

RWANDA / JUDGMENT

Re SUSSMAN

RCOM 0002/14/HCC

COURT

Commercial High Court

DECIDED

27 January 2014

CASE / FILE NUMBER

RCOM 0002/14/HCC

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Re SUSSMAN

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Text

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Re SUSSMAN [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOM 0002/14/HCC (Kamere, P.J.) 27 Mutarama 2014] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Inyandiko y'ikirego gitanzwe n'umuburanyi umwe – Iyakirwa ryayo mu gihe hari urundi rubanza ruvugwamo umuburanyi ugarukwaho muri iyo nyandiko – Inyandiko y'ikirego yatanzwe n'umuburanyi umwe ntiyakirwa ngo isuzumwe mu mizi mu gihe umuburanyi wayitanze yatanze ikindi kirego mu rukiko afite urundi ruhande baburana kuko aba ari ukumuca ruhinga ngo yishakire indi nzira yo gutanga ikindi kirego kuko aba ari kumuvutsa uburenganzira yo kwiregura. Amategeko agenga imiburanishirize y'imanza z'Ubucuruzi – Gusuzuma inyandiko y'ikibazo gitanzwe n'umuburanyi umwe hari urundi rubanza rugisuzumwa idashamikiyeho – Ububasha bw'Urukiko Rukuru rwo kuyizusuma ku rwego rwa mbere – Iyo umuburanyi yamaze gutanga ikirego ku rwego rwa mbere kiri mu bubasha bw'Urukiko Rukuru rw'Ubucuruzi ntiyahindukira ngo yongere atange ikindi kirego kidashamikiye kuri icyo ngo cyakirwe kuko cyo kiba kitari mu bubasha bw'ububasha bw'inkiko z'ubucuruzi, ingingo ya 13. Incamake y'ikibazo : Sussman yaregeye Urukiko Rukuru rw'Ubucuruzi mu buryo bw'inyandiko y'ikibazo gitanzwe

n'umuburanyi umwe arusaba gufata icyemezo kihutirwa cyo gufatira by'agateganyo imitungo yimukanwa n'itimukanwa bya sosiyeti MH International, ibya Mwangacucu n'ibya Umubera aho byaba biri cyangwa byanyuzwa hose ku butaka bw'u Rwanda mu gihe Urukiko Rukuru rw'Ubucuruzi rutaremeza ko urubanza no 292653 W rwaciriwe muri Leta Zunze Ubumwe z'Amerika kuwa 20/08/2010 rurangizwa mu Rwanda. Urukiko Rukuru rw'Ubucuruzi rwemeje ko rutakiriye ikirego cya Sussman cyatanzwe mu buryo bw'inyandiko y'ikibazo gitanzwe n'umuburanyi umwe kuko yatanze ikindi kirego kigamije kwemeza ko urubanza rwaciriwe hanze rurangizwa mu Rwanda. Rwemeje kandi ko rutakwagirwa kuko ikirego cyatanzwe mu buryo bw'inyandiko itanzwe n'umuburanyi umwe kitari mu bubasha bwarwo. Incamake y'icyemezo: 1. Mu gihe Sussman yari asanzwe yatanze ikindi kirego asabira uruhushya urubanza avuga ko yatsindiye mu mahanga kugira ngo rwemererwe kurangizwa mu Rwanda ntiyakwemererwa guca ruhinga uwo bari basanzwe baburana ngo yishakire indi nzira ya bugufi atabanje kunyura mu nzira ya exaquetur yateganyijwe n'itegeko kandi yatangiye ariko ikaba itararangira.

2. Inzira yo gutanga ikirego ku rwego rwa mbere Sussman afite niyo yatangiye mu rubanza RCOM 0019/13/HCC yagira ibyo akenera byihutirwa mbere y'icibwa ry'urubanza rumaze kuvugwa, akabisaba muri urwo rubanza mu buryo amategako abiteganyamo kandi akemera ko uwo baruburanamo ahabwa amahirwe n'igihe cyo kubyireguraho mu iburanisha. Ikirego nticyacyiriwe; Amagarama ahereye ku wareze.

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Amategako yashingiweho: Itegeko Ngenga no 06/2012 ryo kuwa 14/09/2012 rigena imiterere, imikorere n'ububasha bw'inkiko z'ubucuruzi, ingingo ya 13. Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi, ingingo ya 316 na 324. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 09/01/2014, Robert Sussman ufite ubwenegihugu bwa Amerika kandi ubarizwa mu gihugu cya Leta Zunze Ubumwe z'Amerika, abinyujije kuri avoka we Me BUHURU Pierre Celestin, yagejeje kuri uru Rukiko inyandiko y'ikibazo gitanzwe n'umuburanyi umwe (ex parte application/requête unilatérale) arusaba gufata icyemezo cyihutirwa cyo gufatira by'agateganyo imitungo yimukanwa n'itimukanwa bya sosiyeti MH International, ibya Mwangacucu Hizi Edouard n'ibya Umubera Mwangacucu ngo aho byaba biri cyangwa se byanyuzwa hose ku butaka bw'igihugu cy'u Rwanda mu gihe ngo hatarafatwa icyemezo cyo kwemera ko harangirizwa mu Rwanda urubanza n° 292653v rwaciriwe muri Leta Zunze Ubumwe z'Amerika kuwa 20/08/2010. [2] Nk'uko byasobanuwe n'uburanira Robert Sussman mu nyandiko itanga iki kibazo ndetse no mu isuzuma ryacyo mu cyumba cy'umucamanza (en chambre du conseil) kuwa 20/01/2014, Me Buhuru Pierre Celestin avuga ko mu rubanza n° 292653v rwaciriwe muri Leta Zunze Ubumwe z'Amerika kuwa 20/08/2010 Robert Sussman yatsindiye Mwangacucu Hizi Edouard, Umubera Mwangacucu na sosiyeti MH International gufatanya kumwishyura 2,239,428.95 USD, urwo rubanza ngo rukaba rwaramaze kuba indakuka ndetse rugatangira kurangizwa muri Leta Zunze Ubumwe z'Amerika hagurishwa inzu ya Mwangacucu Hizi Edouard yavuyemo 150,000.00 USD. Me Buhuru Pierre Celestin akomeza avuga ko muri iki gihe Mwangacucu Hizi Edouard na sosiyeti MH International basigaye bohereza mu mahanga

amabuye y'agaciro ya coltan anyujijwe mu gihugu cy'u Rwanda kandi ngo Mwangacucu Hizi Edouard afite inzu n'imitungo itimukanwa mu Rwanda agatanga urugero rw'inzu ngo iherereye mu Mudugudu w'Imena, Akagari ka Kiyovu, Umurenge wa Nyarugenge, Akarere ka Nyarugenge, hamwe n'imigabane muri Banki Unguka, bityo ngo kubera ko ubu hari coltan ikiri mu nzira yavamo ubwishyu bugaragara sosiyeti MH International irimo kohereza mu mahanga, urega akaba asaba icyemezo cy'uru Rukiko cyihutirwa kibuza iyo coltan kwambukiranya imipaka y'u Rwanda kimwe no kubuza ko abatsinzwe bagurisha umutungo wabo uwo ari wo wose (« la vente de toute valeur appartenant à l'un des défendeurs preidentifiés »). [3] Ibimenyetso Me Buhuru Pierre Celestin ashyigikiza ibyo uwo aburanira asaba uru Rukiko bigizwe n'ibyo yise « L'expédition du Jugement of the Circuit Court for Montgomery County condamnant MH international et les Mwangacucu en principal à USD 2,293,428.95 plus les intérêts annuels de 6% par an depuis 30 avril 2010, l'authentification de ce jugement et son

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expédition par voie diplomatique habilitée, l'autorisation d'exportation de plus de 23 tones de coltan, la preuve que MH International appartient à Mwangacucu ». [4] Mu rwego rw'amategeko uwatanze ikibazo avuga ko ku birebana n'ishingiro ndetse n'ubwihutire bw'ibyo asaba hashingirwa ku ngingo ya 324 n'ya 325 CPCCSA naho ku birebana n'ububasha bw'uru Rukiko Rukuru rw'Ubucuruzi hagashingirwa ku ngingo ya 13, igika cyayo kuva ku cya 1 kugera ku cya 4 y'Itegeko Ngenga N° 06/2012 ryo kuwa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi kubera ko ngo ibisabwa kugira ngo urubanza rwaciriwe mu mahanga rubashe kurangirizwa mu Rwanda bizasuzumwa mu gihe cya vuba n'uru Rukiko. Naho ku birebana n'ubwihutire bw'ibisabwa n'wareze, Me Buhuru yongeraho ko mu gihe ikamyo itwaye coltan yifuza gufatira yaba yarenze imipaka y'u Rwanda ikagera Dar Es Salam ngo ntabwo byazaba bigishobotse cyangwa se byazagora Urukiko Rukuru rw'Ubucuruzi gushyira mu bikorwa icyemezo rwazafata cyo kwemera ko urubanza rwaciriwe mu mahanga rurangirizwa mu Rwanda. [5] Urukiko rurasanga ibibazo bikwiye gusuzumwa muri uru rubanza ari ibi bikurikira : 1° Niba uru rubanza rushamikiye ku rundi rusanze muri uru Rukiko Robert SUSSMAN aregamo Mwangachuchu Hizi Edouard, Urukiko rukeneye kumenya niba bigishobokera Robert Sussman gukoresha inzira y'ikibazo gitanzwe n'umuburanyi umwe kugirango asabe ifatira ry'imitungo y'abo avuga ko yatsinze mu gihe muri uru Rukiko hakiri urundi rubanza RCOM 0019/13/HCC rukiburanwa aho Robert Sussman aregamo umwe muri batatu avuga ko yatsinze asaba ko urwo rubanza ngo yabatsinzemo mu mahanga ruhabwa uruhushya rwo kwemererwa kurangizwa mu Rwanda (exequatur). 2° Niba uru rubanza rwigenga rukaba rudashamikiye ku rumaze kuvugwa haruguru rutaracibwa muri uru Rukiko, kumenya niba ububasha bw'uru Rukiko Rukuru rw'Ubucuruzi bwo gusuzuma iki kibazo ku rwego rwa mbere bwaba bugifite aho bushingiye. II. ISUZUMA RY'IBIBAZO URUKIKO RUMAZE KUGARAGAZA

1. Niba uru rubanza rushamikiye ku rundi rusanze muri uru Rukiko Robert Sussman aregamo Mwangachuchu Hizi Edouard, Urukiko rukeneye kumenya niba bigishobokera Robert Sussman gukoresha inzira y'ikibazo gitanzwe n'umuburanyi umwe kugirango asabe ifatira ry'imitungo y'abo avuga ko yatsinze mu gihe muri uru Rukiko hakiri urundi rubanza

RCOM 0019/13/HCC rukiburanwa aho Robert Sussman aregamo umwe muri batatu avuga ko yatsinze asaba ko urwo rubanza ngo yabatsinzemo mu mahanga ruhabwa uruhushya rwo kwemererwa kurangizwa mu Rwanda (exequatur). [6] Mu bisobanuro yahaye umucamanza kuwa 20/01/2012, Me Buhuru abajijwe igituma yakoresheje iyi nzira y'ikibazo gitanzwe n'umuburanyi umwe kandi yari asanzwe azi neza ko n'ubundi aburanira Robert Sussman mu rubanza RCOM 0019/13/HCC aho nyuma yo kuburanisha urubanza ku nzitizi yatanze n'uregwa irebana n'ingwate yasabwaga umunyamahanga Robert Sussman mbere y'uko urubanza rubasha gukomeza, Urukiko rwari rwarahaye ababuranyi gahunda yo kuzabasomera icyemezo kuwa 24/01/2014. Yasubije ko

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yabitewe no gutinya ko urubanza RCOM 0019/13/HCC rwazatinda kurangira maze agahitamo gusaba ifatira ry'agateganyo ku mitungo itimukanwa n'iyimukanwa iri mu Rwanda cyangwa ihaca ngo ikaba ifatiriwe mu gihe RCOM 0019/13/HCC rutaracibwa. [7] Abajijwe niba gusaba ibyo asaba muri iki kirego bitari bikwiye kuba byarakozwe mu buryo bw'ikirego cyihutirwa (référé) gishamikiye kuri RCOM 0019/13/HCC kandi n'uwo basanzwe baburana muri uru rubanza agahabwa umwanya wo kwiregura ku ifatira risabwa ku mitungo ye, Me Buhuru yasubije ko yahisemo iyi nzira kuko ngo azi ko Requête unilaterale isa na référé kandi ngo muri requête unilaterale bikaba atari ngombwa ko habanza kubaho urundi rubanza. Aha ariko Me Buhuru akongeraho n'ibindi bitera uru Rukiko urujijo aho avuga ko mu gutanga requête unilaterale ngo atariwe yita ku rubanza RCOM 0019/13/HCC rusanzwe muri uru Rukiko, kandi ko ngo urwo rubanza atari rwo rubanza rw'iremezo rw'iyi requête unilaterale. [8] Rushingiye kuri ibi bisobanuro by'uburanira uwatanze inyandiko y'ikibazo gitanzwe n'umuburanyi umwe, uru Rukiko rurasanga mu gihe Robert Sussman yari asanzwe yatanze ikindi kirego asabira uruhushya urubanza avuga ko yatsindiye mu mahanga kugirango rwemererwe kurangirizwa mu Rwanda abashe kugera mu buryo bwemewe n'amategako ku mitungo y'abo avuga ko yatsize adakwiye kwemerwa guca ruhinga nyuma uwo bari basanzwe baburana muri urwo rubanza ngo noneho yishakire indi nzira ya bugufi yo kwifashisha uru Rukiko mu kugera kuri wa mutungo atabanje kunyura mu nzira ya procédure ya exequatur yateganyijwe n'itegeko kandi yatangiye ariko ikaba itararangira. Ingingo ya 316 CPCCSA iragira iti: « Iyo hari ikirego cy' iremezo, ariko hagomba kugira icyemeza by'agateganyo mu buryo bwihuta ku rubanza rwaregwe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinze kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara ». Uru Rukiko rukaba rusanga iyi ngingo ari yo yari iberanye n'ibyo Robert Sussman yifuzaga by'uko hagira imitungo iba ifatiriwe by'abateganyo kandi mu buryo bwihutirwa kuko ari yo ituma nibura na nyir'umutungo basanzwe baburana abona amahirwe yo kwiregura ku byo asaba. Inzira ya exequatur Robert Sussman yatangiye igikuru igamije ni ugutuma abasha kuzafatira umutungo w'abo avuga ko yatsinze, gusa iyo nzira imusaba kubanza gusabira uruhushya urubanza avuga ko ari rwo ruzamubashisha gufatira wa mutungo, nta bundi buryo rero akwiye kugera ku gufatira uriya mutungo bitanyuze mu nzira y'urubanza rwa exequatur rwatangiye. [9] Nk'uko bimaze gusobanurwa mu gika kibanziriza iki cy'iki cyemezo, uru Rukiko rurasanga ibisabwa na Robert

SUSSMAN bitasuzumwa Mwangachuchu Hizi Edouard basanzwe baburana mu rubanza RCOM 0019/13/HCC atabanje kubyireguraho, ibi kandi bikaba bivuze ko yakagombye kuba yarabiregewe (procédure contradictoire), bityo ibyasabwe na Robert Sussman bikaba bidahura n'igisobanuro cy'inyandiko y'ikibazo gitanzwe n'umuburanyi umwe nk'uko kigaragara mu ngingo ya 324 CPCCSA cyane aho isoza ivuga ko iyi nzira ireba gusa ibibazo bidasaba Urukiko guhamagara byanze bikunze undi muburanyi. Muri uru rubanza uru Rukiko rusanga byanze bikunze Mwangachuchu Hizi Edouard agomba kuruhamagarwamo, akiregura ku bisabwa mbere y'uko umucamanza abifataho icyemezo, ariko kuko Robert Sussman atamureze, uru Rukiko rukaba rusanga ikibazo cye kidakwiye kwakirwa ngo gisuzumwe mu mizi.

2. Niba uru rubanza rwigenga rukaba rudashamikiye kuri RCOM 0019/13/HCC rumaze kuvugwa haruguru rutaracibwa muri uru Rukiko, kumenya niba ububasha

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bw'uru Rukiko Rukuru rw'Ubucuruzi bwo gusuzuma iki kibazo ku rwego rwa mbere bwaba bugifite aho bushingiye. [10] Kubera ko hari aho mu buryo rutabashije gusobanukirwaho uru Rukiko rwumvise Me Buhuru asububiza mu buryo buvuguruzwa ibyo yari yahereyeho ko ngo uru rubanza rudakwiye gufatwa ko rugendeye kuri RCOM 0019/13/HCC, ahubwo ko ngo nyuma yo kubona ifatira ry'agateganyo asaba azareba ukundi yatanga ikirego mu gihe kitarenze amasaha 48, uru Rukiko mu gushakisha ukuri kuri ibyo rwifuje kumenya niba koko ibyo kuzaruregera nyuma yo kuba rwamaze gutanga icyemezo cy'ifatira ry'agateganyo byashoboka mu rwego rw'amategeko maze rusuzuma icyo amategeko ateganya ku bubasha bwarwo rubihuza n'uko ibintu bimeze ku kiburanwa ubu. [11] Ingingo ya 13 y'Itegeko Ngenga n° 06/2012 ryo kuwa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi mu gusobanura ububasha bw'Urukiko Rukuru rw'Ubucuruzi bushingiye ku kiburanwa ibugaragaza neza itandukanyije ububasha bwarwo iyo ruburanisha ku rwego rwa mbere n'ububasha bwarwo iyo ruburanisha ku rwego rw'ubujurire. Uru Rukiko rurasanga ibyo Robert Sussman yaregeye uru Rukiko kugeza ubu ndetse n'ibyo avuga yazaruregera mu masaha 48 aramutse ahawe ifatira isaba nta kuntu byashoboka ko byazigera byitwa ikirego uru Rukiko rwasuzuma ku rwego rw'ubujurire. Inzira rero yaba asigaranye y'ikirego ku rwego rwa mbere nta yindi uretse iyo gusaba kurangiriza mu Rwanda urubanza avuga ko yatsinzemo uwo asabira ifatirwa ry'imitungo, iyo nzira niyo kandi yamaze gutangira mu rubanza RCOM 0019/13/HCC ku buryo uru Rukiko rusanga nta yindi nzira Robert Sussman yatangira uretse gusa gukomeza iriya ya RCOM 0019/13/HCC yagira ibyo akenera byihutirwa mbere y'icibwa ry'urubanza RCOM 0019/13/HCC akabisaba muri urwo rubanza mu buryo amategeko abiteganyamo kandi akemera ko uwo baruburanamo ahabwa amahirwe n'igihe cyo kubyireguraho mu iburanisha. Ibi na none bikaba bishimangira ko ikibazo cyatanzwe n'umuburanyi umwe Robert Sussman kidakwiye kwakirwa ngo Urukiko rwirirwe rufata umwanya wo gusuzuma mu mizi ishingiro ry'ifatira ry'imitungo rwaregewe. III. ICYEMEZO CY'URUKIKO Kubera impamvu zose zavuzwe haruguru, Urukiko Rukuru Rw'ubucuruzi: [12] Rwemeje kutakira inyandiko y'ikibazo gitanzwe n'umuburanyi umwe Robert Sussman kuko itujuje ibisabwa n'amategeko kugira ngo ibashe gutangwa mu buryo yatanzwemo nk'uko byasobanuwe haruguru; [13] Rutegetse Robert Sussman gutanga amagarama y'uru rubanza angana na 4.450 frw.

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