

RWANDA / JUDGMENT

COPCOM v. SHALOM METAL SUPPLY LTD

RCOMA 00519/2022/HCC

COURT

Commercial High Court

DECIDED

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COPCOM v. SHALOM METAL SUPPLY LTD

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Text

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COPCOM v. SHALOM METAL SUPPLY LTD [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00519/2022/HCC (Bwasisi, P.J.,) 22 Kanama 2022] Amategeko agenga amakoperative – Ikirego – Ikirego nticari gutangira mu nzego zivugwa mu ngingo y'Itegeko rigenga amakoperative mu Rwanda mu gihe sosiyete yatanze icyo kirego atari koperative kandi kidashingiye ku masezerano y umwenda ikirego gishingiyeho – Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative, ingingo ya 132. Amategeko agenga imiburanishirize y imanza z ubucuruzi – Inyungu n ububasha byo kurega – Sosiyete – Sosiyete ifite inyungu n'ububasha bwo kuregera amasezerano yagiranye nindi sosiyete iyo ifite ubuzima gatozi kandi yanditse muri RDB – Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 83. Incamake y ikibazo: Sosiyete SHALOM METALS SUPPLY LTD yagiranye na sosiyete COPCOM amasezerano y'ubukode bwa hangari ebyiri. Sosiyete SHALOM yatanze ikirego mu Rukiko Rw'Ubucuruzi irusaba gutegeka COPCOM kubahiriza amasezerano bagiranye ivuga ko yayasheshye nta mpamvu. Mu gihe urubanza rutaracibwa, sosiyete SHALOM yatanze ikirego cyihutirwa isaba Urukiko gutegeka COPCOM guhakarika ibikorwa byayo byo kuyifungira hangari. Sosiyete SHALOM yiregura ivuga

ko yubahirije amasezerano y'ubukode yagiranye na COPCOM, ariko ko yatunguwe no kubona iyisaba gusubiza hangari yakodeshaga, ndetse nyuma ikaza no gusesa amasezerano. Sosiyete COPCOM nayo yiregura ivuga ko ikirego cyatanzwe na SHALOM kitagomba kwakirwa ngo kuko itubahirije ibiteganywa n'itegeko rigenga amakoperative mu Rwanda, ivuga kandi ko ikirego cyagombaga kubanza gushyikirizwa komite nyobozi cyangwa inteko rusange ya COPCOM, byananirana ikagishyikiriza ikigo cy'igihugu, itakwishimira umwanzuro ufashwe ikabona kuregera Urukiko. Sosiyete SHALOM yireguye ivuga ko inzitizi nta shingiro ifite bitewe nuko SHALOM METAL SUPPLY LTD atari umunyamuryango wa COPCOM kandi ikirego cyayo kikaba gishingiye ku masezerano y'ubucuruzi, kandi ko ibivugwa mu itegeko biba bireba abanyamuryango ba koperative kandi igakurikizwa hubahirizwa amategeko shingiro ya Koperative. Sosiyete COPCOM nayo yatanze indi nzitizi ivuga ko uwagiranye amasezerano nayo ari uwitwa Misago Theogene, ko ari nawe wahawe ibaruwa isesa amasezerano, bityo ko ikirego cya SHALOM kitagomba kwakirwa kuko nta bubasha n'inyungu ifite byo kurega. Urukiko rw'Ubucuruzi rwemeje ko inzitizi yatanzwe na COPCOM itakiriwe, rwemeza kandi ko ikirego cyatanzwe na SHALOM kuko gifite ishingiro. Sosiyete SHALOM ivuga ko iyi ngingo y'ubujurire ya COPCOM nta shingiro ifite, bityo ko itakwiye kwakirwa ngo kuko SHALOM atari umunyamuryango wayo kandi ko atari Koperative ahubwo ari Company, kandi ko bisaba ko ari amakimbarane avutse hagati ya Koperative n'abanyamuryango bayo, ko SHALOM METAL SUPPLY LTD atari umunyamuryango wa COPCOM, ngo ntanubwo yayivuyemo cyangwa ngo ibe ari umuzungura w'abapfuye, ko ntan'umwenda iyibereyemo.

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Incamake y' icyemezo: 1. Ikirego nticyari gutangira mu nzego zivugwa mu ngingo y'Itegeko rigenga amakoperative mu Rwanda mu gihe sosiyete yatanze icyo kirego atari koperative kandi kidashyingiye ku masezerano y'umwenda ikirego gishingiyeho.

2. Sosiyete ifite inyungu n'ububasha bwo kuregera amasezerano yagiranye nindi sosiyete iyo ifite ubuzima gatozi kandi yanditse muri RDB.

Inzitizi nta shingiro zifite. Amagarama y urubanza arasubitswe. Amategeko yashingiweho: Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative, ingingo ya 132. Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 3. Nta manza zifashishijwe.

Urubanza

I.IMITERERE Y'URUBANZA

- [1] SHALOM METALS SUPPLY LTD yagiranye na COPCOM amasezerano y'ubukode bwa hangari ebyiri (numero H79 na H78). Kuwa 19/05/2022, COPCOM yasheshe amasezerano y'ubukode yagiranye na SHALOM METALS SUPPLY LTD, ndetse iza no gufunga hangari SHALOM METAL SUPPLY LTD ikoreramo.

- [2] Kuwa 27/05/2022, SHALOM METAL SUPPLY LTD yatanze ikirego mu Rukiko rw'ubucuruzi irusaba gutegeka COPCOM kubahiriza amasezerano yo kuwa 18/08/2021, ikirego cyandikwa kuri numero RCOM 00909/2022/TC. Mu gihe urubanza kuri icyo kirego rutaracibwa, SHALOM METAL SUPPLY LTD yatanze ikirego cyihutirwa

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isaba Urukiko gutegeka COPCOM guhakarika ibikorwa byayo byo kuyifungira, ikirego cyandikwa kuri numero RCOM 01005/2022/TC.

- [3] Abahagarariye SHALOM METAL SUPPLY LTD bavuga ko yubahirije amasezerano y'ubukode yagiranye na COPCOM, ko ariko SHALOM METAL SUPPLY LTD yatunguwe no kubona COPCOM iyandikira iyisaba gusubiza hangari yakodeshaga, ndetse nyuma ikaza no gusesa amasezerano, ko SHALOM METAL SUPPLY LTD yegereye COPCOM kugirango ikibazo gikemurwe mu bwumvikane ariko COPCOM ikabyanga, ko ibyo byatumye SHALOM METAL SUPPLY LTD itanga ikirego mu rukiko irusaba gutegeka COPCOM kubahiriza amasezerano ariko yamara kubona yarezwe igafunga imiryango SHALOM METAL SUPPLY LTD yakoreragamo harimo n'ibikoresho icuruza, ko rero mu rwego rwo kuramira ubucuruzi bwa SHALOM METAL SUPPLY LTD Urukiko rwategeka COPCOM gufungura inzu z'ubucuruzi SHALOM METAL SUPPLY LTD icururizamo kandi igategekwa no gutanga indishyi zinyuranye.
- [4] Me Murekatete Henriette uburanira COPCOM avuga ko ikirego cyatanzwe na SHALOM METAL SUPPLY LTD kitagomba kwakirwa ngo kuko itubahirije ibiteganywa n'ingingo ya 132 y'itegeko N° 024/2021 ryo ku wa 27/04/2021, rigenga amakoperative mu Rwanda, ivuga ko ikirego cyagombaga kubanza gushyikirizwa komite nyobozi cyangwa inteko rusange ya COPCOM, byananirana ikagishyikiriza ikigo cy'igihugu, itakwishimira umwanzuro ufashwe ikabona kuregera Urukiko. Abahagarariye SHALOM METAL SUPPLY LTD bireguye bavuga ko inzitizi itangwa na COPCOM nta shingiro ifite, ngo kuko ibivugwa mu ngingo imaze kuvugwa haruguru biba bireba abanyamuryango ba koperative kandi igakurikizwa hubahirizwa amategeko shingiro ya Koperative, ko rero SHALOM METAL SUPPLY LTD atari umunyamuryango wa COPCOM kandi ikirego cyayo kikaba gishingiye ku masezerano y'ubucuruzi.
- [5] Me Murekatete Henriette yatanze indi nzitizi avuga ko uwagiranye amasezerano na COPCOM ari uwitwa Misago Theogene, ko ari nawe wahawe ibaruwa isesa amasezerano, ko rero SHALOM METAL SUPPLY LTD nta bubasha n'inyungu ifite byo kurega, ko ikirego cyayo kitagomba kwakirwa. Abahagarariye SHALOM METAL SUPPLY LTD bavuga ko inzitizi itangwa na COPCOM nta shingiro ifite ngo kuko uwagiranye amasezerano na COPCOM ari SHALOM METAL SUPPLY

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LTD ihagarariwe n'umuyobozi wayo Misago Theogene. Anavuga ko ikirego cyihutirwa cyabangamira urubanza rw'iremezo.

- [6] Urukiko rw'ubucuruzi rwafashe icyemezo gikurikira : « Rwemeje ko inzitizi itangwa na COPCOM y'uko ikirego cyatanzwe na SHALOM METAL SUPPLY LTD kitagomba kwakirwa kubera ko mbere yo kuregera Urukiko yagombaga kubanza kubahiriza ibiteganywa n'ingingo ya 132 y'Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative mu Rwanda, itakiriwe; Rwemeje ko inzitizi itangwa na COPCOM y'uko SHALOM METAL SUPPLY LTD nta bubasha n'inyungu byo kurega ifite itakiriwe; Rwemeje ko inzitizi itangwa na COPCOM y'uko ikirego cyatanzwe na SHALOM METAL SUPPLY LTD kitagomba kwakirwa kubera ko ibyo iregera muri uru rubanza byabangamira urubanza rw'iremezo mu mizi yarwo, nta shingiro ifite ; Rwemeye kwakira ikirego cyatanzwe na SHALOM METAL SUPPLY LTD ; rugisuzumye rusanga gifite ishingiro ; Rwemeje ko ibisabwa na SHALOM METAL SUPPLY LTD by'uko COPCOM yategekwa guhakarika ibikorwa byayo byo kuyifungira (SHALOM METAL SUPPLY LTD) mu gihe urubanza RCOM 00909/2022/TC rutaracibwa bigaragaza ubwihutirwe ; Rwemeje ko COPCOM igomba gufungura imiryango ibiri (hangari H78 na H79) SHALOM METAL SUPPLY LTD ikoreramo ubucuruzi bwayo ; Rutegetse COPCOM gufungura imiryango ibiri (hangari H 78 na H79) SHALOM METAL SUPPLY LTD ikoreramo ubucuruzi bwayo; [76] Rutegetse ko ingwate y'amagarama ingana n'amafaranga y'u Rwanda ibihumbi makumyabiri (20.000Frw) ibaye isubitswe ».
- [7] COPCOM yajuririyeye icyo cyemezo asaba uru rukiko gusuzuma niba Urukiko rw'ubucuruzirutari gusuzuma inzitizi rwashyikirijwe na COPCOM, no kwemeza ko zifite ishingiro. Anasaba urukiko gusuzuma niba SHALOM METAL SUPPLY LTD yari gufungurirwa.

Urukiko rugiyeye gusuzuma ibibazo bikurikira -Kumenya niba Urukiko rw'ubucuruzi rwaragombaga gusuzuma inzitizi yo kuba mbere yo kuregera Urukiko SHALOM METAL SUPPLY LTD yaragombaga kubahiriza ibiteganywa n'ingingo ya 132 y'Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative mu Rwanda;

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-Kumenya niba Urukiko rw'ubucuruzi rwari guha ishingiro inzitizi yo kuba SHALOM METAL SUPPLY LTD nta bubasha n'inyungu byo kurega ifite; -Kumenya niba Urukiko rw'ubucuruzi rwari gutegeka COPCOM gufungura.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- a) Kumeya niba Urukiko rw'ubucuruzi rwaragombaga gusuzuma inzitizi yo kuba mbere yo kuregera Urukiko SHALOM METAL SUPPLY LTD yaragombaga kubahiriza ibiteganywa n'ingingo ya 132 y'Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative mu Rwanda.
- [8] Uburanira COPCOM avuga ko mu gika cya 22 cy'urubanza rujuririrwa urukiko rwemeje ko inzitizi yatanze na COPCOM idasuzumwa ngo kuko yabangamira urubanza rw'iremezo. Avuga ko kuruhande rwa COPCOM itishimiye icyo cyemezo ngo kuko kwirengagiza imihango yangombwa igomba kubahirizwa n'itegeko byafatwa nk'inenge. Avuga ko ingingo ya 132 y'Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative mu Rwanda

iteganya ko impaka cyangwa amakimbirane bivutse hagati ya koperative ubwazo, hagati ya koperative n'abanyamuryango bayo, abazivuyemo cyangwa abazungura b'abapfuye, hagati ya koperative n'abo zibereyemo imyenda cyangwa abaziyibereyemo, impaka cyangwa amakimbirane byerekeye ishyirwa mu bikorwa ry'amategeko shingiro cyangwa ibikorwa bya koperative, zitashoboye gukemurwa n'inama y'ubuyobozi cyangwa n'inteko rusange ya koperative zikemurwa n'Ikigo cy'Igihugu, uruhande rutishimiye imyanzuro yatanzwe n'Ikigo cy'Igihugu rufite uburenganzira bwo kuregera urukiko rubifitiye ububasha.

- [9] Uburanira SHALOM METAL SUPPLY LTD avuga ko iyi ngingo y'ubujurire ya COPCOM nta shingiro ifite, ko itanakwiye kwakirwa ngo kuko SHALOM METAL SUPPLY LTD atari umunyamuryango wa COPCOM ku buryo ibiteganywa n'iyi ngingo byaba biyireba. Avuga ko ingingo ya 132 isobanura uko amakimbirane akemurwa haribyo isaba. Ko icya mbere ari uko biba ari amakimbirane avutse hagati y'amakoperative ubwayo, ko SHALOM METAL SUPPLY LTD atari Koperative ahubwo ari Company. Ko icya kabiri, bisaba ko ari amakimbirane avutse hagati ya Koperative n'abanyamuryango bayo, ko SHALOM METAL SUPPLY LTD atari umunyamuryango

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wa COPCOM, ngo ntanubwo yayivuyemo cyangwa ngo ibe ari umuzungura w'abapfuye, ko ntan'umwenda iyibereyemo. Ko rero iyo ngingo itareba SHALOM METAL SUPPLY LTD. Avuga ko ikindi ari uko SHALOM METAL SUPPLY LTD yari ifitanye amasezerano na COPCOM ateganya uko ibibazo bikemurwa, ngo ndetse SHALOM METAL SUPPLY LTD yarabyubahirije ngo kuko yandikiye COPCOM ibaruwa yisaba gukemura ibibazo mu bwumvikane, aho kugirango COPCOM yubahirize ibyari mu masezerano, ihitamo kuyasesa no kumufungira business. Ko mu rubanza rujuririrwa barabigaragaje ko amasezerano bari bafitanye ari amasezerano y'ubucuruzi, ko Umucamanza yabisobanuye mu gika cya 23. Avuga ko COPCOM yashashe amasezerano muburyo bunyuranije n'amategeko kandi Urukiko rukaba rwabisobanuye. UKO URUKIKO RUBIBONA [10] Ingingo ya 132 y'Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative mu Rwanda igira iti : « Impaka cyangwa amakimbirane bivutse hagati ya koperative ubwazo, hagati ya koperative n'abanyamuryango bayo, abazivuyemo cyangwa abazungura b'abapfuye, hagati ya koperative n'abo zibereyemo imyenda cyangwa abaziyibereyemo, impaka cyangwa amakimbirane byerekeye ishyirwa mu bikorwa ry'amategeko shingiro cyangwa ibikorwa bya koperative, zitashoboye gukemurwa n'inama y'ubuyobozi cyangwa n'inteko rusange ya koperative zikemurwa n'Ikigo cy'Igihugu. Uruhande rutishimiye imyanzuro yatanzwe n'Ikigo cy'Igihugu rufite uburenganzira bwo kuregera urukiko rubifitiye ububasha ».

- [11] Ingingo ya 83 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti : « [...] Impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy'umuburanyi, hatinjiwe mu mizi yacyo, kubera ko adafite uburenganzira bwo kurega, nko kuba adafite ububasha n'inyungu zo kurega, ubusaze bw'ikirego, kurenza igihe cyo kurega, urubanza rwabaye itegeko cyangwa kudatanga amagarama, harabayeho amasezerano yo kwikiranura

cyangwa iyo hari imihango itarubahirijwe iteganywa n'itegeko ».

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- [12] Ingingo ya 185 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu igira iti : « Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemeza by'agateganyo mu buryo bwihuta ku rubanza rwaregwe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara ». Ingingo ya 186 y'iryo tegeko igateganya ko « Umucamanza uburanisha ikirego cyihutirwa afata icyemezo ku byo yaregwe ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo ».
- [13] Mu rubanza RCOM 01005/2022/TC rwajuririwe, umucamanza yasobanuye neza ko impamvu adasuzumye inzitizi yari yatanze na COPCOM isaba kutakira ikirego kubera ko SHALOM METAL SUPPLY LTD itubahirije ibiteganywa n'ingingo ya 132 y'Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative mu Rwanda ari uko yasanze gusuzuma iyo nzitizi byabangamira urubanza rw'iremezo narwo rwatanze mu mizi yarwo. Uru rukiko rukaba rutemeranya n'Urukiko rw'ubucuruzi kuri iyi mpamvu yatume rudasuzuma iyi nzitizi, kuko mu gusuzuma impamvu ituma ikirego kitakirwa urukiko rudafata icyemezo ku bijyanye n'imizi y'urubanza rw'iremezo. Ni byo koko, ingingo ya 186 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu itegeka umucamanza uburanisha ikirego cyihutirwa gufata icyemezo kitabangamira urubanza rw'iremezo mu mizi yarwo. Ariko gusuzuma inzitizi yatanze mu kirego cyihutirwa yanatanze mu rubanza rw'iremezo ntabwo bibangamira ikirego cy'iremezo mu mizi, kuko nta cyemezo kiba kiribufatwe kirebana n'imizi y'urubanza rw'iremezo, kandi bikaba bitabuzwa umucamanza uzaza urubanza rw'iremezo nawe gusuzuma iyo nzitizi, cyane cyane ko n'ubundi icyemezo gifashwe mu kirego cyihutirwa aba ari icy'agateganyo. Ntacyo rero gusuzuma impamvu ituma ikirego kitakirwa yatanze na COPCOM byari kubangamiraho urubanza rw'iremezo mu mizi.
- [14] Urukiko rusanga ariko iyo mpamvu yo kutakira ikirego yatanze na COPCOM nta shingiro ifite, kuko n'ubwo uburanira COPCOM avugaga ko urubanza rw'iremezo

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rushingiye ku mwenda, ikirego cyatanze n'imyanzuro yatanze bigaragaza ko urubanza rw'iremezo (urubanza RCOM 00909/2022/TC) rushingiye ku iseswa ry'amasezerano COPCOM yagiranye na SHALOM METAL SUPPLY LTD, kandi mu ibaruwa isesha amasezerano (ibaruwa yo ku wa 19/5/2022) ntabwo COPCOM ivugaga ko iyasheshe kubera umwenda iberewe na SHALOM METAL SUPPLY LTD. Ahubwo ivugaga ko iyasheshe kubera ko MISAGO Theogene ari umugambanyi kandi akaba atubaha ibyemezo byafashwe n'urwego rukuru rwa COPCOM.

- [15] Rusanga rero ikirego cya SHALOM METAL SUPPLY kitari gutangira mu nzego zivugwa mu ngingo ya 132 y'Itegeko N° 024/2021 ryo ku wa 27/04/2021 rigenga amakoperative mu Rwanda, kuko ikirego cyayo kidashingiye ku mwenda, kandi ikaba itari umunyamuryango cyangwa umuzungura w'umunyamuryango wa COPCOM, ikaba kandi SHALOM METAL SUPPLY atari koperative, ndetse uru rubanza rukaba rutarebana n'impaka cyangwa amakimbirane byerekeye ishyirwa mu bikorwa ry'amategeko shingiro cyangwa ibikorwa bya koperative.
- b) Kumenya niba Urukiko rw'ubucuruzi rwari guha ishingiro inzitizi yo kuba SHALOM METAL SUPPLY LTD nta bubasha n'inyungu byo kurega ifite
- [16] Uburanira COPCOM avuga ko COPCOM yatanze inzitizi yo kutakira ikirego ishingiyeye ku bubasha bw'uwareze mu rubanza, kuko hareze SHALOM METAL SUPPLY LTD kandi amasezerano ndetse n'ibaruwa isesa amasezerano byarahawe uwitwa MISAGO Theogene, ko rero uwareze nta nyungu ndetse n'ububasha bwo kurega afite kandi atariwe wahawe ibaruwa isesa amasezerano. Avuga ko ibyo byahuzwa n'ingingo ya 2 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru iteganya ko (...) 7° ububasha bw'umuburanyi ari uburenganzira umuntu ahabwa n'amategeko akabukoresha arengera inyungu iyi n'iyi mu rukiko cyangwa yumvikanisha ibyo asaba cyangwa arwanya ibisabwa n'undi, n'ingingo ya 3 y'iryo tegeko iteganya ko ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, keretse igihe itegeko ribiteganyaga ukundi. Avuga ko urukiko,

1 Gutegeka COPCOM kubahiriza amasezerano yo kuwa 18/08/2021 kuko yakozwe mu buryo bukurikije amategeko

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mu gika cya 30, rwavuze ko iyi nzitizi kuyisuzuma no kuyifataho icyemezo muri uru rubanza ku kirego cyihutirwa byabangamira urubanza rw'iremezo mu mizi yarwo, ko rero itakiriwe. Avuga ko ibyo COPCOM isanga ari inenge yo gukosora murubanza rujuririrwa ngo kuko kuba haburanishwa umuburanyi udafite ububasha byaba binyuranyije n'itegeko. [17] Uburanira SHALOM METAL SUPPLY LTD avuga ko iyo ngingo y'ubujurire nta shingiro ifite ngo kuko SHALOM METAL SUPPLY LTD ifite ububasha bwo kurega, ko ari sosiyete y'ubucuruzi, ifite icyangombwa cya RDB na TIN Number zigaragara kuri icyo cyangombwa, ko ntaho COPCOM yahera ivuga ko nta bubasha ifite mu gihe amasezerano yasheshewe ari amasezerano y'ubucuruzi. Avuga ko SHALOM METAL SUPPLY LTD ihagarariwe na MISAGO Theogene kandi ikaba yarasinanye na COPCOM ayo masezerano. Avuga ko RDB Certificate igaragaza ko SHALOM METALS SUPPLY LTD yanditswe kuri Code 102943543 nka sosiyete y'Ubucuruzi. Ngo akaba atumva aho COPCOM ihera ivuga ko nta bubasha ifite bwo kurega. UKO URUKIKO RUBIBONA [18] Urukiko rw'ubucuruzi rwasanze ko kuba inzitizi y'uko SHALOM METAL SUPPLY LTD idafite ububasha n'inyungu byo kurega yatanze no mu rubanza ku kirego cy'iremezo, kuyisuzuma no kuyifataho icyemezo mu rubanza rw'ikirego cyihutirwa byabangamira urubanza rw'iremezo mu mizi yarwo, maze rufata icyemezo cyo kutayakira. [19] Ingingo ya 3 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti :

« Ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, keretse igihe itegeko ribiteganywa ukundi. Ku mashyirahamwe, imiryango n'ibigo bidafite ubuzima gatozi, harega kandi hakaregwa abayobozi babyo mu izina ry'ababigize ».

[20] Ingingo ya 186 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko umucamanza uburanisha ikirego cyihutirwa afata icyemezo

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ku byo yaregawe ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo. Icyo iyi ngingo ibuza umucamanza uburanisha ikirego cyihutirwa ni ugufata icyemezo kibangamira urubanza rw'iremezo mu mizi yarwo. Ntabwo imubuza gusuzuma inzitizi. Uru rukiko rukaba rusanga rero impamvu isaba kutakira ikirego kubera ko SHALOM METALS SUPPLY LTD idafite ububasha yaragombaga gusuzumwa, cyane cyane ko ingingo ya 3 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko nta kirego cyakirwa mu gihe urega adafite ububasha, cyangwa adafite inyungu, cyangwa se adafite ubushobozi. Ikirego cyihutirwa rero nacyo ni ikirego, kikaba kigomba kwakirwa ari uko urega afite inyungu, ububasha, n'ubushobozi.

[21] Uburanira COPCOM avuga ko SHALOM METAL SUPPLY LTD nta bubasha n'inyungu ifite ngo kuko amasezerano n'ibaruwa isesa amasezerano byahawe uwitwa MISAGO Theogene. Urukiko rukaba rusanga iyi mpamvu yo kutakira ikirego nta shingiro ifite, kuko n'ubwo ibaruwa isesa amasezerano yandikiwe MISAGO Theogene, ariko ni ibaruwa yasesaga amasezerano y'ubukode COPCOM yagiranye na SHALOM METAL SUPPLY LTD ihagarariwe na MISAGO Theogene. SHALOM METAL SUPPLY LTD rero ikaba ifite inyungu n'ububasha bwo kuregera amasezerano yagiranye na COPCOM, kuko ari sosiyete ifite ubuzima gatozi (yanditse muri RDB nk'uko bigaragazwa n'icyemezo cy'iyandikwa rya sosiyete).

c) Kumenya niba Urukiko rw'ubucuruzi rwari gutegeka COPCOM gufungura

[22] Uburanira COPCOM avuga ko Urukiko rutagombaga kuyitegeka gufungura ngo kuko SHALOM METAL SUPPLY LTD/MISAGO Theogene ari we nyirabayazana wo gufungirwa bitewe no kutubahiriza amasezerano nkuko bivugwa mu ngingo ya 1 y'amasezerano ko nibarenza ku 05 za buri kwezi batishyuye hatitawe ku mpamvu iyo ariyo yose bizaba ari impamvu yo gusesa amasezerano, bityo rero dusanga SHALOM METAL SUPPLY LTD ari yo yishe amasezerano kubera umwenda ibereyemo COPCOM kandi yamenyeshejwe.

[23] Uburanira SHALOM METAL SUPPLY LTD avuga ko nk'uko Urukiko rwabisonbanuye mu gika cya 30 cy'ikiza ry'urubanza, rugaragaza neza uko ikirego cyihutirwa gitangwa nibyo gishingiraho. Ko icya mbere ari uko haba hari ikirego

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cy'iremezo kandi kiri mu rukiko rwaregewe ikireghe cyihutirwa. Ko kuba rero COPCOM yarakinze imiryango y'ubucuruzi kandi bikaba byahombyaga SHALOM METAL SUPPLY LTD, asanga ubwo bwari ubwihutirwe nkuko n'urukiko rwabibonye. Ko rero imikirize y'urubanza rujurirwa idakwiye kugira icyo ihindukaho kurino ngingo.

UKO URUKIKO RUBIBONA [24] Mu gika cya 55 cy'urubanza rujuririrwa, Urukiko rw'ubucuruzi rwavuze impamvu yatumye rutegeka ko SHALOM METAL SUPPLY LTD ifungurirwa. Rwagize ruti: "Urukiko rusanga rero kuba imiryango SHALOM METAL SUPPLY LTD yakoreragamo ubucuruzi yarafunzwe ubu ikaba itari gukora bibangamiye inyungu zayo, bikaba bigaragaza ubwihutirwe ari nayo mpamvu COPCOM igomba gufungura iyo miryango ». [25] Uru rukiko, rushingiye ku ngingo ya 185 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yemerera urukiko rwaregewe ikirego cyihutirwa gufata icyemezo cy'agateganyo mu buryo bwihuta, rusanga iyi mpamvu yashingiye n'Urukiko rw'ubucuruzi ifite ishingiro, kuko gufunga aho SHALOM METAL SUPPLY LTD icururiza biyitera igihombo, kandi COPCOM ikaba itaragaje icyemezo kiyiha ububasha bwo kujya gukinga izo hangari, kandi ikaba itemerewe kwicira urubanza cyangwa kwihabira (Nul ne peut faire justice à soi-meme). [26] Ibivugwa na COPCOM ko SHALOM METAL SUPPLY LTD ari yo nyirabayazana yo gufungirwa aho ikorera ngo kubera ko irimo umwenda w'uukode, si byo, kuko, nk'uko byagaragajwe haruguru, ikirego cy'iremezo kidashingiye ku mwenda. III.ICYEMEZO CY'URUKIKO [27] Rwemeje ko inzitizi zatanzwe na COPCOM zigomba kwakirwa zigasuzumwa, ariko ruzisuzumye rusanga nta shingiro zifite.

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[28] Rwemeje ko icyemezo cy'Urukiko rw'ubucuruzi gitegeka COPCOM gufungura imiryango ibiri (hangari H 78 na H79) SHALOM METAL SUPPLY LTD ikoreramo ubucuruzi bwayo kidahindutse.

[29] Rusubitse amagarama y'urubanza.

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