

RWANDA / JUDGMENT

CRYSTAL INDUSTRIES Ltd N'ABANDI v. BPR Plc

RCOMAA00099/2022/CA

COURT

Court of Appeal

DECIDED

20 September 2024

CASE / FILE NUMBER

RCOMAA00099/2022/CA

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CRYSTAL INDUSTRIES Ltd N'ABANDI v. BPR Plc

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Text

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CRYSTAL INDUSTRIES Ltd N'ABANDI v. BPR Plc [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA00099/2022/CA (Munyangeri, J. P., Ngagi na Kamere, J.) 20 Nzeri 2024] Amategeko agenga ububasha bw'inkiko – Urukiko rw'Ubujuire – Ubujuire bwa kabiri – Inzitizi y'iburabubasha – Gutsindwa mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe – Kumenya niba impamvu zashingiweho umuburanyi atsindwa ku rwego rwa mbere n'urwa kabiri ari zimwe, hasuzumwa hasesengurwa imikirize y'urubanza ku rwego rwa mbere n'urwa kabiri, ingingo z'ingenzi zasuzumwe, impamvu buri rukiko rwashingiyeho kugira ngo rugere ku cyemezo, byaramuka bigaragaye ko ari zimwe, ubujurire ntibube buri mu bubasha bw'Urukiko rw'Ubujuire. Amategeko agenga ububasha bw'inkiko – Urukiko rw'Ubujuire – Ubujuire bwa kabiri – Inzitizi y'iburabubasha – Gutsindwa mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe – Impamvu zimwe – Mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, ntabwo harebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo

harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa. Incamake y'ikibazo: Banque Populaire du Rwanda Plc (BPR Plc) yareze Crystal Industries Ltd, Kamanzi na Mbabazi mu Rukiko rw'Ubucuruzi isaba ko bayishyura umwenda bayibereyemo wanganaga na 7,453,526,399 Frw n'inyungu zawo zigakomeza kubarwa kugeza wishyuwe, bagategekwa kuyishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, imitungo yatanzwe nk'ingwate ikagurishwa, hakaba irangizarubanza ry'agateganyo ndetse bagahabwa igihano kihatira kwishyura. Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya BPR Plc gifite ishingiro, ko Crystal Industries Ltd igomba kuyishyura uwo mwenda, yabinanirwa ikishyurwa n'Abishingizi bayo aribo Kamanzi na Mbabazi ndetse bagafatanyaga kuyishyura amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid bajuririyeye Urukiko Rukuru rw'Ubucuruzi bavugaga ko umwenda wemejwe atari wo, ahubwo ari umwenda ungana na 4.383.383.922 Frw kubera ko ibikoresho by'uruganda hamwe n'imodoka zarwo, BPR Plc yabyegukanye nyamara bifite agaciro karenze umwenda wishyuzwa. Bityo, bakaba basaba ko BPR Plc yagombye kubasubiza ikinyuranyo kiri hagati y'umwenda n'agaciro k'uruganda n'imashini n'ibikoresho bifatiriwe. BPR Plc yireguye ivuga ko ubujurire bwabo nta shingiro bufite. Mu rubanza RCOMA00469/2021/HCC, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwa Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid nta shingiro bufite. Rwemeje ko imikirize y'urubanza RCOM00034/2021/TC rwaciye n'Urukiko rw'Ubucuruzi, ihindutse gusa ku bijyanye n'ingano y'umwenda ugomba kwishyurwa BPR Plc. Iki cyemezo bakijuririyeye muri uru Rukiko rw'Ubujurire mu rubanza RCOMAA00099/2022/CA, ariko habanza gusuzumwa inzitizi y'iburabubasha bw'uru Rukiko rw'Ubujurire yatanzwe na BPR Plc, ko Abajuririyeye batsinzwe mu nkiko zombi zabanje ku mpamvu zimwe. Muri uru rubanza, Urukiko rw'Ubujurire rwabanje gusuzuma iyo nzitizi ijyanye kumenya niba Crystal Industries Ltd, Kamanzi na Mbabazi baratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe ku buryo ubujurire bwabo butari mu bubasha bwarwo. BPR Plc yatanze iyi nzitizi, ivuga ko Crystal Industries Ltd yatsinzwe mu nkiko zombi kubera kutubahiriza amasezerano y'inguzanyo bari bafitanye, Kamanzi na Mbabazi bakaba abishingizi bayo. Mu gufata icyemezo, Urukiko rw'Ubucuruzi rwasuzumye umwenda watanzwe na BPR Plc mu buryo burambuye, ruwuhuze n'amategeko maze rwemeza ko Crystal Industries Ltd iwishyura, itawishyura Kamanzi na Mbabazi

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bagafatanyaga kuwishyura. BPR Plc ikomeza ivuga ko ibi ari byo byagarutseho mu rubanza rwavuzwe haruguru rwaciye n'Urukiko Rukuru rw'Ubucuruzi, aho rwasuzumye ingingo ijyanye no kumenya umwenda igomba kwishyurwa ishingiyeye ku masezerano yagiranye na Crystal Industries Ltd, ndetse no ku mategeko ateganyaga ko mu kwishyura imyenda itishyurwa, Banki itagomba kurenza umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa, n'inyungu zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano Banki ifitanye n'uyifitiye umwenda. Ibi ni byo, Urukiko Rukuru rw'Ubucuruzi rwashingiye rwemeza ingano y'umwenda Crystal Industries Ltd igomba kuyishyura. Bityo, izi ni zo mpamvu zigaragaza ko Crystal Industries Ltd yatsinzwe mu nkiko

zombi ku mpamvu imwe ijyanye no kutubahiriza amasezerano, bitandukanye nibyo yo ivuga ko itatsinzwe ku mpamvu zimwe ngo kuko Urukiko Rukuru rwasuzumye ibibazo byinshi kurusha ibyo Urukiko rw'ubucuruzi rwasuzumye. Crystal Industries Ltd, Kamazi na Mbabazi bireguye kuri iyi ngingo ijyanye n'inzitizi, bavuga ko nta shingiro ifite kubera ko impamvu zashingiweho mu Rukiko Rukuru atari zimwe n'izashingiweho mu Rukiko rw'ubucuruzi, ibimenyetso rwasuzumye ni ibitarasuzumwe mu Rukiko rw'Ubucuruzi ndetse rwasuzumye ibibazo byinshi ku byasuzumwe muri urwo Rukiko rwabanje, bivuze ko ugereranyije imanza zombi usanga impamvu zashingiweho Inkiko zombi zemeza ko itsinzwe atari zimwe. Incamake y'icyemezo: 1. Kumenya niba impamvu zashingiweho umuburanyi atsindwa ku rwego rwa mbere n'urwa kabiri ari zimwe, hasuzumwa hasesengurwa imikirize y'urubanza ku rwego rwa mbere n'urwa kabiri, ingingo z'ingenzi zasuzumwe, impamvu buri rukiko rwashingiyeho kugira ngo rugere ku cyemezo, byaramuka bigaragaye ko ari zimwe, ubujurire ntibube buri mu bubasha bw'Urukiko rw'Ubujurire.

2. Mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, ntabwo harebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanze no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa. Bityo, ubujurire bwa kabiri ntibwakirwa iyo uwajuriye yatsinzwe mu nkiko zabanje hashingiwe ku mpamvu zimwe. Inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire, ifite ishingiro. Ubujurire ntibwakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire. Amagarama aherera ku isanduku ya Leta. Amategako yashingiweho: Itegeko No 017/2021 ryo ku wa 03/03/2021 ryerekeye kurengera umuguzi wa serivisi y'imari, ingingo ya 20. Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52. itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirije y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111. Itegeko No 47/2017 ryo ku wa 23/9/2017, rigena imitunganyirize y'imirimo y'amabanki, ingingo ya 112. Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64. Imanza zifashishijwe: RS/INJUST/RCOM00003/2020/SC, SANLAM Assurances Générales Plc v. University of Rwanda (UR). rwaciwe n'Urukiko rw'Ikirenga ku wa 27/11/2020. RS/INJUST/RCOM00002/2020/SC Road Solutions Pavement Products v. MAIL CO Ltd.rwaciwe n'Urukiko rw'Ikirenga ku wa 29/9/2020. RCOMAA00103/2022/CA, NEW Century Development Ltd v. Veksons Rwanda Ltd rwaciwe n'Urukiko rw'Ubujurire ku wa 09/04/2024.

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Urubanza I. IMITERERE Y'URUBANZA [1] Banque Populaire du Rwanda Plc yagiranye amasezerano y'inguzanyo na Crystal Industries Ltd ingana na miliyari enye, miliyoni mirongo inani n'eshanu, ibihumbi magana atandatu mirongo itandatu na bitandatu, magana atanu mirongo icyenda na rimwe (4,085,666,591 Frw) yishingiwe na Kamanzi Charles na Mbabazi Enid, iyo nguzanyo ikaba yaragombaga kwishyurwa hamwe n'inyungu zayo buri kwezi kugeza 31/12/2024. [2] Crystal Industries Ltd n'abishingizi bayo baje kunanirwa kwishyura inguzanyo ivugwa haruguru, bituma imwe mu mitungo bari baratanzeho ingwate igurishwa ariko umwenda

ntiwarangira, BPR Plc iregera Urukiko rw'Ubucuruzi irusaba gutegeka Crystal Industries Ltd, Kamanzi na Mbabazi kuyishyura umwenda bayibereyemo wanganaga na 7,453,526,399 Frw ubazwe kugeza ku wa 09/10/2020, kandi inyungu zigakomeza kubarwa kugeza wishyuwe, bagategekwa kandi kuyishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, imitungo yatanzwe nk'ingwate ikagurishwa, hakaba irangizarubanza ry'agateganyo ndetse bagahabwa igihano kihatira kwishyura. [3] Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid ntibitabye Urukiko, urubanza ruburanishwa badahari kuko bahamagawe mu buryo bukurikije amategeko ntibitaba nta n'impamvu bagaragaje. [4] Mu rubanza RCOM00034/2021/TC rwaciwe ku wa 30/03/2021, Urukiko rw'Ubucuruzi, rwemeje ko ikirego cya Banque Populaire du Rwanda Plc gifite ishingiro; rutegeka Crystal Industries Ltd kuyishyura amafaranga miriyari zirindwi, miriyoni magana ane mirongo icyenda n'enye n'ibihumbi magana atanu makumyabiri na bitandatu, mirongo itatu n'atanu (7,494,526,035Frw) y'umwenda iyibereyemo, itayishyura akishyurwa na Kamanzi Charles hamwe na Mbabazi Enid nk'abishingizi ba Crystal Industries Ltd. Rutegeka kandi Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid kwishyura BPR Plc amafaranga miriyoni eshanu (5,000,000Frw) y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka, no kuyisubiza amafaranga ibihumbi makumyabiri (20,000Frw) y'amagarama y'urubanza. [5] Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid bajuririye Urukiko Rukuru rw'Ubucuruzi bavuga ko umwenda wemejwe atari wo kubera ko ibikoresho by'uruganda hamwe n'imodoka zarwo, BPR Plc yegukanye kuva ku wa 5/5/2017 bifite agaciro karenze umwenda wishyuzwa. Basobanura ko hari ibimenyetso n'amakuru Urukiko rutahawe kubera ko urubanza rwaburanishijwe Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid badahari, icyemezo cy'Urukiko bakakimenyeshwa kuri Whatsap ku wa 17/05/2021. [6] Basobanuye kandi ko amasezerano yaseshwe na BPR Plc ku wa 07/03/2017 mu ibaruwa yayo Ref 5808/2017/BPR.10 kandi icyo gihe ingano y'umwenda wishyuzwaga yari 4.383.383.922Frw, atandukanye n'ayo Urukiko rwemeje mu rubanza rujururirwa angana na 7.494.526.035Frw, cyane ko n'ibikoresho n'uruganda ubwabyo biri mu maboko ya BPR Plc kuva 30/05/2017, kuko byafatiriwe n'Umuhesha w'inkiko wayo Muhire Michel hari n'umukozi wayo witwa Munyeshuri Bernard; BPR Plc ikaba ahubwo ari yo yakagombye gusubiza ikinyuranyo kiri hagati y'umwenda n'agaciro k'uruganda n'imashini n'ibikoresho bifatiriwe. BPR Plc yireguye ivuga ko ubujurire bwabo nta shingiro bufite. [7] Mu rubanza RCOMA00469/2021/HCC rwaciwe ku wa 08/08/2022, Urukiko Rukuru rw'Ubucuruzi rwemeje ko:

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- ubujurire bwa Crystal Industries Ltd, Mbabazi Enid na Kamanzi Charles nta shingiro bufite;
- umwenda Crystal Industries Ltd igomba kwishyura BPR Plc ungana na 7.662.379.522Frw, aho kuba 7.494.526.035Frw nk'uko wemejwe mu rwego rwa mbere; - Crystal Industries Ltd, Mbabazi Enid na Kamanzi Charles bagomba gufatanya kwishyura BPR Plc indishyi z'igihembo cya avoka, mu bujurire, zingana na 500.000Frw; - imikuriza y'urubanza RCOM00034/2021/TC rwaciwe ku wa 30/03/2021 n'Urukiko rw'Ubucuruzi, ihindutse gusa ku bijyanye n'ingano y'umwenda Crystal Industries Ltd igomba kwishyura BPR Plc. [8] Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid bajuririye uru Rukiko, ubujurire bwabo

bwandikwa kuri RCOMAA00099/2022/CA. Urubanza rwaburanishijwe mu ruhame ku wa 06/09/2024, Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid bahagarariwe na Me Murutasibe Joseph naho BPR Plc ihagarariwe na Me Rubasha Herbert, hasuzumwe inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire ishingiyeye ku kuba abajuriye baratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe yatanzwe na BPR Plc. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid baratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe ku buryo ubujurire bwabo bwaba butari mu bubasha bw'uru Rukiko [9] Uhagarariye BPR Plc ashingiyeye ku ngingo ya 52, igika cya 3, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, avuga ko ubujurire bwa kabiri bwatanzwe na Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid budakwiye kwakirwa ngo busuzumwe kubera ko batsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. [10] Avuga kandi ko mu nkiko zombi Crystal Industries Ltd yatsinzwe n'uko itubahirije amasezerano. Asobanura ko ibyo bigaragara mu gika cya 7 kugeza ku gika cya 11 by'urubanza RCOM00034/2021/TC rwaciye n'Urukiko rw'Ubucuruzi ku wa 30/03/2021, aho rwashingiyeye ku masezerano y'inguzanyo yo ku wa 09/11/2016, hagati ya BPR Plc na Crystal Industries Ltd yishingiyeye na Kamanzi Charles na Mbabazi Enid, rusobanura inkomoko y'umwenda uregerwa mu buryo burambuye ndetse n'uko wabazwe, ruyahuza n'ingingo ya 20(2) 2° y'Itegeko No 017/2021 ryo ku wa 03/03/2021 ryerekeye kurengera umuguzi wa serivisi y'imari iteganya ko inyungu zitarenze umwenda shingiro wari usigaye igihe umuguzi wa serivisi y'imari yananirirwe kwishyura hakurikijwe amasezerano yagiranye n'utanga serivisi y'imari, ndetse n'ingingo ya 64 y'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye, rutegeka Crystal Industries Ltd kwishyura umwenda ungana na 7,494,526,035Frw, itawishyura akaba ari bwo Kamanzi Charles na Mbabazi Enid bafatanyaga kwishyura. [11] Asobanura kandi ko, ibi ari nabyo byagarutseho n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA00469/2021/HCC rwaciye ku wa 08/08/2022, aho rwasuzumye ingingo ijyanye no kumenya niba umwenda Crystal Industries Ltd ifitiye BPR Plc ungana na 4.383.383.922Frw, aho kuba 7.494.526.035Frw nk'uko wemejwe mu rwego rwa mbere, hanyuma mu gika cya 9, rushingira ku masezerano yo ku wa 09/11/2016 rusobanura impamvu umwenda ugomba kwishyurwa, runashingira ku ngingo ya 112(1) (1o),(2o) y'Itegeko no 47/2017 ryo ku wa 23/9/2017 iteganya ko

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mu kwishyura imyenda itishyurwa, Banki itagomba kurenza umwenda shingiro utarishyurwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa, n'inyungu zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano Banki ifatanye n'uyifitiye umwenda, maze, urwo Rukiko rutegeka ko Crystal Industries Ltd yishyura BPR Plc umwenda ungana na 7.662.379.522Frw aho kuba 7.494.526.035Frw nk'uko wemejwe mu rwego rwa mbere. Bityo ko impamvu yatsinzwe mu nkiko zombi ari ukubera ko itubahirije

amasezerano. [12] Akomeza avuga ko ibyo uburanira Crystal Industries Ltd, Mbabazi Enid na Kamanzi Charles avuga ko ibibazo byasuzumwe n'inkiko zombi atari bimwe ashingiye ku kuba Urukiko Rukuru rw'Ubucuruzi rwarasuzumye ibibazo byinshi ku byo Urukiko rw'Ubucuruzi rwasuzumye, asanga bitaba urwitwazo kuko hari ibibazo bibyutswa bwa mbere ku rwego rw'ubujurire, kandi bene ibyo bibazo bidashingirwaho hasuzumwa niba umuburanyi yaratsinzwe hashingiwe ku mpamvu zimwe, nk'uko byemejwe n'Urukiko rw'Ikirenga, mu rubanza RS/INJUST/RCOM00005/2020/SC rwaciwe ku wa 27/11/2020, ko ahubwo icy'ingenzi cyitabwaho ari ukureba icyaburanwaga n'imatekerereze ya buri Rukiko mu kugaragaza impamvu zashingiweho mu kugira ngo rugere ku cyemezo rwafashe. Ko n'ibyo bavuga ko batabaye ababuranyi mu Rukiko rw'Ubucuruzi atari byo, kuko kuba urubanza rwaraburanishijwe badahari, bitavuze ko batari ababuranyi cyane ko bari bahamagajwe mu buryo bukurikije amategeko ntibitaba. Bityo rero, ko ubujurire bwabo butari mu bubasha bw'Urukiko rw'Ubujurire, kuko batsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. [13] Uhagarariye Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid avuga ko batatsinzwe hashingiwe ku mpamvu zimwe mu nkiko zombi, kuko ibibazo byasuzumwe atari bimwe kuko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo byinshi kuruta Urukiko rw'Ubucuruzi, ko kandi Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid batigeze baba ababuranyi mu Rukiko rw'Ubucuruzi kuko BPR Plc yaburanye yonyine. Avuga kandi ko ikindi kigaragaza ko impamvu atari zimwe, ari uko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibimenyetso bitasuzumwe mu Rukiko rw'Ubucuruzi, ko kandi iyo ugereranyije izo manza zombi usanga impamvu zashingiweho atari zimwe. UKO URUKIKO RUBIBONA [14] Ingingo ya 52, igika cya 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ibikurikira: icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. [15] Ikibazo cyo kumenya niba impamvu zashingiweho umuburanyi atsindwa ku rwego rwa mbere n'urwa kabiri ari zimwe, kigomba gusuzumwa hasesengurwa imikirize y'urubanza ku rwego rwa mbere n'urwa kabiri, ingingo z'ingenzi zasuzumwe, impamvu buri rukiko rwashingiyeho kugira ngo rugere ku cyemezo, byaramuka bigaragaye ko ari zimwe, ubujurire ntibube buri mu bubasha bw'Urukiko rw'Ubujurire. [16] Nk'uko byafashweho umurongo mu zindi manza zaciwe n'Urukiko rw'Ikirenga, mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje ku mpamvu zimwe, harebwa icyaburanwaga n'imatekerereze ya buri rukiko (raisonnement juridique) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagatwawe mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe. Ibi kandi binumvikanisha ko ibyaburanwe mu rwego rwa mbere ari nabyo ubusanzwe bigomba

1Reba urubanza RS/INJUST/RCOM00002/2020/SC rwaciwe ku wa 29/9/2020 haburana Road Solutions Pavement Products na MAIL CO Ltd.

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kuburanwa mu rwego rw'ubujurire hashingiwe ku ihame risanzwe mu micire y'imanza rivuga ko umucamanza wo mu rwego rwa mbere yita ku igenzura ry'ibimenyetso n'amategeko ugereranyije n'ikiburanwa, naho umucamanza wo mu rwego rw'ubujurire akibanda cyane cyane ku kugenzura niba amategeko ku rwego rwa mbere yarubahirijwe uko bikwiye hakurikijwe ibisobanuro n'ibimenyetso byari byatanze muri urwo rubanza, byaba ngombwa agakosora aho bikenewe². [17] Na none mu rubanza RCOMAA0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd³, urwo Rukiko rwasobanuye ko mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanze no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa. [18] Nk'uko bigaragara mu rubanza RCOM 00034/2021/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 30/03/2021, BPR Plc yaregeye urwo Rukiko irusaba gutegeka abaregwa bose gufatanya kwishyura 7,453,526,399Frw agizwe n'umwenda urega yaguriye Crystal Industries Ltd, inyungu zawo ndetse n'indishyi zitandukanye ziwukomokaho. Urwo Rukiko rwasuzumye ikibazo cyo kumenya umwenda BPR Plc iberewemo na Crystal Industries Ltd n'abishingizi bayo, runasuzuma amafaranga y'ikurikiranarubanza n'igihembo cya Avoka; bivuze ko ikibazo nyamukuru cyasuzumwe ari ikijyanye no kumenya umwenda Crystal Industries Ltd n'abishingizi bayo babereyemo BPR Plc. [19] Mu rubanza RCOMA00469/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 08/08/2022, urwo Rukiko rwasuzumye ikibazo cyo kumenya niba umwenda Crystal Industries Ltd ifitiye BPR Plc ungana na 4.383.383.922Frw, aho kuba 7.494.526.035Frw nk'uko wemejwe mu rwego rwa mbere, kumenya niba BPR Plc yategekwa gusubiza Crystal Industries Ltd ikinyuranyo kingana na 804.079.890Frw cy'umwenda yishyura n'agaciro k'uruganda n'imashini zarwo, kumenya niba BPR Plc ikwiye kwishyura Crystal Industries Ltd igihombo gituruka ku kuba imaze imyaka irenga 4 ifatiriye imashini n'imodoka z'uruganda n'icyo kumenya niba ababuranyi muri urwo rubanza bakwiye guhabwa indishyi basabye. [20] Mu kibazo byasuzumwe n'inkiko zombi, ikibazo cy'ingenzi zahuriyeho kinahura n'icyaregewe, ni ikijyanye no kumenya umwenda Crystal Industries Ltd ibereyemo BPR Plc, bityo nicyo kigomba gusuzumwa harebwa niba Crystal Industries Ltd n'abishingizi bayo baratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. [21] Ku kibazo nyamukuru cyo kumenya umwenda Crystal Industries Ltd ibereyemo BPR Plc, Urukiko rw'Ubucuruzi mu gika cya 7 rwashingiye ku masezerano y'inguzanyo ebyeri (Term loan & credit line) BPR Plc yagiranye Crystal Industries Ltd ku wa 09/11/2016, ruvuga ko ayo masezerano agaragaza ko yayigurije 4,085,666,591Frw, yagombaga kwishyurwa hamwe n'inyungu zayo zibariwe kuri 16.5% ku mwaka kugeza ku wa 31/12/2024, hishyurwa buri kwezi 42.165.834Frw, ko kandi iyo nguzanyu yishingiwe na Kamanzi Charles na Mbabazi Enid. Mu gika cya 8 rusanga Crystal Industries Ltd n'abishingizi bayo batarubahirije ayo masezerano, bituma umutungo nimero UPI:1/02/14/07/1277 wari waratanzweho ingwate ugurishwa muri cyamunara ku wa 22/03/2019, ugurwa 107,643,652Frw yishyura umwenda wa "credit line" wanganaga na 1,332,090487Frw hasigara umwenda ungana na 1,224,402,861Frw, naho inguzanyo isanzwe (Term loan), Urukiko rurasanga BPR igaragaza ko umwenda remezo uhwanyeye na 3,135,061,587Frw n'inyungu zawo zingana gutyo, bityo ko

umwenda wose hamwe ungana na 6,270,123,174Frw.

2Reba igika cya 23 cy'urubanza RS/INJUST/RCOM00003/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 27/11/2020, haburana SANLAM Assurances Générales Plc na University of Rwanda (UR).

3Reba igika cya 18 cy'urwo rubanza. Reba na none igika cya 24 cy'urubanza RS/INJUST/RCOM00002/2020/SC rwavuzwe haruguru.

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[22] Mu gika cya 9 cy'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwagararutse ku ngingo ya 20 y'Itegeko No 017/2021 ryo ku wa 03/03/2021 ryerekeye kurengera umuguzi wa serivisi y'imari, igika cya 1, agace ka 2° ivuga ko inyungu zitarenga umwenda shingiro wari usigaye igihe umuguzi wa serivisi y'imari yananirirwe kwishyura hakurikijwe amasezerano yagiranye n'utanga serivisi y'imari, hanyuma rusanga BPR Plc itagomba kwishyurwa inyungu zirenze umwenda shingiro usigaye, bityo ko ikwiye kwishyurwa umwenda ungana na 6,270,123,174Frw abariwemo n'inyungu zawo ku nguzanyo ya (Term loan) na 1,224,402,861 Frw yasigaye ku nguzanyo ya "credit line". Mu gika cya 10-11 rushingira ku ngingo ya 64 y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye, ko ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko, rusanga amasezerano BPR Plc yagiranye na Crystal Industries Ltd ari itegeko kuri bo, rwemeza ko iyi sosiyete itegatswe kwishyura iyo banki 7,494,526,035Frw, itayishyura akishyurwa na Kamanzi Charles na Mbabazi Enid nk'abishingizi b'iyo sosiyete nk'uko amasezerano bagiranye na BPR abiteganye. [23] Kuri iki kibazo nyamukuru kijyanye no kumenya umwenda Crystal Industries Ltd ibereyemo BPR Plc, Urukiko Rukuru rw'Ubucuruzi mu gika cya 9 cy'urubanza RCOMA00469/2021/HCC rwashingiye ku masezerana Crystal Industries Ltd yagiranye na BPR Plc ku wa 09/11/2016, aho yayihaye inguzanyo igizwe na Term loan na credit line, ruvuga ko ayo masezerano agaragaza ko inguzanyo yatanze ingana na 4.085.666.591Frw, ko inyungu zagombaga gutangwa zingana na 16.5% ku mwaka, ko inyungu z'ubucyererwe mu kwishyura, zingana na 4% ku mwaka, ko inguzanyo yagombaga kwishyurwa kugeza ku wa 31/12/2024, hishyurwa buri kwezi amafaranga 42.165.834Frw, ko kandi iyo inguzanyo yishyingiwe na Kamanzi Charles na Mbabazi Enid, nk'uko bigaragazwa n'amasezerano y'ubwishingizi, yo ku wa 09/11/2016. [24] Mu gika cya 11 cy'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwasanze iby'uko inyungu zagombaga gukomeza kubarwa, bigomba guhuzwa n'ingingo ya 112 igika cya 1, agace 1 n'aka 2, y'Itegeko No 47/2017 ryo ku wa 23/9/2017, rigenga imitunganyirize y'imirimo y'amabanki, iteganya ko mu kwishyura imyenda itishyurwa, Banki itagomba kurenza umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa, n'inyungu zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'uyifitiye umwenda. Mu gika cya 12 rusanga umwenda Crystal Industries Ltd igomba kwishyurwa BPR, uhwanywe n'ugaragazwa na Loan status yo ku wa 01/03/2021, igaragaza ko umwenda shingiro kuri term loan, ungana na 3.135.061.587 n'inyungu zayo zingana na 3.135.061.587; yose hamwe akaba angana na 6.270.123.174Frw ndetse n'umwenda remezo

kuri credit line, ungana na 750.000.000Frw n'inyungu zayo zingana na 750.000.000Frw, yose akaba angana na 1.500.000.000Frw hagakurwamo amafaranga 107.743.652Frw yavuye muri cyamunara, hagasigara 1.392.256.348Frw; bityo ko umwenda wose hamwe ungana na 6.270.123.174Frw+1.392.256.348Frw = 7.662.379.522Frw; ukaba ari wo mwenda ugomba kwishyurwa. [25] Urukiko rurasanga kuri iki kibazo cy'ingenzi cyasuzumwe n'inkiko zombi zabanje, Crystal Industries Ltd n'abishingizi bayo baratsinzwe hashingiwe ku masezerano y'inguzanyo yagiranye na BPR Plc ku wa 09/11/2016, aho yayihaye inguzanyo ebyeri (Term loan & credit line) zikirishingirwa na Kamanzi Charles na Mbabazi Enid, kandi ayo masezerano akaba atarubahirijwe, no kuba inyungu zaragombaga gukomeza kubarwa ariko ntizirenge umwenda shingiro. Bityo kuri iki kibazo Crystal Industries Ltd n'abishingizi bayo batsinzwe hashingiwe ku mpamvu zimwe mu nkiko zombi. [26] Ku byo uhagarariye Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid avuga ko batatsinzwe ku mpamvu zimwe kubera ko ibibazo byasuzumwe atari bimwe, Urukiko rurasanga nta shingiro byahabwa, kuko nk'uko byasobanuwe n'uru Rukiko mu rubanza RCOMAA00103/2022/CA rwaciwe ku wa 09/04/2024, haburana New Century Development Ltd na Veksens Rwanda Ltd, icy'ingenzi ntabwo ari uko inkiko zisuzuma ibibazo bingana cyangwa bimwe uko byakabaye, kuko

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hari ibitagaruka kuko bitajuririwe, cyangwa ibindi bikaza mu bujurire bitewe n'imyanzuro y'ujurira ahanini ugira ibyo yongeramo, ahubwo ibyitabwaho n'ibibazo byasumwe ku rwego rwa mbere akaba ari nabyo bijuririrwa kandi bihuye n'ikiburanwa, kuko nibyo bishobora no kujya mu igereranya hasuzumwa ko uwajuriye yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. [27] Urukiko rurasanga na none, ibyo uhagarariye Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid avuga ko batatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe kuko Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid batigeze baba ababuranyi mu Rukiko rw'Ubucuruzi, nta shingiro byahabwa kuko, nk'uko bigaragara mu rubanza RCOM00034/2021/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 30/03/2021, BPR Plc yareze Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid. Kuba rero bataritabye urwo Rukiko ntabwo bivuze ko batabaye ababuranyi muri urwo rubanza. Naho kubyo avuga ko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibimenyetso bitasuzumwe mu Rukiko rw'Ubucuruzi, nabyo nta shingiro byahabwa, kuko nk'uko byasobanuwe mu rubanza RCOMAA0048/16/CS rwibukijwe haruguru, mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, ntabwo harebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanze no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa. [28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ku kibazo inkiko zombi zahuriyeho, Crystal Industries Ltd n'abishingizi bayo baratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, bityo ubujurire bwabo bukaba butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

2. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa afite ishingiro [29] Uhagarariye BPR Plc ashingira ku ngingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirije y'imanza z'imbonezamubano, iz'ubucuruzi,

iz'umurimo n'iz'ubutegetsi avuga ko isaba guhabwa amafaranga miliyoni eshanu (5,000,000Frw) y'ikurikiranarubanza n'igihembo cya Avoka. [30] Uhagarariye Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid avuga ko amafaranga BPR Plc isaba nta shingiro afite, ko aribo bakwiye guhabwa amafaranga miliyoni eshanu (5.000.000Frw) y'ikurikiranarubanza na miliyoni eshatu (3.000.000Frw) y'igihembo cya Avoka yo mu nkiko zose. UKO URUKIKO RUBIBONA [31] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'ayo ikirego cy'iremezo cyaba kitakiriwe. [32] Urukiko rurasanga, kuba Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid barajuriye byaratumye BPR Plc ikurikirana uru rubanza inashaka Avoka wo kuyiburanira, hashingiwe rero ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, birumvikana ko

4Reba igika cya 22 cy'urubanza RCOMAA00103/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 09/04/2024, haburana New Century Development Ltd na Veksons Rwanda Ltd.

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amafaranga y'ibyagiye ku rubanza isaba afite ishingiro, ariko ayo isaba ni menshi harebwe ko urubanza rugarukiye ku nzitizi y'iburabubasha bw'uru Rukiko; bityo mu bushishozi bwarwo rukaba ruyigeneye amafaranga ibihumbi magana atanu (500,000Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana abiri (200,000Frw) y'ikurikiranarubanza, yose hamwe akaba amafaranga ibihumbi magana arindwi (700.000Frw) yo kuri uru rwego, agomba gutangwa na Crystal Industries Ltd Kamanzi Charles na Mbabazi Enid. III. ICYEMEZO CY'URUKIKO [33] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe na Banque Populaire du Rwanda Plc ifite ishingiro. [34] Rwemeje ko ubujurire bwa Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire. [35] Rutegetse Crystal Industries Ltd, Kamanzi Charles na Mbabazi Enid gufatanya kwishyura Banque Populaire du Rwanda Plc amafaranga ibihumbi magana atanu (500.000Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana abiri (200.000Frw) y'ikurikiranarubanza, kuri uru rwego. [36] Ruvuze ko ingwate y'amagarama yatanzwe ihwanye n'ibyakozwe mu rubanza.

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