

RWANDA / JUDGMENT

SELECT KALAOS Ltd vs. MUTAVUNIKA

RS/INJUST/RCOM 00003/2023/SC

COURT

Supreme Court

DECIDED

18 October 2024

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SELECT KALAOS Ltd vs. MUTAVUNIKA

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Text

Page 1

SELECT KALAOS Ltd vs. MUTAVUNIKA [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00003/2023/SC (Hitiyaremye, P.J., Kazungu na Muhumuza, J.) 18 Ukuboza 2024] Amategeko agenga ibimenyetso – Ibimenyetso – Usaba kugira ibyo asubizwa niwe ufite inshingano zo kugaragaza ibimenyetso byabyo – Umuburanyi uvuga ko hashingiwe ku masezerano, uwo baburana amugomba ibintu runaka, amafaranga cyangwa ibindi bintu by'agaciro, agomba kubitangira ikimenyetso; inyandiko igaragaza ko ashobora kuba afite ukuri ku byo aregera ntihagije. Inyungu z'ubukererwe – Usaba guhabwa inyungu z'ubukererwe agomba kugaragaza ishingiro ryazo – Inyungu z'ubukererwe zibarwa gusa mu gihe cy' amasezerano; igihe amasezerano avuyeho cyangwa arangiye inyungu zisabwa nta shingiro, iyo nta kundi ababuranyi babiteganyije. Incamake y'ikibazo: Mutavunika Arcade yareze sosiyete Select Kalaos Ltd ihagarariwe n'umuyobozi wayo Gakire Ntarugera, mu Rukiko rw'Ubucuruzi asaba ko ruyitegeka kumwishyura amafaranga akomoka ku masezerano y'ubukode bw'inzu y'ubucuruzi hamwe n'indishyi zitandukanye. Select Kalaos Ltd na yo yahise irega Mutavunika Arcade isaba kuyishyura amafaranga ahwanye n'ibyo yishyuye mu nyungu ze arizo umuriro n'amazi yishyuriye abapangayi be, TVA ku muriro, inyungu yaciwe na banki, amande ya RRA hamwe n'igihombo

yagize. Urukiko rw'Ubucuruzi rwaciye urubanza maze rwemeza ko ikirego cya Select Kalaos Ltd nta shingiro gifite kubwo kubura ibimenyetso. Select Kalaos Ltd ntiyishimiye imikirize y'urubanza maze ijurira mu Rukiko Rukuru rw'Ubucuruzi irusaba gutegeka Mutavunika kumwishyura. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza maze, rwemeza ko ubujurire bwa Select Kalaos Ltd nta shingiro bufite, bityo ko imikirize y'urubanza mu rwego rwa mbere idahindutse. Igihe cy'iburanisha kigeze, Umuyobozi wa sosiyete Select Kalaos Ltd yandika amenyesha ko atazaboneka ku muni w'iburanisha, asaba ko iburanishwa rwimurirwa undi muni, ariko urukiko rufata umwanzuro wo kuruburanisha adahari. Select Kalaos Ltd yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RCOMA 00301/2021/HCC rwasubirwamo ku mpamvu z'akarengane, ivuga ko akarengane ke gashingiye ku kuba Urukiko Rukuru rw'Ubucuruzi rwaramuburanishije adahari kandi yari yarumenyesheje ko atazaboneka maze ntirunasuzume impamvu yatanze. Urukiko rwabanje gusuzuma ikibazo kijyanye no kumenya niba Gakire Ntarugera yaravukijwe uburenganzira bwo kuburana mu Rukiko Rukuru rw'Ubucuruzi, maze rwemeza ko ikirego cye gifite ishingiro. Uru rukiko mu gufata umwanzuro rwasanze Gakire Ntarugera, umuyobozi wa Select Kalaos Ltd yaravukijwe uburenganzira bw'ibanze bwo kwiburanira akunganirwa, kandi bikaba ari ikibazo

Page 2

ndemyagihugu, maze rwemeza ko urubanza RCOMA 00301/2022/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/10/2022 ruteshejwe agaciro. Urukiko kandi rwemeje ko hagumaho imikirize y'urubanza CMB RCOM 01157 – 01153/2022/TC rwaciye n'Urukiko rw'Ubucuruzi ku wa 21/03/2022, maze urubanza rukomeza kuburanishwa mu mizi. Gakire Ntarugera uhagarariye Select Kalaos Ltd n'umwunganira bavuga ko Urukiko rw'Ubucuruzi rwemeje ko ikirego cyayo nta shingiro gifite rwirengagije ibimenyetso yatanze, basobanura ko mu kirego yasabye Urukiko gutegeka Mutavunika Arcade kumwishyura ibyo yishyuye mu nyungu ze, ni ukuvuga: umuriro n'amazi (ku bapangayi be), TVA atashoboye kugaruza (TVA à récupérer) kuko inyemezabwishyura zasohokaga ku mazina ya Mutavunika, inyungu za 18% yaciye na bank yishyuye ku nguzanyo yafashe mu nyungu za Mutavunika, amande yaciye na RRA, igihombo sosiyete yatejwe no kwishyura ibi byose bitari mu nyungu zayo, byose hamwe akaba 128.042.827Frw. Mutavunika Arcade n'umwunganira baburana bahakana umwenda Select Kalaos Ltd imurega kuko nta bimenyetso byawo yatanze, ukaba utanagaragara mu bitabo by'ibaruramutungo byayo, bavuga ko nta note de débit Select Kalaos Ltd yamushyikirije ngo yange kuyishyura, bityo ko ubujurire bwa Select Kalaos Ltd nta shingiro bufite. Mutavunika Arcade n'umwunganira bavuga kandi ko batanze ubujurire bwuririye ku bwa Select Kalaos Ltd kuko Urukiko rw'Ubucuruzi rwamuhaye amafaranga makeya, bakaba basaba guhabwa amafaranga ateye atya: 16.008.754 Frw (ibirarane) n'inyungu z'ubukererwe zingana na 70.718.692 frw yose hamwe akaba 86.714.437 Frw, bavuga ko inyungu basaba zishingiye ku ngingo ya 5 y'amasezerano, ivuga ko zikomeza kubarwa ku mafaranga yose Select Kalaos Ltd igomba kumwishyura kugeza igihe umwenda wose urangiriye (calcul des intérêts jusqu'au parfait paiement). Gakire Ntarugera uhagarariye Select Kalaos Ltd hamwe n'umwunganira biregura bavuga ko ibirarane bisigaye kwishyurwa bidakwiye kubarirwa inyungu z'ubukererwe kuko Mutavunika ari we watindiye ibiganiro, akaba atashingira ku makosa

ye ngo abisabire indishyi, bityo bakaba basaba Urukiko gutegeka Mutavunika Arcade kubishyura indishyi zisanzwe n'iz'akababaro ndetse n'iz'igihombo. Incamake y'icyemezo: 1. Umuburanyi uvuga ko hashingiwe ku masezerano, uwo baburana amugomba ibintu runaka, amafaranga cyangwa ibindi bintu by'agaciro, agomba kubitangira ikimenyetso; inyandiko igaragaza ko ashobora kuba afite ukuri ku byo aregera ntihagije.

2. Inyungu z'ubukererwe zibarwa gusa mu gihe cy' amasezerano ; igihe amasezerano avuyeho cyangwa arangiye inyungu zisabwa nta shingiro, iyo nta kundi ababuranyi babiteganyije. Ubujurire Select Kalaos Ltd yashyikirije Urukiko Rukuru rw'Ubucuruzi nta shingiro bufite; Amategeko yashingiweho:

Page 3

Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, ingingo ya 12; Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, ingingo ya 4. Nta manza zifashishijwe. Urubanza I.IMITERERE Y'URUBANZA [1] Mutavunika Arcade na Select Kalaos Ltd baburana amafaranga akomoka ku masezerano y'ubukode bw'inzu y'ubucuruzi1. [2] Urubanza rwabimburiye izindi ni ikirego2 cyatanzwe na Mutavunika Arcade asaba Urukiko gutangiza igihombo cya Select Kalaos Ltd no gutegeka iyi sosiyete kumwishyura 109.904.191 Frw. [3] Kuri uyu mwenda, Select Kalaos Ltd yemeye kwishyura 50.621.075 Frw nta mananiza, Mutavunika Arcade na we yemera kureka ikirego cye, impande zombi zumvikana gukomeza ibiganiro ku mafaranga asigaye byananirana uruhande rubishatse rukagana inkiko3. [4] Ubwumvikane ntibwashobotse, Mutavunika Arcade arega Select Kalaos Ltd mu rukiko4 asaba:

- i) Ibizarane by'ubukode 16.008.754 Frw; ii) Inyungu z'ubukererwe 70.718.692 Frw5 ; iii) Indishyi z'akababaro 10.000.000 Frw; iv) Igihombo cy'avoka 7.163.687 Frw;
- v) Amafaranga y'ikurikiranarubanza 2.000.000 Frw n'igarama rya 20.000 Frw; vi) Ko inyungu z'ubukererwe zikomeza kubarwa kugeza igihe umwenda wishyuriwe wose. [5] Ibibonye ityo, Select Kalaos Ltd na yo yahise irega6 Mutavunika Arcade isaba Urukiko kumutegeka kuyishyura 128.042.827 Frw ahwanye n'ibyo yishyuye mu nyungu ze: umuriro n'amazi yishyuriye abapangayi be, TVA ku muriro, inyungu yaciwe na banki, amande ya RRA hamwe n'igihombo yagize. Ibi birego byombi byahurijwe hamwe bihabwa CMB 01157- 1153/2021/ TC.

1 Amasezerano y'ubukode bw'inzu yo ku wa 01/07/2013 hagati ya Mutavunika Arcade na Select Kalaos Ltd.

2 ikirego cyari gifite rcom 02751/2018/tc

Page 4

[6] Ku kirego cya Mutavunika Arcade, Select Kalaos Ltd yemera gusa 16.008.754 Frw y'ibirarane⁴ ; isobanura ko nta ndishyi igomba kwishyura kuko itigeze yanga ubwumvikane, ko ahubwo ari yo izikwiriye, maze isoza ivuga ko ikirego cya Mutavunika nta shingiro gifite. [7] Ku itariki ya 21/03/2022, Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya Select Kalaos Ltd nta shingiro gifite kubera kubura ibimenyetso kandi umuriro n'amazi ivuga bikaba byarishyuwe na Mutavunika nk'uko bigaragazwa na 'reconciliation of rent account; naho ikirego cya Mutavunika Arcade rwemeje ko gifite ishingiro nuko rutegeka Select Kalaos Ltd kumwishyura amafaranga ateye atya : ibirarane 16.008.751 Frw, inyungu z'ubukererwe zingana na 21.741.630 Frw⁸, indishyi z'akababaro zihwanye na 1.000.000 Frw, 700.000 Frw y'igihembo cy'avoka, 100.000 Frw y'ikurikiranarubanza Frw, na 20.000 Frw y'igarama. [8] Select Kalaos Ltd yahise ijurira isaba Urukiko Rukuru rw'Ubucuruzi guhabwa ibyo yaregeraga byose byavuzwe haruguru mu kirego yari yatanze. Twibutse hano gusa ko yasabaga Urukiko gutegeka Mutavunika Arcade kumwishyura 128.042.827 Frw. [9] Mutavunika Arcade yireguye kuri ubu bujurire bwa Select Kalaos Ltd avuga ko nta bimenyetso itanga bishyigikira ikirego cyayo maze asaba ko butahabwa ishingiro. Yuririye kuri ubu bujurire asaba Urukiko Rukuru rw'Ubucuruzi gutegeka Select Kalaos Ltd kumwishyura inyungu z'ubukererwe zibazwe uhereye igihe amasezerano yarangiriye kuva 01/7/2018 – 15/5/2019 zingana na 17.131.560 Frw, kuko kuri we inyungu zigomba gukomeza kubarwa kugeza igihe umwenda wishyuriwe wose. [10] Yasabye kandi guhabwa indishyi z'akababaro zingana na 10.000.000Frw zo kuba yaragirijwe mu manza bigatuma uburwayi bwe bwiyongera; asobanura ko 1.000.000Frw yahawe n'Urukiko rw'Ubucuruzi ari indishyi zo kwica amasezerano kandi azishimira, ariko ko zitandukanye n'iz'akababaro; umwenda wose yishyura ukaba ari $37.750.381 + 17.131.560 = 54.881.941$ Frw. [11] Ku wa 20/09/2022, Urukiko Rukuru rw'Ubucuruzi rwaburanishije urubanza Gakire Ntarugera adahari ariko yaranditse agaragaza ko uwo munsu azaba ari mu mahugurwa hanze y'igihugu, asaba ko iburanisha ryimurirwa ku yindi tariki kugira ngo urubanza ruzaburanishwe ahibereye agire ibyo asobanura kuko avoka we amwunganira atamuhagarariye. [12] Ku itariki ya 31/10/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rushingiye ku myanzuro y'ababuranyi, rwemeza ko ubujurire bwa Select Kalaos Ltd nta shingiro bufite, ko imikirize y'urubanza mu rwego rwa mbere idahindutse. Naho ku bujurire bwuririye ku bundi bwa Mutavunika Arcade, rutegeka ko Select Kalaos Ltd igomba kumwishyura amafaranga ateye atya:

i) Ibirarane: 16.008.751 Frw; ii) inyungu z'ubukererwe: 21.741.630 Frw;

4 Izi ndishyi zibazwe kuva 1/7/2013 kugeza 30/6/2018, zishingiye ku ngingo ya 5 y'amasezerano y'ubukode. Urukiko rwabaze inyungu z'ubukererwe mu gihe cy'amasezerano gusa, reba paragraphe 15 ya kopi y'urubanza.

Page 5

iii) indishyi z'akababaro: 1.000.000 Frw; iv) igihembo cy'avoka: 1.770.000 frw;

v) ikurikiranarubanza: 200.000 Frw; vi) Indishyi z'akababaro zo gukomeza kumushora mu manza (mu bujurire): 1.000.000 Frw; vii) Igihembo cya Avoka wamuteguriye urubanza (mu bujurire): 1.770.000 Frw; viii) Ikurikiranarubanza (mu bujurire): 200.000 Frw; ix) Yose hamwe: 42.540.381 Frw. [13] Urukiko rwasobanuye ko Select Kalaos Ltd nta bimenyetso by'ibyo iregera yarugaragariye; Mutavunika Arcade na we akaba atahabwa inyungu z'ubukererwe kandi amasezerano yararangiye. [14] Select Kalaos Ltd yajuririye uru rubanza mu Rukiko rw'Ubujurire inenga Urukiko Rukuru rw'Ubucuruzi kuba rutarayihaye ibyo iregera no kuyitegeka kwishyura Mutavunika Arcade indishyi. [15] Mutavunika Arcade, ku ikubitiro yireguye avuga ko ubujurire bwa Select Kalaos Ltd butari mu bubasha bw'Urukiko, ko n'iyi kandi bwaba mu bubasha bw'arwo nta shingiro bufite. [16] Urukiko rwabanje gusuzuma ikibazo cyo kumenya niba ubujurire buri mu bubasha bw'arwo. Select Kalaos Ltd yaburanye ivuga ko ishingiyeye ku ngingo ya 52, igika cya 2, 3°, y'Itegeko N 30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw'inkiko5, ubujurire bwayo buri mu bubasha bw'Urukiko. Mutavunika Arcade we yavuze ko ubujurire butari mu bubasha bw'Urukiko kuko kuba Urukiko Rukuru rw'Ubucuruzi rwaraciye urubanza rushingiyeye ku myanzuro y'ababuranyi bitavuze ko rwaciye urubanza rushingiyeye ku itegeko ritariho, kuko nubundi inkiko zica imanza zishingiyeye ku myanzuro y'ababuranyi.

[17] Urukiko rwemeje ko ubujurire butari mu bubasha bw'arwo : rwasobanuye ko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rushingiyeye ku ngingo z'amategako ziriho kandi zizwi : ingingo 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo za 2,3,4 z'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ryakoreshwaga igihe urubanza rwacibwaga10; bityo kuvuga ko rwaciye urubanza rushingiyeye ku itegeko ritariho sibyo. [17] Ku wa 27/06/2023, Select Kalaos Ltd yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RCOMA 00301/2021/HCC rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubusabe bwayo yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

9 Ingingo 52, igika 2, 3°: « Urukiko rw'Ubujurire rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciwe n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa gisirikare, iyo izo manza zishingiyeye ku itegeko ritariho, ingingo z'amategako zitakiriho cyangwa zaciwe n'Urukiko rutabifitiye ububasha » 10 Ryavanyweho n'itegeko N°062/2024 ryo ku wa 20/6/2024.

Page 6

[18] Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo yarukorewe, mu cyemezo N° 168/13/CJ/2023 cyo ku wa 09/11/2023, yemeje ko urubanza RCOMA 00301/2021/HCC rwakongera kuburanishwa ruhabwa RS/INJUST/RCOM 00003/2023/SC. [19] Mu myanzuro ye, Gakire Ntarugera avuga ko akarengane ke gashingiyeye ku kuba Urukiko Rukuru rw'Ubucuruzi rwaramuburanishije adahari kandi yari yarumenyesheje ko atazaboneka ntirunasuzume

impamvu yatanze, ariko Mutavunika Arcade we akavuga ko kuba Urukiko rutarasubitse urubanza rugashingira ku myanzuro y'ababuranyi nta kosa rwakoze. [20] Urubanza rwaburanishijwe mu ruhamwe ku wa 09/09/2024, Select Kalaos Ltd ihagarariwe n'Umuyobozi wayo Gakire Ntarugera yunganiwe na Me Murangwa Faustin, Mutavunika Arcade yunganiwe na Me rutabingwa. [21] Urubanza rwaburanishijwe mu ruhamwe ku wa 09/09/2024, Select Kalaos Ltd ihagarariwe n'Umuyobozi wayo Gakire Ntarugera yunganiwe na Me Murangwa Faustin, Mutavunika Arcade yunganiwe na Me Rutabingwa Athanase, Urukiko rubanza gusuzuma ikibazo kijyanye no kumenya niba Gakire Ntarugera yaravukijwe uburenganzira bwo kuburana mu Rukiko Rukuru rw'Ubucuruzi. [22] Mu cyemezo cyafatiwe mu ntebe, Urukiko rwasanze Gakire Ntarugera uhagarariye Select Kalaos yari yamenyesheje Urukiko Rukuru rw'Ubucuruzi ko atazitabira iburanisha ryo ku wa 20/09/2022 kubera amahugurwa azajyamo hanze y'igihugu, maze asaba ko iburanisha risubikwa ariko urukiko ntirwaha agaciro ubwo busabe, ruburanisha urubanza adahari kandi n'Avoka we adashobora kumuhagararira. [23] Urukiko rushingiye ku ngingo ya 54 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ko « Iyo urega atitabye urukiko nta mpamvu, uregwa ashobora gusaba ko urubanza rusibwa cyangwa agasaba ko ruburanishwa mu mizi yarwo, urubanza ruciwe rukazafatwa nk'aho rwaburanishijwe ababuranyi bahari, keretse iyo Urukiko, ku nyungu z'ubutabera kandi mu buryo buteganywa n'iri tegeko, rusanze ari ngombwa ko urubanza rwimurirwa ku yindi tariki kugira ngo urega yongere ahamagazwe », n'ya 85 yaryo, iteganya ko «Umuburanyi afite uburenganzira bwo kwiburanira, guhagararirwa cyangwa kunganirwa na avoka mu nkiko» ndetse no ku mirongo yatanze n'uru Rukiko11, rwasanze Gakire Ntarugera, uhagarariye Select Kalaos Ltd yaravukijwe uburenganzira bw'ibanze bwo kwiburanira akunganirwa, kandi bikaba ari ikibazo ndemyagihugu, rwemeza ko urubanza RCOMA 00301/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/10/2022 ruteshejwe agaciro. [24] Urukiko kandi rwemeje ko hagumaho imikirize y'urubanza CMB RCOM 01157 – 01153/2022/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 21/03/2022, maze urubanza rukomeza kuburanishwa mu mizi hashingiye ku myanzuro y'ubujurire bwa Select Kalaos Ltd n'imyanzuro yo kwiregura ya Mutavunika Arcade mu Rukiko Rukuru rw'Ubucuruzi. [25] Mu bujurire bwayo mu Rukiko Rukuru rw'Ubucuruzi, Select Kalos Ltd yasabaga guhabwa ibyo yaregeye byose mu Rukiko rw'Ubucuruzi bitahawe ishingiro.

Page 7

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO 1. Kumenya niba Mutavunika Arcade hari umwenda abereyemo Select Kalaos Ltd [26] Gakire Ntarugera uhagarariye Select Kalaos Ltd na Me Murangwa Faustin umwunganira bavuga ko Urukiko rw'Ubucuruzi rwemeje ko ikirego cyayo nta shingiro gifite rwirengagije ibimenyetso yatanze. Basobanura ko mu kirego yasabye Urukiko gutegeka Mutavunika Arcade kumwishyura ibyo yishyuye mu nyungu ze, ni ukuvuga: umuriro n'amazi (ku bapangayi be), TVA atashoboye kugaruza (TVA à récupérer) kuko inyemezabwishyu zasohokaga ku mazina ya Mutavunika, inyungu za 18% yaciwe na bank

yishyuye ku nguzanyo yafashe mu nyungu za Mutavunika, amande yaciwe na RRA, igihombo sosiyete yatejwe no kwishyura ibi byose bitari mu nyungu zayo, byose hamwe akaba 128.042.827Frw. [27] Mutavunika Arcade na Me Rutabingwa Athanase umwunganira baburana bahakana umwenda Select Kalaos Ltd imurega kuko nta bimenyetso byawo yatanze, ukaba utanagaragara mu bitabo by'ibaruramutungo byayo. Basobanura ko ubusanzwe umwenda ubaho iyo uzwi, n'umubare wawo uzwi, ukaba kandi wararengeje igihe cyo kwishyurwa, ibi byose bikagaragazwa n'ibimenyetso nka fagitire, note de débit, lettre de change etc., ko muri iyi dosiye atariko ibintu bimeze. [28] Basobanura ko nta buriganya Mutavunika yagize ku bijyanye na facture y'umuriro wishyuye na Select Kalaos Ltd kuko atari azi ko harimo n'uw'abandi bapangayi, ahubwo ko yabimenye ari uko asabye CEO wa Company witwa Daniel MACHARI gutegura documents za consommation ya company ku bijyanye n'umuriro nk'uko bigaragara ku mugereka wa 49, ko nyuma yabwo babiganiriyeho na Select Kalaos Ltd, bagakora inyandiko yiswe reconciliation of rent account iri ku mugereka wa 32, ko amafaranga ari muri iyo nyandiko ayemera ariyo 8.825.428 Frw na 4.824.847 Frw. [29] Basoba bavuga ko nta note de débit Select Kalaos Ltd yamushyikirije ngo yange kuyishyura, ko rero ubujurire bwa Select Kalaos Ltd nta shingiro bufite. UKO URUKIKO RUBIBONA [30] Ingingo ya 12, igika cya 1, y'Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ko «urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda». [31] Ingingo ya 4 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, iteganya ko « Urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba. Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe. icyakora, umucamanza cyangwa ukemura ikibazo ashobora gutegeka umuburanyi cyangwa umwe mu bafitanye ikibazo cyangwa undi muntu gutanga cyangwa kwerekana ikimenyetso afite». [32] Dosiye y'urubanza igaragaza ko impamvu yatumye Select Kalaos Ltd ijurira mu Rukiko Rukuru rw'Ubucuruzi ari uko Urukiko rw'Ubucuruzi rutayihaye amafaranga yishyuriye abapangayi ba Mutavunika bidakwiye (umuriro n'amazi); amafaranga ya TVA itashoboye

Page 8

kugaruza kuko facture zasohokaga ku mazina ya Mutavunika Arcade; amafaranga y'ihazabu yaciwe na RRA kubera kutabonera ku gihe inyemezabwishyu za EBM yishuriyeho ubukode Mutavunika Arcade; inyungu zingana na 18% yaciwe na Banki ku mwenda yafashe yishyura ibintu byari mu nyungu za Mutavunika Ikaba isaba Urukiko ko rwayirenganura rukayiha amafaranga yose hamwe ahwanye na 128.042.827 Frw. [33] Urukiko rusanga uretse kurondora ibyo yishyura Mutavunika Arcade, Select Kalaos Ltd nta bimenyetso bya byo yigeze igaragaza kuva urubanza rwatangira; n'inyandiko yashyize muri system ivuga ko igaragaza uburyo impande zombi zumvikanyeho icyo buri ruhande rugomba urundi, ni iyanditswe na Select Kalaos Ltd yonyine kandi ikaba itariho imikono y'abayikoze; byongeye kandi iyo nyandiko igaragaza ko amafaranga Mutavunika Arcade yaba agomba Select Kalaos Ltd ari 72.841.255 Frw aho kuba 128.042.827 Frw iregera kuva urubanza rwatangira. [34] Urukiko rusanga ariko mu mafaranga Select Kalaos Ltd yaregeye harimo ayo Mutavunika Arcade yemeye mu iburanisha agizwe na

8.825.424 Frw y'umuriro na 4.824.847 Frw y'amazi; ibyo ubisanga mu nyandiko yitwa Reconciliation of rent Account Select Kalaos Ltd, byanashimangiwe na Me Rutabingwa Athanase umwunganira kuko yavuze ko amafaranga Mutavunika yemera ari agaragara muri Note y'ubwuvikane iri kuri attachment ya 3212 kandi ko yishyuwe. [35] Urukiko rurasanga Select Kalaos Ltd itarabashije gutanga ibimenyetso bya 128.042.827 Frw iregera, ngo igaragaze inkomoko y'uyu mubare n'uburyo iyabara, kuko nubwo hari 8.825.424 Frw y'umuriro na 4.824.847 Frw y'amazi Mutavunika Arcade yemereye mu iburanisha ko Select Kalaos Ltd ishyuriye abapangayi be, mu nyandiko ya reconciliation of rent account yasinywe n'impande zombi, bigaragara ko ayo mafaranga ari mu byumvikanyweho agakurwa mu birarane by'ubukode Select Kalaos Ltd igomba kwishyura Mutavunika Arcade, aribwo hahise hasigara ibirarane by'ubukode bingana na 16.008.754 Frw. [36] Inshingano umuburanyi wese afite yo gutanga ibimenyetso by'ibyo asaba cyangwa yireguza byemejwe mu rubanza rwaciwe n'Urukiko rw'Ubujurire rwo Mujiyi wa Mons (Belgique), ku wa 03/3/2003, aho rwemeje ko umuburanyi uvuga ko, hashingiwe ku masezerano, uwo baburana amugomba ibintu runaka, amafaranga cyangwa ibindi bintu by'agaciro, agomba kubitangira ikimenyetso; inyandiko igaragaza ko ashobora kuba afite ukuri ku byo aregera ntihagije¹³; uru rubanza rurasaba n'urundi rwaciwe n'Urukiko Rusesa Imanza rwo mu Bubiligi (Cour de cassation de Belgique)¹⁴, ku wa 24/05/1962¹⁵, aho urega avuga ko ikibanza kiburanwa yakiguriwe n'umuvandimwe we wapfuye, agasaba Urukiko gutegeka umugore w'uwo muvandimwe ko yamusubiza $\frac{1}{2}$ cy'amafaranga yakoresheje acyubakisha. Urukiko rwemeje ko ikirego cye kidafite ishingiro kubera ko adafite ibimenyetso bigaragaza ibyo aregera, kuko usaba kugira ibyo asubizwa ari we ufite inshingano zo kugaragaza ibimenyetso byabyo, ko rero urega atabigaragaje bityo ikirego cye kikaba kidafite ishingiro¹⁶. [37] Hashingiwe ku ngingo ya 12, igika cya 1, y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, n'iya 4 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 na ryo ryavuzwe ndetse no ku bisobanuro bimaze gutangwa, Urukiko rurasanga Select Kalaos Ltd itarabashije gutanga ibimenyetso bya 128.042.827 Frw iregera, rukaba ntaho rwahera mu kuyatanga, bityo ubujurire yari yatanze mu Rukiko Rukuru rw'Ubucuruzi bukaba nta shingiro bufite.

Page 9

2. Kumenya niba hari inyungu z'ubukererwe n'indishyi Select Kalaos Ltd yategekwa kwishyura Mutavunika Arcade [38] Mutavunika Arcade na Me Rutabingwa Athanase umwunganira bavuga ko yatanze ubujurire bwuririye ku bwa Select Kalaos Ltd kuko Urukiko rw'Ubucuruzi rwamuhaye amafaranga makeya: 16.008.751 Frw (ibirarane) na 21.741.630 Frw (inyungu z'ubukererwe kuva 01/7/2013 - 30/6/2018). [39] Basobanura ko uyu munsu basaba guhabwa amafaranga ateye atya: 16.008.754 Frw (ibirarane) n'inyungu z'ubukererwe zingana na 70.718.692 frw yose hamwe akaba 86.714.437 Frw. [40] Bavuga ko inyungu asaba zishingiye ku ngingo ya 5 y'amasezerano, ko zikomeza kubarwa ku mafaranga yose Select Kalaos Ltd igomba kumwishyura kugeza igihe umwenda wose urangiriye (calcul des intérêts jusqu'au parfait paiement). [41] Gakire Ntarugera uhagarariye Select Kalaos Ltd na Me Murangwa Faustin umwunganira bavuga ko ibirarane bisigaye kwishyurwa bidakwiye kubarirwa inyungu z'ubukererwe kuko Mutavunika ari we watindiye ibiganiro, akaba atashingira ku makosa ye ngo abisabire indishyi, kandi na Mutavunika

akaba atemera kwishyura inyungu kuri ya mafaranga yishyuwe mu nyungu ze (umuriro n'amazi by'abapangayi), ndetse no mu nyandiko y'ubwumvikane ntabwo bateganyije kandi amasezerano yari yarangiye. UKO URUKIKO RUBIBONA [42] Ingingo ya 4 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, iteganya ko « Urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba. Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe. icyakora, umucamanza cyangwa ukemura ikibazo ashobora gutegeka umuburanyi cyangwa umwe mu bafitanye ikibazo cyangwa undi muntu gutanga cyangwa kwerekana ikimenyetso afite». [43] Urukiko rusanga Mutavunika Arcade atagaragaza ishingiro ry'inyungu z'ubukererwe ziyongera ku zagenwe n'Urukiko rw'Ubucuruzi; rusanga inyungu z'ubukererwe zigomba kubarwa gusa mu gihe cy'amasezerano, ni ukuvuga guhera itariki ya 01/07/2013 kugeza ku ya 30/06/2018; igihe amasezerano avuyeho cyangwa arangiye inyungu zisabwa nta shingiro, iyo nta kundi ababuranyi babiteganyije. [44] Hashingiwe ku ngingo ya 4 y'Itegeko N° 062/2024 ryo ku wa 20/06/2024 ryavuzwe haruguru no ku bisobanuro byatanzwe, Urukiko rusanga Select Kalaos Ltd nta mafaranga yiyongera ku yo yari yaciwe n'Urukiko rw'Ubucuruzi igomba kwishyura Mutavunika, bityo ikaba igomba kumwishyura angana na 37.750.381 Frw, nk'uko yari yategetswe n'Urukiko rw'Ubucuruzi. 3. Kumenya ishingiro ry'indishyi zisabwa n'ababuranyi muri uru rubanza [45] Gakire Ntarugera uhagariye Select Kalaos Ltd na Me Murangwa Faustin umwunganira basaba Urukiko gutegeka Mutavunika Arcade kwishyura Select Kalaos Ltd indishyi zingana na

Page 10

10.000.000 Frw akubiyemo indishyi z'akababaro ndetse n'igihombo yayiteje, ko ibyo abishingira ku ngingo ya 136 n'ya 155 z'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano. [46] Banavuga ko Mutavunika Arcade yanze ko urubanza rurangira mu bwumvikane, atuma bajya mu nkiko, akaba agomba kubyirengera, bityo rukamutegeka kuyishyura 2.500.000 Frw akubiyemo 1.500.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza guhera mu bwumvikane (15/5/2019) no mu nkiko, akanategekwa gusubiza 20.000 Frw yatanzweho ingwate y'igarama. [47] Mutavunika Arcade na Me Rutabingwa Athanase umwunganira bavuga ko indishyi Select Kalaos Ltd isaba nta shingiro zifite kuko itashoboye kugaragaza ko hari umwenda n'umwe ayifitiye, akaba asaba Urukiko gutegeka Select Kalaos Ltd kumwishyura amafaranga y'ikurikiranarubanza angana na 2,000,000; amafaranga y'igihembo cya Avoka angana na 1,500,000; hiyongeyeho TVA ya 270,000 Frw, yose hamwe akaba 1.770.000 Frw; yasabye kandi indishyi z'akababaro zingana na 10.000.000 Frw zo kumusiragiza mu nkiko, byatumye uburwayi bwe bwiyongera (bukomera). UKO URUKIKO RUBIBONA [48] Urukiko rusanga indishyi ababuranyi bombi basaba ntazo bakwiye guhabwa kuko, ku ruhande rumwe, ikirego cya Select Kalaos Ltd twabonye ko nta shingiro gifite ku mpamvu zasobanuwe, ku rundi, Mutavunika Arcade nawe ntiyagaragaje ko Select Kalaos Ltd yamureze agamije kumusiragiza mu nkiko kandi nyamara ubushake bubi nk'ubwo nibwo buhanirwa; ibi niko byemejwe mu rubanza RS/INJUST/RC00022/2022/SC rwaciwe n'uru Rukiko ku wa 01/3/2024 haburana SANALAM Assurances Générales Plc na Impanoyimana Epaphrace na bagenzi be. III. ICYEMEZO CY'URUKIKO [49] Rwemeje ko ubujurire Select Kalaos Ltd yashyikirije Urukiko Rukuru rw'Ubucuruzi nta shingiro

bufite; [50] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Mutavunika Arcade nta shingiro bufite; [51] Rwemeje ko imikirize y'urubanza CMB 01157-1153/2021/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 21/3/2022 idahindutse. [52] Rutegetse Select Kalaos Ltd kwishyura Mutavunika Arcade 37.750.381 Frw y'umwenda imubereyemo; [53] Rutegetse Select Kalaos Ltd kwishyura Mutavunika Arcade 700.000 Frw y'igihembo cya Avoka, 100.000Frw y'ikurikiranarubanza na 20.000 Frw y'igarama nk'uko byategetswe n'Urukiko rw'Ubucuruzi;

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