

RWANDA / JUDGMENT

UTC v. RWANDA CLEANING COMPANY

RCOMA 0086/10/CS

COURT

Supreme Court

DECIDED

6 May 2011

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RCOMA 0086/10/CS

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UTC v. RWANDA CLEANING COMPANY

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Text

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UTC v. RWANDA CLEANING COMPANY [Rwanda URUKIKO RW'IKIRENGA – 2011SC – RCOMA 0086/10/CS (Mugenzi, P.J., Mukamurisa na Rugabirwa, J.) Kuwa 06 Gicurasi 2011] Amategeko y'ubucuruzi – Amasezerano yo gukora isuku – Ntibyavugwa ko amasezerano yasheshwe mu buryo bunyuranyije n'amategeko mu gihe umuhesha w'inkiko ubifitiye ububasha yamenyekanishije ibaruwa y'integuza – Umuburanyi ntiyasaba urukiko gusuzuma ikirego gishya kiregera kwiregura gitangiwe ubwambere mu rwego rw'ubujurire . Itegeko n° 31/2001 ryo kuwa 12/06/2001, ingingo ya 21 rishyiraho Urugaga rw'Abahesha b'Inkiko, Itegeko n° 18/2004 ryo kuwa 20/06/2004, ingingo ya 4, igika cya 2 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu Amategeko y'ubucuruzi – Agaciro k'ikirego kitaratanze munyandiko, na mbere yuko iburanishwa ry'ibanze risozwa . Itegeko n° 45/2007 ryo kuwa 11/09/2007 rihindura kandi ryuzuzwa itegeko n° 18/2004 ryo kuwa 20/06/2004, ingingo ya 351 . Incamke y'ikibazo : Uwajuririye yagiranye amasezerano y'imyaka ibiri yo gukora isuku mu nyubako z'uwarezwe yo kuwa kuwa 01/03/2008 kugera kuwa 01/03/2010. Uwajuririye yaje gusesa amasezerano . Uwarezwe yaje kumurega mu Rukiko Rukuru rw'Ubucuruzi avuga ko uwajuririye yasheshe amasezerano nta nteguza, nta n'imishyikirano y'ubwumvikane yabanjirije iseswa

ryayo.Uru rukiko narwo rwategetse uwajuririye kwishyura uwarezwe indishyi zijyanye no gusesa amasezerano nta nteguza.Uwajuririye nawe yajuririye Urukiko rw'Ikirenga avuga ko urukiko rubanza rwayiciye indishyi z'uko yasheshe amasezerano nta nteguza kandi we avuga ko mbere yo gusesa ayo amasezerano, yari yaratanze integuza . Incamake y'icyemezo : 1. Uwarezwe ntaho yahera asaba indishyi z'uko uwajuririye yasheshe amasezerano atayihaye integuza mu gihe ikiburanwa kidashobora guhindurwa mu rukiko rwajuririwe. yakoresheje umuhesha w'inkiko w'umwuga wari ubifitiye ububasha mu guha uwarezwe ibaruwa y'integuza ayimenyesha ko nyuma y'iminsi 30 ayo masezerano azaseswa.Bigaragara rero ko mbere yo kuyasesa uwajuririye yari yarahaye uwarezwe integuza.

2. Uwajuririye ntiyavuga ko urukiko rubanza rwirengagije gusuzuma ikirego kirega kwiregura mu gihe itegeko ryo riteganya ko ikirego kiregera kwiregura gikorwa mu buryo bwanditse kandi kigatangwa mbere yuko iburanisha rya mbere rirangira kandi we atarabikoze. Nta kirego gishya cyakwakirwa mu rwego rw'ubujurire . Ubujurire bufite ishingiro kuri bimwe. Ubujurire bwuririye kubundi nta shingiro bufite. Imikirize y'urubanza irahindutse ku ngingo zayo zose. Amagarama y'urubanza aherereye kuwarezwe.

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Amategeko yashingiweho: Itegeko N°45/2007 ryo kuwa 11/09/2007 rihindura kandi ryuzuza itegeko N° 18/2004 ryo kuwa 20/06/2004, ingingo ya 351, Itegeko N° 31/2001 ryo kuwa 12/06/2001, ingingo ya 21 rishyiraho Urugaga rw'Abahesha b'Inkiko, Itegeko N° 18/2004 ryo kuwa 20/06/2004, ingingo ya 4, igika cya 2 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi . Nta manza zifashishijwe: Urubanza I. IMITERERE Y'URUBANZA

- [1] RWANDA CLEANING COMPANY yagiranye amasezerano na UNION TRADE CENTER yo kuyikorera isuku mu nyubako yayo iri mu Mujyi wa Kigali, ayo masezerano akaba yari kuzamara igihe cy'imyaka ibiri, ni ukuvuga kuwa kuwa 01/03/2008 kugera kuwa 01/03/2010.
- [2] UNION TRADE CENTER yasheshe ayo masezerano, RWANDA CLEANING COMPANY iyirega mu Rukiko Rukuru rw'Ubucuruzi, urubanza rucibwa kuwa 13/08/2010, rutegeka UNION TRADE CENTER guha RWANDA CLEANING COMPANY 28.776.878 Frw y'indishyi z'iseswa ry'amasezerano nta nteguza no gutanga 1.000.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka, yose hamwe akaba 29.776.878 Frw, ikanatanga 1.191.075 Frw y'umusogongerwa wa Leta.
- [3] UNION TRADE CENTER ivuga ko Urukiko rubanza rwayiciye indishyi kandi mbere yo gusesa amasezerano yari yaratanze integuza, naho RWANDA CLEANING COMPANY igasaba indishyi z'uko ayo masezerano yasheshwe nta nteguza, nta n'imishyikirano y'ubwumvikane yabanjirije iseswa ryayo.

[4] UNION TRADE CENTER yajuririye Urukiko rw'Ikirenga, urubanza ruburanishwa mu ruhame kuwa 31/03/2011, ihagarariwe na Me BANDORA Alfred, naho RWANDA CLEANING COMPANY ihagarariwe na Me NDAGIJIMANA Emmanuel na Me MUCYESHA David. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba UNION TRADE CENTER yarasheshe amasezerano nta nteguza

[5] Uburanira UNION TRADE CENTER avuga ko umucamanza wa mbere yasesenguye nabi ingingo za 18, 19 na 20 z'Itegeko n° 31/2001 ryo kuwa 12/06/2001 rishyiraho Urugaga rw'Abahesha b'Inkiko mu Rwanda n'ingingo ya 6 y'amasezerano yo kuwa 01/03/2008, maze ayica indishyi z'iseswa ry'amasezerano nta nteguza, yirengagiza nyamara ko umuhesha w'inkiko yifashishije mu kumenyesha RWANDA CLEANING COMPANY ibaruwa y'integuza yo kuwa 04/08/2008, yari abifitiye ububasha n'ubwo umunyamabanga wayo yanze kuyakira ku bw'akagambane.

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[6] Ababuranira RWANDA CLEANING COMPANY bakavuga ko igomba guhabwa indishyi kuko UNION TRADE CENTER yasheshe ayo masezerano itayihaye integuza, bagasobanura ko bishoboka ko ibaruwa y'integuza yo kuwa 04/08/2008, ari impimbano kuko itagaragajwe mu iburanisha ry'ibanze, ko n'umuhesha w'inkiko wiyambajwe mu kuyitanga atari abifitiye ububasha kuko UNION TRADE CENTER ari ikigo cyigenga, kikaba cyaragombaga kuyinyuza ku iposita nk'uko ayo masezerano yabiteganyaga.

[7] Kuri iki kirego, Urukiko rurasanga Urukiko rubanza rwemeje ko amasezerano UNION TRADE CENTER yagiranye na RWANDA CLEANING COMPANY kuwa 01/03/2008, yasheshwe mu buryo bunyuranyije n'amategeko kuko RWANDA CLEANING COMPANY itahawe integuza kuko yahawe ibaruwa y'integuza n'umuhesha w'inkiko utabifitiye ububasha.

[8] Urukiko rurasanga nyamara hakurikijwe ibiteganywa n'ingingo ya 21 y'Itegeko n° 31/2001 ryo kuwa 12/06/2001 rishyiraho Urugaga rw'Abahesha b'Inkiko mu Rwanda, umuhesha w'inkiko w'umwuga afite ububasha bwo gukorera muntu wese umwitabaje, keretse kwikorera inyandiko we ubwe, kuyikorera abafitanye isano nawe ubwe, abafitanye isano n'uwo bashakanye kugeza ku gisanira cya kane, sosiyete ye n'iyi afitemo imigabane cyangwa sosiyete y'abafitanye isano nawe bamaze kuvugwa. Bigaragara rero ko integuza yatanze n'umuhesha w'inkiko ubifitiye ububasha.

[9] Ku bijyanye n'ubwumvikane RWANDA CLEANING COMPANY ishingiraho isaba indishyi z'uko UNION TRADE CENTER yasheshe amasezeraho yirengagije ibyateganywaga n'ingingo ya 9 y'ayo masezerano yateganyaga ko mbere yo kuregera Urukiko hagomba kubanza gukemura ikibazo mu bwumvikane, cyananirana, hakaregerwa Urukiko rubifitiye ububasha, Urukiko rurasanga ari ikirego gishya gitangiwe bwa mbere mu rwego rw'ubujurire, kuko kitaregwe mu rwego rwa mbere cyangwa ngo kiburanweho, bityo kikaba kitagomba kwakirwa hakurikijwe ibiteganywa n'ingingo ya 4, igika cya 2, y'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano,

iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe kandi ryujijwe kugeza ubu, iteganya ko ikiburanwa kidashobora guhindurwa na gato mu Rukiko rwajuririwe ndetse n'ingingo yaryo ya 168, igika cya 1, iteganya ko ku rwego rw'ubujurire hadashobora kuregerwa ikirego gishya .

- [10] Urukiko rurasanga kuba UNION TRADE CENTER yarakoresheje umuhesha w'inkiko w'umwuga wari ubifitiye ububasha mu guha RWANDA CLEANING COMPANY ibaruwa y'integuza yo kuwa 04/08/2008 yayimenyeshaga ko nyuma y'iminsi 30 ayo masezerano azaseswa, bigaragara ko mbere yo kuyasesa, UNION TRADE CENTER yari yarayihaye integuza yateganywaga n'ingingo ya 8 y'ayo masezerano, bityo nta ndishyi UNION TRADE CENTER igomba gutanga, nta n'impamvu yo gusuzuma ubujurire bwa RWANDA CLEANING COMPANY bwuririye ku bwayo bugamije gusaba ko ariyo yahabwa indishyi.
2. Kumenya niba umucamanza wa mbere yarirengagije gusuzuma ikirego kiregera kwiregura cya UNION TRADE CENTER
- [11] Uburanira UNION TRADE CENTER avuga ko Urukiko rubanza rwanze gusuzuma ikirego kiregera kwiregura cyayo, aho yasabaga 6.500.000 Frw y'indishyi z'uko RWANDA CLEANING COMPANY yayisebeje n'ay'igihembo cya Avoka, ariko ko ubu isaba 7.500.000 Frw, kandi yari yatanze icyo kirego mu nyandiko no mu iburanisha ry'ubanza.

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- [12] Uburanira RWANDA CLEANING COMPANY avuga ko iyo mpamvu y'ubujurire ya UNION TRADE CENTER nta shingiro ifite kuko umucamanza wa mbere yasobanuye ko icyo kirego cyagombaga gutangwa mu nyandiko na mbere yuko iburanisha ry'ibanze risozwa.
- [13] Ku bijyanye n'uburyo icyo kirego kigomba gutangwamo, ingingo ya 351 nonies y'itegeko n° 45/2007 ryo kuwa 11/09/2007 rihindura kandi ryuzuzwa itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru iteganya ko ikirego kiregera kwiregura gikorwa mu buryo bwanditse, kikanatangwa mbere yo kurangiza iburanisha ry'ibanze.
- [14] Urukiko rurasanga nk'uko n'Urukiko rubanza rwabyemeje, ikirego kiregera kwiregura cya UNION TRADE CENTER kitaragombaga kwakirwa kuko itagitanzwe mu buryo bwanditse na mbere yuko iburanisha ry'ibanze rirangira. III. ICYEMEZO CY'URUKIKO
- [15] RWEMEYE kwakira ubujurire bwa UNION TRADE CENTER n'ubujurire bwa RWANDA CLEANING COMPANY bwuririye ku bundi kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;
- [16] RWEMEJE ko ubujurire bwa UNION TRADE CENTER bufite ishingiro kuri bimwe, ko ubujurire bwa RWANDA CLEANING COMPANY bwuririye ku bwa UNION TRADE CENTER nta ishingiro bufite;
- [17] RWEMEJE ko nta ndishyi UNION TRADE CENTER igomba guha RWANDA CLEANING COMPANY;

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- [18] RUVUZE ko imikirize y'urubanza R.COMA 0055/10/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 13/08/2010 ihindutse mu ngingo zarwo zose.
- [19] RUTEGETSE RWANDA CLEANING COMPANY gutanga amagarama y'uru rubanza angana na 21.800 Frw, itayatanga mu gihe cy'iminsi cumi n'itanu, agakurwa mu byayo ku ngufu za Leta.
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