

RWANDA / JUDGMENT

MT LAW OFFICE Ltd v. PELLA RWANDA RESOURCES Ltd

RLR V.3-2020

COURT

Supreme Court

DECIDED

13 April 2018

CASE / FILE NUMBER

RCAA 00003/2018/SC

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MT LAW OFFICE Ltd v. PELLA RWANDA RESOURCES Ltd

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Text

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MT LAW OFFICE Ltd v. PELLA RWANDA RESOURCES Ltd [Rwanda URUKIKO RW'IKIRENGA – RCAA 00003/2018/SC (Mutashya, P.J., Nyirinkwaya na Gakwaya, J.) 13 Mata 2018] Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko mu bujurire bwa kabiri – Nubwo nta ndishyi zingana n'iziteganywa n'Itegeko zagennwe mu manza zaciwe mu nkiko zibanza, hakaba nta n'impaka zabaye ku gaciro k'ikiburanwa muri izo nkiko, nta kibuzwa ko izo mpaka zabyutswa bwa mbere ku rwego rw'ubujurire kugira ngo hasuzumwe niba ubujurire bwa kabiri buri cyangwa butari mu bubasha bw'urwo rukiko hashingiwe ku gaciro k'ikiburanwa. Incamake y'ikibazo: MT Law Office Ltd yagiranye na Pella Rwanda Resources Ltd amasezerano y'ubwunganizi. Pella Rwanda Resources Ltd yemera kuzishyura MT Law Office Ltd igihembo cy'ubwunganizi mu mategeko kingana na 1.200.00 USD, bumvikana ko mu gihe bagirana amakimbirane ibibazo byabo byakemurwa mu bwumvikane mu gihe cy'iminsi 10, byananirana bakiyambaza ubukemurampaka. MT Law Office Ltd yareze Pella Rwanda Resources mu Rukiko rw'Ubucuruzi rwa Nyarugenge kuba itarubahirije inshingano zayo zo kwishyura, ikanga n'uko bakemura

ikibazo mu bwumvikane, maze ishyiraho umukemurampaka wo ku ruhande rwayo, isaba Urukiko gushyiraho undi mukemurampaka wo ku rundi ruhande bityo bagafatanya gushyiraho uwa gatatu. Nyuma yo kudaha ishingiro inzitizi y'iburabubasha bw'urwo Rukiko, rwemeje ko ikirego gifite ishingiro, maze rushyiraho

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umukemurampaka wa kabiri wo ku ruhande rwa Pella Rwanda Resources Ltd. Pella Rwanda Resources Ltd ntiyishimiye icyo cyemezo, ikijuririra mu Urukiko Rukuru rw'Ubucuruzi, urwo rukiko rwasanga rutari rufite ububasha bwo kuburanisha urwo rubanza kuko ibikorwa bijyanye n'umwuga w'ubwunganizi mu nkiko atari ibikorwa by'ubucuruzi MT Law Office Ltd yahise iregera Urukiko Rwisumbuye rwa Gasabo, Pella Rwanda Resources Ltd yongera kuzamura inziti yo kutakira ikirego ariko Urukiko rwemeza ko idafite ishingiro, maze ruca urubanza, rwemeza ko ikirego gifite ishingiro, rushyiraho umukemurampaka wa kabiri wo ku ruhande rwa Pella Rwanda Resources Ltd. Pella Rwanda Resources Ltd yahise ijurira mu Rukiko Rukuru, MT Law Office Ltd nayo isaba ko ubujurire bwa Pella Rwanda Resources Ltd butakirwa kuko yajuririye icyemezo cy'ubukemurampaka kitajuririrwa, Urukiko Rukuru ruza kwemeza ko iyo nzitizi nta shingiro ifite kuko urubanza ari urw'imbonezamubano, ku bijyanye n'ubujurire bwa Pella Rwanda Resources Ltd ruvuga ko Urukiko Rwisumbuye rwa Gasabo rutagombaga gushyiraho umukemurampaka wo gukemura ikibazo cy'imbonezamubano, ko ahubwo rwagombaga kuburanisha urubanza, maze rutegeka ko ikirego gisubizwa mu Rukiko Rwisumbuye rwa Gasabo ngo rukiburanishe mu mizi. MT Law Office Ltd yajuririye Urukiko rw'Ikirenga, Pella Rwanda Resources Ltd nayo itanga inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga mu bujurire bwa kabiri kuko ikiburanwa kidafite agaciro k'amafaranga ateganywa n'Itegeko kandi nta n'indishyi zingana nibura na 50.000.000 Frw zagenwe

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mu manza zaciwe mu nkiko zibanza ndetse ko nta mpaka zishingiye ku gaciro k'ikiburanwa zabaye mu nkiko zibanza. Mu kwiregura kuri iyo nzitizi, MT Law Office Ltd ivuga ko yareze isaba ko hashyirwaho umukemurampaka wa kabiri, ibyo bitashoboka, urukiko rugasuzuma mu mizi ikibazo cy'umwenda yishyura ungana na 900.000 USD, ahwanye na 765.024.365 Frw, ushingiyeye ku masezerano bagiranye, maze Pella Rwanda Resources Ltd igategekwa kwishyura ayo mafaranga, inyungu z'ubukererwe n'indishyi zinyuranye, ko rero basanga urubanza ruri mu bubasha bw'uru Rukiko. Incamake y'icyemezo: 1. Nubwo nta ndishyi zingana n'iziteganywa n'Itegeko zagenwe mu manza zaciwe mu nkiko zibanza, hakaba nta n'impaka zabaye ku gaciro k'ikiburanwa muri izo nkiko, nta kibuzwa ko izo mpaka zabyutswa bwa mbere ku rwego rw'ubujurire kugira ngo hasuzumwe niba ubujurire bwa kabiri buri cyangwa butari mu bubasha bw'urwo Urukiko bwarwo mu bujurire bwa kabiri hashingiye ku gaciro k'ikiburanwa Inzitizi y'iburabubasha nta shingiro ifite. Urubanza ruzakomeza mu mizi. Amagarama y'Urubanza abaye asubitswe. Amategeko yashingiweho: Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'Ububasha by'Urukiko rw'Ikirenga, ingingo ya 28, igika cya 2, agace ka 7 n'igika cya 4. Imanza zifashishijwe:

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Murorunkwere na Utamuriza, RCAA 0075/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 20/05/2011. Nzamubara na Ntawukuriryayo, RCAA 0097/10/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 06/05/2011 Urubanza I. IMITERERE Y'URUBANZA [1] MT Law Office Ltd yagiranye na Pella Rwanda Resources Ltd amasezerano yiswe "Agreement for Performance - related to remuneration". Muri aya masezerano, Pella Rwanda Resources Ltd yemeye ko izishyura MT Law Office Ltd igihembo gishingiye ku bintu bitatu aribyo : "Finder's fees, Legal Fees and Consulting fees", kingana na 1.200.00 USD, bumvikana ko mu gihe bagiranye amakimbirane bazakemura ibibazo mu bwumvikane mu gihe cy'iminsi 10, byananirana bakiyambaza ubukemurampaka. [2] MT Law Office Ltd yabanje kurega Pella Rwanda Resources Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge, ivuga ko yagiranye nayo amakimbirane ashingiyeye ku kutubahiriza inshingano zayo zo kwishyura nk'uko babisezeranye mu masezerano, yanga ko bakemura ikibazo mu bwumvikane, ishyiraho umukemurampaka wo ku ruhande rwayo, isaba ko urukiko rumushyiraho, agafatanyaga n'uwo yashyizeho bagashyiraho uwa gatatu. [3] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza N° RCOM 00437/2016/TC/NYGE ku wa 24/05/2016. Ku bijyanye n'inzitizi yo kutakira ikirego yazamuye na Pella

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Rwanda Resources Ltd ivuga ko MT Law Office Ltd yaregeye Urukiko rw'Ubucuruzi kandi ikirego cyayo ari icy'imbonezamubano gishingiye ku masezerano y'akazi k'ubwunganizi, urwo Rukiko rwemeje ko itakiriwe kuko abagiranye amasezerano ari ibigo by'ubucuruzi, n'ibikorwa biteganyijwe mu masezerano bagiranye akaba ari ibikorwa by'ubucuruzi. Ku bijyanye n'imizi y'urubanza, urwo Rukiko rwemeje ko ikirego cya MT Law Office Ltd gifite ishingiro, maze rushyiraho umukemurampaka wa kabiri wo ku ruhande rwa Pella Rwanda Resources Ltd. [4] Pella Rwanda Resources Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, mu rubanza N° RCOMA 00329/2016/CHC/HCC rwaciwe ku wa 16/09/2016, rwemeza ko ibikorwa bijyanye n'umwuga w'ubwunganizi mu nkiko atari ibikorwa by'ubucuruzi, ruvanaho urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, ko icyo kibazo cyo gushyiraho umukemurampaka cyaregerwa inkiko ziburanisha imanza z'imbonezamubano. [5] Nyuma y'aho urwo rubanza ruciriye, MT Law Office Ltd yaregeye Urukiko Rwisumbuye rwa Gasabo, ikiregerwa ari ugushyiraho umukemurampaka wa kabiri mu rwego rwo kubahiriza amasezerano yagiranye na Pella Rwanda Resources Ltd, bitashoboka, hagasuzumwa ikibazo bafitanye, maze Pella Rwanda Resources Ltd igategukwa kuyishyura umwenda iyibereyemo n'indishyi zinyuranye. [6] Muri urwo Rukiko, Pella Rwanda Resources Ltd na none yazamuye inziti yo kutakira ikirego cya MT Law Office Ltd ivuga ko ikirego cyagakwiye gusuzumwa n'inkiko z'ubucuruzi.

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[7] Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza N° RC 00026/2017/TGI/GSBO ku wa 31/05/2017, rwemeza ko ikirego cya MT Law Office Ltd cyakiriwe kandi ko gifite ishingiro, rushyiraho umukemurampaka wa kabiri wo ku ruhande rwa Pella Rwanda Resources Ltd.

[8] Pella Rwanda Resources Ltd yajuririye Urukiko Rukuru. Muri urwo Rukiko, MT Law Office Ltd nayo yatanze inzitizi ivuga ko ikirego cy'ubujurire cya Pella Rwanda Resources Ltd kidakwiriye kwakirwa, hashingiye ku ngingo ya 13 y'Itegeko N° 05/2008 ryo ku wa 14/02/2008 ryerekeye Ubukemurampaka, kuko yajuririye icyemezo cy'ubukemurampaka kitajuririrwa. [9] Urukiko Rukuru rwaciye urubanza N°RCA 00189/2017/HC/KIG ku wa 06/12/2017, rwemeza ko inzitizi yatanzwe na MT Law Office Ltd isaba Urukiko Rukuru kutakira ubujurire bwa Pella Rwanda Resources Ltd nta shingiro ifite kuko iyishingira ku ngingo ya 13 y'Itegeko N° 05/2008 ryo kuwa 14/02/2008 rigena ubukemurampaka mu manza z'ubucuruzi, mu gihe uru rubanza ari urw'imbenezamubano nk'uko byemejwe mu rubanza n° RCOMA 00329/2016/HCC rwamaze kuba itegeko. [10] Urwo Rukiko kandi rwemeje ko ubujurire bwa Pella Rwanda Resources Ltd bufite ishingiro, rutegeka ko urubanza N°RC 0026/2017/TGI/GSBO rwaciye n'Urukiko Rwisumbuye rwa Gasabo rushyiraho umukemurampaka ruvanyeho kuko rutagombaga gushyiraho umukemurampaka, ahubwo rwagombaga kuburanisha urubanza, rutegeka ko ikirego gisubizwa mu Rukiko Rwisumbuye rwa Gasabo ngo rukiburanishe mu mizi.

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[11] Mu gufata iki cyemezo, Urukiko Rukuru rwasobanuye ko Itegeko N° 51/2010 ryo ku wa 10/01/2010 rishyiraho Ikigo Mpuzamahanga cy'Ubukemurampaka cya Kigali rikanagena imitunganyirize, imikorere n'ububasha bwacyo, iteganya, mu ngingo yayo ya 5, ko ububasha bw'ikigo burebana n'impaka zo mu rwego rw'ubucuruzi mu Rwanda, ko rero umukemurampaka washyizweho n'Urukiko Rwisumbuye rwa Gasabo nta bubasha afite bwo kuba yakemura impaka zirebana n'ikibazo cy'imbenezamubano. [12] Urukiko rwasobanuye kandi ko nta tegeko rirajyaho ryihariye rigena ibijyanye n'ubukemurampaka mu manza zitari iz'ubucuruzi nyuma y'uko hashyizweho Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, aho ivuga, mu ngingo yayo ya 367, ko hazashyirwaho itegeko ryihariye rigena ibijyanye n'ubukemurampaka. [13] Mu kwemeza ko ikirego gisubizwa mu Rukiko Rwisumbuye rwa Gasabo ngo rukiburanishe mu mizi, Urukiko rwasobanuye ko rushingiye ku ngingo ya 26 y'Amabwiriza ya Perezida w'Urukiko rw'Ikirenga. [14] MT Law Office Ltd yajuririye Urukiko rw'Ikirenga ku wa 25/12/2017, Pella Rwanda Resources Ltd nayo yatanze inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga. [15] Urubanza rwaburanishijwe mu ruhamwe ku wa 06/03/2018, MT Law Office Ltd iburanirwa na Me Rwagatare Janvier, Me Rwenga Etienne na Me Mbaga Tuzinde Mbonyimba, naho Pella Rwanda Resources Ltd iburanirwa na Me Moïse Nkundabarashi na Me Kayigirwa Télèsphore,

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ababuranyi bajya impaka ku nzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yabyukijwe na Pella Rwanda Resources Ltd. II. IKIBAZO KIGOMBA GUSUZUMWA N'ISESENGURA RYACYO Kumenya niba urubanza rutari mu bubasha bw'Urukiko rw'Ikirenga hashingiye ku gaciro k'ikiburanwa [16] Ababuranira Pella Rwanda Resources Ltd bavuga ko uru rubanza rutari mu bubasha bw'Urukiko

rw'Ikirenga mu bujurire bwa kabiri kuko ububasha bwarwo butareberwa mu nyandiko itanga ikirego nk'uko MT Law Office Ltd ishaka kubyumvikanisha mu mwanzuro wayo w'ubujurire, ahubwo bureberwa ku ndishyi zagenwe zingana nibura na miliyoni mirongo itanu cyangwa ku gaciro kagenwe n'umucamanza, igihe habaye impaka, kangana nibura n'ayo mafaranga nk'uko bisobanurwa mu ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga N° 03/06/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga, muri uru rubanza hakaba nta ndishyi zagenwemo, ndetse nta n'impaka zabaye ku gaciro k'ikiburanwa ngo kabe kagenwa n'umucamanza. [17] Ababuranira MT Law Office Ltd bavuga ko yareze isaba, ku bw'ibanze, ko hashyirwaho umukemurampaka wa kabiri wo ku ruhande rwa Pella Rwanda Resources Ltd kugira ngo hubahirizwe amasezerano bagiranye ateganya ko amakimbirane yavuka hagati yabo yakemurwa hiyambajwe ubukemurampaka, ibyo bitashoboka, urukiko rugasuzuma mu mizi ikibazo cy'umwenda yishyuzwa ungana na 900.000 USD, ahwanye na 765.024.365 Frw, ushingiyeye ku masezerano

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bagiranye, maze Pella Rwanda Resources Ltd igategekwa kwishyura ayo mafaranga, inyungu z'ubukererwe n'indishyi zinyuranye, ko rero basanga urubanza ruri mu bubasha bw'Urukiko rw'Ikirenga kuko agaciro k'ikiburanwa mu rubanza rwajuririwe karengeje miliyoni mirongo itanu ziteganijwe mu ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga N° 03/06/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru. [18] Bavuga kandi ko iyo ngingo y'itegeko igomba gusomwa muri rusange, hakarebwa n'ibiteganywa mu gace ka 4, igira iti mu zindi manza, agaciro k'amafaranga, agaciro k'ikiburanwa kimwe n'agaciro k'icyo amasezerano ashingiyeho ni byo bigena ububasha bw'Urukiko rw'Ikirenga, hubahirijwe ibivugwa mu gace ka 7 k'igika cya 2 cy'iyi ngingo. UKO URUKIKO RUBIBONA [19] Ku bijyanye n'ububasha bw'Urukiko rw'Ikirenga, ingingo ya 28 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya mu gika cyayo cya 2, agace ka 7, ko uru rukiko ruburanisha mu bujurire bwa kabiri imanza zagenwemo indishyi zingana nibura na 50.000.000 Frw cyangwa se zifite agaciro k'ikiburanwa kagenwe n'umucamanza igihe habaye impaka kangana nibura n'ayo mafaranga, naho mu gika cya 4, igateganya ko mu zindi manza, agaciro k'amafaranga, agaciro k'ikiburanwa kimwe n'agaciro k'icyo amasezerano ashingiyeho aribyo bigena ububasha bw'Urukiko rw'Ikirenga, hubahirijwe ibivugwa mu gace ka 2 k'iyi ngingo. [20] Ku birebana n'uru rubanza, Urukiko rurasanga, nubwo nta ndishyi zingana nibura na 50.000.000 Frw zagenwe mu

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manza zaciwe mu nkiko zibanza, hakaba nta n'impaka zabaye ku gaciro k'ikiburanwa muri izo nkiko kuko haburanywe gusa ku kibazo cyo gushyiraho umukemurampaka wa kabiri, nta kibuzwa ko izo mpaka zabyutswa bwa mbere kuri uru rwego kugira ngo hasuzumwe niba ubujurire bwa kabiri buri cyangwa butari mu bubasha bwarwo hashingiwe ku gaciro k'ikiburanwa. Ibi byemejwe n'uru rukiko mu manza zitandukanye¹. [21] Ku bijyanye rero n'agaciro k'ikiburanwa muri uru rubanza, Urukiko rurasanga, hagendeye ku mwenda wishyuzwa wa 900.000 USD,

ahwanye na 775.987.164 Frw2, ndetse no ku gaciro k'icyo amasezerano asabwa kubahirizwa ashingiyeho kirebana n'igihembo cya 1.200.000 USD, agaciro k'ikiburanwa muri uru rubanza karengaje 50.000.000 Frw zituma ruja mu bubasha bwarwo mu bujurire bwa kabiri hashingiye ku ngingo ya 28, igika cya 2, agace ka 7, ndetse n'igika cya 4 y'Itegeko Ngenga ryavuzwe rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, bityo inzitizi y'iburabubasha ishingiyeye ku gaciro k'ikiburanwa yatanze na Pella Rwanda Resources Ltd ikaba nta shingiro ifite. III. ICYEMEZO CY'URUKIKO [22] Rwemeje ko ubujurire bwa MT Law Office Ltd buri mu bubasha bw'Urukiko rw'Ikirenga. [23] Rwemeje ko iburanisha rizakomeza ku wa 12/06/2018. 1 Urubanza N° RCAA 0075/09/CS rwaciwe ku wa 20/05/2011, haburana Murorukwere na Utamuriza; Urubanza N° RCAA 0097/10/CS rwaciwe ku wa 06/05/2011, haburana Nzamubara na Ntawukurirayo. 2 Ku gipimo cy'ivunja cya 862.20796 kigaragara ku rubuga rwa internet ya Banki Nkuru y'u Rwanda (BNR) yo ku wa 13/04/2018

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[24] Ruvuze ko amagarama y'urubanza abaye asubitswe.

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