

RWANDA / JUDGMENT

RWANDATEL EN LIQUIDATION v. LAP GREEN

RCOMAA 0005/14/CS

COURT

Supreme Court

DECIDED

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RWANDATEL EN LIQUIDATION v. LAP GREEN

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Text

Page 1

RWANDATEL EN LIQUIDATION v. LAP GREEN [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0005/14/CS (Nyirinkwaya, P.J., Hitiyaremye na Hatangimbabazi, J.) 10 Nyakanga 2014] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'Urukiko rw'Ikirenga mu bujurire bwa kabiri – Ububasha bwo gusuzuma ikibazo gikomoka ku masezerano y'ubukemurampaka – Nta nzitizi y'iburabusha yatangwa mu bujurire bwa kabiri ishingiyeye ko amasezerano y'ubukemurampaka yafashweho icyemezo n'Inkiko zitabifitiye ububasha ngo ihabwe ishingiro kuko Urukiko ruba rutemeje urubanza rwarwo rushingiyeye ku kiburanwa – Itegeko Ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, Ingingo ya 28 agace ka 2. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bushingiyeye ku gaciro k'ikiburanwa – Imanza zagenwemo indishyi zingana nibura na 50.000.000frw – Mu itangwa ry'ubujurire bwa kabiri mu Rukiko rw'Ikirenga, nubwo urubanza rujuririrwa rwaba rwaragenwemo indishyi zirenga 50.000.000frw, ntirwakwakirwa mu gihe umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe n'izatanzwe mu

Rukiko rw'Ikirenga – Itegeko Ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, Ingingo ya 28 ahahera. Incamake y'ikibazo: LAP GREEN yareze Rwandatel en liquidation mu Rukiko rw'Ubucuruza rwa Nyarugenge isaba kwishyurwa umwenda wa 46.247.195 USD. Rwandatel en liquidation yireguye ivuga ko uwo mwenda wahinduwe imigabane ya LAP GREEN muri Rwandatel Ltd, ikaba itagomba kuyishyura itararangiza kwishyura abo ibereyemo imyenda. Urukiko rw'Ubucuruza rwa Nyarugenge rwemeje ko Rwandatel en liquidation yishyura LAP GREEN umwenda ungana na 39.710.000 USD. Rwandatel en liquidation yajuririyemo mu Rukiko Rukuru rw'Ubucuruza rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririye kuko Rwandatel en liquidation nta kimenyetso na kimwe yagaragaje cy'uko umwenda yahawe na LAP GREEN wahindutse imigabane. Rwandatel en liquidation yajuririyemo urwo rubanza mu Rukiko rw'Ikirenga ivuga ko urubanza rwajuririye rwaciye n'Urukiko rutabifitiye ububasha kuko ngo impande zombi zari zaremeranyijwe ko impaka zizavuka zizakemurwa hitabajwe ubukemurampaka mu gihe ubwumvikane bwaba bunaniranye. LAP GREEN yo ivuga ko inzitizi yose ituma ikirego kitakirwa igomba kubyutswa mbere yo kwisobanura ku mizi y'urubanza. Irongera itanga inzitizi ivuga ko ubujurire bwa Rwandatel en liquidation butakwakira kuko yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe. Incamake y'icyemezo: 1. Ababuranyi bagiranye amasezerano y'ubukemurampaka bafite uburenganzira bwo guhitamo babyumvikanyeho mu buryo bweruye cyangwa buteruye indi nzira yo gukemura impaka bafitanye, mu gihe ububasha bw'inkiko bushingiye ku kiburanwa bugenwa n'itegeko. Bityo inzitizi ya Rwandatel en liquidation y'iburabusha y'Urukiko Rukuru n'urw'Ubucuruza rwa Nyarugenge yasuzumwa gusa ari uko urukiko rwemeje ububasha bwarwo bushingiye ku kiburanwa.

Page 2

2. Nubwo urubanza rwajuririye rwagenyemo indishyi zirenga 50.000.000 Frw, ubujurire bwa Rwandatel en liquidation ntibwakwirakwira ngo busuzumwe kuko yaratsinzwe mu Rukiko rw'Ubucuruza no mu Rukiko Rukuru rw'Ubucuruza ku mpamvu zimwe. Ubujurire ntibwakiriye. Urubanza rwajuririye rugumyeho. Amagarama aherereye ku uwajuriye. Amategeko yashingiye: Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, Ingingo ya 28 agace ka 2 na 7. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'IKIBAZO [1] LAP GREEN yareze Rwandatel en liquidation mu Rukiko rw'Ubucuruza rwa Nyarugenge isaba kwishyurwa umwenda wa 46.247.195 USD nk' abandi ifitiye imyenda itazigamiye batangiye kwishyurwa. [2] Rwandatel en liquidation yireguye ivuga ko uwo mwenda wahinduwe imigabane ya LAP GREEN muri Rwandatel Ltd, ikaba itagomba kuyishyura itararangiza kwishyurwa abo ibereyemo imyenda kuko abanyamigabane bishyurwa iyo hari amafaranga asigaye nkuko biteganywa n'ingingo ya 67 y'itegeko no 12/2009 ryerekeye izahura ry'ubucuruza n'irangiza ry'ibibazo biturutse ku gihombo. [3] Urukiko rw'Ubucuruza rwa Nyarugenge mu rubanza RCOM 0501/TC/NYGE rwo kuwa 17/09/2013 rwemeje ko inyandiko z'amasezerano ziswe "loan agreement" ya 8.000.000 USD na "addendum to the loan agreement" ya 30.000.000 USD zigaragaza ko Rwandatel yahawe ariya mafaranga nk'inguzanyo yo mu rwego rw'imyenda itazigamiye, ayo masezerano akaba

ateganya inyungu (interest) za 1% ziyongeraho 0.5% mu gihe habayeho ubukererwe, ku buryo zafatwa nka kimwe mu byari ngombwa (conditions) ngo inguzanyo itangwe nk'uko bisanzwe, bitandukanye n'inyungu z'imigabane (dividends) zimenywa nyuma y'urwunguko, bigaragaza ko umwenda uregerwa ari inguzanyo yo mu rwego rw'imyenda itazigamiwe. [4] Urukiko rwategetse rero Rwandatel en liquidation kwishyura LAP GREEN kimwe n'abandi baberewemo imyenda idafitiwe ingwate umwenda ungana na 39.710.000 USD (agizwe na 8.000.000 USD + 30.000.000 USD + 1.710.000.000 USD Frw y'inyungu), ndetse na 300.000 Frw y'igihembo cy'avoka. [5] Rwandatel en liquidation yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ruca urubanza RCOMA 0432/13/HCC kuwa 06/01/2014, rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririye kuko Rwandatel en liquidation nta kimenyetso na kimwe yagaragaje

Page 3

cy'uko umwenda Rwandatel ltd yahawe na LAP GREEN wahindutse imigabane, runatega Rwandatel en liquidation guha LAP GREEN 100.000 Frw y'ikurikiranarubanza na 300.000 Frw y'igihembo cy'avoka yo ku rwego rw'ubujurire. [6] Rwandatel en liquidation yajuririye urwo rubanza mu Rukiko rw'Ikirenga kuwa 05/02/2014, urubanza ruburanishwa mu ruhamwe kuwa 27/05/2014, Rwandatel en liquidation ihagarariwe na Me Herbert Rubasha, LAP GREEN ihagarariwe na Me Bizumuremyi, ababuranyi babanza kujya impaka ku bijyanye n'ububasha bw'Urukiko rw'Ikirenga muri uru rubanza. II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURWA RYABYO 1° Kumenya niba ubujurire bwa Rwandatel en liquidation buri mu bubasha bw'Urukiko rw'Ikirenga kuko urubanza rujuririrwa rwaciwe n'urukiko rutabifitiye ububasha. [7] Me Herbert Rubasha uburanira Rwandatel en liquidation avuga ko ubujurire bwayo buri mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku ngingo ya 28, 2 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga kuko urubanza rujuririrwa rwaciwe n'urukiko rutabifiye ububasha. [8] Asobanura ko Urukiko Rukuru rw'Ubucuruzi n'Urukiko rw'Ubucuruzi nta bubasha zari zifite bwo gusuzuma ikirego cya LAP GREEN kuko ababuranyi bari baremeranyije mu masezerano yabo ko impaka zishobora kuvuka zizakemurwa hitabajwe ubukemurampaka niba ubwumvikane bunaniranye. [9] Me Bizumuremyi uburanira LAP GREEN avuga ko iyi mpamvu nta shingiro ifite kuko itigeze iburanwaho mu nkiko zibanza, bityo Rwandatel en liquidation ikaba itabinenga inkiko zibanza. Yongeraho ko hakurikijwe ibivugwa mu ngingo ya 78 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi inzitizi yose ituma ikirego kitakirwa igomba kubyutswa mbere yo kwisobanura ku mizi y'urubanza. UKO URUKIKO RUBIBONA [10] Ingingo ya 28 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, mu gace kayo ka 2, ivuga ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu bujurire bwa kabiri imanza zaciwe n'urukiko rutabifitiye ububasha. [11] Urukiko rusanga ariko ububasha buvugwa muri icyo ngingo butakwitiranywa n'ububasha bw'urukiko nkemurampaka (tribunal arbitral) kuko ababuranyi bagiranye amasezerano y'ubukemurampaka bafite uburenganzira bwo guhitamo babyumvikanyeho mu buryo bweruye cyangwa buteruye indi nzira yo gukemura impaka bafitanye, mu gihe ububasha bw'inkiko bushingiye ku kiburanwa bugenwa n'itegeko. [12]

Urukiko rusanga rero ikibazo cyabyukijwe na Rwandatel en liquidation kijyanye no kumenya niba Urukiko Rukuru rw'Ubucuruzi n'Urukiko rw'Ubucuruzi nta bubasha zari zifite

Page 4

bwo gusuzuma ikirego rwashyikirijwe na LAP GREEN kubera ko hari amasezerano y'ubukemurampaka ari inzitizi yo kutakira ikirego yasuzumwa gusa ari uko urukiko rwemeje ububasha bwarwo bushingiye ku kiburanwa. 2° Kumenya niba ubujurire bwa Rwandatel en Liquidation bwakwirwa hashingiwe ku gaciro k'ikiburanwa. [13] Me Herbert Rubasha avuga ko urubanza ruri mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku ngingo ya 28,7° y'itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga kuko ikiburanwa gifite agaciro karenze 50.000.000 Frw. [14] Me Bizumuremyi we avuga ko urubanza rutari mu bubasha bw'Urukiko rw'Ikirenga hashingiwe ku ngingo ya 28 in fine y'iryo tegeko kuko Rwandatel en liquidation yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe. UKO URUKIKO RUBIBONA [15] Ingingo ya 28,7° y'itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ivuga ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu bujurire bwa kabiri imanza zagenwemo indishyi zingana nibura na 50.000.000 Frw, ariko ingingo ya 28 in fine y'iryo tegeko ikavuga ko urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe rudashobora kujuririrwa mu Rukiko rw'Ikirenga. [16] Urukiko rusanga nubwo urubanza rujuririrwa rwagenyemo indishyi zirenga 50.000.000 Frw, Rwandatel en liquidation yaratsinzwe mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi ku mpamvu zimwe zishingiye ku kuba amasezerano yiswe "loan agreement" na "addendum to the loan agreement" agaragaza ko Rwandatel Ltd yahawe ariya mafaranga mu rwego rw'inguzanyo, ikaba nta kimenyetso yabashije kugaragaza cy'uko umwenda yahawe na LAP GREEN wahindutse imigabane, bityo ubujurire bwa Rwandatel en liquidation bukaba budashobora kwakirwa ngo busuzumwe. III. ICYEMEZO CY'URUKIKO [17] Rwemeje ko ubujurire bwa Rwandatel en liquidation butakiriwe mu Rukiko rw'Ikirenga, hakaba hagomba kugumaho urubanza RCOMA 0432/13/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 06/01/2014. [18] Rutegetse Rwandatel en liquidation kwishyura amagarama y'urubanza angana na 21.400 Frw.

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