

RWANDA / JUDGMENT

ETRACO LTD v. DOFFICE

RCOM 00002/2017/CHC/HCC

COURT

Commercial High Court

DECIDED

8 May 2017

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ETRACO LTD v. DOFFICE

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Text

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ETRACO LTD v. D'OFFICE [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOM 00002/2017/CHC/HCC (Niwemugeni, P.J.) 08 Gicurasi 2017] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Inyandiko y'ikibazo gitanzwe n'umuburanyi umwe – Umuburanyi umwe ntashobora gutanga requete unilateral ebyiri mu Rukiko rumwe ku kibazo kimwe . Incamake y'ikibazo: Etraco Ltd yajyaga ipiganirwa imirimo itandukanye ijyanye n'iby'ubwubatsi, iza kugwa mu kibazo cy'igihombo bituma itabasha kwishyura imwe mu myenda yagomba kwishyura hanyuma mu buryo bwo gushaka umuti w'ikibazo yiyambaza Urukiko rw'Ubucuruzi kugira ngo ihabwe redressement Commerciale byemezwa mu rubanza RCOM1816/15/TC/NYG. Umucungamutungo yatanze ikirego cya liquidation, Urukiko rurayemeza, Etraco Ltd ijuririra icyo cyemezo ndetse itanga ikirego (référé) isaba ko amafaranga y'ubugure bw'ingwate yatanzwe atahabwa ababerewemo imyenda mu gihe urubanza rutaraba ndakuka. Mu iburanisha, Urukiko Rukuru rw'Ubucuruzi rwasuzumye ikibazo cyo kumenya niba ikirego cya Etraco Ltd gikwiye kwakirwa, rusuzuma niba Requete unilaterale ishobora gushamikira ku yindi Requete unilateral mu rukiko rumwe Incamake y'icyemezo: Umuburanyi umwe ntashobora gutanga requete unilateral ebyiri mu Rukiko rumwe ku kibazo kimwe. Ikirego nticyakiriwe. Amategeko yifashishwe: N° 21/2012 ryo

kuwa 14/06/2012 Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 324. Imanza zifashishijwe: Nta manza zifashishijwe Urubanza IMITERERE Y'URUBANZA [1] Etraco Ltd yareze ivuga ko ari company yajyaga ipiganirwa imirimo itandukanye ijyanye n'iby'ubwubatsi, iza kugwa mu kibazo cy'igihombo bituma itabasha kwishyura imwe mu myenda yagomba kwishyura hanyuma mu buryo bwo gushaka umuti w'ikibazo yiyambaza Urukiko

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rw'Ubucuruzi kugira ngo ihabwe redressement Commerciale byemezwa mu rubanza RCOM1816/15/TC/NYG rwaciwe kuwa 24/12/2015. [2] Ivuga ko nyuma aribwo uwari washizweho nk'umucungamutungo Gasore Alain yongeye gusaba ko habaho liquidation ashingiye mu kuba ngo nta buryo imyenda yashoboraga kuzahurwa urukiko rurabyemeza ariko mu kubyemeza Etraco Ltd ntiyishimira imikirize yurubanza irajurira ariko abari baberewemo imyenda batangira kuregera izindi nkinko kugirango bahabwe inyungu ku myenda Etraco yari ibafitiye nyamara byari byarafatiweho icyemezo ko nta nyungu ndetse ko zaba zisubitswe ibyo umucungamutungo arabimenya ariko ntiyagira icyo abikoraho yewe nka BK ikomeza kubara inyungu z'ubukererwe nyamara icyemezo cyarayireberaga. Ko iregeye urukiko mu gihe urubanza rutaraba ndakuka ko umutungo waba ufatiriwe watanzweho ingwate abo bose bavuze haruguru bakaba ntacyo bahabwa ku mafranga y'ubugure bw'ingwate y'inzu yari yatanzwe, ndetse kubera ko umucungamutungo yakomeje kugaragaza ko nta follow up abikorera bikaba byagira ingaruka ko mu gihe habaye kwishyurwa hari abatakwishyurwa nimba nta gikurikirana kibaye kandi ikigamijwe aruko bose bishyurwa. Ko isaba urukiko ko rwashyiraho undi mu liquidateur. Muri uru rubanza uru rukiko rugiyeye kubanza gusuzuma niba iki kirego gikwiye kwakirwa kigasuzumwa. ISESENGURA RY'URUBANZA

1. Ese ikirego cya Etraco Ltd gikwiye kwakirwa? [3] Mu maburanisha abiri yose yabaye kuri uru rubanza, uhagarariye Etraco Ltd yabwiraga urukiko ko uru rubanza ari requete unilateral rushamikiye ku rubanza RComA 0026/2017/CHC/HCC. Urubanza rwaburanishijwe mu nama y'abacamanza (chambre du conseil), ndetse runatumiza Gasore Alain, liquidateur nk'uko biteganywa n'ingingo ya 327 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets: Umucamanza washyikirijwe ikibazo, aragisuzuma, yasanga ari ngombwa ko ahamagaza uwagitanze n' abandi bose abona ko bashobora kuza muri icyo kibazo akabahamagaza kugirango azabumve mu gihe kitarenze amasaha mirongo ine n'umunani (48)." Mu gusuzuma neza iki kirego, urukiko rwasanze ahubwo muri IECMS, iki kirego cyatanzwe nka Referée, (ikirego cyihutirwa) gishamikiye ku rubanza RCOMA 00026/2017/CHC/HCC. Uru Rukiko rugiyeye gusuzuma niba ubu buryo bwo gutanga ikirego bukurikije amategeko.
- a. Ese Requete unilaterale ishobora gushamikirwa ku yindi Requete unilateral mu rukiko rumwe? [4] Ingingo ya 324 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets ibiteganywa: "/nyandiko y'ikibazo gitanzwe n'umuburanyi umwe ni uburyo budasanzwe bwo kuregera umucamanza

umusaba kugira ibyo aramira mu buryo bwihuse cyane kandi bikaba ari ibibazo bidasaba guhamagara byanze bikunze undi muburanyi." Mu iburanisha ryabaye kuwa 28/03/2017, Maitre Nyembo Emeline yabwiye urukiko ko uru rubanza ari requete unilaterale rushamikiye ku rubanza ruri mu bujurire RComA 0026/2017/CHC/HCC. Kubera ko nta muntu Etraco yari yareze muri uru rubanza, urukiko rwahise rwumva ko ari requete unilateral nk'uko urega yabyivugiraga, ishamikiye ku rubanza mu mizi ruvuzwe haruguru, uwunganira Etraco na we arabyemera binaba ngombwa ko hagobokeshwa liquidateur wa Etraco nk'uko ingingo ya 327 igika cya 1 y'itegeko ryavuzwe

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haruguru ibiteganywa: " Umucamanza washyikirijwe ikibazo, aragisuzuma, yasanga ari ngombwa ko ahamagaza uwagitanze n' abandi bose abona ko bashobora kuza muri icyo kibazo akabahamagaza kugirango azabumve mu gihe kitarenze amasaha mirongo ine n'umunani (48)." Hakurikijwe uko ikirego cyatanze, bigaragara ko cyatanze nka requete unilaterale ishamikiye ku yindi requete unilaterale RComA 0026/2017/CHC/HCC mu rukiko rumwe. Uru Rukiko rurasanga bidashoboka ko umuburanyi umwe ashobora gutanga requete unilateral ebyiri mu Rukiko rumwe ku kibazo kimwe kandi imwe avuga ko ishamikiye ku yindi, kuko byari gushoboka ko atanga requete unilaterale imwe ikarangiza ikibazo, na cyane ko ari we wabyivugiyemo mu iburanisha ko urubanza rwe rushamikiye ku rubanza RComA 0026/2017/CHC/HCC rwavuzwe haruguru. Byongeye kandi ingingo ya 328 y'iryo tegeko ivuga ko icyemezo gifatwa n'umucamanza kirangizwa by'agateganyo kabone nubwo cyajuririrwa kandi nta ngwate itanzwe keretse iyo umucamanza abigennye ukundi" Mu bintu bitatu Etraco isaba, bibiri bikaba bigaragara ko byarangiza urubanza mu mizi aho kururangiza by'agateganyo nk'uko iyi ngingo ibivuga. Inzira ya requete unilateral rero Etraco Ltd yashatse gukoresha muri uru rubanza ikaba idashoboka.

- b. Ese Refere ishobora gushamikiye kuri requete unilaterale? [5] Mu kirego cyatanze kuri IECMS bigaragara ko cyatanze nka Référé ishamikiye ku kirego RComA 0026/2017/CHC/HCC. Usibye gusa ko urubanza rwihutirwa rudashobora gushamikiywe ku rundi rubanza rwihutirwa nk'uko ingingo ya 325 igika cya 2 y'itegeko ryavuzwe haruguru ibiteganywa: "icyakora, iyo umuburanyi ahisemo inzira imwe hagati y'ikibazo gitanzwe n'umuburanyi umwe n'ikirego cyihutirwa ntabwo agishoboye gukoresha indi nzira." Bivuze ko mu gihe Etraco yari yahisemo gutanga ikirego gitanzwe n'umuburanyi umwe, requete unilateral muri RComA 0026/2017/CHC/HCC, itari igifite uburenganzira bwo gutanga ikirego cyihutirwa(refere). Uru Rukiko rero rukaba rusanga iki kirego cyatanze na Etraco kidakwiye kwakirwa ngo gisuzumwe. ICYEMEZO CY'URUKIKO [6] Urukiko Rukuru rw'Ubucuruzi: Rwemeje kutakira ikirego rwashyikirijwe na Etraco Ltd. Rutegetse ko amagarama yatanze irega aguma mu isanduku ya Leta. Rusomwe rutinze kubera ko umunsi rwagombaga gusomerwaho umucamanza yari mu mahugurwa.

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