

RWANDA / JUDGMENT

RWANDA RUDNIKI Ltd v. COGEBANQUE et al.

RCOMA 0037/15/HCC

COURT

Commercial High Court

DECIDED

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RWANDA RUDNIKI Ltd v. COGEBANQUE et al.

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Text**Page 1**

RWANDA RUDNIKI Ltd v. COGEBANQUE n'abandi [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0037/15/HCC (Rwanyindo, P.J.) 9 Werurwe 2015] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ikirego kihutirwa – Gusuzuma inzitizi mu kirego cyihutirwa – Nta muburanyi wavuga ko nta nzitizi yo kutakira ikirego isuzumwa mu kirego cyihutirwa ngo bihabwe ishingiro kuko iyo nzitizi ari indemyagihugu n'amategeko akaba atabaza umucamanza gusuzuma inzitizi zavuka mu rubanza aburanisha – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imboneza mubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ngingo ya 142 na 320. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ikirego cyihutirwa – Kutabangamira iburanisha ry'urubanza mu mizi – Iyo umucamanza afashe icyemezo ku mu iburanisha ry'ikirego cyihutirwa intibifatwa ko yabangamiye iburanisha ry'urubanza mu mizi mu gihe nta kibuka gusuzuma inzitizi zigamije gutuma urubanza rutaburanishwa mu mizi – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imboneza mubano, iz'ubucuruzi, iz'imurimo n'iz'umurimo, ingingo ya 320. Amategeko

agenga imanza z'ubucuruzi – Inzitizi yo kutakira ikirego – Ikirego cyihutirwa cyasuzumye inyandikomvugo y'inama rusange ya sosiyete – Iyo inzitizi yo kutakira ikirego ishingiyeye ku nyandiko mvugo y'inama rusange ya sosiyete yakuye umwe muba nyamigabane ku buyobozi bwayo ntibiba bivuze ko ibyakozze muri iyo nama byubahirije amategeko ahubwo iba igamije ko uwo munyamigabane asaba uburenganzira bwo kurega mu izina rya sosiyeti – Itegeko no 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi, ingingo ya 223. Incamake y'ikibazo : Jaroslav wari umuboyosi wa Rwanda Rudniki Ltd yatanze ikirego cyihutirwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge arusaba kugena umuyobozi w'agateganyo wa sosiyeti yavuzwe haruguru mu gihe urubanza rw'iremezo rutaracibwa ndetse no gutegeka ko habaho igenzura ry'imicungire ry'iyi sosiyete. Mu iburanisha, habukijwe inzitizi yo kutakira ikirego cya Rwanda Rudniki Ltd kuko cyatanze na Jaroslav utabifitiye ububasha bitewe n'uko atakiri umuyobozi mukuru wayo. Ururiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko Jaroslav atariwe umuyobozi uhagarariye Rwanda Rudniki Ltd kuko yakweweho n'inama rusange idasanzwe yo kuwa 22/07/2014. Rwanda Rudniki Ltd yajuriye mu Rukiko Rukuru rw'ubucuruzi ivuga ko yari yasabye ko hadasuzumwa inzitizi yo kutakira ikirego kuko mu birego byihutirwa hadasuzumwa inzitizi ahubwo harebwa niba ikirego cyihutirwa, yavuze kandi iyo nzitizi yasuzumwe yabangamiye urubanza mu mizi rwagombaga kuburanisha ibijyanye n'ikurwa rya Jaroslav ku mwanya w'ubuyobozi bwa sosiyeti mu buryo budakurikije amategeko. COGEBANQUE Ltd Banza na Rulinda baregwa muri uru rubanza bireguye bavuga ko gusuzuma inzitizi mu kirego cyihutirwa nta kibazo babibona namo cyane o ngo bitanyuranyije n'amategeko.

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Barongeye bavuga kandi ko icyemezo cyafashwe n'umucamanza wa mbere gifite ishingiro kuko Jaroslav atariwe uhagarariye Rwanda Rudniki Ltd kuko yakweweho n'inama idasanzwe yavuzwe haruguru. Banza na Rulinda batanze ubujurire bwuririye ku bundi basaba guhabwa amafaranga y'ikurikirana rubanza n'igihembo cya avoka. Incamake y'ikibazo : 1. Umucamanza uburanisha ibirego byihutirwa asusuma mbere yo ufata icyemezo ku kirego yashyikirijwe niba ikirego cyihuta yashyikirijwe kiri mu bubasha bwe, kimwe n'inzitizi zavuka mu rubanza aburanisha. Kugirango rero ikirego cyose cyakirwe haba hagomba gusuzumwa niba urega afite ububasha bwo kurega cyane ko aba ari indemyagihugu.

2. Umucamanza uburanisha ibirego byihutirwa afata icyemezo mu kibazo byose byihutirwa, ariko mu buryo butagabanyije urubanza rw'icyemezo mu mizi. Uwatanze ikirego nk'umuyobozi wa Rwanda Rudniki Ltd nticyarirwe, nyuma agatanga n'ikirego cy'iremezo gisaba kwemeza ko ari umuyobozi wayo, umucamanza aba agomba gusuzuma niba koko yari afite ububasha gutanga icyo kirego.
3. Kuba umucamanza yaremeje ko Jaroslav atakiri umuyobozi wa Rwanda Rudniki Ltd hashingiye ku nyandiko-mvugo y'inama rusange y'iyi sosiyeti ntiyashatse kuvuga ko iyo nama yakozwe mu buryo bukurikije amategeko ahubwo kugira ngo bigaragare ni uko Jaroslav yarega asaba ko inama rusange yamukuye ku buyobozi bwa sosiyete Rwanda Rudniki Ltd yateshwa agaciro Ubujurire nta shingiro bufite; Urubanza rwajuriye

ntiruhindutse. Amategeko yashingiweho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'ibanza z'imboneza mubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 142 na 320. Itegeko no 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi, ingingo ya 223. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Rwanda Rudniki Ltd yari isanzwe iyoborwa na Fiala Jaroslav, ifite ndetse na konti muri COGEBANQUE Ltd. Nyuma, habayeho Inama Rusange y'iy sosiyete yashyizeho undi Muyobozi witwa Mbanza Boniface usimbura Fiala Jaroslav. [2] Fiala Jaroslav yatanze ikirego cyihutirwa mu Rukiko rw'ubucuruzi rwa Nyarugenge arusaba kugena umuyobozi w'ateganyo wa Rwanda Rudniki Ltd mu gihe urubanza rw'iremezo rutaracibwa ndetse no gutegeka ko habaho igenzura ry'imicungire y'umutungo w'iy sosiyete kuwa kuwa 22/07/2014 kugeza hagiye umuyobozi w'ateganyo.

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- [3] Mu iburanisha ry'urubanza mu rwego rwa mbere, habukijwe impamvu yo kutakira ikirego cya Rwanda Rudniki Ltd kubera ko cyatanzwe na Fiala Jaroslav utabifitiye ububasha kubera ko atakiri umuyobozi mukuru wayo. [4] Urukiko rw'Ubucuruzi rwa Nyarugenge rwacye urubanza rwemeza ko Fiala JAROSLAV atariwe umuyobozi uhagarariye Rwanda Rudniki Ltd kandi ko yakuweho n'inama rusange idasanzwe yo kuwa 22/07/2014. [5] Rwanda Rudniki Ltd yajuririye icyo cyemezo ku mpamvu zikurikira:
- Yasabye Umucamanza wa mbere kudasuzuma inzitizi yo kutakira ikirego kubera ko mu birego byihutirwa hadasuzumwa inzitizi ahubwo hasuzumwa gusa niba ari ikirego cyihutirwa.
 - Kuba Umucamanza wa mbere yarasuzumye inzitizi yo kutakira ikirego ishingiyeye ku iburabubasha rya Fiala Jaroslav bikaba byarabangamiye urubanza mu mizi rugomba kuburanishwa ku bijyanye n'uko Fiala Jaroslav yakuwemo mu mwanya w'ubuyobozi bwa Rwanda Rudniki Ltd mu buryo budakurikije amategeko. [6] Mbanza Boniface na Rulinda Gabriel batanze ubujurire bwururiye ku bundi basaba Frw 5.000.000 y'ikurikiranarubanza n'igihembo cy'Avoka. [7] Ibibazo bisuzumwa muri uru rubanza n'ibikurikira:
 - Kumenya niba Umucamanza wa mbere ataragombaga gusuzuma inzitizi kubera ko yashyikirijwe ikirego cyihutirwa aho inzitizi zidasuzumwa.
 - Kumenya niba kuba Umucamanza wa mbere yasuzumye inzitizi akayifataho icyemezo bikaba byarabangamiye iburanisha ry'urubanza mu mizi ndetse niba icyemezo yafashe gifite ishingiro.
 - Kumenya niba Mbanza Boniface na Rulinda Gabriel bagomba guhabwa Frw 5.000.000 y'ikurikiranarubanza n'igihembo cy'Avoka basaba. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA A. Kumenya niba Umucamanza wa mbere ataragombaga gusuzuma inzitizi kubera ko yashyikirijwe ikirego cyihutirwa aho inzitizi zidasuzumwa. [8] Uwatanze ikirego mu izina rya Rwanda Rudniki Ltd avuga ko Umucamanza ataragombaga gusuzuma inzitizi yo kutakira ikirego kubera ko mu birego byihutirwa hasuzumwa gusa icyihutirwa, ntabwo

hasuzumwa inzitizi. [9] Uhagarariye COGEBANQUE Ltd yiregura avuga ko ibyaregawe bidahuriye nayo kuko icyo COGEBANQUE Ltd itegereza n'uko hagaragare umuyobozi nyawo wa Rwanda Rudniki Ltd kugira ngo azaba ariwe uzatanga uburenganzira ku makonti yayo ari muri COGEBANQUE Ltd.

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- [10] Avuga kandi ko kuba Umucamanza w'ikirego cyihutirwa yarasuzumye inzitizi nta kibazo abibonamo ariko ko ikibazo gihari n'uko iyo nzitizi yongeye kubyutswa no gusuzumwa mu kirego cy'iremezo. [11] Uhagarariye Mbanza Boniface na Rulinda Gabriel yireguye avuga ko gusuzuma inzitizi mu kirego cyihutirwa bitanyuranyije n'ingingo ya 320 y'Itegeko ryerekeye imiburanishirize y'imanza z'imboneza, ubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu (2012). [12] Ku bijyanye n'icyo kibazo, Urukiko rusanze koko ko ingingo ya 320 y'Itegeko ryavuzwe haruguru itabaza Umucamanza w'ikiregi cyihutirwa gusuzuma inzitizi kuko iyo ingingo ivuga mu gika cyayo cya 2 ko Umucamanza uburanisha ibirego byihutirwa asuzuma mbere yo gufata icyemezo ku kirego yashyikirijwe niba ikirego cyihuta yashyikirijwe kiri mu bubasha bwe, kimwe n'inzitizi zavuka mu rubanza aburanisha. [13] Rusanze kandi ko kugira ngo ikirego icyari cyose cyakirwa, hagomba gusuzumwa niba uwagitanze afite ububasha bwo kugitanga kuko ingingo ya 2 y'Itegeko ryavuzwe haruguru ivuga ko ikirego nticyemerwa mu rukiko iyo urega adafite ububasha, inyungu n'ubushobozi bwo kurega. [14] Rusanze na none ko inzitizi ijyanye n'iburabubasha ry'urega ari ndemyagihugu, bityo ikaba igomba gusuzumwa n'Umucamanza byanze bikunze nk'uko bivugwa mu ingingo ya 142 y'Itegeko ryavuzwe haruguru ivuga ndetse ko inzitizi y'iburabubasha ry'urega ari ndemyagihugu. B. Kumenya niba kuba Umucamanza wa mbere yasuzumye inzitizi akayifataho icyemezo bikaba byarabangamiye iburanisha ry'urubanza mu mizi ndetse niba icyemezo yafashe gifite ishingiro. [15] Uwatanze ikirego mu izina rya Rwanda Rudniki Ltd avuga ko mu gusuzuma no gufata icyemezo ku nzitizi y'iburabubasha bwa Fiala Jaroslav, Umucamanza wa mbere yabangamiye iburanisha ry'urubanza mu mizi kubera ko urwo rubanza rugomba gusuzuma no gutesha agaciro inama rusange zakuwe Fiala Jaroslav mu buyobozi bwa sosiyete Rwanda Rudniki Ltd mu buryo budakurikije amategeko. Avuga ko mu gufata icyo cyemezo ku nzitizi, Umucamanza yamaze kwemeza ko ibyakozwe mu nama rusange bifite agaciro ndetse ko Mbanza Boniface yasimbuye Fiala Jaroslav mu mwanya wo guhagararira Rwanda Rudniki Ltd, bityo icyo cyemezo cy'Umucamanza ku kirego cyihutirwa kigomba kuvaho. [16] COGEBANQUE Ltd yiregura ivuga ko icyemezo cyafashwe n'Umucamanza wa mbere gifite ishingiro kuko Fiala Jaroslav atariwe uhagarariye Rwanda Rudniki Ltd kuko yamaze gukurwaho n'inama rusange idasanzwe yo ku wa 22/07/2014. [17] Uhagarariye Mbanza Boniface na Rulinda Gabriel avuga ko icyo uhagarariye Rwanda Rudniki Ltd avuga nta shingiro bifite kuko urubanza rw'iremezo rutigeze rurangira ahubwo iburanisha mu mizi rikaba riteganyijwe ku itariki ya 12/03/2015. Avuga kandi ko icyemezo cyafashwe n'Umucamanza wa mbere gifite ishingiro kubera ko Fiala Jaroslav yakuwe mu mwanya w'ubuyobozi n'inama rusange ya Rwanda Rudniki Ltd nk'uko biteganywa n'ingingo ya 14 y'amategeko nshingiro yayo ivuga ko Umuyobozi Mukuru ashobora kuvanywa mu mwanya

we n'inama rusange cyangwa n'Urukiko ku mpamvu zikwiye.

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- [18] Ku bijyanye n'uko mu gufata icyemezo ku nzitizi, Umucamanza wa mbere yabangamiye urubanza mu mizi, Urukiko rusanze ko ibyo nta shingiro bifite kuko inzitizi zose zigamije gutuma urubanza rutaburanishwa mu mizi kuko ari ikibibuza. [19] Rusanze ko icyo Umunyamategeko yashatse kuvuga mu ngingo ya 320 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (2012) ivuga ko Umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihutirwa, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo, n'uko mu gihe afata icyemezo ku kirego cyihutirwa ariko icyemezo kitajyanye n'inzitizi (kuko ubusanzwe inzitizi n'impamvu zituma urubanza rutaburanishwa mu mizi yarwo), Umucamanza yirinda kubangamira imizi y'urubanza. [20] Rusanze ko niba uwatanze ikirego cyihutirwa nk'Umuyobozi wa Rwanda Rudniki Ltd kandi atakiriwe, hanyuma akanatanga ikirego remezo gisaba kwemeza ko akiri Umuyobozi wa Rwanda Rudniki Ltd, akaba yarakoze ikosa kuko byanze bikunze Umucamanza agomba gusuzuma niba koko afite ububasha bwo gutanga icyo kirego. [21] Rusanze kandi ko kuba Umucamanza wa mbere yaremeje ko Fiala Jaroslav atakiri Umuyobozi wa Rwanda Rudniki Ltd hashingiwe ku nyandiko-mvugo y'inama rusange y'iyi sosiyete imukura kuri uwo mwanya, bikaba bitavuze byanze bikunze ko iyi nama rusange yakozwe mu buryo bukurikije amategeko ahubwo kugira ngo hagaragare niba yakozwe koko mu buryo bukurikije amategeko, Fiala Jaroslav yashobora gusaba Urukiko uburenganzira bwo kurega mu izina rya Rwanda Rudniki Ltd ngo inama rusange ya sosiyete Rwanda Rudniki Ltd imukura mu mwanya w'ubuyobozi bwayo iteshwa agaciro nk'uko biteganywa n'ingingo ya 223 y'Itegeko no 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi ndetse nk'uko byanavuzwe n'Umucamanza wa mbere mu gika cya 12 cya matoleo y'urubanza rujuririrwa. [22] Rusanze rero ko kubera ko hari inyandiko-mvugo y'inama rusange idasanze ya Rwanda Rudniki Ltd yo ku wa 22/07/2013 igaragaza ko Fiala Jaroslav atakiyobora iyi sosiyete, nta kuntu Urukiko rwabyirengagiza rwakira ikirego cye kandi atarubahirije ibisabwa n'ingingo ya 223 y'Itegeko ryavuzwe haruguru ngo atange ikirego mu izina rya sosiyete kuko ikigaragara kugeza ubu n'inyandiko ivuga ko atakiri Umuyobozi wa Rwanda Rudniki Ltd nubwo afite uburenganzira bwose bwo gusaba inkiko kuyitesha agaciro ariko na none akabikora akurikije ibiteganywa n'amategeko ku bijyanye n'ububasha bwo gutanga ikirego. [23] Kubera izo mpamvu, rukaba rusanga ko icyemezo cyafashwe n'Umucamanza wa mbere gifite ishingiro. C. Kumenya niba Mbanza Boniface na Rulinda Gabriel bagomba guhabwa Frw 5.000.000 y'ikurikiranarubanza n'igihembo cy'Avoka basaba. [24] Ku bijyanye n'icyo kibazo, Urukiko rusanze ko Mbanza Boniface na Rulinda Gabriel bagomba guhabwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kubera ko ubujurire bwa Rwanda Rudniki Ltd nta shingiro bufite bivuga ko yatumye abo yareze bakoresha amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka bitari ngombwa. [25] Rusanze ariko ko Frw 5.000.000 basaba ari ikirenga, bityo rukaba rubageneye mu bushishozi n'ubwitonzi bwarwo hakurikijwe imiterere y'urubanza Frw 500.000.

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III. ICYEMEZO CY'URUKIKO [26] Rwemeye kwakira ubujurire bwa Rwanda Rudniki Ltd, rwemeje ko nta shingiro bufite. [27] Rwemeje ko nta gihindutse ku rubanza RCOM 0037/14/TC/NYGE rwaciwe ku wa 07/01/2015 n'Urukiko rw'Ubucuruza rwa Nyarugenge. [28] Rutegetse Rwanda Rudniki Ltd yatanze ikirego ihagarariwe na Fiala Jaroslav muri uru rubanza kwishyura Mbanza Boniface na Rulinda Gabriel Frw 500.000 y'ikurikiranarubanza n'igihembo cy'Avoka.

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