

RWANDA / JUDGMENT

ORACION TRADING LTD v SANLAM

RCA00080/2022/HC/MUS

COURT

High Court

DECIDED

16 August 2023

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ORACION TRADING LTD v SANLAM

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Text

Page 1

ORACION TRADING LTD v SANLAM [Rwanda URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA00080/2022/HC/MUS (Rutikanga, P.J.) 16 Kanama 2023] Itegeko rigena ububasha bw’Inkiko – ububasha bw’Urukiko rw’Ubucuruzi – Ubwishingizi – Urukiko rwubucuruzi ruburanisha impaka zerekeye ubwishingizi ariko hatarimo izerekeye indishyi z’impanuka zisabwa amasosiyete y’ubwishingizi n’abadafitanye amasezerano na yo. Incamake y’ikibazo : Uru rubanza rwatangiye sosiyete ORACION Trading Ltd irega Sanlam mu Rukiko Rwisumbuye rwa Rubavu kubera impanuka imodoka yayo RAE969Z yakoze igeze mu murenge wa Nyamyumba, Akarere ka Rubavu ihetse imifuka ya sima Magana arindwi (700) ikangirika. SANLAM yatanze inzitizi yo kutakira ikirego avuga ko amasezerano bagiranye atasuzumwa n’Urukiko rwisumbuye rwa Rubavu kuko ashingiye ku mpamvu z’ubucuruzi, ko ikirego cyatanzwe kiri mu bubasha bw’Urukiko rw’Ubucuruzi ko icyishingiwe ari imizigo yari itwawe niyo modoka Uhagarariye Oracion Trading Ltd yavuze ko SANLAM yitiranya uburyozwe buturuka ku kutubahiriza amasezerano n’uburyozwe bw’ubwishingire. Avuga ko icyo ORACION yaregeye ari Uburyozwe bw’ibyayo byangijwe n’ikinyabiziga cyishingiwe na SANLAM, ko icyaregewe kidashingiye ku masezerano. Urukiko Rwisumbuye rwa Rubavu mu rubanza RC00036/2022/TGI/RBV, rwagaragaje ko mu kirego cya

ORACION, ivuga ko imifuka ya sima yangiritse ari iyari ihetswe n'imodoka, kandi ubwishingizi SANLAM yagombaga gutanga akaba ari ubw'ibyangijwe n'imodoka bindi bitari ibiri mu modoka, bityo rwemeza ko kuba sima zangiritse zari zipakiwe n' imodoka, rudafite ububasha bwo kuburanisha icyo kirego, kuko kiri mu bubasha bw'Urukiko rw'ubucuruzi. Uburanira ORACION avuga ko Urukiko Rwisumbuye rwa Rubavu rwemeje ko rwibeshye rukemeza ko rudafite ububasha, rwitiranya ibintu uko bitari kuko ngo icyaregawe ari iyangirika ry'imifuka 700 yari hasi hamwe n'indi mike byari kumwe yahubutse mu modoka ikagwa hasi imodoka ikayinyura hejuru ikangirika, asaba Urukiko rwajuririwe kubikosora rukemeza ko Urukiko Rwisumbuye rwa Rubavu rwari rufite ububasha kuko nta masezerano y'ubucuruzi ORACION yagiranye na SANLAM. Uburanira SANLAM nawe yemera ko Urukiko rwisumbuye rwa Rubavu rwari rufite ububasha asaba ko ikirego cyasubizwa muri urwo Rukiko. Urukiko mu rubanza RCA00080/2022/HC/MUS rwemeje ko ikirego cya ORACION Trading Ltd yari yatanze mu rukiko rwisumbuye rwa Rubavu cyaragombaga kwakirwa kigasuzumwa, ruvuga ko urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ruteshwa agaciro, maze urwo Rukiko rugategekwa kwakira ikirego rwari rwashyikirijwe na ORACION Trading Ltd, kuko ORACION Trading Ltd idafitanye amasezerano na Sanlam. Incamake y'icyemezo : Urukiko rwubucuruzi ruburanisha impaka zerekeye ubwishingizi ariko hatarimo izerekeye indishyi z'impanuka zisabwa amasosiyete y'ubwishingizi n'abafitanye amasezerano na yo. Bityo kuba imodoka ipakiye ibicuruzwa bikangirika kandi ari ibya sosiyete idafitanye amasezerano na sosiyete yishingiye iyo modoka, Urukiko Rwisumbuye nirwo rufite ububasha. Ubujurire bufite ishingiye. Amategeko yashyirahweho: Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, Ingingo ya 81

Page 2

Itegeko No22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 158 Nta manza zifashishijwe. Urubanza. I. IMITERERE Y'URUBANZA [1] Ku wa 11/10/2021, imodoka yo mu bwoko bwa camion ifite plaque RAE969Z ya sosiyete ORACION Trading Ltd igeze mu mudugudu wa Rushagara, akagari ka Rubona, Umurenge wa Nyampumba, Akarere ka Rubavu yakoze impanuka ihetse imifuka ya sima Magana arindwi (700) irangirika. [2] Oracion Trading Ltd yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu irega SANLAM umwishingizi wiyo kamyo kugira ngo irihe izo sima zangiritse. Mu gihe baburanaga mu Rukiko Rwisumbuye rwa Rubavu, uhagarariye SANLAM yatanze inzitizi yo kutakira ikirego avuga ko amasezerano bagiranye atasuzumwa n'Urukiko rwisumbuye rwa Rubavu kuko ashingiye ku mpamvu z'ubucuruzi, ko ikirego cyatanzwe kiri mu bubasha bw'Urukiko rw'Ubucuruzi ko icyishingiye ari imizigo yari itwawe niyo modoka. [3] Me Nsabimana Jean Damascene waburanaga ahagarariye ORACION TRADING LTD yavuze ko SANLAM yitiranye uburyozwe buturuka ku kutubahiriza amasezerano n'uburyozwe bw'ubwishingire. Avuga ko icyo ORACION yaregeye ari Uburyozwe bw'ibyayo byangijwe n'ikinyabiziga cyishingiye na SANLAM, ko baregera uburyozwe bw'ubwishingire, ko icyaregawe kidashingiye ku masezerano, ko iyo kiba gishingiye ku masezerano ntabwo baba baregeye Urukiko Rwisumbuye rwa Rubavu. [4] Urukiko Rwisumbuye rwa Rubavu, rwagaragaje ko mu kirego cya ORACION, ivuga ko imifuka ya sima yangiritse ari iyari ihetswe n'imodoka, kandi

ubwishingizi SANLAM yagombaga gutanga akaba ari ubw'ibyangijwe n'imodoka bindi bitari ibiri mu modoka, ko ibyo bihuye n'ibiteganywa mu gace ka 5 k' ingingo ya 81 y'itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko ibirego byerekeye indishyi z'impanuka zisabwa amasosiyete y'ubwishingizi n'abadafitanye amasezerano na yo biregerwa inkiko zisanzwe. Urukiko rwagaragaje ko kuba sima zangiritse zari zipakiwe n' imodoka ziri mu modoka imbere, ibyo byatumye rwemeza ko nta bubasha rufite bwo kuburanisha icyo kirego, kuko kiri mu bubasha bw'Urukiko rw'ubucuruzi. [5] Uburanira ORACION Me Callixte yajurirye icyo cyemezo mu Rukiko Rukuru Urugereko rwa Musanze avuga ko Urukiko Rwisumbuye rwa Rubavu rwafashe icyemezo ruvuga ko rudafite ububasha ngo kuko icyaregewe gishingiye ku buryozwe bw'indishyi z'imifuka ya sima 700 yari mu modoka,ko rwasesenguye nabi rwitiranya ibintu uko bitari kuko ngo icyaregewe ari iyangirika ry'imifuka 700 yari hasi hamwe n'indi mike byari kumwe yahubutse mu modoka ikagwa hasi imodoka ikayinyura hejuru ikangirika, asaba Urukiko rwajuririwe rukabikosora rukemeza ko Urukiko Rwisumbuye rwa Rubavu rwari rufite ububasha kuko nta masezerano y'ubucuruzi ORACION yagiranye na SANLAM. [6] Me Gratien uburanira SANLAM nawe yemera ko Urukiko rwisumbuye rwa Rubavu rwari rufite ububasha asaba ko ikirego cyasubizwa muri urwo rukiko rugasuzuma ikirego rwashyikirijwe. [7] Urukiko rusanga hakwiye gusuzumwa kumenye niba ikirego cyatanzwe cyari mu bubasha bw'Urukiko Rwisumbuye rwa Rubavu.

Page 3

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba ikirego cyatanzwe cyari mu bubasha bw'Urukiko Rwisumbuye rwa Rubavu. [8] Me Ahishakiye Callixte uburanira ORACION Trading Ltd avuga ko impamvu z'ubujurire ni uko Urukiko rwafashe icyemezo nkaho ibyo baregeraga byari bishingiye ku masezerano kandi nta masezerano bafitanye na SANLAM ko ahubwo ari umuburanyi utaragiranye amasezerano(tierce Personne) waregaga, ko ibirego birebana n'impanuka biregerwa inkiko zisanzwe kandi nabo nicyo baregera, ko Urukiko rwiya mbuye ububasha kandi nyamara rufite ububasha, asaba Urukiko gutegeka ko Urukiko Rwisumbuye rwari rufite ububasha rugakuraho icyemezo rwafashe rukarutegeka kwakira ikirego rukagisuzuma; [9] Me Nkiranuye Gratien uburanira SANLAM avuga ko nawe yemeranywa n'uburanira ORACION, ko Urukiko rwisumbuye rwa Rubavu rwari rufite ububasha, ibisobanuro rwatanze ko atari byo, ko ibyakozwe ntaho bihuriye n'amasezerano y'ubwishingizi. UKO URUKIKO RUBIBONA [10] Ingingo ya 81 y'itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko Haseguriwe ibivugwa mu ngingo ya 27, agace ka 4o, Urukiko rw'Ubucuruzi ruburanisha mu rwego rwa mbere imanza zose z'ubucuruzi, iz'imari, iz'imisoro n'ibindi bibazo bifitanye isano nabyo byerekeye(50) impaka zerekeye ubwishingizi havanywemo izerekeye indishyi z'impanuka zisabwa amasosiyete y'ubwishingizi n'abadafitanye amasezerano na yo; [11] Urukiko rusanga ibikubiye muri iyo ngingo agace ka 5 byumvikanisha ko Urukiko rwubucuruzi ruburanisha impaka zerekeye ubwishingizi ariko hatarimo izerekeye indishyi z'impanuka zisabwa amasosiyete y'ubwishingizi n'abadafitanye amasezerano na yo; [12] Urukiko rubona Me Ahishakiye Callixte uburanira ORACION Trading Ltd avuga ko ORACION Trading Ltd nta masezerano ifitanye na SANLAM, byumvikanisha ko Urukiko rw'ubucuruzi rudafite ububasha

bwo kumuburanisha kuko nta masezerano bafitanye, ibi bikaba binemeweza n'uburanira SANLAM, Me Nkiranuye Gratien nawe uvuga ko Urukiko rwari rufite ububasha ari Urukiko rwisumbuye rwa Rubavu, bigaragara rero ko Urukiko rwisumbuye rwa Rubavu rwiya mbuye ububasha kandi rubufite. [13] Ingingo ya 158 y'Itegeko No22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Iyo Urukiko rwajuririwe rusanze urubanza rwararegewe mu rwego rwa mbere mu buryo budakurikije amategeko cyangwa rwararegeye urukiko rudafite ububasha, nyamara urwo rukiko rukaba rwafashe icyemezo cyo kurwakira kandi rutaragombaga kurwakira, Urukiko rwajuririrwe rwakira ubwo bujuriye, rukagaragaza ko urwo rubanza rwajuririwe rwari rwararegewe Urukiko rwa mbere mu buryo bunyuranyije n'amategeko, rugatesha agaciro ibyemezo byose byashingiye kuri iryo kosa; ubifitemo inyungu akaba yakongera agatanga ikirego bundi bushya. Nyamara, iyo Urukiko rwajuririwe rusanze urubanza rwari rwaregewe mu buryo bukurikije amategeko Urukiko rwaruciye ku rwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, Urukiko rwajuririwe rurarwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere; rukarutesha agaciro maze rukarusubiza Urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi, nta yindi ngwate y'amagarama itanzwe. Urukiko rwohererejwe uru rubanza ntirushobora kwanga kuruburanisha rwitwaje ko rwafashe icyemezo kuri iryo burububasha ; [14] Hakurikijwe ibyagaragajwe, Urukiko rusanga ikirego cya Oracion Trading Ltd yari yatanze mu rukiko rwisumbuye rwa Rubavu cyaragombaga kwakirwa kigasuzumwa, bityo kuba ikirego

Page 4

kitarakiriwe kandi nyamara cyaragombaga kwakirwa, ibyo bituma urwo rubanza RC00036/2022/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 13/10/2022 ruteshwa agaciro, maze Urukiko rwisumbuye rwa Rubavu rugategekwa kwakira ikirego rwari rwashyikirijwe na ORACION Trading Ltd rukagisuzuma . III. ICYEMEZO CY'URUKIKO [15] Rwemeje ko ubujuriye bwatanzwe na ORACION Trading Ltd bufite ishingiro. [16] Rwemeje ko urubanza RC00036/2022/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 13/10/2022, ruteshejwe agaciro; [17] Rutegetse Urukiko Rwisumbuye rwa Rubavu, kwakira ikirego rwari rwashyikirijwe na ORACION Trading Ltd mu rubanza RC00036/2022/TGI/RBV rwaciwe ku wa 13/10/2022 rukagisuzuma. [18] Ruvuze ko ingwate y'igarama yatanze ahwanye n'ibyakozwe mu rubanza.

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