

RWANDA / JUDGMENT

UWAMAHORO v. RSB Ltd

RCOMA 0139/14/HCC

COURT

Commercial High Court

DECIDED

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UWAMAHORO v. RSB Ltd

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Text

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UWAMAHORO v. RSB Ltd [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0139/14/HCC (Nsengiyunva, P.J.,) 16/05/2014] Amategeko agenga amasezerano – Amasezerano y'Ubugure – Kwishyura ikiguzi cyose cy'inzu – Ihererekanya ry'ibyangombwa by'inzu yagurishijwe – Ababuranyi bombi bafite inshingano zo kubahiriza amasezerano bagiranye – Kuba uwaguze inzu atishyuye ikiguzi cyose cy'inzu yaguze nk'uko byunvikanywe mu masezerano, ntiyasaba yuko uwamugurishije amuha ibyangombya by'iyi nzu mu gihe atubahirije amasezerano – Uwagurishije inzu nawe ntiyubahirije amasezerano mu gihe atagaragaje ubushake bwo gusubiza ibaruwa uwaguze yamwandikiye yamusabaga kugaragaza ibyangombwa by'inzu ngo bibe ikimenyetso ko inzu ariye koko., Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64 n'ya 65, Amasezerano yakozwe n' impande zombi. Amategeko agenga amasezerano – Ubujurire bwuririye ku bundi – Kwishyura ubukode bw'inzu – Kuba mbere y'uko inzu igurishwa yabanje gukodeshwa inatwemo n' uwayiguze ubu ariko ntiyishyure ubukode icyo gihe cyose yari ayituyemo, itegeko kwishyura ubukode kuva aho amasezerano y'ubugure yashiriweho umukono kugeza urubanza rusomwe – Incamake y'ikibazo: Umuyobozi mukuru wa RSB Ltd yareze Uwamahoro Florent de la paix mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba

ko yakubahiriza amasezerano bagiranye, amushyikiriza ikibanza yaguze, hakabaho n'iherekanya ry'ubwo butaka. Urukiko rwemeza ko Uwamahoro Florent yishyura ikiguzi cy'ikibanza cyemejweho mu masezerano, akanatanga ibyangombwa by'inzu, RSB Ltd nayo ikishyura ubukode bw'igihe cyose imaze mu nzu. Uwamahoro yajuririyemo mu Rukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rubanza rwirengagije ko RSB Ltd itubahirije amasezerano bagiranye. Uwamahoro akomeza avuga ko RSB Ltd itigeze itanga ikiguzi cy'inzu ariko Urukiko rubanza rukemeza ko nta kosa yakoze, runemeza ko nta kigaragaza ko inzu yagurishijwe ari iye. Akomeza asaba yuko yagenerwa indishyi, anasaba ko RSB Ltd yategukwa kwishyura ikiguzi cyasigaye hamwe n'inyungu zawo. RSB Ltd yiregura ivuga ko impanvu Uwamahoro yatanze zidafite ishingiro kuko atahise ayiha ibyangombwa by'inzu ngo hakorwe n'iherekanya. RSB Ltd ikomeza ivuga ko hadakwiye ko yananiwe gutanga ubwishyu mu gihe Uwamahoro atagaragaje ibyangombwa by'inzu. RSB Ltd ikomeza ivuga ko yiteguye kwishyura Uwamahoro aruko ibonye ibyangombwa bimwanditse ho bigaragaza ko inzu yagurishijwe ari iye. Mu bujirire bwuririyemo kubundi, RSB Ltd ivuga ko urukiko rubanza rwategetse ko yishyura Uwamahoro 42.000 US ahwanye n'ubukode bw'igihe cyose yabaye munzu ye. Ikomeza ivuga ko nta masezerano y'ubukode yigeze aba hagati y'ababuranyi, ko yo nka sosiyete iteganya ubukode bwa 700.000 frws, inasaba ko Uwamahoro yategukwa kuyiha indishyi ziyongera kuzagenywe n'urukiko rubanza. Incamake y'icyemezo: 1. Mu gihe bigaragara ko uwagurishije atagaragaje ubushake bwo gusubiza mu ibaruwa yandikiwe n'uwaguze, ku mpungenge zayo zirebana n'ibyangombwa by'inzu bimwanditseho, n'uwaguze nawe akaba atishyuye ikiguzi cyose cy'inzu nk'uko babyunvikanye mu masezerano, buri ruhande rwagize uruhare, nubwo zitangana mu kutubahirizwa

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kw'amasezerano. Bityo uwaguze akaba agomba guhita yishyura ubwishyu bwose bw'inzu yaguze, uwagurishije nawe agahita yandikisha iyo nzu ku mazina y'uwaguze.

2. Kubera uruhare rw'uwagurishije yagize adasubiza amabaruwa y'uwaguze ayimara impungenge ku birebana n'impapuro, rutuma agenerwa ½ cy'ubwo bukode, ziyongera ku bwishyu bw'inzu. Ubujirire bufite ishingiro kuri bimwe. Imikurizwe y'urubanza RCOM 1152/13/TC/Nyge yahindutse. Amategeko yashyirahweho: Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64 n'ya 65, Amasezerano yakozwe n'impande zombi. Nta manza zifashishijwe: Urubanza

I. IMITERERE Y'URUBANZA [1] Umuyobozi Mukuru wa RSB Ltd yaregeye Urukiko rw'Ubucuruzi rwa Nyarugenge Uwamahoro Florent de la Paix, arusaba kumutege kakubahiriza amasezerano bagiranye, akamushyikiriza ibyangombwa by'ikibanza yaguze, hakanabaho iherekanya ry'ubwo butaka. [2] Urwo Rukiko, rwaburanishije urubanza, rwanzura rwemeza ko Uwamahoro Florent de la Paix yishyurwa gusa ikiguzi cyemejweho mu masezerano, akanatanga ibyangombwa by'inzu, akanishyura amafaranga y'ikurikiranarubanza na RSB Ltd ikishyura ubukode bw'igihe cyose imaze mu nzu. [3] Uwamahoro Florent de la Paix ntivyishimiye iyo mikurizwe, ayijuririra uru Rukiko ku mpamvu nyamukuru y'uko Urukiko rubanza rwirengagije ko ari RSB Ltd itubahirije amasezerano bagiranye. Ikiri busuzumwe hano mu bujirire, ni ukureba

mu baburana, hanashingiwe ku byemejwe n'Urukikorubanza, ninde utubahirije inshingano ze mu masezerano bagize. II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA A) Ku iyubahirizwa ry'amasezerano ku mpande zombi [4] Uwamahoro Florent de la Paix mu ngingo zitandukanye yashyikirije uru Rukiko, agaragaza ko Urukiko rubanza rwirengagije ko ari RSB Ltd itubahirije amasezerano bagiranye, cyane cyane ingingo ya 2 n'ya 5, kuko ntaho ayo masezerano yateganyije ko ari Uwamahoro Florent de la Paix wagombaga kubanza gutanga ibyangomwa, mu gihe nyamara hari igihe cyasabwaga RSB Ltd, gutanga igice cya kabiri cy'ikiguzi cy'inzu, ntiyabyubahiriza. [5] Uwamahoro Florent de la Paix akomeza gusobanura ko Urukiko rwasanze RSB Ltd, ifite inzu itigeze itangira ikiguzi, ariko nyamara rukemeza ko nta kosa yakoze, runateguka nyirinzuzi

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gutanga amafaranga y'ikurikirana rubanza. Rukaba rwaremeje ko nta kigaragaza ko inzu ari iya Uwamahoro Florent de la Paix, kandi nyamara RSB Ltd, yiyemereye ahantu henshi ko inzu ari iya Uwamahoro; ko rero yari akwiriye we ahubwo kugenerwa indishyi. Bityo akaba asaba uru Rukiko kwemeza ko ari RSB Ltd itubahirije amasezerano, igategekwa kwishyura ikiguzi cyasigaye, inyungu yayo ya 18% ku kwezi kuwa 25/03/2011 cyangwa kwishyura ubukode bungana na frw 1,200\$ guhera ukwezi kwa gatatu 2011 kugeza urubanza rusomwe, hiyongereyeho inyungu za 1,5% buri kwezi, ikanishyura Frw 1,000,000 y'igihembo cya avoka n'ikurikirana rubanza. [6] RSB Ltd yiregura ivuga ko izi mpamvu za Uwamahoro Florent de la Paix zidafite ishingiro, kuko nubwo amasezerano yateganyije ko RSB Ltd igomba kwishyura ikiguzi, ariko iyo Uwamahoro Florent de la Paix yari kuba afite ibyangombwa by'inzu uwo munsu basinye amasezerano, nta nzitizi n'imwe yari kubaho nk'uko biteganyijwe mu ngingo ya 3 y'amasezerano, kandi ko n'ingingo ya 5 y'amasezerano iteganyije ko igihe RSB Ltd yashyikirijwe inzu, Uwamahoro Florent de la Paix yagombaga guhita atanga ibyangombwa by'inzu bimwanditseho, hakabona gukorwa iherekanya (mutation). [7] RSB Ltd, inakomeza ivuga ko nk'uko bimaze kugaragara hejuru, hadakwiye kuvugwa ko yananiwe gutanga ubwishyu, mu gihe yasobanuriye mucamanza wa mbere ko Uwamahoro Florent de la Paix atagaragaje ibyo bya ngombwa by'inzu, kugira ngo abone kuvuga ko RSB, Ltd yananiwe kwishyura. [8] RSB Ltd isoza ivuga ko ari Uwamahoro Florent de la Paix utubahirije inshingano zasezeranwe kuko atagaragarije RSB Ltd ibyangombwa by'inzu bimwanditseho, anashaka kujijisha, yiha kwandikira RSB Ltd ayisaba kuyishyura, ariko nayo imusubiza imubwira ko yiteguye kumwishyura aruko ibonye ibyangombwa bimwanditseho, kandi ko nta kindi cyari kugaragaza ko inzu ari iya Uwamahoro Florent de la Paix, kitari icyemezo cyanditsweho ko ariwe nyirumutungo utimukanwa. [9] Urukiko, rumaze gusuzuma imyiregurire y'impane zombi, runasuzumye ibyemeranijweho mu masezerano ababuranyi bagiranye, rusanga hakwiye gusobanuka neza ibiteganyijwe cyane cyane mu ngingo zagiweho impaka n'ababuranyi, arizo ingingo ya 2, iya 3 n'ya 5 z'amasezerano, kuko nk'uko biteganyijwe mu ngingo ya 64 na 65 z'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigena amasezerano, ababuranyi bagomba kubahiriza nta buriganya inshingano zabo zaba uko zisobanuwe mu masezerano cyangwa ingaruka yazo, ugushyira mu kuri, imigenzereze cyangwa amategeko arebana n'ayo masezerano. [10] Urukiko rusanga rero, ingingo ya 2 y'amasezerano yo kuwa 14/03/2011 yashyizweho umukono

n'impande zombi, yateganyije (byakozwe mu cyongereza, ariko bishyizwe mu Kinyarwanda) ko abayagiranye bemeraniye ko igiciro cy'inzu iguzwe ari Rwf 110,000,000, kizishyurwa uko bikurikira: Rwf 30,000,000 y'itangiriro bitarenze kuwa 25/03/2011; asigaye Rwf 80,000,000 akishyurwa ku ihererekanya, hatanzwe sheki ya Ecobank Rwanda. Ingingo ya 3 y'amasezerano iteganya ko uwagurishije, yemereye uwaguze ko iyo nzu ifite ibyangombwa byose bikwiye, kandi bimuhesha ububasha bwo kuyigurisha, kandi na none ko yemeje ko izagurishwa ko nta wundi uzabuza uwaguze uburenganzira ku nzu yaguze. Ingingo ya gatanu, yo igateganya ko impande zombi zemeraniye ko ibyangombwa by'iyi nzu, bizahererekanwa k'uwaguze igihe iyo nzu izashyikirizwa aho uwaguze abarizwa.

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[11] Ikigaragarira Urukiko, n'uko izi ngingo uko ari eshatu, zerekana (nubwo hari aho ziteje urujijo, hagereraniywe n'uko ibintu byagenze, nk'uko uwaguze yabaga muri iyo nzu yaguze, bivuga ko ariho yabarizwaga) ko, mu ngingo ya kabiri, nta cyasabwaga mbere y'uko RSB, Ltd yishyura ubwishyu bw'inzu. Mu ngingo ya gatatu, abagiranye amasezerano bemeranya ko inzu nta kibazo ifite, yaba ku bijyanye n'impapuro no kuburenganzira/ububasha bwa Uwamahoro Florent de la Paix bwo kuyigurisha, bivuga ko ntawari ugishidikanya ku birebana n'ububasha bwo kugurisha iyo nzu. Ibi bikaba ari nabyo bigaragara mu ngingo ya gatanu, ahavugwa uko inzu izahererekanwa (delivery & mutation), kandi ntihavugwemo ibihe bizakorerwa, n'igisabwa mbere, bikaba bikwiye gusobanura ko impande zombi zagombaga gukora, nta gushidikanya, ibyo ziyemeje mu masezerano, cyane cyane mu ngingo ya kabiri (kwishyura ubwishyu). [12] Urukiko, rushingiye rero ku biteganyijwe muri izi ngingo z'amasezerano zimaze gusuzumwa, runashingiye ko amasezerano agomba kubahirizwa hamwe n'inkurikizi yazo, n'impande zose nta buriganya, rusanga uko ababuranyi bagiye bashyira mu bikorwa inshingano zabo z'amasezerano, RSB Ltd yateshutse ku nshingano zayo zo kwishyura igice cya mbere cy'ubwishyu bw'inzu, ku itariki yasezeranweho kuko ntacyo urundi ruhande rwasabwaga mbere y'uko RSB Ltd ibikora. RSB Ltd yiyemereye mu ibaruwa yayo yo kuwa 11 Werurwe ko yashyize amafaranga kandi atuzuye, na none iyashyira kuri konti yayo (aho kuyaha Uwamahoro Florent de la Paix), inabikora kuwa 12/04/2011. [13] Urukiko rusanga na none, Uwamahoro Florent de la Paix nawe atagaragaje ubushake nta buyarya (bonne foi) bwo gusubiza mu ibaruwa yandikiwe na RSB Ltd, ku mpungenge zayo zirebana n'ibyangombwa by'inzu bimwanditseho. Rusanga rero, buri ruhande rwagize uruhare, nubwo zitangana mu kutubahirizwa kw'amasezerano. [14] Kubera izi mpamvu rubonye, rusanga bikwiye ko buri ruhande rutegekwa kubahiriza inshingano zarwo z'amasezerano, kugira ngo ibyemejwe bishyirwe mu bikorwa nk'Itegeko ry'abagiranye amasezerano; RSB Ltd igategekwa guhita yishyura ubwishyu bwose bw'inzu yaguriye Uwamahoro Florent de la Paix, nawe agahita (amaze kubona ubwo bwishyu bwumvikanweho) yandikisha iyo nzu ku mazina y'uwayiguze. B) Ku bujurire bwa RSB Ltd bwuririye kubwa Uwamahoro Florent de la Paix [15] RSB Ltd nayo yatanze ubujurire bwuririye kubwa Uwamahoro Florent de la Paix, bushingiye ku kuba Urukiko rubanza rwafashe ibintu uko bitari, bituma rugera ku cyemezo kitari cyo rutegeka RSB Ltd kwishyura

US\$ 42,000 ahwanye n'ubukode bw'igihe cyose yabaye mu nzu, mu gihe yananirwa kwishyura ubwishyu. Ibi ikaba ibijuririyeye kuko nta masezerano y'ubukode yigeze iba hagati y'ababuranyi, ko kandi n'amasezerano y'ubukode yerekanwe mu rubanza kuri iyo nzu, nubwo itabaye hagati ya RSB Ltd nka sosiyete, iteganya ubukode bwa Rwf 700,000 (bidafite aho bihuriye na US\$ 42,000), ikaba isoza isaba ko Uwamahoro Florent de la Paix ategukwa kuyiha indishyi zingana na Rwf 2,000,000 z'ikurikirana rubanza no gusiragizwa mu Nkiko ziyongera ku zagenwe n'Urukiko rubanza. [16] Urukiko rusanga, nk'uko rwabibonye ku mpamvu y'ubujurire bwa Uwamahoro Florent de la Paix, bisobanuye hejuru, RSB Ltd niyo yateshyutse ku nshingano zayo zo kutishyura ubwishyu bw'inzu yaguze, ikaba rero ntaho yahera isaba indishyi. Rusanga na none, nk'ingaruka y'ibyo rwabonye hejuru, harimo uruhare rwa buri ruhande mu kuba amasezerano y'ubugure atashyizwe mu bikorwa, no kuba nk'uko byavuzwe mu iburanishyamba Uwamahoro Florent de la

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Paix, ntibivuguruzwe na RSB Ltd, ko iyo nzu yaguzwe yabanje gukodeshwa n'abahagarariye cyangwa ababyobozi ba RSB Ltd (reba amasezerano yo kuwa 13/07/2010) kugeraho hemeranywa ko RSB Ltd ihagura, abo bayobozi bakomeje gutura iyo nzu kugeza magingo aya, kandi batishyuye ubwo bwishyu, kuvaho inzu yaguriwe, ntibanishyure ubukode. [17] Hashingiye ku biteganyijwe n'ingingo z'amategako agenga amasezerano, uko zasobanuye hejuru, no ku ruhare RSB Ltd yagize mu kutubahirizwa kw'amasezerano, ikwiye kwishyura ubukode bw'inzu, kuvaho amasezerano (y'ubugure) yashirihwe umukono, kuko yari ifite iyo nzu, itayishyurira ubwishyu, kugeza uru rubanza rusomwe, ubukode bubariwe kuri Rwf 700,000 ku kwezi, bivuye ko ari kuwa 14 Avril 2011 (ukwezi nyuma y'amasezerano) kugeza ukwezi kwa kane 2014 (amezi 37). Urukiko rusanga, uruhare rwa Uwamahoro Florent de la Paix rwo kudasubiza amabaruwa ya RSB Ltd ayimara impungenge ku birebana n'impapuro, rutuma agenerwa ½ cy'ubwo bukode, nk'uko uruhare rwe narwo rwasobanuye hejuru, akaba yagenerwa Rwf 12,950,000 (½ ya Rwf 25,900,000) y'ubukode, ziyongera ku bwishyu bw'inzu. III. ICYEMEZO CY'URUKIKO: [18] Urukiko Rukuru rw'Ubucuruza:

- Rwemeye kwakira ubujurire bwa Uwamahoro Florent de la Paix kuko bwatanzwe mu buryo bwubahirije amategako, rubusuzumye rusanga bufite ishingiro kuri bimwe.
- Rwemeje ko imikirize y'urubanza rwajuririye R Com 1152/13/TC/Nyge, rwaciye n'Urukiko rw'Ubucuruza rwa Nyarugenge, kuwa 31/01/2014, ihindutse.
- Rukijije ko Umuyobozi Mukuru wa RSB Ltd ariwe wabanje kutubahiriza inshingano ze zateganyijwe mu masezerano.
- Rukijije ko ababuranyi bombi batagaragaje ishyirwa mu bikorwa ry'amasezerano bagiranye, nta buryarya "bonne foi".

- Rubategetse guhita bubahiriza amasezerano bagiranye, yo kuwa 14/03/2011; Umuyobozi Mukuru wa RSB, Ltd akishyura ubwishyu bw'umutungo utimukanwa na Uwamahoro Florent de la Paix agahita ayandikishaho (RSB, Ltd) uwo mutungo.
- Rutegetse Umuyobozi Mukuru wa RSB, Ltd kwishyura Uwamahoro Florent de la Paix kimwe cya kabiri cy'amafaranga y'ubukode yishyurwaga kuri uwo mutungo utimukanwa (inzu), ahwanye na Frw 12,950,000, uko bisobanuwe mu rubanza.
- Rutegetse ko buri muburanyi yirengera ibyo yakoreshe muri uru rubanza.

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