amanza k'Umuhesha w'Inkiko w'umwuga KANYANA Bibiane, Urukiko rusanga nyuma y'icyemezo cy'Urukiko rw'Ikirenga mu rubanza n° RCOMA 0004/14/CS-RCOMA 0121/11/CS rwo kuwa 06/08/2014 kugeza tariki ya 09/03/2015, KANYANA Bibiane atarigeze yishyura COGEBANQUE Ltd ; ko ku itariki ya 10/3/2015, ari bwo KANYANA Bibiane yashyikirije COGEBANQUE Ltd icyemezo gihatira kwishyura kibanziriza ifatira-bwishyu harangizwa urubanza rwavuzwe haruguru. [20] Urukiko rusanga ku itariki ya 10/03/2015, COGEBANQUE Ltd yarashubije KANYANA ko itanze kurangiza urubanza, ko ahubwo, itegereje ko Me MUTEMBE Protais ayigezaho ibyangombwa yamusabye, inaboneraho isaba KANYANA kuyigaragariza nawe amasezerano yanditse yagiranye na GAHITIRA Bishumba Raymond amwemerera kurangiza urwo rubanza nk'uko biteganywa n'ingingo ya 382 y'Itegeko n° 12/2013 ryo kuwa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko. Kuba KANYANA Bibiane ataragaragaje ayo masezerano yanditse ateganywa n'Itegeko, ngo abone guhabwa ibyangombwa, ntaho Urukiko rwahera rwemeza ko COGEBANQUE Ltd yanze kurangiza urubanza. [21] Urukiko, rushingiye ku ngingo ya 220 y'Itegeko n° 21/2012 ryavuzwe haruguru no ku mpamvu zavuzwe, rurasanga ubujurire bwa COGEBANQUE Ltd bugamije kvanaho igihano gihatira kurangiza urubanza (astreinte) cyatanzwe n'Urukiko rw'Ikirenga mu rubanza RCOMA 0004/14/CS-RCOMA 0121/11/CS rwo kuwa 06/08/2014 gifite ishingiro kubera ko itanze 1 "Pour plus de sûreté,... il est conseillé de faire dresser une procuration notariée. «Elle a plus de valeur». En effet, le notaire s'assure que le mandant veut vraiment confier certaines responsabilités à son mandataire, et que le mandataire est d'accord pour les accepter" (Maryse Guénette, Prudence avec les procurations, <https://www.lebelage.ca/argent-et-droits/vos-droits/prudence-avec-les-procurations?page=all>, consulté le 31/7/2015). 2 Mbere yo kurangiza urubanza, ibyemezo cyangwa, izindi nyandikompesha, umuhesha w'inkiko w'umwuga abanza kugirana amasezerano yanditse n'umwiyambaje, yerekana umubare w'amafaranga y'igihembo cy'umurimo n'uburyo azishyurwa. Ayo masezerano agomba

kuba ashingiye ku giciro fatizo kivugwa mu ngingo ya 37 y'iri tegeko.

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kurangiza urubanza, bityo 12 000 000 Frw yishyuzwa Banki y'igihano kirangiza urubanza agomba kuvanwaho. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ikirego cyihutirwa cyatanzwe na COGEBANQUE Ltd gifite ishingiro. [23] Rutegetse ko igihano gihatira kurangiza urubanza cyatanzwe mu rubanza RCOMA 0004/14/CS-RCOMA 0121/11/CS rwo kuwa 06/08/2014 itagomba kuyishyura. [24] Rutegetse ko 12 000 000 Frw, COGEBANQUE Ltd yishyuzwa na GAHITIRA Bishumba Raymond mu mwana w'umwana we GAHITIRA Cyusa Richard y'igihano gihatira kurangiza urubanza avanyweho. [25] Rutegetse ko igihe GAHITIRA Bishumba Raymond azaba aje kwifatira ibyangombwa by'inzu y'umwana we GAHITIRA Cyusa Richard, cyangwa akohereza intumwa ye yitwaje "procuration" iriho umukono wa Noteri, COGEBANQUE Ltd ntitange ibyo byangombwa byavuzwe haruguru, izabarirwa igihano gihatira kurangiza urubanza cya 50,000 Frw ku muni kizatangira kubarwa guhera icyo gihe. [26] Rutegetse GAHITIRA Cyusa Richard gutanga amagarama y'uru rubanza angana na 100.000 Frw.

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