

RWANDA / JUDGMENT

WAMUNGU v. BANKI YA KIGALI

RCOMA 0046/13/CS

COURT

Supreme Court

DECIDED

12 February 2016

CASE / FILE NUMBER

RCOMA 0046/13/CS

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WAMUNGU v. BANKI YA KIGALI

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- Date: 2016-02-12
- Case/document no.: RCOMA 0046/13/CS
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WAMUNGU v. BANKI YA KIGALI [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0046/13/CS (Kayitesi z, P.J., Rugabirwa na Kayitesi R, J.) 12/02/2016] Amategeko agenga ububasha bw'inkiko – Ububasha bwo kuburanisha bushingiye kw'ifasi – kuburanisha – Urukiko rugira ububasha bwo kuburanisha urubanza hashingiwe aho amasezerano ashingirwaho yakorewe – Kuba sosiyete yatse inguzanyo iba hanze y'iguhugu cyakorewemo amasezerano y'inguzanyo ntibyashingirwaho mu kuvuga ko urukiko rwaregewe rudafite ububasha bwo kuburanisha kandi n'amafaranga yagurijwe akaba ari ayo mu gihugu cyatanze iyo inguzanyo. Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'inkiko, ingingo ya 123. Amategeko agenga Ibimenyetso – Imiburanire y'ababuranyi ntiyashingirwaho mu gihe harimo ivuguruzanya – Bitewe nuko sosiyete yatse inguzanyo ikaninarwa kwishyurwa igizwe n'abanyamigabane bemeye kwishyura mu gihe izaba yananiwe kwishyura hashingiwe kuri sitati y'iyi sosiyete ivuga ko buri munyamigabane yiyemeje kuzishyura imyenda y'iyi sosiyete kugera ku rugero rungana n'imigabane yayitanzemo, abo banyamigabane ntibahindukira ngo bange ibyo biyemeje mu masezerano y'inguzanyo bakanayashyiraho umukono. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Incamake y'ikibazo: Banki ya

Kigali yahaye sosiyete yitwa MIGETRAD SPRL inguzanyo y'amafaranga angana na 30.000.000 Frws maze ntiyishyura nk'uko bikwiye, nyuma BK iyirega hamwe n'abanyamigabane bayo aribo MBANZABUGABO na WAMUNGU mu Rukiko Rukuru rw'Ubucuruzi isaba kwishyurwa amafaranga angana na 13.653.674 Frws y'umwendaremezo hamwe n'inyungu z'ubukererwe. Urukiko rwemeza ko nta mwenda Mbanzabugabo François afitiye Banki ya Kigali, ruyitegeka kumwishyura 1.000.000 Frw y'ikurikiranarubanza, rutegeka WAMUNGU kwishyura nawe Banki ya Kigali Ltd 24.462.542 Frw ahwanye n'uruhare rwe rungana na 50% afite muri MIGETRAD SPRL. WAMUNGU yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko nta mwenda abereyemo Banki ya Kigali, avuga kandi ko urubanza rujuririrwa rukwiye kuvanwaho kuko rwaciye n'Urukiko rutabifitiye ububasha bushingiye ku ifasi kuko MIGETRAD ifite icyicaro cyayo i bukavu muri congo, avuga ko igengwa n'amategeko yaho. Nyuma yaho MBANZABUGABO yagobotse muri uru rubanza avuga yarangije kwishyura BK amafaranga ahwanye n'uruhare rwe muri MIGETRAD SPRL. Banki ya Kigali itanga ubujurire bwuririye ku bundi isaba ko abanyamigabane ba MIGETRAD buri wese yayishyura 50% y'umwenda-remezo n'inyungu zawo hamwe n'indishyi zinyuranye bihwaye n'uruhare rwabo. WAMUNGU yisobanura avuga ko urubanza MIGETRAD ko itigeze ifungura Ishami ryayo mu Rwanda ku buryo yagengwa n'amategeko y'u Rwanda agenga amasosiyete y'amanyamahanga akorera mu Rwanda. Banki ya Kigali avuga ko impamvu y'ubujurire ya WAMUNGU nta shingiro ifite kuko atigeze ayitanga mu mwanzuro we nk'impamvu y'ubujurire, ivuga kandi ko arubwa mbere ayitanze.

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Banki ya Kigali ivuga ko ikimara kubona icyemezo yahawe n'Urukiko rw'Umujyi wa Kigali ku wa gifatira by'agateganyo amafaranga yari kuri konti ya MBANZABUGABO iri muri Banki ya Kigali, yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko iryo fatira ry'agateganyo ry'amafaranga ryahinduka ifatira bwishyu kugira ngo yiyishyure ayo mafaranga nk'uko amategeko abiteganyaga, ikomeza ivuga ko isaba abanyamigabane ba MIGETRAD gufatanya kwishyura. MBANZABUGABO we akaba asaba guhabwa na WAMUNGU indishyi zo gushorwa mu manza nta mpamvu, hamwe n'ay'ikurikiranarubanza n'igihembo cya Avoka. Incamake y'icyemezo: 1. Kuba sosiyete yatse inguzanyo iba hanze y'iguhugu ntibyashingirwaho mu kuvuga ko urukiko rwaregawe rudafite ububasha bwo kuburanisha mu gihe mu gihugu cy'urwo rukiko ari ho hakorewe amasezerano y'inguzanyo kandi amafaranga yagurijwe akaba ari ayo mu gihugu cyatanze inguzanyo. Bityo urubanza rukaba rutateshwa agaciro.

2. Buri munyamigabane ugize sosiyete yahawe inguzanyo afite inshingano zo kwishyura uruhare rwe yiyemeje kuzishyura imyenda y'iyo sosiyete kugera ku rugero rungana n'imigabane yayitanzemo. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe. Amagarama y'urubanza aherereye kuwareze. Amategeko yashingiweho: Itegeko Ngenga N° 51/2008 ryo ku wa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko, ingingo ya 123. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Nta manza zifashishijwe. Urubanza

I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru rw'Ubucuruzi, Banki ya Kigali Ltd irega sosiyete yitwa MIGETRAD SPRL n'abanyamigabane bayo aribo Mbanzabugabo François na Wamungu Sindayiheba, isaba ko bayishyura 13.653.674 Frw y'umwenda-remezo n'inyungu z'ubukererwe zawo zingana na 6.504.468 Frw abazwe kugeza ku wa 28/02/2003 akomoka ku nguzanyo ingana na 30.000.000 Frw Banki ya Kigali Ltd yaguriye MIGETRAD SPRL. [2] Urwo Rukiko rwaciye urubanza n° RCOM 0260/11/HCC – RCOM 0432/08/HCC ku wa 08/03/2013, rwemeza ko nta mwenda Mbanzabugabo François afiteye Banki ya Kigali, ruyitegeka kumwishyura 1.000.000 Frw y'ikurikiranarubanza, rutegeka Wamungu Sindayiheba kwishyura Banki ya Kigali Ltd 24.462.542 Frw abazwe kugera ku wa 24/09/2012 ahwanye n'uruhare rwe rungana na 50% afite muri MIGETRAD SPRL.

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- [3] Wamungu Sindayiheba yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko nta mwenda abereyemo Banki ya Kigali. Igihe cy'iburanisha ry'urubanza, Me Gatera Gashabana umuburanira, avuga ko urubanza rujuririrwa rukwiye kuvanwaho kuko rwaciye n'Urukiko Rukuru rw'Ubucuruzi rutabifitiye ububasha bushingiye ku ifasi bitewe n'uko MIGETRAD SPRL ari sosiyete ifite icyicaro i Bukavu muri Repubulika Iharanira Demokarasi ya Kongo, ko kandi igengwa n'amategeko y'iki gihugu. [4] Mbanzabugabo François yagobotse muri uru rubanza avuga ko nta mwenda akibereyemo Banki ya Kigali bitewe n'uko yarangije kuyishyura amafaranga ahwanye n'uruhare rwe muri MIGETRAD SPRL. Banki ya Kigali nayo yatanze ubujurire bwuririye ku bundi isaba ko Wamungu Sindayiheba na Mbanzabugabo François buri wese yayishyura umwenda-remezo n'inyungu zawo hamwe n'indishyi zinyuranye bihwanye n'uruhare rwe rwa 50% afite muri MIGETRAD SPRL. [5] Nyuma y'iburanisha ry'urubanza ryabaye mu ruhamwe ku wa 27/10/2015, Wamungu Sindayiheba ahagarariwe na Me Gatera Gashabana, Banki ya Kigali ihagarariwe na Me Nkurunziza François Xavier, naho Mbanzabugabo François ahagarariwe na Me Twiringiyemungu Joseph, Urukiko rwamenyesheje ababuranyi ko ruzasomwa ku wa 11/12/2015, uyu muni ugeze, ruca urubanza rubanziriza urundi, rutegeka ko iburanisha ryarwo rizongera gufungurwa ku wa 13/01/2016, kugira ngo ababuranyi bazagire icyo bavuga ku bimenyetso bishya byatanzwe na Me Nkurunziza François Xavier uburanira Banki ya Kigali ngo bigaragaza ko Mbanzabugabo François atarangije kuyishyura amafaranga ahwanye n'uruhare rwe rwa 50% afite muri MIGETRAD SPRL, uwo muni ugeze, urubanza ruburanishwa, ababuranyi bameze nk'uko bari bahagarariwe mbere. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO A. Ku birebana n'ubujurire bwatanzwe na Wamungu Sindayiheba
1. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bushingiye ku ifasi bwo kuburanisha uru rubanza [6] Uburanira Wamungu Sindayiheba avuga ko urubanza n° RCOM 0260/11/HCC – RCOM 0432/08/HCC rwajuririye muri uru Rukiko rukwiye kuvanwaho kubera ko rwaciye n'Urukiko Rukuru rw'Ubucuruzi rudafite ububasha bushingiye ku ifasi bwo kuburanisha kuko MIGETRAD SPRL ari sosiyete ifite icyicaro i Bukavu, ahitwa "Place" Lumumba, Avenue n° 4 i Bagira, muri Repubulika Iharanira Demokarasi ya Kongo, ko kandi

itigeze ifungura Ishami ryayo mu Rwanda ku buryo yagengwa n'amategeko y'u Rwanda agenga amasosiyete y'amanyamahanga akorera mu Rwanda. [7] Uburanira Banki ya Kigali avuga ko impamvu y'ubujurire ya Wamungu Sindayiheba ijyanye n'uko urwo rubanza rwateshwa agaciro kubera ko rwaciwe n'urukiko rutabifitiye ububasha nta shingiro ifite kuko atigeze ayitanga mu mwanzuro we nk'impamvu y'ubujurire, ko ahubwo ayitangiye bwa mbere mu iburanisha ry'uru rubanza.

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Uko urukiko rubibona [8] Ku byerekeye iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi bitewe n'uko MIGETRAD SPRL itaba mu Rwanda, ko ahubwo ikorera i Bukavu mu gihugu cya Repubulika Iharanira Demokarasi ya Kongo ikaba inagengwa n'amategeko yacyo, ingingo ya 123 y'Itegeko Ngenga n° 51/2008 ryo ku wa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko yakurikizwaga igihe Banki ya Kigali yatangaga ikirego, iteganyaga ko "Imanza zerekeye amasosiyete y'ubucuruzi n'indi miryango ifite ubuzimagatozi itari iya Leta, ziburanishirizwa mu rukiko rwo mu ifasi irimo icyicaro cyabyo gikuru, cyangwa aho ikiburanwa kiri". Na none ingingo ya 134 y'iryo Tegeko Ngenga igateganyaga ko "Abanyamahanga bashobora kuregwa mu Nkiko z'u Rwanda, iyo amasezerano ikirego gishingiyeho yakorewe mu Rwanda". [9] Ku bijyanye no kumenya aho amasezerano y'inguzanyo iburanwa muri uru rubanza yakorewe, dosiye y'urubanza igaragaza ko ku wa 21/10/1997, Mbanzabugabo François na Wamungu Sindayiheba nk'abanyamigabane (Administrateurs Associés) muri sosiyete y'ubucuruzi yitwa MIGETRAD SPRL bandikiye Banki ya Kigali bari mu Rwanda bayisaba ko yaguriza 30.000.000 Frw iyo sosiyete yabo iri i Bukavu, yanditse mu bitabo by'ubucuruzi (Registre de Commerce) kuri n° 43418 KIN, aho igiye kumara igihe cy'imyaka ibiri, ayo mafaranga bakazayakoresha mu kugura no kohereza mu bihugu by'Iburayi amabuye y'agaciro yitwa "Cassiterite" na "Colombio Tantalite (Coltan)", bakazabasha kugura buri kwezi amatoni 10 y'amabuye y'agaciro. Ku wa 03/12/1997, Banki ya Kigali yandikiye MIGETRAD SPRL iyimenyesha ko iyihaye ayo mafaranga iyanyujije kuri konti yayo n° 040-0043566-46 iri muri iyo Banki, MIGETRAD SPRL nayo iyiha ingwate (nantissement) y'iyi nguzanyo igizwe n'ibihumbi mirongo irindwi by'amadorari y'amanyamerika (70.000 U\$). Nyuma y'aho, Banki ya Kigali yareze MIGETRAD SPRL, Mbanzabugabo François na Wamungu Sindayiheba mu Rukiko Rukuru rw'Ubucuruzi isaba ko bayishyura 13.653.674 Frw y'umwenda-remezo n'inyungu zawo zingana na 6.504.468 Frw. [10] Hashingiwe ku mategeko n'ibisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga mu gihe ayo masezerano y'inguzanyo ya 30.000.000 Frw yabaye hagati ya Banki ya Kigali na MIGETRAD SPRL ihagarariwe na Mbanzabugabo François na Wamungu Sindayiheba yabereye mu Rwanda kandi n'amafaranga aburanwa akaba yari mu Rwanda, bigaragara ko Urukiko Rukuru rw'Ubucuruzi rwari rufite ububasha bwo kuburanisha impaka zerekeranye no kutishyura iyo nguzanyo, bityo hashingiwe ku ngingo ya 123 na 134 z'Itegeko Ngenga ryavuzwe haruguru, urubanza n° RCOM 0260/11/HCC – RCOM 0432/08/HCC rwaciwe n'urwo Rukiko rukaba rutateshwa agaciro.

2. Kumenya niba Wamungu Sindayiheba atakwishyura umwenda wa MIGETRAD SPRL kubera ko idafite ubuzimagatozi no kuba itarategetswe kuwishyura. [11] Uburanira Wamungu Sindayiheba avuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kumutegeka kwishyura

Banki ya Kigali 24.462.542 Frw ahwanye n'uruhare rwe muri MIGETRAD SPRL nk'umunyamigabane wayo, nyamara MIGETRAD SPRL itarigeze ibaho mu rwego rw'amategeko kuko nta kimenyetso uburanira Banki ya Kigali yatanze kigaragaza ko sitati zayo ziriho umukono na Noteri zatangajwe mu Igazeti ya Repubulika Iharanira Demokarasi

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ya Kongo nk'uko amategeko y'iki gihugu abiteganya kugira ngo sosiyete y'ubucuruzi igire ubuzimagatozi. [12] Avuga kandi ko urubanza n° RCOM 0260/11/HCC – RCOM 0432/08/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi rukwiye kuvanwaho kubera ko rwategetse Wamungu Sindayiheba kwishyura Banki ya Kigali umwenda wa MIGETRAD SPRL wavuzwe haruguru, rwirengagiza ko Wamungu Sindayiheba nk'umunyamigabane wayo akaba n'umwishingizi (caution) wayo yagombaga gukurikiranwaho uwo mwenda mu gihe MIGETRAD SPRL yawufashe yananiwe kuwishyura, ariko ko nta kimenyetso kigaragaza ko yahombye kugira ngo abanyamigabane bayo basabwe kwishyura umwenda wayo. [13] Uburanira Banki ya Kigali avuga ko impamvu y'ubujurire ya Wamungu Sindayiheba ijyanye n'uko atakwishyura umwenda wa MIGETRAD SPRL bitewe n'uko itabaho mu rwego rw'amategeko itakwagirwa kubera ko ayitangiye bwa mbere mu iburanisha ry'uru rubanza. Avuga ko ahubwo uru Rukiko rukwiye gutegeka Wamungu Sindayiheba kwishyura umwenda wa MIGETRAD SPRL kuko nta kimenyetso yatanze kigaragaza ko itabaho mu rwego rw'amategeko, kandi ko iryo kosa ritaryozwa Banki ya Kigali yayihaye inguzanyo, ko ahubwo ryaryozwa Wamungu Sindayiheba wahawe inguzanyo nk'umunyamigabane wa MIGETRAD SPRL, ariko akaba adashaka kuyishyura. [14] Uburanira Mbanzabugabo François avuga ko MIGETRAD SPRL ibaho mu rwego rw'amategeko nk'uko bigaragazwa na sitati zayo ziri muri dosiye, kandi ko Banki ya Kigali yabahaye inguzanyo nk'abanyamigabane bayo, uretse ko Mbanzabugabo François yarangije kwishyura uruhare rwe nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi. Uko urukiko rubibona [15] Ingingo ya 3 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana (...)". [16] Hashingiwe ku biteganywa n'iyi ngingo, Urukiko rurasanga imvugo y'uburanira Wamungu Sindayiheba y'uko atakwishyura umwenda wa MIGETRAD SPRL kubera ko itabaho mu rwego rw'amategeko bitewe n'uko sitati zayo zitigeze zitangazwa mu Igazeti ya Repubulika Iharanira Demokarasi ya Kongo nta shingiro ifite kubera ko imiburanire ye irimo ivuguruzanya (contradiction) kuko ku ruhande rumwe, avuga ko MIGETRAD SPRL iriho, kandi ko iri i Bukavu, aho ikorera ubucuruzi bw'amabuye y'agaciro, ku rundi ruhande akavuga ko itigeze ibaho mu rwego rw'amategeko. [17] Byongeye kandi, Urukiko rurasanga Wamungu Sindayiheba wafashe umwenda ahagarariye MIGETRAD SPRL ari n'umunyamigabane wayo atahindukira ngo yange kuwishyura yitwaza ko idafite ubuzimagatozi. [18] Naho ku kibazo kijyanye no kumenya niba Wamungu Sindayiheba atakwishyura umwenda wa MIGETRAD SPRL bitewe n'uko Urukiko Rukuru rw'Ubucuruzi rutigeze ruyitegeka kwishyura umwenda wayo ngo inanirwe kuwishyura, ingingo ya 6 ya Sitati ya MIGETRAD SPRL, iteganya ko buri mu nyamigabane wayo yiyemeje kuzishyura imyenda

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y'iyi sosiyete kugera ku rugero rungana n'imigabane yayitanzemo (Chaque associé n'est responsable des engagements de la société que jusqu'à concurrence du montant de sa participation). [19] Hashingiwe ku mategeko n'ibisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga, nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye, mu gihe Wamungu Sindayiheba na Mbanzabugabo François basabye bakanahabwa inguzanyo na Banki ya Kigali ingana na 30.000.000 Frw nk'abanyamigabane ba MIGETRAD SPRL, kandi akaba ariyo mpamvu yatumye Banki ya Kigali ibarega muri urwo Rukiko ibafatanyije na MIGETRAD SPRL, maze rutegeka Wamungu Sindayiheba kuyishyura amafaranga ahwanye n'uruhare rwe rungana na 50% afite muri MIGETRAD SPRL nk'uko sitati z'iyi sosiyete zibiteganyaga, ntaho uyu yahera avuga ko atakwishyurira MIGETRAD SPRL amafaranga ahwanye n'urwo ruhare rwe.

3. Kumenya niba nta mwenda Wamungu Sindayiheba afiteye Banki ya Kigali [20] Uburanira Wamungu Sindayiheba avuga ko Urukiko Rukuru rw'Ubucuruzi rwamutegetse kwishyura Banki ya Kigali 24.462.542 Frw ahwanye n'uruhare rwe rungana na 50 % afite muri MIGETRAD SPRL nk'umunyamigabane wayo, rwirengagije ko we na Mbanzabugabo François bakimara gusabira MIGETRAD SPRL inguzanyo muri Banki ya Kigali, yahise asezerana muri MIGETRAD SPRL muri Kamena mu mwaka wa 1998 bitewe n'uko batumvikanaga n'ubwo nta kimenyetso abifitiye, asubizwa imigabane ye yose na Mbanzabugabo François, yisubiririra muri Kongo, maze asigara ayicunze wenyine, ndetse ko hashingiwe ku ngingo ya 43 y'Itegeko n° 06/1988 ryo ku wa 12/02/1988 ryagengaga amasosiyete y'ubucuruzi, iyo sosiyete yahise iseswa kuko itashoboraga kubaho igizwe n'umunyamigabane umwe. [21] Avuga ko ikindi kimenyetso kigaragaza ko nta mwenda Wamungu Sindayiheba afiteye, ari uko Banki ya Kigali yiyishyuye amadorari y'amanyamerika ibihumbi mirongo irindwi (70.000 U\$) bari barayihaye nk'ingwate (nantissement) y'umwenda yahaye MIGETRAD SPRL, maze habaho ihwanya ry'imyenda y'impane zombi nk'uko biteganywa n'ingingo ya 182 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano1 ku buryo umwenda wose wa MIGETRAD SPRL wahise urangira bitewe n'uko ku wa 31/10/2000, konti yayo igaragaraho "solde zéro", ariko ko Urukiko Rukuru rw'Ubucuruzi rutemeje ko nta mwenda Wamungu Sindayiheba akibereyemo Banki ya Kigali, ko ahubwo rwamutegetse kuyishyura 24.462.542 Frw abazwe kugeza ku wa 24/09/2012, rutagaragaje aho rwavanye 13.653.674 Frw y'umwenda rwashingiyeho rumuca ariya mafaranga. [22] Uburanira Banki ya Kigali avuga ko Wamungu Sindayiheba agomba gufatanya na Mbanzabugabo François kwishyura umwenda wa MIGETRAD SPRL kuko aribo basabye inguzanyo mu izina ryayo, bituma Banki ya Kigali iyiha 30.000.000 Frw bakoresheje mu bucuruzi bwabo mu Rwanda, ko kandi hashingiwe ku ngingo ya 6 ya sitati ya MIGETRAD SPRL, ari abanyamigabane bayo bishingiye umwenda wayo hakurikijwe imigabane bayifitemo. 1 1 Ingingo ya 182 CCLIII, iteganyaga ko "Ihwanya ry'imyenda riba nta rubanza kubera gusa ko amategeko abiteganyaga atyo, yewe n'iyi abagomba kwishyura batabizi; imyenda yombi irazimangana ku mpande zombi kuva igihe ibereyeho, kugeza ku gaciro kayo kangana".

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[23] Avuga kandi ko Wamungu Sindayiheba agomba kwishyura Banki ya Kigali umwenda ayifitiye uhwanye n'uruhare rwe rwa 50% afite muri MIGETRAD SPRL kubera ko nta cyemezo cy'Inama Rusange cy'iyo sosiyete yatanze kigaragaza ko yayivuyemo igasigara icunzwe na Mbanzabugabo François wenyine ku buryo Wamungu Sindayiheba atakwishyura inguzanyo yasabiye MIGETRAD SPRL ikanayihabwa, ndetse ko nta n'ikimenyetso yatanze kigaragaza ko Mbanzabugabo François yamuguriye imigabane ye, bigatuma iyo sosiyete iseswa bitewe n'uko yari isigaranye umunyamigabane umwe, ko ahubwo sitati z'iyo sosiyete ziri muri dosiye zigaragaza ko itigeze iseswa kuko zitigeze zihinduka kugeza ubu. [24] Avuga na none ko ibyo uburanira Wamungu Sindayiheba avuga ko atakwishyura Banki ya Kigali inguzanyo yahaye MIGETRAD SPRL kubera ko Banki ya Kigali yiyishyuye ibihumbi 70.000 U\$ by'amadorari y'amanyamerika yari yarahawe ingwate ku buryo umwenda wose warangiye nta shingiro bifite, kubera ko Banki ya Kigali yiyishyuye ayo mafaranga ariko umwenda wose ntiwarangira nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye, ahubwo wavuye kuri 43.000.000 Frw ugera kuri 26.000.000 Frw, ariko ko utarangiye wose, cyane cyane ko nta n'ikimenyetso Wamungu Sindayiheba abitangira. [25] Asobanura ko Wamungu Sindayiheba akwiye kwishyura Banki ya Kigali umwenda ayifitiye kubera ko nta kimenyetso yatanze kigaragaza ko konti ya MIGETRAD SPRL igaragaraho "solde zéro", ko ahubwo iriho 9.653.674 Frw y'umwenda-remezo, ariko ko inyungu z'ubukererwe zawo zakomeje kubarirwa kuri konti "interne" n° 9800181-13 ya MIGETRAD SPRL iri muri iyo Banki ku buryo ubu zigeze kuri 34.188.612 Frw. Asobanura ko impamvu izi nyungu zitagaragara kuri konti isanzwe (compte courant) ya MIGETRAD SPRL ari uko amabwiriza ya Banki Nkuru y'Igihugu (BNR) atemerera Banki ya Kigali kuzandika kuri iyo konti mu gihe umwenda wayo washyizwe mu cyiciro cya 5 bitewe n'uko yananiwe kuwishyura. [26] Uburanira Mbanzabugabo François avuga ko n'ubwo yarangije kwishyura uruhare rwe muri MIGETRAD SPRL, ariko ko yagobotse muri uru rubanza kugira ngo arengere inyungu ze. Avuga kandi ko imvugo ya Wamungu Sindayiheba y'uko atakwishyura Banki ya Kigali umwenda wahawe MIGETRAD SPRL ngo bitewe n'uko yayivuyemo agasigara ayicunze wenyine nta shingiro ifite kuko nta kimenyetso yatanze kigaragaza igihe yayiviriyemo, ko kandi atagaragaje ko igihe MIGETRAD SPRL yafataga uwo mwenda atari akiri muri iyi sosiyete, ndetse ko atanagaragaje ko Mbanzabugabo François yafashe iyo nguzanyo muri Banki ya Kigali ku giti cye ku buryo ariwe ugomba kuyishyura wenyine. Uko urukiko rubibona [27] Ingingo ya 9 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko « Urega agomba kugaragaza ibimenyetso by'ibyo aregera, iyo abibuze, uwarezwe aratsinda ». [28] Hashingiwe ku biteganywa n'iyi ngingo, Urukiko rurasanga imvugo ya Wamungu Sindayiheba ijyanye n'uko atakwishyura umwenda wa MIGETRAD SPRL kubera ko yayivuyemo mu mwaka wa 1998 nta shingiro ifite kuko nta bimenyetso yagaragariye Urukiko ko yavuye muri MIGETRAD SPRL. Ikindi n'uko kuba yarafashe inguzanyo ayibereye umunyamigabane wayo birahagije ngo ayishyure hashingiwe ku ngingo ya 6 ya sitati ya

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MIGETRAD SPRL2. Naho ibyo avuga ko Banki ya Kigali yiyishyuye uwo mwenda wose ikoresheje 70.000 U\$ MIGETRAD SPRL bari barayihaye nk'ingwate yawo nabyo nta shingiro bifite kuko nta kimenyetso yerekanye ko umwenda wose wa Banki ya Kigali ujjanye n'uruhare rwe yawishyuye, bityo akaba agomba kwishyura uwo mwenda n'inyungu ziwukomokaho bihwanye n'uruhare rwe rwa 50 % byawo nk'uko byasobanuwe haruguru. B. Kumenya niba ubujurire bwuririye ku bundi bwatanzwe na Banki ya Kigali bufite ishingiro [29] Mu bujurire bwuririye ku bundi, uburanira Banki ya Kigali avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Mbanzabugabo François yarangije kuyishyura uruhare rwe ruhwaye na 50% yari afite muri MIGETRAD SPRL ngo kuko yayishyuye 2.000.000 Frw anayishyura 17.758,21U\$, rwirengagije ko atayishyuye umwenda wose ayifitiye bitewe n'uko 17.758,21U\$ atagabanyije umwenda wa MIGETRAD SPRL uri muri Banki ya Kigali kuko itashoboraga kwiyishyura aya mafaranga cyangwa ngo isabe Banki Nkuru y'Igihugu (BNR) kuyiyasubiza kugira ngo iyiyishyure bitewe n'uko itari ifite icyemezo cy'Urukiko kiyemerera kwiyishyura ayo mafaranga. [30] Asobanura ko Banki ya Kigali ikimara kubona icyemezo n° 121/KMC/2005 yahawe n'Urukiko rw'Umujyi wa Kigali ku wa 15/06/2005 gifatira by'agateganyo (saisie-arrêt conservatoire) 17.758,21U\$ yari kuri konti ya Mbanzabugabo François iri muri Banki ya Kigali, yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko iryo fatira ry'agateganyo ry'amafaranga ryahinduka ifatira bwishyu (saisie-exécution) kugira ngo yiyishyure ayo mafaranga nk'uko amategako abiteganyaga, ko kandi yanatanze ikindi kirego isaba ko MIGETRAD SPRL, Mbanzabugabo François na Wamungu Sindayiheba bayishyura umwenda-remezo n'inyungu zawo, ariko ko urwo Rukiko rwahuje izo manza zombi kuri n° RCOM 0433/08/HCC - RC 42.849/2005, ruca urubanza mu mizi, ariko ntirwagira icyo ruvuga ku kirego cyerekeranye n'iryo fatira, bituma ibura aho yahera yiyishyura ayo mafaranga mu gihe itari ifite icyemezo cy'uru Rukiko kiyemerera kwiyishyura ayo mafaranga yari kuri konti ya Mbanzabugabo François batari bafitanye amasezerano y'inguzanyo, ko ahubwo yafitanye na MIGETRAD SPRL gusa. [31] Akomeza asobanura ko ikigaragaza ko amadorari y'amanyamerika 17.758,21 atagabanyije umwenda wa MIGETRAD SPRL uri muri Banki ya Kigali ari uko ku wa 31/12/2006, yari akiri kuri konti ya Mbanzabugabo François iri muri iyo Banki, ariko ko nyuma y'aho, iyo Banki yayohereje kuri "compte dormant" ye iri muri Banki Nkuru y'Igihugu (BNR) nk'uko amabwiriza yayo abiteganyaga, ko kuba iyo Banki yarohererezaga Mbanzabugabo François "avis de débit et/ou de crédit" za konti ye buri gihe yagombaga kumenya niba ayo mafaranga yaravuye cyangwa ataravuye kuri konti ye. [32] Asaba rero ko Wamungu Sindayiheba na Mbanzabugabo François nk'abanyamigabane ba MIGETRAD SPRL n'abishingizi bayo bakwishyura Banki ya Kigali 9.653.674 Frw y'umwenda-remezo na 34.188.612 Frw y'inyungu z'ubukererwe zawo zigaragarira kuri konti "interne" n° 2 Iyo ngingo iteganyaga ko buri mu nyamigabane wayo yiyemeje kuzishyura imyenda y'iyi sosiyete kugera ku rugero rungana n'imigabane yayitanzemo (Chaque associé n'est responsable des engagements de la société que jusqu'à concurrence du montant de sa participation).

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9800181-13 iri muri iyo Banki, maze Mbanzabugabo François akayishyura 50% y’umwenda wose ahereye ku bwishyu yatanze mbere, umwenda we utarangira akawishyura akoresheje umutungo we bwite, Wamungu Sindayiheba nawe akayishyura 50% y’uwo mwenda wose nk’uruhare rwe rungana na 50% yari afite muri MIGETRAD SPRL, ndetse bakanafatanyaga kuyishyura 10% y’uwo mwenda wose y’ikurikiranarubanza n’igihembo cya Avoka bitewe n’uko urubanza rwatangiyemo mu mwaka wa 2003 kugeza ubu. [33] Uburanira Wamungu Sindayiheba avuga ko inyandiko za Banki ya Kigali zigaragaza ko Wamungu Sindayiheba ayibereyemo umwenda zitahabwa agaciro kubera ko yazikoreye kuko itigeze izishyikiriza MIGETRAD SPRL igihe bakoranaga. Avuga kandi ko ibaruwa Mbanzabugabo François yanditse ku wa 12/10/2004 asaba ko Banki ya Kigali yamumenyesha ingano y’umwenda wa MIGETRAD SPRL kugira ngo ayishyure amafaranga ahwanye n’uruhare rwe muri iyo sosiyete itareba Wamungu Sindayiheba, ko ahubwo imureba ku giti cye. [34] Uburanira Mbanzabugabo François avuga ko nta mwenda akibereyemo Banki ya Kigali kubera ko yarangije kwishyura uruhare rwe ruhwaye na 50% ry’umwenda MIGETRAD SPRL yari ifitiye Banki ya Kigali nk’uko byemejwe n’Urukiko Rukuru rw’Ubucuruzi, cyane cyane ko nta n’ikimenyetso Banki ya Kigali kigaragaza ko 17.758,21U\$ yayishyuye akiri kuri konti ye muri iyo Banki, kandi ko inyandiko iyi Banki yatanze zigaragaza ko ayo mafaranga yoherejwe muri Banki Nkuru y’Igihugu (BNR) nta gaciro zifite kuko ari izo yikoreye kubera urubanza. [35] Asobanura ko 17.758,21U\$ yavuye hanze y’Igihugu yohererejwe Mbanzabugabo François, anyura muri Banki Nkuru y’Igihugu (BNR), ikuraho amafaranga (frais) yayo, asigaye iyohereza kuri konti ye iri muri Banki ya Kigali, ko kuba iyi Banki itariyishyuye ayo mafaranga, ahubwo ikaba yarongeye kuyohereza muri Banki Nkuru y’Igihugu (BNR), igomba kwirengera iryo kosa yakoze, aho kuriryoza Mbanzabugabo François warangije kuyishyura ayo mafaranga. [36] Avuga kandi ko imvugo y’uburanira Banki ya Kigali y’uko itiyishyuye 17.758,21U\$ ya Mbanzabugabo François ngo bitewe n’uko yabuze icyemezo cy’Urukiko kiyemerera kwiyishyura ayo mafaranga nta shingiro ifite kubera ko itigeze ijuririra imikuriza y’urubanza n° RCOM 0260/11/HCC – RCOM 0432/08/HCC rwaciye n’Urukiko Rukuru rw’Ubucuruzi, ko ahubwo rwajuririwe na Wamungu Sindayiheba, bivuze ko Banki ya Kigali yari yishimiye imikuriza yarwo, ko rero itasaba ko Mbanzabugabo François ayishyura umwenda-remezo n’inyungu zawo mu bujurire bwuririye ku bundi mu gihe itakoze ubujurire bw’iremezo. Uko urukiko rubibona [37] Ku byerekeranye no kumenya niba ubujurire bwuririye ku bundi bwatanzwe na Banki ya Kigali bukwiye kwakirwa ku birebana na Mbanzabugabo François, ingingo ya 167, igika cya 2 y’Itegeko n° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishiriza y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ryakurikizwaga igihe Banki ya Kigali yatangaga ikirego, iteganya ko “Ubujurire bwuririye ku bundi bukorewe n’uwarezwe mu bujurire bwerekeye ku wajuriye cyangwa ku bandi barezwe mu bujurire”. Naho ingingo ya 113 y’iryo Tegeko, igateganya ko “Kugoboka ku bushake ni igihe umuntu, ku bwende bwe, yinjiye mu rubanza atareze cyangwa atarezwemo, kugira ngo yemeze ko ikiburanwa ari icye cyangwa kugira ngo yizere ko uburenganzira bwe budahungabanywa n’icyemezo cy’urukiko”.

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[38] Naho umuhanga mu mategeko witwa André LA PAIGE mu gitabo cye yise “Précis de Droit Judiciaire, Les Voies de Recours”, asobanura ko ubujurire bwuririye ku bundi butuma uwarezwe mu bujurire ashobora kurega undi warezwe mu bujurire, ariko kugira ngo ubwo bujurire bwuririye ku bundi bwakirwe, hagomba kuba umuburanyi wajuririye undi. Umuburanyi mu rwego rw’ubujurire utaramujuririye ntabwo aba yararezwe, bityo uyu utararezwe ntashobora gutanga ikirego cy’uririye ku cy’umuburanyi utarajuririye mu gihe byemewe n’amategeko³. Asobanura kandi ko Ukugoboka ku bushake mu rwego rw’ubujurire kwemewe mu gihe umuburanyi agamije kurengera inyungu ze⁴. [39] Inyandiko itanga ikirego cy’ubujurire Wamungu Sindayiheba yatanze muri uru Rukiko ahagarariwe na Me Gatera Gashabana ku wa 05/04/2013, igaragaraza ko Wamungu Sindayiheba yareze Banki ya Kigali asaba ko imikirize y’urubanza n° RCOM 0260/11/HCC – RCOM 0432/08/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi yavanwaho kubera ko rwamutegetse kuyishyura 24.462.542 Frw, kandi nta mwenda ayibereyemo. [40] Naho ku birebana na Mbanzabugabo François, dosiye y’urubanza igaragaza ko atigeze ajuririra uru rubanza, ndetse na Wamungu Sindayiheba atigeze amurega haba mu nyandiko itanga ikirego yavuzwe haruguru cyangwa mu mwanzuro w’inyongera yatanze muri uru Rukiko ku wa 22/10/2015, ndetse mu miburaniye yakoreye imbere y’uru Rukiko, Wamungu Sindayiheba asobanura ko ataha Mbanzabugabo François indishyi asaba mu bujurire bwuririye ku bundi kubera ko atigeze amurega muri uru rubanza. Naho mu mwanzuro we wo ku wa 24/08/2015, Mbanzabugabo François asobanura ko agobotse muri uru rubanza kugira ngo agaragarize uru Rukiko ko yarangiye kwishyura uruhare rwe ku birebana n’umwenda MIGETRAD SPRL yari ibereyemo Banki ya Kigali yari yarabahaye. [41] Hashingiwe ku mategeko n’ibisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga ubujurire bwuririye ku bundu bwatanzwe na Banki ya Kigali butagomba kwakirwa ku birebana na Mbanzabugabo François kubera ko atagaragara nk’uregwa na Wamungu Sindayiheba haba mu nyandiko itanga ikirego cye cy’ubujurire cyangwa mu miburanire ye yakoreye imbere y’uru Rukiko. [42] Byongeye kandi, Urukiko rurasanga, kuba Banki ya Kigali itarajuririye mu gihe cyemewe n’amategeko, itakoresha inzira y’ubujurire bwuririye ku bundi ngo isabe ko Mbanzabugabo François yayishyura umwenda-remezo n’inyungu zawo yashoboraga gusaba ko ayiha mu bujurire bw’iremezo yagombaga gukora mu gihe giteganywa n’amategeko, bityo urubanza rwaciwe n’Urukiko Rukuru rw’Ubucuruzi rukaba rutagomba guhinduka ku birebana na Mbanzabugabo François. [43] Ku bijyanye no kumenya ingano y’umwenda Wamungu Sindayiheba agomba kwishyura Banki ya Kigali, dosiye y’urubanza igaragaza ko ku wa 08/03/2013, Urukiko 3 « L’appel incident permet à l’intimé originaire de faire aussi appel incident contre une partie autre que celle qui l’a intimé, à condition qu’elle soit en cause. (...) Toutefois, pour être recevable à former cet appel incident, il faut que la partie ait été intimé par une autre partie. La partie appelée à la cause en degré d’appel par une autre partie qui ne forme pas d’appel contre elle, n’est pas intimée et ne peut dès lors former appel incident contre d’autres parties vis-à-vis desquelles elle a négligé de relever appel dans les délais », par André LA PAIGE, “Précis de Droit Judiciaire, Les Voies de Recours,” Larcier, Bruxelles,

TIV, 1973, pp.52-53, 83. 4 « Une intervention volontaire, tendant à la sauvegarde des intérêts de l'intervenant (...) est possible devant le juge de second appel ». 4

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Rukuru rw'Ubucuruzi rwategetse Wamungu Sindayiheba nk'umunyamigabane wa MIGETRAD SPRL kwishyura Banki ya Kigali 24.462.542 Frw abazwe kugera ku wa 24/09/2012, ahwanye n'uruhare rwe rwa 50 % afite muri icyo sosiyete, kandi n'umuburanira akaba atarigeze avuguruza ingano y'uwo mwenda. [44] Ku bijyanye n'inyungu z'ubukererwe, ingingo ya 7 y'Amabwiriza Rusange n° 02/2011 ku shyirwa mu byiciro ry'inyenda no guteganya ingoboka, iteganya ko "Inyungu zose ku mwenda itishyurwa neza zabariwe mbere mu mutungo, ariko ntizakirwe zigomba guhindurwa kandi zikandikwa kuri konti y'inyungu zahagaze kugeza igihe zishyuriwe n'uwasabye umwenda". [45] Nyuma y'icibwa ry'urwo rubanza, Banki ya Kigali yitangiye ubwayo muri uru Rukiko inyandiko zirimo "historique bancaire" ya konti n° 9800181 ya MIGETRAD SPRL zigaragaza ko Wamungu Sindayiheba na Mbanzabugabo François nk'abanyamigabane ba MIGETRAD SPRL bayibereyemo 9.653.674 Frw y'umwenda - remezo na 34.188.612 Frw y'inyungu zawo z'ubukererwe abazwe kugera ku wa 17/09/2015, yose hamwe akaba 43.842.286 Frw. [46] Urukiko rurasanga mu gihe ubujurire bwuririye ku bundi bwatanzwe na Banki ya Kigali butakiriwe ku byerekeye Mbanzabugabo François kubera impamvu zasobanuwe haruguru, bigaragaza ko uruhare rwa Wamungu Sindayiheba rwa 50 % kuri uwo mwenda nk'umunyamigabane wa MIGETRAD SPRL ari 43.842.286 Frw : 2 = 21.921.143 Frw, aho kuba 24.462.542 Frw yaciye n'Urukiko Rukuru rw'Ubucuruzi. [47] Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rurasanga, kuba hari ibyo Banki ya Kigali itsindiye muri uru rubanza, bigaragara ko Wamungu Sindayiheba agomba kuyiha 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka wayiburaniye uru rubanza, ayo mafaranga akaba agenwe n'urukiko mu bushishozi bwatanzwe na Mbanzabugabo François bufite ishingiro ku birebana na Wamungu Sindayiheba [48] Mu bujurire bwe bwuririye ku bundi, uburanira Mbanzabugabo François avuga ko Wamungu Sindayiheba akwiye kumuha 2.000.000 Frw y'indishyi zo gushorwa mu manza nta mpamvu, ay'ikurikiranarubanza n'igihembo cya Avoka. [49] Uburanira Wamungu Sindayiheba avuga ko ataha Mbanzabugabo François indishyi asaba muri ubwo bujurire kubera ko atigeze amurega muri uru rubanza. Uko urukiko rubibona [50] Urukiko rurasanga mu gihe Wamungu Sindayiheba atareze Mbanzabugabo François nk'uko bigaragazwa n'inyandiko ye y'ubujurire yatanze muri uru Rukiko ku wa 05/04/2013, ntaho rwahera rumutegeka guha Mbanzabugabo François indishyi asaba muri uru rubanza.

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III. ICYEMEZO CY'URUKIKO [51] Rwemeje ko ubujurire bwa Wamungu Sindayiheba nta shingiro bufite. [52] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Banki ya Kigali bufite ishingiro kuri bimwe. [53] Rwemeje ko imikirize y'urubanza n° RCOM 0260/11/HCC – RCOM 0432/08/HCC, rwaciye n'Urukiko Rukuru rw'Ubucuruzi, ku wa 08/03/2013 ihindutse kuri bimwe. [54] Rutegetse ko Wamungu Sindayiheba yishyura Banki ya Kigali 21.921.143 Frw ahwanye

n'uruhare rwe rungana na 50 % afite muri MIGETRAD SPRL hiyongereyeho 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, yose hamwe akaba 22.421.143 Frw. [55] Rutegetse ko amagarama y'urubanza angana na 100.000 Frw yatanzwe na Wamungu Sindayiheba ahwanye n'ibyakozwe muri uru rubanza.

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Prepared on 14 October 2026 · Esheria