

RWANDA / JUDGMENT

SETRAPCO v. BARBARA A. STIEFEL FOUNDATION

RLR V.1 - 2015

COURT

Supreme Court

DECIDED

4 April 2014

CASE / FILE NUMBER

RCOMA 0153/12/CS

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SETRAPCO v. BARBARA A. STIEFEL FOUNDATION

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Text**Page 1**

SETRAPCO v. BARBARA A. STIEFEL FOUNDATION [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0153/12/CS (KAYITESI, P.J., RUGABIRWA na MUKANDAMAGE, J.) 04 Mata 2014] Amategeko y'imbonezamubano – Kutagira ububasha bw'uregwa – Inzitizi y'iburabubasha bw'uregwa ni indemyagihugu, iba igomba gusuzumwa aho urubanza rwaba rugeze hose; muri icyo gihe irakirwa kandi igasuzumwa – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 142. Amategeko y'imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'urega n'uregwa mu isuzuma ry'iyakirwa ry'ikirego – Kugira ngo ikirego cyakirwe ni uko urega n'uregwa bagomba kuba bafite ububasha, ko mu gihe batabufite, ikirego cyabo nticyakirwa. Amategeko y'imiburanishirize y'imanza z'ubucuruzi – Itumizwa ry'ibigo, sosiyete, n'imiryango bitari ibya Leta bifite ubuzima gatozi – Iyakirwa ry'ikirego iyo harezwe udahagarariye société mu buryo bukurikije amategeko – Iyo ariwe warezwe mu rubanza ntibyahabwa ishingiro ngo cyakirwe kuko uwo muriyango uba ugomba kuregwa mu izina ry'uwuhagarariye, Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye

imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. Ingingo ya 31, agace ka 5°. Incamake y'ikibazo: SETRAPCO yagiranye amasezerano na Barbara A. Stiefel Foundation yo gucumbikiramo abanyeshuri mu gihe cy'iminsi 180 . ku giciro kingana na 129.670.559 Frw. SETRAPCO yaregeye Urukiko Rukuru rw'Ubucuruzi asaba kwishyurwa 29.908.359 Frw asigaye yiyongereyeho indishyi zinyuranye kuko yarangije kubaka. Mu iburanisha Barbara A. Stiefel Foundation yatanze inzitizi yo kutakira ikirego cya SETRAPCO avuga ko amasezerano ishingiraho isaba indishyi yasheshwe n'urubanza RCOM 0210/11/HCC rwaciwe 29/11/2011. Urukiko rwemeje ko ikirego cya SETRAPCO cyitakiriwe kuko itakongera gusaba indishyi ishingiyeye ku masezerano yasheshwe n'urubanza rwavuzwe. SETRAPCO yajuririye Urukiko rw'Ikirenga ariko iburanisha ritangiye Barbara A. Stiefel Foundation itanga inzitizi yo kutakira ikirego cya SETRAPCO kuko yayireze ihagarariwe na Rwamuranga Steven na Penny Enseley, nyamara badafite ububasha bwo kuyihagararira mu nkiko, ko ahubwo bufitwe na Barbara A. Stiefel, ko kandi SETRAPCO yahise imurega nyamara ingingo ya 13 y'amasezerano bagiranye iteganya ko mu gihe batumvikanye mu ishyirwa mu bikorwa ryayo, impande zombi zizabanza kwiambaza abahuza, bananirwa kubumvikanisha akaba aribwo utishimye ashobora kuregera Urukiko rubifitiye ububasha. SETRAPCO yo ivuga ko iyo nzitizi nta shingiro ifite kubera ko Barbara A. Stiefel Foundation itayitanye mu myanzuro yayo yo kwiregura no mu gihe cy'inama ntegura rubanza. SETRAPCO yasabye ko Barbara A. Stiefel Foundation yayishyura 29.908.359 Frw asigaye akiyongeraho indishyi n'inyungu zinyuranye kuko yarangije kubaka naho Barbara A. Stiefel Foundation nawe mubujurire bwuririye ku bundi agasaba ko uwajuriye ariwe wamuha indishyi kuko atubahirije amasezerano bagira nye.

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Incamake y'icyemezo: 1. Impamvu ituma ikirego kitakirwa ishobora kubyutswa n'umuburanyi cyangwa n'Urukiko rubyibwirije. Impamvu zituma ikirego kitakirwa zigaragazwa n'urukiko rubyibwirije iyo ari indemyagihugu, nko kurenza igihe cyo kujurira cyangwa kutagira ububasha, ubushobozi cyangwa inyungu byo kurega. Kuba inzitizi y'iburabubasha bw'uregwa ari indemyagihugu igomba gusuzumwa aho urubanza rwaba rugeze hose, bityo ikaba igomba kwakirwa igasuzumwa.

2. Abahagarariye ibigo, sosiyete, n'imiryango bitari ibya Leta bifite ubuzima gatozi bitumirwa mu izina ry'abayihagarariye. Kuba uwajuriye avuga ko Penny Ensley na Stephen Rwamurangwa bahawe ububasha na Barbara A. Stiefel bwo guhagararira Barbara A. Stiefel Foundation mu Nkiko nta shingiro bifite, kuko inyandiko yo kuwa 19/08/2010 igaragaza ko Barbara A. Stiefel yabahaye inshingano zo kwemeza ko imirimo yakozwe n'inyemezabuguzi (factures).
3. Ikirego cyakirwa ari uko urega n'uregwa bagomba kuba bafite ububasha, ko mu gihe batabufite, ikirego nticyakirwa. Bityo ubujurire bw'uwajuriye butagomba kwakirwa kuko yareze uregwa ahagarariwe na Penny Ensley na Stephen Rwamurangwa, kandi nta bubasha bafite bwo kumuhagararira mu Nkiko. Inzitizi y'iburabubasha bw'uregwa ifite ishingiro. Ubujurire ntibwakiriwe. Amagarama aherereye ku uwajuriye. Amategeko yashingiweho:

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 31 agace ka 5 n'ya 142. Nta manza zifashishijwe Inyandiko z'abahanga zifashishijwe: SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, 5 ème Edition, Dalloz, Paris, 2006-2007, p. 22. Urubanza I. IMITERERE Y'URUBANZA [1] Kuwa 19/08/2010, Barbara A. Stiefel Foundation ihagarariwe na Barbara A. Stiefel na SETRAPCO Ltd bagiranye amasezerano y'ubwubatsi bw'inzu yo gucumbikiramo abanyeshuri ba « Kayonza Modern Secondary School » iri mu Karere ka Kayonza, mu Ntara y'Iburasirazuba, bumvikana ko iyo mirimo izakorwa mu gihe cy'iminsi 180 ku giciro kingana na 129.670.559 Frw. [2] Nyuma yaho, SETRAPCO Ltd yareze Barbara A. Stiefel Foundation mu Rukiko Rukuru rw'Ubucuruzi kuri n° RCOM 0291/11/HCC, isaba ko yayishyura 29.908.359 Frw asigaye yiyongereyeho indishyi zinyuranye kuko yarangije kubaka inyubako yavuzwe haruguru.

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- [3] Igihe cy'iburanisha ry'urubanza mu Rukiko Rukuru rw'Ubucuruzi, uburanira Barbara A. Stiefel Foundation yatanze inzitizi yo kutakira ikirego cya SETRAPCO Ltd kubera ko amasezerano yo kuwa 19/08/2010 ishingiraho isaba indishyi yasheshwe n'urubanza RCOM 0210/11/HCC rwaciwe n'urwo Rukiko kuwa 29/11/2011, Urukiko rwemeza ko ikirego cya SETRAPCO Ltd kitakiriwe kuko itakongera gusaba indishyi zishingiye ku masezerano yasheshwe n'urubanza RCOM 0210/11/HCC yajuririye mu Rukiko rw'Ikirenga. [4] SETRAPCO Ltd yajuririye urwo rubanza mu Rukiko rw'Ikirenga kuri n° RCOMA 0153/12/CS, ruhuzwa n'urubanza RCOMA 0010/12/CS kuko zifitanye isano. [5] Kuwa 31/01/2014, Urukiko rw'Ikirenga rwaciye urubanza RCOMA 0010/12/CS - RCOMA 0153/12/CS, rutegeka ko imikurizye y'urubanza RCOM 0210/11/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 29/11/2011 ivanyweho kubera ko Barbara A. Stiefel yaregeye iseswa ry'amasezerano yavuzwe haruguru ku giti cye, nyamara yaragombaga kuyaregera ahagarariye Barbara A. Stiefel Foundation, rutegeka kandi ko iburanisha ry'urubanza RCOMA 0153/12/CS hagati ya Barbara A. Stiefel Foundation na SETRAPCO LTD rizakomeza kuwa 18/03/2014. [6] Kuri uwo muni, urubanza rwaburanishijwe mu ruhamo SETRAPCO Ltd ihagarariwe na Ritararenga Didas, Umuyobozi Mukuru wayo, yunganiwe na Me Ngirumpetse JMV, naho Barbara A. Stiefel Foundation ihagarariwe na Me Niyondora Nsengiyumva. [7] Iburanisha ry'urubanza ritangiye, uburanira Barbara A. Stiefel Foundation yatanze inzitizi zigamije kutakira ubujurire bwa SETRAPCO Ltd kubera ko yareze Barbara A. Stiefel Foundation ihagarariwe na Rwamuranga Steven na Penny Enseley, nyamara badafite ububasha bwo kuyihagararira mu nkiko, ko ahubwo bufitwe na Barbara A. Stiefel, ko kandi SETRAPCO Ltd yahise iyirega mu Rukiko Rukuru rw'Ubucuruzi, nyamara ingingo ya 13 y'amasezerano bagiranye iteganyako mu gihe batumvikanye mu ishyirwa mu bikorwa ryayo, impande zombi zizabanza kwiambaza abahuzi, bananirwa kubumvikanisha akaba aribwo utishimye ashobora kuregera Urukiko rubifitiye ububasha. [8] Ku birebana n'urubanza mu mizi, SETRAPCO Ltd isaba ko Barbara A. Stiefel Foundation yayishyura 29.908.359 Frw asigaye akiyongeraho indishyi n'inyungu zinyuranye kuko yarangije kubaka ishuri ryavuzwe haruguru, byaba

ngombwa, akishyurwa n'Akarere ka Kayonza kuko ariko karikoresha. Barbara A. Stiefel Foundation yo ikavuga ko itakwishyura SETRAPCO Ltd izo ndishyi kuko itubahirije amasezerano bagiranye, ko ahubwo ariyo ikwiye kuyiha indishyi yasabiye mu bujurire bwayo bwuririye ku bundi nk'uko zisobanuye mu mwanzuro yatanze.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO: Inzitizi yo kutakira ubujurire bwa SETRAPCO Ltd kuko yareze abo itagombaga kurega (défaut de qualité des défendeurs). [9] Uburanira Barbara A. Stiefel Foundation avuga ko ubujurire bwa SETRAPCO butakwakirwa kuko yareze Barbara A. Stiefel Foundation mu izina rya Rwamurangwa Steven na

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Penny Ensley nk'uko bigaragazwa n'imyanzuro yatanze mu rwego rwa mbere, nyamara badafitte ububasha bwo kuyihagararira mu Rukiko, ko ahubwo yagombaga kurega Barbara A. Stiefel Foundation ihagarariwe na Barbara A. Stiefel kuko ariwe ufite ububasha bwo kuyihagararira nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza n° RCOMA 0010/12/CS - RCOMA 0153/12/CS rwaciwe kuwa 31/01/2014, ko rero ubujurire bwayo butujuje ibisabwa n'ingingo ya 2 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kugira ngo bwakirwe. [10] Avuga kandi ko kuba SETRAPCO yarareze Barbara A. Stiefel Foundation mu izina ry'abatayihagarariye mu buryo bwemewe n'amategeko, byatumye ihamagazwa mu buryo bunyuranyije n'ingingo ya 31, agace ka 5° y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, iteganya ko imiryango itegamiye kuri Leta ifite ubuzima gatozi ihamagazwa mu izina ry'abayihagarariye. [11] Asobanura ko Barbara A. Stiefel Foundation yari yatanze iyo nzitizi mu Rukiko Rukuru rw'Ubucuruzi, ariko ko rutayisuzumye kubera ko rutakiriye ikirego cya SETRAPCO kubera ko rwasanze itaragombaga kongera kururegera amasezerano yasheshwe n'urubanza RCOM 0210/11/HCC, ko rero uru Rukiko rwasuzuma iyi nzitizi, rukemeza ko ifite ishingiro. [12] Uburanira SETRAPCO avuga ko iyo nzitizi nta shingiro ifite kubera ko Barbara A. Stiefel Foundation itayitanye mu myanzuro yayo yo kwiregura yo kuwa 15/03/2013 no mu Nama ntegururubanza yo kuwa 28/03/2013. [13] Avuga kandi ko SETRAPCO yareze Barbara A. Stiefel Foundation mu buryo bwemewe n'amategeko kubera ko Rwamurangwa Steven na Penny Ensley basinye ku masezerano y'ubwubatsi yo kuwa 19/08/2010, ko kandi Barbara A. Stiefel yabahaye ububasha bwo guhagararira Barbara A. Stiefel Foundation hashingiwe ku ibaruwa ye yo kuwa 19/08/2010.

UKO URUKIKO RUBIBONA

- a. Ku birebana n'iyakirwa ry'inzitizi [14] Ingingo ya 142 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Impamvu ituma ikirego kitakirwa ishobora kubyutswa n'umuburanyi cyangwa n'urukiko rubyibwirije. Impamvu zituma ikirego kitakirwa zigaragazwa n'urukiko rubyibwirije iyo ari indemyagihugu, nko kurenza igihe cyo kujurira cyangwa kutagira ububasha, ubushobozi cyangwa inyungu byo kurega". [15] N'ubwo iyi nzitizi y'iburabubasha bw'uregwa itasuzumwe mu rwego rwa mbere, Urukiko rurasanga ari ndemyagihugu ikaba igomba gusuzumwa aho urubanza rwaba rugeze hose,

bityo ikaba igomba kwakirwa igasuzumwa.

- b. Ku birebana n'ishingiro ry'inzitizi [16] Ingingo ya 31, agace ka 5° y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi,

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iteganya ko “abahagarariye ibigo, sosiyete, n'imiryango bitari ibya Leta bifite ubuzima gatozi bitumirwa mu izina ry'abayihagarariye”. [17] Abahanga mu mategeko barimo Serge Guinchard bavuga ko kugira ngo “ikirego cyakirwe ari uko urega n'uregwa bagomba kuba bafite ububasha (qualité), ko mu gihe batabufite, ikirego nticyakirwa”¹. [18] Inyandiko itanga ikirego yo kuwa 28/11/2011 mu Rukiko Rukuru rw'Ubucuruzi, igaragaza ko SETRAPCO Ltd “yareze Barbara A. Stiefel Foundation, mu izina ry'abayihagarariye mu buryo bwemewe n'amategeko, aribo Penny Ensley na Stephen Rwamurangwa”, isaba ko yayiha 29.908.359 Frw asigaye itayishyuye nyuma yo kurangiza imirimo y'ubwubatsi yavuzwe haruguru, ikayihira n'indishyi zinyuranye. [19] Urukiko rurasanga ibimenyetso biri muri dosiye birimo amasezerano y'ubwubatsi yo kuwa 19/08/2010, yabayeho hagati ya Barbara A. Stiefel Foundation na SETRAPCO Ltd, ibaruwa yo kuwa 16/08/2011, Barbara A. Stiefel yandikiye SETRAPCO Ltd ayisaba ko yakwakira 4.385.495 Frw ahwanye n'imirimo yakoze iteganyijwe muri ayo masezerano, ibaruwa yo kuwa 26/07/2011, Barbara A. Stiefel yandikiye Ritararenga Didas, Umuyobozi wa SETRAPCO Ltd, amumenyesha ko hari imirimo bari barasezeranye yakozwe, ariko ko hari n'itarakozwe, ko azareba uko yakwishyura yakozwe, hamwe n'ibaruwa yo kuwa 23/08/2011, Barbara A. Stiefel yandikiye SETRAPCO Ltd iyimenyesha ko kuba yaranze kwakira 4.385.495 Frw yateganyaga kuzayishyura bizatuma bakorana inama kugira ngo bakemure icyo kibazo mu bwumvikane, ko nikinanirana, aribwo SETRAPCO Ltd ishobora kuzaregera Urukiko nk'uko biteganyijwe mu masezerano bagiranye, bigaragaza ko Barbara A. Stiefel ariwe uhagarariye Barbara A. Stiefel Foundation mu Rwanda kuko yagiye asinya nk'uyihagarariye mu bikorwa byayo. [20] Urukiko rurasanga ibyo SETRAPCO Ltd ivuga ko Penny Ensley na Stephen Rwamurangwa bahawe ububasha na Barbara A. Stiefel bwo guhagararira Barbara A. Stiefel Foundation mu Nkiko nta shingiro bifite, kuko inyandiko yo kuwa 19/08/2010 igaragaza ko Barbara A. Stiefel yabahaye inshingano zo kwemeza ko imirimo yakozwe n'inyemezabuguzi (factures) zijyanye nayo mbere y'uko ayishyura. [21] Hashingiwe ku mategeko n'ibisobanuro bimaze gutangwa, Urukiko rurasanga ubujurire bwa SETRAPCO Ltd butagomba kwakirwa kuko yareze Barbara A. Stiefel Foundation ihagarariwe na Penny Ensley na Stephen Rwamurangwa, kandi nta bubasha bafite bwo kuyihagararira mu Nkiko. III. ICYEMEZO CY'URUKIKO [22] Rwemeje kwakira inzitizi y'iburabubasha bw'abaregwa yatanze na Barbara A. Stiefel Foundation; [23] Rwemeje ko iyo nzitizi ifite inshingiro; 1 « La qualité est une condition d'existence de l'action, exigée tant en demandant qu'en défense. Le défaut de qualité donne lieu à une fin de non-recevoir », par SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, 5^{ème} Edition, Dalloz, Paris, 2006-2007, p. 22.

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[24] Rwemeje ko ubujurire bwatanzwe na SETRAPCO Ltd ku rubanza RCOMA 0153/12/CS

- RCOM 0291/11/HCC butakiriwe; [25] Rutegetse SETRAPCO Ltd gutanga amagarama y'uru rubanza angana na 35.250 Frw, itayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu byayo ku ngufu za Leta.

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