

RWANDA / JUDGMENT

VICTORIA PLAZA Ltd v. BANQUE POPULAIRE DU RWANDA

RCOMA 0201/12/CS

COURT

Supreme Court

DECIDED

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VICTORIA PLAZA Ltd v. BANQUE POPULAIRE DU RWANDA

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Text

Page 1

VICTORIA PLAZA Ltd v. BANQUE POPULAIRE DU RWANDA [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0201/12/CS (Nyirinkwaya, P.J., Mukandamage na Kanyange, J.) 13 Werurwe2015]

Amategeko agenga amasezerano – Amasezerano y'ubugure – Kutubahiriza amasezerano – Inyungu – Igihano gihatira kwishyura – Uwaguze ntiyacibwa inyungu z'ubukererwe cyangwa ngo ahabwe igihano kimuhatira kwishyura mu gihe uwagurishije atubahirije amasezerano bagiranye kugirango ubwishyu bubeho –Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 33. Incamake y'ikibazo: BANQUE POPULAIRE DU RWANDA yagurishije VICTORIA PLAZA Ltd ikibanza ku mafaranga angana na 365.000.000 frws, hishyurwa 300.000.000 frws, hasigara 65.000.000 frws yagombaga kwishyurwa ari uko hamaze gukorwa iherekanya, habonetse ibyangombwa by'umwimerere byanditse kuri VICTORIA PLAZA Ltd ndetse n'uwabaga muri iyo nzu yayivuyemo. BANQUE POPULAIRE yareze VICTORIA PLAZA Ltd mu Rukiko Rukuru rw'Ubucuruzi isaba kwishyurwa ayo mafaranga yasigaye ku bugure bw'ikibanza hamwe n'inyungu z'ubukererwe ziyakomokaho. Urukiko rwemeza ko ikirego cya

BPR gifite ishingiro, rutegeka ko VICTORIA PLAZA Ltd imwishyura 65.000.000 frws yasigaye. VICTORIA PLAZA Ltd yajuririye Urukiko rw'Ikirenga ivuga ko BPR itubahirije ibyo yagombaga gukora nk'uko biri mu masezerano. VICTORIA PLAZA Ltd ivuga ko impamvu itishyuye amafaranga yari yasigayemo BPR n'uko nayo itubahirije ibyo yagombaga gukora. Ikomeza ivuga ko mu guca urubanza habayeho akarengane kubera ko BPR yananiwe kurangiza inshingano zayo. VICTORIA PLAZA Ltd irangiza ivuga ko BPR nta nyungu zo gutinda kwishyura ikwiye guhabwa kuko ariyo nyirabayazana yo kutishyurwa igice cya kabiri cy'umwenda VICTORIA PLAZA Ltd yari iyifitiye, ivuga kandi ko inyungu zatanze zari zibariwe ku gipimo cya 18%, kandi ari 7% yunvikanyweho mu masezerano nk'igipimo cy'inyungu z'uburyozwe. BANQUE POPULAIRE Y'U RWANDA yo ivuga ko VICTORIA PLAZA Ltd itigeze ibasha kwerekana ko BPR Ltd yayigurishije ikibanza gitanzwe n'abandi bantu kuko ntawe igaragaza wigeze akigiraho uburenganzira kuva ikiyigurishije. Irangiza ivuga ko kubera ko VICTORIA PLAZA Ltd yanze kwishyura inyungu igahitamo kuzihagarikisha, iza nyungu nazo zigomba kwishyurwa zihereye umunsi ikibanza cyanditswe mu mazina yayo kugeza irangije kwishyura. Incamake y'icyemezo: 1. N'ubwo uwagurishije yahaye uwaguze ibyangombwa by'ikibanza, ntiyakemuye ikibazo cy'umuntu wari utuye mu nzu wagombaga kuvamo nk'uko bari babyumvikanye, kugeza ubwo uwaguze abyikoreye akabona kwishyura amafaranga yari yasigaye. Uwaguze rero yari afite impamvu zo kutishyura mu gihe uwagurishije atujuje inshingano ze zikubiye mu masezerano, bityo inyungu zijyanye no kutishyura uwaguze yaciye n'Urukiko Rukuru rw'Ubucuruzi hamwe n'igihano kimuhatira kwishyura bigomba kuvaho.

Page 2

Ubujurire bufite ishingiro. Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe. Urubanza rwajuririye ruhindutse kuri byose. Amagarama y'urubanza aherereye ku warezwe. Amategako yashingiweho: Itegeko ryo kuwa 30/07/ 1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 33. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] BANQUE POPULAIRE DU RWANDA (BPR) Ltd yagurishije Sosiyete VICTORIA PLAZA Ltd ikibanza n° 07 kiri mu Kagari ka Kiyovu, Umurenge wa Kiyovu, Akarere ka Nyarugenge, Umujyi wa Kigali ku mafaranga 365.000.000, yishyura 300.000.000 Frw hasigara 65.000.000 Frw, BPR Ltd ikavuga ko ayo mafaranga yagombaga kwishyurwa ari uko hamaze gukorwa ihererekanya habonetse ibyangombwa by'umwimerere byanditse kuri VICTORIA PLAZA, naho yo ikavuga ko BPR yagombaga no kuvana muri icyo kibanza umuntu wari ugituyemo, hagakorwa n'andi masezerano ya burundu. [2] BPR Ltd yareze VICTORIA PLAZA Ltd mu Rukiko Rukuru rw'Ubucuruzi isaba kwishyurwa ayo mafaranga yasigaye ku bugure bw'ikibanza n'inyungu z'ubukererwe ziyakomokaho, amafaranga y'igihano kiyihatira kwishyura, irangizarubanza ry'agateganyo n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [3] Urukiko Rukuru rwaciye urubanza rwemeza ko ikirego cya BPR Ltd gifite ishingiro kubera ko rwasanze ingingo ya 1 n'ya 4 y'amasezerano impande zombi zagiranye zisesenguriwe hamwe zigaragaza ko VICTORIA PLAZA Ltd yagombaga kwishyura B.P.R Ltd amafaranga yasigaye ku kiguzi cy'ikibanza nyuma yo kubona impapuro z'umwimerere ziri mu mazina yayo, n'ubwo mu ngingo ya 1 hari hateganyijwe ko ikibanza kigomba gutangwa nta wundi muntu ugifiteho uburenganzira, ariko ko mu ngingo ya 4

bitagarutsweho. [4] Urukiko rwategetse rero ko VICTORIA PLAZA Ltd igomba kwishyura BPR Ltd amafaranga 65.000.000 yasigaye kubera ko yamaze kubona impapuro z'umwimerere kandi ziri mu mazina yayo, n'inyungu zayo zibariwe kuri 18% mu gihe cy'amezi 22 abazwe kuva tariki ya 19/01/2011 ibonye impapuro z'ikibanza kugeza urubanza ruciwe, zingana na 21.450.000 Frw, hiyongereyeho amafaranga 400.000 y'ikurikiranarubanza. Rwanategetse ko urubanza rurangizwa by'agateganyo kubera ko amasezerano y'igurisha ry'ikibanza agize ikimenyetso cy'ikiburanwa ari inyandikomvaho yakorewe imbere ya Notaire wa Leta, VICTORIA PLAZA ikanatanga amafaranga 20.000 buri kwezi mu gihe izaba itarangije urubanza rumaze kuba ndakuka. [5] VICTORIA PLAZA Ltd yajuririye Urukiko rw'Ikirenga, ivuga ko urukiko rwayiciye inyungu rwirengagije ko kutishyura igice cyari gisigaye ku kiguzi cy'ikibanza byatewe n'uko BPR Ltd itubahirije ibyo yagombaga gukora nk'uko biri mu masezerano, izo nyungu kandi

Page 3

ruzibarira ku gipimo cya 18% rwirengagije icya 7% cyumvikanyweho mu masezerano. Ivuga kandi ko, kubera iyo mpamvu, itagombaga no guhabwa igihano kiyihatira kwishyura ndetse n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko nta bimenyetso yagaragarijwe. [6] Urubanza rwaburanishijwe mu ruhame tariki ya 03/02/2015, Banque Populaire du Rwanda (BPR) Ltd ihagarariwe na Me Mhayimana Isaïe, VICTORIA PLAZA Ltd iburanirwa na Me BUGINGO John Bosco. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kumenya niba VICTORIA PLAZA Ltd yaraciye inyungu ku mafaranga 65.000.000 yasigaye ku kiguzi cy'ikibanza cya BPR Ltd n'andi mafaranga, kandi yari ifite impamvu zo kutayishyura. [7] Me Bugingo uburanira VICTORIA PLAZA Ltd avuga ko urukiko rwirengagije imyiregurire yayo aho yasobanuye ko impamvu itishyuye amafaranga yari yasigayemo BPR Ltd ari uko nayo itubahirije ibyo yagombaga gukora kugira ngo yishyurwe nk'uko bigaragagara mu ngingo ya 1 igika cya nyuma y'amasezerano yo kuwa 09/11/2010 ni ukuvuga gutanga ikibanza kidatwemo no gukora amasezerano ya burundu (the balance of sixty five million Rwandan Francs shall be payable after delivery of the original documents in the buyer's names and the vacant occupancy of the land). [8] Avuga kandi ko urukiko rwirengagije ibiteganyijwe mu ngingo ya 4, c) y'amasezerano nayo iha inshingano BPR yo gutanga ikibanza kidatwemo kuko bagura cyarimo BANDAG n'umuntu wari umaze imyaka 15 atuyemo, ko rero ayo mafaranga 65.000.000 yishyurwe tariki ya 17/09/2012 Akarere ka Nyarugenge kamaze kumuvanamo ajya gutuzwa i Byumba. [9] Avuga na none ko BPR Ltd idahakana ko yiyemeje gutanga ikibanza kidatwe, ko ahubwo yarambiwe kugikurikirana, maze ihitamo kurega VICTORIA PLAZA Ltd yirengagiza inshingano yihaye mu masezerano, ibyo akabishingira ku mpamvu y'uko tariki ya 26/08/2011 yandikiye VICTORIA PLAZA Ltd iyisaba kopi z'inyandiko z'ikibanza ivuga ko imaze amezi ikurikirana ikibazo cyo kuvana umuntu mu kibanza ariko bikayinanira, kuwa 31/08/2011 VICTORIA PLAZA Ltd yongera kuyibutsa inshingano yayo, isubiza ko ibishyizemo imbaraga bizakorwa mu gihe gito gishoboka. [10] Asanga rero urukiko rutari kwirengagiza uburemere bw'ingingo ya 1 y'amasezerano, maze ngo rukurikize iya 4 yayo kubera ko BPR Ltd yananiwe kurangiza inshingano, ko rero habayeho akarengane. Na none, mu gusesengura izo ngingo, ngo umucamanza yibeshye ku cyo "vacant occupancy" bivuze, maze avuga ngo "ntawe ugifiteho uburenganzira" ibyo abikora anyuranyije n'ibiteganywa n'ingingo ya

69 agace ka 1 - 4 y'itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano. [11] Yanzura avuga ko BPR Ltd nta nyungu zo gutinda kwishyura ikwiye kuko ariyo nyirabayazana yo kutishyurwa igice cya kabiri cy'umwenda VICTORIA PLAZA Ltd yari iyifitiye, ko kandi izatanzwe zabariwe ku gipimo cya 18 % hirengagijwe 7% yumvikanyweho mu masezerano nk'igipimo cy'inyungu z'uburyozwe.

Page 4

[12] Me Mhayimana uburanira BPR Ltd avuga ko VICTORIA PLAZA Ltd yirengagiza ko mu gika cya nyuma cy'ingingo ya mbere ndetse n'igika cya b) cy'ingingo ya 4 z'amasezerano bisobanuye neza ko "igice cya kabiri ku kiguzi cy'ikibanza cya 65.000.000 Frw kigomba kwishyurwa uwaguze (VICTORIA PLAZA Ltd) akimara kubona inyandiko z'umwimerere zanditse ku mazina ye" ari nabyo umucamanza wo mu Rukiko Rukuru rw'Ubucuruzi yasobanuye neza mu gika cya 7 cy'ica ry'urubanza rwajuririwe. [13] Avuga kandi ko VICTORIA PLAZA Ltd yirengagiza ko yemeye kwishyura ayo mafaranga nyuma y'uko ibitegetswe n'urukiko, nyamara ntiyerekane icyari cyarayibujije kwishyura mbere hose, ko nta nzitizi iyo ari yo yose BPR Ltd yaba yarakuyeho ngo noneho bibe ari byo byatumye yemera kwishyura 65.000.000 Frw yari yaranze kwishyura. [14] Asanga rero kuva ikibanza kimaze kugera mu izina rya VICTORIA PLAZA Ltd, nta bundi bubasha n'ubushobozi BPR Ltd yari igifiteho, cyane cyane ko bumvikanye ko "ugurishije yemeye ko, akimara kugurisha, nta nyungu cyangwa ubundi burenganzira ubwo ari bwo bwose azaba agifite ku kibanza, ko byose bizegurirwa uguze". [15] Me Mhayimana yongeraho ko VICTORIA PLAZA Ltd itigeze ibasha kwerekana ko BPR Ltd yayigurishije ikibanza gitunzwe n'abandi bantu kuko ntawe igaragaza wigeze akigiraho uburenganzira kuva ikiyigurishije kuwa 09/11/2010, kuko n'ubwo haba hari kuba hari uwacyigabije agaturamo (voie de fait), VICTORIA PLAZA Ltd niyo yonyine, nka nyiri ikibanza, yari ifite uburenganzira bwose yemererwa n'amategeko yo guhagarika iyo "voie de fait", cyane cyane ko nta rubanza yari ikeneye, kandi nta n'urwo yigeze ikenera kugeza ubu, kugeza aho yemeye kwishyura amafaranga yari isigayemo. [16] Ku byo VICTORIA PLAZA Ltd ivuga ko inyungu zo gutinda kwishyura zari kuba 7% aho kuba 18%, Me Mhayimana avuga ko yirengagiza ko BPR Ltd ari umucuruzi, ko iyo iza kwishyurwa ku gihe iba yarayacurujye ku rwunguko rwa 18% isaba abo ihaye umwenda bese, ko 7% ateganywa mu ngingo ya 4 b) y'amasezerano yo kuwa 09/11/2010, ari igihano BPR Ltd yari gucibwa iyo iza kuba itarubahirije inshingano yo kwandikisha ikibanza kuri VICTORIA PLAZA Ltd. [17] Yongeraho ko kubera ko VICTORIA PLAZA Ltd yanze kwishyura inyungu zingana na 21.450.000 Frw zagenwe n'urukiko, ahubwo igahitamo kuzihagarikisha, izo nyungu nazo zigomba kubarirwa icyo gihe cyose zagombaga kwishyurwa, zihereye kuwa 19/01/2011 umunsi ikibanza cyanditswe mu mazina yayo kugeza umunsi uru rubanza ruzasomerwaho ni ukuvuga: $21.450.000 \text{ Frw} \times 18\% \times \text{imyaka } 4 = 15.444.000 \text{ Frw}$, izo nyungu zigakomeza kubarwa kugeza irangije kwishyura. Uko Ururukiko rubibona: [18] Ku byerekeye inshingano zikomoka ku masezerano, ingingo ya 33 y'Urwunge rw'amategeko y'imbonezamubano, yerekeye imirimo nshinganwa cyangwa amasezerano, yakurikizwaga igihe VICTORIA PLAZA Ltd na BPR Ltd bagiranaga amasezerano, iteganya ko "amasezerano

akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kwubahirizwa nta buryarya”.

Page 5

- [19] Mu ngingo ya mbere, igika cya nyuma y'amasezerano VICTORIA PLAZA Ltd na BPR Ltd bagiranye imbere ya Notaire tariki ya 10/11/2010, bumvikanye ko amafaranga 65.000.000 asigaye ku kiguzi cya 365.000.000 Frw y'ikibanza azishyurwa hamaze gutangwa impapuro z'umwimerere ziri mu mazina y'uwiguzwe kandi ahaguzwe nta muntu ukirimo (The Balance of Sixty Five Million Rwandan Francs (65.000.000) shall be payable after delivery of the original documents in the buyer's names and vacant occupancy of the land). [20] Mu ngingo ya 4 b) y'ayo masezerano bumvikanye ko uguze azishyura igice cya kabiri cy'amafaranga asigaye agihabwa ibyangombwa by'umwimerere byanditswe mu mazina ye, ugurishije nawe yiyemeje gukurikirana ko imirimo yose ijyanye n'iherekanywa izaba yarangiye mu gihe kitarenze amezi abiri, bitaba ibyo agacibwa inyungu ya 7% ku mafaranga yishyuwe (Buyer is obliged to pay the second installment on reception of all original documents in his names, the seller commits that all the transfer process will be completed in a period less than 2 months failure of which an interest of 7% will be chargeable on the advance paid). [21] Naho mu ngingo ya 4 c) y'ayo masezerano abayagiranye bumvikana ko ugurishije atanga ahaguzwe nta muntu n'umwe ukirimo, yaba abahakodesha cyangwa abatuyemo, bakavamo amasezerano akimara gushyirwaho umukono, keretse mu gihe baba babyiyumvikaniyeho n'uguze. (The seller agrees to help and facilitate the process of property transfer, and the seller agrees to meet the costs connected to any transfer costs chargeable. It is hereby agreed that the seller is to be given vacant occupancy of the property and any liabilities, tenants and occupants vacate the property at the time of signing of this agreement except for a mutually agreed occupancy between buyer and third party). [22] Izi ngingo zumvikanisha ko BPR Ltd nk'ugurisha yemeye gukora ibishoboka byose kugira ngo yandikishe ikibanza kuri VICTORIA PLAZA Ltd yakiguze mu gihe kitarenze amezi abiri, itabikora ikabitangira inyungu ya 7% ku mafaranga yari amaze kwishyurwa, ko kandi kuva amasezerano agisinywa, yari ifite inshingano yo kuvanamo abantu bari bakirimo kugirango cyegukanwe burundu n'uwaguzwe. [23] Bigaragara mu nyandiko ziri muri dosiye impande zombi zagiye zandikirana ko na BPR Ltd ariko yabibonaga, kuko kuwa 26/08/2011 nyuma y'uko itanga ibyangombwa by'ikibanza, yandikiye Avoka wa VICTORIA PLAZA Ltd isubiza ibaruwa ye yo kuwa 18/08/2011 imubwira ko yagerageje gukuramo umuntu utuye mu kibanza cyaguzwe ariko bikaba bitarakemuka, imusaba ko yayiha kopi (scanned copy) y'icyangombwa cyayo kugirango icyifashishe yandikira ubuyobozi. [24] Urukiko rurasanga BPR Ltd yaratanze ibyangombwa by'ikibanza, ariko ntiyakemura ikibazo cy'umuntu wari utuye mu nzu kugeza ubwo VICTORIA PLAZA Ltd ibyikoreye ikabona kwishyura igice cy'amafaranga y'ikiguzi yari yasigaye, iyi rero ikaba yari ifite impamvu zo kutishyura mu gihe BPR Ltd itujuje inshingano zayo zikubiye mu masezerano. [25] Urukiko rurasanga rero, ubujurire bwa VICTORIA PLAZA Ltd bufite ishingiro, bityo inyungu zingana na 21.450.000

Frw yaciwe n'Urukiko Rukuru rw'Ubucuruzi ku mafaranga 65.000.000 Frw, amafaranga 400.000 Frw y'ikurikiranarubanza yategetswe kwishyura BPR Ltd, hamwe n'igihano yaciwe kiyihatira kwishyura cy'amafaranga 20.000 Frw buri kwezi bigomba kuvaho.

Page 6

III. ICYEMEZO CY'URUKIKO [26] Rwemeje ko ubujurire bwa VICTORIA PLAZA Ltd bufite ishingiro; [27] Rwemeje ko ubujurire bwa BPR Ltd bwuririye ku bundi nta shingiro bufite; [28] Rutegetse ko urubanza RCOM 0148/12/HCC rwajuririwe rwaciwe tariki ya 19/11/2012 n'Urukiko Rukuru rw'Ubucuruzi ruhindutse kuri byose; [29] Rutegetse BPR Ltd kwishyura 100.000 Frw y'amagarama y'urubanza.

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