

RWANDA / JUDGMENT

ECOBAGEC Ltd v. SORAS AG Ltd

ECOBAGEC LTD V. SORAS AG LTD

COURT

Commercial High Court

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Text

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ECOBAGEC Ltd v. SORAS AG Ltd [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0560/13/HCC (Kamere, P.J.) 20 Gashyantare 2014] Amategeko agenga amasezerano – Kwemera umwenda – Gusaba kongererwa igihe cyo kwishyura – Urimo umwenda ufite nawe abataramwishyura ntibyamubera impamvu yo gutinza kwishyura undi muntu abereyemo umwenda mu gihe batasezeranye ko azamwishyura ari uko nawe abamubereyemo umwenda bamwishyuye. Amategeko agenga amasezerano – Indishyi z'ubukererwe – Nta muburayi wasaba ko indishyi z'ubukererwe zijya mu nsi y'igipimo cy'ijanisha yumvikanyeho n'urundi ruhande mu masezerano mu gihe atasabye ko gishyirwa mu masezerano hakiri kare. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Igihano gihatira kwishyura – Ntigitangwa gusa kubera ko umuburanyi yabisabye – Iyo umuburanyi afite ingwate yarangirizaho urubanza ku ngufu mu gihe uwatsinzwe atemeye kururangiza ku neza, urukiko ntirwategeka igihano gihatira kwishyura yasabye kuko ashobora gutinda kururangisha biturutse kuburangare cyangwa ku bushake bwe. Incamake y'ikibazo: ECOBAGEC Ltd nyuma yo gusinyana amasezerano n'Akarere ka Nyanza yo kubaka amateme 4, yasabye SORAS AG Ltd kwishingira iyubahirizwa ry'iyi mirimo. Impande zombi kandi zemeranyijwe ko ECOBAGEC Ltd nitubahiriza amasezerano y'isoko yahawe, SORAS AG Ltd

izahita yishyura nta mpaka amafaranga y'ubwishingire yateganyijwe. Kuwa 26/10/2012 nyuma y'uko Umunyamabanga Nshingwabikorwa w'Akarere ka Nyanza yandikiye SORAS AG Ltd iyishyura amafaranga y'ubwishingizi byatanze na ECOBAGEC Ltd, SORAS AG Ltd yahise iyishyura. Nyuma yaho SORAS AG Ltd yasabye ECOBAGEC Ltd kuyisubiza amafaranga yari maze kwishyura Akarere ka Nyanza, ECOBAGEC Ltd yasabye SORAS AG Ltd ko yayemera kwishyura ayo mafaranga mu byiciro mu gihe kingana n'imyaka 5. SORAS AG Ltd, nyuma yo kwihanangiriza ECOBAGEC Ltd, ntibigire iyo bitanga, yaregeye Urukiko rw'Ubucuruza rwa Nyarugenge isaba ko yo na Rurangwa basubiza amafaranga y'ubwishingire yishyurwe Akarere ka Nyanza, inyungu zayo zibariwe kuri 18%, amafaranga y'ikurikirana rubanza n'igihembo cya avoka, ayo kururangiza n'ay'igarama. Urukiko rwemeje ko ikirego cya SORAS AG Ltd gifite ishingiro rutegeka ECOBAGEC Ltd kuyishyura amafaranga y'ubwishingire nk'uko yasabwe na SORAS AG Ltd, 772.170 frw y'inyungu na 600.000 frw y'indishyi z'ikurikirana rubanza n'igihembo cya Avoka. ECOBAGEC Ltd yajuririje Urukiko Rukuru rw'Ubucuruza ivuga ko Urukiko rw'Ubucuruza rwa Nyarugenge rwanze kwakira ikirego cyayo cyasabaga kongerwa igihe cyo kwishyura, ko urukiko rwabariye inyungu ku gipimo cya 13% aho kuba 10%, ko urukiko rwatanze amafaranga y'ikurikirana rubanza menshi. SORAS AG Ltd nayo yatanze ubujurire bwuririje ku bundi isaba igihano gihatira kwishyura cya 50.000 frw buri kwezi n'amafaranga y'ikurikirana rubanza n'igihembo cya Avoka

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Incamake y'icyemezo: 1. Mu gihe urimo umwenda aba nawe afite abatamwishyuye ntibyamubera impamvu yo kwemererwa n'urukiko kutishyura cyangwa gutinza kwishyura uwo abareyemo umwenda mu gihe batasezeranye ko azamwishyura byanze bikunze ari uko nawe yishyurwe. Kwemera ibi byaba biganisha ku mwenda ko mu gihe ababereyemo umwenda banze kwishyura burundu uwurimo yabibonamo impamvu yo kutishyura burundu.

2. Ntaho Urukiko Rukuru rw'Ubucuruza rubona Urukiko rw'Ubucuruza rwa Nyarugenge rwari gushingira rutanga inyungu ku gipimo cya 10% ku mwaka mu gihe ECOBAGEC Ltd itasabye ko gishyirwa mu masezerano hakiri kare. Byongeye kandi na SORAS AG Ltd ntiyigeze ijuririra ko itagenewe inyungu ziri muni y'igipimo kiri mu masezerano.
3. Gutanga cyangwa kudatanga igihano gihatira kwishyura ni ibintu umushingamategeko yahariye ubushishozi bw'urukiko. Bityo kikaba kidatangwa gusa kubera ko umuburanyi yagisabye. Urukiko rero ntirwahanisha igihano gihatira kwishyura uwatsinzwe kuko SORAS AG Ltd ifite ingwate yarangirizaho urubanza ku ngufu kuko gutinda kururangiza byaturuka ku burangare cyangwa ku bushake bwayo. Ubujurire nta shingiro bufite. Ubujurire bwuririje ku bundi bufite ishingiro kuri bimwe. Urubanza rwajuririje ntiruhindutse. Amagarama aherereye ku wajuririje. Nta mategeko yashingiweho. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Sosiyeti ECOBAGEC Ltd imaze gusinyana n'Akarere ka Nyanza amasezerano yo kubaka amateme ane (4) ya Mwenya-Makera-Gisuma na Kavomoari mu Karere ka Nyanza, Intara y'Amajyepfo yasabye SORAS Assurances Générales Ltd kwishingira bonne exécution y'iyi mirimo nk'uko byasabwaga muri ayo masezerano y'ubwubatsi bw'amateme. Kuwa 12 Mutarama 2012, SORAS Assurances

Générales Ltd na ECOBAGEC Ltd basinyanye amasezerano y'ubwishingizi n° DC082 yiswe Contrat d'Assurance Caution : « Bonne Fin des travaux ». Mu ngingoya 4 y'ariya masezerano, SORAS Assurances Générales Ltd yemeranyijwe na ECOBAGEC ko uhawe isoko natubahiriza amasezerano SORAS Assurances Générales Ltd izariha nta mpaka caution de bonne exécution du marché yateganijwe. Byongeye kandi mu gikacya 2 cy'iyi ngingo humvikanyweho ko Bwana Rurangwa Jean Damascène ku giti cye yishingiye iriha ry'iriya caution. Nyuma y'ibaruwa yo kuwa 26/10/2012 y'Umunyamabanga Nshingwabikorwa w'Akarere ka Nyanza yishyuzaga SORAS Assurances Générales Ltd garantie de bonne exécution y'amafaranga 9.131.758 Frw, SORAS AG Ltd nk'umwishingizi yahise yishyura ayo mafaranga hakurikijwe amasezerano yavuzwe haruguru. Nyuma yo kwishyura, SORAS Assurances

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Générales Ltd yasabye ECOBAGEC Ltd kuyisubiza ariya mafaranga 9.131.758 Frw hakurikijwe iseswa ry'amasezerano hagati y'Akarere ka Nyanza na ECOBAGEC Ltd iyi ariko iyi sosiyeti ntiyabikora ahubwo isaba SORAS AG Ltd kuyemerera ko ubwo bwishyu bwazagenda bukorwa mu byiciro mu gihe kingana n'imyaka 5. [2] Nyuma y'uko SORAS Assurances Générales Ltd yihanangiriza uyirimo umwenda ntibigire icyo bitanga yahisemo kuregera Urukiko rw'Ubucuruzi rwa Nyarugenge, irega ECOBAGEC Ltd na RURANGWA Jean Damascène ikirego kigamije gusaba gusubizwa amafaranga 9.131.758 FRW ya garantie caution de bonne execution yishyurwa Akarere ka Nyanza, kwishyurwa inyungu za 18% ku mwaka y'umwenda wishyuzwa zihereye kuwa 12/02/2012 kugeza umunsi urubanza ruzasomerwa, amafaranga y'ikurikiranarubanza no kururangiza 10% y'umwenda wishyurwa, 500.000 FRW yo guhemba avoka na 4.000 FRW y'igarama. Mu guca urwo rubanza, Urukiko rwemeje ishingiro ry'ikirego cya SORAS AG Ltd maze rutegeka ECOBAGEC Ltd kwishyura SORAS AG Ltd amafaranga yose hamwe 10.453.928 FRW akubiyemo 9.131.758 FRW yayishyuriye y'ubwishingire, 722.170 FRW y'inyungu z'ubukererwe zibariwe kuri 13% ku mwaka y'ay'ubwishingire mu gihe cy'iminsi 219 ibazwe uhareye ku munsi uwishyuzwa yamenyesherejwe ko arezwe na 600.000 FRW y'indishyi z'ikurikiranarubanza n'igihembo cy'avoka. [3] Sosiyeti ECOBAGEC Ltd itarishimiye imikirize y'urwo rubanza yararujuririye muri uru Rukiko Rukuru rw'Ubucuruzi, ubujurire bwandikwa kuri RCOM A 0560/13/HCC, urubanza mu mizi ruburanishwa kandi iburanisha risozwa kuwa 27/01/2014 ababuranyi bose bitabye aho uwajuriye yaburanirwaga na Me KABUREGE Project, ECOBAGEC Ltd iburanirwa na Me NGIRUMPETSE Jean Marie Vianney, naho RURANGWA Jean Damascène yiburanira. Isomwa ry'urubanza rikaba ryarashyizwe kuwa 13/02/2014, ariko uwo munsi ntirwasomwa ahubwo umucamanza atangariza mu ruhame ko ruzasomwa kuwa 20/02/2014. [4] Muri ubu bujurire, Urukiko rwasuzumye ibibazo bikurikira byagaragajwe n'ababuranyi :

- Impamvu y'ubujurire bwa ECOBAGEC Ltd yo kuba ngo umucamanza yaranze kwakira ikirego cya ECOBAGEC Ltd cyuririye kucya SORAS Assurances Générales Ltd gisaba kongererwa igihe cyo kwishyura ;

- Impamvu y'ubujurire bwa ECOBAGEC Ltd yo kuba ngo umucamanza yatanze indishyi akoresheje ijanisha rinini rya 13% ry'inyungu aho gukoresha iritarenza 10% banki zungukiraho abantu ;
- Impamvu y'ubujurire bwa ECOBAGEC Ltd yo kuba ngo umucamanza yatanze indishyi z'amafaranga y'ikurikiranarubanza menshi ;
- Ubujurire bwuririyeho bwa SORAS AG Ltd aho isaba igihano gihatira kwishyura cya 50.000 Frw buri kwezi n'indishyi z'ikurikiranarubanza n'igihembo cy'avoka mu bujurire zingana na 500.000 FRW ;

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II. ISUZUMWA RY'IBIBAZO BIGIBWAHO IMPAKA MU RUBANZA

1. Ikibazo kijyanye no kuba ngo umucamanza yaranze kwakira ikirego cya ECOBAGEC Ltd cyuririye kucya SORAS Assurances Générales Ltd gisaba kongererwa igihe cyo kwishyura [5] ECOBAGEC Ltd ivuga mu buryo yemeranywaho na RURANGWA Jean Damascene ko mu rubanza ku rwego rwa mbere yaburanye yemera umwenda yishyuzwa na SORAS AG Ltd ariko ko nayo yagize ibibazo byo kwamburwa n'abo yakoreye, ku buryo ngo yabasha kwishyura umwenda ibereyemo SORAS mu gihe cy'umwaka mu byiciro bine. [6] Mu kwiregura kwa SORAS kuri iyi ngingo, uyiburanira asobanura mu buryo n'uru Rukiko rusanga rukwiye guha ishingiro ko hadakwiye kwirengagizwa ko SORAS Assurances Générales Ltd ariumucuruzi ku buryo iramutse itegetswe kwemera ko abobagiranye amasezerano bajya bayishyurira igihe babishakiye gitandukanye n'icyari cyarumvikanyweho mu masezerano byayishora mu gihombo. Ingingoya 82 ya CCL3 ECOBAGEC Ltd yashingiyeho isaba guhabwa igihe cyo kwishyura iteganya ko igihegishoborakongerwahabonetse impamvu. Umucamanza wo ku rwego rwa mbere nta kosa yakoze ryaba ryishe iyi ngingo mu gihe yanze gutanga igihe cyo kwishyura ku mpamvu y'uko ngo na ECOBAGEC hari abatarayishyuye. Kuba urimo umwenda nawe afite abatamwishyuye ntabwo byamubera impamvu yo kwemererwa n'Urukiko kutishyura cyangwa se gutinza kwishyura uwo abereyemo umwenda mu gihe batasezeranye ko azamwishyura byanze bikunze ari uko nawe yishyuye. Kwemera ibi ECOBAGEC Ltd isaba byaba biganisha ku kwemera ko mu gihe nawe abamubereyemo umwenda banze kumwishyura burundu yabibonamo impamvu yo kutishyura burundu SORAS yemera ko abereyemo umwenda kandi wagejeje igihe cyo kwishyurwa cyumvikanyweho.
 2. Ikibazo kijyanye no kuba ngo umucamanza yatanze indishyi akoresheje ijanisha rinini rya 13% ku mwaka ry'inyungu aho gukoresha iritarenza 10% banki zungukiraho abantu [7] ECOBAGEC Ltd ivuga mu buryo na none yemeranywaho na RURANGWA Jean Damascene
- ko
- ngo

umucamanzayatanze indishyikoresha irenza 10% bankizungukiraho abantu . [8] Uburanira SORAS AG

Ltd we asubiza ko iyi mpamvu y'ubujurire nta shingiro ikwiye guhabwa kandi n'uru Rukiko niko rubibona kuko nk'uko uburanira SORAS abisobanura indishyi z'ubukererwe ECOBAGEC yaciwe ntabwo zirenze izo yari yarumvikanyeho na SORAS AG Ltd mu ngingoya 4 al 3 ya contrat d'assurance caution : « Bonne Fin des Travaux » aho impande zagiranye ayo masezerano zumvikanye ku gipimo cy'inyungu cya 1,5% kukweziyohabayeubukererwe mu kwishyura. Iki gipimo ku mwaka kikaba kingana na 18%, kandi kikaba gisumba icya 13% umucamanza wa mbere yafatiyeho. Ntabwo rero uru Rukiko rubona aho umucamanza wa mbere yari gushingira atanga inyungu ku gipimo cya 10% ku mwaka ECOBAGEC Ltd, iyo ijya kwifuza iki gipimo yari kuba yarasabye hakiri kare ko ari cyo gishyirwa mu masezerano. Kuba kandi SORAS AG Ltd itarajuriye ivuga ko itanyuzwe no kugenerwa inyungu ku gipimo kiri muni y'ikiri mu masezerano, uru Rukiko rurasanga ntaho rwashingira ruhindura igipimo cya 13% ku mwaka cyemejwe n'umucamanza wa mbere.

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3. Ikibazo kijyanye no kuba ngo umucamanza yatanze indishyi z'amafaranga y'ikurikiranarubanza menshi [9] ECOBAGEC Ltd inenga mu buryo yemeranwaho na RURANGWA Jean Damascene kuba ngo umucamanza yatanze indishyi z'amafaranga y'ikurikiranarubanza menshi. Gusa aba baburanyi ntabwo bagaragaza icyo bagereranya n'izi ndishyi mu kuzita nyinshi. [10] Kuri iyi ngingo, uru Rukiko ruremeranwa n'uregwa ko idakwiye guhabwa ishingiro kubera ko mu gutanga izi ndishyi umucamanza wa mbere yagaragaje ko yazigennye mu bushishozi bwe, izo yagennye zikaba zitari hejuru y'izari zasabwe kandi uvuga ko ari nyinshi akaba we ntazo yari yagaragariye urukiko ko ari zo nibura yemera ko zaba zikwiye aramutse ari zo aciwe.
4. Ikibazo cy'ubujurire bwuririyeho bwa SORAS AG Ltd aho isaba igihano gihatira kwishyura cya 50.000 Frw buri kwezi [11] Uburanira SORAS AG Ltd anenga kuba ngo mu iburanishyari urubanzarwajuririwe, SORAS yari yasabye igihano gihatira kwishyura cya 50.000 Frw buri kwezi mu gihe urubanza ruzaba ntakuka uwatsinzwe ntiyishyure kuneza, ibi ngo akaba yarabisabye ashingiye ku ngingo ya 216 CPCCSA, ariko Ururukiko ngo ntirugire icyo ruvuga kuri icyo cyifuzo, bityo akaba ubu abisaba Ururukiko Rukururw'Ubucuruzi. [12] Uru Rukiko rurasanga koko urukiko rubanza ntacyo rwavuze kuri iki gihano gihatira kwishyura SORAS yasabaga, ariko ko n'iyi rujya kugifataho icyemezo rusanga nta mpamvu ifite ishingiro rwari gushingiraho rwemera kugitanga. Impamvu ari uko uru Rukiko rubifata ni ukuba mbere na mbere gutanga cyangwa se kudatanga bene iki gihano ari ibintu umushyamba umushyamba yahariye ubushishozi bw'urukiko, bityo kikaba kidatangwa gusa kubera ko umuburanyi yagisabye. Ikindi ni uko SORAS AG Ltd yagenewe indishyi z'ubukererwe mu kwishyura zabazwe kugeza ku muni urubanza rwaciriweho kandi uru Rukiko rukaba rusanga mu gihe SORAS AG Ltd ifite ingwate yarangirizaho urubanza ku ngufu mu gihe uwatsinzwe atemeye kururanga ku neza, impamvu zo gutinza irangiza

ry'urubanza zishobora no guturuka ku burangare cyangwa se ubushake buke bwa SORAS ku buryo Urukiko rutateganya igihano cyazahanishwa uwatsinzwe wenyine (kuko n'uwatsinze ashobora gutinda kururangirisha).

5. Ikibazo cy'ubujurire bwuririyeho bwa SORAS AG Ltd aho isaba indishyi z'ikurikiranarubanza n'igihembo cy'avoka mu bujurire zingana na 500.000 Frw [13] Rushingiye ku kuba ECOBAGEC Ltd yarajuriye bigatuma SORAS AG Ltd mu kwiregura igira igihombo gituruka ku gukurikirana urubanza no guhamba avoka mu bujurire, uru Rukiko rushingiye na none ku ngingo ya 258 CCL III rurasanga indishyi zingana na 500.000 FRW SORAS AG Ltd isabira icyo gihombo izikwiye. III. ICYEMEZO CY'URUKIKO Kubera izo mpamvu zose kandi bikorewe mu ruhamwe, Urukiko Rukuru rw'Ubucuruzi: [14] Rwemeje kwakira ubujurire bwatanzwe na sosiyeti ECOBAGEC Ltd kuko bwaje mu nzira zikurikije amategeko ariko ko nta shingiro bufite ;

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- [15] Rwemeje kwakira ubujurire bwuririye ku bundi bwatanzwe na SORAS Assurances Générales (AG) Ltd kuko bwaje mu nzira zikurikije amategeko kandi ko bufite ishingiro kuri bimwe ; [16] Rutegetse sosiyeti ECOBAGEC Ltd kwishyura SORAS Assurances Générales (AG) Ltd amafaranga 500.000 Frw akubiyemo indishyi z'igihembo cya avoka n'ikurikiranarubanza muri ubu bujurire, byiyongera ku byo yari yaciwe mu rubanza rwajuririwe, mu gihe itayishyuye akishyurwa na RURANGWA Jean Damascene; [17] Rutegetse sosiyeti ECOBAGEC Ltd gutanga amagarama y'urubanza mu bujurire angana na 5.850 FRW yiyongera kuyo yaciwe mu rubanza rwajuririwe; [18] Rukijije ko ku bindi imikirize y'urubanza RCOM 0798/13/TC/NYGE rwaciwe kuwa 07/11/2013 n'Urukiko rw'Ubucuruzi rwa Nyarugenge idahindutse.

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