

RWANDA / JUDGMENT

SNCTPC - CHINA ROAD v. BEST Ltd

RCOMA 0196/12/CS

COURT

Supreme Court

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SNCTPC - CHINA ROAD v. BEST Ltd

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Text

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SNCTPC - CHINA ROAD v. BEST Ltd [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0196/12/CS (Mukanyundo, P.J., Hatangimbabazi na Gakwaya, J.) Kuwa 21/02/2014] Amategeko agenga ubucuruzi – Amasezerano – Kuregera Indishyi – icyemezo cy'ubutegetsi kivanwaho n'inkiko iyo cyatanzwe mu buryo budakurikije amategeko – Nta ndishyi zatangwa mu gihe uwaziregeye atigeze asaba ko icyemezo cy'ubuyobozi giteshwa agaciro – Amategeko agenga ubucuruzi – Indishyi zishingiye kuri transaction – Ikirego cy'indishyi gishingiye kuri transaction nticyakirwa iyo usabwa gutanga izo ndishyi yagizwe umwere ku cyaha cy'ubuhemu bushingiye kuri iyo transaction mu rubanza nshinjabyaha rwabaye ndakuka – Amategeko agenga ubucuruzi – Ubujurire bwuririye ku bundi – Ubujurire bwuririye kubundi bw'uregwa ntibwakirwa iyo bugamije gusaba urukiko guhindura icyemezo ku kibazo yatsinzweho mu rubanza rujuririrwa – Incamake y'ikibazo: Ku itariki ya 16/02/2006, binyuze muri Mininfra, Leta y'u Rwanda yagiranye amasezerano na SNCTPC- China Road yo kubaka umuhanda wa Ruhengeri-kinigi. Leta y'u Rwanda yunvikana na SNCTPC ko ibikoresho izakenera mu kubaka uwo muhanda izajya icukura kariyeri za Mubona na Kara zari zarahawe sosiyete yitwa Best Ltd. Iyi itangira gushyira SNCTPC ku nkeke iyohereza factures ziyishyuzwa, inasaba indishyi ivuga ko SNCTPC yinjiye mu birombe

bya BEST Ltd icukura amabuye nta ruhushya ibifitiye. BEST Ltd yashyikirije ikibazo cyayo ubugyenzacyaha, ubushinjacyaha burega uhagarariye SNCTPC bumukurikiranaho icyaha cy'ubujura budakoresheje kiboko, Urukiko rw'ibanze rwa Nyamirambo rwaregewe rwemeje ko umuyobozi wa SNCTPC adahanwa n'icyaha kuko nta bimenyetso bifatika bimushinja. BEST Ltd yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Nyarugenge, rusanga SNCTPC ntacyo ikwiye kubazwa kuko yahawe uburenganzira bwo gucukura ibirombe bya BEST Ltd na leta, rwemeza ko indishyi BEST isaba zitatangwa. BEST Ltd yatanze ikirego mu Rukiko Rukuru i Kigali ruburanisha imanza z'ubutegetsi isaba ko iteka rya Minisitiri riha SNCTPC uburenganzira bwo gucukura ibikoresho mu birombe bya BEST Ltd rivanwaho, inasaba indishyi SNCTPC na Leta y'u Rwanda. Urukiko rwemeza ko indishyi BEST isaba SNCTPC itazihabwa kuko yahawe uburenganzira na Leta. Taliki ya 10/07/2006, BEST Ltd yongeye kurega SNCTPC mu Rukiko Rwisumbuye rwa Nyarugenge, ko yacukuye ibikoresho mu birombe byayo mu buryo bunyuranyije n'amategeko, iyisaba indishyi zingana na 145.000.000 frws, ariko kubera ivugururwa ry'ubucamanza, ikirego cyaje kwimurirwa mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko SNCTPC itsinzwe, ruyiyegeka kwishyura BEST Ltd amafaranga angana na 57.397.877 frws. SNCTPC ntiyishimiye icyo cyemezo, ijurira mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza ku kirego cy'indishyi zishingiye ku cyaha (action civile) kandi atari cyo rwaregewe.

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Mu iburanisha mu mizi y'uru rubanza, SNCTPC yasabye ko indishyi yaciwe n'Urukiko Rukuru rw'Ubucuruzi zavaho kuko nta kosa yakoreye BEST Ltd, iyi nayo ikavuga ko izo ndishyi zigomba gutangwa, inasaba ko transaction yakozwe hagati ya SNCTPC n'uwaru administrateur wa BEST yateshwa agaciro. Abahagarariye BEST Ltd basaba indishyi bari basabye mu Rukiko Rukuru rw'Ubucuruzi zose hamwe zingana n'amafaranga 569.786.200 frws zijyanye na factures zose zitishyuwe. SNCTPC yo ikavuga ko nta ndishyi igomba gutanga kuko yacukuye ibirombe bya BEST Ltd ibifitiye uruhushya. BEST Ltd ivuga ko Kayitana wari Perezida w'inama y'ubutegetsi wayo yihaye ububasha bwo gukora transaction yari igamije kurangiza mu bwunvikane ikibazo BEST yari ifitanye na SNCTPC kandi nta bubasha yari abifitiye, bigatuma BEST ibihomberamo, akaba agomba gutanga indishyi. Uburanira Kayitana avuga ko ikibazo kirebana na transaction yakirezwe mu manza nshinjabyaha, urukiko rukamuhanaguraho icyaha. SNCTPC yo isaba ko urukiko rwakwemeza ko transaction yakozwe na kayitana yahabwa agaciro kuko yari afite ububasha bwo kuyikora, ariko uburanira BEST Ltd akavuga ko iyo transaction inyuranije n'amategeko. Incamake y'icyemezo: 1. Kuba icyemezo cy'ubuyobozi kidakurikurikije amategeko byemezwa n'inkiko, ko abaturage bashobora kuregera urukiko kugira ngo rubuze ishyirwa mu bikorwa ry'icyemezo kidakurikije amategeko, ko ariko urukiko rudashobora kwibwiriza kuburanisha urubanza, ko ahubwo ari ngombwa ko uwumva yarahohotewe atanga ikirego, noneho umucamanza akaba yakuraho icyo cyemezo.

2. Ubujurire bwuririye ku bundi ntibwakirwa kuko ikibazo cy'indishyi gishingiye kuri transaction cyamaze gufatwaho icyemezo ndakuka mu manza nshinjabyaha uwaregwaga akagirwa umwere, uwaregaga akabitsindirwa.
3. Ubujurire bwa Kayitana bwuririye ku bwa BEST Ltd , ndetse no kubwa bwa SNCTPC–China Road ntibwakirwa kuko Kayitana yatsinzwe ku kibazo kijyanye n'agaciro kagomba guhabwa transaction yagiranye na SNCTPC–China Road, ko rero adashobora mu bujurire gusaba urukiko guhindura icyemezo cyerekeye icyo kibazo, ko ahubwo yagombaga kubisaba akora ubujurire bw'iremezo kuri icyo kibazo. Ubujurire bufite ishingiro. Ubujurire bwuririye kubundi nta shingiro bufite. Amagarama y'urubanza aherereye kuwarezwe. Nta mategeko yifashishijwe: Imanza zashingiweho: Urubanza n° RPA 0250/TGI/NYGE

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Urubanza I. IMITERERE Y'URUBANZA [1] Ku itariki ya 16/02/2006, binyuze muri MININFRA, Leta y'u Rwanda yagiranye amasezerano na SNCTPC – China Road yo kubaka umuhanda Ruhengeri-Kinigi ufite 21.8 Km, muri ayo masezerano bumvikana ko ibikoresho bya kariyeri bizakenerwa mu kubaka uwo muhanda, Leta y'u Rwanda izabatangira ubuntu. Kubera ko icyo gikorwa Leta yashakaga ko cyihuta bitewe nuko uwo muhanda wari ukenewe cyane kandi ufite benshi akamaro, Leta y'u Rwanda yabwiye SNCTPC–China Road ko izajya gucukura ibikoresho ikeneye mu gukora umuhanda muri kariyeri za Mubona na Kara zari zarahawe indi Sosiyete yitwa BEST Ltd, inababwira ko ibaruwa ibaha iyo kariyeri bazayibona nyuma, aribyo byaje gukorwa tariki 07/07/2006, ariko muri icyo baruwa ngo hakavugwamo ko ifite “effet rétroactif” kuva tariki ya 22/02/2006, ko kandi urwo ruhushya rufite agaciro ku gihe kingana n'igihe amasezerano bagiranye azamara, ni ukuvuga amezi 9. [2] Kuva SNCTPC–China Road itangiye gukora, BEST Ltd yatangiye kuyishyira ku nkeke iyohereza fagitire z'urudaca iyishyura ibikoresho icukura muri za kariyeri yari yarahawe. [3] Ahagana mu myaka ya 2004-2005, ngo nibwo SNCTPC-China Road yinjiye mu birombe bya BEST Ltd icukuramo amabuye nta ruhushya ibifitiye, ko icyo gihe yakoraga umuhanda Ruhengeri-Gisenyi, ariko ko muri 2005 habaye amasezerano yo kwikiranura, SNCTPC–China Road ivuga ko itazasubira mu birombe bya BEST Ltd ariko nyuma yongera kubikora kuko guhera mu kwa kabiri kugeza mu kwa gatandatu 2006 imaze kubona isoko ryo gukora umuhanda wa Ruhengeri-Kinigi, yasubiyemo ariko noneho itwara ibikoresho BEST Ltd yacukuye . Icyo gihe BEST yarabandikiye bagira n'ibyo bumvikana ndetse SNCTPC–China Road yishyura facture ya mbere. [4] BEST Ltd yashyikirije ikibazo cyayo Police tariki 14/08/2006, ikirego cyandikwa mu Rukiko rw'Ibanze rwa Nyamirambo kuri n° RP 0186/06/TB/NYG, Ubushinjacyaha burega Ren Hong Peng uhagarariye SNCTPC-China Road, bumukurikiranyeho icyaha cy'ubujura budakoreshejwe kiboko cyangwa ibikangisho, BEST Ltd nayo iregera indishyi muri urwo rubanza. [5] Urukiko rw'Ibanze rwa Nyamirambo rwareguye rwemeje ko Ren Hong Pen adahamwa n'icyaha kubera ko nta bimenyetso bifatika bikimushinja, ruvuga ko icyaha ari gatozi ko yagombaga guhamagarwa mu izina rya Sosiyete, kandi ko Sosiyete idakora icyaha, ruvuga ko SNCTPC–China Road yari ifite uburenganzira yahawe na Leta y'u Rwanda bwo gucukura amabuye bikaba byabazwa Leta yabahaye ubwo burenganzira. [6] BEST Ltd yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Nyarugenge, ikirego cyandikwa kuri n° RPA 0530/09/

TGI/NYGE, urubanza rucibwa kuwa 14/04/2011, Urukiko rusanga SNCTPC–China Road ntacyo ikwiye kubazwa kuko yahawe uburenganzira bwo gucukura na Leta, ko rero byumvikana ko n’umuyobozi wayo Ren Hong Peng ari nta bujura bukwiye kumubarwaho, rwemeza ko indishyi BEST Ltd isaba zitatangwa kuko nta cyaha rusanga cyakozwe nk’uko rwari rwabisobanuye.

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- [7] Dosiye igaragaza ko hari izindi manza z’inshinjabyaha BEST Ltd yarezemo Kayitana Imanzi Emmanuel harimo NRP 0249/TB/NYG aho Ubushinjacyaha bwari bukurikiranyeho Kayitana Imanzi Emmanuel icyaha cy’ubuhemu ngo yaba yarakoze ubwo yari Administrateur wa BEST Ltd maze agakorana „transaction“ na SNCTPC–China Road, BEST Ltd muri urwo rubanza ikaba yararegeye indishyi, urwo rubanza ruza kujuririrwa mu rubanza RPA 0250/TGI/NYG rwaciye kuwa 27/09/2012, Urukiko rukemeza ko nta cyaha cy’ubuhemu gihama Kayitana Imanzi Emmanuel, RWEMEZA ko nta ndishyi BEST Ltd ihagarariwe na Bakaregeya Ignace yahabwa . [8] Uretse imanza nshinjabyaha zimaze kuvugwa, BEST Ltd yatanze ikirego mu Rukiko Rukuru i Kigali, ruburanisha imanza z’ubutegetsi, isaba ko Iteka rya Minisitiri n° 18/16.03/05 ryo kuwa 26/06/2006 riha SNCTPC–China Road uburenganzira bwo gucukura ibikoresho muri kariyeri zayo yahawe mu buryo bukurikije amategeko rivanwaho, inasaba ko Leta y’u Rwanda yafatanyaga na China Road kuyishyura indishyi zingana na 1.667.518 Frw. Urukiko rwaciye urubanza RAD 0125/08/HC/KIG kuwa 13/05/2011 rwemeza ko nta ruhare rwa SNCTPC–China Road rwagaragajwe mu gushyiraho Iteka rya Minisitiri rivanaho iryahaga BEST Ltd uburenganzira bwo gucukura. [9] Urukiko rwasanze amakosa BEST Ltd yakorewe yarakozwe na Leta y’u Rwanda maze iyica indishyi zingana na 10.000.000 Frw, rwemeza ko indishyi BEST isaba SNCTPC–China Road nta shingiro zifite kuko yahawe n’Iteka rya Minisitiri n° 18/16.03/05 ryo kuwa 26/06/2006 uburenganzira bwo gucukura, bityo ikaba itaryozwa indishyi kuko nta kosa ryayo ryagaragajwe ryatumye hajyaho Iteka rya Minisitiri rivanaho irya mbere ryahaga BEST Ltd uburenganzira bwo gucukura kariyeri. [10] Mbere y’uko BEST Ltd itanga ikirego muri police kugirango umuyobozi wa SNCTPC– China Road akurikiranywe n’Ubushinjacyaha mu rubanza nshinjabyaha rwavuzwe haruguru, BEST Ltd yari yareze SNCTPC–China Road tariki 10/07/2006 mu Rukiko Rwisumbuye rwa Nyarugenge, ko yacukuye mu buryo bunyuranyije n’amategeko ibikoresho mu birombe byayo, isaba indishyi zingana na 145.000.000 Frw. [11] Kubera ivugururwa ry’ubucamanza, ikirego cyaje kwimurirwa mu Rukiko Rukuru rw’Ubucuruzi gihabwa n° RCOM 0343/08/HCC, rukiza urubanza kuwa 09/11/2011, rwemeza ko SNCTPC–China Road itsinzwe, ruyitegeka kwishyura BEST Ltd 57.397.877 frw . [12] SNCTPC–China Road ntiyishimiye icyo cyemezo maze ijurira mu Rukiko rw’Ikirenga ivuga ko Urukiko rwanze kwakira inzitizi y’iburabubasha yatanze kandi yari ifite ishingiro, ko Urukiko rwaciye urubanza ku kirego cy’indishyi zishingiye ku cyaha (action civile) kandi atari cyo rwaregewe no kuba Urukiko rwaraciye urubanza rushingiye ku nyandiko mvugo z’Ubugenzacyaha zateshejwe agaciro n’urubanza nshinjabyaha, ndetse ko rwayiciye indishyi runyuranyije n’icyemezo cyafashwe mu rubanza rw’ubutegetsi nyamara rwari rwemeje guhagarika iburanisha kugira ngo rubanze rurebe icyemezo kizarufatwamo kugira ngo hatazaba ivuguruzanya ry’ibyemezo.

[13] Kuri ubu bujuriye bwa SNCTPC–China Road, urubanza rwaburanishijwe mu ruhame ku nshuro ya mbere kuwa 15/10/2013, SNCTPC–China Road ihagarariwe na Me Umubyeyi Béatrice, Me Rutabingwa Athanase ahagarariye Kayitana Imanzi Emmanuel

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warugobokeshejwemo naho Société BEST ihagarariwe na Bakaregeya Ignace afashijwe na Me Ruberwa Zacharie. [14] Muri iryo buranisha, Me Umubyeyi Béatrice uhagarariye SNCTPC–China Road yagaragaje ko hari inzitizi y’iburabubasha igomba kubanza gusuzumwa ishingiyeye ku kuba Urukiko Rukuru rw’Ubucuruzi rwarasuzumye ikirego kitari mu bubasha bwawo. [15] Kuwa 15/11/2013, mu rubanza rubanziriza urundi, Urukiko rwafashe icyemezo kuri iyo nzitizi rwemeza ko Urukiko Rukuru rw’Ubucuruzi rwari rufite ububasha bwo kuburanisha ikirego cya BEST Ltd gisaba indishyi zikomoka ku bucukuzi SNCTPC–China Road yakoreye mu birombe byayo mu buryo BEST Ltd yumvaga bunyuranyije n’amategeko (exploitation illégale), rusobanura ko, kuba SNCTPC–China Road na BEST Ltd, zombi ari Sosiyete z’ubucuruzi, ubwabyo bihagije kugira ngo indishyi BEST Ltd iregera zikomoka ku bikorwa SNCTPC–China Road yakozwe mu rwego rw’ubucuruzi isanzwe ikora, zitwe iz’ubucuruzi nk’uko bivugwa mu ngingo ya 3 y’Itegeko n°59/2007 ryo kuwa 16/12/2007 ryavuzwe haruguru. [16] Kuwa 07/01/2014, urubanza rwaburanishijwe mu mizi, SNCTPC–China Road ihagarariwe na Me Umubyeyi Béatrice naho BEST Ltd ihagarariwe n’Umuyobozi Mukuru wayo, Bakaregeya Ignace yunganiwe na Me Ruberwa Zacharie naho Me Rutabingwa Athanase ahagarariye Kayitana Imanzi Emmanuel. Ababuranyi bamenyeshejwe ko urubanza ruzasomwa tariki ya 21/02/2014. [17] Nyuma y’ipfundikirwa ry’urubanza, Ubwanditsi bw’Urukiko rw’Ikirenga bwakiriye kuwa 13/02/2014 inyandiko ya Bakaregeya Ignace avugamo ko yohereje “note de plaidoirie” n’ibimenyetso, arusaba kongera gufungura iburanisha avuga ko hari ibintu abo baburana bavuze ntiyabyireguraho kandi ko hari imyanzuro ya Kayitana Imanzi Emmanuel y’inyongera ataboneye igihe gihagije cyo gutegura iyo kwireguza mu gihe cy’iburanisha. [18] icyifuzo cya BEST Ltd nticyemewe kuko inyandikomvugo z’iburanisha, zigaragaza ko ababuranyi bese bahawe ijamba, barasubizanya, ibyo Bakaregeya asaba byo kongera gufungura iburanisha bikaba ari uburyo bwo gushaka kongera kuburana bundi bushya urubanza rwarangije gufundikirwa. [19] Dosiye y’urubanza igaragaza na none ko Kayitana Imanzi yashyikirije uru Rukiko imyanzuro ibiri, umwe wakiriwe tariki 12/08/2013 n’undi wakiriwe tariki 07/10/2013, kandi nyuma yaho habaye iburanisha kuwa 17/09/2013 no kuwa 15/10/2013 haburanishwa ku nzitizi yatanze na SNCTPC–China Road, iburanisha rya nyuma mu mizi y’urubanza rikaba tariki ya 07/01/2014, bisobanuye ko yabonye igihe gihagije cyo gutegura urubanza rwe, bikaba bigaragara ko ashaka kongera kuburana uru rubanza bundi bushya kandi rwarapfundikiwe nk’uko byari bimaze kuvugwa. [20] Ku bijyanye n’imizi y’uru rubanza, SNCTPC–China Road yifuza mu bujuriye bwayo ko indishyi yaciwe n’Urukiko Rukuru rw’Ubucuruzi zingana na 57.397.877 Frw zavaho mu gihe nta kosa yakoreye BEST Ltd, naho BEST Ltd mu bujuriye bwuririye ku bundi ikavuga ko SNCTPC–China Road igomba gutanga izo ndishyi kuko yatwaye ibikoreshe byayo yari yaracukuye muri kariyeri yahawe za Kara na Mubona kandi ko transaction yakozwe hagati ya SNCTPC–China Road na Kayitana Imanzi Emmanuel mu buryo budakurikije amategeko

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yateshwa agaciro. Hasuzumwe kandi n'ubujurire bwuririye ku bundi bwatanzwe na Kayitana Imanzi Emmanuel asaba ko „ transaction“ yakozwe hagati ye na SNCTPC–China yagumana agaciro kayo. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO KU BUJURIRE BWA SNCTPC–China Road kumenya niba SNCTPC–China Road igomba kwishyura indishyi BEST Ltd iyirega muri uru rubanza [21] Me Umubyeyi Béatrice, uhagarariye SNCTPC–China Road, asobanura ko BEST Ltd yareze SNCTPC–China Road ivuga ko yigabije nta ruhushya ibirombe byayo yari yarahawe mu buryo bukurikije amategeko maze igacukuramo kariyeri yakoresheje mu gukora umuhanda Ruhengeri–Kinigi mu mwaka wa 2006 bawushyiramo kabulimbo. Avuga ko BEST Ltd yatanze ikirego mu nkiko ziburanisha imanza z'inshinjabyaha, ikirego cyandikwa kuri n° RP 0186/06/TB/NYGE, uhagarariye SNCTPC–China Road witwa REN HONG PENG akurikiranwaho icyaha cy'ubujura, BEST Ltd iregera indishyi muri urwo rubanza, igihe rutaracibwa irongera ijyana ikirego cy'izo ndishyi mu Rukiko rw'Ubucuruzi ndetse no mu Rukiko Rukuru ruburanisha imanza z'ubutegets, ko asanga kiriya kirego cy'indishyi baburana ari ikirego kimwe cyashyikirijwe inkiko zitandukanye. [22] Me Umubyeyi Béatrice avuga ko mu rubanza rubanziriza urundi n°RCOM 0343/08/HCC, Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo cyo kuba ruhagaritse iburanisha bisabwe n'uhagarariye SNCTPC–China Road kugira ngo hategerezwe icibwa ry'urubanza n° RAD 0125/HC/KIG kubera isano izo manza zombi zifitanye, Urukiko rurabyemera, ruhagarika iburanisha kugira ngo hatazafatwa ibyemezo bivuguruzanya. [23] Me Umubyeyi Béatrice avuga ko urubanza n° RAD 0125/HC/KIG rwaciwe n'Urukiko Rukuru rwemeje ko nta ruhare na ruto SNCTPC–China Road ifite mu mpaka zari zashyikirijwe urwo rukiko zirebana no gukoresha kariyeri za Kara na Mubona, runayigenera indishyi kubera gushorwa mu manza ku maherere, ariko SNCTPC–China Road iza gutangazwa n'uko mu guca urubanza n° RCOM 0343/08/HCC mu mizi, Urukiko Rukuru rw'Ubucuruzi rwemeje ko yakozwe amakosa mu gihe yakoresheje kariyeri za Kara na Mubona yubaka imihanda ya Leta y'u Rwanda, ruyica indishyi rushingiye ku nyandikomvugo zateshejwe agaciro n'Urubanza rw'inshinjabyaha n° RPA 0530/09/TGI/NYGE-RP-0186/06/TB/NYGE rwagize umwere Umuyobozi Mukuru wayo. [24] Me Umubyeyi Béatrice avuga ko SNCTPC–China Road itagomba kwishyura amafaranga y'indishyi BEST Ltd isaba kuko nta kosa yayikoreye bitewe nuko ibikoresho yacukuye mu birombe bya Kara na Mubona n'ubwo byari byarahawe BEST Ltd, yatangiye gucukura ifite uruhushya rw'Umunyamabanga wa Leta ushinze amazi na mine rutanditse ariko bigeze kuwa 07/07/2006 babona ibaruwa yandikiwe Umuyobozi Mukuru wa SNCTPC–China Road havugwamo ko urwo ruhushya rutanzwe guhera tariki ya 17/02/2006 (avec effet rétroactif), kandi ko BEST Ltd itigeze isaba ko icyo cyemezo cyateshwa agaciro. Asoza asaba ko BEST Ltd

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yaha SNCTPC–China Road 5.000.000 Frw y'indishyi z'akababaro kubera kuyishora mu manza ku maherere n'andi 3.000.000 Frw y'igihembo cya avoka. [25] Bakaregeya Ignace uhagarariye, BEST Ltd avuga ko atemera uruhushya Umunyamabanga wa Leta ushinze amazi na mine yahaye SNCTPC–China Road kuwa 07/07/2006 abemerera gucukura ibirombe bya BEST Ltd biherereye Kara na Mubona, kuko batari baruzi kuko barumenyeye mu Rukiko. [26] Ku bijyanye n'ibyo Me

Umubyeyi Béatrice aburanisha by'uko Urukiko Rukuru rw'Ubucuruzi rutagombaga gushingira ku nyandikomvugo ziri muri dosiye nshinja byaha, kugira ngo ruce SNCTPC–China Road indishyi, Bakaregeya Ignace uhagarariye BEST Ltd avuga ko nta kosa urwo Rukiko rwakoze kuko rwasanze ziriya nyandiko mvugo ari ibimenyetso bigaragaza ukwiyemerera kwa SNCTPC–China Road ko yatwaye ibikoresho BEST Ltd yari yacukuye muri kariyeri yahawe kandi ko n'uhagarariye SNCTPC–China Road akaba yarabyemereye imbere y'Urukiko baburana urubanza rw'ubutegetsi mu Rukiko Rukuru (agace ka 4 ka matolewo y'urubanza). [27] Ku bijyanye n'ibivugwa na SNCTPC–China Road y'uko icyemezo cy'Urukiko Rukuru rw'Ubucuruzi kitagombaga kuvuguruzwa icyafashwe mu rubanza rw'ubutegetsi, Bakaregeya Ignace n'umwunganira bavuga ko indishyi yahawe mu rubanza rw'ubutegetsi, ari izo Leta yaciwe kubera ko yahaye SNCTPC–China Road iteka rya Minisitiri tariki ya 26/06/2006 riyiha uruhushya rwo gucukura ibirombe BEST Ltd yari yarahawe mu buryo bukurikije amategeko, naho indishyi BEST Ltd iregera mu rubanza rw'ubucuruzi zikaba zijyanye n'ibikoresho byacukuwe mbere y'uko BEST Ltd yamburwa kariyeri na ririya Teka rya Minisitiri ryo kuwa 26/06/2006, [28] Me Rutabingwa Athanase uhagarariye Kayitana Imanzi Emmanuel, avuga ko ntacyo banenga ubujurire bwa SNCTPC–China Road kuko ibyo iburana na BEST Ltd bitareba uwo ahagarariye, ko ahubwo mu mwanzuro bagejeje ku Rukiko bagerageje gusobanura cyane ku bijyanye n'ubujurire bwuririrye ku bundi bwa BEST Ltd burega Kayitana Imanzi Emmanuel ku bijyanye na „transaction“ yagiranye na SNCTPC–China Road. UKO URUKIKO RUBIBONA [29] Ku kibazo cyo kumenya niba SNCTPC – China Road igomba kwishyura indishyi BEST Ltd iyirega muri uru rubanza, zishingiye ku bikoresho yacukuye hagati y'itariki ya 22/02/2006 na 25/06/2006 muri Kariyeri za Kara na Mubona, itarahabwa uburenganzira n'iteka rya Minisitiri n° 08/16.03/05 ryo kuwa 26/06/2006, dosiye y'urubanza igaragaza ko mbere y'iyi tariki ya 26/06/2006, SNCTPC–China Road imaze kwegukana isoko ryo gukora umuhanda wa Ruhengeri-Kinigi, kuwa 16/02/2006, ari ho yagiranye amasezerano na Leta y'u Rwanda, ihagarariwe na Minisitiri y'ibikorwa remezo, ayemerera ko ibikoresho bya kariyeri izakenera, izabihabwa na Leta y'u Rwanda, noneho mu ibaruwa yo kuwa 07/07/2006, Umunyamabanga wa Leta ayandikira ayibwira ko ihawe uruhushya rwo gucukura ibikoresho muri Kariyeri za Kara na Mubona guhera tariki 17/02/2006 kandi ko urwo ruhushya ruzakoreshwa mu gihe cyose cyagenwe mu masezerano yasinyanye na Leta y'u Rwanda.

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[30] Ikigaragarira Urukiko rero, ni uko, n'ubwo kuwa 26/06/2006 ari ho hasohotse iteka rya Minisitiri n° 08/16.03/05 ryo kuwa 26/06/2006, ariko ko mu ibaruwa yo kuwa 07/07/2006 imaze kuvugwa, SNCTPC–China Road yahawe uburenganzira na Leta bwo gucukura ibikoresho muri Kariyeri za Kara na Mubona guhera tariki ya 17/02/2006, bikaba byumvikanisha ko ibyo BEST Ltd ivuga by'uko nta burenganzira yari ifite bwo gucukura muri izo kariyeri hagati y'itariki ya 22/02/2006 na 25/06/2006 nta shingiro bifite. [31] Nk'uko kandi Iteka rya Minisitiri n° 08/16.03/05 ryo kuwa 26/06/2006 rimaze kuvugwa ari icyemezo cy'ubutegetsi BEST Ltd yaregeye mu rubanza rw'ubutegetsi RAD 0125/08/HC/KIG rwaciwe kuwa 13/05/2011 kikavanwaho, ikagenerwa n'indishyi zingana na 10.000.000 Frw, ubu rwamaze kuba itegeko ndakuka, Urukiko rurasanga n'ibaruwa y'Umunyamabanga wa Leta

yavuzwe haruguru nayo igize icyemezo cy'ubutegetsu cyashoboraga kumanwaho iyo BEST Ltd iza kuregera ko giteshwa agaciro (recours en annulation) niba yarabonaga ko kibangamiye uburenganzira ku mutungo wayo cyangwa niba yarabonaga cyaratanzwe mu buryo budakurikije amategeko (un acte irrégulier). [32] Umuhanga mu mategeko witwa Yves Gaudemet¹, avuga ko kuba icyemezo cy'ubuyobozi kidakurikurikije amategeko byemezwa n'inkiko, ko abaturage bashobora kuregera urukiko kugira ngo rubuze ishyirwa mu bikorwa ry'icyemezo kidakurikije amategeko, ko ariko urukiko rudashobora kwibwiriza kuburanisha urubanza, ko ahubwo ari ngombwa ko uwumva yarahohotewe atanga ikirego, noneho umucamanza akaba yakuraho icyo cyemezo. [33] Mu gihe rero BEST Ltd itigeze irega ngo isabe ko icyemezo cy'Umunyamabanga wa Leta giha SNCTPC-China Road uruhushya rwo gucukura ibikoresho byo gukora imihanda muri kariyeri za BEST Ltd kivanwaho, ibi byumvikanisha ko SNCTPC-China Road yacukuye ibikoresho muri izo kariyeri ibyemerewe, bityo indishyi BEST Ltd iyirega rukaba rusanga ntaho zaba zishingiye. [34] Urukiko rurasanga ahubwo, nk'uko uhagarariye SNCTPC-China Road abivuga, BEST Ltd yarakuruye SNCTPC-China Road mu manza, rukaba rusanga ikwiye kugenerwa indishyi z'akababaro isaba, ariko zigatangwa mu bushishozi bw'Urukiko kuko 5.000.000 Frw yasabye zikabije kuba nyinshi, ikaba yagenerwa 1.000.000 Frw, igahabwa na 500.000 y'igihembo cya avoka. B. UBUJURIRE BWURIRIYE KU BUNDI bwa BEST Ltd

1. Kumenya niba indishyi BEST Ltd isaba yazihabwa [35] Abahagarariye BEST Ltd bavuga ko Urukiko Rukuru rw'Ubucuruzi rwabimye indishyi zose bari basabye ruvuga ko nta bimenyetso bazitangiye, bakaba basaba uru rukiko kuzibaha rushingiye kuri za fagitire zashyikirijwe SNCTPC – China Road harimo, amafaranga yose hamwe basaba akaba angana na 569.786.200 Frw. Ngo mu bimenyetso itanga harimo na facture ya stock ya BEST Ltd yari isigaye SNCTPC–China Road yatwaye kuwa kuwa 20/09/2006 kugeza kuwa 18/10/2006 ku gaciro ka 47.872.000 Frw, cyane ko SNCTPC–China Road yabyemeye mu ibaruwa yayo yo kuwa 02/02/2007 yandikiye BEST Ltd ivuga ko igiye kubisuzuma. 1 Yves Gaudemet, *Droit administratif*, 18 édition, L.G.D.J. 453 Pages, p.121 ss,

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- [36] Me Umubyeyi Béatrice avuga ko nta ndishyi igomba kwishyura BEST Ltd kuko ibyo yacukuye yabikoze ifite uruhushya nk'uko bakomeje kubisobanura, naho ibyo bavuga ko ngo kuba yeremeye gukora „transaction „ ni uko yemeraga amakosa yayo atari byo kuko iyo “transaction” yayemeye bitewe ni uko bamwe mu bayobozi ba BEST Ltd bayihozaga ku nkeke, bagahamagara Police ikaza mu isaka rya hato na hato maze iyikora yigura kugira ngo ibone amahoro., UKO URUKIKO RUBIBONA [37] Ku birebana n'indishyi BEST Ltd isaba, SNCTPC – China Road mu bujurire bwayo bwuririye ku bundi, kubera ibikoresho ivuga ko yacukuye mu buryo bunyuranyije n'amategeko muri kariyeri zayo za Kara na Mubona kuwa tariki 22/02/2006 kugeza tariki 25/06/2006, Urukiko rurasanga nk'uko byavuzwe haruguru, nta ndishyi SNCTPC–China Road igomba kwishyura BEST Ltd kubera ko ibyo yacukuye hagati y'itariki ya 22/02/2006 n'itariki ya 25/06/2006 yari yabihereye uruhushya mu ibaruwa Umunyamabanga wa Leta ushinze amazi na mine yandikiye umuyobozi wayo tariki

07/07/2006. [38] Urukiko rurasanga kandi na BEST ubwayo yivuguruza kuko rimwe ivuga ko indishyi isaba SNCTPC–China Road ari iz’ibikoresho yatwaye hagati y’ukwezi kwa kabiri n’ukwa gatandatu 2006, nyamara mu bimenyetso itanga byerekana akarengane abashinwa bayigiriye ikerekana na fagitire yo kuva kuwa 20/09/2006 kugeza kuwa 18/10/2006 ku gaciro ka 47.872.000 Frw kandi ivuga ko ibya nyuma y’itariki 26/06/2006, yabiregeye mu rubanza rw’ubutegetsi, bikaba byumvikanisha ko ibyo Best iregera bidafite ishingiro.

2. Kumenya niba indishyi BEST LTD isaba ko SNCTPC–China Road na Kayitana Imanzi Emmanuel bafatanyaye kuyishyura kubera „transaction“ bagiranye yayihombeje yazihabwa kandi niba iyi „transaction“ yateshwa agaciro [39] Uhagarariye BEST Ltd avuga ko Kayitana Imanzi Emmanuel yari Perezida w’Inama y’ubutegetsi ya BEST Ltd, akaba yari yaratorewe mandat y’umwaka umwe gusa, nyuma ngo aza kwiha ububasha bwo gukora „transaction“ igamije kurangiza mu bwumvikane ikibazo BEST Ltd yari ifitanye na SNCTPC–China Road tariki ya 04/09/2007 kandi nta bubasha yari abifitiye, ibyo rero ngo byarayahombeje bakaba babimusabira indishyi kuko ariwe wabujije abashinwa kubishyura ibikoresho byabo bigabije. Avuga ko indishyi bamusaba zitandukanye n’izo bari baregeye mu rubanza rw’inshinjabyaha mu Rukiko Rwisumbuye rwa Nyarugenge kuko rwemeje ko nta butumwa yari yamuhaye maze ngo abe yarayihemukiye, ko indishyi bamureze mu rubanza RCOM 0343/08/HCC ari inyungu mbonezamusaruro agomba gufatanyaye na SNCTPC– China Road kuko yemeye amafaranga adahuye n’ibyo BEST Ltd yishyuzaga, bakaba basaba ko iriya „transaction“ yakozwe mu buryo bunyuranyije n’amategeko yateshwa agaciro. [40] Me Umubyeyi Béatrice avuga ko iriya “transaction” SNCTPC – China Road yagiranye na Kayitana Imanzi Emmanuel yakozwe hagamijwe kvanaho urubanza RC0174/06/TGI/NYGE rwari rwaregewe Urukiko Rwisumbuye rwa Nyarugenge ari narwo rwavuyemo uru baburana kandi ko itakozwe kubera ko hari amakosa SNCTPC–China Road yemera nk’uko Bakaregeya Ingace ashaka kubyumvikanisha, ko ahubwo byakozwe mu rwego rwo kugura amahoro kubera ko bamwe mu bayobozi ba BEST Ltd bayihozaga ku nkeke ya buri munsu bazana Police yayikorera isaka rya hato na hato, bityo indishyi isaba ikaba ntazo yahabwa.

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- [41] Me Rutabingwa Athanase avuga ko Kayitana Imanzi Emmanuel nta ruhare yagize mu gutwara ibikoresho bya BEST Ltd, ko ikibazo kirebana na „transaction“ yakirezwe mu manza nshinjabyaha maze Urukiko rukamuhanaguraho icyaha, ndetse ko n’Urukiko Rukuru rw’Ubucuruzi rwemeje ko ntacyo yaryozwa mu gika cya 19 cy’imikirize y’urubanza, n’ubu akaba asaba uru Rukiko kwemeza ko transaction yakozwe yari abifitiye ububasha nka Perezida w’Inama y’Ubutegetsi ya BEST Ltd kandi ko na Bakaregeya hari inyandiko zimwe Kayitana yasinye muri icyo „qualité“, ko batagomba kwitwaza ko yagombaga kumara umwaka umwe gusa kandi nyuma atarigeze asimburwa kuko uwamusimbuye yagiyeho tariki ya 15/03/2008. Bavuga ko indishyi BEST Ltd iregera Kayitana muri uru rubanza, yari yaziregeye mu rubanza RPA 0250/TGI/NYGE, irazitsindirwa , ko rero yahisemo urukiko iregera ikaba ubu itahindukira ngo yongere iziregere mu rundi rubanza nk’uko biteganywa n’ingingo ya 130 y’Itegeko n° 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y’imanza

z'inshinjabyaha. UKO URUKIKO RUBIBONA [42] Ku bijyanye n'ibyo BEST Ltd isaba mu bujurire bwuririye ku bundi by'uko „transaction“ Kayitana Imanzi Emmanuel yagiranye na SNCTPC–China Road yakomeza guteshwa agaciro nk'uko byari byemejwe n'Urukiko Rukuru rw'Ubucuruzi maze rukamutegeka gufatany nayo kuyishyura indishyi kubera iriya „transaction“ idakurikije amategeko, Urukiko rurasanga n'ubwo uregwa mu bujurire atabujijwe mu bujurire bwuririye ku bundi kurega undi nawe uregwa mu bujurire, ikigaragara ni uko ikibazo cy'iyi "transaction" cyaciriweho urubanza aho Kayitana Imanzi Emmanuel yaregwaga ubuhemu bushingiye kuri iyi "transaction" akaza kugirwa umwere kandi muri izi manza BEST Ltd, yari ihagarariwe na Bakaregeya Ignace, ikaba yararegeraga indishyi ikabitsindirwa (reba urubanza n° RPA 0250/TGI/NYGE rwo kuwa 27/09/2012), bikaba byumvikanisha ko ikibazo cy'indishyi gishingiye kuri iriya "transaction" cyamaze gufatwaho icyemezo ndakuka mu manza nshinjabyaha zimaze kuvugwa, bityo rero ubujurire bwuririye ku bundi bwayo bukaba budashobora kwakirwa. [43] Ibi kandi bihuza n'ibisobanuro by'umuhanga mu mategeko witwa „Talendier“2 aho avuga ko uregwa mu bujurire yemerewe gukora ubujurire bwuririye ku bundi kugirango akurikirane undi na we uregwa mu bujurire, iyo agamije muri ubwo bujurire bwe kugumana ibyo yahawe ku rwego rwa mbere; (l'appel peut avoir lieu, d'intimé à intimé, quand l'intimé n'a pas eu d'intérêt à appeler contre celui vis-à-vis duquel il a succombé, et qu'il s'agit pour lui, en appel de conserver le bénéfice de ce qui a été jugé en première instance), ariko muri uru rubanza, ikigaragara ni uko nta kintu gihari BEST Ltd ishobora guhamana gishingiye kuri "transaction" mu gihe hafashwe icyemezo ndakuka mu manza nshinjabyaha zavuzwe haruguru. C. UBURURIRE BWURIRIYE KU BUNDI BWA KAYITANA IMANZI EMMANUEL 2 Talendier, Traité de l'appel en matière civile (E-BOOK-free), Section Dixième, l'appel incident est –il recevable d'intimé à intimé.

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Kumenya niba „transaction“ Kayitana Imanzi Emmanuel yagiranye na SNCTPC– China Road ifite agaciro ko niba n'indishyi asaba BEST Ltd yazihabwa [44] Me Rutabingwa Athanase avuga ko mu gika cya 18 cy'urubanza n° RCOM 0343/08/HCC, Urukiko rwemeje ko "transaction" Kayitana yagiranye na SNCTPC–China Road kuwa 04/09/2007 idafite agaciro kuko mandat Kayitana Imanzi Emmanuel yari yatorewe yo kuyobora BEST Ltd yari iy'umwaka umwe, akaba yuririye ku bujurire bwa SNCTPC–China Road n'ubwa Bakaregeya Ignace asaba ko uru Rukiko rwemeza ko iriya „transaction“ ihabwa agaciro kuko Kayitana yari afite ububasha bwo kuyikora nk'uko bigaragara mu mwanzuro wa gatatu w'inama rusange ya Sosiyete BEST Ltd yo kuwa 19/11/1998, yamutoreye kuba Perezida wayo, muri iyo nama agahabwa n'inshingano harimo no kuyishyuriza BEST Ltd. [45] Avuga ko ibyo Bakaregeya aburanisha by'uko yagombaga kumara umwaka umwe nta shingiro bifite kuko atigeze asimburwa kandi ko igihe bari bacyumvikana, yagiye ashyira umukono ku nyandiko nyinshi za BEST Ltd ntibazihakane. [46] Asaba Urukiko kwemeza ko BEST Ltd itsinzwe kandi rukayitegeka kumwishyura indishyi zo gusiragira mu rubanza, igihembo cya avoka byose bingana na 5.000.000 Frw. [47] Bakaregeya Ignace uhagarariye BEST Ltd avuga ko iriya “transaction” inyuranyije “ n'amategeko kandi ko yabaye Kayitana yarivanye mu rubanza. UKO

URUKIKO RUBIBONA [48] Kuri iki kibazo cyerekeye ubujurire bwa Kayitana Imanzi Emmanuel bwuririye ku bwa SNCTPC–China Road n’ubwa BEST Ltd, umuhanga mu mategeko witwa „Talendier“ wavuzwe haruguru avuga ko uregwa mu bujurire atemerewe gukora ubujurire bwuririye ku bundi kugira ngo akurikirane undi na we uregwa mu bujurire kandi wamutsinze, iyo agamije kubona muri ubwo bujurire bwe ibyo atahawe ku rwego rwa mbere; ko icyo gihe icyo aba agomba gukora ari ubujurire bw’iremezo (L’intimé n’est pas recevable à interjeter appel incident contre l’intimé, à l’égard duquel il a succombé, quand il s’agit pour lui d’obtenir en appel ce qui lui a été dénié en première instance. Dans ce cas, c’est un appel principal qui devait être interjeté)3. [49] Hashingiwe ku bisobanuro by’umuhanga uvuzwe haruguru, Urukiko rurasanga ubujurire bwa Kayitana Imanzi, uregwa muri uru rubanza bwuririye ku bwa BEST Ltd nayo iregwa, ndetse no kubwa bwa SNCTPC–China Road butakwagirwa kuko Kayitana Imanzi Emmanuel yatsinzwe ku kibazo kijyanye n’agaciro kagomba guhabwa iriya „transaction„ yagiranye na SNCTPC–China Road, ko rero adashobora mu bujurire gusaba Urukiko guhindura icyemezo cyerekeye icyo kibazo nkuko bivugwa n’umuhanga, ko ahubwo yagombaga kubisaba akora ubujurire bw’iremezo kuri icyo kibazo. [50] Ku bijyanye n’indishyi zo gusiragira ku rubanza n’ igihembo cya avoka bingana na 5.000.000 Frw Kayitana Imanzi asaba BEST Ltd, Urukiko rurasanga nk’uko byavuzwe haruguru, ikibazo cy’indishyi zisabwa Kayitana Imanzi Emmanuel gishingiye kuri „transaction“ yagiranye na SNCTPC–China Road, cyaramaze gufatwaho icyemezo ndakuka mu manza 3 Talendier, op cit

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nshinjabyaha, bikaba bigaragara ko BEST Ltd yagaruye Kayitana Imanzi Emmanuel muri uru rubanza ku maherere ariyo mpamvu agomba kugenerwa indishyi zo gusiragira mu rubanza n’igihembo cya avoka, mu bushishozi bwawo rukaba rumugeneye 500.000 Frw y’indishyi z’akababaro na 500.000 Frw y’igihembo cya avoka kubera ko 5.000 .000 Frw asaba ari ikirenga. III .ICYEMEZO CY’URUKIKO [51] Rwemeje ko ubujurire bwa SNCTPC–China Road bufite ishingiro; [52] Rwemeje kwakira ubujurire bwuririye ku bundi bwa BEST Ltd ku byo irega SNCTPC– China Road , ariko ko nta shingiro bufite; [53] Rwemeje ko indishyi BEST Ltd irega Kayitana Imanzi Emmanuel ku bijyanye na transaction yagiranye na SNCTPC–China Road butakiriwe kuko bwatanzwe mu buryo n’inzira bidakurikije amategeko; [54] Rwemeje ko ubujurire bwa Kayitana Imanzi Emmanuel bwuririye ku bwa BEST Ltd butakiriwe ku birebana no kwemeza ko “transaction” yagiranye na SNCTPC–China Road yayikoze afite ububasha kandi ko ifite agaciro kuko bwatanzwe mu buryo n’inzira bidakurikije amategeko; [55] Rwemeje ko ubujurire Kayitana Imanzi Emmanuel bwuririye ku bwa BEST Ltd busaba ko yamwishyura indishyi z’akababaro n’igihembo cya avoka bwakiriwe kandi ko bufite ishingiro; [56] Rutegetse BEST Ltd kwishyura SNCTPC–China Road indishyi z’akababro zingana na 1.000.000 Frw na 500.000 Frw y’igihembo cya avoka. [57] Rutegetse BEST Ltd kwishyura Kayitana Imanzi Emmanuel 500.000 Frw y’indishyi zo kumukurura mu manza ku maherere na 500.000 Frw y’igihembo cya avoka, yose hamwe akaba 1.000.000 Frw. [58] Rutegetse BEST Ltd kwishyura amagarama y’urubanza angana na 59.700 Frw, itayatanga mu gihe cy’iminsi umunani, ayo mafaranga agakurwa mu byayo ku ngufu za Leta.

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