

RWANDA / JUDGMENT

# NIL MINING COMPANY LTD V ICYIMANIMPAYE N'ABANDI

RCA00003/2023/HC/MUS

COURT

High Court

DECIDED

5 April 2024

CASE / FILE NUMBER

RCA00003/2023/HC/MUS

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## NIL MINING COMPANY LTD V ICYIMANIMPAYE N'ABANDI

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### Text

#### Page 1

NIL MINING COMPANY LTD V ICYIMANIMPAYE N'ABANDI [Rwanda URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA00003/2023/HC/MUS (Mukamuhire, P.J.) 05 Mata 2024]

Itegeko ryerekeye imiburanishirize y'imanza mbonezamubano – Guca urubanza – igishingirwaho mu guca urubanza iyo nta Tegeko ririho – Iyo nta tegeko rijyanye n'ikiburanwa, Umucamanza ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucruzi, iz'umurimo n'Ubutegets, ngingo ya 9. Amategeko mbonezamubano – indishyi – indishyi zikomoka ku mpanuka yo mu kirombe – Nta Tegeko rihari mu Rwanda ryashingirwaho hagenwa indishyi zikomoka ku mpanuka zabereye mu birombe, bityo hagomba gushingirwa ku ihame rusange ryerekeye uburyozwe buturutse ku byangijwe n'ibintu umuntu ashinzwe kurinda. Incamake y'ikibazo: Uru rubanza rwatangiye Icyimanimpaye na bagenzi be barega Nil Mining Company Ltd na Sanlam Ag

Ltd mu Rukiko Rwisumbuye rwa Rubavu basaba Urukiko gutegeka abo barega gufatanya gutanga indishyi zitandukanye zikomoka ku mpanuka yahitanye Zigirabandi mu kirombe cy'amabuye y'agaciro cya Nil Mining Company Ltd, nyuma yahoo bandikiye Sanlam Ag Ltd bayisaba indishyi ikagasubiza ko indishyi yemera gutanga ari 1.000.000Frw kuko ariyo ari mu masezerano yagiranye na Nil Mining Company Ltd. Abarega basaba indishyi bashingiye ku Itegeko riteganywa indishyi zikomoka ku mpanuka ngo kuko ayo masezerano bagiranye atagira ingaruka ku muntu utarayashyizeho umukono. Nil Mining Company Ltd yo Isaba Urukiko gutegeka ko idakwiye kugira icyo ibazwa mu gihe yafashe ubwishingizi ndetse ikanamenyekanisha impanuka. Ivuga ko yarezwe idakwiye kuregwa. Ivuga kandi ko hatari gusabwa indishyi hashingiwe ku Iteka riteganywa indishyi zisabwa hakozwe impanuka zo mu muhanda. Urukiko mu rubanza RCA00065/2021/TGI/RBV rwemeje ko ikirego cya icyimanimpaye na bagenzi be, gifite ishingiro, rutegeka Nil Mining Ltd kwishyura indishyi zitandukanye zikomoka ku mpanuka yatewe n'ikirombe cyayo igahitana Zigirabandi, runategeka kandi Sanlam AG LTD kwishyura indishyi ziteganyijwe mu masezerano yagiranye na Nil Mining Ltd. Nil Mining Company Ltd ntiyanyuzwe nicyo cyemezo ikijuririra mu Rukiko Rukuru urugereko rwa Musanze, ivuga ko Urukiko rwirengagije ko Nil Mining Company Ltd yafatiye nyakwigendera ubwishingizi bukwiye rukayitegeka kwishyura indishyi; ngo Urukiko rwabanje rwarivugururije ku bijyanye n'Itegeko ryakoreshwa mu kubara indishyi ngo kuko rwavuze ko zitabarwa hashingiwe ku Iteka rya Perezida nyamara rugashingira ku rubanza rwazibaze hashingiwe kuri iryo Teka; ivuga kandi ko Urukiko rwarategetse Nil Mining guha SANLAM AG Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka nyamara atariyo yayishoye mu manza.

## Page 2

Uhagarariye abaregera indishyi yakoze ubujurire bwuririye ku bundi asaba Urukiko kuyigenera miliyoni imwe y'amafaranga y'ikurikiranarubanza n'igihembo cya Avocat. Sanlam yakoze ubujurire bwuririye ku bundi ivuga ko isaba uregwa gutegekwa kwishyura igihembo cya Avoka n'ikurikiranarubanza. Urukiko mu rubanza RCA00003/2023/HC/MUS rwemeje ko ubujurire bwa Nil Mining Company Ltd bufite ishingiro kuri bimwe, ko ubujurire bwuririye ku bundi nta shingiro bufite usibye ubwa SANLAM AG Ltd. Incamake y'icyemezo: Nta Tegeko rihari mu Rwanda ryashingirwaho hagenwa indishyi zikomoka ku mpanuka zabereye mu birombe, bityo hagomba gushingirwa ku ihame rusange ryerekeye uburyozwe buturutse ku byangijwe n'ibintu umuntu ashinzwe kurinda, kuko hatashingirwa ku Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kuko rifite umwihariko (loi special) ntihanashingirwa kandi ku masezerano y'ubwishingizi yabaye hagati ya nyiri kirombe n'ikigo cy'ubwishingizi kuko amasezerano akenshi akena indishyi nkeya cyane kandi amasezerano agira ingaruka hagati y'abayagiranye.

2. amafaranga y'ikurikirana rubanza n'igihembo cya Avoka nta muburanyi uyahabwa iyo buri ruhande rufite ibyo rwatsindiye nibyo rwatsindiye. Ubujurire bufite ishingiro kuri bimwe. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucruzi, iz'umurimo n'Ubutegetsi,

ngingo ya 9. Imanza zifashishijwe: RS/INJUST/RC 00013/2021/CA, MANIRARORA Jean de Dieu v RWANDA RUDNIKI Ltd, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/6/2022, igika cyarwo cya 40, RCAA0049/14/CS, SORAS AG LTD v Umuhoya Pacifique, Izabayo Sylvie na Niyoyita Jacques, rwaciwe n'Urukiko rw'Ikirenga kuwa 25/11/2016 igika cya 36, Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 03/05/2019, mu mudugudu wa Rurambo, akagari ka Rutagara, Umurenge wa Muhanda, Akarere ka Ngororero, Intara y'Iburengerazuba mu kirombe bacukuramo amabuye y'agaciro cya NIL MINING COMPANY ihagarariwe na Nyirarwango Laurence, habereye impanuka ubwo abakozi b'iyi company bari barimo gucukura amabuye y'agaciro maze ikirombe kibagwaho, uwitwa Zigirabandi Cyprien ahita yitaba Imana. Hakoze iperereza ngo hamenyekane icyateye impanuka, maze basanga ari

### Page 3

impanuka yabaye ku bakozi ba NL MINING COMPANY maze abayobozi bayo bavugaga ko bafite ubwishingizi muri SORAS AG LTD ko abakozi babo babashyize mu bwishingizi. Abazungura ba Zigirabandi Cyprien bandikiye SANLAM AG LTD kuwa 22/02/2021 basaba ko bahabwa indishyi zikomoka ku mpanuka y'ikirombe maze SANLAM isubiza ko yakwishyura umugore wa Nyakwigendera indishyi zingana na 1.000.000frw gusa ngo kuko ariyo bumvikanye na NIL MINING COMPANY mu masezerano y'ubwishingizi bw'abakozi maze twebwe tukababwira ko bagomba kubara indishyi nk'uko itegeko riteganyaga indishyi zikomoka ku mpanuka, kuko ayo masezerano bagiranye atagira ingaruka ku muntu utarayashyizeho umukono kuko uyu nyakwigendera Zigirabandi Cyprien atigeze ayashyiraho umukono. Bakaba basaba ko NIL MINING COMPANY na SANLAM AG LTD bafatanye kwishyura indishyi zinyuranye basabye kubera ko nyakwigendera yasize umubyeyi we (1), umugore (1), abana (4), abavandimwe (5) ndetse n'amafaranga y'ikurikirana rubanza atandukanye harimo n'igihembo cy'avoka. Abarega bavugaga ko batarebwe n'amasezerano NL MINING LTD yagiranye na SANLAM. [2] NIL MINING COMPANY ivugaga ko Ubuyobozi bwa NIL MINING bwamenyekanishije impanuka ku mwishingizi (SANLAM AG PLC) aho abakozi ba NIL MINING Company Ltd bafatiwe ubwishingizi kugira ngo bahabwe ibikubiye muri ubwo bwishingizi. Isaba Urukiko kutegeka ko NL MINING idakwiye kugira icyo ibazwa mu gihe yafashe ubwishingizi ndetse ikanamenyekanisha impanuka yahitanye Zigirabandi Cyprien. Ikaba isanga idafite ububasha bwo kuregwa. Ivugaga kandi ko hatari gusabwa indishyi hashingiwe ku Iteka riteganyaga indishyi zisabwa hakoze impanuka zo mu muhanda. [3] Urukiko Rwisumbuye rwa Rubavu rwareguye ku rwego rwa mbere rwafashe icyemezo giteye gitya : Rwemeje kwakira ikirego cyatanze na Christine Icyimanimpaye, Hafashimana Enias, Mukarugwiza Bernadette, Mukaruziga Lucretie, Nyirabagenzi, Nyirahabimana Claudine, Nyiramihimo Therese, Nyiranzafashwanimana Clementine, Nzitonda Cyprien Uhagarariwe n'umubyeyi we witwa Icyimanimpaye Christine, Pierre Nzabonimpa, Uramukiwe Winifride rugisuzumye rusanga gifite ishingiro. Rutegetse NIL MINING LTD kwishyura Icyimanimpaye Christine indishyi mbangamirabukungu zingana na miliyoni enye n'ibihumbi makumyabiri na birindwi na maganabiri n'atandatu (4.027.206frw). Rutegetse NIL MINING LTD kwishyura Icyimanimpaye Christine indishyi mbangamiramuko ze n'iz'abana Nzitonda Cyrien, Nyiranzafashwanimana Clementine, Hafashimana Enias na Nyirahabimana Claudine, ariko kuri

Nzitonda Cyprien zingana na miliyoni eshatu n'ibihumbi maganatandatu (3.600.000frw). Rutegetse NIL MINING LTD kwishyura Icyimanimpaye Christine indishyi mbangamirabukungu zingana na miliyoni enye n'ibihumbi makumyabiri na birindwi na maganabiri n'atandatu (4.027.206frw).

## Page 4

Rutegetse NIL MINING LTD kwishyura indishyi mbangamiramuco Mukarugwiza Bernadette, Mukaruziga Lucretie, Nzabonimpa Pierre, Uramukiwe Winifride na Nyirabagenzi zingana na miliyoni ebyiri n'ibihumbi maganabiri na mirongwitanu (2.250.000frw). Rutegetse NIL MINING LTD kwishyura abarega bose bahagarariwe na Icyimanimpaye Christine indishyi mbangamiramuco zagombaga guhabwa Nyiramihigo Theresie kuko yitabye Imana zingana n'ibihumbi maganatandatu na mirongwirindwi na bitanu (675000frw). Rutegetse NIL MINING LTD kwishyura Icyimanimpaye Christine amafaranga yaguze dosiye n'ibyangombwa angana n'ibihumbi mirongwitatu na maganatandatu (30600frw). Rutegetse NIL MINING LTD kwishyura Icyimanimpaye Christine indishyi zingana n'ibihumbi maganarindwi (700000frw) y'ikurikiranarubanza n'igihembo cya avoka. Rutegetse NIL MINING LTD kwishyura SANLAM AG LTD zingana n'ibihumbi maganabiri (200000frw) y'ikurikiranarubanza. Rutegetse NIL MINING LTD kwishyura SANLAM AG LTD zingana n'ibihumbi maganarindwi (700000frw) y'ikurikiranarubanza n'igihembo cya avoka. Rutegetse SANLAM AG LTD kwishyura Icyimanimpaye Christine indishyi zingana na miliyoni imwe n'igice (1.500.000frw), NIL MINING LTD ikazaziharaho yishyura Icyimanimpaye Christine. [4] NIL MINING LTD ntiyishimiye imikirize y'urubanza, ijurira mu Rukiko Rukuru, urugereko rwa Musanze. [5] Iburanisha mu ruhamye ry'uru rubanza ryabaye kuwa 08/02/2024, NIL MINING LTD ihagarariwe na Me Ngamije Eric, abaregera indishyi bahagarariwe na Me Hakizimana Martin naho SANLAM ihagarariwe na Me Uwiragiye Ibtisam. [6] Uhagarariye NIL MINING Company Ltd yavuze ko impamvu zatumye ijurira ari izi zikurikira : Kuba Urukiko rwariyengagije ko NIL MINING Company Ltd yafatiye nyakwigendera ubwishingizi bukwiye rukayitegeka ko yakwishyura indishyi nyamara yari yarafatiye ubwishingizi ; Kuba Urukiko rwarivugururije mu gufata umurongo ku itegeko ryakoreshwa mu kubara indishyi aho rwavuze ko zitabarwa hashingiwe ku Iteka rya Perezida nyamara rugashingira ku rubanza rwazibaze hashingiwe kuri iryo Teka ; Kuba Urukiko rwategetse NIL MINING guha SANLAM AG Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka nyamara atari NIL MINING yayishoye mu manza. [7] Uhagarariye abaregera indishyi yasubije ku mpamvu z'ubujurire za NIL MINING Company ku buryo bukurikira : Ibyo NIL MINING ivuga ku rwego rw'ubujurire ko habayeho amakosa mu rubanza rujuririrwa, aho bavuga ko kuba bari baragiranye amasezerano na SANLAM AG LTD

## Page 5

nta shingiro bifite kuko ayo masezerano atagira ingaruka ku muntu utarayashyizeho umukono ; Baburana mu Rukiko Rwisumbuye rwa Rubavu berekanye izindi manza zisa n'uru aho Urukiko rwategetse ko amasezerano umuntu atashyizeho umukono atamugiraho ingaruka maze bategeka ko ikigo cy'ubwishingizi cyakwishyura ayo cyumvikanye mu masezerano, amafaranga arengaho

akishyurwa n'ikigo gicukura amabuye y'agaciro kandi niko byakozwe. [8] Basabye Urukiko kwemeza ko nta makosa yakozwe mu rubanza rwajuririwe, rugatega ko rudahindutse, hanyuma rugatega ko urega yacibwa indishyi zo kubashora mu manza n'ikurikiranarubanza hakiyongeraho n'igihembo cy'Avoka ; [9] Uhagarariye abaregera indishyi bose yakoze ubujurire bwuririye ku bundi asaba Urukiko kuyigenera miliyoni imwe y'amafaranga y'u Rwanda (1.000.000Frw) akubiyemo ay'ikurikiranarubanza n'igihembo cya Avocat. [10] Uhagarariye SANLAM yakoze ubujurire bwuririye ku bundi avuga ko ashingiye ku ngingo ya 152 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, isaba uregwa gutegekwa kwishyura 600.000 frw akubiyemo igihembo cya Avoka n'ikurikiranarubanza. [11] Urukiko rugiye gusuzuma ibibazo bikurikira : Kumenya icyagombaga gushingirwaho mu kugena indishyi zikomoka ku mpanuka zagenwe muri uru rubanza niba ari Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga cyangwa niba ari amasezerano y'ubwishingizi yabaye hagati ya NIL MINING Company Ltd na SANLAM ; Kumenya niba NIL MINING Company Ltd yaragombaga kuryozwa izindi ndishyi kandi yari yarafashe ubwishingizi bw'abakozi bayo; Kumenya niba NIL MINING Company Ltd yaragombaga gutegekwa guha SANLAM indishyi z'ikurikiranarubanza n'igihembo cya Avocat kandi atari yo yayikuruye mu manza; Kumenya niba indishyi zasabwe muri uru rubanza mu bujuri zahabwa ishingiro. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya icyagombaga gushingirwaho mu kugena indishyi zikomoka ku mpanuka zagenwe muri uru rubanza, niba ari Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga cyangwa niba ari amasezerano y'ubwishingizi yabaye hagati ya NIL MINING Company Ltd na SANLAM: [12] Kuva aburana ku rwego rwa mbere kugeza no mu bujuri, uhagarariye NIL MINING Company Ltd yavuze ko nta ndishyi NIL MINING Company Ltd ikwiye kuryozwa kubera ko yari yashyize abakozi bayo mu bwishingizi harimo na nyakwigendera Zigirabandi Cyprien, ko

## Page 6

kubera iyo mpamvu abaregera indishyi atari we bagombaga gusaba indishyi ahubwo SANLAM niyo yagombaga kubaha indishyi zingana na miliyoni imwe y'amafaranga y'u Rwanda (1.000.000 Frws) nk'uko amasezerano y'ubwishingizi bagiranye abiteganya ko mu gihe hagize umukozi ugira impanuka bikamuviramo gupfa, SANLAM izajya yishyura miliyoni imwe (1.000.000Frws). Yakomeje avuga ko icyabatangaje ari ukubona Urukiko Rwisumbuye rwa Rubavu rwarirengagije ariya masezerano maze rukagera icyimanimpaye na bagenzi be indishyi rushingiye ku Iteka rya Perezida kandi iri teka rishingirwaho gusa mu gihe habayeho impanuka itewe n'ikinyabiziga. [13] Uhagarariye icyimanimpaye na bagenzi be baregera indishyi yavuze ko impamvu y'ubujurire ya NIL MINING Company Ltd nta shingiro ikwiye guhabwa kuko nabo bazi neza ko nubwo yafashe ubwishingizi bw'abakozi bayo ariko ko yatanze imisanzu mike cyane ku buryo indishyi baregera zitari kuvamo. Kuba rero Urukiko Rwisumbuye rwa Rubavu rwarabageneye indishyi rushingiye kuri ririya Teko rya Perezida nta mategeko yishwe cyane ko nta rindi tegeko riraho ryashingirwaho mu kugena indishyi mu gihe habayeho impanuka y'abakora mu birombe. Yasoje

asaba Urukiko kwemeza ko urubanza rwajuririwe rudahindutse kuko rwaciwe mu buryo bwubahirije amategeko. UKO URUKIKO RUBIBONA [14] Ababuranyi bose muri uru rubanza bemeranya ko nta tegeko ry'umwihariko (special) ririho ryashingirwaho mu gihe habayeho impanuka ku mukozi ukora mu kirombe. Impaka zigibwa muri uru rubanza rero ni ukumenya icyashingirwaho mu kugena indishyi mu gihe umukozi ukora mu kirombe yagize impanuka agakomereka cyangwa se agapfa. Bamwe bavuga ko hagomba gushingirwa ku Iteka rya Perezida rishingirwaho mu kugena indishyi igihe habayeho impanuka yatewe n'ikinyabiziga, abandi bakavuga ko mu gihe habayeho impanuka ariko hari amasezerano y'ubwishingizi, aya ari yo agomba gushingirwaho mu kuriha indishyi uwahohotewe. [15] Muri dosiye y'uru rubanza bigaragara ko habayeho amasezerano y'ubwishingizi hagati ya NIL Mining Company na SANLAM, impande zombi zikaba zemeranya ko bumvikanye ko mu gihe hari umukozi wagize impanuka bikamuviramo gupfa, SANLAM izajya yishyura umuryango we 1.000.000Frws. Aya mafaranga akaba ariyo SANLAM yari yiteguye kwishyura icyimanimpaye Christine na bagenzi be baregera indishyi ariko bakaba barazanze, basaba ko yabishyura indishyi zose basabaga. [16] Hashingiwe ku bimaze kuvugwa haruguru, bigaragara ko Iteka rya Perezida No 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga ari itegeko ry'umwihariko (special) rishingirwaho mu kugena indishyi mu gihe habayeho impanuka itewe n'ikinyabiziga nk'uko n'izina ryaryo ribigaragaza, mu by'ukuri rero rikaba ritaragombaga gushingirwaho mu kugena indishyi muri uru rubanza kuko impanuka yahitanye ubuzima bwa nyakwigendera Zigirabandi Cyprien itatewe n'ikinyabiziga. Ikindi kandi abaregera indishyi muri uru rubanza ntibagombaga kugenerwa indishyi hashingiwe ku masezerano y'ubwishingizi yabaye hagati ya NIL MINING Company Ltd na SANLAM kuko yateganyije amafaranga make cyane angana na 1.000.000Frws mu gihe hari umukozi wakoze impanuka bikamuviramo gupfa. Ikindi kandi ariya masezerano yabaye

## Page 7

hagati ya ziriya mpande zombi ni bo bonyine areba bagomba kubahiriza ibiyakubiyemo, akababera Itegeko, ntareba abaregera indishyi muri uru rubanza ku buryo bahatirwa kuyubahiriza keretse mu gihe babona bitabangamiye inyungu zabo. [17] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki rero, kubera ko NIL MINING Company Ltd yemera ko nyankwigendera Zigirabandi Cyprien yavukijwe ubuzima n'ikirombe cyayo yakoragamo, akemera kandi ko mu by'ukuri ari yo igomba kuryozwa indishyi, ikibazo gihari gusa ni ukumenya icyashingirwaho mu kugena ziriya ndishyi. Kubera rero ko bimaze kugaragara ko ririya Teko rya Perezida ridashobora gushingirwaho kuko impanuka yabaye itatewe n'ikinyabiziga, hakaba kandi hatashingirwa ku masezerano y'ubwishingizi yabaye hagati ya NIL Mining Company na SANLAM kuko atareba abaregera indishyi kandi ibiyakubiyemo bikaba nta nyungu bibafitiye, Urukiko rurabona indishyi muri uru rubanza zigomba kugenwa hashingiwe ku kuba impanuka yahitanye nyakwigendera yaratewe n'ikosa rya NIL Mining Company Ltd kuko iyi ariyo yari ishinze kurinda ibirombe byayo no gukora ibishoboka byose ngo abakozi bayo batagira impanuka. Mu gihe rero itabikoze, nta wundi waryozwa indishyi zikomoka kuri iriya mpanuka yahitanye ubuzima bwa nyakwigendera Zigirabandi Cyprien, maze indishyi zikagenwa mu bushishozi

bw'urukiko. [18] Ibimaze kuvugwa mu gika kibanziriza iki biri mu mujyho umwe n'ibyemejwe n'Urukiko rw'Ubujurire mu rubanza RS/INJUST/RC 00013/2021/CA rwaciwe kuwa 28/6/2022, mu gika cyarwo cya 40, haburana Manirarora Jean de Dieu na RWANDA RUDNIKI Ltd, aho rwemeje ko kubera ko nta tegeko rihari rirebana n'impanuka yabereye mu kirombe gicukurwamo amabuye y'agaciro, hashingiwe ku ngingo ya 9 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano ...iteganyako ko iyo nta tegeko rijyanye n'ikiburanwa, Umucamanza ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko. Urukiko rw'Ubujurire rwemeje ko mu kugenera indishyi uwari wahohotewe hagomba gushingirwa ku ihame rusange ryerekeye uburyozwe buturutse ku byangijwe n'ibintu umuntu ashinzwe kurinda (responsabilité du fait des choses). [19] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga nta gushidikanya ko umugore wa nyakwigendera Zigirabandi Cyprien, abana be, umubyeyi we n'abavandimwe be bababajwe n'urupfu rwe, bityo bakaba bagomba kugenerwa indishyi z'akababaro zigenwe mu bushishozi bw'urukiko nk'uko byavuzwe haruguru ko nta tegeko ryihariye ryashingirwaho mu kugena indishyi mu gihe habayeho impanuka yatewe n'ikirombe, bityo rero buri wese mu baregera indishyi akaba agomba kugenerwa indishyi z'akababaro zingana n'ibihumbi Magana atanu (500.000Frws). [20] Ibimaze kuvugwa mu gika kibanziriza iki, biri mu mujyho umwe n'ibyemejwe n'Urukiko rw'Ubujurire mu rubanza RS/INJUST/RC 00013/2021/CA (rwavuzwe haruguru) rwaciwe kuwa 28/6/2022, mu gika cyarwo cya 55, haburana MANIRARORA Jean de Dieu na Rwanda Rudniki Ltd, aho rwageneye uregera indishyi indishyi z'akababaro zigenwe mu bushishozi bw'urukiko. [21] Ku byerekeye indishyi mbonezamusaruro cyangwa z'ibangamirabukungu zasabwe n'Icyimanimpaye Christine, umugore wa Nyakwigendera, Urukiko rurabona zifite ishingiro nk'uko n'Urukiko Rwisumbuye rwa Rubavu rwari rwabivuze, gusa kubera ko nta tegeko rihari

## Page 8

ryo gushingiraho mu kuzibara, zigomba kugenwa mu bushishozi bw'urukiko hashingiwe ku kuba yari asigaje imyaka cumi n'itanu (15) kugira ngo ajye mu kiruhuko cy'izabukuru kandi akaba ari we wari utunze umuryango we, bityo akaba agomba kugenerwa indishyi zingana na miliyoni eshanu (5.000.000Frws). [22] Ku byerekeye indishyi z'ibyakoreshejwe byose, urukiko rurabona zo zitagomba guhinduka, zigomba kuguma uko zabazwe ku rwego rwa mbere kuko NIL MINING itigeze izijuririra kuko zitagenwe hashingiwe kuri ririya Teka rya Perezida ryavuzwe haruguru. Bityo Icyimanimpaye Christine agomba guhabwa indishyi ziteye zitya : Amafaranga yaguzwe dosiye n'ibyangombwa : 30.600Frws ; Amafaranga y'ikurikiranarubanza, ay'insimburamubyizi, ay'ingendo hamwe n'igihembo cya Avocat : 700.000Frws. Kumenya niba NIL MINING Company Ltd yaragombaga gutegekwa guha SANLAM indishyi z'ikurikiranarubanza n'igihembo cya Avocat kandi atari yo yayikuruye mu manza: [23] Uhagarariye NIL MINING Company Ltd yavuze ko iyindi mpamvu yatumye ijurira aruko Urukiko Rwisumbuye rwa Rubavu rwayitegetse guha SANLAM 200.000 Frws y'ikurikiranarubanza na 700.000Frws y'igihembo cya Avocat kandi atari yo yayikuruye mu manza, ngo yarezwe n'abaregera indishyi. [24] Uhagarariye SANLAM yavuze ko

yashatse kwishyura abaregera indishyi miliyoni imwe y'amafaranga y'u Rwanda (1.000.000Frws) nk'uko biri mu masezerano y'ubwishingizi yagiranye na NIL MINING Company Ltd bikiri mu bwumvikane ariko ntibyakunda kuko bo bashakaga indishyi zirenzeho, ko rero kuba yaraje mu rubanza nyirabayazana ni NIL MINING Company Ltd itarabashije kwishyura indishyi zirenze kuri iriya 1.000.000 Frws bari barumvikanye, bityo kuba urukiko rwarayitegetse kuyiha indishyi bifite ishingiro. UKO URUKIKO RUBIBONA [25] Hashingiwe ku byasobanuwe haruguru, nyakwigendera Zigirabandi Cyprien yari umukozi mu birombe bya NIL MINING Company Ltd akaba yaraje kugira impanuka agwirwa n'ikirombe arapfa. Ab'umuryango we basabye indishyi NIL MINING ibabwira ko basanga SANLAM ikabaha indishyi kuko yari yarashinganishije nyakwigendera, bageze kuri SANLAM basanga hashingiwe ku masezerano yagiranye na NIL MINING bemerewe indishyi zingana na 1.000.000Frws yonyine, nicyo cyatumye bafata umwanzuro wo kuregera urukiko. Bigaragara rero ko iyo NIL MINING ishyira mu gaciro, ikemera ko SANLAM itanga amafaranga basezeranye ko izajya yishyura mu gihe hari umukozi wayo wagize impanuka bikamuviramo gupfa, hanyuma ku zindi ndishyi akumvikana n'abaziregeraga, ntibyari kuba ngombwa ko bajya mu rukiko. Kuba mu by'ukuri abaregera indishyi baritabaje urukiko nuko babonaga ibyifuzo byabo bitari kubonerwa umuti nyawo. [26] Ibimaze kuvugwa mu gika kibanziriza iki bigaragaza ko uko NIL MINING Company yitwaye mu kibazo ari byo byatumye na SANLAM ikururwa mu rubanza. Ubwo Urukiko rwari rumaze kugaragaza ko NIL MINING Company Ltd ari yo yatsinzwe urubanza, nta wundi wari

## Page 9

kuryozwa indishyi z'amafaranga SANLAM yakoresheje mu rubanza atari NIL MINING Company Ltd, bityo icyemezo cy'Urukiko Rwisumbuye rwa Rubavu kuri iyi ngingo kikaba kigumanye agaciro kacyo. Kumenya niba indishyi zasabwe muri uru rubanza zifite ishingiro: [27] Uhagarariye abaregera indishyi yasabye urukiko ko rwategeka urega ari we NIL MINING Company Ltd kwishyura indishyi z'ikurikiranarubanza n'igihembo cy'avoka bingana na 1.000.000frs. [28] Uhagarariye SANLAM yasabye Urukiko gutegeka NIL MINING Company kuyigenera 600.000Frws y'ikurikiranarubanza n'igihembo cya Avocat. [29] Uhagarariye NIL MINING Company ntacyo yasubije kuri ziriya ndishyi zasabwe n'abandi baburanyi. UKO URUKIKO RUBIBONA [30] Hashingiwe ku byavuzwe haruguru, aho urukiko rwagaragaje ko ubujurire bwa NIL MINING Company bufite ishingiro kuri bimwe, urukiko rurabona hari aho yatsinze n'aho yatsinzwe, bityo indishyi z'ikurikiranarubanza n'iz'igihembo cya Avocat zasabwe n'abaregera indishyi zikaba nta shingiro zahabwa. [31] Ibimaze kuvugwa mu gika kibanziriza iki, birashimangirwa n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza RCAA0049/14/CS rwaciye kuwa 25/11/2016 (igika cya 36, urupapuro rwa 12), haburana SORAS AG LTD na Umuhozo Pacifique, Izabayo Sylvie na Niyoyita Jacques, aho rwemeje ko nta muburanyi ukwiye guhabwa indishyi z'ikurikiranarubanza ndetse n'amafaranga y'igihembo cya Avocat mu gihe buri ruhande rufite ibyo rwatsindiye n'ibyo rwatsindiye. [32] Ku byerekeye indishyi zasabwe na SANLAM, urukiko rurabona zifite ishingiro ariko zikaba ari ikirenga, bityo mu bushishozi bw'urukiko SANLAM ikaba igomba kugenerwa 300.000Frws y'igihembo cya Avocat n'ikurikiranarubanza mu bujurire. III. ICYEMEZO CY'URUKIKO [33] Urukiko rwemeje ko ubujurire bwa NIL MINING Company Ltd

bufite ishingiro kuri bimwe. [34] Urukiko rwemeje ko ubujurire bwuririye ku bundi bwakozwe n'abaregera indishyi nta shingiro bufite. [35] Urukiko rwemeje ko ubujurire bwuririye ku bundi bwakozwe na SANLAM bufite ishingiro. [36] Urukiko rutegetse NIL MINING Company Ltd gutanga ibihumbi Magana atanu (500.000 Frws) by'indishyi z'akababaro kuri buri wese mu baregera indishyi ari bo:

## Page 10

Icyimanimpaye Christine, Hafashimana Enias, Mukarugwiza Bernadette, Mukaruziga Lucretie, Nyirabagenzi Agathe, Nyirahabimana Claudine, Nyiramihigo Therese, Nyiranzafashwanimana Clementine, Nzitonda Cyprien Uhagarariwe n'umubyeyi we Icyimanimpaye Christine, Nzabonimpa Pierre, Uramukiwe Winifride [37] Urukiko Rutegetse NIL MINING Company Ltd guha Icyimanimpaye Christine indishyi ziteye zitya : Miliyoni eshanu (5.000.000Frws) z'ibangamirabukungu ; Ibihumbi mirongo itatu na Magana atandatu (30.600Frws) yaguzwe dosiye n'ibyangombwa (yagenwe ku rwego rwa mbere) ; Ibihumbi Magana arindwi (700.000Frws) y'insimburamubyizi, ingendo n'igihembo cya Avocat (yagenwe ku rwego rwa mbere). [38] Urukiko rutegetse NIL MINING Company Ltd guha SANLAM ibihumbi Magana abiri (200.000Frws) y'ikurikiranarubanza n'ibihumbi Magana arindwi (700.000Frws) y'igihembo cya Avocat (yagenwe ku rwego rwa mbere), ikanayiha ibihumbi Magana atatu (300.000Frws) y'igihembo cya Avocat n'ikurikiranarubanza mu bujurire. [39] Urukiko Rutegetse ko urubanza rwajuririwe ruhindutse kuri bimwe. [40] Urukiko Rutegetse ko ingwate y'amagarama yatanzwe na NIL MINING Company Ltd ijurira ihwanye n'ibyakozwe mu rubanza.

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