

RWANDA / JUDGMENT

## NZABAKIRA v. AGRUNI COMPANY LTD

RS/INJUST/RSOC 00007/2022/CA

## COURT

Court of Appeal

## DECIDED

20 November 2024

## CASE / FILE NUMBER

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## NZABAKIRA v. AGRUNI COMPANY LTD

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## Text

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NZABAKIRA v. AGRUNI COMPANY LTD [Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RSOC 00007/2022/CA (Munyangeri, P.J., Kamere na Ngagi, J.) 20 Ugushyingo 2024] Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Amasezerano y'ubwumvikane – Agaciro n'ingaruka z'amasezerano y'ubwumvikane – Amasezerano y'ubwumvikane yarangije gushyirwaho umukono n'ababuranyi bombi afatwa nk'ayamaze gukemura ikibazo bari bafitanye, kandi aba agomba kubahirizwa n'impande zombi zayagiranye. Incamake y'ikibazo: Nzabakira yagiranye amasezerano y'igihe kizwi na AGRUNI Ltd akora ku mwanya wa percepteur kuri station ya Rusororo, ariko biturutse kukuba hari ibyaha yakurikiranyweho byatumye afungwa, AGRUNI Ltd imwirukana ku kazi inasesa amasezerano bari bafitanye. Aho Nzabakira afunguriwe yatanze ikirego mu Rukiko rwisumbuye rwa Nyarugenge arusaba gusuzuma indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, integuza, imperekeza, indishyi zijyanye n'icyemezo cy'umukoresha atahawe, umushahara atahembwe, insimburakiruhuko atahawe, gutangirwa imisanzu y'ubwiteganyirize bw'umukozi muri RSSB n'amafaranga y'ikurikiranarubanza. Uro Rukiko rwaciye urubanza rwemeza ko ikirego cya Nzabakira kidafite ishingiro kuko atigeze asezererwa ku kazi mu buryo bunyuranyije n'amategeko ahubwo amasezerano yari afitanye na

AGRUNI Co Ltd yarangiye. Nzabakira yajuririye mu Rukiko Rukuru asaba gusuzuma niba ubujurire bwe bugomba kwakirwa bugasuzumwa n'ubwo yajuriye ku itariki ya 15/04/2019, avuga ko urubanza rwaciye ku wa 15/03/2019 rujuririrwa ku wa 15/04/2019, umunsi wa nyuma wari kuba ku wa 14/04/2019, ariko ko hari ku wa gatandatu (6), umunsi w'ikiruhuko bituma umunsi wa nyuma wo kujurira wimukira ku munsi w'akazi, bivuze ko umunsi wa nyuma wahise uba ku wa mbere taliki 16/04/2018, nk'uko amategeko abiteganya kandi ko we yatanze ubujurire bwe ku wa 15/04/2018. Anasaba Urukiko kuzasuzuma niba hatarabayeho kumwirukana mu buryo bunyuranyije n'amategeko, anasaba gusuzuma niba atari akwiye kwishyurirwa imisanzu ya RSSB, akanakurirwaho indishyi yaciye ku rwego rwa mbere. Urukiko Rukuru rwaciye urubanza rwemeza ko ubujurire bwe budafite ishingiro kuko yajuriye nyuma y'ibihe biteganywa n'amategeko. Nzabakira yandikiye Perezida w'Urukiko rw'ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane arabyemererwa, ureo rubanza ruhabwa Urukiko rw'Ubujurire kugirango abe arirwo ruzaruburanisha. Mu gihe cy'iburanisha, Urukiko rwashishikariye ababuranyi gukemura ikibazo mu bwumvikane barabyemera ndetse bakora amasezerano agaragaza ko bakemuye ikibazo cyabo mu bwumvikane. Urukiko muri uru rubanza rusuzuma agaciro kayo masezerano n'ingaruka zayo ku rubanza rwari mu Rukiko rw'Ubujurire. Incamake y'icyemezo: Amasezerano y'ubwumvikane yarangiye gushyirwaho umukono n'ababuranyi bombi afatwa nk'ayamaze gukemura ikibazo bari bafitanye, kandi aba agomba kubahirizwa n'impande zombi zayagiranye.

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Amasezerano y'ubwumvikane asoje urubanza kandi agomba kubahirizwa. Amategeko yashingiweho: Itegeko N° 22/2018 yo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9. Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Nta manza zifashishijwe

Urubanza I. IMITERERE Y'URUBANZA [1] Nzabakira Emmanuel yagiranye amasezerano y'akazi y'igihe kizwi na AGRUNI COMPANY Ltd yagombaga kumara umwaka, akora akazi ka percepteur kuri Direction ya Rusororo; ayo masezerano akaba yaragombaga kuva ku wa 14/08/2015 akarangira ku wa 14/08/2016. Mu ntangiriro y'ukwezi kwa Gicurasi 2016, Nzabakira Emmanuel yaje gukurikiranwaho n'Ubushinjacyaha icyaha cyo konona cyangwa kurigisa umutungo aragifungirwa, ariko nyuma aza kurekurwa ku wa 22/09/2016, akigizweho umwere. [2] Mu gihe Nzabakira Emmanuel yari afunzwe, AGRUNI COMPANY Ltd nk'umukoresha we yahise imwirukana mu kazi inasesa amasezerano y'akazi bari bafitanye. Amaze gufungurwa yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arusaba gusuzuma indishyi zo kwirukanwa mu buryo bunyuranyije n'amategeko, integuza, imperekeza, indishyi zijyanye n'icyemezo cy'umukoresha atahawe, umushahara atahembwe, insimbura kiruhuko atahawe, gutangirwa imisanzu y'ubwiteganyirize bw'umukozi muri RSSB n'amafaranga y'ikurikiranarubanza. [3] Ku wa 15/03/2019, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza, rwemeza ko ikirego cya Nzabakira Emmanuel nta shingiro gifite kuri byose, ko Nzabakira Emmanuel atigeze asezererwa

ku kazi mu buryo bunyuranyije n'amategeko ahubwo amasezerano yari afitanye na AGRUNI Co Ltd yarangiye. Rutegeka Nzabakira Emmanuel guha AGRUNI Co Ltd indishyi zingana na 200.000 Frw kandi ko 50.000 Frw yatanzeho ingwate y'amagarama arega mu rubanza ahwanye n'ibyarukozwemo. [4] Nzabakira Emmanuel yajuriye mu Rukiko Rukuru asaba gusuzuma niba ubujurire bwe bugomba kwakirwa bugasuzumwa n'ubwo yajuriye ku itariki ya 15/04/2019, avuga ko urubanza rwaciwe ku wa 15/03/2019 rujuririrwa ku wa 15/04/2019, umunsi wa nyuma wari kuba ku wa 14/04/2019, ariko ko hari ku wa gatandatu (6), umunsi w'ikiruhuko bituma umunsi wa nyuma wo kujurira wimukira ku munsi w'akazi, bivuze ko umunsi wa nyuma wahise uba ku wa mbere taliki 16/04/2018, nk'uko amategeko abiteganywa kandi ko we yatanze ubujurire bwe ku wa 15/04/2018. Anasaba Urukiko kuzasuzuma niba hatarabayeho kumwirukana mu buryo bunyuranyije

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n'amategeko, anasaba gusuzuma niba atari akwiye kwishyurirwa imisanzu ya RSSB, akanakurirwaho indishyi yaciwe ku rwego rwa mbere. [5] Uhagarariye AGRUNI Co Ltd yasabye ko ikirego cya Nzabakira Emmanuel kitakirwa kuko yajuriye ibihe byararenze, ntanagaragaze impapuro zo kwa muganga wemewe na Leta zigaragaza koko ko yari arwaye, cyangwa se akareba uwo atuma kubimufasha adategereje umunsi wa nyuma kuko ibirego bitangwa muri System kandi ikora amasaha yose n'iminsi yose. [6] Ku wa 30/01/2020, Urukiko Rukuru rwaciye urubanza RSOCA 00089/2019/HC/KIG, rwemeza kutakira ubujurire rwashyikirijwe na Nzabakira Emmanuel kubera ko yajuriye ibihe biteganywa n'amategeko byararenze, ko imikirize y'urubanza rwajuririwe idahindutse, Nzabakira Emmanuel ategukwa kwishyura AGRUNI Co Ltd 250.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza yiyongera ku yo yaciwe ku rwego rwa mbere. [7] Nzabakira Emmanuel ashingiye ku ngingo ya 55 (2) y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko yandikiye Perezida w'Urukiko rw'Ubujurire amusaba kwemeza ko urubanza RSOCA 00089/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 30/01/2020 rwasubirwamo ku mpamvu z'akarengane. [8] Mu cyemezo cya Perezida w'Urukiko rw'Ikirenga no 189/CJ/2022 cyo ku wa 22/09/2022, yemeza ko urubanza RSOCA 00089/2019/HC/KIG rwaciwe n'Urukiko Rukuru, rusubirwamo ku mpamvu z'akarengane kandi ko rwoherezwa mu Rukiko rw'Ubujurire rukaruburanisha. [9] Iburanisha ry'urubanza ryashyizwe ku wa 04/11/2024, ruburanishwa Nzabakira Emmanuel yunganiwe na Me Ruganza BIN Seba, AGRUNI COMPANY Ltd ihagarariwe na Me Habinshuti Norbert, Urukiko rushishikariza ababuranyi kurangiza ikibazo bafitanye mu bwumvikane barabyemera, iburanisha rirasubikwa kugira ngo bajye mu biganiro byo kurangiza ikibazo mu bwumvikane, bamenyeshwa ko nibumvikana icyemezo kizasomwa ku wa 20/11/2024, ubwumvikane butashoboka iburanisha rigakomeza uwo munsi. Ibiganiro byarangiye bemeye kurangiza ikibazo bafitanye mu bwumvikane, bagira n'ibyo bemeranwaho mu masezerano bagiranye ku wa 19/11/2024. [10] Hashingiye ku miterere n'imigendekere y'uru rubanza imaze gusobanurwa haruguru, hagiye gusuzumwa agaciro k'ayo masezerano y'ubwumvikane yabaye hagati y'ababuranyi n'ingaruka zayo ku rubanza RS/INJUST/RSOC 00007/2022/CA rwari mu Rukiko rw'Ubujurire. II. ISESENGURA RY'IKIBAZO KIGIZE URU RUBANZA Kumenya agaciro k'amasezerano y'ubwumvikane yabaye ku wa 19/11/2024 hagati y'ababuranyi bombi n'ingaruka

zayo ku rubanza RS/INJUST/RSOC 00007/2022/CA rwari mu Rukiko rw'Ubujurire [11] Ingingo ya 9, igika cya gatatu, y'Itegeko N° 22/2018 yo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets, iteganya ibikurikira:

"Umucamanza ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko ari bwo buryo buboneye mu kurangiza impaka. Ashobora kubunga ubwe cyangwa akabohereza mu bwunzi, agasubika urubanza mu gihe ubwunzi burimo gukorwa".

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[12] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ibikurikira: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye". [13] Nk'uko byasobanuwe haruguru, mu iburanisha ryo ku wa 04/11/2024 ababuranyi bashishikarijwe n'Urukiko gukemura mu bwumvikane impaka bafitanye, barabyemera, Urukiko rusubika urubanza mu gihe ubwumvikane bwari bukorwa, nk'uko biteganywa n'ingingo ya 9, igika cya 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 yibukijwe haruguru. [14] Mu butumwa ababuranyi bashyize muri dosiye ku wa 19/11/2024, ababuranyi bese bashimangiye ko bamaze kumvikana mu masezerano bagiranye ku wa 19/11/2024, ubwo bwumvikane bukaba bugamije gusoza urubanza bari bafitanye muri uru Rukiko nk'uko byari byifujwe mu iburanisha riheruka ryo ku wa 04/11/2024. Mu masezerano yo kwikiranura bashyize muri dosiye AGRUNI Ltd yemeye gukuriraho Nzabakira Emmanuel amafaranga yose yagiye acibwa mu manza zabanjirije uru, kuko yari yatsinzwe, ndetse ikamuha sheki y'amafaranga ibihumbi magana abiri (200.000 Frw) agomba kwishyurwa ku wa 26/11/2024, bityo na we akaba nta kindi agomba kongera gusaba AGRUNI Ltd. [15] Ku byerekeye amasezerano y'ubwumvikane yashyizweho umukono n'ababuranyi bombi ku wa 19/11/2024, Urukiko rurasanga yarakemuye ikibazo ababuranyi bari bafitanye akaba rero asoje urubanza RS/INJUST/RSOC 00007/2022/CA rwari mu Rukiko rw'Ubujurire hagati ya Nzabakira Emmanuel na AGRUNI Company Ltd, kandi akaba agomba kubahirizwa n'imipande zombi zayangiranye nk'uko biteganywa n'ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano yibukijwe haruguru. III. ICYEMEZO CY'URUKIKO [16] Rwemeje ko amasezerano y'ubwumvikane yabaye ku wa 19/11/2024 hagati ya Nzabakira Emmanuel na AGRUNI Company Ltd asoje urubanza RS/INJUST/RSOC 00007/2022/CA rwari mu Rukiko rw'Ubujurire kandi akaba agomba kubahirizwa. [17] Ruvuze ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

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