

RWANDA / JUDGMENT

ORACLE ENTREPRISES Ltd v. ECOBANK Ltd

RCOMAA 0009/14/CS

COURT

Supreme Court

DECIDED

2 October 2015

CASE / FILE NUMBER

RCOMAA 0009/14/CS

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ORACLE ENTREPRISES Ltd v. ECOBANK Ltd

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Text

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ORACLE ENTREPRISES Ltd v. ECOBANK Ltd [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0009/14/CS (Kayitesi Z, P.J., Mutashya na Gakwaya, J.) 02 Ukwakira 2015] Amategeko agenga ububasha bw'Urukiko rw'Ikirenga – Kwakira Ubujurire – Ubujurire ntibwakirwa mu Rukiko rw'Ikirenga iyo uwajuriye yatsinzwe ku mpamvu zimwe mu nkiko zabanje, Itegeko Ngenga n° 03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28. Incamake y'Ikibazo: ORACLE ENTREPRISES Ltd yareze ECOBANK Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kuyishyura amafaranga angana na 57.150.000 Frw yategetswe mu rubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyarugenge. Urukiko rwemeje ko ECOBANK Ltd itagomba kwishyura ORACLE ENTERPRISES Ltd ngo yikurikiranire Gatwaza Aimable, ruyitegeka kwishyura ECOBANK Ltd indishyi zo gushorwa mu manza nta mpamvu. ORACLE ENTREPRISES Ltd yajuriye mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko urubanza rujuririrwa rudahindutse. Yongera ijurira mu Rukiko rw'Ikirenga ivuga ko mu guca urubanza Urukiko rwavuze ko nta kimenyetso yagaragaje kandi atari uko bimeze, avuga ko sheki ziri muri

dosiye bigaragara ko ziri barrés. Uhagarariye ECOBANK Ltd avuga ko yatanze inzitizi asaba ko ubujurire bwa ORACLE ENTREPRISES Ltd butakwagirwa mu Rukiko rw'Ikirenga kubera ko yatsinzwe ku mpamvu zimwe mu nkiko zombi yaburaniyemo, avuga ibyaburanwaga mu rwego rwa mbere ari nabyo byajuririwe mu Rukiko Rukuru rw'Ubucuruzi, urukiko runemeza ko imikirize y'urubanza rwajuririwe idahindutse, akavuga ko asanga ubujurire bwa ORACLE ENTREPRISE Ltd butagomba kwakirwa mu Rukiko rw'Ikirenga. Uhagarariye ORACLE ENTERPRISES Ltd we akavuga ko itigeze itsindwa ku mpamvu zimwe mu nkiko zabanje, avuga ko ingingo z'amategako zashingiweho zitandukanye n'izashingiweho mu rwego rwa kabiri, anavuga ko impamvu zimwe zigomba kumvikana nk'igitekerezo kimwe. Incamake y'Icyemezo: 1. Kuba uwajuriye yaratsinzwe n'impamvu zimwe mu nkiko zabanje yaburaniyemo mbere, bituma ubujurire bwayo bwa kabiri butaba mu bubasha bw'Urukiko rw'Ikirenga. Urubanza ntiruri mu bubasha bw'Urukiko rw'Ikirenga. Amagarama y' Urubanza ahererye kuwareze. Amategako yashingiweho Itegeko Ngenga n° 03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28. Nta manza zifashishijwe

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Urubanza I. IMITERERE Y'URUBANZA [1] ORACLE ENTREPRISES Ltd yareze ECOBANK Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba ko yategakwa kuyishyura amafaranga angana na 57.150.000 Frw yategetswe mu rubanza RP 0390/12/TB/Nyg rwaciye n'Urukiko rw'Ibanze rwa Nyarugenge ku wa 17/12/2012 n'inyungu zayo, ikurikiranira uwitwa Gatwaza Aimable yahaye amafaranga. Urukiko rwaciye urubanza ku wa 30/07/2013, rwemeza ko ECOBANK Ltd itagomba kwishyura ORACLE ENTREPRISES Ltd ngo yikurikiranire Gatwaza Aimable, ahubwo ruyitegeka kwishyura ECOBANK Ltd 1.000.000 Frw y'indishyi zo gushorwa mu manza nta mpamvu na 200.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka. [2] ORACLE ENTREPRISES Ltd ntiyishimiye icyo cyemezo ijurira mu Rukiko Rukuru rw'Ubucuruzi, narwo ruca urubanza ku wa 17/10/2013 rwemeza ko urubanza rujuririrwa rudahindutse. [3] ORACLE ENTREPRISES Ltd na none ntiyishimiye icyo cyemezo maze ijurira mu Rukiko rw'Ikirenga ivuga ko mu guca urubanza Urukiko rwavuze ko nta kimenyetso ORACLE ENTREPRISES Ltd yagaragaje kandi atari ko bimeze kuko «chèques» ubwazo ziri muri dosiye bigaragara ko ziri «barrés», no kuba mu guca urubanza urukiko rwaravuze ko ECOBANK Ltd itakwishyura Gatwaza ngo kuko yaba yishyuye kabiri kandi ataribyo. [4] Iburanisha mu mizi ryabaye ku wa 23/06/2015, ORACLE ENTREPRISES Ltd iburanirwa na Me BIMENYIMANA Emmanuel, naho ECOBANK Ltd iburanirwa na Me RUBASHA Herbert. Mbere y'uko iburanisha rikomeza mu mizi, Me RUBASHA Herbert yazamuye inzitizi y'iburabubasha avuga ko ikirego cya ORACLE ENTREPRISES Ltd kitagomba kwakirwa ngo gisuzumwe kuko kitujuje ibiteganywa n'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 mu gaka kayo ka nyuma kuko ujurira yatsinzwe ku mpamvu zimwe mu nkiko zombi yaburaniyemo. Ni kuri iyo nzitizi urubanza rwaburanishijweho. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba ORACLE ENTREPRISES Ltd yaratsinzwe ku mpamvu zimwe mu nkiko zombi yaburaniyemo, bikaba byatuma ubujurire bwayo butakirwa mu Rukiko rw'Ikirenga [5] Me RUBASHA Herbert avuga ko yatanze inzitizi y'uko ubujurire bwa ORACLE ENTREPRISES Ltd

butakwagirwa mu Rukiko rw'Ikirenga kuko butujuje ibiteganywa n'ingingo ya 28, igika cya 5 y'Itegeko Ngenga n°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, asobanura ko ORACLE ENTREPRISES Ltd yatsinzwe ku mpamvu zimwe mu nkiko zombi yaburaniyemo. [6] Avuga ko ibyaburanwaga mu rwego rwa mbere ari nabyo byajuririwe mu Rukiko Rukuru rw'Ubucuruzi, kuko mu rubanza rwajuririwe mu Rukiko rw'Ikirenga, ku kibazo cyerekeranye no kuba urukiko rwarirengagije amakosa ya ECOBANK Ltd mu gace ka 7, umurongo wa 6 mu

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nyandiko y'imikirize y'urubanza, urukiko rwaburanishije ku byari byaburanishijweho mu rubanza rwaciwe m'Urukiko rw'Ubucuruzi rwa Nyarugenge, ko ndetse mu cyemezo cy'urubanza rujuririrwa (dispositif), Urukiko Rukuru rwavuze ko imikirize y'urubanza rwajuririwe idahindutse, ko rero hashingiwe ku ngingo ya 28, igika cya 5 y'Itegeko Ngenga n° 03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru, asanga ubujurire bwa ORACLE ENTREPRISES Ltd mu Rukiko rw'Ikirenga budakwiye kwakirwa kuko yatsinzwe ku mpamvu zimwe mu nkiko zabanje. [7] Me BIMENYIMANA Emmanuel avuga ko ORACLE ENTREPRISES Ltd itigeze itsindwa ku mpamvu zimwe mu nkiko zabanje nk'uko bivugwa n'uburanira ECOBANK Ltd, kuko mu rubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, ku rupapuro rwa 4, agace ka 9, urukiko rwavuze ko ingingo ya 489, 493 na 503 z'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano ntacyo zamarira Me BIMENYIMANA Emmanuel muri uru rubanza, ariko iyo mpamvu ikaba itarongeye kuburanwaho mu bujurire. [8] Akomeza asobanura ko ibivugwa mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi mu gace ka 10 ko urubanza rutagomba guhinduka, nawe yemera ko ariko umucamanza yabivuze, ariko ko ibisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi bitandukanye n'ibyatanzwe mu Rukiko rw'Ubucuruzi, cyane cyane ko ingingo z'amategako zashingiweho zitandukanye n'izashingiweho mu rwego wa kabiri, byongeye kandi, impamvu zimwe zikaba zigomba kumvikana nk'igitekerezo kimwe. UKO URUKIKO RUBIBONA [9] Ingingo ya 28, igice cya 5 y'Itegeko Ngenga N° 03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko «icyakora, urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ntirushobora kujuririrwa mu Rukiko rw'Ikirenga». [10] Nk'uko bigaragara mu nyandiko z'imikirize y'urubanza mu Rukiko rw'Ubucuruzi rwa Nyarugenge no mu Rukiko Rukuru rw'Ubucuruzi, ugutsindwa kwa ORACLE ENTREPRISES Ltd kwashingiye ku mpamvu ebyiri, imwe ikaba ijyanye no kuba itarigeze igaragariza urukiko uruhare cyangwa amakosa ECOBANK Ltd yaba yarakoze ku birebana na «endossement» ya sheki, indi ikaba ijyanye no kuba urukiko rwarasanze rutatega ECOBANK Ltd kwishyura ORACLE ENTREPRISES Ltd amafaranga yategetswe kwishyurwa n'undi muntu mu rubanza nshinjabyaha ngo izamwikurikiranire. [11] Urukiko rurasanga, ku bijyanye n'impamvu ya mbere, ibisobanuro Urukiko rw'Ubucuruzi rwa Nyarugenge rwatanze nk'uko bigaragara mu gika cya 10 cy'inyandiko y'imikirize y'urubanza, aho rwerekanye ko hashingiwe ku ngingo ya 48 y'Itegeko n° 32/2009 ryo ku wa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa, rwarasanze nta kosa ECOBANK Ltd yakoze ku birebana na «endossement» ya sheki, ibyo bisobanuro akaba ari nabyo byatanzwe n'Urukiko Rukuru

rw'Ubucuruzi mu gika cya 9 n'icya 10 by'inyandiko y'imikirize y'urubanza. [12] Ku bijyanye n'impamvu ya kabiri irebana no kuba Urukiko rw'Ubucuruzi rwarasanze rutatega ECOBANK Ltd kwishyura ORACLE ENTREPRISES Ltd amafaranga Gatwaza

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yategetswe kwishyura mu rubanza nshinjabyaha ngo izamwikurikiranire kuko byaba bidakurikije amatega nk'uko bigaragara mu gika cya 11 cy'inyandiko y'imikirize y'urubanza, ari nabyo byasuzumwe n'Urukiko Rukuru rw'Ubucuruzi mu gika cya 5 n'icya 6 by'inyandiko y'imikirize y'urubanza, aho rwasanze amafaranga ORACLE ENTREPRISES Ltd yasabaga ECOBANK Ltd ko yabishyura, yarayagenewe mu rubanza nshinjabyaha, rwatega undi muntu kuyishyura. [13] Ku birebana n'ibivugwa n'uburanira ORACLE ENTREPRISES Ltd ko itigeze itsindwa ku mpamvu zimwe mu nkiko zabanje kuko mu Rukiko rw'Ubucuruzi rwa Nyarugenge ingingo za 489, 493 na 503 z'Igitabo cya gatatu cy'urwunge rw'amatega mbonezamubano, Umucamanza yavuze ko zidahuye n'ikiburanwa, icyo kibazo kikaba kitarongeye kuburanwaho mu Rukiko Rukuru rw'Ubucuruzi, Urukiko rusanga nta shingiro bifite kubera ko nk'uko bigaragara mu gika cya 9 cy'inyandiko y'imikirize y'urubanza mu rwego rwa mbere, izo ngingo atari zo umucamanza yashingiyeho afata icyemezo, ahubwo yasanze ntacyo zamarira ORACLE ENTREPRISES Ltd muri uru rubanza kuko ntaho zihuriye n'ikiburanwa. [14] Urukiko rusanga rero kuba ORACLE ENTREPRISES Ltd yaratsinzwe n'impamvu zimwe mu nkiko zabanje yaburaniyemo mbere nk'uko byasobanuwe haruguru, bituma ubujurire bwayo bwa kabiri butaba mu bubasha bw'Urukiko rw'Ikirenga, hakurikijwe ibiteganywa n'ingingo ya 28, igice cya 5 y'Itegeko Ngenga n° 03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. III. ICYEMEZO CY'URUKIKO [15] Rwemeje ko inzitizi yatanze na ECOBANK Ltd ifite ishingiro; [16] Ruvuze ko uru rubanza rutari mu bubasha bw'Urukiko rw'Ikirenga; [17] Rutegaga ORACLE ENTREPRISES Ltd kwishyura amagarama y'urubanza angana na 100.000 Frw.

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