

RWANDA / JUDGMENT

MAKUZA N'ABANDI v. NEW BUGARAMA MINING COMPANY Ltd

RCOMA 0141/12/CS&RCOMA 0142/12/CS

COURT

Supreme Court

DECIDED

8 January 2016

CASE / FILE NUMBER

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MAKUZA N'ABANDI v. NEW BUGARAMA MINING COMPANY Ltd

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Text

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MAKUZA N'ABANDI v. NEW BUGARAMA MINING COMPANY Ltd [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0141/12/CS&RCOMA 0142/12/CS (Mugenzi, P.J., Kayitesi na Hitiyaremye, J.) 08 Mutarama 2016] Amategeko agenga ibimenyetso – Ikimenyetso cyanditse – Inyandiko bwite – Ibaruwa – Ibaruwa umuntu yandikiye undi itsindisha uwayanditse iyo yemera ikiburanwa n'ubwo yaba atabivugiyemo mu rukiko – Kutamenya ururimi ibaruwa yanditse ataribwo ubwabyo bigaragaza ko idakomoka kuri runaka, kuko ashobora no kuyandikisha ku wundi ariko bitabujije ko ibiyikubiyemo biba ibye, bigasinywa nawe mu gihe atigeze ayiregera nk'inyandiko mpimbano cyangwa agaragaze ko hari icyo ayikemanga. – Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ngingo ya 28. Amategeko agenga amasezerano – Ihindurwa ryibikubiye mu masezerano – Ibyo abantu bumvikanyeho mu masezerano bidashobora guhindurwa n'uruhande rumwe bitumvikanyweho – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33. Indishyi – Indishyi zituruka ku butubahiriza amasezerano – Ugomba inshingano ategukwa, iyo bibaye ngombwa, kwishyura

indishyi zitewe no kutubahiriza inshingano cyangwa no gutinda kuyubahiriza, igihe cyose atagaragaza ko kutayubahiriza byatewe n'impamvu itamuturutseho. – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 45. Incamake y'ikibazo: Ugirumwami na Makuza bareze New Bugarama Mining Company Ltd muri uru rubanza (NBMC), mu Rukiko Rukuru rw'Ubucuruzi aho bayiregaga kutubahiriza amasezerano bagiranye ikanga kubahemba imirimo bayikoreye . Urwo Rukiko rwanze kwakira ibirego rukemeza ko nta nyungu bafite yo kurega iyo sosiyete kuko batigeze bagirana nayo amasezerano. Bajuriye icyo cyemezo mu Rukiko rw'Ikirenga maze urwo Rukiko rwemeza ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kwakira ibirego byabo, runemeza ko rugomba kuburanisha urwo rubanza. Abajuriye bavugaga ko icyo baregeye ari amafaranga ya komisiyo bakoreye fagitire yo kuwa 18/11/2011 angana na 51.593.425Frw ndetse na komisiyo y'amafaranga 500 ku kilo z'umusaruro wakomeje kuboneka nyuma y'iyi tariki kugeza urubanza ruciye iyo komisiyo ikaba ishingiye ku masezerano bagiranye na NBMC bagasaba ko Urukiko rwategeka RRA kugaragazaurugero rw , bagasaba n'Urukiko ko rwabagenera inyungu za 18% za buri mwaka ku mafaranga batishyuye, indishyi z'ikurikirana rubanza n'igihembo cya Avoka

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NBMC ikiregura ivuga ko icyo gihe abarega basabira komisiyo bari batagikora ako kazi, ibi bakabishyingira kw'ibaruwa Makuza yandikiye umuyobozi mushya w'iyi sosiyete ku itariki ya 27 Kanama, 2010 aho yerekanaga ko kuwa 30 Gicuraci, 2010 ibya komisiyo bitari bitagikora akanasaba ko yamusubiza ku kazi ,kandi ko “certificat d'enregistrement” yo kuwa 01 Ukuboza, 2010, yerekana ko nta musaruro wa barega umuyobozi mushya w'iyi sosiyete yakiriye ahubwo Historique abarega bitangiye yerekana ko umusaruro wagiye kwa Munyarugerero Damien, mu isosiyete ye yitwa MUNSAD, naho ku birebana n'imibare ya sabwa RRA ivuga ko ari bo ubwabo bari bakwiye kuba barayizanye kuko urega ariwe usabwa gutanga ibimenyetso, akandi ko Urukiko rusanze hari amafaranga agomba kwishyurwa ku bijyanye na komisiyo, hakwishyurwa fagitire y'ibigeza gusa igihe Munyarugerero yari akiri mu kazi, naho ibya nyuma y'uho avuye ku kazi akaba yabyiyishyurira, ayakwishyurwa akaba yari kuba 15.289.000 Frw ku biro 30.578 Ku byerekeranye iseswa ry'amasezerano NBMC ivuga ko atakiriho gutyo akaba atarakomeje gushyirwa mu bikorwa. Naho kuruhande rwabarega mu iburanisha ryo ku wa 21 Mata 2015 ubunganira bombi yasabye ko amasezerano yaseswa ariko mu iburanisha ryo ku wa 17 Ugushyingo 2015 uwunganira Ugirumwami yavuze ko amasezerano akwiye gukomeza. Incamake y'icyemezo: 1. Ibaruwa umuntu yandikiye undi itsindisha uwayanditse iyo yemera ikiburanwa n'ubwo yaba atabivugiyemo mu rukiko. Kutamenya ururimi ibaruwa yanditsemo ataribwo ubwabyo bigaragaza ko idakomoka kuri runaka, kuko ashobora no kuyandikisha ku wundi ariko bitabujije ko ibiyikubiyemo biba ibye, bigasinywa nawe mu gihe atigeze ayiregera nk'inyandiko mpimbano cyangwa agaragaze ko hari icyo ayikemanga.

2. Amafaranga magana atanu niyo agomba kubarirwa ikilo cy'umusaruro wabonetse kuko ibyo abantu bumvikanyeho mu masezerano bidashobora guhindurwa n'uruhande rumwe bitumvikanyweho, rero amafaranga magana atatu avugwa na NBMC nta gaciro yahabwa mu gihe hatagaragajwe ko impande zombi zemeranyije.
3. Ugomba inshingano ategukwa, iyo bibaye ngombwa, kwishyura indishyi zitewe no kutubahiriza inshingano cyangwa no gutinda kuyubahiriza, igihe cyose atagaragaza ko kutayubahiriza byatewe n'impamvu itamuturutseho, bityo NBMC igomba guha abarega indishyi hagendewe ku rugero rw'inyungu ya 10% ku mwaka ihabwa ababitsa amafaranga mu mabanki, zikabarwa guhera umunsi NBMC yishyurijweho komisiyo ituruka ku musaruro wa 30.578 kg kugeza munsi w'isomwa ry'urubanza. Ubujurire bufite ishingiro kuri bimwe; Ubujurire bwuririye ku bundi nta shingiro bufite; NBMC igomba kwishyura Makuza na Ugirumwami igiteranyo cy'indishyi zingana na 26.863.580 Frw;

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Amasezerano, NBMC yagiranye na Makuza na Ugirumwami asheshwe; NBMC igomba kwishyura amagarama y'urubanza. Amategeko yashingiweho: Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ngingo ya 28. Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33 na 45 Ibitekerezo bya bahanga: Henri de Page, *Traité Élémentaire de Droit Civil Belge*, Tome Deuxième, Les Incapables, Les Obligations (Première Partie), Troisième édition, Bruxelles, 1964, p 729, no 763., Urubanza I. IMITERERE Y'URUBANZA [1] Urukiko Rukuru rw'Ubucuruzi rwanze kwakira ibirego bya Ugirumwami Aloys na Makuza Pierre Célestin baregaga NEW BUGARAMA MINING COMPANY LTD (NBMC) ko itubahirije amasezerano bagiranye ikanga kubahembera imirimo bayikoreye, rusobanura ko nta nyungu bafite yo kurega iyo sosiyete kuko batigeze bagirana nayo amasezerano. [2] Ugirumwami na Makuza bajuririye Urukiko rw'Ikirenga, maze nyuma y'uko, mu byemezo bifatiwe mu ntebe, rwanze igobokeshwa rya RRA ryasabwaga n'abarega, n'itandukanywa ry'ibirego ryasabwaga n'uregwa, kuwa 18/7/2014 rwemeza ko ibirego byabo byagombaga kwakirwa mu Rukiko Rukuru rw'Ubucuruzi, runemeza ko rugomba kuburanisha urwo rubanza. Nyuma uburanira NBMC yatanze ikirego kiregera inyandiko mpimbano, asaba Urukiko kwemeza ko inyandiko yo kuwa 07/10/2009 y'amasezerano abarega baburanisha ari mpimbano, kuwa 13/02/2015 Urukiko rwemeza ko icyo kirego kidafite ishingiro. [3] Iburanisha ry'urubanza ryakomeje mu ruhame ku mataliki ya 21/04/2015, 17/06/2015, 15/09/2015, na 17/11/2015, NBMC iburanirwa na Me Nizeyimana Boniface, Ugirumwami na Makuza baburanirwa na Me Karake Canisius, waje no gufatanya na Me Idahemuka Tharcisse mu kuburanira Ugirumwami, impaka zigibwa hasuzumwa umubare w'amafaranga ya komisiyo Ugirumwami na Makuza bagomba kwishyurwa na NBMC, hashingiwe ku masezerano bagiranye n'iyi sosiyete, hamwe n'ikibazo cy'indishyi ababuranyi basaba.

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[4] Iburanisha rya nyuma risojwe ku wa 17/11/2015, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku wa 18/12/2015, ariko kuri uwo munsu ntirwasomwa kubera amatora ya Referendumu ku Itegeko Nshinga, isomwa ryarwo ryimurirwa ku wa 08/01/2016. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO Kumenya umubare w'amafaranga ya komisiyo NBMC igomba kwishyura Makuza na Ugirumwami, hakurikijwe umusaruro wabonetse babigizemo uruhare. [5] Ababuranira Ugirumwami na Makuza bavuga ko icyo baregeye ntibagihabwe n'Urukiko Rukuru rw'Ubucuruzi ari ukwishyurwa amafaranga 103.186.850 Frw (51.593.425 Frwx2) ya komisiyo bakoreye fagitire kuwa 18/11/2011 NBMC ikanga kubishyura, ndetse na komisiyo z'umusaruro wakomeje kuboneka nyuma y'iyi taliki kugeza urubanza ruciwe. [6] Basobanura ko icyo komisiyo bishyura ishingiyeye ku masezerano abarega bagiranye na NBMC, ateganya ko bagomba guhabwa amafaranga 500 ku kilo cy'umusaruro wabonetse mu bucukuzi bw'amabuye y'agaciro, uwo musaruro ukaba warakomeje kuboneka kugeza ubu, bakaba rero basaba ko izo komisiyo n'inyungu zabarwa kugeza urubanza ruciwe, kuko abarega bakomeje kugira uruhare ku musaruro wa NBMC kubera imbaraga bashyizemo ubwo bazanaga amakipe y'abakozi benshi kandi bashoboye akazi, n'ubwo ubu ataribo bakibakoresha cyangwa ngo babahembe. [7] Bavuga ko kuba abarega bitwa ko batagikora atari byo byatuma badahabwa komisiyo yasezeranywe, kuko itandukanye n'umushahara, imirimo ya Komisiyo ikaba itandukanye n'akazi gasanzwe. Bemeza ko abarega bahagaze ku kazi muri 2011. [8] Bavuga kandi ko nyuma yo gusimburwa kwa Munyarugerero ku Buyobozi bwa NBMC ibyo yakoze mbere bitabura guhabwa agaciro, naho iby'ubujura buvugwa n'uburanira NBMC akaba atari ukuri, ko ahubwo amabuye yajyaga mu ruganda MUNSAD yajyanwagaye kugira ngo ahatunganyirizwe kuko rwari uruganda rutunganya amabuye mbere y'uko yoherezwa hanze. Bavuga ko icyo haza kuba harabaye ubujura, na fagitire ebyiri za mbere zitaba zarishyurwe. [9] Bavuga ko ubwo batemerewe igobokesha bari basabye rya RRA kugirango igaragaze imibare yakwerekana urugero rw'umusaruro wa NBMC nyuma yo ku wa 18/11/2011, Urukiko rukwiye gutegeka icyo Kigo cy'Imisoro kugaragaza icyo mibare kugira ngo n'urugero rwa komisiyo basaba guhera kuri icyo taliki rugaragare. [10] Bavuga ko n'ubwo RRA itemera kugaragariza abantu ibiri muri dosiye z'abandi, begereye abakozi b'icyo kigo babasha kubereka imibare y'umusaruro w'ibiro 428.834 kg wabonetse muri NBMC guhera kuwa 18/11/2011 kugeza kuwa 30/04/2014, bikaba rero

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bigaragara ko komisiyo ibariwe kuri 500 Frw ku kilo abarega bagomba guhabwa 214.417.000 Frw kuri icyo gice cy'umusaruro. [11] Bavuga kandi ko uwo mubare w'amafaranga 500 ya komisiyo ku kilo cy'umusaruro wabonetse utigeze ugabanywa nk'uko uburanira NBMC abivugaga, kuko ibaruwa avugaga ko yanditswe na Munyarugerero agabanyaga icyo gihembo batigeze bayimenyeshwa ngo babe banemera ibiyikubiyemo. [12] Uburanira NBMC avugaga ko abarega bashingira ku masezerano, nyamara NBMC igaragaza ko batari bagikora kariya kazi basabira Komisiyo nk'uko bigaragarwaga n'ibaruwa yo kuwa 27/08/2010 yanditswe na Makuza yandikira Umuyobozi wa NBMC

Bwana Francart, yerekana ko kuwa 30/05/2010 ibya komisiyo bitari bigikora, kuko mu gika cya nyuma yasabaga uwo muyobozi mushya ko yamusubiza ku kazi, anasaba imbabazi z'uko bibye, ariko nyuma y'iyi baruwa ntiyasubijwe ku kazi, ibi rero bikaba binagaragaza ko ibyo basaba byo kubarirwa komisiyo kugeza urubanza ruciwe nta shingiro bifite, ko ahubwo iyo taliki ya 27/08/2010 ari yo yafatwa ko bahagarikiyeho akazi. [13] Avuga ko mu kureba umusaruro wabonetse, hashingirwa kuri "certificat d'enregistrement" yo kuwa 01/10/2010 ishyiraho Umuyobozi mushya Jean Paul Francart, bikagaragara ko nta musaruro w'abarega yakiriye, ko ahubwo Historique abarega bitangiye yerekana ko umusaruro wagiye kwa Munyarugerero Damien, mu isosiyete ye yitwa MUNSAD yahawe "certificat d'enregistrement" kuwa 23/02/1996, ikaza kuvugururwa nyuma, akaba ari we bakwiye kwishyura, kandi ko uwo Munyarugerero akiri Umuyobozi Mukuru wa NBMC, hari aho yagiye arengera, akishyura abarega amafaranga batari bakwiye guhabwa nka 22. 059. 250 Frw yibanye nabo. Asobanura ko sosiyete MUNSAD yajyanwagamo amabuye idakora imirimo yo kuyatunganya (traitement), ko ahubwo nayo yacukuraga. [14] Ku byerekeye imibare abarega bavuga ko yasabwa RRA, uburanira NBMC avuga ko ari bo ubwabo bari bakwiye kuba barayizanye kuko urega ariwe usabwa gutanga ibimenyetso. [15] Avuga ko Urukiko rusanze hari amafaranga agomba kwishyurwa Ugirumwami na Makuza ku bijyanye na komisiyo, hakwishyurwa fagitire y'ibigeza gusa igihe Munyarugerero yari akiri mu kazi, naho ibya nyuma y'uko avuye ku kazi akaba yabyiyishyurira, ayakwishyurwa akaba yari kuba 15.289.000 Frw ku biro 30.578, ariko nayo akaba atari yo yakwishyurwa kuko hari inyandiko yaje kuboneka nyuma igaragaza ko ibihembo bya komisiyo ku kilo byaje kuwa kuri 500 Frw bijya kuri 300 Frw ubwo Munyarugerero yari akiri Umuyobozi Mukuru. UKO URUKIKO RUBIBONA [16] Urukiko rurasanga amasezerano yo kuwa 07/10/2009 Ugirumwami na Makuza bagiranye na NBMC yarateganyaga ko bazajya bahabwa 500 Frw ku kilo cy'umusaruro wabonetse, nabo

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bagashyiraho amakipe azajya acunga umutekano w'ikirombe anarwanya ubucuruzi bwa magendu bwahakorera. [17] Urukiko rurasanga, nyuma y'uko Ugirumwami na Makuza bahawe ibihembo bya komisiyo ku wa 24/11/2009 (10.000.000 Frw), ku wa 06/01/2010 (10.000.000 Frw), no ku wa 10/02/2010 (2.059.250 Frw) hashingiwe ku masezerano yavuzwe haruguru, barakoze indi fagitire ku wa 30/05/2010 bishyura komisiyo ku musaruro w'ibiro 30.578, iyo fagitire akaba ari nayo MAKUZA yibukije mu ibaruwa ye yo ku wa 27/08/2010, asaba umuyobozi mushya wa NBMC kuyishyura, anasaba ko yamubabarira amakosa yakoze akamugarura mu kazi. [18] Urukiko rurasanga, ibaruwa yo ku wa 27/08/2010 ivuzwe haruguru igaragaza nta gushidikanya ko kuri iyo taliki Makuza atari agikorera NBMC kuko yabyiyemereye ubwe muri iyo baruwa ubwo yingingiraga Umuyobozi mushya wa NBMC kumugarura mu kazi yavuyemo kubera amakosa yemera, hakaba kandi nta kimenyetso Makuza yigeze agaragaza cyakwemeza ko yemerewe kugaruka mu kazi nyuma y'iyi baruwa. [19] Urukiko rurasanga rero, hashingiwe ku ngingo ya 28 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ibaruwa umuntu yandikiye undi itsindisha uwayanditse iyo yemera ikiburanwa n'ubwo yaba atabivugiye mu rukiko, ukwiyeemerera kwa Makuza ko yari atagikora muri NBMC ku wa 27/08/2010, kugomba gufatwaho ukuri kumutsindisha kuri iyo ngingo. [20] Urukiko

rurasanga, imyiregurire ya Makuza y'uko iyo baruwa itamukomokaho kuko yanditse mu gifaransa kandi atakizi itafatwaho ukuri, kuko kutamenya ururimi ibaruwa yanditsemo ataribyo ubwabyo byagaragaza ko idakomoka kuri runaka, kuko ashobora no kuyandikisha ku wundi ariko bitabujije ko ibiyikubiyemo biba ibye, bigasinywa nawe. Iyo baruwa rero Makuza atigeze aregera nk'inyandiko mpimbano ndetse akaba ataranagaragaje mu rwego rwa mbere ko hari icyo ayikemanga, igomba gufatwaho ukuri, kugaragaza ko ku wa 27/08/2010 atari agikora muri NBMC. 1 Muri iyo baruwa Makuza yagize ati: "Par la présente, je viens auprès de votre haute personnalité pour vous demander de me comprendre car j'ai commis une faute dans la production je vous demande de tout coeur, de bien vouloir me reprendre dans mon travail et que je signe un contrat de performance d'atteindre au moins 10 tones par mois." 2 Ingingo ya 28 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igira iti: "Ibaruwa umuntu yandikiye undi itsindisha uwayanditse, n'aho yaba atarashyizeho umukono cyangwa igikumwe, bapfa kugaragaza gusa ko ari we ikomokaho. Iyo baruwa iyo yemera ikiburanwa iba igaragaje ko uwayanditse yiyemerera ubwe icyo ashinjwa n'ubwo aba atabivugiye mu rukiko bwose".

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[21] Urukiko rurasanga kandi, uko kwiyeemerera ku bijyanye n'igihe Makuza atari agikora muri NBMC kunareba mugenzi we Ugirumwami basinyiye hamwe amasezerano y'akazi mu nyandiko imwe, ndetse n'igihembo cya komisiyo cyumvikanyweho ku kilo cy'umusaruro kikaba ari kimwe cy'amafaranga 500 kuri bombi, ndetse n'ibihe bavuga ko bakoze akaba ari bimwe, birimo na nyuma yo kuwa 27/08/2010, kandi Ugirumwami akaba atagaragaza ko nyuma y'iki gihe yaba yarasigaye akora wenyine, ahubwo yemeza ko yakoranaga na Makuza kandi byagaragajwe haruguru ko Makuza yiyemereye ko yari yarahagaze ku kazi. [22] Bigaragarira Urukiko rero ko fagitire yo kuwa 18/11/2011 Makuza na Ugirumwami bakoze bishyura 103.186.850 Frw ya komisiyo y'imirimo bavuga ko bakoreye NBMC guhera ku wa 11/10/2009 kugeza ku wa 28/10/2011 nta gaciro yahabwa, iyo bagomba kwishyurwa kandi NBMC yemera ikaba ari iyo ku wa 30/05/2010 ijyanye n'umusaruro w'ibiro 30.578 by'amabuye yacukuwe. [23] Urukiko rurasanga, nk'uko byagaragajwe haruguru ko Makuza na Ugirumwami batakoreye NBMC nyuma yo kuwa 27/08/2010, ibyo bihagije gusobanura ko nta gihembo bakwaka mu gihe batakoze, bikaba rero atari ngombwa gusuzuma ingingo ijyanye n'urugero rw'umusaruro wa NBMC bavuga ko baba bareretswe n'abakozi b' Ikigo cy'Igihugu gishinzwe imisoro n'amahoro. [24] Urukiko rurasanga kandi ibisobanura NBMC itanga by'uko umusaruro wibwe ukajyanwa mu ruganda MUNSAD rwa Munyarugerero wari Umuyobozi Mukuru wa NBMC bitakwemerwaho impamvu yo kutishyura iriya fagitire yo ku wa 30/05/2010, mu gihe NBMC itigeze ibisobanura ityo mbere, ikaba itarabiregeye, haba mu kirego cy'ibanze cyangwa mu kirego kiregera kwiregura nyuma y'uko Makuza na Ugirumwami bayireze, uru Rukiko rero rukaba rutasuzuma ishingiro ry'icyo kibazo cy'ubujura bwaba bwarabaye kuko kitaregewe. [25] Ku byerekeye umubare w'amafaranga agomba kubarirwa ikilo cy'umusaruro wabonetse, Urukiko rurasanga ari 500 Frw nk'uko amasezerano Makuza na Ugirumwami bagiranye na NBMC ku wa 07/10/2009 yabiteganyaga, naho ibaruwa NBMC ivuga ko yaba yaragabanyije icyo gihembo ikaba nta gaciro yahabwa

mu gihe hatagaragajwe ko impande zombi zemeranyije kuri iryo gabanya, kandi ingingo ya 33 y'Igitabo cya gatatu cy'Urwunge rw' amategeko mbonezamubano yumvikanisha ko ibyo abantu bumvikanyeho mu masezerano bidashobora guhindurwa n'uruhande rumwe bitumvikanyweho. [26] Haherewe kuri ibyo bisobanuro, Urukiko rurasanga amafaranga ya komisiyo NBMC igomba kwishyura Makuza na Ugirumwami ari 15.289.000 Frw(30.578 kg x 500 Frw), ajyanye na fagitire yo kuwa 30/05/2010, igihe bari bagikorera iyo sosiyete. B. Ku byerekeye inyungu Makuza n'Ugirumwami basaba ku mafaranga ya komisiyo batishyuriwe igihe.

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- [27] Ugirumwami na Makuza barasaba inyungu za 18% za buri mwaka ku mafaranga ya komisiyo batishyurwe, naho uburanira NBMC akavuga ko ntaho zateganyijwe mu masezerano. UKO URUKIKO RUBIBONA [28] Urukiko rurasanga abarega batagaragaza aho bashingira inyungu za 18% basaba kandi zitigeze zisezeranwa cyangwa se ngo abe ari inguzanyo zishingiweho, ariko kubera ko byumvikana ko bagize igihombo mu kutabonera igihe amafaranga bishyuzwa ngo babe barabashije kuyakoresha ibibafitiye inyungu, bakaba baragize igihombo, bagenerwa indishyi hashingiwe ku ngingo ya 45 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko ugomba inshingano ategakwe, iyo bibaye ngombwa, kwishyura indishyi zitewe no kutubahiriza inshingano cyangwa no gutinda kuyubahiriza, igihe cyose atagaragaza ko kutayubahiriza byatewe n'impamvu itamuturutseho.
- [29] Urukiko rurasanga, indishyi Ugirumwami na Makuza bahabwa zagenwa hagendewe ku rugero rw'inyungu ya 10% ku mwaka ihabwa ababitsa amafaranga mu mabanki, zikaba zabarwa guhera ku wa 30/5/2010, umunsi NBMC yishyurijweho komisiyo ituruka ku musaruro wa 30.578 kg wavuzwe haruguru, ihwanye na 15.289.000 Frw, kugeza uyu munsi w'isomwa ry'urubanza, izo ndishyi rero zikaba 8.574.580 Frw (. C Ku bijyanye n'indishyi z'ikurikirana rubanza n'igihembo cya Avoka. [30] Ugirumwami na Makuza barasaba indishyi za 4.000.000 Frw z'ikurikiranarubanza n'igihembo cya avoka. [31] Uburanira NBMC avuga ko nta ndishyi abarega bari bakwiye kwishyurwa kuko nta musaruro bashyikirije NBMC ahubwo ko bawuhaye sosiyete MUNSAD ya Munyarugerero n'indi yitwa PHOENIX, yongeraho ariko ko uwo ahagarariye yemera kwishyura igihembo cya ba avoka hakurikijwe urugero rwashyizweho n'Urugaga rwa ba avoka, ni ukuvuga atarenze 1.000.000 Frw kuri Me Karake Canisius waburaniye abantu babiri, naho Me Idahemuka akagenerwa atarenze 600.000 Frw. [32] Mu bujurire bwuririye ku bundi, uburanira NBMC asaba indishyi za 20.000.000 Frw akubiyemo indishyi zo gushorwa mu manza nta mpamvu, bikanayitera igisebo gikomeye, n'igihembo cya Avoka. Abarega bo bavuga ko izo ndishyi nta shingiro zifite kuko aribo ahubwo bahohotewe na NBMC. UKO URUKIKO RUBIBONA:

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[33] Urukiko rusanga, hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'amategako mbonezamubano, iteganya ko igikorwa cyangirije umuntu gituma nyirukugikora ategakwa gusana ibyangijwe, Makuza na Ugirumwami bakwiye kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cy'abavoka bababuraniye, kuko bagize ibyo batakaza bakurikiranye urubanza banahemba abababuranira, buri wese akaba yagenerwa, mu bushishozi bw'Urukiko 1.500.000 Frw ku nzego zombi baburaniyemo. Naho ku bijyanye n'indishyi zisabwa na NBMC, Urukiko rusanga ntazo ikwiye kuko ariyo nyirabayazana wo kujyanwa mu manza kubera ko itubahirije amasezerano yo kwishyura Makuza na Ugirumwami komisiyo bari bemeranyijwe. [34] Hakurikijwe ibisobanuro byatanze haruguru, igiteranyo cy'indishyi NBMC igomba guha Makuza na Ugirumwami ni 15.289.000 Frw ahwanye na komisiyo batishyuye, 8.574.580Frw y'indishyi zo kuba batarayishyuriwe igihe, na 3.000.000 Frw y'ikurikiranarubanza n'igihembo cy'abavoka, yose hamwe akaba 26.863.580 Frw. D. Ku kibazo cyo kumenya niba amasezerano NBMC yagiranye na Ugirumwami na Makuza yaseswa. [35] Me Nizeyimana uburanira NBMC avuga ko amasezerano atakiriho, kuko kuva abarega bandika ibaruwa basaba imbabazi ku makosa bakoze batasubiye mu kazi, amasezerano rero akaba atarakomeje gushyirwa mu bikorwa. [36] Mu iburanisha ryo ku wa 21/04/2015, Me Karake waburaniraga Makuza na Ugirumwami, nawe yasabaga ko amasezerano yaseswa kuko imikoranire myiza itagishobotse, maze bagasubizwa ibikoresho basize mu kirombe. Mu iburanisha ryo ku wa 17/11/2015, Me Idahemuka waburaniraga Ugirumwami nawe yavuze ko uyu atakibasha kugera mu kirombe cy'ubucukuzi bw'amabuye ngo ahacungire abakozi, akaba akibacunga atahageze, n'ubwo avuga ko amasezerano akwiye gukomeza. UKO URUKIKO RUBIBONA [37] Urukiko rurasanga, hashingiwe ku miburanire y'abahagarariye impande zombi, bagaragaza ko ishyirwa mu bikorwa ry'amasezerano ryahagaze kubera imikoranire mibi, binakubitiyeho ko amasezerano bagiranye nta gihe runaka yagenewe kumara, bityo hakaba nta cyabuza ko amasezerano nk'ayo aseswa n'iyi byaba byifujwe n'uruhande rumwe (résiliation par volonté unilatérale) nk'uko bisobanurwa n'abahanga mu mategeko³, ayo masezerano rero akaba akwiye guseswa, naho ikibazo cy'ibikoresho by'abarega baba barasize mu kirombe, kikaba kidahuye n'ibyaregowe muri uru rubanza, nk'uko byafashweho icyemezo mu rubanza rubanziriza urundi RCOMA 0141/12/CS & RCOMA 0142/12/CS rwo ku wa 23/10/2015. 3 Reba Henri de Page, *Traité Élémentaire de Droit Civil Belge*, Tome Deuxième, Les Incapables, Les Obligations (Première Partie), Troisième édition, Bruxelles, 1964, p 729, no 763.

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III. ICYEMEZO CY'URUKIKO [38] Rwemeje ko ubujurire bwa Makuza P. Célestin na Ugirumwami Gasana Aloys bufite ishingiro kuri bimwe; [39] Rwemeje ko ubujurire bwa NEW BUGARAMA MINING COMPANY LTD(NBMC) bwuririye ku bundi nta shingiro bufite; [40] Rutegetse NBMC kwishyura Makuza na Ugirumwami igiteranyo cy'indishyi gihwanye na 26.863.580 Frw nk'uko zasobanuwe haruguru mu bika bya 26,29,33 na 34; [41] Rutegetse ko amasezerano yo ku wa 07/10/2009 NBMC yagiranye na Makuza na Ugirumwami asheshwe ; [42] Rutegetse NBMC

kwishyura amagarama y'urubanza.

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