

## COGEBANQUE LTD v. GAHITIRA

[Rwanda URUKIKO RW'IKIRENGA – RCOM 009/15/CS (Mukanyundo, P.J., Ngagi na Rugabirwa, J.) 31 Nyakanga 2015]

*Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Igihano gihatira kurangiza urubanza – Amananiza mu kurangiza urubanza – Mu gihe Noteri ariwe wemerewe kwemeza ko inyandiko mpeshabubasha (procuration)yo gukora mu izina ry'undi muntu ari ukuri, kuba banki nk'umunyamwuga yakwanga gutanga ibyangombwa by'inzu igasaba Avoka inyandiko mpeshabubasha iriho umukono wa Noteri naho umuhesha w'inkiko ikamusaba amasezerano yanditse ateganywa n'amategeko, ntibyafatwa nk'amananiza. Bityo igihano gihatira kurangiza urubanza kigomba kuvaho – Itegeko N°13 bis 2014 ryo kuwa 21/05/2014 rigena umurimo wa Noteri w'umwuga, ingingo ya 52 – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 220.*

**Incamake y'ikibazo:** COGEBANQUE Ltd yahaye sosiyete yitwa DALBIT PETROLEUM inguzanyo. Iyi inanirwa kwishyura iyo nguzanyo bituma COGEBANQUE Ltd ifatira ingwate y'inzu ya Gahitira Cyusa Richard wari utaruzuzwa imyaka y'ubukure kubera ko iyi ngwate yatanzwe na se w'umwana watanze ikirego mu izina ry'umwana we, asaba ko ingwate yateshwa agaciro. Urukiko rwemeza ko amasezerano y'ingwate ateshejwe agaciro kubera ko hagwaturijwe inzu y'umwana muto nta burenganzira bw'urukiko bahawe. Impaka zavutse hagati y'abaturanyi kubijyanye n'ugomba gusubizwa ibyangombwa by'inzu byari bigifitwe na banki. Se w'umwana avuga ko ariwe ugomba guhabwa ibyangombwa by'inzu, COGEBANQUE Ltd yo ikavuga ko bigomba guhabwa DALBIT PETROLEUM kubera ko ariyo yahawe umwenda. Urukiko rw'Ikirenga rwemeza ko ari se w'umwana ugomba gusubizwa ibyangombwa kandi ko itabikoze mu minsi 30 izacibwa ibihano bihatira kwishyura bingana na 50.000Frw ku munsu.

Uwaburaniraga Gahitira ariwe se w'umwana yakomeje gusaba ibyangombwa by'inzu banki, iyi nayo ikamusaba procuration iriho umukono wa noteri cyangwa andi masezerano yanditse bagiranye na Gahitira kubera ko banki yari ifite amakuru ko umuryango wa Gahitira wose usigaye uba iburayi. Umuhesha w'inkiko Kanyana Bibiane nawe yakoze icyemezo gihatira banki gutanga icyangombwa cy'ubutaka no kwishyura 12.000.000Frw yakomotse ku gutinda kurangiza urubanza. Yafatiriye ndetse n'imodoka ya banki kugirango itezwe cyamunara ivemo amafaranga y'ubwishyu. COGEBANQUE Ltd nayo yahise itanga ikirego cyihutirwa mu Rukiko rw'Ikirenga isaba gukurirwaho igihano gihatira kurangiza urubanza. Uburanira Gahitira nawe atanga inzitizi isaba kutakira ikirego cya banki kubera ko ikirego cyihutirwa gitangwa mu rukiko rwaregewe ikirego cy'iremezo kitaraburanishwa. Urukiko rwemeza ko inzitizi nta shingiro ifite maze iburanisha mu mizi rirakomeza.

Uhagarariye Gahitira avuga ko banki ariyo yashyizeho amananiza isaba inyandiko mpeshabubasha biba ngombwa ko biyambaza umuhesha w'inkiko kugirango banki itange ibyangombwa kugahato kubera ko nta tegeko risaba umuhesha w'inkiko kwitwaza inyandiko mpeshabubasha mu irangizarubanza.

**Incamake y'icyemezo:** 1. Kuba Banki nk'umunyamwuga yaranze gutanga ibyangombwa by'inzu igasaba avoka inyandiko mpeshabubasha iriho umukono wa noteri naho umuhesha w'inkiko ikamusaba amasezerano yanditse ateganywa n'amategeko, ntibyafatwa nk'amananiza. Bityo ikirego cya banki kigamije kvanaho igihano gihatira kurangiza

urubanza gifite ishingiro kubera ko itanze kururangiza, n'amafaranga yishyuzwa banki y'igihano gihatira kurangiza urubanza akaba agomba kuvaho.

**Ikirego cyihutirwa gifite ishingiro.  
Igihano gihatira kurangiza urubanza kivanyweho.  
Amagarama y'urubanza aherereye ku warezwe.**

**Amategeko yashingiweho:**

Itegeko N°13 bis 2014 ryo kuwa 21/05/2014 rigena umurimo wa Noteri w'umwuga, ingingo ya 52.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 220.

**Nta manza zifashishijwe.**

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] COGEBANQUE Ltd yahaye Sosiyete DALBIT PETROLEUM inguzanyo. DALBIT PETROLEUM yananiwe kwishyura iyi nguzanyo, bituma COGEBANQUE Ltd ifatira ingwate y'inzu iri Nyarutarama ya Gahitira Cyusa Richard wari utaruzuzwa imyaka y'ubukure. Iyi ngwate yari yatanze na se Gahitira Bishumba Raymond waje no gutanga ikirego mu izina ry'uyu mwana we cyo gutesha agaciro icyo ngwate.

[2] Urwo rubanza rwo gutesha agaciro ingwate rwarangiriye mu Rukiko rw'Ikirenga kuwa 13/09/2013, kuri N° RCOMA0121/11/CS hemezwa ko amasezerano y'ubugwate ateshejwe agaciro kuko Gahitira Bishumba Raymond yagwatirije inzu y'umwana we muto kandi atabihereye uburenganzira n'Urukiko.

[3] Nyuma y'urwo rubanza havutse impaka hagati y'ababuranyi ku bijyanye n'ugomba gusubizwa ibyangombwa by'inzu byari bifitwe na COGEBANQUE Ltd. Gahitira Bishumba Raymond avuga ko ariwe ugomba kubibwira nka se w'umwana, COGEBANQUE Ltd yo ikavugaga ko bigomba gusubizwa DALBIT PETROLEUM, kuko ariyo yari yarahawe umwenda.

[4] Gahitira Cyusa Richard uhagarariye na se yatanze ikirego mu Rukiko rw'Ikirenga kigamije gukemura izo mpaka. Uru Rukiko rwemeza mu rubanza RCOMA0004/14/CS-RCOMA0121/11/CS ko Gahitira Bishumba Raymond nka se w'umwana ariwe ugomba guhabwa ibyo byangombwa by'inzu yari yatanze ingwate hishingirwa umwenda wahawe DALBIT PETROLEUM. Rutegeka kandi ko COGEBANQUE Ltd iramutse itabikoze mu gihe cy'iminsi 30 guhera isomwa ry'urubanza, izacibwa igihano gihatira kurangiza urubanza cya 50.000Frw ku muni.

[5] COGEBANQUE Ltd ivugaga ko Me Mutembe Protais waburaniraga Gahitira Cyusa Richard yayisabye kumuha ibyo byangombwa nayo imusaba "*procuration*" iriho umukono wa Noteri cyane ko yari ifite amakuru ko Gahitira n'umuryango we basigaye baba i Burayi, ariko Me Mutembe ntiyayitanga. Nyuma ngo Umuhesha w'Inkiko w'umwuga Kanyana Bibiane nawe yaje gusaba icyo cyangombwa ariko Banki imusaba "*procuration*" iriho

umukono wa Noteri cyangwa amasezerano yanditse yaba yaragiranye na Gahitira Bishumba Raymond.

[6] Nyuma, Umuhesha w'Inkiko w'umwuga Kanyana Bibiane yakoze icyemezo gihatira kwishyura kibanziriza ifatira-bwishyu, muri icyo cyemezo akaba yarahatiraga COGEBANQUE Ltd kwishyura 12.000.000Frw zabazwe hashingiwe ku rubanza RCOMA0004/14/C- RCOMA0121/11/CS no gusubiza Gahitira Raymond ibyangombwa by'inzu. Yaje no gufatira imodoka ya COGEBANQUE Ltd yo mu bwoko bwa Ford ifite plaque N° RAB 779 V kugira ngo itezwe cyamunara ivemo amafaranga ahatira COGEBANQUE Ltd kwishyura ahwanye na 12.000.000Frw. Iyo cyamunara y'iyi modoka yari iteganyijwe kuwa 21/07/2015.

[7] COGEBANQUE Ltd yatanze ikirego cyihutirwa mu Rukiko rw'Ikirenga isaba ko havanwaho igihano gihatira kurangiza urubanza (*astreinte*) cyatanzwe mu rubanza RCOMA0004/14/CS - RCOMA0121/11/CS kubera ko itanze kurangiza urubanza, ko ahubwo yashyizweho amananiza yatumye itabasha kururangiza.

[8] Urubanza rwaburanishijwe mu ruhamwe kuwa 28/07/2015, COGEBANQUE Ltd iburanirwa na Me Kayitare Serge, Gahitira Cyusa Richard ahagaririwe na Me Mutembe Protais.

[9] Me Mutembe Protais, ashingiyeye ku ngingo ya 316 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, yatanze inzitizi yo kutakira ikirego cyatanzwe na COGEBANQUE Ltd avuga ko ikirego cyihutirwa gitangwa mu rukiko rwaregewe ikindi kirego cy'iremezo kitaraburanishwa, ko rero iki kirego kidakwiye kwakirwa.

[10] Me Kayitare Serge avuga ko ingingo ya 220 y'Itegeko N°21/2012 ryavuzwe haruguru iteganywa ko bisabwe n'uwahawe igihano gihatira kurangiza urubanza, urukiko rushobora, ruregewe mu buryo bw'ikirego cyihutirwa, kukivanaho, kugihagarika by'agateganyo mu gihe rugennye cyangwa kukigabanya, iyo uwagihawe atagishoboye burundu cyangwa se mu gihe iki n'iki kubahiriza imikirize y'urubanza rw'ibanze, atagishoboye kuyubahiriza yose cyangwa igice cyayo. Bityo akaba abona nta mpamvu iki kirego cyihutirwa kitakwagirwa n'Urukiko bitewe n'imiterere yacyo.

[11] Nyuma yo kwihereza, Urukiko rushingiyeye ku ngingo ya 220 y'Itegeko N°21/2012 ryavuzwe haruguru, rurasanga inzitizi yatanzwe na Me Mutembe Protais nta shingiro ifite, maze iburanisha mu mizi rirakomeza.

## **II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO**

**Kumenya niba igihano gihatira kurangiza urubanza COGEBANQUE Ltd yategetsewe gikwiye kuvanwaho.**

[12] Me Kayitare Serge avuga ko COGEBANQUE Ltd itigeze yanga gutanga "*titre de propriété*", ko ahubwo yasabye Me Mutembe kuyizanira "*procuration*" iriho umukono wa Noteri ahawe na Gahitira Bishumba Raymond cyangwa se yatanzwe na *Ambassade*, nkuko biteganywa n'ingingo ya 52 y'Itegeko N°13 bis 2014 ryo kuwa 21/05/2014 rigena umurimo wa Noteri w'umwuga. Avuga ko ntayo Me Mutembe yigeze yerekana. Nyuma y'aho haje umuhesha w'inkiko Kanyana Bibiane nawe COGEBANQUE imubaza iyo "*procuration*"

cyangwa amasezerano yaba yaragiranye na Gahitira Bishumba Raymond, nawe ntiyabizana. icyakurikiyeho nuko kuwa 11/5/2015, Kanyana yakoze icyemezo gihatira kwishyura kibanziriza ifatira-bwishyu, muri icyo cyemezo akaba yarahatiraga COGEBANQUE Ltd kwishyura 12.000.000Frw, y'igihano gihatira kurangiza urubanza no gusubiza Gahitira B. Raymond ibyangombwa by'inzu. Ku itariki ya 10/7/2015, Kanyana Bibiane yafatiriyeye imodoka ya COGEBANQUE Ltd yo mu bwoko bwa FORD ifite plaque RAB 779 V kugira ngo itezwe cyamunara ivemo amafaranga yavuzwe haruguru. Me Kayitare Serge avuga ko atabona aho gufatira imodoka bihuriye na "*titre de propriété*". Yibaza impamvu Me Mutembe na Kanyana batubahiriza ibyo amategeko ateganya nyuma ngo babone guhabwa ibyo bifuzwa. Asanga babikora nkana kugira ngo icyo gihano gikomeze kwiyongera. Ari yo mpamvu COGEBANQUE Ltd isaba ko iki gihano kivanywaho kuko itigeze yanga kurangiza urubanza, ahubwo yananjwe nk'uko byasobanuwe.

[13] Me Kayitare Serge akomeza avuga ko kuva urubanza rwasomwa kuwa 06/08/2014 irangiza rubanza ryakozwe na Me Mutembe Protais, naho Umuhesha w'Inkiko Kanyana Bibiane, Banki yamubonye igihe yazanaga ibaruwa ye itegeka "*astreinte*" mu kwezi kwa gatanu 2015. Asobanura ko Kanyana Bibiane yaje asaba amafaranga, aho kuza asaba ibyangombwa by'inzu ya Gahitira Cyusa Richard; COGEBANQUE Ltd imubajije amasezerano yanditse yagiranye na Gahitira Bishumba Raymond ntiyayatanga, imusubiza ko yazazana ayo masezerano, ikazamuha ibyangombwa by'inzu.

[14] Me Kayitare Serge asoza avuga ko Banki itigeze yanga gutanga ibyo yasabwe ahubwo yagiye ishyirwaho amananza. Akomeza avuga ko Gahitira Bishumba Raymond aramutse yiyiziyeye cyangwa agatanga "*procuration*" iriho umukono wa Noteri, yahabwa ibyo byangombwa nta mananza. Asaba uru Rukiko gukuraho iki gihano cya "*astreinte*" cyangwa kukigabanya kuko nabyo biteganywa n'ingingo ya 220 y'Itegeko N°21/2012 ryavuzwe haruguru.

[15] Me Mutembe Protais avuga ko COGEBANQUE Ltd ariyo yashyize amananza kuri Gahitira Bishumba Raymond imusaba "*procuration*" iriho umukono wa Noteri. Akomeza avuga ko kuba Banki yari yanze gutanga ibyo byangombwa by'inzu ku bwende, byabaye ngombwa ko Gahitira Bishumba Raymond yiyambaza Umuhesha w'Inkiko kugirango Banki ibitange ku gahato. Na none avuga ko Banki yagombaga guha Kanyana Bibiane ibyo byangombwa kuko nta tegeko risaba Umuhesha w'inkiko kwitwaza "*procuration*" mu irangiza rubanza.

[16] Me Mutembe Protais avuga ko kuba Kanyana Bibiane yaraje asaba amafaranga aho gusaba ibyangombwa by'inzu byatewe nuko Banki yabaruhije, babona binaniranye bagahitamo gukoresha inzira y'agahato.

## **UKO URUKIKO RUBIBONA**

[17] Ku bijyanye na "*procuration*" iriho umukono wa Noteri COGEBANQUE Ltd isaba, Me Mutembe Protais uhagaririyeye Gahitira Cyusa Richard, Ingingo ya 52, igika cya mbere y'Itegeko N°13bis/2014 ryo kuwa 21/05/2014 rigenga umurimo w'Ubunoteri ivuga ko Umunoteri ubifitiye ububasha yemerewe kwemeza ko inyandiko y'iheshabubasha yo gukora mu izina ry'undi muntu umwe cyangwa benshi yahawe umuntu umwe cyangwa benshi ari ukuri.

[18] Urukiko, rushingiye ku ngingo ya 52 ivuzwe haruguru, rusanga Noteri ariwe wemerewe kwemeza ko inyandiko y'iheshabubasha yo gukora mu izina ry'undi muntu ari ukuri. Nubwo ihame ari uko ubutumwa ari igikorwa gikomoka ku bwiemerere bwonyine bw'abagiranye amasezerano, ariko hashingiwe kuri kamere y'ubutumwa biba ngombwa ko umuntu utari muri ubwo butumwa asaba ko bwaba bufite umukono wa Noteri. Ibi ndetse bikaba bishimangirwa na Michel Beauchamp, umuhanga mu mategeko uvuga ko, kugira ngo harusheho kuba umutekano, ari uko inyandiko y'iheshabubasha yo gukora mu izina ry'undi muntu yakorerwa imbere ya Noteri. Ibyo biyihesha agaciro, kuko Noteri yemeza ko uwatanze ubutumwa yifuzza koko kugira inshingano aha intumwa, kandi ko niyo ntumwa yemeye izo nshingano<sup>1</sup>. Kuba COGEBANQUE Ltd yarashatse kumenya ukuri kw'inyandiko y'iheshabubasha Gahitira Bishumba Raymond yahaye Me Mutembe Protais, igasaba ko iyo nyandiko yemezwa na Noteri ntabwo byafatwa nk'amananiza yashyizweho na Banki. Urukiko rusanga Banki nk'umunyamwuga itari gutanga ibyangombwa by'inzu ishingiyeye kuri "procuration" itariho umukono wa Noteri kabone nubwo yaba izanywe na Avoka. Kuba Banki yaragize amakenga igasaba "procuration" iriho umukono wa Noteri ntabwo byafatwa nk'amananiza, cyane cyane ko na Me Mutembe Protais nta mpamvu atanga yatumye iyo "procuration" idashyikirizwa Banki.

[19] Ku bijyanye no kuba Banki yarashyize amananiza k'Umuhesha w'Inkiko w'umwuga Kanyana Bibiane, Urukiko rusanga nyuma y'icyemezo cy'Urukiko rw'Ikirenga mu rubanza N° RCOMA0004/14/CS - RCOMA0121/11/CS rwo kuwa 06/08/2014 kugeza tariki ya 09/03/2015, Kanyana Bibiane atarigeze yishyura COGEBANQUE Ltd; ko ku itariki ya 10/3/2015, ari bwo Kanyana Bibiane yashyikirije COGEBANQUE Ltd icyemezo gihatira kwishyura kibanziriza ifatira-bwishyu harangizwa urubanza rwavuzwe haruguru.

[20] Urukiko rusanga ku itariki ya 10/03/2015, COGEBANQUE Ltd yarashubije Kanyana ko itanze kurangiza urubanza, ko ahubwo, itegereje ko Me Mutembe Protais ayigezaho ibyangombwa yamusabye, inaboneraho isaba Kanyana kuyigaragariza nawe amasezerano yanditse yagiranye na Gahitira Bishumba Raymond amwemerera kurangiza urwo rubanza nk'uko biteganywa n'ingingo ya 38<sup>2</sup> y'Itegeko N°12/2013 ryo kuwa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko. Kuba Kanyana Bibiane ataragaragaje ayo masezerano yanditse ateganywa n'Itegeko, ngo abone guhabwa ibyangombwa, ntaho Urukiko rwahera rwemeza ko COGEBANQUE Ltd yanze kurangiza urubanza.

[21] Urukiko, rushingiye ku ngingo ya 220 y'Itegeko N°21/2012 ryavuzwe haruguru no ku mpamvu zavuzwe, rurasanga ubujurire bwa COGEBANQUE Ltd bugamije kuvanaho igihano gihatira kurangiza urubanza (*astreinte*) cyatanzwe n'Urukiko rw'Ikirenga mu rubanza RCOMA0004/14/CS - RCOMA0121/11/CS rwo kuwa 06/08/2014 gifite ishingiro kubera ko itanze kurangiza urubanza, bityo 12.000.000Frw yishyuzwa Banki y'igihano kirangiza urubanza agomba kuvanwaho.

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<sup>1</sup> "Pour plus de sûreté,... il est conseillé de faire dresser une procuration notariée. «Elle a plus de valeur». En effet, le notaire s'assure que le mandant veut vraiment confier certaines responsabilités à son mandataire, et que le mandataire est d'accord pour les accepter" (Maryse Guénette, Prudence avec les procurations, <https://www.lebelage.ca/argent-et-droits/vos-droits/prudence-avec-les-procurations?page=all>, consulté le 31/7/2015).

<sup>2</sup> Mbere yo kurangiza urubanza, ibyemezo cyangwa, izindi nyandikompesha, umuhesha w'inkiko w'umwuga abanza kugirana amasezerano yanditse n'umwiyambaje, yerekana umubare w'amafaranga y'igihembo cy'umurimo n'uburyo azishyurwa. Ayo masezerano agomba kuba ashingiyeye ku giciro fatizo kivugwa mu ngingo ya 37 y'iri tegeko.

### III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko ikirego cyihutirwa cyatanzwe na COGEBANQUE Ltd gifite ishingiro.

[23] Rutegetse ko igihano gihatira kurangiza urubanza cyatanzwe mu rubanza RCOMA0004/14/CS - RCOMA0121/11/CS rwo kuwa 06/08/2014 itagomba kuyishyura.

[24] Rutegetse ko 12.000.000Frw, COGEBANQUE Ltd yishyuzwa na Gahitira Bishumba Raymond mu mwana w'umwana we Gahitira Cyusa Richard y'igihano gihatira kurangiza urubanza avanyweho.

[25] Rutegetse ko igihe Gahitira Bishumba Raymond azaba aje kwifatira ibyangombwa by'inzu y'umwana we Gahitira Cyusa Richard, cyangwa akohereza intumwa ye yitwaje "procurator" iriho umukono wa Noteri, COGEBANQUE Ltd ntitange ibyo byangombwa byavuzwe haruguru, izabarirwa igihano gihatira kurangiza urubanza cya 50.000Frw ku muni kizatangira kubarwa guhera icyo gihe.

[26] Rutegetse Gahitira Cyusa Richard gutanga amagarama y'uru rubanza angana na 100.000Frw.