VICTORIA INTERNATIONAL LTD v. TIGO RWANDA/AIRTEL RWANDA LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00048/2019/CA (Mukandamage, P.J.) 23 Ukwakira 2020]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Amasezerano yo kwikiranura – Mu gihe urukiko rushishikarije ababuranyi gukemura ikibazo bafitanye binyuze mu bwumvikane, ababuranyi nabo bakabyemera bagakorana n'amasezerano yo kwikiranura babifashijwemo n'abanyamategeko, ayo masezerano akemura ikibazo agasoza n'urubanza kandi akubahirizwa uko ateye.

Incamake y'ikibazo: Victoria International Ltd yagiranye amasezerano na Tigo Rwanda y'ubwoko bubiri. Amwe yari ay'ikodeshagurisha ry'imodoka andi akaba ayo guzikodesha zikoreshwa. Aya masezerano ya nyuma niyo yaje kuvukamo ikibazo aho Tigo Rwanda itishyuye imodoka yakoresheje bituma uwajuriye aregera Urukiko rw'Ubucuruzi kugira ngo yishyurwe 103.232.890 frw yari amaze kumugeramo.

Urukiko rw'Ubucuruzi rwemeje ko ikirego cya Victoria gifite ishingiro kuri bimwe rutegeka Tigo Rwanda kuyishyura 65.351.011 Frw agizwe n'umwenda, inyungu zawo, indishyi zo kwica amasezerano, amafaranga y'ikurikirana rubanza n'igihembo cya Avocat. Urukiko rwanategetse irangizarubanza ry'agateganyo kuri 44.829.930 Frw ababuranyi bose bemeranywaho.

Tigo Rwanda yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko yaciwe amafaranga y'umurengera, Urukiko rwemeza ko urubanza rwo ku rwego rwa mbere rugumaho uretse indishyi mbonezamusaruro zigomba kugabanuka zikava ku 16.721.081 zikaba 7.431.591 Frw.

Impande zombi zajuririye Urukiko rw'Ubujurire zigira icyo zisaba ku ibarwa ry'amafaranga zasabaga ko ryakwitabwaho. Mu gihe urubanza rwari rutaracibwa, urukiko rwagiriye inama ababuranyi bombi kurangiza ikibazo mu bwumvikane kugira ngo zizarugezeho uburyo zizaba zakemuye ikibazo zifitanye.

Incamake y'icyemezo: Amasezerano yo kwikiranura abaye hagati y'impande zayagiranye arangiza ikibazo cyari kiri hagati yazo kandi akaba aba agomba kubahirizwa uko ateye. Bityo, urubanza n° RCOMAA 00048/2019/CA rwari hagati ya Victoria International Ltd na Tigo Rwanda zari zifitanye rukaba rurangiriye aha.

Amasezerano y'ubwumvikane agomba kubahirizwa uko ateye.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko n° 22/2018 yo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, n'iz'umurimo n'iz'ubutegetsi, ingingo ya 9.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rukomoka ku masezerano y'ubwoko bubiri, aho Victoria International Ltd yahaye Tigo Rwanda Ltd, ubu yahindutse Airtel Rwanda Ltd, imodoka zayo, bakagirana amasezerano ajyanye no gukodesha ugurisha (finance lease), no gukodesha ukoresha (operational lease), impande zombi zumvikana ibiciro kuri buri masezerano, ariko kubera ko imodoka zose zitagiye zitangirwa igihe kimwe, imodoka zo gukodesha ukoresha zishyurwaga ari uko zakoreshejwe, bitewe n'uko zabaga zikenewe.

[2] Victoria International Ltd yaje kurega Tigo Rwanda Ltd, mu Rukiko rw'Ubucuruzi, ivuga ko itubahirije ayo masezerano bagiranye, iyishyuza umwenda ungana na 103.232.890 Frw n'inyungu, maze mu rubanza n° RCOM 00564/2017/TC rwaciwe ku wa 09/07/2018, urwo Rukiko rwemeza ko ikirego cyayo gifite ishingiro kuri bimwe, rutegeka Tigo Rwanda Ltd kuyishyura umwenda wose iyibereyemo ungana na 44.829.930 Frw, hiyongereyeho 16.721.081 Frw y'inyungu mbonezamusaruro, 3.000.000 Frw y'indishyi zo kwica amasezerano na 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, yose hamwe akaba 65.351.011 Frw, rutegeka kandi Tigo Rwanda Ltd kwishyura 17.100.000 Frw kuri konti ya Gorilla Motor Ltd, ko ndetse habaho irangizarubanza ry'agateganyo ku mafaranga 44.829.930 Frw y'umwenda ababuranyi bemeranyagaho.

[3] Tigo Rwanda Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, Victoria International Ltd nayo yuririra kuri ubwo bujurire igira ibyo isaba, urwo Rukiko ruca urubanza n° RCOMA 00496/2018/HCC ku wa 21/02/2019, rwemeza ko ubujurire bwatanzwe na Tigo Rwanda Ltd bufite ishingiro gusa ku bijyanye n'indishyi mbonezamusaruro z'umurengera yaciwe, ko ubujurire bwuririye ku bundi bwa Victoria International Ltd nta shingiro bufite, rutegeka ko indishyi mbonezamusaruro Tigo Rwanda Ltd igomba kwishyura Victoria International Ltd ari 7.431.591 Frw, ko ku bindi urubanza rwajuririwe ruhamaho mu ngingo zarwo zose, buri muburanyi akirengera ibyo yatanze ku rubanza mu bujurire, n'igarama ryatanzwe rigahera mu Isanduku ya Leta.

[4] Victoria International Ltd yajuririye Urukiko rw'Ubujurire, ubujurire bwayo bwandikwa kuri n° RCOMAA 00048/2019/CA, isaba ko rwategeka Airtel Rwanda Ltd kwishyura 21.394.070 Frw, akubiyemo 3.526.400 Frw yo mu ibaruwa yo ku wa 24/01/2017 (ingingo ya 4), 1.896.210 Frw Airtel Rwanda Ltd yitiranya na credit note, na 15.971.460 Frw yasigaye ku yari yemejwe n'Urukiko rw'Ubucuruzi, kuyitegeka kwishyura amafaranga 1.121.000 Frw akomoka ku ikodesha gurisha rya Land Cruiser V8, 35.617.010 Frw akomoka kuri *Total ya invoice* zose yagombaga kwishyura zihwanye na 104.319.080 Frw, hakishyurwamo gusa 68.702.070 Frw (54.600.000 Frw + 11.332.070 Frw + 1.770.000 Fn/v *credit note* n° 366 + 1000.000 Frw *credit note* n° 406) no gutegeka ko imodoka RAC 617Q yandikwa kuri Airtel Rwanda Ltd.

[5] Airtel Rwanda Ltd nayo yarajuriye, ubujurire bwayo buhabwa n° RCOMAA 00054/2019/CA, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje umwenda ungana na 21.308.070 Frw, mu gihe Victoria International Ltd itagaragaza inkomoko yawo, kandi yo yemera

ko yamaze kwishyura 23.521.860 Frw, inasaba gusuzuma niba inyungu mbonezamusaruro zatanzwe zingana na 7.431.591 Frw zari zikwiye.

[6] Ubwo bujurire bwombi bwarahujwe, urubanza ruhabwa n° RCOMAA 00048/2019/CA, iburanisha ryarwo rigenda ryimurirwa ku matariki atandukanye, kugeza ku wa 11/06/2020, ubwo rwaburanishijwe mu ruhame Victoria International Ltd ihagarariwe na Me NDIHOKUBWAYO Innocent, naho Airtel Rwanda Ltd ihagarariwe na Me BIMENYIMANA Eric.

[7] Muri iryo buranisha, ababuranyi bagiriwe inama n'Urukiko yo gukemura ibibazo bafitanye mu bwumvikane, barabyemera bahabwa igihe cyo kubikora, maze bashyikiriza Urukiko amasezerano y'ubwumvikanye bashyizeho umukono ku wa 26/08/2020, bayashimangira mu iburanisha ryo ku wa 28/09/2020, babwira Urukiko ko ibibazo bari bafitanye byarakemutse.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya agaciro k'amasezerano y'ubwumvikane bwabaye hagati ya Victoria Internationa Ltd na Airtel Rwanda Ltd

[8] Ingingo ya 9, igika cya gatatu, y'ltegeko n° 22/2018 yo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, n'iz'umurimo n'iz'ubutegetsi, iteganya ko *"Umucamanza ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko ari bwo buryo buboneye mu kurangiza impaka. Ashobora kubunga ubwe cyangwa akabohereza mu bwunzi, agasubika urubanza mu gihe ubwunzi burimo gukorwa"*.

[9] Nk'uko byasobanuwe haruguru, Victoria International Ltd na Airtel Rwanda Ltd bari bafitanye ikibazo kijyanye n'umwenda w'amafaranga ungana na 103.232.890 Frw n'inyungu zawo. Mu rubanza n° RCOM 00564/2017/TC rwaciwe ku wa 09/07/2019, Urukiko rw'Ubucuruzi rwategetse Tigo Rwanda Ltd kwishyura Victoria International Ltd 65.351.011 Frw, akubiyemo umwenda remezo, inyungu mbonezamusaruro, indishyi zo kwica amasezerano, amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka no kwishyura 17.100.000 Frw kuri konti ya Gorilla Motor Ltd, naho mu rubanza n° RCOMA 00496/2018/CHC/HCC rwaciwe ku wa 21/02/2019, Urukiko Rukuru rw'Ubucuruzi rwemeza ko igihindutse mu rubanza rujuririrwa ari ibyerekeye indishyi mbonezamusaruro z'umurengera Tigo Rwanda Ltd yaciwe, ikaba igomba gutanga izingana na 7.431.591 Frw.

[10] Urukiko rw'Ubujurire rushingiye ku biteganywa n'ingingo ya 9, igika cya gatatu, y'ltegeko n° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, rwashishikarije ababuranyi gukemura ikibazo bafitanye binyuze mu bwumvikane, ababuranyi nabo barabyemera, bajya kwikiranura babifashijwemo n'abanyamategeko babo bagera ku masezerano y'ubwumvikane bashyizeho umukono ku wa 26/08/2020.

[11] 11 .Muri ayo masezerano yo kwikiranura, Victoria International Ltd na Airtel Rwanda Ltd bumvikanye ku bintu bitandukanye, harimo bibiri by'ingenzi bikurikira:

- Ko Airtel Rwanda Ltd izishyura Victoria International Ltd 59.754.760 Frw, akubiyemo umwenda remezo, inyungu ziwukomokaho n'indishyi z'ibyakoreshejwe mu manza, mu gihe kitarenze iminsi 7 y'akazi uhereye umunsi amasezerano y'ubwumvikane yashyiriweho umukono, kandi ko ayo

mafaranga azashyirwa kuri konti n° 00040 - 00293262 - 64 ya ISABWE Alain Tierry Robert iri muri Banki ya Kigali (BK);

- Ko imodoka Toyota Land Cruiser Prado RAC 617Q izandikwa kuri Airtel Rwanda Ltd bitarenze iminsi 7 y'akazi ibarwa uhereye igihe Victoria Internatinal Ltd izaba yamaze kwakira ubwishyu buvugwa mu masezerano y'ubwumvikane;

[12] Urukiko rurasanga amasezerano yo kwikiranura yo ku wa 26/08/2020 yabaye hagati ya Airtel Rwanda Ltd na Victoria International Ltd yararangije ikibazo cyari kiri hagati yazo, akaba agomba kubahirizwa uko ateye, bityo n'urubanza n° RCOMAA 00048/2019/CA izo sosiyete zombi zari zifitanye muri uru Rukiko rukaba rurangiriye aho.

III. ICYEMEZO CY'URUKIKO

[13] Rwemeje ko amasezerano y'ubwumvikane yabaye hagati ya Victoria International Ltd na Airtel Rwanda Ltd ku wa 26/08/2020, ashoje urubanza n° RCOMAA 00048/2019/CA, akaba agomba kubahirizwa uko ateye.

[14] Ruvuze ko amagarama yatanzwe n'abajuriye ahwanye n'ibyakozwe muri uru rubanza