CORAR v. MBONIMPA

[Rwanda URUKIKO RW'IKIRENGA – RCOMA 0185/12/CS (Mugenzi, P.J., Gatete na Munyangeri, J.) 15 Ugushyingo 2013]

Amategeko y'ubwishingizi – Uruhushya rwo gutwara ikinyabiziga rwatangiwe mu mahanga – Iyo rutanenzwe n'inzego zibifitiye ububasha cyangwa rutararegewe ko ari inyandiko mpimbano ruba rufite agaciro – Itegeko n^o 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 46.

Amategeko y'ubwishingizi – Amasezerano y'ubwishingizi – Igenagaciro k'imodoka yangiritse ku bw'impanuka – Kabarwa hashingiwe kubikubiye mu masezerano.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Kuvutswa amahirwe – Ibara ry'Indishyi zijyanye n'amafaranga ikinyabiziga cyagombaga kuba cyarakoreye zibarwa hakurikijwe igiciro kiri ku isoko havanywemo ibyari kuyigendaho – Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Indishyi z'akababaro – Ntizitangwa iyo uzisaba atagaragaje icyo yangirijwe gitandukanye n'ibyabazwe mu ndishyi mboneza musaruro – Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Hashingiwe ku masezerano y'ubwishingizi, Mbonimpa yareze CORAR mu Rukiko Rukuru rw'ubucuruzi kuba ataramusubije agaciro k'imodoka ye yakoze impanuka kuwa 04/09/2010 ikangirika bikabije bigatuma idashobora gusanwa ngo isubire mu kazi; ku bw'ibyo anabisabira n'indishyi zijyanye n'agaciro k'imodoka yangiritse, iz'ijyanye n'amafaranga imodoka yagombaga kuba yarakoreye n'indishyi z'akababaro zirimo izishingiye ku rupfu rw'umugabo we wari utwaye imodoka n'izindi.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko CORAR igomba guha Mbonimpa amafaranga y'agaciro k'imodoka, ay'indishyi imodoka yagombaga kuba yarakoreye ku mezi 17, ay'indishyi z'akababaro, ajyanye n'urupfu rw'umushoferi wari uyitwaye ikora impanuka ay'ikurikirana rubanza n'igihembo cya avoka.

CORAR yajuriye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwageneye Mbonimpa indishyi kandi impanuka yarakozwe n'imodoka ye mu gihe yari itwawe n'umushoferi utabifitiye uruhushya rwemewe, ibyo bikaba binyuranye n'amasezerano y'ubwishingizi bagiranye.

Mbonimpa avuga ko umushoferi yari afite uruhushya rwo gutwara imodoka rwatangiwe muri Repubulika iharanira Demokarasi ya Congo ibyo bikaba byaranemejwe na Inspecteur de Police wa Repubulika iharanira Demokarasi ya Congo.Yasabye kandi mu bujurire bwuririye ku bundi amafaranga imodoka yagombaga kuba yarakoreye, indishyi z'akababaro, ay'ikurikirana rubanza n'igihembo cya Avoka.

Kubijyanye n'izo ndishyi CORAR yo ivuga ko amafaranga imodoka yagombaga kuba yarakoreye ari ikirenga kandi ko ntabimeyetso ayatangira.

Kubijyanye n'indishyi z'akababaro, avuga ko nta bisobanuro Mbonimpa azitangira kandi ko yagenewe indishyi mbonezamusaruro.

Incamake y'icyemezo: 1. Iyo habaye impanuka ikozwe n'umushoferi ufite uruhushya rwatangiwe mu mahanga, kandi ntawigeze aregera inyandiko mpimbano, n'Ubugenzacyaha ntiburukemange mu iperereza ku mpanuka cyangwa se ngo ababuranyi babugaragarize ko hari inenge rufite bituma rudateshwa agaciro.

2. Mu gihe Mbonimpa atagaragaje impamvu hatakubahirizwa amasezerano y'ubwishingizi yagiranye na CORAR kandi ntavuguruze agaciro k'imodoka kagenwe n'impuguke hashingiwe ku masezerano bagiranye, ayemejwe n'impuguke niyo agomba guhabwa.

3. Amafaranga imodoka ya Mbonimpa yashoboraga kuba yarinjije iyo CORAR imuha uburyo bwo kwishakira indi modoka, abarwa kuva ku munsi Urukiko rwaregeweho kugeza ku munsi w'isomwa ry'urubanza ku rwego rwa nyuma. Ariko kubw'uko bigaragara ko imodoka hari iminsi itakora, n'amafaranga y'ibigenda ku kuyikoresha no ku zindi mpamvu zinyuranye bigaragaza ko amahirwe yavukijwe yo kwinjiza amafaranga ari ku kigereranyo cya 80% y'amafaranga yashoboraga kuba yakorera 12.240.000 frw bityo indishyi uregwa agomba guhabwa zikaba zingana na 9.792.000 frw.

4. Mbonimpa nta ndishyi z'akababaro yagenerwa mu gihe atazisobanuye.

Ubujurire bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye ku baburanyi bombi.

Amategeko yashingiweho:
Itegeko, n°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 46.
Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza rwifashishijwe.

Inyandiko z'abahanga:
Philippe, T., Droit de la responsabilité et des contrats, 8e éd., Dalloz, 2010, p. 1419-1420.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mbonimpa Solange na CORAR Ltd bagiranye amasezerano y'ubwishingizi bw'imodoka Daihatsu RAB 849P yakoreshwaga mu mirimo y'ubwikorezi bw'ibintu. Kuwa 04/09/2010 iyo modoka yakoze impanuka irangirika bikomeye, impuguke mu by'imodoka yemeza ko idashobora gusanwa ngo isubire mu muhanda.

[2] Mbonimpa yareze CORAR Ltd mu Rukiko Rukuru rw'Ubucuruzi kuba yaranze kumwishyura iyo modoka yishingiye, CORAR ikisobanura ivuga ko idashobora kuryozwa iby'iyo mpanuka kubera ko imodoka yari itwawe n'umuntu udafite uruhushya rwemewe n'amategeko. Urubanza rwaburanishijwe CORAR Ltd ititabye, rwemeza ko igomba guha Mbonimpa 25.000.000 frw y'agaciro k'imodoka, 3.000.000 frw ajyanye n'urupfu rw'umushoferi wari uyitwaye ikora impanuka, 5.000.000 frw y'indishyi mbonezamusaruro

ku mezi 17, 1.000.000 frw y'indishyi z'akababaro na 500.000 frw y'ikurikirana rubanza n'igihembo cya avoka.

[3] CORAR A.G. Ltd yajuririye mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwageneye Mbonimpa indishyi kandi impanuka yakozwe n'imodoka ye mu gihe yari itwawe n'umushoferi utabifitiye uruhushya rwemewe, ibyo bikaba binyuranye n'amasezerano y'ubwishingizi bagiranye, ndetse n'indishyi zagenwe zikaba zirengeje agaciro kishingiwe.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 15/10/2013, CORAR ihagarariwe na Me Munyandirikirwa Laurent, naho Mbonimpa Solange aburanirwa na Me Masumbuko Mussa.

II. IBIBAZO BISUZUMWA MURI URU RUBANZA

A. Ku kibazo cyo kumenya niba umushoferi wari utwaye imodoka yari abifitiye uruhushya rwemewe n'amategeko.

[5] Uburanira CORAR avuga Urukiko Rukuru rw'Ubucuruzi rutitaye ku kibazo cy'uko umushoferi wari utwaye iyo modoka yakoze impanuka atari afite uruhusa rwo gutwara imodoka rwemewe n'amategeko, ibyo bikaba binyuranyije n'ingingo ya 24 n'iya 64 z'amasezerano y'ubwishingizi Mbonimpa yagiranye na CORAR aho ateganya ko imodoka yafatiwe ubwishingizi igomba kuba itwawe n'umushoferi ubifitiye uburenganzira kandi afite uruhushya rwo gutwara imodoka rwemewe n'amategeko y'u Rwanda.

[6] Asobanura ko urwo ruhusa rwatangiwe muri Repubulika iharanira Demokarasi ya Congo, inyandiko iri mu dosiye Mbonimpa yatanze ivuga ko ruzwi muri Congo yakozwe na Inspecteur de police, mu gihe CORAR yo yahawe inyandiko n'ukuriye *Service de communication* aho muri Congo yemeza ko ukuri kwayo gushidikanywaho (*l'autenticité de ce permis est mise en doute*), kandi iyo service ariyo ishinzwe gutanga impushya zo gutwara imodoka, naho Inspecteur de Police akaba nta bubasha abifitiye.

[7] Arasaba Urukiko ko ubwo hari ibyemezo bibiri bitandukanye, Urukiko rwategeka irindi perereza kugira ngo hemezwe amakuru nyayo kuri authenticité de permis. Avuga ko ikindi kigaragaza ko urwo ruhusa rutakwizerwa nk'urwatanzwe mu buryo bukurikije amategeko, ari uko rugaragaza ko Hakizayezu yavukiye i Goma mu gihe attestation de mariage yerekana ko avuka Cyuve- Musanze.

[8] Mbonimpa n'umwunganira bavuga ko Urukiko Rukuru rw'Ubucuruzi rwasobanuye neza ibijyanye n'urwo ruhushya, na dosiye ikaba igaragaza inyandikomvugo y'impanuka yakozwe n'inzego zibifitiye ububasha, ndetse kuwa 03/06/2011 urwego rubifitiye ububasha muri Repubulika iharanira Demokarasi ya Congo (Inspecteur de Police) rukaba rwaremeje ko urwo ruhushya baruzi kandi barwemera.

[9] Basobanura ko kuba hari abayobozi b'i Goma bavuga ko ukuri kw'urwo ruhushya gushidikanywaho bitavuga ko atarirwo cyangwa rudahari, kuko mu dosiye harimo PV y'impanuka yakozwe n'ababifitiye ububasha, nko ku rupapuro rwa kane bavuga ko nyakwigendera yari afite uruhushya rwo gutwara imodoka rwatangiwe muri Congo rufite catégorie zitandukanye; iyo nyandiko ikaba nta yindi ihari iyivuguruza kimwe n'uko batayikemanga, ahubwo Urukiko rukaba rwasuzuma niba CORAR ifite ububasha bwo kurenga imbibi ijya kureba ibyangombwa aho kwandikira Police ngo ibe yakora dosiye y'inyongera(dossier subséquent).

[10] Urukiko rusanga, kuba ibyemezo byatanzwe n'abayobozi bo muri Congo bivuguruzanya ku byerekeye uruhushya rwo gutwara imodoka bitarigeze bisabwa n'inzego z'u Rwanda zibifitiye ububasha, buri mu buranyi ariwe wishakiye icye kandi bikaza bivuguruzanya, byongeye hakaba nta n'umwe muri bo wigeze aregera inyandiko mpimbano mu buryo buteganywa n'ingingo ya 46 y'Itegeko ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ibyo bituma nta mpamvu hashingirwa kuri ibyo byemezo, mu gihe Ubugenza cyaha bw'u Rwanda bwakoze iperereza ku mpanuka yabaye bwavuze ko bwanabonye uruhushya rw'uwari utwaye iyo modoka n'ibiruranga byose ntibugire icyo burukemanga cyangwa se ababuranyi ngo babugaragarize ko hari inenge rufite.

B. Ku byerekeye indishyi zisabwa muri uru rubanza

1. Indishyi zijyanye n'agaciro k'imodoka yangiritse

[11] Uburanira CORAR A.G. Ltd avuga ko Urukiko Rukuru rw'Ubucuruzi rwagenye indishyi zirengeje agaciro kishingiwe kandi zidateganywa mu masezerano, kuko rwemeje agaciro k'imodoka ka 25.000.000 frw kandi imodoka yarishingiwe ku gaciro ka 17.000.000 frw (valeur assurée), mu gihe ahubwo amasezerano ateganya ko iyo habaye impanuka, agaciro kishyurwa ari ako imodoka yari isigaranye umunsi w'impanuka.

[12] Asobanura ko ingingo ya 45 y'amasezerano iteganya ko amafaranga yishyurwa ku mpanuka y'imodoka angana n'agaciro iyo modoka yari ifite ikora impanuka (valeur actuelle), bivuze ko agaciro k'iyo modoka kari kubarirwa kuri 17.000.000 frw hagakurwamo amortissement ya 2% buri kwezi, ku mezi 9 yarimaze ikora, ni ukuvuga 18%, hagakurwamo n'agaciro k'igikanka (valeur de l'épave)ka 10%, maze bigahura n'ayo impuguke Nikwigize yemeje ko imodoka yakoze impanuka ifite agaciro ka 12.546.000 frw, ariyo mafaranga Mbonimpa yagombye guhabwa aho kubarirwa 25.000.000 frw batazi iyo Urukiko rwayakuye.

[13] Mbonimpa n'umwunganira bavuga ko iyo ngingo nta shingiro ifite kuko CORAR yaba yirengagiza ingaruka zo kutubahiriza ibyo yasezeranye, kandi itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, mu ngingo yaryo ya 65 na 81 zivuga ko amasezerano adateganya gusa icyemejwe, ahubwo yongeraho ingaruka, ugushyira mu kuri, imigenzereze cyangwa amategeko byageneye inshingano bikurikije kamere yayo, kandi kwica amasezerano yose, bitanga uburenganzira ku ndishyi z'akababaro zishingiye ku nshingano zo gukora igisabwa zitararangira.

[14] Bavuga ko CORAR itubahirije amasezerano ku gihe, kandi agaciro k'imodoka kishingiwe ari 17.000.000 frw, ako gaciro kakaba kaguma uko kari, naho kuba Urukiko rwarayiciye 25.000.000 frw bikaba ari ingaruka ku kutubahiriza amasezerano ku gihe, kuko nyuma y'impanuka Mbonimpa yagombaga kugurirwa indi modoka nshya, kandi ku isoko itaboneka kuri 17.000.000 frw.

[15] Urukiko rurasanga, nta mpamvu Mbonimpa agaragaza yo kuba hatakwubahirizwa amasezerano y'ubwishingizi yagiranye na CORAR, ateganya ko mu gihe impanuka izatuma iyo modoka yangirika yose (en cas de perte totale), CORAR izishyura imodoka hakurikijwe agaciro yari ifite mu gihe yakoraga impanuka (la valeur vénale au jour du sinistre), naho izindi ndishyi zaba ziterwa no kutubahiriza amasezerano ku gihe, zikaba zasobanurwa ukwazo zititiranyijwe n'iz'agaciro k'imodoka ubwayo.

[16] Urukiko rusanga rero, mugihe Mbonimpa atigeze avuguruza ko agaciro k'imodoka umunsi ikora impanuka ari 12.546.000 frw nk'uko byagaragajwe n'impuguke Nikwigize, nta yandi mafaranga yagenerwa ku bijyanye n'agaciro k'imodoka usibye ayo ngayo.

2. Indishyi zijyanye n'amafaranga imodoka yagombaga kuba yarakoreye.

[17] Uburanira CORAR avuga ko izo ndishyi Mbonimpa atagomba kuzihabwa kuko imodoka yari itakibasha gusubira mu muhanda, kandi iyo bimeze bityo nta ndishyi mbonezamusaruro zibarwa kuko iyo modoka iba itagomba kubyara umusaruro kuko itari igishoboye kujya mu muhanda, Urukiko rukazabishingira ku rubanza RCAA 0001/11/CS rwaciwe kuwa 13/01/2012, ku gika cya 12 urupapuro rwa 4.

[18] Mbonimpa n'umwunganira bavuga ko ku birebana n'indishyi mbonezamusaruro, kuba imodoka yari igenewe gukora imirimo y'ubucuruzi harimo gutwara ibintu, imodoka ikaba yarangiritse ku buryo itakongera gukora, ayo akaba ari amakuba Mbonimpa yagize, umwishingizi we CORAR ntiyamugobokemo, ariyo mpamvu kutishyurira igihe bitera ingaruka zo kwishyura menshi.

[19] Mu bujurire bwuririye ku bundi, barasaba ko Mbonimpa yagenerwa indishyi zibariwe kuri 50.000 frw iyo modoka yinjizaga ku munsi, bityo, Mbonimpa agahabwa 18.700.000 frw yasabaga ku mezi 17 hakiyongeraho 14.300.000 frw y'amezi agera kuri 13 uhereye kuwa 27/09/2012 urubanza rumaze gucibwa kugeza mu kwa 10/2013 aburana mu Rukiko rw'Ikirenga.

[20] Uburanira CORAR we avuga ko amafaranga 50.000 frw ku munsi Mbonimpa avuga ko imodoka yakoreraga ari ikirenga atanagaragariza ibimenyetso, Urukiko rusanze izo ndishyi zigomba kwishyurwa hakaba hashingirwa ku biciro biteganywa na RURA ku byerekeye amafaranga imodoka zikorera.

[21] Urukiko rusanga, kuba impanuka yarabaye kuwa 04/09/2010, nyuma hakaba inyandiko zinyuranye hagati ya Mbonimpa na CORAR zijyanye n'ikibazo cy'ubwishyu Mbonimpa yasabaga, kugeza ubwo aregeye Urukiko byananiranye, bikagaragaza ko habaye kwanga kwishyura, kandi ari yo yari inshingano ya CORAR hakurikijwe amasezerano y'ubwishingizi basinyanye, iryo akaba ari ikosa ryateje Mbonimpa igihombo kigomba kuryozwa CORAR yagiteje, hakurikijwe ingingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[22] Urukiko rusanga urugero rw'amafaranga 50.000 frw Mbonimpa avuga ko imodoka yakoreraga ku munsi atari ikirenga ku modoka y'ubwoko bwa Daihatsu ikora imirimo y'ubwikorezi, ariko hakaba hakwiye kuvanwamo 40% y'ibigenda ku modoka byose, hagasigara 30.000 frw iyo modoka yabasha gukorera mu minsi 22 mu kwezi, harebwe ko hari iminsi ibiri itakora mu cyumweru kubera impamvu zinyuranye z'irimo no gukoreshwa kwayo.

[23] Urukiko rurasanga rero, amafaranga imodoka ya Mbonimpa yashoboraga kuba yarinjije iyo CORAR imuha uburyo kwishakira indi modoka, yabarwa kuva ku munsi CORAR yaregeye Urukiko kuwa 03/05/2012 kugeza ku munsi w'isomwa ry'urubanza ku rwego rwa nyuma kuwa 15/11/2013, ni ukuvuga mu mezi 18 n'iminsi cumi n'ibiri (12), yose akaba = 12.240.000 frw.

[24] Kubera ariko ko amafaranga avuzwe haruguru atari ayo imodoka yari yinjije ngo tuvuge ko yabuze yari yayakoreye, ahubwo ari ayo imodoka yabashaga kuba yarinjije iyo iramuka ikoze neza nta nkomyi muri kiriya gihe cyavuzwe, byumvikana ko Mbonimpa ari amahirwe yavukijwe[1] yo kwinjiza ariya mafaranga (perte de chance), ayo mahirwe rero ubwo bigaragara ko yari menshi kuko imodoka yari isanzwe ikora, akaba yagereranyirizwa kuri 80% y'amafaranga yashoboraga kuba yakorera, bityo, indishyi Mbonimpa akwiye guhabwa zikaba 9.792.000 frw.

3. Indishyi z'akababaro Mbonimpa asaba

[25] Usibye indishyi za 3.000.000 frw Mbonimpa yagenewe n'Urukiko Rukuru rw'Ubucuruzi kubera urupfu rw'umushoferi wari n'umugabo we wari utwaye imodoka, arasaba indishyi z'akababaro zingana na 3.000.000 frw, uburanira CORAR akavuga, mu bujurire bwuririye ku bundi, ko n'izo Urukiko Rukuru rw'Ubucuruzi rwamugeneye za 1.000.000 frw zitagombaga kubaho, mu gihe yari agenewe indishyi mbonezamusaruro.

[26] Urukiko rusanga nta bisobanuro Mbonimpa atanga ku ndishyi z'akababaro asaba usibye kuvuga ko CORAR yamuruhije, akaba rero ntazo yagenerwa, mu gihe yagenewe iz'imbonezamusaruro zibariwe ku gihe CORAR yamaze yanze kumuha indishyi z'imodoka ye yakoze impanuka.

4. Indishyi z'ikurikiranarubanza n'igihembo cy'Avoka.

[27] Ku bijyanye n'amafaranga 2.000.000 frw Mbonimpa asaba y'ikurikiranarubanza n'igihembo cya avoka ku rwego rw'Urukiko rw'Ikirenga, Urukiko rurasanga, n'ubwo bigaragara ko yagombye kwiyambaza avoka ahemba akagira n'ibyo atanga ku ikurikiranarubanza, nta bimenyetso yerekana ku rugero rw'izo ndishyi, bityo, mu bushishozi bw'Urukiko akaba yagenerwa 1.000.000 frw ku nzego zombi yaburaniyemo.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa CORAR bufite ishingiro kuri bimwe;

[29] Rwemeje ko ubujurire bwa Mbonimpa bwuririye ku bundi bufite ishingiro kuri bimwe;

[30] Rutegetse CORAR Ltd kwishyura Mbonimpa Solange 12.546.000 frw y'indishyi ku modoka ye yangijwe n'impanuka, 9.792.000 frw y'indishyi mbonezamusaruro, 3.000.000 frw y'indishyi ku mushoferi w'iyo modoka waguye muri iyo mpanuka, zikaba zitarajuririwe, na 1.000.000 frw y'igihembo cya avoka n'ikurikiranarubanza, yose hamwe akaba 26.338.000 frw;

[31] Rutegetse CORAR Ltd na Mbonimpa Solange kwishyura buri wese icya ½ cy'amagarama y'uru rubanza, angana na 22.100 frw, ni ukuvuga 11.050 frw buri wese.

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[1] Abahanga mu mategeko basobanura ko kuvutswa amahirwe bitandukanye no kuvutswa inyungu nyakuri zari zitegerejwe, indishyi zitangwa iyo ari amahirwe umuntu yavukijwe zikaba zidashobora kungana n'izari gutangwa iyo haza kuba ari inyungu nyakuri yavukijwe. Ni byo Philippe Le Tourneau asobanura mu gitabo cye, Droit de la responsabilité et des contrats, 8ème edition, Dalloz, février 2010, p 1419-1420, aho agira ati: " La perte de chance implique toujours l'existence d'un aléa; c'est ce qui la distingue du strict gain manqué, dont l'obtention aurait été certaine si le fait dommageable n'était pas survenu. La réparation est donc en principe nécessairement inférieure à l'avantage que la victime escomptait retirer de l'événement en question".