

RWANDA / JUDGMENT

ESMAEIL KHANABADI N'UNDI v BDF LTD

RCOMAA 00073/2018/CA

COURT

Court of Appeal

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31 July 2019

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ESMAEIL KHANABADI N'UNDI v BDF LTD

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Text

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ESMAEIL KHANABADI N'UNDI v BDF LTD [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00073/2018/CA (Ngagi, P.J.) 31 Nyakanga 2019] Amategeko agenga amasezerano –Kutubahiriza amasezerano – Iyo umwe mu bakoze amasezerano atayubahirijwe uruhande rwarenganyijweruba rufite uburenganzira bwo kuyasesa. Incamake y'ikibazo: Esmaeil Khanabadi yagurishije BDF Ltd imashini yitwa Wood Drying Machine, bakorana amasezerano y'ubugure, barayasinya, uwaguze atanga avansi, bumvikana ko ayasigaye azayishyura nyuma imashini imaze kuhagera. Papyrus Co Ltd yabaye umwishingizi w'uwigurishije. Iyi mashini yaraguzwe, ariko BDF Ltd iza kuyanga ivuga ko itujuje ibyangombwa byose byumvikanyweho mu masezerano, isaba Esmaeil Khanabadi ko basesa ayo masezerano bari bafitanye agasubiza igice cy'ikiguzi cy'ayo mashini yakiriye akimara gusinya ayo masezerano. Uwagurishije we akavuga ko yubahirije ibyari bikubiye mu masezerano, bityo aregera Urukiko rw'Ubucuruza rwa Nyarugenge. Urukiko rw'Ubucuruza rwa Nyarugenge rushyiraho abahanga batatu, mu mwanzuro wabo bavugaga ko iyo mashini ikora neza, ariko umwe muri abo bahanga agaragaza ko hari ibyo atemeranya na bagenzi be. Urukiko rwategetse uwagurishije n'umwishingizi we kwishyura amafaranga ya avansi yakiriye. Esmaeil wagurishije iyo mashini hamwe n'umwishingizi we bajuririye mu rukiko rukuru

rw'ubucuruza ku mpamvu yuko urukiko rubanza rwemeje ko imashini yagurishije bdf itujuje ubuziranenge, kandi ko agomba gusubiza avansi yari yahawe. uru rukiko rwemeje ko imikurizwe y'urubanza rukurirwa igumaho. bongeye bajurira mu rukiko rw'ikirenga, nyuma y'ivugurura ry'urwego ry'ubucumanza urubanza rwimirira mu rukiko rw'ubujurire.

Esmaeil n'umwishingizi we bavuye ko bajurira muri uru rukiko kuko inkiko zibanze zashyigirye ku myanzuro y'impuguke yashyigirweho na BDF, iyibogamiraho, zongera zishyigirira ku myanzuro y'izindi mpuguke zivuguruzanya, no kuba baraciwe indishyi kandi batarishe amasezerano, bavuye ko ahubwo hari gushyigirwa ku ihame rya nyamwinshi (principe de la majorité). BDF Ltd, mu kwiregura ku mpamvu ya mbere y'ubujurire, avuye ko impuguke zitigeze zivugurura, ku mpamvu ya kabiri y'ubujurire, avuye ko indishyi Esmaeil n'umwishingizi baciwe zari zifite ishingiro, kuko batsinzwe n'uko batubahirije amasezerano bagiranye. Esmaeil n'umwishingizi basaba urukiko guhabwa igihembo cy'impuguke zayifashije gukora expertise y'iyi mashini hamwe n'indishyi zitandukanye. BDF yo ikavuye ko indishyi Esmaeil n'umwishingizi we baciwe zifite ishingiro kuko batsinzwe n'uko batubahirije amasezerano Incamake y'icyemezo: Iyo umwe mu bakozwe amasezerano atayubahirijwe uruhande rwarenganyijwe ruvuye uburenganzira bwo kuyasasa.

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Ubujurire nta shingiro bufite;

Amategeko yashyigirweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 111. Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryerekeye masezerano iteganya ko, ingingo ya 64 Nta manza zifashishijwe. Urubanza

I.IMITERERE Y'URUBANZA [1] Uru rubanza rukomoka ku masezerano yo ku wa 25/12/2015, Esmaeil Khanabadi yagiranye na Business Development Fund Ltd (BDF Ltd), bumvikana ko Esmaeil Khanabadi azayigurira imashini yitwa Wood Drying Machine ku giciro cy'amafaranga 100.000.000 Frw hishyurwamo 70.000.000 Frw ya avansi, bumvikana ko andi azishyurwa nyuma, imashini imaze kuhagera. Iyi mashini yaraguzwe, ariko BDF Ltd iza kuyanga ivuye ko itujuje ibyangombwa byose byumvikanyweho mu masezerano, isaba Esmaeil Khanabadi ko basesa amasezerano bari bafitanye agasubiza igice cy'ikiguzi cy'iyi mashini yakiriye akimara gusinya ayo masezerano. Kubera ko Esmaeil Khanabadi we yumvaga yarubahirije amasezerano kandi umuburanyi we atari ko abyumva, yahisemo kuregera Urukiko rw'Ubucuruza rwa Nyarugenge, BDF Ltd nayo itanga ikirego kiregera kwiregura. [2] Mu rubanza RCOM 01251/TC/NYGE/RCOM - 01686/2016/TC/NYGE rwaciwe ku wa 26/05/2017, Urukiko rw'Ubucuruza rwa Nyarugenge, rwategetse Esmaeil Khanabadi n'umwishingizi we Papyrus CO Ltd kwishyura BDF 70.000.000 Frw yatanze avansi mu masezerano bagiranye no kwishyura 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. [3] Esmaeil Khanabadi na Papyrus CO Ltd bajurirye urwo rubanza mu Rukiko Rukuru rw'Ubucuruza bavuye ko Urukiko rw'Ubucuruza rwa Nyarugenge rwemeje ko imashini ivugwa muri uru rubanza itari "Fully automatic" n'uko yategetswe gusubiza avansi yari yahawe. [4] Mu rubanza RCOMA 00438/2017/CHC/HCC rwaciwe ku wa 07/06/2017, Urukiko

Rukuru rw'Ubucuruzi rwemeje ko imikirize y'urubanza rujuririrwa igumaho, usibye ku bijyanye n'uko abajuriye bagomba gusubiza BDF Ltd 2.362.500 Frw yishyuye impuguke zashyizweho n'Urukiko ku rwego rwa mbere n'igihembo cya Avoka kingana na 1.000.000 Frw.

- [5] Esmaeil Khanabadi na Papyrus Company Ltd bajuririyeye urwo rubanza mu Rukiko rw'Ikirenga ruhabwa RCAA 00004/2018/SC, nyuma y'ivugurura ry'Urwego rw'Ubucamanza

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ruza kwimurirwa mu Rukiko rw'Ubujurire ruhabwa RCAA 00073/2018/CA, hashingiye ku ngingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. [6] Urubanza rwaburanishijwe mu ruhame ku wa 09/04/2019, BDF Ltd ihagarariwe na Me Kagwisagye Craish, Esmaeil Khanabadi na Papyrus CO Ltd batitabye batanahagarariwe, urubanza rwimurirwa ku wa 07/05/2019, kuko Esmaeil Khanabadi yari yandikiye Urukiko ko yakoze impanuka .

- [7] Kuri icyo tariki, urubanza rwongeye kuburanishwa mu ruhame, BDF Ltd ihagarariwe na Me Kagwisagye Craish, Esmaeil Khanabadi na Papyrus Co Ltd batitabye ariko hitabye Me Nyamaswa Raphaël ubunganira, Urukiko rutegeka ko urubanza rwimurirwa ku wa 10/06/2019, ruvuga ko uwo munsu Esmaeil Khanabadi n'atitaba, urubanza ruzaburanishwa nta gisibya. [8] Ku wa 10/06/2019, urubanza rwaburanishijwe mu ruhame, BDF Ltd ihagarariwe nka mbere, Esmaeil Khanabadi na Papyrus Co Ltd batitabye kandi batanahagarariwe, nk'uko byari byemejwe mu rubanza rwo ku wa 07/05/2019, urubanza ruburanishwa badahari, kuko bari bazi icyemezo cyafashwe n'Urukiko ku itariki imaze kuvugwa, haburanwa inzitizi y'iburabubasha bw'uru Rukiko yatanze n'uhagarariye BDF Ltd. [9] Ku wa 28/06/2019, Urukiko rwemeje ko inzitizi y'iburabubasha rwashyikirijwe na BDF Ltd nta shingiro ifite, rutegeka ko iburanisha ry'urubanza rizakomeza ku wa 09/07/2019, uwo munsu ababuranyi bitaba Urukiko, BDF Ltd ihagarariwe na Me Karemera Frank, naho Esmaeil Khanabadi na Papyrus Co Ltd batitabye kandi batahagarariwe, Urukiko rwemeza ko urubanza ruburanishwa badahari, kandi urubanza rugafatwa nk'aho rwaburanishijwe bahari, kuko bari bazi itariki y'iburanisha. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ESMAEIL Khanabadi yarubahirije amasezerano yakoranye na BDF Ltd [10] Esmaeil Khanabadi na Papyrus Company Ltd, mu myanzuro yabo, bavuga ko impamvu ya mbere yatumye bajurira ari uko habayeho kwivuguruzwa ku mpuguke yitwa Eng. Ingabire Bernard na Ntakirutimana Thomas ndetse no kuba Urukiko rwarashyigiyeye ku myanzuro y'impuguke yitwa Joseph Ademola Maborukoje washyizweho na BDF Ltd kandi runayibogamiraho, bityo ko bitari ngombwa kongera gutumiza izo mpuguke mu bujurire ahubwo hari gushingirwa ku ihame rya nyamwinshi (principe de la majorité). [11] Me Rusanganwa Jean Claude uburanira Esmaeil Khanabadi na Papyrus Company bavuga ko impamvu ya kabiri yatumye bajurira, ari uko banenga imikirize y'urubanza rujuririrwa ku bijyanye no kubatega ko bagomba gutanga indishyi, nyamara atari bo bishe amasezerano,

1 Ingingo ya 105, igika cya mbere, iteganya ko : « Guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'urukiko zaregewe, zoherezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko ».

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nk'uko n'impuguke 2 kuri eshatu zabyemeje, ko imashini yujuje ibyari byemeranijweho n'impande zombi. [12] Me Karemera Frank, uburanira BDF Ltd, mu kwiregura ku mpamvu ya mbere y'ubujurire, avuga ko Eng. Ingabire Bernard na Ntakirutimana Thomas batigeze bivuguruzwa, ko ahubwo hari ibyo batari basobanuye mu rukiko rubanza basobanuye neza mu bujurire banabyemeranywaho bose. Avuga ko ibyo kuvuga ko urukiko rwashingiye ku cyemezo cy'impuguke yitwa Joseph Ademola Maborukoje atari ukuri, kuko atari rwo rwayitegetse ibyo ishyira muri raporo yayo. [13] Me Karemera Frank mu kwiregura ku mpamvu ya kabiri y'ubujurire, avuga ko indishyi Esmaeil Khanabadi na Papyrus Co Ltd baciwe zari zifite ishingiro, kuko batsinzwe n'uko batubahirije amasezerano bagiranye na BDF Ltd, kandi ko byari ngombwa ko basubiza amafaranga bari bahaweho avansi. UKO URUKIKO RUBIBONA [14] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryerekeye masezerano iteganya ko: " Amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye". [15] Ingingo ya 2 y'amasezerano yabaye hagati ya BDF Ltd na Esmaeil Khanabadi yo ku wa 12/12/2015 iteganya inshingano z'ugurisha zirimo gukora "installation" y'imashini no kuyishyikiriza BDF Ltd yujuje ibisabwa birimo no kuba iyo mashini yumisha imbaho igomba kuba iri "automatic". [16] Dosiye y'urubanza igaragaza ko mu Rukiko rw'Ubucuruza rwa Nyarugenge, impande zombi zitumvikanaga niba iyo mashini yujuje ibisabwa nk'uko biteganyijwe mu masezerano, kuko uruhande rwa BDF Ltd rwavugaga ko imashini itujuje ibisabwa bumvikanyeho, naho Esmaeil Khanabadi na Papyrus Co Ltd bakavugaga ko ibyujuje, ari cyo cyatumye Urukiko rw'Ubucuruza rwa Nyarugenge rushyiraho abahanga batatu, mu mwanzuro wabo bavugaga ko iyo mashini ikora neza (a machine is in a good working condition), ariko umwe muri abo bahanga witwaga Joseph Ademola Maborukoje agaragaza ko hari ibyo atemeranya na bagenzi be harimo ko imashini itari automatic yose (not a full automatic machine) n'ibindi, Urukiko rushingiye ku masezerano no ku miburanire y'impande zombi, no kuri raporo y'abahanga, rwemeza ko imashini itujuje ibyateganyijwe mu masezerano (specifications). [17] Dosiye igaragaza ko mu bujurire bwa Esmaeil Khanabadi na Papyrus Co Ltd, Urukiko Rukuru rw'Ubucuruza rwahamagaje abahanga bose bakoze raporo kuri iriya mashini kugira ngo baruhe ibisobanuro, mu rwego rwo kumenya uruhande rutubahirije inshingano zikubiye mu masezerano yo ku wa 12/12/2015, rubishingiye ku ingingo ya 97 (sic) y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Babajijwe iby'iyi mashini, Eng. Joseph Ademola Maborukoje yongeye guhamya ko iyo mashini itari full automatic (reba igika cya 13 cy'urubanza), Eng. Ingabire Bernard nawe yemeza ko hari ibice by'imashini bitikoresha (reba igika cya 15 cy'urubanza), bituma nyuma yo gusesengura ubuhamya bwabo, Urukiko Rukuru rw'Ubucuruza rwemeza ko Esmaeil Khanabadi atubahirije amasezerano nk'uko byemejwe mu rubanza rwajuririwe.

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- [18] Urukiko rw'Ubugurire rurasanga koko ingingo ya 2 y'amasezerano impande zombi zagiranye atanga urutonde rw'ibyo iriya mashini yagombaga kuba yubahirije (specifications), harimo no kuba yaragombaga kuba iri "automatic", ariko nk'uko inkiko zabanje zabibonye, hari ibice byayo bitari automatic, nyamara byaragombaga kuba ari ko bimeze, bikaba rero bigaragara ko Esmaeil Khanabadi ari we utarubahirije inshingano zari ziteganyijwe mu masezerano. [19] Urukiko rurasanga ibyo uburanira Esmaeil Khanabadi na Papyrus CO Ltd bavuga, ko habayeho kwivuguruza ku mpuguke yitwa Eng. Ingabire Bernard na Ntakirutimana Thomas ndetse no kuba Urukiko rwarashingiye ku myanzuro y'impuguke yitwa Joseph Ademola Maborukoje washyizweho na BDF Ltd kandi anayibogamiraho, bityo ko bitari ngombwa kongera gutumiza izo mpuguke mu bujurire, ko ahubwo hari gushingirwa ku ihame rya nyamwinshi (principe de la majorité), nta shingiro byahabwa kuko nta tegeko ribuza Urukiko kuba rwahamagaza impuguke zakoze raporo kugira ngo rurushaho gusobanukirwa ukuri ku kiburanwa. Urukiko rurasanga na none impuguke zitarivugurujwe, kuko kuba zaravuze ko imashini ikora neza, ariko bikagaragara ko nubwo ikora neza atari automatic nk'uko amasezerano yabiteganyaga, nta kwivuguruza kurimo kuko zitigeze zemeza ko iyo mashini ari automatic ngo babe noneho barageze aho bakabihakana. [20] Urukiko rurasanga na none kuvuga ko hari gukurikizwa "principe de la majorité", n'ubwo byanze bikunze atari ihame ko majorité ihora ifite ukuri, ariko nk'uko byasobanuwe haruguru, ntaho "majorité" yigeze yemeza ko imashini ari "automatic". Kuba rero impuguke zavuzwe zahamagajwe n'Urukiko Rukuru zaremerenyijwe ko hari ibice byayo bitari automatic, nta kosa inkiko zabanje zakoze mu kwemeza ko Esmaeil Khanabadi ari we utarubahirije ibikubiye mu masezerano, bityo BDF Ltd ikaba yari ifite uburenganzira bwo gusesa amasezerano igasubizwa na 70.000.000 Frw ya avansi yari yarahaye Esmaeil Khanabadi. [21] Hashingiwe ku ngingo z'amategeko no ku bisobanuro bimaze gutangwa haruguru, Urukiko rurasanga Esmaeil Khanabadi ari we utarubahirije ibikubiye mu masezerano, bityo BDF Ltd ikaba yari ifite uburenganzira bwo kuyasesa, no gusubizwa 70.000.000Frw ya avansi yari yarahaye Esmaeil Khanabadi, nk'uko inkiko zibanje zabibonye, bityo 30.000.000Frw yasigaye asaba kwishyurwa akaba ayatahabwa.
2. Kumenya niba hari indishyi zatangwa muri uru rubanza [22] Me Rusanganwa Jean Claude, uburanira Esmaeil Khanabadi na Papyrus Co Ltd, mu myanzuro ye, asaba ko kuri uru rwego abo aburanira bahabwa 10.000.000Frw y'igihembo cy'impuguke zayifashije gukora "expertise" y'iyi mashini, 10.000.000Frw yo kuyishora mu manza ku maherere, 5.000.000Frw y'igihembo cya Avoka, 3.000.000Frw y'ikurikiranarubanza na 225.000Frw yatanzeho amagarama guhera ku rwego rwa mbere kugera muri uru rukiko. [23] Me Karemera Frank avuga ko indishyi Esmaeil Khanabadi na Papyrus Company baciwe zari zifite ishingiro kuko batsinzwe nk'uko batubahirije amasezerano bagiranye na BDF Ltd kandi byari na ngombwa ko basubiza amafaranga bari bahawe avansi, bityo bakaba ari bo bagomba guhabwa kuri uru rwego 1.500.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza, yiyongera kuyo bari bahawe ku rwego rw'ubujurire.

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UKO URUKIKO RUBIBONA [24] Ingingo ya 111 y'Itegeko N^o 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: "Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe". [25] Urukiko rurasanga amafaranga yose Esmaeil Khanabadi na Papyrus Company Co Ltd basaba ntayo bakwiye guhabwa kuko batsinzwe uru rubanza kandi nk'uko byagaragajwe, uruhande rwabo ari rwo rutubahirije amasezerano bakoranye na BDF Ltd. [26] Urukiko rurasanga ahubwo, Esmaeil Khanabadi na Papyrus Co Ltd bakwiye gufatanya guha BDF Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kubera ko uru rubanza rwatumye igira ibyo itakaza irukurikirana ndetse ishaka Avoka wo kuyiburanira, ariko kubera ko amafaranga yaka ari menshi hakurikijwe imirimo yakozwe kuri uru rubanza, bakaba bagomba guha BDF Ltd 700.000Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, kuri uru rwego. III. ICYEMEZO CY'URUKIKO [27] Rwemeje ko ubujurire bwa Esmaeil Khanabadi na Papyrus Company Co Ltd nta shingiro bufite; [28] Rwemeje ko imikirize y'urubanza RCOMA 00438/2017/CHC/HCC rwaciwe ku wa 07/06/2017 n'Urukiko Rukuru rw'Ubucuruzi idahindutse; [29] Rutegetse Esmaeil Khanabadi na Papyrus Company Co Ltd gufatanya guha The Business Development Fund Ltd (BDF Ltd) 700.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza, kuri uru rwego; [30] Ruvuze ko amagarama yatazwe ahwanye n'ibyakozwe muri uru rubanza.

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