HYDROBATEL Ltd v. KAREKEZI

[Rwanda URUKIKO RW'IKIRENGA – RCOMA 0007/13/CS (Mukanyundo, P.J., Rugabirwa na Gakwaya, J.) 6 Gashyantare 2015]

Amategeko agenga ubukemurampaka – Amasezerano y'ubutumwa bw'ubukemurampaka – Kongera amasezerano y'ubutumwa bw'ubukemurampaka mu buryo buteruye – Amasezerano y'ubutumwa bw'ubukemurampaka afatwa nk'aho yongerewe igihe mu buryo buteruye, iyo igihe yagombaga kumara cyarangiye ariko ababuranyi bagakomeza kwitabira imihango y'ubukemurampaka.

Amategeko agenga ubukemurampaka – Umwanzuro w'ubukemurampaka – Ivanwaho ry'umwanzuro w'abakemurampaka – Umwe mu biyambaje ubukemurampaka wirengagije uburenganzira bwe bwo kugaragaza ibyo atemera mu mwanzuro w'ubukemurampaka ntiyasaba ivanwaho ryawo – Itegeko no 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, ingingo ya 6.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Indishyi z'akababaro – Gushorwa mu manza ku maherere – Umuburanyi usabye indishyi z'akababaro zituruka ku gushorwa mu manza ku maherere ntazihabwa iyo Urukiko rusanze uzisabwa yari afite uburenganzira bwo kujurira – Itegeko n^{o} 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 162.

Incamake y'ikibazo: Karekezi, Katabarwa Andre na Katabarwa Aimé bashinze sosiyete yitwa bayita HYDROBATEL Ltd kandi bateganya mu ngingo ya 51 y'amategeko shingiro yayo ko mu gihe havutse ikibazo, kizakemurwa n'ubukemurampaka, bitashoboka, kizakemurwa n'Inkiko z'u Rwanda zibifitiye ububasha.

Karekezi yaje kwegura muri iyo sosiyeti kubera kutishimira imicungire yayo y'umutungo, maze aregera Inteko Nkemurampaka igizwe n'abakemurampaka batatu asaba ko yahabwa inyungu zikomoka ku migabane ye yashyize muri iyo sosiyete n'indishyi zinyuranye.

Kuwa 29/01/2013 ababuranyi bombi bagiranye inyandiko itanga ubutumwa, aho bahaye abakemurampaka igihe cy'iminsi 60 ngo bazabe barangije gufata umwanzuro wabo ku kibazo bafitanye.

Kuwa 10/04/2013, Inteko y'Abakemurampaka yafashe umwanzuro itegeka HYDROBATEL Ltd guha Karekezi 60.000.000Frw y'inyungu zikomoka ku migabane yashoye muri iyo sosiyete, 20.000.000Frw y'indishyi z'akababaro, 3.700.000Frw y'ubukemurampaka yatanze mbere, 1.850.000Frw y'ubukemurampaka yasigaye na 3.925.000Frw y'igihembo cya Avoka.

HYDROBATEL Ltd yajuririye uwo mwanzuro mu Rukiko Rukuru rw'Ubucuruzi isaba ko wavanwaho kuko wafashwe n'inteko nkemurampaka igihe cy'iminsi 60 yari yarahawe cyo kuwufata cyararenze ikaba isanga nta bubasha bari bagifite.

Mu gihe cy'iburanisha, Karekezi yatanze inzitizi yo kutakira ikirego ishingiye ku iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi avuga ko iyo ababuranyi batiyambaza ubukemurampaka, Urukiko rw'Ubucuruzi arirwo rwari rufite ububasha bwo kuburanisha urubanza rwabo. Yatanze kandi inzitizi yo kutakira ikirego cya HYDROBATEL Ltd kuko itigeze igaragariza Inteko Nkemurampaka ko igihe cy'iminsi 60 yagombaga gufatamo umwanzuro yari yarahawe cyari cyararenze.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko inzitizi y'iburabubasha yatanzwe na Karekezi nta shingiro ifite kuko arirwo rufite ububasha bwo kuburanisha urubanza rwaregewe. Rwemeje kandi ko ikirego cya HYDROBATEL Ltd kitakiriwe kuko igihe yaburanishwaga n'Inteko y'Abakemurampaka itigeze inenga ko igihe cy'iminsi 60 cy'ubutumwa bw'ubukemurampaka cyarenze.

HYDROBATEL Ltd yajuririye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kwakira ikirego cyayo kuko inenge zijyanye n'ubutumwa bw'ubukemurampaka zitavuzwe impitagihe.

Mu iburanisha, Karekezi yarongeye atanga inzitizi yo kutakira ikirego cya HYDROBATEL Ltd avuga ko Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo kuburanisha ubujurire bwayo, ko ahubwo bwari bufitwe n'Urukiko rw'Ubucuruzi kuko arirwo rwagombaga kuburanisha urwo rubanza iyo ababuranyi batiyambaza ubukemurampaka.

Urukiko rw'ikirenga rwemeje ko inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi yatanzwe na Karekezi nta shingiro ifite kuko urwo Rukiko arirwo rwari rufite ububasha bwo kuburanisha ubujurire bwa HYDROBATEL Ltd bwasabaga ivanwaho ry'umwanzuro wo kuwa 10/04/2013 wafashwe n'Inteko Nkemurampaka.

Mu iburanisha ry'urubanza mu mizi, Karekezi yatanze ubujurire bwuririye ku bundi asaba indishyi zo gushorwa mu manza ku maherere n'igihembo cya avoka. HYDROBATEL Ltd yavuze ko itazimuha ishingiye ko yazigenewe mu rubanza rwaciwe mu mizi, ko ariko urukiko rusanze rwazimugenera rushingiye ku mategeko agenga abavoka.

Incamake y'icyemezo: 1. Umuburanyi wiyambaje ubukemurampaka ntiyasaba urukiko ivanwaho ry'umwanzuro bwafashe kandi yaritabiriye iburanisha kenshi ndetse akanasinya inyandiko-mvugo zaryo n'iz'isomwa ry'icyemezo ntagire icyo azinenga.

2. Umuburanyi witabiriye imihango y'ubukemurampaka akanasinya inyandiko-mvugo zirimo iz'isomwa ry'icyemezo, ntiyahindukira ngo avuge ko icyemezo cyafashwe cyarengeje igihe kuko ukwicecekera kwe gufatwa nk'aho igihe cy'ubutumwa cyongerewe mu buryo buteruye.

3. Umuburanyi usabye indishyi z'akababaro zituruka ku gushorwa mu manza ku maherere ntazihabwa iyo Urukiko rusanze uzisabwa yari afite uburenganzira bwo kujurira.

Ubujurire nta shingiro bufite.
Umwanzuro wafashwe n'nteko y'abakemurampaka ugumyeho.
Amagarama aherereye ku wajuriye.

Amategeko yashingiweho:

Itegeko n° 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi , ingingo ya 6.

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 162.

Nta manza zifashishijwe.

Inyandiko z'abahanga zakoreshejwe:

Philipe DE Bournoville, <u>Droit Judiciaire-L'Arbitrage</u>, Larcier, 2000, p.183.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Karekezi François Xavier afatanyije na Katabarwa André, Katabarwa Aimé na Kalisa Evariste bashinze Sosiyete yitwa HYDROBATEL Sarl yahindutse HYDROBATEL Ltd ifite imari-shingiro ingana na 5.000.000Frw ahwanye n'imigabane 100, ni ukuvuga ko buri wese yatanze 50.000Frw y'umugabane we. Mu ngingo ya 51 ya Sitati y'iyo Sosiyete hateganyijwe ko mu gihe havutse ikibazo muri Sosiyete kizakemurwa n'Umukemurampaka umwe cyangwa benshi bumvikanyweho n'impande zose, bitashoboka, kigakemurwa n'Inkiko z'u Rwanda zibifitiye ububasha.

[2] Karekezi François Xavier avuga ko yeguye muri iyo sosiyete kubera ko imicungire yayo itari myiza, maze hakurikijwe ibiteganywa n'ingingo ya 51 ya Sitati ya HYDROBATEL Ltd yavuzwe haruguru, aregera Inteko Nkemurampaka igizwe n'Abacamanza batatu (3) asaba ko yahabwa inyungu zikomoka ku migabane ye yatanze muri iyo sosiyete hamwe n'indishyi zinyuranye.

[3] Kuwa 29/01/2013, ababuranyi b'impande zombi bagiranye inyandiko itanga ubutumwa (Acte de mission), aho bahaye Abakemurampaka igihe cy'iminsi 60 kugira ngo bazabe barangije gufata umwanzuro wabo ku kibazo bashyikirijwe.

[4] Kuwa 10/04/2013, Inteko y'Abakemurampaka yafashe umwanzuro wayo, itegeka HYDROBATEL Ltd ihagarariwe na Katabarwa André guha Karekezi François Xavier 60.000.000Frw y'inyungu (dividendes) zikomoka ku migabane ye yashoye muri iyo sosiyete, 20.000.000Frw y'indishyi z'akababaro, 3.700.000Frw y'ubukemurampaka yatanze mbere, 1.850.000Frw y'ubukemurampaka yasigaye na 3.925.000Frw y'igihembo cya Avoka.

[5] HYDROBATEL Ltd yajuririye uwo mwanzuro mu Rukiko Rukuru rw'Ubucuruzi isaba ko wavanwaho kubera ko wafashwe n'Inteko Nkemurampaka itakibifitiye ububasha kuko igihe cy'iminsi 60 yari yarahawe cyo kuwufata cyari cyararenze.

[6] Iburanisha ry'urubanza ritangiye, Karekezi François Xavier yatanze inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi bwo kuburanisha urwo rubanza kubera ko bufitwe n'Urukiko rw'Ubucuruzi kuko arirwo rwagombaga kuruburanisha iyo ababuranyi batiyambaza Ubukemurampaka. Karekezi François Xavier yatanze kandi inzitizi igamije kutakira ikirego cya HYDROBATEL Ltd kubera ko yagitanze impitagihe bitewe n'uko yagitanze muri urwo Rukiko, nyamara itarigeze igaragariza Inteko Nkemurampaka igihe cy'iburanisha, ko yafashe umwanzuro wayo igihe cy'iminsi 60 yari yarahawe cyo kuwufata cyari cyararenze.

[7] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, rwemeza ko inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi yatanzwe na Karekezi François Xavier nta shingiro ifite kubera ko urwo Rukiko arirwo rufite ububasha bwo kuburanisha urwo rubanza hashingiwe ku ngingo ya 13, igika cya 4 y'Itegeko Ngenga n° 06/2012/OL ryo kuwa 14/09/2012 rigena imiterere, imikorere n'ububasha by'Inkiko z'Ubucuruzi, iteganya ko "Urukiko Rukuru rw'Ubucuruzi rufite ububasha bwo kuburanisha mu rwego rw'ubujurire ibyemezo byafashwe n'Abakemurampaka".

[8] Urukiko Rukuru rw'Ubucuruzi rwemeje kandi ko ikirego cya HYDROBATEL Ltd kitakiriwe kubera ko cyatanzwe impitagihe kubera ko igihe yaburanaga, itigize igaragariza Inteko Nkemurampaka ko yasomye umwanzuro wayo kuwa 10/04/2013, igihe cy'iminsi 60 yari yarahawe cyo kuwufata mu nyandiko itanga ubutumwa cyari cyararenze.

[9] HYDROBATEL Ltd yajuririye urwo rubanza mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kwakira ikirego cyayo kuko kitatanzwe impitagihe.

[10] Iburanisha ry'urubanza ritangiye, Karekezi François Xavier yatanze inzitizi igamije kutakira ubujurire bwa HYDROBATEL Ltd kubera ko Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo kuburanisha ubujurire bwayo busaba ivanwaho ry'umwanzuro wafashwe n'Inteko Nkemurampaka, ko ahubwo ubwo bubasha bufitwe n'Urukiko rw'Ubucuruzi kuko arirwo rwagombaga kuburanisha urwo rubanza iyo ababuranyi batiyambaza Ubukemurampaka.

[11] Nyuma y'iburanisha ry'urubanza kuri iyo nzitizi, Urukiko rw'Ikirenga rwafashe icyemezo kuwa 24/10/2014, rwemeza ko inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi yatanzwe na Karekezi François Xavier nta shingiro ifite kubera ko urwo Rukiko arirwo rwari rufite ububasha bwo kuburanisha ubujurire bwatanzwe na HYDROBATEL Ltd busaba ivanwaho ry'umwanzuro wo kuwa 10/04/2013 wafashwe n'Inteko Nkemurampaka, rutegeka ko iburanisha ry'urubanza mu mizi rizaba kuwa 16/12/2014.

[12] Kuri iyo tariki, urubanza rwaburanishijwe mu mizi, HYDROBATEL Ltd ihagarariwe na Me Rusanganwa Jean Bosco, naho Karekezi François Xavier yunganiwe na Me Mucyo Donatien.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

1. Kumenya niba Umwanzuro w'Abakemurampaka wateshwa agaciro kubera ko wafashwe igihe cy'ubutumwa cyararangiye

[13] Me Rusanganwa Jean Bosco uburanira HYDROBATEL Ltd avuga ko Urukiko rwemeje ko ikirego cyayo kitakiriwe kubera ko cyatanzwe impitagihe ngo kuko itagaragarije Abakemurampaka ko amasezerano (Acte de mission) yo kuwa 29/01/2013 yabahaga ububasha yari yararangiye kuwa 25/03/2013, rwirengagije ko itashoboraga kubigaragariza Abakemurampaka igihe cy'iburanisha bitewe n'uko icyo gihe ayo masezerano yari agifite agaciro, ariko ko igihe bafataga umwanzuro wabo kuwa 10/04/2013, ayo masezerano yari yarataye agaciro kubera ko yarangiye kuwa 25/03/2013.

[14] Asobanura ko urubanza rwaburanishijwe bwa nyuma kuwa 13/03/2013, Urukiko Nkemurampaka rumenyesha ababuranyi ko urubanza ruzasomwa kuwa 03/04/2013, uwo munsi ugeze, HYDROBATEL Ltd iritaba, ariko ntirwasomwa kubera ko umwe mu Bakemurampaka atari yitabye, maze hakorwa inyandiko-mvugo yimurira isomwa ryarwo kuwa 08/04/2013, irayisinya, uyu munsi ugeze, nabwo ntirwasomwa kandi ntihakorwa inyandiko-mvugo yimurira isomwa ryarwo kuwa 10/04/2013, ahubwo yamenyeshweje iyi tariki kuri telefoni gusa, iyi tariki igeze urubanza rurasomwa. Asaba ko umwanzuro wafashwe n'Abakemurampaka kuwa 10/04/2013 wavanwaho kuko wafashwe n'Abakemurampaka batagifite ububasha bitewe n'uko amasezerano (Acte de mission) yo

kuwa 29/01/2013 yabubahaga yari yararangiye kuwa 25/03/2013, ko kandi ayo masezerano atigeze yongerwa kuko itariki y'isomwa ry'urubanza yo kuwa 10/04/2013 itigeze yumvikanywaho n'ababuranyi b'impande zombi.

[15] Urukiko rwabajije Me Rusanganwa Jean Bosco impamvu yatumye HYDROBATEL Ltd itamenyesha Abakemurampaka igihe cy'iburanisha cyangwa icy'isubikwa ry'urubanza ko amasezerano y'ubutumwa (Acte de mission) yarangiye kuwa 25/03/2013, asubiza ko byatewe n'uko itari yaratahuye ivuguruzanya (contradiction) riri muri ayo masezerano ku byerekeranye n'igihe cy'iminsi 60, ubutumwa bwagombaga kumara n'igihe cy'iminsi 30 yari igenewe isomwa ry'urubanza, ariko ko HYDROBATEL Ltd yajurijwe n'uko Abakemurampaka bafashe umwanzuro wabo kuwa 10/04/2013, ayo masezerano atagifite agaciro kuko atigeze yongererwa igihe.

[16] Yongeraho ko kuba Abakemurampaka barirengagije ibikubiye mu masezerano y'ubutumwa (Acte de mission) yavuzwe haruguru ku bijyanye n'igihe bagombaga gukoreramo akazi kabo no gufata icyemezo, bigaragara ko batubahirije ingingo ya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2001 rigenga amasezerano, iteganya ko amasezerano akozwe mu buryo bukurikije amategeko, aba itegeko ku bayagiranye, ko agomba kubahirizwa nta buriganya.

[17] Me Mucyo Donatien, uburanira Karekezi François Xavier, avuga ko ku bw'ibanze (A titre principal), asanga igihe Urukiko Nkemurampaka rwafataga icyemezo cyarwo kuwa 10/04/2013, rwari rubifitiye ububasha kubera ko iminsi 60 rwari rwarahawe n'ababuranyi kugira ngo rufate umwanzuro warwo yari itararangira kuko rwakoresheje iminsi 54 gusa kubera ko mu kubara iminsi 60 rwari rwarahawe hagomba kuvanwamo iminsi y'ikiruhuko yemewe n'amategeko nk'uko biteganywa n'ingingo ya 369 na 370 z'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, uretse ko iyo umunsi wa nyuma ubaye uw'ikiruhuko aribwo wongerwaho, ko kandi Urukiko rutakwirengagiza ko mu masezerano y'ubutumwa (Acte de mission) yavuzwe haruguru hateganyijwe ko iminsi 60 yashoboraga kongerwa ariko ntirenge igihe giteganywa n'Itegeko ryerekeye Ubukemurampaka.

[18] Avuga kandi ko "à titre subsidiaire", mu gihe Urukiko rwasanga iminsi 60 y'Ubukemurampaka yararenze n'ubwo atariko Karekezi François Xavier abibona, rwakwemeza ko icyo gihe cyongerewe biturutse ku bwumvikane bw'impande zombi kubera ko HYDROBATEL Ltd yitabiraga isubikwa ry'iburanisha ry'urubanza ryaterwaga ahanini n'uko itabaga yatanze ibimenyetso yasabwaga, ko kandi yagiye initabira isubikwa ry'isomwa ry'urubanza ryabaga ryemeranyijwe n'impade zombi ryabaye kuwa 03/04/2013, 08/04/2013 no kuwa 10/04/2013, ikanarisinyira, ko rero itakwitwaza ko urubanza rwasomwe kuwa 10/04/2013 amasezeramo y'Ubukemurampaka atagifite agaciro kuko itigeze ibigaragariza Abakemurampaka muri icyo gihe cyose.

[19] Asobanura ko urubanza rwaburanishijwe kuwa 13/03/2013, Urukiko Nkemurampaka rumenyesha ababuranyi ko urubanza ruzasomwa kuwa 03/04/2013, impande zombi zitaha ziyisinyiye, iyi tariki igeze, isomwa ry'urubanza ryimurirwa kuwa 08/04/2013, uyu munsi ugeze nabwo ntirwasomwa bitewe n'uko wahuriranye n'ikiruhuko gitunguranye kijyanye n'icyunamo cyo kwibuka abazize Jenoside yakorewe Abatutsi bituma isomwa ryarwo ryimurirwa kuwa 10/04/2013 ariko ababuranyi b'impande zombi babimenyeshwa kuri telefoni, uyu munsi ugeze, urubanza rusomwa ababuranyi bose bahari, ko rero asanga umwanzuro wafashwe n'Inteko y'Abakemurampaka kuwa 10/04/2013 utateshwa agaciro kubera ko amasezerano y'ubutumwa yari agifite agaciro.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 6 y'Itegeko n°005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, iteganya ko "Umwe mu biyambaje ubukemurampaka uzi neza ko hari ingingo muri iri tegeko abiyambaje ubukemurampaka bashobora kwirengagiza, cyangwa se ko hari ibisabwa n'amasezerano y'ubukemurampaka byirengagijwe, ariko we agakomeza ubukemurampaka atagaragaje ibyo anenga hatabayeho gukererwa cyangwa niba hari igihe ntarengwa cyateganyijwe akabigaragaza muri icyo gihe, ubwo afatwa nk'uwaretse uburenganzira bwe bwo kugaragaza ibyo atemera mu bukemurampaka".

[21] Ku birebana n'uru rubanza, Urukiko rurasanga ubujurire bwa HYDROBATEL Ltd bugamije gusaba kuvanaho umwanzuro wafashwe n'Inteko y'Abakemurampaka tariki ya 10/04/2013 kubera ko wafashwe mu buryo bunyuranyije n'amategeko bitewe n'uko wafashwe amasezerano y'Ubutumwa (Acte de mission) yo kuwa 29/01/2013 atagifite agaciro kubera ko yarangiye kuwa 25/03/2013.

[22] Ingingo ya 6 y'amasezerano y'ubutumwa (Acte de mission) Karekezi François Xavier yagiranye HYDROBATEL Ltd iteganya ko Urukiko Nkemurampaka ruhawe iminsi mirongo itandatu (60) itangira kubarwa guhera kuwa 24/01/2013 kugira ngo ruzabe rwarangije imirimo yarwo, ko kandi umwanzuro wabo uzafatwa mu gihe cy'iminsi 30 itangira kubarwa guhera igihe ayo masezeramo azatangira gukurikizwa kuwa 29/01/2013, ariko ko icyo gihe gishobora kongerwa ariko ntikirenze igihe giteganywa n'Itegeko ryerekeye Ubukemurampaka.

[23] Inyandiko mvugo ziri muri dosiye zigaragaza ko iburanisha ry'urubanza rishojwe kuwa 13/3/2013, Urukiko Nkemurampaka rwamenyesheje ababuranyi b'impande zombi ko urubanza ruzasomwa kuwa 03/04/20013, bataha basinyiye iyo tariki, iyi tariki igeze, ababuranyi bose baritabye, ariko Urukiko rubamenyesha ko isomwa ry'urubanza ryimuriwe kuwa 08/04/2013 kubera ko hari Umukemurampaka utabonetse, ababuranyi b'impande zombi barayisinyira, iyi tariki igeze nta nyandiko-mvugo y'iyimurwa ry'isomwa ry'urubanza iri muri dosiye, ariko ababuranyi b'impande zombi bavuze igihe cy'iburanisha ko bamenyeshejwe kuri telefoni ko urubanza rutari busomwe, ko ahubwo ruzasomwa kuwa 10/04/2013, iyi tariki igeze, urubanza rwasomwe hari ababuranyi b'impande zombi, HYDROBATEL Ltd ihagarariwe na Katabarwa André hari kandi na Karekezi François Xavier, ndetse ababuranyi bombi batashye basinyiye ko basomewe umwanzuro warwo, nyamara ntacyo HYDROBATEL Ltd yigeze yandika ku nyandiko-mvugo y'isomwa ry'urubanza igira icyo inenga uwo mwanzuro nk'uko bigaragazwa n'inyandiko-mvugo y'isomwa ryarwo iri muri dosiye.

[24] Hakurikijwe ibimaze kuvugwa haruguru, Urukiko rurasanga kuba HYDROBATEL Ltd yarakomeje kwitabira imihango y'Ubukemurampaka harimo n'iy'isomwa ry'urubanza ryagiye ryimurirwa ku matariki atandukanye ikanasinya ku nyandiko-mvugo, kandi ivuga ko igihe cy'ubutumwa cyari cyararangiye, ntigire icyo ibivugaho, uko guceceka kwayo kugaragaraza ko yari yemeye mu buryo buteruye (tacite) ko igihe cy'ubutumwa cyongerewe (prorogation tacite), bityo ingingo y'ubujurire ya HYDROBATEL Ltd isaba ko umwanzuro wafashwe n'Inteko y'Abakemurampaka tariki ya 10/04/2013 wateshwa agaciro ikaba nta shingiro ifite.

[25] Ibyo bihuje kandi n'ibisobanuro by'abahanga mu mategeko arebana n'Ubukemurampaka barimo Philipe DE Bournoville mu gitabo cye yise "Droit Judiciaire-L'arbitrage"1, aho yasobanuye ko igihe cyateganyijwe mu masezerano y'Ubutumwa (Acte de mission) gishobora kongerwa n'ababuranyi mu buryo bweruye (exprès) cyangwa buteruye (tacite), ko kandi umucamanza uburanisha urubanza mu mizi ariwe ufite ububasha bwo kubyemeza mu bushishozi bwe bitewe n'imiterere ya buri dosiye yashyikirijwe. Akomeza asobanura ko imanza zaciwe n'Inkiko (Jurisprundences) zigaragaza ko igihe cyari giteganyijwe mu masezerano y'Ubutumwa (Acte de mission) cyongerewe n'ababuranyi bose, iyo icyo gihe cyarangiye, ariko bagakomeza kwitabira imihango y'Ubukemurampaka bakanakora nyuma y'aho ibikorwa bigaragara mu buryo budashidikanywaho.

[26] Hashingiwe ku mategeko n'ibisobanuro by'abahanga byavuzwe haruguru, Urukiko rurasanga ubujurire bwa HYDROBATEL Ltd nta shingiro bufite.

2. Kumenya niba ubujurire bwuririye ku bundi bwatanzwe na Karekezi François Xavier bufite ishingiro

[27] Me Mucyo Donatien avuga ko Karekezi François Xavier yunganira atanze ubujurire bwuririye ku bundi asaba ko HYDROBATEL Ltd yamuha 10.000.000Frw y'indishyi z'akababaro z'uko yamushoye mu manza ku maherere na 500.000 Frw y'igihembo cya avoka, yose hamwe akaba 10.500.000Frw.

[28] Me Rusanganwa Jean Bosco uburanira HYDROBATEL Ltd avuga ko itaha Karekezi François Xavier indishyi asaba kubera ko yazigenewe mu rubanza rwaciwe mu mizi, ariko ko mu gihe Urukiko rwasanga Avoka wamuburaniye akwiye guhabwa amafaranga y'igihembo cya avoka, rwayamugenera ruhereye ku byo amategeko agenga ba Avoka abateganyiriza.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 162 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Umuntu wese wabaye umuburanyi mu rubanza ku rwego rwa mbere ashobora kurujuririra iyo abifitemo inyungu, keretse iyo amategeko abigena ukundi".

[30] Hakurikijwe ibiteganywa n'iyo ngingo, Urukiko rurasanga HYDROBATEL Ltd itaha Karekezi François Xavier indishyi z'akababaro asaba kuko itamushoye mu rubanza ku maherere nk'uko abivuga kuko ari uburenganzira bwayo bwo kujuririra imikirize y'urubanza itishimiye.

[31] Urukiko rurasanga rero HYDROBATEL Ltd igomba Karekezi François Xavier 500.000Frw y'igihembo cya avoka kuko byabaye ngombwa ko ashaka umwunganira kuri uru rwego hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'amategeko y'imbonezamubano,

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[1] Philipe DE Bournoville, Droit Judiciaire-L'Arbitrage, Larcier, 2000, p.183, yasobanuye ko "Les parties peuvent proroger, soit expressément, soit tacitement, le délai fixé dans la convention d'arbitrage, leur accord dit être exempt de toute ambiguïté et bannir toute imprécision quant au nouveau délai. Il appartient au juge de fond, sur base des faits qu'il constate, d'apprécier souverainement s'il ya prorogation tacite du délai. La jurisprudence induit généralement une prorogation du délai de la participation de toutes les parties à l'instance, se traduisant par des actes positifs et sans équivoques, sans protestation ni réserve. Il en est ainsi si les parties assistent librement à une phase de l'arbitrage après expiration de délai initialement convenu".

iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ubujurire bwa HYDROBATEL Ltd nta shingiro bufite;

[33] Rutegetse HYDROBATEL Ltd guha Karekezi François Xavier 500.000Frw y'igihembo cya avoka;

[34] Rwemeje kandi rutegetse ko umwanzuro wafashwe n'Inteko y'Abakemurampaka tariki ya 10/04/2013 ugumyeho;

[35] Rutegetse HYDROBATEL Ltd gutanga amagarama y'uru rubanza angana na 100.000Frw.