

RWANDA / JUDGMENT

NZABAMWITA N'ABANDI v. STIPPAG RWANDA

RCOMAA 0003/13/CS

COURT

Supreme Court

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NZABAMWITA N'ABANDI v. STIPPAG RWANDA

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Text

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NZABAMWITA N'ABANDI v. STIPPAG RWANDA [Rwanda URUKIKO RW'IKIRENGA – 2013SC – RCOMAA 0003/13/CS (Mutashya, P.J., Mukanyundo na Kayitesi, J.) Kuwa 17 Mutarama 2013] Amategeko y'Ubucuruzi – Amasezerano y'ubwubatsi – Agaciro k'amasezerano akozwe mu izina ry'ubucuruzi rikoresha n'abantu ku giti cyabo aho kuba sosiyete bahuriyeho – Iyo mubagiranye amasezerano, buri wese yasinye ku giti cye, ntashobora gufatwa gufatwa nk'udafite ubushobozi mu gihe ntawe itegeko ryagize imburabushozi – Ntawe ushobora gusaba gutesha agaciro amasezerano kubera inenge afite kandi yarayirenzeho akayubahiriza, kabone n'iyi ryaba ari ikosa riri mu myandikire y'amasezerano. Itegeko N°21/2012 ryo kuwa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'izubutegets, ingingo ya 91 n'ya 96, – Iteka ryo kuwa 30/07/1888, rishyiraho igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano: ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 8 n'ya 23. Incamake y'ikibazo: Abajurirye bagiranye amasezerano yo kubakira uregwa amazu 60, yakuzura, akayagurisha bagasangira inyungu, uregwa agafata 60%, naho

abajuririye bagafata 40%. Muri ayo masezerano bateganyije ko impaka zizavuka zizakemurwa ku bwumvikane, byananirana zigakemurwa n'abakempurampaka. Ishyirwa mu bikorwa ry'amasezerano bagiranye ryateje impaka, abajuririye barega uwarezwe mu rukiko nkempurampaka, urwo rukiko rufata icyemezo ruvuga ko ikirego cyabo gifite ishingiro kuri bimwe. Uregwa yajuririye mu Rukiko Rukuru rw'Ubucuruzi, rutegeka ko icyemezo cy'ubukemurampaka kivanwaho, ruvuga ko amasezerano yateganyaga ubukemurampaka yakozwe mu buryo bunyuranyije n'amategeko. Abajuririye nabo bajurira mu Rukiko rw'Ikirenga bavuga ko umucamanza yafashe ibintu uko bitari, bavuga kandi ko umucamanza ntacyo yavuze ku myiregurire yabo. Incamake y'icyemezo: 1. Uregwa ntaho yahera avuga ko sosiyete y'umwe mu bajuririye yari ihagarariwe n'abamureze bombi, kuko hashingiwe ku nyandiko zitandukanye ziri muri dosiye zigaragaza ko aho kuba sosiyete bombi bahuriyeho, ari izina ry'ubucuruzi rikoreshe n'umwe uyihagarariye, kubera ko iramutse ari sosiyete, ikaba itahagararirwa n'abantu babiri, kandi uregwa yabishyuraga buri wese kuri konti ye bwite. ibi bigaragaza ko abarega aribo bagiranye amasezerano n'uregwa buri wese ku giti cye bitari ku izina rya sosiyete. Uregwa ntiyavugaga ko atagirana amasezerano n'abantu badafite ububasha kuko bahagarariye sosiyete idafite ubuzima gatozi mu gihe iyo itegeko ritamugize imburabushobozi, umuntu wese afite ubushobozi bwo gukora amasezerano.

2. Uregwa ntiyasaba iseswa ry'amasezerano kubera inenge zirimo kabone n'iyi ryaba gusa ari ikosa riri mu myandikire y'amasezerano umwe mu bayagiranye akarirenga akayubahiriza, ikindi kandi ibyangombwa kugira ngo amasezerano agire agaciro ari byo: ukwiyemerera kw'ugomba kuzuza inshingano ariyo (consentement), ubushobozi bwo gukora isezzerano ari yo (capacité), Ikintu kidashidikanywa ari na cyo remezo ry'isezerano (objet), n'impanvu itanyuranye n'amategeko muri iyo nshingano ari yo (cause) bikaba byarubahirijwe.

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Ubujurire bufite ishingiro. icyemezo cy'ubukemurampaka kigumye. Amagarama y'urubanza aherera ku regwa. Amategeko yashingiweho: Itegeko N° 21/2012 ryo kuwa 14/06/2012, ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 96 Itegeko N°18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 91. Iteka ryo kuwa 30/07/1888 rishyira ho igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano kuberekeye imirimo nshinganwa, ingingo ya 8, n'ya 23. Nta manza zifashishijwe. Ibitekerezo by'abahanga: Encyclopédie Dalloz, Confirmation, Civil III, 2e éd., 1991, p 3. Urubanza I. IMITERERE Y'URUBANZA

- [1] Kuwa 07/03/2003 STIPPAG SARL ubu yahindutse STIPPAG RWANDA yagiranye amasezerano na NZABAMWITA Emile (akoresha ARGEC nk'izina ry'ubucuruzi) na RURANGIRWA Célestin, aba uko ari babiri bemera inshingano zo kubakira STIPPAG RWANDA mu kibanza cyayo no 811 kiri ku Gisozi amazu 60 yakuzura ikayagurisha, inyungu zigasangirwa, STIPPAG RWANDA igafata 60%, NZABAMWITA Emile na RURANGIRWA Célestin bagafata 40%. Muri ayo masezerano bateganyijemo kandi ko impaka zizavuka mu ishyirwa mu bikorwa ryayo

zizakemurwa ku bwumvikane, byananirana ikibazo kigakemurwa n' Abakemurampaka

- [2] Ishyirwa mu bikorwa ry'ayo masezerano ryaje guteza impaka, NZABAMWITA Emile na RURANGIRWA Célestin barega STIPPAG mu Rukiko Nkemurampaka, rufata icyemezo kuwa 01/8/2012, ruvuga ko ikirego cyabo gifite ishingiro kuri bimwe, rutegeka STIPPAG kubishyura 212.234.198 Frw hamaze kuvanwamo 30% y'umusoro ku nyungu, 750.000 Frw y'Abagenagaciro na 7.800.000 Frw yasigaye ku gihembo cy'Abakemurampaka, rutegeka kandi RURANGIRWA Célestin na NZABAMWITA Emile kwishyura 750.000 Frw y'Abagenagaciro na 7.800.000 Frw yasigaye ku gihembo cy'Abakemurampaka.
- [3] STIPPAG RWANDA yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi ruca urubanza RCOMA 0301/12/HCC kuwa 28/02/2013 rutegeka ko icyemezo cy'ubukemurampaka kivanwaho, rusobanura ko amasezerano yateganyaga ubukemurampaka yakozwe mu buryo bunyuranyije n'amategeko ngo kuko Entreprise ARGEC yagiranye na STIPPAG RWANDA ayo masezerano itari ifite ububasha bwo kuyakora kubera ko nta buzima gatozi ifite, runavuga ko NZABAMWITA na RURANGIRWA bashobora gusaba ko amazu batunze yanditse kuri STIPPAG abandikwaho.

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- [4] NZABAMWITA na RURANGIRWA bahagarariwe na Me RUKANGIRA Emmanuel bajuririye urwo rubanza mu Rukiko rw'Ikirenga bavuga ko umucamanza yafashe ibintu uko bitari ngo kuko yitiranye ARGEC na sosiyete kandi ari izina ry'ubucuruzi rya NZABAMWITA ridafite aho rihuriye na RURANGIRWA Célestin, ko kandi kurikoresha bitagombaga kuba ari uko ifite ubuzima gatozi.
- [5] Bavuga kandi ko umucamanza ntacyo yavuze ku myiregurire ya NZABAMWITA Emile akanacira urubanza ku kitaregewe (statuer ultrapetita).
- [6] Urubanza rwaburanishijwe mu ruhamwe kuwa 03/09/2013, ariko mbere yo kwinjira mu mizi, Urukiko rw'Ikirenga rubanza gusuzuma inzitizi y'iburabubasha yari yatanze n'uburanira STIPPAG RWANDA, rwemeza ko ubujurire bwayo buri mu bubasha bwari, rusobanura ko uru rubanza rwaciye mu rwego rwa mbere n'Urukiko Rukuru rw'Ubucuruzi kuko ubukemurampaka budafatwa nk'urukiko. Iburanisha ry'urubanza mu mizi ryabaye kuwa 03/12/2013, NZABAMWITA Emile na RURANGIRWA Célestin bunganiwe na Me Rukangira Emmanuel na Me Buzayire Angèle naho STIPPAG ihagarariwe na Gahunde Mafutamingi wunganirwa na Me Rutabingwa Athanase. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
1. Kumenya abo STIPPAG yagiranye nabo amasezerano n' agaciro k'ayo.
- [7] Me RUKANGIRA uhagarariye NZABAMWITA Emile na RURANGIRWA Célestin avuga ko umucamanza yafashe ARGEC nka sosiyete kandi ari izina ry'ubucuruzi (nom commercial) rikoreshe na NZABAMWITA Emile wenyine, naho RURANGIRWA Célestin akaba yarasinye mu izina rye bwite, ko rero amasezerano agibwaho impaka yabaye hagati ya STIPPAG RWANDA na NZABAMWITA Emile hamwe na RURANGIRWA Célestin.

- [8] Avuga kandi ko STIPPAG RWANDA yashyize umukono kuri ayo masezerano izi neza ko idasinyanye na sosiyete kuko iyo isanga igiye gusinyana na sosiyete, hari ibindi byangombwa yari gusaba mbere yo gusinya. Avuga ko ikindi kigaragaza ko itasinye na ARGEC, ahubwo yasinyanye na NZABAMWITA Emile na RURANGIRWA Célestin, buri wese ku giti cye ari uko iyo yabandikiraga, yandikiraga buri wese ku giti cye, ko kandi itigeze yandikira ARGEC.
- [9] Avuga na none ko STIPPAG RWANDA yabishyuraga buri wese kuri konti ye afite muri Banque de Kigali (BK), Nzabamwita Emile ikamwishyura kuri konti ye yitwa ARGEC/Nzabamwita, naho Rurangirwa Célestin ikamwishyura kuri konti ye bwite imwanditseho.
- [10] Abahagarariye NZABAMWITA na RURANGIRWA bavuga kandi ko umucamanza ntacyo yavuze ku myiregurire yabo, aho bagaragaje ko mu gihe mu masezerano haba harimo inenge ariko uyibutsa akaba yarayirenzeho akayubahiriza, atahindukira ngo asabe ko yateshwa agaciro, ko ibyo babishingira ku biteganywa n'ingingo 1 ya 96 y'Itegeko No 21/2012 ryo kuwa 14/06/2012 1 Ingingo ya 96 y'Itegeko No 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo z'ubutegetsi iteganya ko "Ntawe ushobora gusaba gutesha agaciro amasezerano kubera inenge afite kandi yarayirenzeho akayubahiriza".

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ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

- [11] Me RUTABINGWA Célestin uhagarariye STIPPAG RWANDA avuga ko bigaragara mu masezerano yabaye kuwa 07/03/2003 hagati ya STIPPAG yari ihagarariwe na Gahunde Mafutamingi na Entreprise ARGEC ihagarariwe na NZABAMWITA Emile na RURANGIRWA Célestin, ko batanditse ``prestataires`` mu bwinshi, ahubwo handitswe ``prestateur``, bivuze rero ko ari ARGEC yari ihagarariwe na bombi, ko ndetse no mu nama yo kuwa 19/12/2011 yateguraga urubanza rw'Abakemurampaka, STIPPAG RWANDA yanze gusinya kuko yavugaga ko itagirana amasezerano n'abantu badafite ububasha kubera ko bahagarariye sosiyete idafite ubuzima gatozi, ko rero atari ubwa mbere iki kibazo kivuzwe.
- [12] Ku bijyanye no kuba STIPPAG yarishyuraga amafaranga kuri konti zabo bwite, Me Rutabingwa avuga ko ibyo bitagaragaza ko NZABAMWITA Emile na RURANGIRWA Célestin batari bahuriye muri ARGEC, kuko icyangombwa ari uko bari kwishyurwa hatitawe aho amafaranga yanyuzwa.
- [13] Ku bijyanye no kuba STIPPAG RWANDA yarubahirije ayo masezerano ikaba itabirengaho ngo iyanenge ko nta gaciro afite, Me RUTABINGWA avuga ko uru Rukiko rwakwemeza ko ibyo bireba uwubahirije amasezerano azi neza ko afite inenge, ariko ko we n'uwo aburanira bamenye iyo nenge ari uko bagiye mu bukemurampaka, ko kandi mbere ya "Convention du 07/03/2003", impande zombi zagiye zikorana nta masezerano zigiranye.

[14] Akomeza avuga kandi ko nta kibuzwa ko igihe cyose umuntu yamenye ko amasezerano arimo inenge yayasabira iseswa, ko n'iyi ngingo ya 96 y'Itegeko No 21/2012 ryo kuwa 14/06/2012 rivuzwe haruguru ishingirwaho iri mu itegeko ryasohotse nyuma y'uko ayo masezerano avugwa ashyiriweho umukono, ko rero itareba ibyakozwe mbere y'uko iryo tegeko rijyaho. Uko Urukiko rubibona

a. Ku byerekeye kumenya abo STIPPAG RWANDA yagiranye amasezerano nabo.

[15] Mu nyandiko zitandukanye ziri muri dosiye, haherewe kuri ``Convention du 07 Mars 2003`` ubwayo, uburyo abayisinyeho banditse ``ARGECE représentée par NZABAMWITA Emile et RURANGIRWA Célestin, bigaragara ko [et] itandukanya RURANGIRWA Célestin na ARGECE ihagarariwe na NZABAMWITA Emile kuko mu buryo busobanutse ARGECE niyo yaba ari sosiyete, idashobora guhagararirwa n'abantu babiri, harebwe kandi ``Acte de mission dans l'affaire`` Célestin RURANGIRWA Célestin et Emile NZABAMWITA Emile (ARGECE), na none bigaragara neza ko ARGECE ari umwihariko wa NZABAMWITA Emile, iyo bitaba ibyo, hari kubanza kwandikwa ``ARGECE`` hagakurikiraho abo STIPPAG RWANDA ivuga ko bayihagarariye bese kandi bitanashoboka.

[16] Bigaragara kandi hepfo gato kuri ``Acte de Mission`` yahawe Abakemurampaka ibikurikira :
En cause:

1. Célestin RURANGIRWA.....

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2. Emile NZABAMWITA, kuba hari N° 1) na 2), nabyo ni ikimenyetso cyerekana ko abafatanyije na STIPPAG RWANDA guha Abakemurampaka inshingano (acte de mission) ari abantu babiri batandukanye. Ku rupapuro rwa nyuma rw'iyi ``Acte de mission, impande zasinyeho ni NZABAMWITA Emile (ARGECE) ku giti cye na RURANGIRWA Célestin, ibi kandi ni nako bigaragara ku cyemezo cy'Inteko-Nkemurampaka, ko n'Abakemurampaka ubwabo batigeze bafata NZABAMWITA Emile na RURANGIRWA Célestin nk'abagize ARGECE banayihagarariye.

[17] Urukiko rusanga rero hashingiwe ku nyandiko zitandukanye ziri muri dosiye, ARGECE itandukanye na RURANGIRWA Célestin, ko ahubwo ari izina ry'ubucuruzi rikoreshewa na NZABAMWITA Emile aho kuba sosiyeti ahuriyeho na RURANGIRWA Célestin nk'uko uburanira STIPPAG RWANDA abivuga, ko kandi iramutse ari sosiyete, ikaba itahagararirwa n'abantu babiri nk'uko byasobanuwe. Ibi kandi na none bigaragazwa n'uko na STIPPAG RWANDA idahakana ko yabishyuriraga buri wese kuri konti ye bwite, ariko NZABAMWITA Emile akishyurwa kuri konti ye muri Banki ya Kigali (BK) yitwa ARGECE/NZABAMWITA, Urukiko rukaba rusanga abagiranye amasezerano na STIPPAG RWANDA atari ARGECE ahubwo ari NZABAMWITA Emile na RURANGIRWA Célestin buri wese ku giti cye.

b. Ku birebana n'agaciro k'amasezerano yabaye hagati ya STIPPAG RWANDA na NZABAMWITA Emile (ARGECE) na RURANGIRWA Célestin.

- [18] Ku birebana n'agaciro k'amasezerano, ingingo ya 8 y'Iteka ryo kuwa 30 Nyakanga 1888 rishyiraho Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano ku byerekeye imirimo nshinganwa cyangwa amasezerano ryakoreshwaga amasezerano ashwirwaho umukono iteganya ``ibyangombwa by'iremezo kugira ngo amasezerano agire agaciro ari bikurikira: (1) ukwiyemerera kw'ugomba kuzuza inshingano (consentement), (2) ubushobozi bwo gukora isezerano (capacité), (3) ikintu kidashidikanywa ari na cyo remezo ry'isezerano (objet) (4) n'impamvu itanyuranye n'amategeko muri iyo nshingano (cause)``. Naho iya 23 y'iryo Teka ikavuga ko ``Umuntu wese afite ubushobozi bwo gusezerana iyo itegeko ritamugize imburabushobozi``.
- [19] Hashingiwe ku biteganywa n'izi ngingo, Urukiko rusanga kuvuga ko RURANGIRWA Célestin na NZABAMWITA Emile nta bushobozi bari bifite bwo gukora amasezerano (absence de capacité), nta shingiro ryabyo kuko yaba RURANGIRWA Célestin cyangwa NZABAMWITA Emile/ARGECE bombi babifitiye ubushobozi mu gihe ntawe itegeko ryagize imburabushobozi kandi buri wese akaba yarayasinze ku giti cye atari mu izina rya ``ARGECE`` nk'uko byasobanurwa haruguru.
- [20] Urukiko rusanga kandi niyo aya masezerano aza kuba afite inenge, kuba STIPPAG yarayashyize mu bikorwa bigaragaza ko yemeye kwirengera iyo nenge (confirmation tacite), ubwabyo akaba ari impamvu ihagije ituma atashyirwa agaciro hashingiwe ku biteganywa n'ingingo ya 96 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo z'ubutegetsi iteganya ko ``Ntawe ushobora gusaba gutesha agaciro amasezerano kubera inenge afite kandi yarayirenzeho akayubahiriza``, kabone n'iyi ryaba gusa ari ikosa riri mu myandikire y'amasezerano umwe mu bayagiranye akarirengaho akayubahiriza, hashingiwe ku byateganywaga n'ingingo ya 91 y'Itegeko N° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryariho icyo gihe; ibi kandi ni nako abahanga mu

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mategeko babivugaga ko uwiyeje kubahiriza amasezerano afite inenge, ingaruka bigira ari uko aya masezerano adashyirwa agaciro.

- [21] Hashingiwe kuri ibyo bisobanurwa byose, Urukiko rusanga rero amasezerano yo kuwa 07/03/2003 (Convention du 07/03/2003) hagati ya STIPPAG RWANDA na NZABAMWITA Emile/ARGECE na RURANGIRWA Célestin afite agaciro kuko abayagiranye bari bafite ubushobozi (capacité) bwo gukora amasezerano, ubujurire bwa NZABAMWITA Emile/ARGECE na RURANGIRWA Célestin bufite ishingiro, imikirize y'urubanza rwaciye n'Urukiko Rukuru rw'Ubucuruzi ikaba igomba guhinduka. Urukiko rusanga atari ngombwa ko hagira ikindi gusuzumwa. III. ICYEMEZO CY'URUKIKO
- [22] Rwemeje ko ubujurire bwa RURANGIRWA Célestin na NZABAMWITA Emile/ARGECE bufite ishingiro;

- [23] Rwemeje ko imikirize y'urubanza RCOMA0301/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 28/02/2013 ihindutse, hakagumaho icyemezo cy'ubukemurampaka;
- [24] Rutegetse STIPPAG RWANDA kwishyura amagarama y'urubanza angana na 12.100 Frw, itayatanga mu minsi umunani akavanwa mu byayo ku ngufu za Leta. 2 La confirmation tacite est celle qui résulte de l'attitude de la partie à laquelle il appartient de se prévaloir de la nullité.....forme de confirmation tacite : l'exécution volontaire de l'obligation annulable (voir Encyclopédie Dalloz, Civil III, 2ème éd., 1991, Confirmation, p 3. 3 Idem, p.4. : la confirmation rend inattaquable par son auteur l'acte confirmé.

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