

RWANDA / JUDGMENT

IKIGO CY'IMISORO N'AMAHORO(RRA) v. GARIBSONS COMMODITIES

RS/REV/COM 0013/12/CS

COURT

Supreme Court

DECIDED

23 November 2012

CASE / FILE NUMBER

RS/REV/COM 0013/12/CS

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IKIGO CY'IMISORO N'AMAHORO(RRA) v. GARIBSONS COMMODITIES

- Source: Amategeko
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- Date: 2012-11-23
- Case/document no.: RS/REV/COM 0013/12/CS
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Text

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IKIGO CY'IMISORO N'AMAHORO(RRA) v. GARIBSONS COMMODITIES [Rwanda URUKIKO RW'IKIRENGA – RS/REV/COM 0013/12/CS (Nyirinkwaya , P.J., Mukandamage na Munyangeri, J.) 23 November 2012] Amategeko agenga umusoro – Igenzura – Guhagarika irangizarubanza – Gusubirishamo urubanza ingingo nshya – Gusubirishamo urubanza ingingo nshya ntibirubuza kurangizwa. Ariko umusoresha iramutse itsinze urubanza rusubirishamo urundi ingingo nshya, ishobora kubura uko igaruza amafaranga yaba yaratanze kuko usoreshwa igizwe n'abanyamahanga bashobora no kwisubirira iwabo, ikaba idafite imitungo itimukanwa mu Rwanda, ndetse n'aho ibarizwa hazwi. Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 190. Incamake y'ikibazo: Sté GARIBSONS COMMODITIES yakorewe igenzura n'ubuyobozi bwa gasutamo, buyimenyesha ko hari umuceli ungana na 307 tonnes watumijwe muri Pakistan wamenyekanyishijwe ku giciro gito ugereranyije n'ibiciro by'umuceli urangurwa n'abandi bacuruza. Ijurira komiseri wa za gasutamo isabakoyasoreshwa ku giciro yamenyekanyishijeho,

icyufuzo cyayo nticyakiriwe bituma itanga ikirego mu Rukiko Rukuru rw'Ubucuruzi, narwo rwemeza ko uwo muceli ugomba gusoreshwa ku gaciro yawumenyekanyishijeho, rutegeka kandi RRA kwishyura Ste GARIBSONS indishyi z'ikurikiranarubanza. RRA yajuririye Urukiko rw'Ikirenga, inatanga n'ikirego gisaba gusubirishamo urubanza ingingo nshya ivuga ko nyuma y'uko urubanza ruciwe yabonye ibimenyetso bishya byerekana ko igiciro Garibsons yatanze Atari cyo. RRA itanga ikirego cyihutirwa gisaba guhagarika irangizwa ry'urubanza mu gihe hateganyijwe icyemezo cy'urukiko rw'ikirenga ku kirego gusubirishamo urubanza ingingo nshya. Ku byerekeye guhagarika irangizarubanza, RRA ikomeza ivuga ko iramutse itsinze urubanza rusubirishwamo urundi ingingo nshya, harigiye ishigira kubura uko igaruka amafaranga yaba yatanze kuko Ste GARRIBSONS igizwe n'abanyamahanga bashobora no kwisubirira iwabo, ikaba idafite imitungo itimukanwa mu Rwanda. RRA ikomeza ivuga ko kurangiza urubanza rwasabwe gusubirishamo ingingo nshya byagira ingaruka mbi ku misoreshereze kuko abandi batumiza ibicuruzwa bimwe nk'ibya GARIBSONS ariko basoreshwa ku giciro nk'icyayo babishingiraho basaba nabo ko basoreshwa ku giciro nk'icye. RRA yongera ivuga imiyungo ya Ste GARIBSONS itatangwaho ingwate kuko atari imitungo ya sosiyete. Incamake y'icyemezo: 1. Kuba sosiyete yakorewe igenzura n'ikigo cy'imisoro n'amahoro itaboneka kuri telephone igendanwa, kuba idafite imitungo izwi mu Rwanda, no kuba kandi aho bakorera haba hafunze kuko nta bicuruzwa biba birimo. Bityo ibi byose bikaba ari impamvu zihagije zituma irangizwa ry'urubanza rwasabwe gusubirishwamo ingingo nshya rihagarikwa kuko nta kigaragaza ko iyi sosiyete yaboneka cyangwa ko yabona ubwishu ikirego gisubirishamo urubanza ingingo nshya cyatanzwe n'umusoresha kiramutse cyakiriwe, urubanza rwasubirishijwemo rugahinduka.

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Ikirego cyihutirwa gifite ishingiro. Irangizarubanza rirahagaza. Amagarama y'urubanza aherereye kw'isanduku ya leta. Amategeko yashingiweho Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 190. Nta manza zifashishijwe Urubanza I.IMITERERE Y'URUBANZA [1] Ubuyobozi bwa Gasutamo bwakoreye GARIBSONS COMMODITIES igenzura maze buyimenyesha ko bwasanze umuceri ungana na 307 tons watumijwe muri Pakistan wamenyekanishijwe ku giciro cya 170 USD/Ton gito cyane ugereranyije n'ibiciro by'umuceri urangurwayo n'abandi bacuruzi, ruyitegeka kwishyura 362 USD/Ton, ijuririra Komiseri wa za Gasutamo isaba ko yasoreshwa ku giciro yamenyekanishije, icyifuzo cyayo nticyakirwa, ihita itanga ikirego mu Rukiko Rukuru rw'Ubucuruzi. [2] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOM 0303/10/HCC, kuwa 03/02/2011, rwemeza ko ikirego cya GARIBSONS COMMODITIES gifite ishingiro, ko umuceri ungana na 307 tons winjijwe mu kwezi kwa Nzeri 2010 ugomba gusoreshwa ku gaciro ka 170 USD/Ton aho kuba 362 USD/Ton, rutegeka kandi RRA kwishyura GARIBSONS COMMODITIES amafaranga y'indishyi z'ikurikiranarubanza n'igihembo cy'avoka angana na 1.000.000 FRW. [3] RRA yajuririye Urukiko rw'Ikirenga, ruca urubanza RCOM A 0007/11/CS kuwa 30/12/2011, rwemeza ko ubujurire bwa RRA nta shingiro bufite. [4] RRA yatanze ikirego gisaba gusubirishamo urwo rubanza ingingo nshya ivuga ko nyuma y'uko urubanza ruciwe yabonye ibimenyetso bishya byerekana ko igiciro GARIBSONS COMMODITIES yatanze atari cyo,

cyandikwa kuri n° RS/REV/COM 0002/12/CS. Yatanze n'ikirego cyihutirwa gisaba guhagarika irangizwa ry'urubanza RCOM A 0007/11/CS mu gihe hagitegerejwe icyemezo cy'Urukiko rw'Ikirenga ku kirego cyo kurusubirishamo ingingo nshya., cyandikwa kuri n° RS/REV/COM 0013/12/CS. [5] Urubanza rwahamagawe bwa mbere kuwa 30/10/2012, ntirwaburanishwa kuko GARIBSONS COMMODITIES itari yitabye, Umuhesha w'inkiko yanditse ko atashoboye kuyimenyesha kuko yageze aho ikorera asanga hakinze, ahamagaye kuri telefone yayo igendanwa ntihagira uwitaba, ahamagaye avoka wayiburaniraga amubwira ko atababuranira uru rubanza, uhagarariye RRA Me Gasana nawe avuga ko batazi aho GARIBSONS COMMODITIES yimukiye, ko bayishatse kugira ngo bayigezeho imyanzuro yabo, basanga ibiro byayo bikinze, telefone yayo igendanwa ntawe uyitaba, abavoka bayiburaniraga mbere bavuga ko batayiburanira uru rubanza, hafatwa icyemezo ko izahamagarwa ahatazwi.

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[6] Urubanza rwongeye guhamagarwa kuwa 20/11/2012, uwo muni ababuranyi baritaba, ruburanishwa mu ruhamwe, RRA ihagarariye na Me Gasana Raoul hamwe na Me Kabibi Spéciose, GARIBSONS COMMODITIES ihagarariye na Me Nsengiyumva Abel hamwe na Me Biseruka Frank. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO Kumenya niba irangiza ry'urubanza RCOMA 0007/11/CS rikwiye guhagarikwa mu gihe hagitegerejwe icyemezo cy'Urukiko rw'Ikirenga ku kirego cya RRA gisaba gusubirishamo urwo rubanza ingingo nshya. [7] Ababuranira RRA bavuga ko RRA iramutse itsinze urubanza rusubirishamo urundi ingingo nshya, ishobora kubura uko igaruka amafaranga yaba yaratanze kuko GARIBSONS COMMODITIES igizwe n'abanyamahanga bashobora no kwisubirira iwabo, ikaba idafite imitungo itimukanwa mu Rwanda, ndetse n'aho ibarizwa hazwi, ibi akaba ari nayo mpamvu yatumye uru rubanza rutinda kuburanishwa hategerejwe ko ihamagazwa ahatazwi. [8] Bavuga kandi ko kurangiza urubanza rwasabwe gusubirishwamo ingingo nshya byagira ingaruka mbi ku misoreshereze kuko abandi bacuruzi batumiza ibicuruzwa bimwe nk'ibya GARIBSONS COMMODITIES ariko basoreshwa ku giciro cya 362 USD/Ton babishingiraho basaba nabo gusoreshwa ku giciro cya 170 USD/Ton hashingiye ku ihame ry'uko abantu bose bangana imbere y'amategeko. [9] Bavuga nanone ko kurangiza urwo rubanza byagira ingaruka mbi ku ngengo y'imari y'uyu mwaka kuko igiciro cya 170 USD/Ton gishingiweho ku bacuruzi bose batumiza umuceri muri Pakistan, umusoro RRA yinjiriza Leta wagabanukaho 428.440.709 FRW nk'uko imibare iri ku mugereka n°3 batanze ibigaragaza. [10] Ku bijyanye n'impungenge za RRA ko ishobora kubura uko yagaruka amafaranga urubanza rurangijwe, ababuranira GARIBSONS COMMODITIES, bavuga ko ifite aho ibarizwa hazwi ariko ko umunsi bayishatse bakayibura yari yafunze ibiro byayo kubera ko RRA isa nk'iyayihombeje kubera imitungo yayo yafatiriye, ikaba nta bicuruzwa yari ifite, ndetse ko umunsi umuhesha w'inkiko abashaka akababura bari muri RRA muri "audit", akaba ariyo mpamvu batabonetse. [11] Bavuga kandi ko abanyamigabane ba GARIBSONS COMMODITIES umwe afite ubwenegihugu bwa Pakistani n'ubw'u Rwanda, undi ari umunyarwandakazi, ndetse ko bafite inzu ifite agaciro karenze 300.000.000 FRW yafatwaho ingwate bibaye ngombwa. [12] Kuri iki kibazo cy'uko

umutungo w'abanyamigabane ba GARIBSONS COMMODITIES watangwaho ingwate, ababuranira RRA bavuga ko umutungo w'inzu w'abanyamigabane batanagaragaje aho uherereye utakwitiranywa n'uwa GARIBSONS COMMODITIES nka sosiyete kuko itandukanye n'abayigize. [13] Ku bijyanye n'impungenge nanone za RRA ko kurangiza urubanza byagira ingaruka mbi ku misoreshereze no ku ngengo y'imari y'Igihugu kuko abatuma ibicuruzwa bimwe nk'ibya GARIBSONS COMMODITIES basaba nabo kugendera ku giciro cyemejwe mu rubanza,

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ababuranira GARIBSONS COMMODITIES bavuga ko hari itegeko rigenga uko ibicuruzwa bigomba gusoroshwa bigeze kuri gasutamo, ko hadashingirwa ku rubanza rwa RRA na GARIBSONS COMMODITIES. [14] Ku bijyanye by'umwihariko n'impugenge ko kurangiza urubanza byagira ingaruka mbi ku ngengo y'imari y'Igihugu, bavuga ko imisoro ari agace gato cyane mu bigize ingengo y'imari y'Igihugu, ko ndetse na Komiseri Mukuru wa RRA aherutse gutangaza ko ku misoro bari biyemeje kwinjiza hiyongereyeho miliyari 8. Bavuga kandi ko GARIBSONS COMMODITIES nk'umushoramari nayo ifite ibyo yashoye mu bucuruzi bwayo birimo kwangirika, ko uburenganzira bwayo yahawe n'urukiko rubifitiye ububasha budakwiye guhungabana. Uko Urukiko rubibona [15] Ingingo ya 190 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko gusubirishamo urubanza ingingo nshya bitarubuza kurangizwa, keretse iyo iryo rangizwa ryahagaritswe bitangiye impamvu n'urukiko rwaregewe. [16] Nkuko bigaragazwa n'inyandiko ziri muri dosiye urubanza RCOMA 0007/11/CS rwasabiwe kurangizwa na GARIBSONS COMMODITIES ariko RRA yatanze ikirego ubu kitarafatwaho icyemezo gisaba kurusubirishamo ingingo nshya. [17] Ku birebana n'ihagarikwa ry'irangizwa ry'urwo rubanza igihe hagitegerejwe icyemezo Urukiko rw'Ikirenga ruzafata ku kirego gisaba kurusubirishamo ingingo nshya, Urukiko rusanga impungenge za RRA ko kurangiza urubanza rwasabwe gusubirishwamo ingingo nshya byagira ingaruka mbi ku misoreshereze no ku ngengo y'imari zitaba impamvu ihagije yo guhagarika irangizwa ry'urubanza kuko kurangiza urubanza rwabaye itegeko ari inshingano ya buri muburanyi watsinzwe urubanza. [18] Urukiko rusanga ariko nanone kuba GARIBSONS COMMODITIES itaboneka ku biro byayo no kuri telefone igendanwa nk'uko byagaragajwe n'Umuhesha w'inkiko, n'imvugo z'abayiburanira bavuga ko yari yafunze kuko nta bicuruzwa ifite muri iki gihe zikaba zibishimangira, kuba kandi idafite imitungo izwi mu Rwanda nk'uko abayiburanira babyemera usibye ko bavuga ko abanyamigabane bafite inzu yafatirwaho ingwate bibaye ngombwa ariko ntibagaragaze aho iherereye n'agaciro kayo kemejwe n'inzego cyangwa abantu babifitiye ububasha, ari impamvu zihagije zituma irangizwa ry'urubanza rwasabwe gusubirishwamo ingingo nshya rihagarikwa kuko nta kigaragaza ko GARIBSONS COMMODITIES yaboneka cyangwa ko yabona ubwishu ikirego gisubirishamo urubanza ingingo nshya cyatanzwe na RRA kiramutse cyakiriwe, urubanza rwasubirishijwemo rugahinduka. III. ICYEMEZO CY'URUKIKO [19] [Rwemeye kwakira ikirego kihutirwa cya Rwanda Revenue Authority. [20] Rwemeje ko gifite ishingiro.

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- [21] Rutegetse ko irangizwa ry'urubanza RCOMA 0007/11/CS rihagarara igihe hagitegerejwe icyemezo Urukiko rw'Ikirenga ruzafata ku kirego gisaba kurusubirishamo ingingo nshya.
- [22] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.
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Prepared on 14 October 2026 · Esheria