

RWANDA / JUDGMENT

TURQUAZ CONSULTANCY Ltd v d'office

RS/INTERT/RCOM 00002/2022/CA

COURT

Court of Appeal

DECIDED

29 June 2022

CASE / FILE NUMBER

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TURQUAZ CONSULTANCY Ltd v d'office

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Text

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TURQUAZ CONSULTANCY Ltd v d'office [Rwanda URUKIKO RW'UBUJURIRE - RS/INTERT/RCOM 00002/2022/CA (Nyirandabaruta, PJ) 29 Kamena 2022] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi - Umuburanyi ntakoresha inzira y'ikirego cyo gusobanura urubanza agamije gusobanura ibitarigeze biburanwaho mu rubanza. Incamake y'ikibazo: TURQUAZ Consultancy Ltd yareze APEK Group Ltd mu Rukiko rw'Ubucuruzi, irusaba kwemeza ko APEK Group Ltd yasheshe amasezerano bagiranye yo gucunga Ikigo cy'Ishuri (School management contract) mu buryo bunyuranyije n'amategeko, no kuyitegeka kuyiha indishyi. Urukiko rwemeza ko icyo kirego gifite ishingiro rutegeka APEK Group Ltd kwishyura TURQUAZ Consultancy Ltd 10.000.000Frw y'indishyi zo gusesa amasezerano mu buryo bunyuranyije n'amategeko, kuyishyura 6,984.6 USD y'ibikoresho bigizwe n'ameza n'intebe TURQUAZ Consultancy Ltd yari imaze kugura, no kuyishyura 600.000 Frw akubiyemo 500.000Frw y'igihembo cya Avoka na 100.000Frw y'ikurikiranarubanza no kuyisubiza 20.000Frw yatanzeho ingwate y'amagarama irega. TURQUAZ Consultancy Ltd yajuririye urwo mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko yagenewe indishyi nkeya zitangana n'ibyo yahombye, APEK Group Ltd nayo ijurira ivuga ko Urukiko rwashingiye ku bitarabayeho. Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwatanzwe

na TURQUAZ Consultancy Ltd bufite ishingiro kuri bimwe naho ubwatanzwe na APEK Group Ltd nta shingiro bufite, Rutegeka APEK GROUP Ltd gusubiza TURQUAZ Consultancy Ltd 72.026.635Frw yari kuri izo konti ikayihira n'inyungu zayo zingana na 5.762.130Frw, kuyihira 1.000.000Frw y'igihembo cya Avoka, 500.000 Frw y'ikurikiranarubanza no kuyisubiza 40.000Frw y'ingwate y'amagarama yatanze. APEK Group Ltd yajuriririyeye urwo rubanza mu Rukiko rw'Ubujurire, Urukiko rw'Ubujurire ruca urubanza, Nyuma y'icibwa ry'urwo rubanza, TURQUAZ Consultancy Ltd itanga ikirego gisaba gusobanura urubanza ku bijyanye na USD 6.984,6 Urukiko rw'Ubucuruzi rwategetse ko igomba kwishyurwa, Urukiko Rukuru rw'Ubucuruzi rukaba ntacyo rwayavuzeho n'Urukiko rw'Ubujurire rukaba ntacyo rwayavuzeho kuko icyo kibazo kitajuririye. Incamake y'icyemezo: Ishingiro ry'ikirego cyo gusobanura urubanza ni ugusaba umucamanza waciye urubanza kurusobanura mu gihe rutajuririye no gusobanura biruseho ibidasobanutse mu rubanza yaciye mbere, akaba ariwe ufite ubwo bubasha bwo kurusobanura, kuko aba ari nawe wahaye urubanza kuba itegeko, kandi itegeko risobanurwa n'ubarishyizeho. Igisabwa gusobanurwa ni icyaciriweho urubanza igihe hagaragaramo ibitumvikana neza cyangwa ibishobora gutera urujijo, ari nabyo byonyine umuburanyi yemerewe gusaba ko byasobanurwa bikumvikana. Umuburanyi ntakoresha iyo nzira agamije gusobanura ibitarigeze biburanwaho mu rubanza. Rwemeje ko ikirego cyatanzwe, gisaba gusobanura urubanza, nta shingiro gifite. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 6, 10 na 138. Inyandiko z'abahanga: Cécile Chainais, Frédéric Ferrand, Lucie Mayer et Serge Guinchard, Procédure Civile, 34éd. , Dalloz, Paris, 2018, P.124

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Urubanza I. IMITERERE Y'URUBANZA [1] TURQUAZ Consultancy Ltd yareze APEK Group Ltd mu Rukiko rw'Ubucuruzi, irusaba kwemeza ko APEK Group Ltd yasheshe amasezerano bagiranye yo gucunga Ikigo cy'Ishuri (School management contract) mu buryo bunyuranyije n'amategeko, no kuyitegeka kuyihira indishyi. [2] Urukiko rw'Ubucuruzi rwaciye urubanza n° RCOM 00764/2018/TC kuwa 28/02/2019, rwemeza ko ikirego cyatanzwe na TURQUAZ Consultancy Ltd gifite ishingiro, ko APEK Group Ltd yasheshe amasezerano bagiranye mu buryo bunyuranyije n'amategeko, rutegeka APEK Group Ltd kwishyura TURQUAZ Consultancy Ltd 10.000.000Frw y'indishyi zo gusesa amasezerano mu buryo bunyuranyije n'amategeko, kuyishyura 6,984.6 USD y'ibikoresho bigizwe n'ameza n'intebe TURQUAZ Consultancy Ltd yari imaze kugura, no kuyishyura 600.000 Frw akubiyemo 500.000Frw y'igihembo cya Avoka na 100.000Frw y'ikurikiranarubanza no kuyisubiza 20.000Frw yatanzeho ingwate y'amagarama irega. [3] TURQUAZ Consultancy Ltd ntiyishimiye imikurizye y'urwo rubanza, irujuririra mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko rwayigeneye indishyi nkeya zitangana n'ibyo yahombye, ko rutategetse APEK Group Ltd kuyisubiza amafaranga yayo yari kuri konti zitandukanye n'inyungu zayo, inasaba kugenerwa indishyi z'ikurikiranarubanza n'igihembo cya Avoka kubera gushorwa mu manza, ubujurire bwayo buhabwa n°RCOMA 00293/2019/HCC. [4] APEK Group Ltd nayo yajuririyeye urwo rubanza, ivuga ko Urukiko rw'Ubucuruzi rwemeje ko yasheshe amasezerano mu buryo bunyuranyije n'amategeko rushingiye ku bitarabayeho, ko rwayitegetse kwishyura 10.000.000Frw y'indishyi zo gusesa

amasezerano no gusubiza 6,984.6 USD rukavuga ko ikirego kiregera kwiregura nta shingiro gifite rwirengagije ibimenyetso bigaragaza uburiganya bwa TURQUAZ Consultancy Ltd, kandi ntiruyigenere n'indishyi zo gushorwa mu manza ku maherere, ubujurire bwayo bwandikwa kuri n° RCOMA 00298/2019/HCC. Izo manza zahurijwe hamwe hamwe mu rubanza n° RCOMA 00293/2019/HCC- CMB RCOMA 00298/2019/HCC, nyuma ziza gusibwa ku mpamvu y'uko ku munsu w'iburanisha nta numwe mu baburanyi witabye, ariko nyuma impande zombi zemererwa kuzibiyutsa mu rubanza n° RCOMA 00981/2019/HCC – RCOMA 00982/2019/HCC. [5] Mu rubanza n° RCOMA 00981/2019/HCC – RCOMA 00982/2019/HCC rwaciwe ku wa 16/04/2021, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwatanzwe na TURQUAZ Consultancy Ltd bufite ishingiro kuri bimwe naho ubwatanzwe na APEK Group Ltd nta shingiro bufite, rwemeza ko imikirize y'urubanza n°RCOM 00764/2018/TC rwaciwe n'Urukiko rw'Ubucuruzi kuwa 28/12/2018, ihindutse gusa ku ngingo ijyanye n'amafaranga yari kuri konti zitandukanye mu ma Banki n'inyungu yayo, Rutegeka APEK GROUP Ltd gusubiza TURQUAZ Consultancy Ltd 72.026.635Frw yari kuri izo konti ikayihira n'inyungu zayo zingana na 5.762.130Frw, kuyihira 1.000.000Frw y'igihembo cya Avoka, 500.000 Frw y'ikurikiranarubanza no kuyisubiza 40.000Frw y'ingwate y'amagarama yatanze. [6] APEK Group Ltd yajuriririyeye urwo rubanza mu Rukiko rw'Ubujurire kuwa 14/05/2021, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo ku ngingo z'ubujurire bwa TURQUAZ Consultancy Ltd kandi zitaragiweho impaka mu iburanisha; ko rwemeje ko APEK Group Ltd yasheshe amasezerano yagiranye na TURQUAZ Consultancy Ltd kuwa 18/06/2015 mu buryo bunyuranyije n'amategeko kandi atari ko biri; ko rwategetse ko TURQUAZ Consultancy Ltd ihabwa amafaranga yari kuri konti z'ikigo cya APEK Ecole Saint Joseph ntaho rushigiye rukanayihira n'ayo itaregeye, isaba amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka.

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- [7] TURQUAZ Consultancy Ltd nayo yatanze ubujurire bwuririye ku bundi, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko amasezerano yagiranye na APEK Group Ltd yasheshwe mu buryo bunyuranyije n'amategeko ariko ntirugene indishyi z'igihombo yagize zishingiye ku gihe amasezerano yari asigaje ngo arangire, inasaba amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza. [8] Urukiko rw'Ubujurire rwaciye urubanza n° RCOMAA 00034/2021/CA ku wa 28/04/2022, rwemeza ko ubujurire bwa APEK Group Ltd bufite ishingiro kuri bimwe; ko ubujurire bwuririye ku bundi bwatanzwe na TURQUAZ Consultancy Ltd nta ishingiro bufite; ko urubanza n° RCOMA 00981/2019/HCC – RCOMA 00982/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 16/04/2021, ruhindutse; rutegeka TURQUAZ Consultancy Ltd kwishyura APEK Group Ltd 800.000 Frw arimo ay'igihembo cya Avoka n'ay'ikurikiranarubanza, no kuyisubiza 70.000 Frw y'ingwate y'amagarama yatanze ijurira. [9] Nyuma y'icibwa ry'urwo rubanza, ku wa 31/05/2022, TURQUAZ Consultancy Ltd ihagarariwe na Me Ndutiye Yussuf, yatanze ikirego gisaba gusobanura urubanza n° RCOMAA 00034/2021/CA, ku bijyanye na USD 6.984,6 Urukiko rw'Ubucuruzi rwategetse ko APEK GROUP Ltd igomba kwishyura TURQUAZ CONSULTANCY Ltd kuko hari intebe n'ameza yasigaranye imaze gusesa amasezerano. Urukiko Rukuru rw'Ubucuruzi rukaba ntacyo rwavuze ku bujurire bwari bwatanzwe na APEK GROUP Ltd kuri ayo madolari n'Urukiko

rw'Ubujurire rukaba ntacyo rwayavuzeho kuko icyo kibazo kitajuririwe. [10] Iburanisha ry'uru rubanza ryabereye mu muhezo ku wa ku wa 22/06/2022, isomwa ryarwo rishyirwa ku wa 29/06/2022 saa tanu. II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO Kumenya niba urubanza n° RCOMAA 00034/2021/CA rugomba gusobanurwa [11] Mu nyandiko itanga ikirego, Me Ndutiye Yussuf uhagarariye TURQUAZ Consultancy Ltd, avuga ko ikibazo kigomba gusobanurwa ari ikijyanye na USD 6.984,6 Urukiko rw'Ubucuruzi rwategetse APEK GROUP Ltd kwishyura TURQUAZ Consultancy Ltd kuko hari intebe n'ameza yasigaranye imaze gusesa amasezerano, Urukiko Rukuru rw'Ubucuruzi rukaba ntacyo rwavuze ku bujurire bwari bwatanzwe na APEK GROUP Ltd kuri icyo kibazo, kandi n'Urukiko rw'Ubujurire rukaba ntacyo rwakivuzeho kuko kitajuririwe. [12] Avuga ko mu ngingo APEK GROUP Ltd yajuririye mu rubanza basaba ko rusobanurwa, itajuririye ikibazo cya USD 6.986,6 bigatuma Urukiko rw'Ubujurire mu gusesengura ibibazo bigize urubanza rutagishyiramo, maze no mu guca urubanza ntirwakivugaho ahubwo mu rubanza n° RCOMAA 00034/2021/CA rwaciye ku wa 28/04/2022 (igika cya 86) rwemeza gusa ko urubanza n°RCOMA 0981/2019/HC na RCOMA 0982/2019/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ruhindutse, ariko ntirwavugaga niba muri uko guhinduka hakuweho n'indishyi za USD 6,984.6 APEK GROUP Ltd yari yategetswe kwishyura TURQUAZ Consultancy Ltd mu rwego rwo kwishyura intebe n'ameza yasigaranye. UKO URUKIKO RUBIBONA [13] Ingingo ya 6 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: "Ikiburanwa kigenwa

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n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegururubanza ku manza iteganyijwemo" [...]. Ingingo ya 10 y'iryo Tegeko iteganya ko: "Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine". [14] Ingingo ya 138 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko: "Ibirego bisaba gusobanura cyangwa gukosora amakosa ari mu rubanza biregerwa urukiko rwaciye urwo rubanza bigasuzumwa n'umucamanza waruciye. Iyo bidashobotse bishyikirizwa undi mucamanza. Ku birebana n'ibirego bisaba gusobanura cyangwa gukosora urubanza". Ingingo ya 140 y'Itegeko rimaze kuvugwa, iteganya ko: "Ikirego gikosora cyangwa gisobanura urubanza kiburanishwa nk'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe. Urubanza rukosora urundi, rukosora gusa amakosa y'imyandikire". [15] Ku birebana no gusobanura urubanza, ingingo z'amategeko zavuzwe haruguru, cyane iya 138 yumvikanisha ko igisabwa gusobanurwa ari icyaciriweho urubanza igihe hagaragaramo ibitumvikana neza cyangwa ibishobora gutera urujijo, ari nabyo byonyine umuburanyi yemerewe gusaba ko byasobanurwa bikumvikana. Byumvikana rero ko umuburanyi atakoresha iyo nzira agamije gusobanura ibitarigeze biburanwaho mu rubanza. Uko ninako abahanga mu mategeko Cécile Chainais, Frédéric Ferrand, Lucie Mayer et Serge Guinchard, babisobanura, aho bavugaga ko gusobanura urubanza bikorwa igihe muri urwo rubanza hagaragaramo ingingo zimwe na zimwe zidasobanutse cyangwa ziteye urujijo, bigatuma umuburanyi agaruka imbere y'urukiko mu

rubanza rusobanura urundi, kurusaba gusobanura neza izo ngingo zitumvikana kandi ziteje urujijo mu gihe urwo rubanza rutajuririwe. Bavuga ko ishingiro ry'icyo kirego, ari ugusaba umucamanza waciye urubanza kurusobanura mu gihe rutajuririwe no gusobanura biruseho ibidasobanutse mu rubanza yaciye mbere, akaba ariwe ufite ubwo bubasha bwo kurusobanura, kuko aba ari nawe wahaye urubanza kuba itegeko, kandi itegeko risobanurwa n'ugarishyizeho¹. [16] Dosiye igaragaza ko nk'uko byibukijwe mu miterere y'urubanza, APEK Group Ltd ijuririra urubanza n°RCOMA 0981/2019/HC-RCOMA 0982/2019/HCC muri uru Rukiko kuwa 14/05/2021, yavugaga ko Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo ku ngingo z'ubujurire bwa TURQUAZ Consultancy Ltd kandi zitaragiweho impaka mu iburanisha, ko rwemeje ko APEK Group Ltd yasheshe amasezerano yagiranye na TURQUAZ Consultancy Ltd kuwa 18/06/2015 mu buryo bunyuranyije n'amategeko kandi atari ko biri, ko rwategetse ko TURQUAZ Consultancy Ltd ihabwa amafaranga yari kuri konti z'Ikigo cya APEK Ecole Saint Joseph ntaho rushigiye rukayihira n'ayo itaregeye, isaba amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka. Dosiye igaragaza kandi ko TURQUAZ Consultancy Ltd nayo itanga ubujurire bwuririye ku bundi, yavuze ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko amasezerano yagiranye na APEK Group Ltd yasheshwe mu buryo bunyuranyije n'amategeko ariko ntirugenere indishyi z'igihombo yagize zishingiye ku gihe amasezerano yari asigaje ngo arangire, inasaba kugenerwa amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza. [17] Izo ngingo z'ubujurire ndetse n'iz'ubujurire bwuririye ku bundi Urukiko rw'Ubujurire rwashyikirijwe, nizo rwasuzumye, runazifataho ibyemezo byatumye rwemeza ko urubanza n° RCOMA 00981/2019/HCC – RCOMA 00982/2019/HCC rwajuririwe ruhindutse. 1 La demande en interprétation consiste , lorsque la décision contient une disposition obscur ou ambiguë, à revenir devant le tribunal pour lui demander un deuxième jugement expliquant clairement les termes du premier, tant que celui-ci n'est pas frappe d'appel. Au fondement de ce recours, on trouve l'idée selon laquelle il appartient au juge d'interpréter son propre jugement tant qu'il n'est pas frappé d'appel et de l'élucider si nécessaire : ejus est interpretari cujus est condere (A celui qui a le pouvoir de faire le droit, celui de l'interpréter).Cécile Chainais, Frédéric Ferrand, Lucie Mayer et Serge Guinchard, Procédure Civile, 34éd. , Dalloz, Paris, 2018, P.124).

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[18] Ibyo Urukiko rw'Ubujurire mu cyemezo cyarwo mu rubanza n° RCOMAA 00034/2021/CA rwemeje ko urubanza n° RCOMA 00981/2019/HCC – RCOMA 00982/2019/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi kuwa 16/04/2021, ruhindutse, bikwiye kumvikana ko ibyahindutse bigomba kureberwa mu byemezo byafashwe ku bibazo byasuzumwe muri uru Rukiko bigereranyijwe n'ibyemezo ibyo bibazo byafatiwe mu Rukiko Rukuru rw'Ubucuruzi, ari nabyo byajuririwe muri uru Rukiko. [19] Ku kibazo cya USD 6.986,6 Me Ndutiye Yussuf watanze iki kirego mu mwanya wa TURQUAZ Consultancy Ltd asaba ko yatangwaho ibisobanuro muri uru rubanza, ubwe arahamya, kandi niko kuri, ko USD 6.986,6 atafashweho icyemezo muri uru Rukiko mu rubanza n° RCOMAA 00034/2021/CA, kuko atari mu byajuririwe, ariko ntiyerekana aho ashingira asaba Urukiko gusobanura ibintu bitari mu rubanza rwaciye. [20] Urukiko rusanga nk'uko ingingo z'itegeko zagaragajwe haruguru

n'imvugo z'abahanga nazo zagarutsweho haruguru zibisobanura, umucamanza ashobura gusobanura gusa ingingo zigaragara mu rubanza yaciye zidasobanutse neza cyangwa zishobora guteza urujijo. Rusanga rero rubanza n° RCOMAA 00034/2021/CA, rutagomba gusobanurwa kuko nta kidasobanutse kirurimo, naho ibijyanye n'ikibazo cya USD 6.986,6 Me Ndutiye Yussuf yasabye mu izina rya TURQUAZ Consultancy Ltd ko cyasobanurwa, ntacyo rwakivugaho kuko kitasuzumwe cyangwa ngo gifatweho icyemezo mu rubanza n° RCOMAA 00034/2021/CA rwasabiwe gusobanurwa. III. ICYEMEZO CY'URUKIKO [21] Rwemeje ko ikirego cyatanzwe na TURQUAZ Consultancy Ltd, gisaba gusobanura urubanza n° RCOMAA 00034/2021/CA, nta shingiro gifite.

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