

RWANDA / JUDGMENT

KARANGWA v. COGEAR

RCOMA 0190/12/CS

COURT

Supreme Court

DECIDED

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Text

Page 1

KARANGWA v. COGEAR [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0190/12/CS (Mugenzi, P.J., Kanyange na Munyangeli, J.) Kuwa 11/04/2014] Amategeko y'ubwishingizi – Agaciro k'amasezerano y'ubwishingizi – Amasezerano impande zombi zakoranye mu ntangiriro yasimbuwe n'ayiswe amasezerano y'inyongera – Kuba amasezerano y'inyongera yagiye asinywa n'impande zombi n'ikimenyetso kigaragaza ko bakigengwa n'amasezerano ya mbere – Umwishingizi ntiyavugaga ko igihe impanuka yabaye amasezerano y'ubwishingire nta gaciro yari agifite mu gihe buri mwaka impande zombi zagiye zisinywa andi masezerano bise ay'inyongera ateganyagako nta gihindutse ku masezerano y'ibanze. Amategeko y'ubwishingizi – Gusaba Inyungu ku mwenda watanze na banki – Uburyozwe ku makosa bugomba kuba butaziguye – Umwishingire ntiyasaba umwishingizi we inyungu ku mwenda yahawe na banki kubera ko nawe azicibwa mu gihe ikibazo cyerekeye amasezerano y'umwenda umuburanyi afitanye na banki kidakemurirwa muri uru rubanza. Incamake y'ikibazo: Kuwa 22/08/2008 ibicuruzwa bya Karangwa byaje gukongerwa n'inkonji y'umuriro, abimenyesha Cogear kubera ko ari we umwishingizi we, asaba yuko imwishyura irabyanga, bituma ayirega mu Rukiko Rukuru rw'Ubucuruza asaba ko imwishyura 60.000.000 frws kubw'impanuka y'umuriro yatwitse

ibicuruzwa bye, anasaba inyungu zingana na 43.000.000 frw hamwe na 5.000.000 y'ibigenda ku rubanza. Urukiko Rukuru rw'Ubucuruzi narwo rwemeje ko ikirego cya Karangwa gifite ishingiro kuri bimwe, rutegeka Cogear kumuha 60.000.000 Frws y'indishyi na 500.000 Frws y'ikurikiranarubanza. Cogear yajuririyeye Urukiko rw'Ikirenga ivuga ko itategakwizwa kwishyura indishyi Karangwa asaba kuko impanuka yabaye amasezerano y'ubwishingizi bagiranye yararangiye. Uburanira Cogear avuga ko Urukiko Rukuru rw'Ubucuruzi rwayitegetse kwishyura iyo mpanuka kandi bitagombye guhabwa agaciro kuko amasezerano impande zombi zagiranye muntangiriro yavugaga ko azajya yongerwa nyuma y' umwaka mu gihe nta yandi yongeye gukorwa. Avuga kandi ko buri mwaka kuwa muri 1998 kugeza muri 2008 impande zombi zashyiraga umukono ku masezerano y'inyongera avuga ko bufite agaciro kuwa kuwa 20/05/2007 kugera kuwa 19/05/2008, impanuka ikaba yarabaye kuwa 22/08/2008 nyuma y'itariki irebwa n'aya masezerano. Uburanira Karangwa we akavuga ko hatakorwaga amasezerano yihariye buri mwaka ahubwo ko hakorwaga ay'inyongera, anavuga ko ibindi bisanzwe mu masezerano bitahindutse, asaba ko ubujurire budakwiye guhabwa ishingiro. Kubirebana n'indishyi, Karangwa asaba ko Cogear yamuha 41.437.500 frws y'inyungu za banki kuko BK izimukurikiranyeho ku mwenda ayifitiye. Uburanira Cogear akavuga ko inyungu za banki Karangwa asaba atazihabwa kuko nta kimenyetso agaragaza cyatuma zibazwa Cogear ku masezerano afitanye na BK. Incamake y'icyemezo: 1. Kuba amasezerano yiswe ay'inyongera yarasinywe n'impande zombi, n'ikimenyetso kigaragaza ko zemeraga ko zikigengwa n'amasezerano ya mbere kuko iyo bataza kuba aruko babyumva bombi, bari gusinyana ayandi. Bityo ibicuruzwa byahiye bigifite ubwishingizi, umwishingizi akaba agomba kuryozwa ibyo yishingiriye byangiritse.

Page 2

2. Kuba ntakigaragaza isano ritaziguye inyungu umwishingire acibwa na banki zifitanye n'amasezerano y'ubwishingizi, nta nyungu yasabwa zishingiye ku masezerano umwishingizi adafitemo uruhare. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro. Urubanza rwajurirwe ntiruhindutse. Amagarama y'urubaza aherereye kuwarezwe. Amategeko yashingiweho: Amategeko y'ubwishingizi Nta manza zifashishijwe: Urubanza I. IMITERERE Y'URUBANZA. [1] Kuwa 20/05/1996 KARANGWA yafatiye ibicuruzwa bye ubwishingizi muri COGEAR, bumvikana ko amasezerano bagiranye azajya yubahirizwa buri mwaka hatabayeho andi (renouvellement par tacite reconduction), ariko ashobora guseswa n'ubushaka bitangiye integuza y'amezi atatu. [2] Ku itariki ya 22/08/2008 ibicuruzwa bya KARANGWA byaje gukongorwa n'inkongi y'umuriro mu mpanuka, abimenyesha COGEAR na Polisi, iyi nayo ibikorera inyandikomvugo kuwa 26/08/2008. [3] KARANGWA rero ashingiye ku masezerano y'ubwishingizi yagiranye na COGEAR yayisabye kumwishyura, ariko irabyanga ivuga ko ibicuruzwa bye byahiye amasezerano y'ubwishingizi yabyo yararangiye. [4] KARANGWA yaregeye Urukiko Rukuru rw'Ubucuruzi asaba COGEAR kumwishyura 60.000.000 frw kubera impanuka y'umuriro yatwitse ibicuruzwa bye, 43.200.000 frw y'inyungu za banki yishyuzwa mu gihe cy'imyaka ine, na 5.000.000 frw y'ibigenda ku rubanza harimo n'igihembo cya avoka. [5] Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cye gifite ishingiro kuri bimwe rwanga kumugenera inyungu (43.200.000 frw)

yasabaga avuga ko acibwa na banki yamuhaye umwenda, ariko rutegeka COGEAR kumuha 60.000.000 frw y'indishyi na 500.000 frw y'ikurikiranarubanza n'igihembo cya avoka. [6] COGEAR yajuririrye Urukiko rw'Ikirenga ivuga ko itategukwa kwishyura indishyi KARANGWA asaba kubera ko impanuka yishingiye yabaye amasezerano y'ubwishingizi bagiranye yarangiye, naho KARANGWA we akavugaga ko ayo masezerano yari agifite agaciro kayo.

Page 3

- [7] Urubanza rwaburanishijwe mu ruhamwe kuwa 11/03/2014 Me KAYITARE Serge aburanira COGEAR na Me TWIRINGIYEMUNGU aburanira KARANGWA. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.
1. Kumenya niba impanuka y'umuriro watwitse ibicuruzwa bya KARANGWA yarabaye amasezerano y'ubwishingizi atagifite agaciro. [8] Me KAYITARE Serge aburanira COGEAR avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko igihe impanuka yabaga amasezerano y'ubwishingizi yari agifite agaciro, bituma rutegeka COGEAR kwishyura iyo mpanuka, ariko bitagombye guhabwa agaciro kubera ko amasezerano y'ubwishingizi impande zombi zagiranye mu ntangiriro yavugaga ko azajya yongerwa umwaka ku mwaka, nta yandi masezerano yongeye gukorwa (renouvellement par tacite reconduction), nyamara ibyo bikaba byarakozwe gusa kugeza kuwa 20/05/1998, kuko nyuma y'icyo gihe hakozwe amasezerano y'inyongera yahinduye amasezerano fatizo ku birebana n'igihe amasezerano y'ubwishingizi agiriramo agaciro no kubyerekeye amafaranga yishyurwaga ku bwishingizi, kubera ko yavugaga igihe amasezerano azatangirira n'igihe agomba kurangirira. [9] Avuga ko kandi ibyo, impande zombi zabyumvise zirabyubahiriza kuko buri mwaka kuwa mu 1998 kugeza mu 2008 zashyiraga umukono ku masezerano avuga igihe ubwishingizi butangirirye n'igihe buzarangirira, ko kuba KARANGWA na COGEAR barashyize umukono ku masezerano y'inyongera avuga ko ubwo bwishingizi bufite agaciro kuwa kuwa 20/05/2007 kugeza kuwa 19/05/2008 byumvikana ko impanuka yabaye kuwa 22/08/2008 nyuma y'itariki yo kuwa 19/05/2008 itarebwa n'ayo masezerano. [10] Me TWIRINGIYEMUNGU uburanira KARANGWA avuga ko hatakorwaga amasezerano yihariye buri mwaka ahubwo ko hakorwaga amasezerano y'inyongera yitwa "avenants de renouvellement par tacite reconduction", akaba yaravugaga ko ibindi bisanzwe mu masezerano yibanze bidahindutse, ko rero amasezerano ya mbere yari agifite agaciro kayo, bityo n'impanuka ikaba yarabaye agifite agaciro, umucamanza wo ku rwego rwa mbere akaba yarakoze ibikwiriye, ariyo mpamvu ubujurire bwa COGEAR budakwiye kugira ishingiro. Uko Urukiko rubibona [11] Amasezerano y'ubwishingizi yo kuwa 20/05/1996 yabaye hagati ya COGEAR na KARANGWA ateganya ko igihe cyayo kizajya cyongerwa uko umwaka ushize hatabayeho andi masezerano (renouvellement par tacite reconduction), ko kandi uwashaka kuyasesa agomba kubatangira integuza y'amezi atatu. [12] Kuwa kuwa 20/05/1998 COGEAR na KARANGWA bagiye basinyana buri mwaka andi masezerano bise ayinyongera mu rwego rwo gushyira mu bikorwa amasezerano yabo y'ubwishingizi, bakanavugaga igihe atangirirye n'igihe azarangirira, ayanyuma akaba ayo kuwa 04/09/2007 yatangiye gukurikizwa kuwa 20/05/2007, buri

masezerano y'inyongera ariko yateganyaga ko nta gihindutse ku biteganyijwe mu masezerano y'ibanze (Il n'est pas autrement dérogé aux clauses et conditions du contrat).

Page 4

- [13] Urukiko rurasanga ibyo COGEAR ivuga ko kuva mu 1998 ingingo ijyanye nuko amasezerano y'ibanze azajya yongerwa nta y'andi masezerano abanje gukorwa "renouvellement par tacite reconduction" itari ikiri mu masezerano y'ubwishingizi yagiranye na KARANGWA, ngo kuko buri mwaka bombi bashyiraga umukono ku masezerano yagombaga kumara umwaka umwe gusa, nta shingiro bifite kuko ayo masezerano atagaragaza ko iyo ngingo (renouvellement par tacite reconduction) yavanyweho, kuba ahubwo baragiye bandika ko amasezerano bise ay'inyongera basinyanye yose ari "renouvellement tacite ", byumvikana ko nabo bumvaga ko ari ya masezerano y'ibanze agikomeza kubagenga, igihinduka gusa ari ingano y'amafaranga yishyurwa ku bw'ishingizi ku mwaka (primes), hakaba nta kigaragaza ko ayo masezerano yarangiye bidatangiye integuza y'amezi atatu yateganywaga nayo mu ngingo yayo ihera. [14] Urukiko rurasanga kandi, kuba amasezerano yiswe ayinyongera yarasinze kuwa 04/09/2007 n'impande zombi, ariko atangira gukurikizwa kuwa kuwa 20/05/2007 akarangira kuwa 19/05/2008, nabyo ari ikindi kimenyetso kigaragaza ko impande zombi zemeraga ko zikigengwa n'amasezerano ya mbere arimo na ya ngingo ya "renouvellement tacite " kuko iyo bataza kuba ariko babyumva bombi, bari gusinyana andi masezerano kuwa 20/05/2007, aho kuyasinye nyuma y'amezi atatu amasezerano y'inyongera abanziriza ayo ashize, iyo bitaza kuba ariko babifashe rero, bari kuvuga gusa ko atangira kuwa 04/09/2007 igihe bayasinyiye. [15] Ku bijyanye no kumenya niba ibicuruzwa bya KARANGWA byaratwitswe n'umuriro kuwa 22/08/2008 bitagifite ubwishingizi, Urukiko rurasanga kuri iyo tariki ibicuruzwa byarahiye bigifite ubwishingizi bwa COGEAR kuko nkuko bisobanuye haruguru, amasezerano abuteganya yari agifite agaciro kayo, akaba ari yo mpamvu COGEAR igomba kuryozwa ibyo yishingiye byangiritse, ikishyura KARANGWA amafaranga yose yategetswe n'urukiko rubanza.
2. Kumenya niba inyungu n'indishyi KARANGWA asaba muri uru rubanza yazihabwa. [16] Mu bujurire bwuririye ku bundi KARANGWA asaba ko COGEAR yamuha 41.437.500 frw y'inyungu za banki kuko umucamanza yanze kuzitanga avuga ko zitagaragarijwe ibimenyetso by'uko banki ya Kigali izimukurikiranyeho ku mwenda ayifitiye nyamara yatanze ibyo bimenyetso, akanagaragaza ko inyungu zabariwe ku nguzanyo yose yahawe na BK, akaba asaba na 3.000.000 frw y'igihembo cya avoka mu bujurire. [17] Me KAYITARE Serge avuga ko 41.437.500 frw y'inyungu za banki KARANGWA asaba atazihabwa kuko nkuko umucamanza wa mbere yabisobanuye ntacyo agaragaza cyatuma zibazwa COGEAR ku masezerano afitanye na BK. Uko Urukiko rubibona. [18] Urukiko rurasanga inyungu KARANGWA asaba kubera ko nawe azicibwa na banki nta shingiro zifite, kuko usibye ko nta n'ibimenyetso azigaragariza, ikibazo cyerekeye amasezerano y'umwenda afitanye na BK kitaza gukemurirwa muri uru rubanza, kubera ko uburyozwe ku makosa bugomba kuba butaziguye (le damage doit etre direct), akaba atagaragaza isano ritaziguye inyungu acibwa na Banki zifitanye n'amasezerano y'ubwishingizi, akaba adakwiye gusaba inyungu zishingiye

ku masezerano COGEAR idafitemo uruhare.

Page 5

[19] Naho igihembo cya avoka asaba gihwanye na 3.000.000 frw, nayo akaba atayahabwa kubera ko ari ikirenga atanagaragaza uburyo yabazwe, ariko kubera ko kuri uru rwego yiyambaje umwunganizi yagombye gutangaho amafaranga akaba yagenerwa 500.000 frw yiyongera kuyo yagenewe mu rwego rwa mbere, indishyi zose hamwe zikaba 61.000.000 frw. III. ICYEMEZO CY'URUKIKO. [20] Rwemeje ko ubujurire bwa COGEAR nta shingiro bufite; [21] Rwemeje ko ubujurire bwuririye ku bundi bwa KARANGWA bufite ishingiro kuri bimwe; [22] Ruvuze ko urubanza rwajuririwe rudahindutse, uretse ku byerekeye indishyi. [23] Rutegetse COGEAR kwishyura KARANGWA 61.000.000 frw ; [24] Rutegetse COGEAR kwishyura amagarama y'urubanza angana na 22.700 frw.

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