

RWANDA / JUDGMENT

ECOBANK v. ECOGER Ltd

RCOMA 0143/12/CS

COURT

Supreme Court

DECIDED

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ECOBANK v. ECOGER Ltd

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Text

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ECOBANK v. ECOGER Ltd [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0143/12/CS (Mutashya, P.J., Mukanyundo na Kayitesi R, J.) Kuwa 11/10/2013] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Amasezerano y'ubwishingizi – Agaciro k'ubwishingizi – Kubura ibimenyetso kwa banki yatanze ubwishingizi bigaragaza ko hari izindi nshingano uwagombaga kuyihabwa ayifitiye zikomoka ku bwishingire yatanze, hakaba nta kindi kimenyetso yerekana ko yakomeje kwishyuzwa amafaranga bituma atsindwa urubanza – Itegeko n°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz' ubutegetsi, ingingo ya 9 . Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Indishyi zishingiye mu kuvutswa amahirwe – Indishyi zituruka mu kuvutswa amahirwe zigenwa n'umucamanza mu bushishozi bwe – Kuba uwagombaga guhabwa inguzanyo atarayihawe ntibivuga ko yagize igihombo, hubwo bituma atakaza amahirwe yuko iyo iza kuyibona yashoboraga kuyibyaza inyungu. Incamake y'ikibazo: Sosiyete yitwa ECOGER Ltd yo mu Rwanda yishyize hamwe na Sosiyete AMCEKO yo mu Bubiligi zitsindira isoko ryo mu Rwanda, izo sosiyete zisaba inguzanyo muri FORTIS BANK nayo yo mu Bubiligi mu rwego rwo gushyira iryo soko mu bikorwa. FORTIS BANK nayo isaba ECOBANK yo mu Rwanda ubwishingizi bw'iyi nguzanyo

kugera kuri 250.000 Euros; ECOBANK irabyemera. ECOGER ivuga ko FORTIS BANK itatanze inguzanyo yari yemereye ziriya sosiyete zishyize hamwe, maze ECOBANK isesa amasezerano y'ubwishingire bw'inguzanyo bari bakoranye ariko ECOBANK ikomeza kwishyura ECOGER yo mu Rwanda, bituma iyi iregera Urukiko Rukuru rw'Ubucuruzi ivuga ko ECOBANK iyishyura umwenda utigeze ubaho. Urukiko rwemeza ko ikirego cya ECOGER gifite ishingiro, rutegeka ECOBANK guha ECOGER indishyi zo kutubahiriza amasezerano y'inguzanyo bagiranye. ECOBANK nayo yajuririye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso yatanze bigaragaza ko igifitiye umwenda FORTIS BANK kandi ECOGER ariyo igomba kwishyura. Uhagarariye ECOBANK avuga ko iyi itagomba guha ECOGER inguzanyo kubera ko kugeza ubu FORTIS BANK icyishyura ECOBANK amafaranga y'ubwishingizi yayihaye kuko mu masezerano ECOBANK yagiranye na FORTIS, ECOBANK yavugaga ko izahita iyishyura amafaranga angana n'ubwishingire yemeye. ECOBANK yaje kwandikira FORTIS BANK iyimenyesha ko itesheje agaciro guarantee yayihaye, FORTIS nayo iyisubiza ivuga ko iyo guarantee igifite agaciro. FORTIS yo ivuga ko kugirango ECOBANK itange ubwo bwishingire nukugirango nayo ibashe guha inguzanyo AMCEKO. ECOGER ikomeza ivuga yagiranye amasezerano y'inguzanyo na ECOBANK ariko iyi ntiyabahiriza nta mpamvu. Ikomeza ivuga ko urwandiko rwa guarantee ECOBANK yitwaje rwari rugamije yuko FORTIS BANK iha AMCEKO avance y'umwenda ariko icyabaye nuko FORTIS BANK itigeze itanga inguzanyo kandi ECOBANK ikaba yarabimenyeshejwe na ECOGER.

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Incamake y'icyemezo: 1. Kuba nta kimenyetso uwagombaga gutanga inguzanyo atanga kigaragaza ko hari izindi nshingano uwagombaga kuyihabwa iyifitiye zikomoka ku bwishingire yatanze, ikaba kandi nta kindi kimenyetso cyerekana ko yakomeje kwishyuzwa amafaranga y'ubwishingire yahawe n'indi banki ku buryo byari gutuma igira impungenge zatuma idatanga inguzanyo yari yemereye uwo yagombaga kuyiha banagiranye amasezerano, iyi banki yagombaga gutanga inguzanyo ntibikore igomba gutsindwa kubwo kubura ibimenyetso by'ibyo iregera.

2. Kuba uwagombaga guhabwa inguzanyo itarayihawe, yatakaje amahirwe yuko iyo iza kuyibona yashoboraga kuyibyaza inyungu, ntago ari igihombo nkuko we akibara, akaba agomba kugenerwa indishyi zituruka mu kuvutswa amahirwe zigenwa n'umucamanza mu bushishozi bwe. Ubujurire bw'uwarezwe nta shingiro bufite. Urubanza ruhindutse gusa ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. Amagarama y'urubanza aherereye kuwarezwe. Amategeko yashingiweho: Itegeko n°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9 – Nta manza zifashishijwe: Urubanza I. IMITERERE Y'URUBANZA MURI MAKE [1] Sosiyete ECOGER Ltd yo mu Rwanda yishyize hamwe na Sosiyete GROUP PHILIPPE BLATON, AMART SA, na Sosiyete CONSTRUCTIONS ET EQUIPEMENTS, izi sosiyete zose zikaba ari izo mu Bubiligi, zimaze kwishyira hamwe zabyaye icyitwa AMCECO. Iyi AMCECO yaje gutsindira isoko mu Rwanda maze mu rwego rwo kurishyira mu bikorwa yaka inguzanyo muri Banki yo mu Bubiligi yitwa FORTIS BANK. Kugira ngo FORTIS BANK itange iyo nguzanyo nayo yasabye ko ECOBANK yo mu Rwanda aho imirimo izakorerwa

itanga ubwishingizi bw'inguzanyo kugera kuri 250.000 Euros, ECOBANK irabyemera. [2] ECOGER ivuga ko FORTIS BANK yo mu Bubiligi itatanze inguzanyo yari yemeye bigatuma ECOBANK isesa amasezerano y'ubwishingizi kuko ntacyo yari igishingiyeho, ariko ko yatunguwe no kubona ECOBANK ikomeza kuyishyura 250.000 Euros ndetse ikanabishingiraho yanga kuyiha izindi nguzanyo zitandukanye nyamara yari yemeye kuzitanga. [3] ECOGER Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi igamije kwerekana ko umwenda ECOBANK yishyura utabayeho no gusaba indishyi zituruka ku kuba ECOBANK itarubahirije amasezerano y'inguzanyo bagiranye, inerekana ko ECOGER Ltd ari imwe mu masosiyete agize AMCECO ari nayo yatsindiye isoko, kandi ko yari yagiranye amasezerano

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y'inguzanyo na FORTIS BANK bivuze ko ari nayo yagombaga kuregwa haramutse habaye ikibazo. [4] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya ECOGER Ltd gifite ishingiye, rutegeka ECOBANK guha ECOGER Ltd indishyi zo kutubahiriza amasezerano y'inguzanyo bagiranye zingana na 5.000.000 Frw na 2.000.000 Frw z'ikurikiranarubanza akubiyemo indishyi zo kuyishora mu manza n'igihembo cy'avoka. [5] ECOBANK Rwanda yatanze ubujurire mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso yatanze bigaragaza ko kugeza ubu igifitiye umwenda FORTIS BANK ko kandi ECOGER Ltd ariyo igomba kwishyura uwo mwenda kubera ko ariyo yayisabye kwishingira inguzanyo FORTIS BANK yagombaga guha AMCECO ibereye umunyamuryango. [6] Iburanisha ry'urubanza ryabereye mu ruhame kuwa 04/09/2013, ECOBANK iburanirwa na Me MUGISHA Richard, naho ECOGER Ltd iburanirwa na Me MBAGA Tuzinde MBONYIMBUGA afatanyije na Me KAYIRANGWA Claire. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO. Ikibazo kiri muri uru rubanza ni ukumenya niba ubwishingire ECOBANK yahaye FORTIS BANK ku nguzanyo yagombaga guha AMCECO bugifite agaciro, ku buryo ECOBANK yari kubiharaho yima ECOGER inguzanyo yari yayemereye. [7] Me MUGISHA Richard avuga ko ECOBANK itagombaga guha ECOGER Ltd inguzanyo mu gihe hari inshingano itari yarubahirije zirimo kuba kugeza ubu itazi amasezerano ari hagati ya ECOGER Ltd na FORTIS BANK, kuba ECOBANK yaranze guha inguzanyo ECOGER Ltd bikaba biterwa nuko kugeza ubu FORTIS BANK icyishyura ECOBANK amafaranga y'ubwishingire yayihaye, ECOGER Ltd ikaba yarasabwe kugenda ikazana ikimenyetso cy'uko FORTIS BANK yishyurwe kuko amasezerano ECOBANK yagiranye na FORTIS BANK yavugaga ko izahita iyishyura amafaranga angana n'ubwishingire yemeye nta mananiza kandi kugeza ubu Garantie yatanze ikaba igifite agaciro, kugeza ubu ikaba itazi niba inshingano ECOGER Ltd yari ifitiye FORTIS BANK zararangiye akaba ariyo mpamvu ikomeza kuyishyura ibijyanye na Garantie yayihaye. [8] ECOBANK ivuga ko impamvu kuwa 12/06/2009 yandikiye FORTIS BANK iyimenyesha ko itesheshe agaciro Garantie yayihaye, ari uko kuwa 27/05/2009 FORTIS BANK yari yayandikiye iyimenyesha ko igihagaze kuri "position" yayo, ko garantie yayihaye igifite agaciro, bigashimangirwa n'ibaruwa yo kuwa 26/06/2009 FORTIS BANK yandikiye ECOBANK iyisaba kwishyura Euros 250.000 ahwanye n'ubwishingire yari yarayihaye, ko kandi kugira ngo ECOBANK itange ubwo bwishingire, ari uko ECOGER Ltd yaje isaba inguzanyo

ihwanye n'ubwo bwishingire kugirango FORTIS BANK ibashe kubaha inguzanyo, ECOGER Ltd ikaba yaremeye ko izishyura bitarenze ku wa 30/06/2009, kuba rero itarishyuye ikaba ariyo mpamvu yatumye idahabwa inguzanyo. [9] Ku bijyanye n'isano iri hagati y'inguzanyo ECOGER Ltd yatse n'amasezerano y'ubwishingire yabaye hagati ya FORTIS BANK na ECOBANK, uyiburanira yavuze ko aya

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masezerano afitanye isano kubera ko kugira ngo ECOBANK itange ubwo bwishingire yabisabwe na ECOGER Ltd, ko kandi kuba inguzanyo yishingirwaga itaratanze ari amakuru yatanze na ECOGER Ltd, ECOBANK ikaba ntayo yari izi. [10] Ababuranira ECOGER Ltd bavugaga ko ECOBANK yagiranye amasezerano na ECOGER Ltd ariko ntiyubahirize kandi nta n'impamvu itanze. Ko "Lettre de garantie" ECOBANK yitwaje, icyo yari igamije cyari gisobanutse, ikaba yari igamije gutuma FORTIS BANK iha AMCECO "avance", icyabaye rero ni uko FORTIS BANK itigeze iha inguzanyo AMCECO kandi ECOBANK ikaba yarabimenyeshejwe na ECOGER biturutse ku ibaruwa yari yandikiye FORTIS BANK iyibaza niba hari amafaranga yahaye AMCECO nayo ikayisubiza ko ayo makuru yatangwa na ECOGER, byongeye kandi, niyo FORTIS BANK iba yarahaye AMCECO inguzanyo, iba yarishyuye kuko hari ama Euros 400.000 ya AMCECO yanyuze kuri konti muri FORTIS BANK, bikaba bigaragara ko nta kindi kibazo ECOBANK ifitanye na FORTIS BANK cyatuma idaha ECOGER Ltd inguzanyo, bikaba bitumvikana ukuntu yavugaga ngo nyuma y'imyaka ine yose itegereje kuzishyura FORTIS BANK mu gihe izi neza ko amasezerano y'ubwishingire yayasheshe. Uko Urukiko rubibona [11] Urukiko rurasanga mu nyandiko zigize urubanza harimo inyandiko yo kuwa 21/10/2008 yanditswe na ECOBANK imenyesha FORTIS BANK ko yishingiye umwenda kugera ku euros 250.000 ko kandi ubwo bwishingire bufite agaciro kugera kuwa 30/06/2009. [12] Urukiko rurasanga hari inyandiko yo kuwa 14/05/2009 ECOBANK yongeye kwandikira FORTIS BANK iyibaza aho imirimo igeze no kubaza niba hari "avance" yahaye AMCECO, iyi baruwa ikaba yarabubijwe n'indi yo kuwa 27/05/2009, FORTIS BANK imenyesha ECOBANK ko ubwishingire yatanze bugifite agaciro kugeza kuwa 30/06/2009. Ko ibijyanye n'uko imirimo irimo igenda, n'andi makuru ECOBANK yasabye, yabibaza ECOGER kuko ariyo iri hafi y'aho imirimo irimo gukorwa. [13] Urukiko rurasanga ECOBANK, ishingiye ku ibaruwa yo kuwa 27/05/2009 imaze kuvugwa, yarandikiye ECOGER Ltd kuwa 01/06/2009 iyisaba amakuru yari yasabye FORTIS BANK kuwa 14/05/2009, iyi baruwa ya ECOBANK ikaba yarabubijwe na ECOGER Ltd kuwa 03/06/2009 iyimenyesha ko kuva hatangwa "garantie" nta nguzanyo n'imwe irabona itanzwe na FORTIS BANK, ko imirimo ijyanye n'isoko irimo gukorwa hakoreshejwe amafaranga atangwa na Union Européenne, ko kuba iyo nguzanyo FORTIS BANK itarayitanze ari ikibazo kuri AMCECO, ko kuva kuri iyo tariki ECOGER Ltd nta zindi nshingano isigaranye zerekanywe n'iyi "garantie". [14] Urukiko rurasanga nanone mu mabaruwa anyuranye yagiye yandikwa, bigaragara ko ECOBANK ubwayo, nyuma yo kubona amakuru yahawe na ECOGER Ltd, yarafashe icyemezo cyo gutesha agaciro "garantie" yari yaratanze mu ibaruwa yandikiye FORTIS BANK kuwa 12/06/2009 iyimenyesha ko, kuba itaratanze inguzanyo yari yemeye guha AMCECO, "garantie" nayo itesheshejwe agaciro(.....la dite garantie n'a plus de valeur et vous prions d'en tirer toutes les consequences)1 1(..... La dite garantie n'a plus de valeur et vous prions d'en tirer toutes les

consequences)

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[15] Urukiko rurasanga nta kindi kimenyetso ECOBANK itanga kigaragaza ko hari izindi nshingano ECOGER Ltd iyifitiye zikomoka ku bwishingire yatanze ku nguzanyo AMCECO yagombaga guhabwa na FORTIS BANK, ikaba kandi nta kindi kimenyetso yereka Urukiko cyerekana ko FORTIS yakomeje kwishyuza amafaranga ku buryo byari gutuma ECOBANK igira impungenge zatumye idaha ECOGER Ltd inguzanyo yari yarayemereye banagiranye amasezerano, dore ko n'itariki yo guta agaciro k'ubwo bwishingire yari yararenze kuko bari bumvikanye ko "garantie" itanzwe ifite agaciro kugeza kuwa 30/06/2009, bityo kuba nta bimenyetso ECOBANK itanga ikaba igomba gutsindwa kubera kubura ibimenyetso by'ibyo iregera hakurikijwe ibiteganywa n'ingingo ya 9 y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi .2 Ku byerekeye ku bujuzire bwuririye ku bundi [16] Ababuranira ECOGER Ltd barasaba indishyi zikomoka ku gihombo bagize kubera kudahabwa inguzanyo ECOBANK yari yabemereye ndetse n'amasezerano bamaze kuyasinya, bakanasaba amafaranga y'igihembo cya Avoka angana na 15.000.000 Frw na 5.000.000 Frw y'ikurikiranarubanza. [17] Urukiko rurasanga nk'uko Urukiko Rukuru rwabyemeje, ECOBANK igomba guha indishyi ECOGER Ltd kubera ko yimwe inguzanyo ku maherere kandi yari yamaze gusinyana na ECOBANK amasezerano y'iyi nguzanyo, ECOBANK igahitamo kuyiheza mu gihirahiro nta mpamvu yumvikana ihawe. [18] Urukiko rurasanga kuba ECOGER Ltd itarahawe iyo nguzanyo, icyo yatakaje ari amahirwe (perte d'une chance) yuko iyo iza kuyibona yashoboraga kuyibyaza inyungu, atari igihombo nkuko we akibara, ko rero nkuko abahanga mu mategeko babivuga ndetse n'imanza zaciwe kuri icyo kibazo, indishyi zituruka mu kuvutswa amahirwe zigenwa n'umucamanza mu bushishozi bwe. Urukiko rukaba rusanga indishyi zingana na 5.000.000 Frw ECOGER Ltd yagenewe n'urukiko rubanza zikwiye. [19] Urukiko rurasanga ECOBANK yarajuriye mu Rukiko rw'Ikirenga bikaba byaratumye ECOGER Ltd ishyiraho uyiburanira kuri uru rwego bikaba byarayiteje igihombo, bityo ECOBANK ikaba igomba kubitangira indishyi zingana na 500.000 Frw zihwanye n'amafaranga y'ikurikirana rubanza n'igihembo cy'avoka kuko ayo isaba ari menshi. 2 Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. 3 Comme en responsabilité délictuelle, le juge du fond apprécie souverainement le préjudice dès l'instant qu'il a caractérisé la perte de chance. Cf. Civ. 1ère, 10 juillet 2002, Bull.civ. I, n° 197

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III. ICYEMEZO CY'URUKIKO [20] Rwemeje ko ubujuzire bwa ECOBANK nta shingiro bufite; [21] Rutegetse ECOBANK guha ECOGER Ltd 500.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka yiyongera kuri 7.000.000 Frw yaciwe mu Rukiko Rukuru rw'Ubucuruzi yose akaba 7.500.000 Frw; [22] Rwemeje ko urubanza N° RCOM 0023/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2012, ruhindutse gusa ku bijyanye na 500.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka yiyongereye kuyo ECOBANK yaciwe mu Rukiko Rukuru rw'Ubucuruzi; [23] Rutegetse

ECOBANK gutanga amagarama y'urubanza angana na 28.600 Frw.

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