

RWANDA / JUDGMENT

EMUGECO v. UMUYI WA KIGALI

RADA0051/11/CS

COURT

Supreme Court

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EMUGECO v. UMUYI WA KIGALI

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Text

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EMUGECO v. UMUYI WA KIGALI [Rwanda URUKIKO RW'IKIRENGA – 2013SC – RADA0051/11/CS (Nyirinkwaya, P.J., Havugiyaremye na Mukalisa, J.) 25 Ukwakira 2013] Amategeko y'ubutegetsi – impaka zivutse mu masezerano - agaciro ikirego cy'indishyi mu gihe hataregeregewe iseswa ry'amasezerano gikomokaho, Itegeko ryo kuwa 30/07/1888 rishyiraho urwunge rw'amategeko mbonezamubano igitabo cya gatatu,, ingingo ya 258. Incamake y'ikibazo: Uwajuriye yagiranye amasezerano n'uregwa yo gusana imihanda itandukanye yo muri Kigali hanyuma uregwa aza kuyasesa nta mpamvu, aribyo byatumye uwajuriye aregera UrukikoRukuru asaba indishyi kubikoresho byasigaye bidakoreshejwe. Urukiko Rukuru rwasanze ikirego cye nta shingiro gifite kuko ariwe watinze kurangiza imirimo ku gihe kandi na factures zatanze z'ibikoresho zirimo urujijo. Yajuririye urukiko rw' ikirenga avuga ko Urukiko Rukuru rwirengagije ibimenyetso n'ibisobanuro yatanze byerekana ko uregwa yasheshe amasezerano nta mpamvu, ndetse rwirengagije na « décompte final » yakozwe hari abahagarariye impande zombi ziburana igaragaza ko hari ibikoresho byasigaye bifitanye isano n'akazi kavugwa mu masezerano. Uregwa yatanze nawe ubujurire bwuririye ku bundi asaba igihembo cya avoka kingana na 6% y'ikiburanwa kuko yashowe mu rubanza n'abakozi bazakuburana bataye akazi. Incamake

y'icyemezo: Inyandiko zitandukanye zigize isoko, amasezerano n'izindi ntaho impande zombi zateganyije ko amasezerano naseswa uregwa azishyura agaciro k'ibikoresho bizaba byasigaye. Kuba kandi uwajuriye atararegeye gusesa amasezerano nta mpamvu, ntaho yahera asaba agaciro k'ibikoresho byasigaye cyane cyane ko bimwe yanabigurishije. Ubujurire bwuririye ku bundi ntibukwiye kwakirwa ngo busuzumwe igihe butavuzwe mu iburanisha ngo bugibweho impaka. Ubujurire nta shingiro bufite. ubujurire bwuririye ku bundi ntibwakiriwe, amagarama aherereye ku wajuriye. Amategeko yifashishijwe: Itegeko ryo kuwa 30/07/1888 rishyiraho urwunge rw'amategeko mbonezamubano igitabo cya gatatu, ingingo ya 258. Nta manza zashingiweho Urubanza I.IMITERERE Y 'URUBANZA [1] EMUGECO yagiranye amasezerano n'Umujyi wa Kigali yo gusana imihanda itandukanye iri mu Mujyi wa Kigali. Ayo masezerano yakozwe kuwa 01/11/2005 akaba yaragombaga kumara amezi abiri ashobora kongerwaho andi mezi 10. Umujyi wa Kigali waje gusesa ayo masezerano kuwa 06/04/2006. [2] EMUGECO yaregeye Urukiko Rukuru isaba ibikubiye mu kiburanwa nk'uko byavuzwe haruguru. Urwo rukiko rwabanje gusuzuma ububasha bwarwo kuko Umujyi wa Kigali wari wabyukije inzitizi y'iburabubasha ishingiye ku ngingo ya 28 y'amasezerano ivuga ko impaka zizavuka zizakemurwa "par voie arbitrale", iyo nzira yananirana akaba aribwo hitabazwa inkiko

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zibifitiye ububasha, Urukiko rwemeje mu rubanza rubanziriza urundi rwaciwe kuwa 23/09/2011 ko iyo nzitizi nta shingiro ifite. [3] Iburanisha ry'urubanza mu mizi ryabaye Umujyi wa Kigali utitabye ariko warahamagawe mu buryo bukurikije amategeko, Urukiko Rukuru ruca urubanza RAD 0145/09/HC/KIG kuwa 25/11/2011, rwemeza ko ikirego cya EMUGECO nta shingiro gifite kubera ko ariyo yatinze kurangiza imirimo ku gihe, ko kandi factures z' ibikoresho yatanze zirimo urujijo kuko zaje nyuma y' isurwa ry' ibyo bikoresho. [4] EMUGECO yajuririye urwo rubanza mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rwirengagije ibimenyetso n'ibisobanuro yatanze byerekana ko Umujyi wa Kigali washeshe amasezerano nta mpamvu, ndetse rwirengagije na « décompte final » yakozwe hari abahagarariye impande zombi ziburana igaragaza ko hari ibikoresho bisigaye bifitanye isano n'akazi kavugwa mu masezerano. [5] Urukiko rwabanje gusuzuma ububasha bwarwo kuko amasezerano impande zombi zari zarashyizeho umukono yateganyaga ko nihavuka impaka hazabanza kwiyambazwa inzira nkemurampaka, maze mu rubanza rubanziriza urundi rwo kuwa 05/07/2013 rwemeza ko uru rubanza ruri mu bubasha bwarwo. [6] Urubanza mu mizi rwaburanishijwe mu ruhamwe kuwa 24/09/2013, EMUGECO iburanirwa na Me Kazungu Jean Bosco hamwe na Me Nyiridandi Assiel, Umujyi wa Kigali uburanirwa na Me Sebazungu Alphonse. II ISESENGURA RY' IBIBAZO BIGIZE URU RUBANZA 1° Kumenya niba EMUGECO yahabwa indishyi kubera iseswary'amasezerano [7] Ababuranira EMUGECO bavuga ko Urukiko Rukuru rwirengagije ko Umujyi wa Kigali ariwo watumye igihe imirimo yagombaga kumara kirenga, ibyo bikaba bigaragazwa n'uko wakomeje gutanga akazi. Bavuga ko Umujyi wa Kigali utigeze unenga imirimo yakozwe nubwo washeshe amasezerano uvuga ko ushingiye ku ngingo ya 25 y'amasezerano « cas de tromperies graves dument constatées sur l'exécution des travaux ». [8] Basobanura ko amasezerano yagombaga kumara amezi abiri uhereye igihe EMUGECO iboneye uburenganzira bwo gutangira imirimo, ni ukuvuga ko yari

kurangira kuwa 14/12/2005. Ko yakomeje gutinda kubera ko Umujyi wa Kigali watinzeho iminsi 24 gutanga “avance de démarrage” no gushyiraho “fonctionnaire dirigeant”, n’aho agiriye akaba yarakomeje kunaniza EMUJECO [9] Bavuga kandi ko Urukiko Rukuru rwasuzumye ibyo gusesa amasezerano nta mpamvu kandi ataribyo rwari rwaregewe, ko ariko ntacyo bitwaye kuko n’ubundi Umujyi wa Kigali ariwo watindije imirimo nk’uko bimaze gusobanurwa, umucamanza akaba yaragombaga gusuzuma igisebo EMUGECO [10] Bavuga nanone ko impamvu bataregeye iseswa ry’amasezerano ari uko Umuyobozi wari wahaye isoko EMUGECO yahindutse, uwamusimbuye agahubuka mu gusesa amasezerano, noneho EMUGECO yanga guteza imanza Umujyi wa Kigali nk’uko byari byagenze kuri Mirimo Gaspard, bityo barega basaba gusubizwa ibikoresho gusa, cyane ko n’isoko ryari ryamaze guhabwa undi rwiyezimirimo bakumva ntacyo bakiramira. Bavuga rero ko indishyi basaba zishingiye ku ngingo ya 258 y’igitabo cya gatatu cy’amategeko mbonezamubano. [11] Uburanira Umujyi wa Kigali avuga ko indishyi EMUGECO isaba nta shingiro zifite kuko EMUGECO itigeze iregera iseswa ry’amasezerano ahubwo yaregeye kwishyurwa agaciro k’ibikoresho yaguze byari bihari amasezerano amaze guseswa.

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[12] Ingingo ya 258 y’igitabo cya gatatu cy’urwunge rw’amategeko y’imbonezamubano cyerekeye amasezerano ivuga ko igikorwa cyose cy’umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse. [13] Ku bijyanye n’uru rubanza, abunganira EMUGECO bivugira ko Urukiko Rukuru rwasuzumye ibyo gusesa amasezerano nta mpamvu kandi ataribyo rwari rwaregewe, bityo bakaba batahindukira ngo basabe indishyi zishingiye ku ngingo ya 258 y’igitabo cya gatatu cy’amategeko mbonezamubano kuko uhabwa indishyi ari ugaragaza ko yakorewe ikosa. 2o Kumenya niba Umujyi wa Kigali ugomba kwishyura agaciro k’ibikoresho byasigaye bidakoreshejwe [14] Ababuranira EMUGECO bavuga ko Urukiko Rukuru rwemeje ko nta bimenyetso EMUGECO yatanze byemeza nta shiti agaciro k’ibikoresho byari bigenewe imirimo ngo kuko itagaragaza ko byaguzwe mu rwego rwo gukora imirimo yemejwe mu masezerano, kandi bari babitanze. [15] Bavuga kandi ko Urukiko Rukuru ruterekana aho rwakuye igisubizo kivuguruzwa ibimenyetso bya EMUGECO kuko Umujyi wa Kigali uregwa utari uhari igihe cy’iburanisha, bikaba bigaragaza ko urukiko rwishyize mu mwanya w’uregwa kandi ariwe wagombaga kugira icyo asobanura kuri ibyo bimenyetso. [16] Bavuga nanone ko Urukiko Rukuru rwirengagije “décompte final” yo kuwa 17/04/2006 yakozwe hari abahagarariye impande zombi ziburana igaragaza ko hari ibikoresho byasigaye bifitanye isano n’amasezerano, ndetse ko rwivugurujye kuko rwemeje ko iyo akanama kakoze “décompte final” kerekana agaciro k’ibikoresho byaguzwe bivugwa mu gace ka (d), EMUGECO yari kubyishyurwa, ariko noneho ntirwita ku bimenyetso rwashyikirijwe byerekana agaciro kabyo ngo noneho EMUGECO ibyishyurwe, ruvuga ko nta bimenyetso ibitangira kandi yari yabitanze. [17] Ku bijyanye n’igiciro EMUGECO yishyura, bavuga ko yabonye uko igurisha ibikoresho bimwe mu rwego rwo korohereza Umujyi wa Kigali (gestion d’affaires), ko ibyo yishyura ari ibyasigaye bikiri muri stock zayo. [18] Uburanira Umujyi wa Kigali avuga ko n’ubwo EMUGECO yagaragaza inyemezabuguzi

zidashidikanywaho ataribyo byayihira uburenganzira bwo kwishyurwa agaciro k'ibikoresho yashigaye nk'aho ari Umujyi wa Kigali wabiguzze ngo uzabikoreshe kuko ntaho bigaragara mu nyandiko zigize amasezerano ko aramutse asheshwe Umujyi wa Kigali uzishyura ibikoresho bisigaye, ahubwo icyo amategeko yemera ni ukuregera iseswary'amasezerano iyo ridakurikije amategeko. [19] Avuga kandi ko ibisobanuro EMUGECO itanga bitagaragaza uburenganzira bwo kwishyurwa agaciro k'ibikoresho, ndetse ko ingingo za 41 na 42 za "clauses administratives" ziteganyye uko "décompte mensuel ou final" zikorwa, zidateganyye ko rwiyezamirimo afite uburenganzira bwo kwishyurwa ibikoresho yaguzze. [20] Avuga ko kuba harateganyijwe ibarura ry'ibikoresho byasigaye no kubiha agaciro ari ko bisanzwe bigenda ku mirimo ya "ingénieur" kuko ntiwasiga ibintu kuri chantier utabihaye agaciro. Avuga ko no kuba Urukiko Rukuru rwarabivuzeho ari amahirwe abarega bagize kuko urukiko rutari rukwiye kubitindaho. [21] Avuga kandi ko niba ibikoresho byari byujuje ubuziranenge nta mpungenge EMUGECO yagombaga kugira kuko itabura icyo ibimaza cyane cyane ko nta gihe imihanda idakorwa haba mu Rwanda cyangwa ahandi. [22] Urukiko rusanga icyo EMUGECO ishingiraho isaba guhabwa agaciro k'ibikoresho byasigaye ari uko Umujyi wa Kigali washeshe amasezerano akazi katararangira bigatuma hari

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ibikoresho bisigara. Ikindi EMUGECO ishingiraho ni uko habayeho "décompte final" akanama kayishinzwe kakemeza ko ibikoresho bisigaye bifitanye isano n'akazi kavugwa mu masezerano¹. [23] Urukiko rurasanga kuba harabayeho "décompte final", bakavugaga ko ibikoresho bisigaye bifitanye isano n'akazi kavugwa mu masezerano, bidasobanura ko abagize akanama bemeje ko ibyo bikoresho bizishyurwa n'Umujyi wa Kigali, cyane ko mu nyandiko zitandukanye zigize isoko, nk'amasezerano, "cahier des clauses administratives" n'izindi, ntaho impande zombi zateganyije ko amasezerano naseswa, Umujyi wa Kigali uzishyura agaciro k'ibikoresho bizaba bisigaye. [24] Urukiko rusanga kandi nk'uko byasobanuwe haruguru, mu gihe EMUGECO itaregeye iseswa ry'amasezerano nta mpamvu, ntaho yahera isaba agaciro k'ibikoresho byasigaye, cyane ko nayo yiyemerera ko yabisubiranye, bimwe ikabigurisha ibindi ikaba yarabijyanye mu bubiko bwayo. [25] Hashingiye kuri ibyo bisobanuro byose bimaze gutangwa, urukiko rusanga nta mpamvu yatuma Umujyi wa Kigali utegekwe kwishyura agaciro k'ibikoresho EMUGECO yasigaranye. 320 Ku bijyanye n'ubujurire bwuririye ku bundi bwatanzwe n'Umujyi wa Kigali [26] Uburanira Umujyi wa Kigali avuga ko mu bujurire bwuririye ku bwa EMUGECO asaba 13.000.000 frw y'igihembo cy'avoka kingana na 6% y'ikiburanwa nk'uko yagenwe n'Urugaga rw'Abavoka. [27] Asobanura ko Leta isaba amafaranga y'igihembo cya Avoka kuko iba yarahinduwe umuburanyi, abakozi bayo bakaza mu manza bataye akandi kazi. [28] Abunganira EMUGECO bavuga ko ubujurire bwuririye ku bundi bw'Umujyi wa Kigali nta shingiro bufite kuko amafaranga basaba batigeze bayasaba mu rwego rwa mbere, akaba ari ikirego gishya. Bongeraho ko EMUGECO yareze hari impamvu kandi ko kurega ari "droit fondamental". Basaza bavuga ko uburanira Umujyi wa Kigali ari intumwa ya Leta, ko rero atemerewe gusaba igihembo cya avoka. [29] Urukiko rusanga ibyo abuburanira EMUGECO bavuga ko iki kirego ari gishya bifite ishingiro kuko, nubwo mu mwanzuro wanditse w'Umujyi wa Kigali ku rwego rwa mbere, uwayiburaniraga

yari yasabye amafaranga y'igihembo cy'avoka n'ayo gushorwa mu manza, ibyo bitigeze bivugwa mu iburanisha ngo bibe byagibwaho impaka, umucamanza abifateho icyemezo, bityo ubujurire bwuririye ku bundi bw'Umujyi wa Kigali bukaba budakwiye kwakirwa ngo busuzumwe. III. ICYEMEZO CY' URUKIKO [30] Rwemeje ko ubujurire bwa EMUGECO nta shingiro bufite. [31] Rwemeje ko ubujurire bw'Umujyi wa Kigali bwuririye ku bwa EMUGECO butakiriwe. [32] Rwemeje ko urubanza rwajuririwe rudahindutse [33] Rutegetse EMUGECO kwishyura amagarama y' urubanza angana na 28.500Frw. 1 Les matériaux et matériels entreposés soit sur le chantier ou en stock au siège de l'Entreprise : Pour ces matériaux et matériels, il n'existe pas un prix contractuel sur lequel on pouvait se référer afin de l'utiliser dans ce décompte. Néanmoins la commission a jugé nécessaire de les mentionner étant donné qu'ils avaient un lien étroit avec les travaux formulés dans le contrat. La connaissance des vraies valeurs à appliquer à ces matériaux et matériels requièrent une documentation en dehors du contrat.

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