

## KZ NOIR (R) Ltd v. KUBWIMANA N'UNDI

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0232/14/HCC (Kadigwa, P.J.)  
12 Kamena 2014]

*Amategeko agenga ubukemurampaka mu bibazo by'ubucuruzi – Ububasha bwo kuburanisha ibirego byihutirwa birebana n'ubukemurampaka – Umwe mu biyambaje ubukemurampaka ashobora gusaba urukiko, mbere cyangwa hagati mu gikorwa cy'ubukemurampaka, gufata icyemezo cy'agateganyo – Itegeko n° 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, ingingo ya 3 n'iya 10.*

*Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Igenwa ry'ikiburanwa – Ikiburanwa kigenwa n'ibisabwa na buri muburanyi – Mu isuzuma ry'iyakirwa ry'ikirego, Urukiko ntirugarukira ku bikubiye ku nteruro y'ikiregerwa gusa ahubwo rwita ku bikubiye mu myanzuro no ku miburanire y'ababuranyi – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 4.*

*Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kutaburanisha bundi bushya urubanza rwateshejwe agaciro n'Urukiko rwajuririwe – Iyo Urukiko rutesheje agaciro urubanza rwajuririwe ntiruburanisha mu mizi ahubwo ruburanishwa n'urukiko rubifite ububasha ku rwego rwa mbere mu gihe ba nyiri ugutanga ikirego bagishaka kugikomeza – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 172.*

**Incamake y'ikibazo:** KZ NOIR (R) Ltd yagiranye na Kubwimana Chrysologue afatanyije Kubwimana Philippe amasezerano arimo ingingo ivuga ko impaka zayavukamo zazashyikirizwa ubukemurampaka. Impande zombi ntizumvikanye bituma ziyambaza Ubukemurampaka, ariko mu gihe hatarafatwa icyemezo, KZ NOIR (R) Ltd itanze ikirego cyihutirwa mu Rukiko rw'Ubucuruzi rwa Musanze isaba ko hafatwa ibyemezo by'agateganyo maze urwo Rukiko rwemeza ko kitakiriwe kuko nta kirego cy'iremezo gishamikiyeho cyatanzwe muri urwo Rukiko.

KZ NOIR (R) Ltd yajuririye mu Rukiko Rukuru rw'ubucuruzi ivuga ko ikirego cyayo cyagombaga kwakirwa kigasuzumwa kuko ikirego cy'iremezo kiri mu bukemurampaka kandi amategeko akaba abyemera.

Mu bujuriye Kubwimana Chrysologue na Kubwimana Philippe bavuga ko ibyemezo by'agateganyo biri mu bubasha bw'Inteko y'abakemurampaka; bityo akaba ariyo igomba kuburanisha iki kirego.

**Incamake y'icyemezo:** 1. Umwe mu biyambaje ubukemurampaka ashobora gusaba urukiko, mbere cyangwa hagati mu gikorwa cy'ubukemurampaka, gufata icyemezo cy'agateganyo kandi urukiko rukaba rwagitanga mu gihe bitanyuranyije n'amasezerano y'ubukemurampaka, bityo Urukiko rw'Ubucuruzi rwa Musanze rukaba rwagombaga kwakira ikirego rwashyikirijwe.

2. Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Mu gihe ibisobanuro by'ikirego bigaragara mu myanzuro ndetse no mu miburanire y'abarega bigaragara neza ko icyo ababuranyi

baregeye ari ugusaba urukiko gufata ibyemezo by'agateganyo, interuro y'imyanzuro ubwayo siyo ihabwa agaciro.

3. Urukiko rutesheje agaciro urubanza rwajuririwe ntiruburanisha bundi bushya mu mizi yarwo; ruba rugomba kwakirwa n'urukiko rwaruburanishije ku rwego rwa mbere rukaburanishwa mu mizi mu gihe abatanze ikirego bashaka kugikomeza. Urubanza rwajuririwe rukaba rugomba kuburanishwa n'urukiko rw'Ubucuruzi rwa Musanze.

**Ubujurire bufite ishingiro.**

**Urubanza rwajuririwe ruteshejwe agaciro mu ngingo zarwo zose.  
Amagarama aherereye ku baregwa.**

**Amategeko yashingiweho:**

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 4 n'ya 172  
Itegeko n° 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, ingingo ya 11 n'ya 23.

**Nta manza zifashishijwe.**

## **Urubanza**

### **I. UKO IKIBAZO GITEYE MU NCAMAKE**

[1] Mu ikubitiro ababuranyi bombi bagiranye amasezerano arimo ingingo ivuga ko impaka zayavukamo zazashyikirizwa abakemurampaka (arbitrage). Mu rubanza R.COM 0144/TC/MUS rwaciye n'Urukiko rw'Ubucuruzi rwa Musanze kuwa 21/04/2014 urega yatanze ikirego cyihurirwa asaba ibyavuzwe haruguru mu kiregerwa, urukiko rwanga kucyakira rushingiye ko nta kirego cy'iremezo cyakibanjirije rushingira icyemezo cyarwo ku ngingo ya 316 CPCCSA.

[2] Abarega ntibanyuzwe n'icyo cyemezo kuko bumvaga kuba ikirego cy'iremezo kiri mu bukemurampaka bihagije, ko kandi n'amategeko yerekeye ubukemurampaka abyemera. Batangaho urugero ingingo ya 11 n'ya 23 z'Itegeko no 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi.

[3] Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba ibirego byihutirwa bishingiye ku kirego cy'iremezo cyashyikirijwe abakemurampaka bishobora gufatwa n'inkiko ubusanzwe zifite ububasha bwo kuburanisha bene ibyo birego.

### **II ISESENGURA RY'IKIBAZO KIGOMBA GUSUZUMWA MURI URU RUBANZA**

[4] Urukiko rwaciye uru rubanza ku rwego rwa mbere rwafashe ko ikirego rwashyikirijwe ari ikirego cyihutirwa ubusanzwe kiburanishwa hakurikijwe imiburanishirize yihariye ya bene ibyo

birego iteganywa n’tegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’ianza z’imbonezamubano, iz’ubucuruzi iz’umurimo n’iz’ubutegetsu.

[5] Abarega bo baburanye bagaragaza ko ikirego batanze kigamije gusaba urukiko gufata ibyemezo by’agateganyo bivugwa mu ngingo ya 11 n’iya 23 z’Itegeko n° 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n’ubwunzi mu bibazo by’ubucuruzi, nubwo mu nteruro y’imyanzuro yabo bagaragaje ko baregera urukiko mu buryo bw’inyandiko itanze ikirego cyihutirwa.

[6] Uru Rukiko rubona urukiko rwacye uru rubanza ku rwego rwa mbere rwarahagaze gusa ku nteruro y’imyanzuro yatanze n’abaregaga yerekana ko batanze ikirego cyihutirwa (référé) rwirengagiza ibyari bikubiye mu mwanzuro no mu miburanire yabo, yagaragazaga ko baruregeye barusaba gufata ibyemezo by’agateganyo bivugwa mu ngingo ya 11 n’iya 23 z’Itegeko n° 005/2008 ryo kuwa 14/02/2008.

[7] Kuba urukiko rwacye uru rubanza ku rwego rwa mbere rwaribanze gusa ku nteruro y’imyanzuro y’abarega yagaragazaga ko batanze ikirego cyihutirwa, rukirengagiza ibyari bikubiye mu myanzuro no mu miburanire yabo, uru Rukiko rubona binyuranyije n’ingingo ya 4 y’Itegeko n° 21/2012 ryo kuwa 14/06/2012 CPCCSA iteganya ko “Ikiburanwa kigenwa n’ibisabwa na buri muburanyi. Ibisabwa bigaragazwa n’inyandiko itangiza ikirego n’imyanzuro yo kwiregura”.

[8] Uru Rukiko rubona interuro y’imyanzuro ubwayo atariyo yahabwa agaciro mu gihe ibisobanuro by’ikirego bigaragara mu myanzuro ndetse no mu miburanire y’abarega byarabonekaga neza ko icyo baregeye ari ugusaba urukiko gufata ibyemezo by’agateganyo, biteganywa n’Itegeko n° 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n’ubwunzi mu bibazo by’ubucuruzi.

[9] Kuba ingingo ya 3 n’iya 10 z’Itegeko n° 005/2008 ryo kuwa 14/02/2008 rivuzwe haruguru, iteganya ko urukiko ruvugwa muri iryo tegeko ari “urukiko rubifitiye ububasha mu bucuza bw’u Rwanda”, uru Rukiko rusanga urukiko rwacye uru rubanza ku rwego rwa mbere rwaragombaga kwakira ikirego rwaregawe nk’uko biteganywa n’ingingo ya 11 y’iryo tegeko iteye itya: “Umwe mu biyambaje ubukemurampaka ashobora gusaba urukiko, mbere cyangwa hagati mu gikorwa cy’ubukemurampaka, icyemezo cy’agateganyo kandi urukiko rukaba rwagitanga. Ibyo kandi ntibishobora kuba binyuranyije n’amasezerano y’ubukemurampaka”.

[10] Ibyo Me Buhuru Célestin uburanira abaregwa mu bujirire avuga ko ibyemezo by’agateganyo biri mu bucuza bw’Inteko y’abakemurampaka, uru Rukiko rubona nta shingiro bifite kuko, hakurikijwe ingingo ya 19 y’Itegeko n° 005/2008 ryo kuwa 14/02/2008 rivuzwe haruguru iyo nteko ifata bene ibyo byemezo ari uko ibisabwe n’umwe mu biyambaje ubukemurampaka.

[11] Rushingiyiye ku bimaze kuvugwa byose, uru Rukiko rubona icyemezo cyafashwe mu rubanza rwajuririwe R.COM 0144/TC/MUS rwaciye n’Urukiko rw’Ubucuruzi rwa Musanze kuwa 21/04/2014 kigomba guteshwa agaciro.

[12] Rushingiye kandi ku ngingo ya 172 iteganya ko “Urukiko rutesheje agaciro urubanza rwajuririwe rutaruburanisha bundi bushya mu mizi yarwo”, uru Rukiko rusanga ikirego cyatanzwe n’urega mu bujurire, kigomba kwakirwa n’urukiko rwakiburanishije ku rwego rwa mbere kikaburanishwa mu mizi, ba nyiri kugitanga babaye bagishaka kugikomeza.

### **III. ICYEMEZO CY’URUKIKO**

[13] Urukiko Rukuru rw’Ubucuruzi :

[14] Rwemeje kwakira ubujurire bwatanzwe na KZ NOIR (R) Ltd ko kandi bufite ishingiro;

[15] Rwemeje ko ikirego KZ NOIR (R) Ltd cyagombaga kwakirwa n’urukiko rwaciye uru rubanza ku rwego rwa mbere;

[16] Rutegetse ko imikirize y’urubanza rwajuririwe R.COM 0144/TC/MUS rwaciwe n’Urukiko rw’Ubucuruzi rwa Musanze kuwa 21/04/2014 iteshwa agaciro mu ngingo zayo zose;

[17] Rutegetse Chrysologue Kubwimana na Philippe Kubwimana gufatanya gutanga amagarama y’uru rubanza.