BAKUNDUKIZE v. SONARWA

[Rwanda URUKIKO RW'UBUCURUZI – RCOM00115/2018/TC (RCOM00338/2018/TC/NYGE) (Hamenyimana, P.J.) 11 Ukwakira 2018]

Amategeko agenga amasezerano – Amasezerano y'ubwishingizi – Kwishyura kumwishingizi – Umwishingizi wujuje inshingano ze z'ubwishyu nta shobora kongera kuryozwa izo nshingano n'uwahaye umwenda uwo yishingiye mu gihe umwishingizi yubahirije ibikubiye mu masezerano y'ubwishingizi.

Amategeko agenga amasezerano – Ubwishingizi bw'impanuka y'inkongi – Inshingano z'umwishingizi – Umwishingizi yishyura amafaranga yumvikanyweho mu masezerano n'uwo yishingiye – Uwishingiwe ntashobora kuryozwa igihombo cyose yatewe n'inkongi mu gihe umwishingizi yishyuye uwishingiwe ashingiye ku byumvikanyweho mu masezerano.

Incamake y'ikibazo: Bakundukize yagiranye amasezerano y'ubwishingizi bw'inkongi bw'inyubako ye na SONARWA. Yaje kandi kugirana n'andi y'inguzanyo na COGEBANQUE itangaho ingwate ya nyubako. Amasezerano y'inguzanyo yateganyaga ko mu gihe inyubako yangijwe n'inkongi amafaranga azishyurwa COGEBANQUE.

Bakundukize yaje kugira ibyago inyubako ye yibasirwa n'inkongi bituma asaba SONARWA kubahiriza masezerano y'ubwishingizi. SONARWA yamwishyuye igice, ikindi gice iza kukishyura ikinyujije kuri sosiyete ye yitwa FARUCON Ltd.

COGEBANQUE yagobotse mu rubanza isaba ko SONARWA yayishyura ikindi gice. Bakundukize nawe ku rundi ruhande yasabaga ko yakwishyurwa ikinyaranyo cy'agaciro k'inzu ye n'ayo yishyuye kuko yavugaga ko kuba SONARWA itaramwishyuye agaciro kose bumvikanye byatumye adahita asana inzu ye bigatuma mu gihe yari agiye kwimurwa ku mpamvu z'inyungu rusange, abarirwa amafaranga make.

Incamake y'icyemezo: 1. Gukora ibisabwa byose mu masezerano bikuraho inshingano zo kubikora. Umwishingizi wujuje inshingano ze z'ubwishyu nta shobora kongera kuryozwa izo nshingano n'uwahaye umwenda uwo yishingiye mu gihe umwishingizi yubahirije ibikubiye mu masezerano y'ubwishingizi. Bityo, kuba SONARWA yarubahirije inshingano zayo yishyura Bakundukize na FARUCON Ltd ikaba ntacyo yaryozwa na COGEBANQUE.

2. Umwishingizi wubahirije amasezerano y'ubwishingizi akishyura amafaranga yose yagombaga kwishyura, ntiyaryozwa amafaranga yo kusana inyubako yangijwe n'inkongi y'umuriro kuko we aba yakoze ibisabwa mu masezerano yagiranye n'uwo yishingiye.

Ikirego nta shingiro gifite.
Ingwate y'amagaragama igumye mu isanduku ya Leta.

Amategeko yashingiweho:
Itegeko n^{o} 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 80.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 07/09/2016 Bakundukize Leonidas yagiranye na SONARWA amasezerano y'ubwishingizi bw'inkongi y'umuriro ku nzu iri mu kibanza no 152 ho inyubako yari ifite agaciro ka 377,940,355 rwf hanyuma bo bakemera kwishingira kugaciro ka 320,167,000rwf.. Ku wa 13/04/2017, iyo nzu yafashwe n'inkongi y'umuriro bimenyeshwa SONARWA kuwa 14/04/201 nayo yemera kwishyura 20,975,772 yo gusana ikaba yarishyuye igice kimwe ikindi yanga kukishyura bituma inzu idasanwa maze mukwimura abantu ku nyungu rusange iyo igenerwa agaciro kari hasi kubera SONARWA itatanze ayo gusana. Akaba ariyo mpamvu Bakundukize Leonidas yatanze iki kirego ngo SONARWA itegekwe kwishura igice cyasigaye ndetse n'indishyi z'igihombo yatejwe nuko inzu ye yahawe agaciro gato.

[2] Ku ruhande rwa SONARWA yabanje gusaba igobokeshwa rya COEBANQUE Ltd, ngo yishyuye amafaranga yose yagombaga kwishyura, igice cya mbere kingana na 10,487,886frw ndetse n'igice cya kabiri kingana na 10,487,886frw yashyizwe kuri konti ya FARUCON Ltd bisabwe na COGEBANQUE kubera umwenda wa FARUCON Ltd Bakundukize Leonidas yishingiye n'iyo nzu ikaba yari ingwate yawo, ko rero itabazwa iby'igihombo cyabaye ahubwo yagenerwa indishyi.

[3] COGEBANQUE yo ngo inzu yahiye yari yatanzweho ingwate kubera umwenda yahaye FARUCON Ltd maze uwitwa Bakundukize Leonidas yemera gutangaho ingwate inzu ye y'ubucuruzi kugirango izavemo ubwishyu mu gihe uwo yishingiye azaba yananiwe kwishyura. Ko rero yatwaye igice cya mbere igisigaye COGEBANQUE Ltd isaba ko cyanyuzwa kuri konti ya FARCON Ltd ngo cyishyure umwenda.

[4] Urubanza rwaburanishijwe kuwa 21/09/2018 impande zose zitabye. Urukiko rukaba rugomba gusuzuma ibibazo bikurikira:

a. Gusuzuma niba SONARWA itarishyuye icyiciro cya kabiri cy'ubwishyu yagombaga guha Bakundukize Leonidas kuburyo yahatirwa kuyatanga.

b. Gusuzuma niba SONARWA yategekwa kwishyura igihombo kingana n'ikinyuranyo cy'agaciro k'inyubako kangana na 222,635,8000frw.

c. Gusuzuma ishingiro ry'indishyi z'ikurikiranarubanza n'igihembo cya avoka zasabwe.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a. Gusuzuma niba SONARWA itarishyuye icyiciro cya kabiri cy'ubwishyu yagombaga guha Bakundukize Leonidas kuburyo yahatirwa kuyatanga.

[5] Urega avuga ko SONARWA yemeye kwishyura Bakundukize amafaranga 20,975,772 rwf yo gusana inzu yari yafashwe n'inkongi y'umuriro kugira ngo isubirane agaciro kayo nkuko byari biri mu masezerano, ndetse bemeranya ko azashyirwa kuri konte 01-01302057573-97 yari iri muri COGEBANQUE. nyuma yaho SONARWA yishyuriye igice kimwe cy'ubwishyu yandikiwe

inshuro nyinshi kuko kuwa 22/08/2017 yandikiwe asaba ko mugihe cy'iminsi 3 baba bishyuye kugirango inzu isubizwe agaciro kayo nyamara kugeza ubu bakaba batarigeze bayatanga. Ko rero yategekwa kuyishyura.

[6] SONARWA yiregura ivuga ko yishyuye umwenda wose ikiciro cya kabiri ikinyujije kuri FARUCON Ltd company ya Bakundukize, Bakundukize Leonidas yabonye igice cya mbere cy'amafaranga yumvikanye na SONARWA, ubwo yatangaga indi konti iri kuri Discharge form ayihishe COGEBANQUE kugira ngo idahita yiyishyura, ari nayo mpamvu yamusabye kuyagarura, ndetse igatanga n'indi konti igashyirwaho icyiciro cya kabiri cy'amafaranga yasinyiye kuri Discharge form Bakundukize Léonidas ntashobore kubivuguruza ko ayo mafaranga atatanzwe.

[7] Me Munyengabe Henri Pierre uhagarariye COGEBANQUE avuga ko kuwa 07/11/2016 COGEBANQUE Ltd yagiranye amasezerano y’inguzanyo na FARUCON Ltd maze Bakundukize Leonidas yemera gutangaho ingwate inzu ye y’ubucuruzi kugirango izavemo ubwishyu mu gihe uwo yishingiye azaba yananiwe kwishyura. Habaye kandi n’amasezerano y’ubwishingizi n˚ HDQ/CLS/1/09/110727 hagati ya SONARWA na Bakundukize Leonidas agaragaza ko umutungo wishingiwe (ariwo wanatanzweho ingwate muri COGEBANQUE Ltd) uramutse wibasiwe n’inkongi y’umuriro ubwishyu bwahabwa COGEBANQUE Ltd “TRANSFER OF INTEREST”.

[8] Avuga ko kuwa 13/04/2017 nibwo iyo nzu yatanzweho ingwate yafashwe n’inkongi y’umuriro. amafaranaga ashyirwa kuri konti ya Bakundukize arayatwara, kuwa 04/09/2017 COGEBANQUE Ltd yandikiye Bakundukize Leonidas ibaruwa imusaba gusubiza amafaranga angana na 10.485.000 Frw yabikuje kuri konti ye tariki 21/08/2017 akaba yari yayishyuwe na SONARWA kubera inkongi y’umuriro kandi akaba yari agenewe kwishyura ubwishingizi bwavuzwe haruguru. Kuwa 08/01/2018, SONARWA yishyuye icyiciro cya 2 ingana na 10.487.886 Frw akomoka kuri bwa bwishingizi bwaya nkongi y’umuriro yibasiye ingwate ya COGEBANQUE Ltd; anyuzwa kuri konti ya FARUCON Ltd kugirango yishyure ideni FARUCON Ltd ifitiye COGEBANQUE Ltd nk’uko bigaragazwa na Historique ya konti ya FARUCON Ltd, ko kugeza tariki 09/04/2018 yari ikiyifitiye umwenda remezo n’inyungu zawo bingana na 63.908.572 Frw.

UKO URUKIKO RUBIBONA

[9] Rusanga impamde zombi zemeranya ko kuwa 07/09/2016 habaye amasezerano y’ubwishingizi hagati ya SONARWA na Bakundukize Léonidas hishingirwa inzu iri mukibanza n^{o} 152, ndetse hakaba amasezerano y’inguzanyo yo mu kwezi kwa 11/ 2016 hagati ya FARCON Ltd na COGEBANQUE Ltd ndetse Bakundukize Léonidas asinya nk’umwishingizi ndetse ingwate yatanzwemo ari umutungo uvugwa mu masezerano y’ubwishingizi.

[10] Rusanga rero kuba SONARWA yarasabwe na COGEBANQUE ko ubwishyu bujyanye n’inkongi y’umuriro ku nzu yahaweho ingwate kandi nyirayo akaba yarishingiye umwenda wo kuwa 03/11/2016 wahawe FARCON LTD, ntakosa yakoze ryatuma ifatwa nkaho itubahirje amasezerano mu gihe nyuma y’amasezerano y’ubwishingizi Bakundukize Leonidas yemeye kwishingira umwenda no gutanga inzu ye ikaba ingwate; bityo SONARWA ikaba yarubahirije amasezerano itanga ubwishyu nta nshingano zindi ifite zo kwishyura nkuko ingingo ya 80

y’itegeko rigenga amasezerano igika cya mbere iteganya ko ‘Gukora ibisabwa byose mu masezerano bikuraho inshingano zo kubikora”.

b. Gusuzuma niba SONARWA yategekwa kwishyura igihombo kingana n’ikinyuranyo cy'agaciro k’inyubako kangana na 222,635,8000frw.

[11] Avuga ko byageze kuwa 18/01/2018 amafaranga yari asigaye Bakundukize Leonidas atari yayahabwa ngo akore imirimo y'ubwubatsi yagombaga gukora ku nyubako ye kugeza na nubu bakaba batari bayatanga. ibyo rero byatumye inyubako ita agaciro kayo kuko kuwa 05/02/2018 ubuyobozi bw'umujyi wa Kigali bwashyikirije Bakundukize igenagaciro k’inyubako ye kuberako SONARWA yanze gutanga amafaranga yari yiyemeje gutanga kugira ngo inyubako isubizwe uko yari imeze inyubako yahawe agaciro ka 97,551,200frw. Kubw’ibyo gihombo 222,635,8000frw SONARWA yakiryozwa.

[12] Me Asiimwe Frank na Me Munyentwali Charles bavuga ko SONARWA GENERAL INSURANCE COMPANY Ltd itakwishyura agaciro k’inzu gasabwa kubera ko umwishingizi ntiyishyura agaciro k’icyishingiwe, yishyura amafaranga yumvikanywe iyo habaye impanuka kandi ayo mafaranga yose Bakundukize Léonidas yarishyuwe, ko ibyo aregera ubu nta shingiro byahabwa kubera ko ari uburyo bwo gukurura SONARWA GENERAL INSURANCE COMPANY Ltd mu manza nta mpamvu.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 258 y’itegeko ryo ku wa 30 Nyakanga 1888 urwunge rw'amategeko y'imbonezamubano : ibyerekeye imirimo nshinganwa cyangwa amasezerano (CCLIII) ivuga ko “Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse”..

[14] Rusanga nkuko byasobanuwe hejuru SONARWA yarubahirije amasezerano kuko yishyuye amafaranga yose yagombaga kwishyura, kuba rero inzu itarasanwe atariyo yabibazwa ngo yishyure ikinyuranyo cy’agaciro yahawe mu kwimura abantu byakozwe n’Umujyi wa Kigali; bivuga ko ntakosa SONARWA yakoze mugihe ingingo ya 258 CCLIII ivuga ko uwakoze ikosa ariwe usana ibyo ryangije, na Bakundukize kuba atarasanye inzu bikaba ariwe bireba ntacyo SONARWA yaryozwa.

c. Gusuzuma ishingiro ry’indishyi z’ikurikiranarubanza n’igihembo cya avoka zasabwe.

[15] Bakundukize Leonidas asaba urukiko gutegeka sonarwa gutanga 10,000,000frw akubiyemo ikurikirana rubanza ndetse n'igihembo cy'avoka, SONARWA ivuga ko ntashingiro zifite, ahubwo isaba ko Bakundukize Léonidas yacibwa amafaranga y’ikurikiranarubanza angana na 500,000Rwf n’igihembo cy’avoka kingana na 2,000,000Rwf kubera kuyishora mu manza nta mpamvu kandi yarishyuwe amafaranga yose y’impanuka, bigatuma ikurikirana urubanza igashaka n’abayiburanira. Naho COGEBANQUE Ltd irasaba Urukiko gutegeka uzatsindwa muri uru rubanza kuyisubiza amafaranga y’ikurikiranarubanza angana na 100,000frw, igihembo cy’Avoka wayiburaniye angana na 500,000frw.

[16] Ingingo ya 258 y’itegeko ryo ku wa 30 Nyakanga 1888 urwunge rw'amategeko y'imbonezamubano : ibyerekeye imirimo nshinganwa cyangwa amasezerano (CCLIII) ivuga ko

“Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse”. Ingingo ya 4 y’iteka rya Minisitiri n° 133/MOJ/AG/18 ryo ku wa 04/06/2018 rigena amafaranga atangwa mu manza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ivuga ko “Iyo umuburanyi watanze amafaranga y’ingwate y’amagarama atsinze urubanza, umucamanza ategeka, mu cyemezo cy’urukiko, uwatsinzwe kuyamwishyura, akagena n’igihe azishyurwamo”.

[17] Rusanga kuba Bakundukize Leonidas yaraje mumanza ariwe wabyiteye, bivuga ko hari ibyo yatakaje akaba atagomba kubisubizwa kuko ingingo ya 258 CCLIII iteganya ko uwakoze ikosa ari we usana ibyangijwe naryo, ahubwo kuba yarazanye SONARWA mu manza akwiye kyishyura ibuyo yatakaje ariko kuko amafaranga yasabwe ari menshi akaba agomba kwishyura 100,000frw y’ikurikiranarubanza na 500,000frw y’igihembo cya Avoka, naho indishyi zisabwa na COGEBANQUE Ltd idakwiye kuzihabwa kuko kuba yaje mu rubana igobokeshejwe na SONARWA.

III. ICYEMEZO CY’URUKIKO

[18] Rwemeje ko ikirego cya Bakundukize Leonidas nta shingiro gifite.

[19] Rutegetse Bakundukize Leonidas kwishyura SONARWA amafaranga ibihumbi ijana (100,000frw) y’ikurikirana rubanza n’ibihumbi Magana atanu (500,000frw) y’igihembo cya avoka.

[20] Rutegetse ko amafaranga (50,000frw) Bakundukize Leonidas yatanzeho ingwate y’amagarama arega agumye mu isanduku ya Leta.