

RWANDA / JUDGMENT

33THOMAS & PIRON GRANDS LACS v. Dr CLEAN PROJECT

2014SC

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33THOMAS & PIRON GRANDS LACS v. Dr CLEAN PROJECT

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THOMAS & PIRON GRANDS LACS v. Dr CLEAN PROJECT [Rwanda URUKIKO RW'IKIRENGA – 2014SC – (Kanyange , P.J., Gakwaya na Hitiyaremye , J.) 28 Ugushyingo 2014] Amategeko y'imiburanishirize y'imanza z'ubucuruzi-Irangiza ry'Urubanza-Irangiza ry'Urubanza ntabwo rikorwa k'utarigeze aba Umuburanyi mu rubanza-Abishize hamwe- Abishize hamwe bishyurizwa hamwe imyenda yose ishyirahamwe ryananiwe kwishyura-Itegeko n 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ° iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 203. Amasezerano cyangwa imirimo nshinganwa-Indishyi-Ikirego kigamije gutinza irangiza ry'Urubanza-Urukiko rugenera indishyi mu bushishozi bwarwo uwangirijwe n'itinzwa ry'urubanza -Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano ,ingingo ya 258. Incamake y'ikibazo: Dr Clean Project Ltd isanzwe ikora imirimo y'isuku,yatanze Ikirego mu Rukiko Rukuru rw'Ubucuruzi irega JV Piron-Thomas & Piron Grands Lacs Ltd (JV-TPGL Ltd) kuba yaratindiye imirimo,bikaba byarayiteje igihombo,Urukiko rwaciye Urubanza Rutegeka yuko JV Piron-Thomas & Piron Grands

Lacs Ltd yishyura Dr Clean Project amafaranga y'akazi kakozwe mu minsi y'inyongera, na 314.440 Rwfrs y'ikurikiranarubanza, igatanga na 50.000 Rwfrs buri kwezi y'igihano gihatira kurangiza urubanza na 6.200 Rwfrs y'amagarama y'urubanza. Ababuranyi bombi baje kujuririra Urukiko rw'Ikirenga. narwo ruca urubanza RCOMA 0038- 0039/12/CS, rwemeza ko ubujurire bwa Dr Clean Project Ltd bufite ishingiro kuri bimwe naho ubujurire bwa J.V. Piron-Thomas & Piron Grands Lacs Ltd bukaba nta shingiro bufite, rutegeka J.V. Piron-Thomas & Piron Grands Lacs Ltd kwishyura Dr Clean Project Ltd ikanatanga Indishyi z'uho yakomeje kwirengagiza kwishyura, na 500.000 Frw y'igihembo cya avoka. Ruyitegeka nanone kwishyura igihano gihatira kurangiza urubanza gihwanye na 50.000 Rwfrs buri kwezi. Mu rwego rwo kurangiza Urubanza, Umuhesha w'Inkiko Yafatiriye imitungo ya T.P.G.L. Ltd, maze nayo itanga ikirego mu Rukiko rw'Ikirenga: (1) isaba yuko rwabakiranura kubera y'uho JV Piron- Thomas & Piron Grands Lacs itandukanye na Thomas & Piron Grands Lacs Ltd ikaba itumva impamvu umutungo wayo wafatiriwe n'Umuhesha w'inkiko ayitiranye na JV Piron-Thomas & Piron Grands Lacs kandi yo itarabaye umuburanyi mu rubanza rurangizwa. (2) inasaba guhabwa indishyi kubera ko yarezwe mu rwego rwo gutinza irangiza ry'urubanza. Dr Clean Project Ltd yasubije ivuga ko: (1) ikibazo cyo kurangiza urubanza gishingiye kuri "contrat d'adhésion" yabaye, kandi haba muri ayo masezerano, mu nyandiko bagiye bandikirana, muri "paiement" zakozwe ndetse no mu manza zaburanywe hose handitse Thomas & Piron, ahubwo ko icyo bashakira kwita JV Piron- Thomas na Thomas & Piron Grands Lacs ari bimwe kuko muri Rwanda Development Board (R.D.B.) handitse Thomas & Piron Grands Lacs, (2) Indishyi zitatangwa kubera ko Thomas & Piron Grands Lacs Ltd ifite inyungu muri uru rubanza.

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Incamake y'icyemezo: 1. Ntabwo irangiza ry'urubanza ryakorwa k'utarigeze aba umuburanyi mu rubanza rurangizwa, ariko mu gihe ari sosiyete yishyize hamwe n'indi zigamije gukora imirimo izwi "Joint Venture" icyo gihe irangiza ry'urubanza rishobora gukorwa kuri imwe muri ayo masosiyete, hashingiwe ku ihame ry'amategeko rivuga ko abagize ishyirahamwe bishyurizwa hamwe imyenda yose ishyirahamwe ryananiwe kwishyura. Bityo nta kosa Umuhesha w'Inkiko yakoze mu gufatira umutungo wa Thomas & Piron Grands Lacs Ltd (TPGL Ltd), imwe mu masosiyete abiri agize ishyirahamwe JV Piron- Thomas & Piron Grands Lacs Ltd.

2. Mu gihe urukiko rusanze yuko ikirego cyatanze cyari kigamije gutinza urubanza, rugenera indishyi mu bushishozi bwawo uwo byangirije. Ubujurire nta shingiro; Urubanza rwajuririwe ntiruhindutse; Uwajuriye ategetswe guha indishyi uwarezwe; Amagarama y'Urubanza aherereye k'Uwajuriye. Amategeko yashingiweho: Itegeko n 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, ° iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 203; Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258. Nta manza zifashishijwe: Ibitekerezo by'abahanga: Me L. Philippe et Y. Olga : la-joint-venture de Me Philippe Lemelletier et Olga Yaousheva, Echos judiciaire de Girondin : <http://www.echos-judiciaires.com/chroniques-du-barreau/la-joint-venture-a9689.html>; Jean F.M: Le régime juridique de la société momentanées, avantages et inconvénients, Droit et Fiscalité belge :

<http://www.droit-fiscalite-belge.com/article87.html> Imikirize IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru rw'Ubucuruzi, Dr Clean Project Ltd irega JV Piron-Thomas & Piron Grands Lacs Ltd (JV-TPGL Ltd) iyishyuza 43.196.568 Frw akomoka ku mirimo yo gukora isuku ya RSSB (Insurance Plaza) yakozwe mu gihe kirenze ibyumweru 3 byari biteganyijwe mu masezerano ku makosa ya JV Piron-Thomas & Piron Grands Lacs Ltd, bitewe n'uko inzu yubakwaga yatinze kuzura bigatuma Dr Clean Project itinda kurangiza imirimo mu gihe cyari cyumvikanyweho mu masezerano, bikayiteza igihombo gikabije. [2] Kuwa 06/02/2013, urwo Rukiko rwaciye urubanza RCOM 0280/12/HCC rutegeka JV Piron-Thomas & Piron Grands Lacs Ltd kwishyura Dr Clean Project Ltd 3.144.405 Frw y'akazi kakozwe mu minsi y'inyongera, no kwishyura 314.440 Frw y'ikurikiranarubanza, igatanga na

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50.000 Frw buri kwezi y'igihano gihatira kurangiza urubanza na 6.200 Frw y'amagarama y'urubanza. [3] Ababuranyi bombi ntibishimiye imikirize y'urubanza bajuririra Urukiko rw'Ikirenga. Kuwa 19/09/2014 Urukiko rw'Ikirenga rwaciye urubanza RCOMA 0038-0039/12/CS, rwemeza ko ubujurire bwa Dr Clean Project Ltd bufite ishingiro kuri bimwe naho ubujurire bwa J.V. Piron-Thomas & Piron Grands Lacs Ltd nta shingiro bufite, rutegeka J.V. Piron-Thomas & Piron Grands Lacs Ltd kwishyura Dr Clean Project Ltd 37.286.667 Frw , 500.000 Frw y'indishyi z'uko J.V. Piron-Thomas & Piron Grands Lacs Ltd yakomeje kwirengagiza kwishyura na 500.000 Frw y'igihembo cya avoka. Ruyitegeka nanone kwishyura igihano gihatira kurangiza urubanza gihwanye na 50.000 Frw buri kwezi. [4] Kuwa 10/11/2014, T.P.G.L. Ltd yatanze ikirego isaba Urukiko gukemura impaka zishingiye ku irangiza ry'urubanza RCOMA 0038-39/12/CS, ivuga ko mu rwego rwo kurangiza urwo rubanza, Huissier KAGAME Alexis yaje gufatira imitungo ya sosiyete T.P.G.L. Ltd nyamara itarabaye umuburanyi mu rubanza rurangizwa, ko icyo isaba Urukiko ari ukuyirenganura maze rugategeka ko imitungo yafatirwa ari iy'ababuranye urubanza rwaciye ku itariki ya 19.09.2014. [5] Urubanza rwaburanishijwe mu ruhamwe kuwa 18/11/2014, Thomas & Piron Grands Lacs Ltd en sigle T.P.G.L. Ltd ihagarariwe na Me KAZUNGU Jean Bosco naho Dr Clean Project Ltd ihagarariwe na Me KAYITANA Dominique Savio. II.ISESENGURA RY'IBIBAZO BIGIZE URUBANZA:

- a. Kumenya niba irangiza ry'urubanza RCOMA 0038-0039/12/CS hagati ya JV Piron- Thomas & Piron Grands Lacs Ltd na Dr Clean Project Ltd rishobora gukorerwa kuri Thomas & Piron Grands Lacs Ltd [6] Me KAZUNGU Jean Bosco avuga ko bareze basaba Urukiko kubakiranura ku ngingo imwe gusa y'uko JV Piron- Thomas & Piron Grands Lacs itandukanye na Thomas & Piron Grands Lacs Ltd kuko umutungo w'iyi ya nyuma wafatiriwe n'Umuhesha w'inkiko ayitiranya na JV Piron-Thomas & Piron Grands Lacs kandi yo itarabaye umuburanyi mu rubanza arangiza. [7] Asobanura ko JV Piron-Thomas & Piron Grands Lacs igizwe na Piron Thomas na Thomas & Piron Grands Lacs Ltd, bityo urubanza rurangizwa rukaba rutareba Thomas & Piron Grands Lacs Ltd, kuko itigeze igirana amasezerano na Dr Clean Project Ltd. [8] Me KAYITANA Dominique Savio avuga ko ikibazo cyo kurangiza urubanza gishingiye kuri "contrat d'adhésion" yabaye, kandi haba muri ayo masezerano, mu nyandiko bagiye bandikirana, muri "paiement" zakozwe ndetse no mu manza zaburanywe hose handitse

Thomas & Piron, ahubwo ko icyo bashaka kwita JV Piron- Thomas na Thomas & Piron Grands Lacs ari bimwe kuko muri Rwanda Development Board (R.D.B.) handitse Thomas & Piron Grands Lacs. [9] Asobanura ko mu masezerano bagiranye (contrat) JV Piron- Thomas & Piron Grands Lacs na Thomas & Piron Grands Lacs babifata kimwe kuko kuri “entête” y’ayo masezerano handitse Thomas & Piron Grands Lacs ndetse na aderesi zazo zikaba ari zimwe ndetse ko

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Thomas & Piron Grands Lacs ariyo yishyuye amafagitiri (paiements) yose, kandi ko ari nayo yemeje ko imirimo yakozwe neza. UKO URUKIKO RUBIBONA [10] Ingingo ya 203 y’Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsu iteganya ko “Irangiza ry’ibyemezo by’Inkiko cyangwa inyandiko rigomba gukorwa mu buryo no mu gihe cyategetswe n’ibyemezo byazo”. [11] Urukiko rw’Ikirenga rurasanga mu rubanza RCOM 0038- 0039/12/CS, Urukiko rwarategetse JV Piron - Thomas & Piron Grands Lacs Ltd kwishyura Dr Clean Project Ltd 37.286.667 Frw y’imirimo yari yakozwe na 1.000.000 Frw z’indishyi. [12] Urukiko rw’Ikirenga rurasanga “Exploit de signification et commandement préalable à la saisie-exécution” yakozwe n’Umuhesha w’Inkiko igaragaza ko amenyesha JV Piron- Thomas & Piron Grands Lacs Ltd ko igomba kumwishyura cyangwa kwishyura Dr Clean Project Ltd ako kanya 38.286.667 Frw yategetswe muri uru rubanza RCOMA 0038-0039/12/CS na 500.000 Frw y’igihembo cye. [13] Urukiko rw’Ikirenga rurasanga mu Rukiko rubanza Dr Clean Project Ltd yarareze JV Piron- Thomas & Piron Grands Lacs Ltd naho mu rwego rw’ubujurire JV Piron- Thomas & Piron Grands Lacs Ltd yareze Dr Clean Project Ltd. [14] Urukiko rw’Ikirenga rurasanga “certificate of domestic company registration” yatanze n’uburanira Thomas & Piron Grands Lacs Ltd igaragaza ko JV TP-TPGL Ltd yanditswe mu bitabo by’Umwanditsi Mukuru (Registrar General) kuwa 29/1/2013. [15] Ku byerekeranye n’urubanza RCOMA 0038-0039/12/CS rugomba kurangizwa, Urukiko rw’Ikirenga rurasanga isosiyete ivugwa mu nyandiko yavuzwe haruguru (certificate of domestic company registration) itandukanye n’isosiyete yaburanye muri urwo rubanza kuko isosiyete ivugwa muri icyo nyandiko yitwa JV TP-TPGL Ltd (JV Thomas & Piron- Thomas & Piron Grands Lacs Ltd) naho iyaburanye na Dr Clean Project Ltd yitwa JV Piron- Thomas & Piron Grands Lacs Ltd. [16] Urukiko rw’Ikirenga rurasanga kandi amasezerano hagati ya JV Piron- Thomas & Piron Grands Lacs Ltd na Dr Clean Project Ltd yarabaye kuwa 15/9/2011 mu gihe iyandikisha rya JV TP-TPGL Ltd ryabaye kuwa 29/1/2013, ibyo bikaba bigaragaza ko izo sosiyete ari ebyiri zitandukanye. [17] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rw’Ikirenga rurasanga nk’uko Me KAZUNGU Jean Bosco abivugaga, JV Piron-Thomas & Piron Grands Lacs Ltd, yagiranye amasezerano na Dr Clean Project Ltd ari nayo yabaye umuburanyi mu rubanza rugomba kurangizwa, igizwe n’amasosiyete abiri ariyo Piron na Thomas & Piron Grands Lacs Ltd kuko

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ari “joint venture”¹ ni ukuvuga amasosiyete abiri yishyize hamwe, agamije gukora imirimo izwi. [18] Ku byerekeranye no kurangiza urubanza RCOMA 0038-0039/12/CS, Urukiko rw’Ikirenga rurasanga JV Piron- Thomas & Piron Grands Lacs Ltd ivugwa muri urwo rubanza nta kigaragaza ko ifite ubuzima gatozi ahubwo ari ishyirahamwe rigizwe n’ama sosiyete abiri afite ubuzima gatozi agamije gukorana imirimo izwi, bityo irangizwa ry’urwo rubanza rikaba rishobora gukorwa kuri imwe muri ayo masosiyete, hakurikijwe ihame ry’amategeko rivuga ko abagize ishyirahamwe bishyurizwa hamwe imyenda yose ishyirahamwe ryananiwe kwishyura byaba ngombwa ibintu bigafatwa aho biri mu bagize ishyirahamwe² (principe de la solidarité des associés dans l’association momentanée). [19] Hakurikijwe ibivugwa mu gika kibanziriza iki, Urukiko rurasanga mu gihe Umuhesha w’Inkiko, mu kurangiza urubanza RCOMA 0038-0039/12/CS, yarafatiriye umutungo wa Thomas & Piron Grands Lacs Ltd (TPGL Ltd), imwe mu masosiyete abiri agize ishyirahamwe JV Piron- Thomas & Piron Grands Lacs Ltd, ataranyuranije n’ihame y’amategeko (Principe de droit) ryavuzwe haruguru. [20] Kubera izo mpamvu zose, Urukiko rw’Ikirenga rurasanga ikirego cyatanzwe na Thomas & Piron Grands Lacs Ltd (TPGL Ltd) nta shingiro gifite.

- b. Kumenya niba Dr Clean Project Ltd ikwiye indishyi isaba [21] Dr Clean Project Ltd isaba ko Thomas & Piron Grands Lacs Ltd itegukwa kuyishyura 1.000.000 Frw y’indishyi zo gushorwa mu manza kuko yareze mu rwego rwo gutinza irangiza ry’urubanza. [22] Me KAZUNGU Jean Bosco avuga ko amafaranga yo gusiragizwa mu nkiko Dr Clean Project Ltd isaba, itayahabwa kubera ko Thomas & Piron Grands Lacs Ltd ifite inyungu muri uru rubanza. UKO URUKIKO RUBIBONA 1 “Il s’agit de toute forme de coopération entre entreprises. La joint venture peut prendre la forme d’une coopération simplement contractuelle ou la coopération peut être institutionnelle avec la création d’une personne morale. En effet, la joint venture est le résultat d’une rencontre entre deux ou plusieurs personnes, morales ou physiques, au moins contractualisée, pour organiser ensemble une activité collaborative. Cette rencontre va donner naissance à la création d’une entreprise commune ou “co-entreprise” qui va se voir attribuer un projet spécifique commun à ses personnes créatrices. <http://www.echos-judiciaires.com/chroniques-du-barreau/la-joint-venture> de Me Philippe Lemelletier et Olga Yaousheva, consulté le 17/11/2014. “Une coentreprise, également appelée entreprise commune, entreprise en participation ou joint venture, est un accord passé entre plusieurs entreprises qui acceptent de poursuivre ensemble un but précis pour une durée limitée. La coentreprise peut prendre des formes extrêmement diverses et n’entraîne pas nécessairement la création d’une entité dotée de la personnalité juridique”.<http://fr.wikipedia.org/wiki/Coentreprise> consulté le 17/11/2014 2 “Ces personnes vont partager la gestion, les bénéfices et les pertes générés par la “joint venture” soit en fonction de leur apport, soit à parts égales, soit la répartition se fera suivant l’accord des partenaires en fonction de la situation de chacun” <http://www.echos-judiciaires.com/chroniques-du-barreau/la-joint-venture> de Me Philippe Lemelletier et Olga Yaousheva, consulté le 17/11/2014. “Les associés momentanés sont tenus solidairement à l’égard des tiers”, le régime juridique de la société momentanées, avantages et inconvénients, [Research copy · Verify against the source](http://www.droit-</p></div><div data-bbox=)

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[23] Ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse". [24] Ku byerekeye 1.000.000 Frw y'indishyi zo gushorwa mu manza, Dr Clean Project Ltd isaba kuko isanga ko Thomas & Piron Grands Lacs Ltd yayireze mu rwego rwo gutinza irangiza ry'urubanza, Urukiko rw'Ikirenga rurasanga ikwiye guhabwa izo ndishyi ariko ko amafaranga isaba ari ikirenga, bityo mu bushishozi bwarwo, rukaba ruyigeneye 500.000 Frw. III. ICYEMEZO CY'URUKIKO [25] Rwemeje ko ikirego cyatanzwe na Thomas & Piron Grands Lacs Ltd nta shingiro gifite. [26] Rwemeje ko urubanza RCOMA 0038-0039/12/CS rushobora kurangizwa kuri Thomas & Piron Grands Lacs Ltd. [27] Rutegetse Thomas & Piron Grands Lacs Ltd kwishyura Dr Clean Project Ltd 500.000 Frw y'indishyi zo gushorwa mu manza nta mpamvu. [28] Rutegetse Thomas & Piron Grands Lacs Ltd gutanga amagarama y'uru rubanza.

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