

RWANDA / JUDGMENT

KOBIL PETROLEUM v. CITIEX

RCOMA 0065/09/CS

COURT

Supreme Court

DECIDED

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KOBIL PETROLEUM v. CITIEX

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Text

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KOBIL PETROLEUM v. CITIEX [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0065/09/CS (Nyrinkwaya, P.J., Rugabirwa na Hatangimbabazi, J.) 18 Kamena 2010] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kubyutsa urubanza rwasibwe kuko urega atitabye – Impamvu ikomeye yatuma urubanza rubyutswa – Kumenya niba kumvikana kw'ababuranyi ku isubikisha ry'urubanza bishobora kuba impamvu ikomeye yo kurubyutsa – Iyo urubanza rwahawe itariki yo kuruburanisha, nta muburanyi wakwitwaza ko yiyumvikaniye na mugenzi we ku isubika ryarwo ngo bifatwe nk'impamvu ikomeye ituma rubyutswa mu gihe ubisaba ntacyo yamenyesheje Urukiko – Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 51. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kubyutsa urubanza kuko urega atitabye – Impamvu ikomeye yatuma urubanza rubyutswa – Kumenya niba mu gihe uwajuriye atatanze imyanzuro ngo uregwa ayisubize byafatwa nk'impamvu ikomeye mu kurubyutsa – Mu gihe umuburanyi yiyemereye gushyikiriza imyanzuro mugenzi we ngo ayiregureho ariko ntabikore, ntibyafatwa nk'impamvu ikomeye ituma urubanza rwasibwe rubyutswa kuko biba bihura n'ihame ry'uko nta muntu ukwiye kwumvwa mu gihe ibyo avuga bishingiye ku makosa ye.

Incamake y'ikibazo: KOBIL PETROLEUM yareze CITIEX PETROLEUM mu Rukiko Rukuru rw'ubucuruzi isaba gusubizaho amasezerano y'ubukode bwa station, inasaba kandi gusubiza ibintu uko byari bimeze mbere y'uko CITIEX isesa amasezerano y'ubukode bagiranye n'indishyi z'akababaro. Urukiko Rukuru rw'Ubucuruzi rwemeje ikirego cya KOBIL PETROLEUM gifite ishingiro kuri bimwe; rutegeka CITIEX PETROLEUM kuyishyura 39.739.712 Frw no kuyisubiza ibikoresho byayo KOBIL PETROLEUM yajuririye mu Rukiko rw'Ikirenga, mu gihe cy'iburanisha uyihagarariye ntiyitaba kuko ngo hari urundi rubanza yari yagiye kuburana naho CITIEX PETROLEUM yari yitabye ivuga ko itashoboye gukora imyanzuro isubiza kuko KOBIL PETROLEUM itayishyikirije imyanzuro yayo. Urukiko rw'Ikirenga rwafitiye icyemezo ku ntebe cyo gusiba ubujurire bwa KOBIL PETROLEUM mu bitabo byarwo. KOBIL PETROLEUM yatanze ikirego cyo kububutsa ivuga ko yiyumvikaniye n'uwo baburanaga gusubika urubanza ndetse ko na CITIEX PETROLEUM itari yagasubije imyanzuro yayo. CITIEX PETROLEUM yo ikavuga ko ibyakozwe bikurikije amategeko. Incamake y'icyemezo: 1. Iyo urubanza rwasibwe mu bitabo by'urukiko, mu rwego urwo ari rwo rwose, bitewe n'ikosa ry'ushaka kwongera kurubutsa, icyo kibazo cye nticyakirwa atabanje kugaragaza impamvu ikomeye yamubujije kuza kuruburana mbere. Iyo itariki y'iburanisha ry'urubanza yumvikanyweho n'impande zombi, nyuma urega ntiyitabe bikamuviramo ko urubanza rwe rusibwa mu bitabo by'Urukiko, ntiyabishingiraho avuga ko byafatwa nk'impamvu ikomeye asaba kurubutsa kandi ntacyo yari yamenyeshe Urukiko.

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2. Umuburanyi ntiyashingira ko urubanza rutagombaga kuburanishwa bitewe n'uko atashyikirije imyanzuro mugenzi we ngo ayiregureho, kuko ibyo aba avuga biba bihuje n'ihame ry'uko nta muntu ukwiye kwumvwa mu gihe ibyo avuga bishingiye ku makosa ye. Akaba atari impamvu ikomeye yatuma urubanza rwasibwe ku makosa ye rwemererwa kubutswa. Ikirego ntashingiro gifite. Amagarama aherereye ku uwareze. Amategeko yashingiweho: Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 51. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] KOBIL PETROLEUM yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba gusubizaho amasezerano yagiranye na CITIEX PETROLEUM, igasubizwa Station Service yakodesheje ndetse iyo Station igasubizwaho amarangi aranga KOBIL PETROLEUM. Yanasabaga nanone ko CITIEX PETROLEUM yategekwa gukora ibishoboka byose mu buryo bwihuse kugira ngo ibintu bisubire uko byari bimeze mbere y'uko CITIEX isesa amasezerano y'ubukode bagiranye, ndetse inasaba indishyi z'akababaro. [2] Mu rubanza RCOM 0395/08/HCC rwaciwe kuwa 02/03/2009, Urukiko Rukuru rw'Ubucuruzi rwemeye kwakira ikirego cya Sosiyete KOBIL PETROLEUM, rwemeza ko gifite ishingiro kuri bimwe, rutegeka Sosiyete CITIEX PETROLEUM/MIRIMO Gaspard kwishyura Sosiyete KOBIL PETROLEUM 39.739.712 Frw, ikanayisubiza ibikoresho byayo. [3] Urukiko ntirwakiriye ikirego cyo kwiregura (demande reconventionnelle) cya CITIEX PETROLEUM kubera ko nta sano gifitanye n'ikirego cy'iremezo. [4] Sosiyete KOBIL PETROLEUM ntiyishimiye imikirize y'urubanza, maze ijuririra mu Rukiko rw'ikirenga.

Ikirego cyanditswe kuri n° R.COM A 0017/09/CS. [5] Igihe cy'iburanisha ryo kuwa 29/09/2009, hitabye uhagarariye CITIEX/MIRIMO Gaspard, abwira Urukiko ko Avoka we atarakora imyanzuro isubiza bitewe n'uko nta myanzuro bagejejweho na Me HAGUMA Jean uhagarariye uwajuriye ari we Sosiyete KOBIL PETROLEUM, byongeye kandi na Me HAGUMA Jean akaba atashoboye kuboneka kubera ko yagiye mu rundi rubanza rw'inshinjabyaha mu Rukiko rw'ibanze. [6] Urukiko rwafatiye icyemezo ku ntebe, rwemeza ko ikirego cy'Ubujurire n° R.COM A 0017/09/CS cya Sosiyete KOBIL PETROLEUM gisibwe mu bitabo by'Urukiko rw'Ikirenga, ruyitegeka no kwishyura amagarama y'urubanza angana na 15.200Frw.

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- [7] Ku itariki ya 12/10/2009, Sosiyete KOBIL PETROLEUM ihagarariwe na Me HAGUMA Jean yatanze ikirego mu Rukiko rw'Ikirenga isaba kubyutsa urubanza n° R.COMA 0017/09/CS rwasibwe, maze gihabwa n° R.COMA 0065/09/CS, urubanza ruburanishwa kuwa 04/05/2010.
- II. IBYASUZUMWE N'URUKIKO [8] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba Avoka w'umuburanyi umwe ashobora kwiyumvikanira na mugenzi we uburanira undi muburanyi, maze bikaba impamvu ikomeye yatuma ibyutswa ry'urubanza rwasibwe ryemerwa. Ikindi kibazo ni ukumenya niba kuba umuburanyi (warezwe mu bujurire) atarasubiza ku myanzuro yatanze n'undi muburanyi wajuriye nabyo byaba impamvu ikomeye yatuma ibyutswa ry'urubanza rwasibwe ryemerwa.
1. Ku bijyanye n'uko ababuranyi biyumvikaniye ubwabo kugirango basubikishe urubanza [9] Kuri iki kibazo, Me HAGUMA Jean, yasobanuriye Urukiko, ko impamvu ashingiraho asaba kubyutsa urubanza ari uko yari yumvikanye n'uburanira CITIEX PETROLEUM/MIRIMO ko basubikisha iburanisha ry'urubanza, ariko uyu ngo abirengaho asaba ahubwo ko urubanza rusibwa. Yakomeje asobanura ko yari yahamagawe kujya kunganira Madame MUKASINE Marie Claire mu rubanza yaburanaga n'Ubushinjacyaha mu Rukiko rw'Ibanze rwa Kacyiru, ko rero ubwihutirwe bwa dosiye ya Madame MUKASINE Marie Claire ari bwo bwatumye asaba uburanira CITIEX PETROLEUM/MIRIMO ko yakwemera ko basubikisha urubanza. [10] Me KAYITARE uburanira CITIEX PETROLEUM/MIRIMO, yavuze ko n'ubwo yemera ko ibyo mugenzi we Me HAGUMA Jean avuga yamusabye ari uko byagenze koko, ariko ko atari we mu by'ukuri wasabye ko urubanza rusibwa, kuko na we atari yageze ku Rukiko, ko ahubwo uwari wahageze ari umukiriya we, aba ari na we usaba ko urubanza rusibwa, ubwo yabonaga uwo baburanaga wajuriye yari yanze kwitaba. [11] Yakomeje avuga ko ku ruhande rumwe, iyo we na Me HAGUMA bahibera, wenda Urukiko rwari kubemerera ko urubanza rusubikwa; ko ariko ku rundi ruhande, asanga n'ibyo umukiriya we yakozwe abyemererwa n'amategeko, kuko biteganywa n'ingingo ya 51 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. Akaba asanga rero kuri we, nta mpamvu ikomeye ihari yatuma ibyutswa ry'urubanza ryemerwa. [12] Ingingo ya 51 y'Itegeko rimaze kuvugwa, iteganya ko "Iyo urubanza rwasibwe mu bitabo by'urukiko, mu rwego urwo ari rwo rwose, bitewe n'ikosa ry'ushaka kwongera kurubutsa, icyo kibazo cye nticyakirwa atabanje kugaragaza impamvu

ikomeye yamubujije kuza kuruburana mbere“. [13] Nk’uko byavuzwe hejuru, urubanza rwasibwe, rwari rwahamagariwe kuburanishwa kuwa 29/09/2009. Ibyo kandi byakozwe ari Avoka w’uwajuriye, ari Avoka w’uregwa mu bujurire, bamaze kumvikana kuri iyo tariki mbere y’uko Urukiko ruyishyira kuri gahunda y’iburanisha. Ibyo ni ibigaragarira ku rupapuro rwa gatanu rw’inyandiko ya „mise en état“ iri muri dosiye kuri cote ya 9, ikaba yarashyizweho umukono n’impande zombi kuwa 27/07/2009. Muri iyo

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nyandiko kandi impande zombi zerekanye nanone kuri urwo rupapuro rwa gatanu ko nta mbogamizi zibona yatuma urubanza rutaburanishwa. [14] Urukiko rurasanga uburemere bw’urubanza rwa Madame MUKASINE Marie Claire, Maître HAGUMA avuga yari afite mu Rukiko rw’Ibanze rwa Kacyiru, atararubonye umunsi urubanza rwa Sosiyete KOBIL na Sosiyete CITIEX rwagombaga kuburanishwa mu Rukiko rw’Ikirenga kuwa 29/09/2010. Kuba rero kugeza kuri iyo tariki, nta kintu na kimwe yari yarigeze amenyesha Urukiko, ahubwo agahitamo kujya kwiyumvikanira n’Avoka w’umuburanyi we, Urukiko rurasanga bitakwitwa impamvu ikomeye ivugwa mu ngingo ya 51 y’Itegeko ryavuzwe haruguru.

2. Ku bijyanye n’uko igihe urubanza rwari rwahamagawe kuburanishwa, Sosiyete CITIEX PETROLEUM yari itarasubiza ku myanzuro yatanze na Sosiyete KOBIL PETROLEUM yajuriye. [15] Indi ngingo Me HAGUMA Jean ashingiraho asaba kubyutsa urubanza rwasibwe, ngo ni uko igihe urubanza rwari rwahamagawe kuburanishwa kuwa 29/09/2009, Sosiyete CITIEX PETROLEUM yari itarasubiza ku myanzuro yatanze na Sosiyete KOBIL PETROLEUM yajuriye. [16] Ikigaragarira Urukiko, ni uko muri ya nyandiko ya “mise en état” yavuzwe haruguru iri muri dosiye, Avoka wunganira uwajuriye (Sosiyete Kobil) yari yiyemeje ko mu byumweru bibiri (2 weeks) uherezeye tariki ya 27/07/2009, azaba yashyikirije imyanzuro y’ubujurire uregwa kugirango ayiregureho, ni ukuvuga bitarenze tariki ya 11/08/2009. Nyamara byageze kuwa 29/09/2009, urubanza ruhamagarwa, iyo myanzuro itaratangwa nk’uko byasobanuwe n’uregwa ari we CITIEX PETROLEUM wari witabye wenyine, na Maître HAGUMA, Avoka w’uwajuriye, mu iburanisha ry’uru rubanza, akiyemerera koko ko iyo myanzuro atari yakayitanze. [17] Kuba Maître HAGUMA abiheraho, akavuga ko urubanza rutashoboraga kuburanishwa kuko ngo rutari “en état” kubera imyanzuro itatanze ngo inasubizwe, Urukiko rurasanga iyo mpamvu nta shingiro ifite, kuko atakwitwaza ko atatanze imyanzuro, ngo ahindukire avuge ko dosiye itagombaga kuburanishwa, ibyo bikaba binahuje n’ihame ry’uko uko nta muntu ukwiye kwumvwa mu gihe ibyo avuga bishingiye ku makosa ye (Nemo auditur turpidunem suam allegans). [18] Hashingiwe ku bisobanuro byose byatanze haruguru, Urukiko rurasanga ibyo Abavoka biyumvikaniye hagati yabo, no kuba nta myanzuro y’ubujurire yatanze na Maître HAGUMA kugirango uregwa mu bujurire ashobore kuyireguraho bitari impamvu ikomeye yatuma urubanza rwasibwe ku makosa y’uwajuriye rwemererwa kubyutswa. III. ICYEMEZO CY’URUKIKO RW’IKIRENGA [19] Rwemeje ko ikirego cyatanze na Sosiyete KOBIL PETROLEUM isaba kubyutsa urubanza n° R.COMA 0017/09/CS nta shingiro gifite.

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[20] Rutegetse KOBIL PETROLEUM gutanga amagarama y'urubanza angana na 70.300 frw, nk'uko yabazwe n'ubwanditsi bw'uru Rukiko, itayatanga mu minsi umunani, agakurwa mu byayo ku ngufu za Leta.

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