KCB BANK UGANDA LTD v. KIIZA & LOUISE (KL) LTD

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA0042/16/CS - RCOM 00021/2016/SC (Kayitesi R, P.J., Mukamulisa na Mukandamage, J.) 19 Mutarama 2018]

Amategeko agenga ububasha bw'inkiko – Ububasha bw'inkiko zo mu Rwanda – Amasezerano yakorewe mu muhanga – Inkiko zo mu Rwanda zishobora kugira ububasha bwo kwakira ibirego bitanzwe n'abanyamahanga bishingiye ku masezerano yakorewe mu mahanga iyo impande zombi zabyumvikanye gutyo ndetse niyo ububasha bw'inkiko bufite aho buhuriye nayo masezerano – Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imitunganyirize, imikorere n'ububasha by'inkiko, ingingo ya 134(2) – Itegeko- Teka ryo kuwa 30/7/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33.

Incamake y'ikibazo: KCB BANK Uganda Ltd yagiranye amasezerano y'inguzanyo na sosiyete Kiiza & Louise (KL)Ltd mu gihugu cya Uganda, Kiiza Mulindwa Innoncent na Ndayizeye Andrée Louise barayishingira banatanga ingwate iri mu Rwanda, ariko bemeranywa aya masezerano azagengwa n'amategeko y'igihugu cya Uganda, ariko bitabuza banki kurega ugurijwe mu rundi rukiko rwose rufite ububasha, iyi nzu yaje gutezwa cyamunara na KCB Rwanda Ltd.

Kiiza & Louise (KL) Ltd ntiyubahirije amasezerano bituma KCB BANK Uganda Ltd iyirega hamwe n'abishingizi bayo mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kwishyurwa umwenda bayirimo, amafaranga y'ikurikiranarubanza hamwe n'igihembo cya Avoka, inasaba kandi ko urubanza rwarangizwa byagateganyo kuko ingwate yatanzwe kuri iyo nguzanyo igizwe n'inzu iri mu Rwanda yagurishijwe na KCB Rwanda Ltd.

Umwe mu bishingizi yahise atanga inzitizi y'iburabubasha y'urukiko kuko ikirego cyagombaga gutangwa mu nkiko zo mu gihugu cya Uganda nkuko impande zombi zumvikanye mu masezerano y'inguzanyo bakoranye.

Kuri iyi nzitizi, Urukiko rwaregewe rwemeje ko rufite ububasha bwo kuburanisha urubanza kuko abarezwe batuye mu Rwanda, naho mu mizi y'urubanza urukiko rwemeza ko ikirego cyatanzwe na KCB Uganda Ltd gifite ishingiro, rwemeza kandi ko sosiyete Kiiza & Louise Ltd hamwe n'abishingizi bayo bishyura KCB Uganda Ltd umwenda bayiberemo havanywemo amafaranga yakomotse ku igurisha ry'ingwate yagurishijwe mu cyamunara, ayo mafaranga akazatangwa n'ushinzwe kugurisha ingwate.

Umwe mu bishingizi yajuririye mu Rukiko Rukuru rw'Ubucuruzi avuga ko urukiko rubanza rutitaye ku nzitizi y'iburabubasha yatanze kuko nta ruhare yagize mu ikorwa ry'a masezerano y'inguzanyo yaregewe na KCB Uganda Ltd. Urukiko rwemeje ko ikirego kitagombaga kwakirwa kuko kitari mu bubasha bw'inkiko zo mu Rwanda, ko ahubwo cyagombaga gutangwa mu nkiko za Uganda kuko mu masezerano bumvikanye ko azagengwa n'amategeko ya Uganda, rugenera umwishingizi indishyi zo gushorwa mu manza ku maherere.

KCB Uganda Ltd yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko inkiko zo mu Rwanda nta bubasha zifite bwo kuburanisha ikirego cyayo rwirengagije ko ba nyiri sosiyete yarezwe ari abanyarwanda, batuye mu Rwanda ndetse ko n'ingwate batanze iri mu Rwanda, kandi ko hari ingingo mu masezerano ivuga ko batazitiwe kuregera mu zindi nkiko izarizo zose zifite ububasha.

Mu kwiregura, umwishingizi avuga ko amasezerano yateganyaga ko azagengwa n'amategeko ya Uganda, uwahawe umwenda agakurikiranwa n'inkiko zibifitiye ububasha, avuga ko asanga inkiko zo mu Rwanda nta bubasha bwagira kuko ababuranyi ubwabo bemeranyijwe gukoresha amategeko ya Uganda.

Incamake y'icyemezo: Inkiko zo mu Rwanda zishobora kugira ububasha bwo kwakira ibirego bitanzwe n'abanyamahanga bishingiye ku masezerano yakorewe mu mahanga iyo impande zombi zabyumvikanye gutyo, ndetse niyo ububasha bw'inkiko bufite aho buhuriye nayo masezerano. Bityo rero, KCB BANK Uganda Ltd sosiyete y'inyamahanga yashoboraga gutanga ikirego mu nkiko z'u Rwanda irega sosiyete Kiiza & Louise (KL) Ltd hamwe n'abishingizi bayoishingiye ku masezerano bakoranye mu mahanga kuko ingwate ishingiye kuri ayo masezerano iri mu Rwanda.

Ubujurire bufite ishingiro.
Iburanisha mu mizi rizakomeza.
Amagarama y'urubanza arasubitswe.

Amategeko yashingiweho:
Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imitunganyirize, imikorere n'ububasha by'inkiko, ingingo ya 134(2).
Itegeko- Teka ryo kuwa 30/7/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33.
Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 171.

Nta manza zashingiweho.

Urubanza

I. IMITEREREY'URUBANZA

[1] KCB BANK Uganda Ltd yareze Sosiyete Kiiza & Louise (KL) Ltd, Kiiza Mulindwa Innoncent n'umugore we Ndayizeye Andrée Louise mu Rukiko rw'Ubucuruzi rwa Nyarugenge, isaba ko bayishyura umwenda bayirimo, amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, ko n'urubanza rwarangizwa by'agateganyo. Uburanira Ndayizeye Andrée Louise yatanze inzitizi y'iburabubasha by'urwo Rukiko, avuga ko mu masezerano bagiranye na KCB BANK Uganda Ltd bemeranyijwe ko ayo masezerano azagengwa n'amategeko y'igihugu cya Uganda. Kuri iyo nzitizi, rushingiye ku biteganywa n'ingingo ya 121 y'itegeko Nº51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere, n'ububasha by'inkiko, Urukiko rwemeje ko rufite ububasha bwo kuburanisha urubanza, kubera ko Kiiza Mulindwa Innoncent na Ndayizeye Andrée Louise batuye mu Rwanda.

[2] Mu mizi y'urubanza, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM 1381/14/TC/NYGE kuwa 10/04/2015, rusanga ikirego cyatanzwe na KCB BANK Uganda Ltd gifite ishingiro, rutegeka Bimenyimana Eric, ushinzwe kugurisha ingwate (receiver) guhita ayiha 110.112.570Frw akomoka kuri cyamunara y'inzu ya Kiiza Mulindwa Innoncent na Ndayizeye Andrée Louise, runategeka Sosiyete Kiiza & Louise (KL) Ltd, Kiiza Mulindwa Innoncent na Ndayizeye Andrée

Louise kwishyura KCB BANK Uganda Ltd 160.945.741Frw y'umwenda bayibereyemo, havanywemo ayo ushinzwe kugurisha ingwate azayiha, 500.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka, no gutanga amagarama y'urubanza.

[3] Ndayizeye Andrée Louise yajuririye Urukiko Rukuru rw'Ubucuruzi, avuga ko Urukiko rwabanje rutitaye ku nzitizi y'iburabubasha bwarwo yatanze, ko nta bubasha yigeze agira mu ikorwa ry'amasezerano KCB BANK Uganda Ltd yaregeye, ko kandi rwemeje ko amafaranga yasigaye ku yagurishijwe inzu mu cyamunara ahabwa iyo banki rushingiye ku masezerano yo kugabana ingwate hagati ya KCB BANK Uganda Ltd na KCB Rwanda Ltd afite inenge.Urwo rukiko rwaciye RCOMA 0241/15/HCC kuwa 29/04/2016, rwemeza ko mu ngingo ya 22 y'amasezerano yo kuwa 10/05/2011, impande zombi zumvikanye ko azagengwa n'amategeko ya Uganda, ko rero ikirego kitagombaga kwakirwa n'Urukiko rw'Ubucuruzi rwa Nyarugenge, kuko kitari mu bubasha bw'inkiko zo mu Rwanda, ahubwo cyagombaga gutangwa mu nkiko za Uganda, ruvuga ko urubanza rwajuririwe ruhindutse, ndetse n'ifatira ryari ryabaye ku mafaranga yavuye mu cyamunara cy'inzu ya Kiiza Mulindwa Innoncent na Ndayizeye Andrée Louise nta gaciro rifite, rutegeka KCB BANK Uganda Ltd guha Ndayizeye Andrée Louise 1.500.000Frw y'indishyi zo gushorwa mu manza n'igihembo cy'Avoka, kandi ikamusubiza 7.500Frw y'igarama yatanze ku rubanza ajurira.

[4] KCB BANK Uganda Ltd yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko inkiko zo mu Rwanda zidafite ububasha bwo kuburanisha urubanza ku kirego cyayo, rwirengagije ko abaregwa batuye mu Rwanda, ndetse ko n'ingwate y'umwenda ariho iri, ko badahakana umwenda yabahaye, ko kandi rwasesenguye nabi ingingo ya 22 y'amasezerano kuko iyemerera kuregera aho ariho hose.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 19/12/2017, KCB BANK Uganda Ltd iburanirwa na Me Mwine Geoffrey, Kiiza & Louise Ltd na Kiiza Mulindwa Innoncent batitabye, ariko barahamagawe ahatazwi mu buryo bukurikije amategeko, naho Ndayizeye Andrée Louise ahagarariwe na Me Kabera Jean Claude.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba ikirego cya KCB BANK Uganda Ltd cyaragombaga kwakirwa n'inkiko zo mu Rwanda.

[6] Me Mwine Geoffrey, uhagarariye KCB BANK Uganda Ltd, avuga ko ikirego KCB BANK Uganda Ltd yashyikirije urukiko kitajyanye n'umwenda abarezwe bayibereyemo, ko ahubwo cyari kigamije gukurikirana amafaranga yavuye mu cyamunara cy'ingwate banki yahawe na Kiiza Mulindwa Innoncent na Ndayizeye Andrée Louise, zagurishijwe na KCB Rwanda Ltd yasigaranywe n'ushinzwe kugurisha ingwate.

[7] Akomeza avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko inkiko zo mu Rwanda zidafite ububasha bwo kuburanisha urubanza, rwirengagije ko ba nyiri sosiyete Kiiza & Louise (KL) Ltd ari abanyarwanda kandi batuye mu Rwanda, ko inzu batanzeho ingwate y'umwenda iri mu Rwanda, ndetse bakaba badahakana umwenda iyo Banki yabahaye. Avuga ko rero Urukiko rwirengagije ibiteganywa n'ingingo ya 134 agace ka 2, n'iya 135 z'Itegeko Nº51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere, n'ububasha by'inkiko, hamwe n'ibivugwa mu ngingo ya 12 y'Itegeko Nº14/2010 ryo kuwa 07/05/2015 rihindura kandi ryuzuza Itegeko Nº07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete

y'ubucuruzi, iteganya ko amasosiyete yo mu bihugu bigize East African Community (EAC) afatwa kimwe n'ayo mu Rwanda, ibyo bikaba bivuze ko amategeko ya Uganda atabuza amahirwe KCB BANK Uganda Ltd gukurikirana umutungo wayo irimo kuvutswa mu Rwanda.

[8] Me Mwine Geoffrey avuga na none ko kuba Urukiko Rukuru rw'Ubucuruzi rwarashingiye ku ngingo ya 22 igika cya 1, y'amasezerano y'umwenda yo kuwa 10/05/2011 yabaye hagati ya KCB BANK Uganda Ltd na Kiiza & Louise (KL) Ltd ataribyo, kubera ko iyo ngingo igenga iby'umwenda (banking facilities), ko ahubwo hagombaga gushingirwa ku ingingo ya 8, 9, 10 na 11 z'amasezerano ku byerekeye ingwate (security), aho mu ngingo ya 8, agaka ka 2, iteganya ko iyo habaye kugongana kw'ingingo z'amasezerano, ay'ingwate ariyo ashyirwa imbere, ko rero ntaho ayo masezerano yambura ububasha inkiko z'u Rwanda.

[9] Me Kabera Jean Claude, uhagarariye Ndayizeye Andrée Louise, avuga ko ingingo ya 22, agace ka 1, y'amasezerano iteganya ko ayo masezerano azagengwa n'amategeko ya Uganda, ko haramutse havutse ikibazo banki izakurikirana uwahawe umwenda mu inkiko zibifitiye ububasha yaba rumwe cyangwa nyinshi.

[10] Akomeza avuga ko mu gusesengura aya masezerano, hagombye gusobanurwa icyari kigamijwe mu ikorwa ryayo, ko rero byumvikana ko amasosiyete abiri ya Uganda yagiranye amasezerano, amategeko agomba kubahirizwa ari ay'icyo gihugu, bikaba bitumvikana ukuntu KCB BANK Uganda Ltd yaregeye inkiko z'u Rwanda kandi yarazambuye ububasha, akaba asanga ibyemejwe n'Urukiko Rukuru rw'Ubucuruzi ko inkiko zo mu Rwanda zidafite ububasha bifite ishingiro kuko ababuranyi ubwabo bemeranyijwe gukoresha amategeko ya Uganda.

[11] Ku byerekeye amasezerano yiswe "Security Agreement", Me Kabera Jean Claude avuga ko nta tariki afite, ko kandi uwo ahagarariye nta ruhare yayagizemo, akaba atamureba, hashingiwe ku biteganywa n'ingingo ya 113 y'Itegeko Nº45/2011 rigenga amasezerano.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 33 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano yakurikizwaga ubwo amasezerano yakorwaga kuwa 10/05/2011 iteganya ko "amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buryarya".

[13] Ku byererekeye ububasha bw'inkiko ku birebana n'imanza z'abanyamahanga, ingingo ya 134 (2) y'Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 rigena imitunganyirize, imikorere n'ububasha by'inkiko, nk'uko ryahinduwe kugeza ubu, iteganya ko "abanyamahanga bashobora kuregwa mu nkiko z'u Rwanda, barezwe n'umunyarwanda cyangwa n'umunyamahanga mu bihe bikurikira: (...) mu manza zerekeye ibintu bitimukanwa biri mu Rwanda", naho iya 135 yaryo igateganya ko "iyo impamvu zose zateganyijwe n'ingingo ya 134 y'iri Tegeko Ngenga zidahagije mu gusobanura igihe inkiko zo mu Rwanda zifite ububasha bwo guca imanza z'abanyamahanga, urega ashobora kuregera urukiko rwo mu Rwanda rw'aho atuye cyangwa aho aba cyangwa se aho icyo aregera kiri".

[14] Nk'uko bigaragara mu masezerano y'inguzanyo (Banking facility) yo kuwa 10/05/2011 yabaye hagati ya KCB BANK Uganda Ltd na Kiiza & Louise (KL) Ltd, zombi zibarizwa mu gihugu cya Uganda, mu ngingo ya 22 y'ayo masezerano impande zombi zumvikanye ko ayo masezerano agomba

kugengwa n'amategeko ya Uganda, ko ariko ibyo bitabuza Banki uburenganzira bwayo bwo kurega ugurijwe mu rundi rukiko rwose rufite ububasha, cyangwa se kuba yatanga ibirego bitandukanye mu rukiko urwo ari rwo rwose rufite ububasha[1].

[15] Urukiko rurasanga, n'ubwo muri iyo ngingo abagiranye amasezerano bahisemo ko azagengwa n'amategeko ya Uganda, ariko kandi bumvikanye ko banki itazitiwe nabyo, ko ishobora no kuregera izindi nkiko zifite ububasha, bikaba rero byumvikana ko ishobora no kuregera inkiko zo mu Rwanda mu gihe zifite ububasha bwo kuburanisha ikirego yatanga.

[16] Urukiko rurasanga na none, mu myanzuro itanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, KCB BANK Uganda Ltd yarasabye urwo Rukiko kwemeza ko abaregwa bayibereyemo umwenda ungana n'amashillingi 680.905.957 n'amadolari 112.000$ itishyuye, amafaranga y'ikurikiranarubanza n'irangizwa ry'agateganyo ry'urubanza, kandi nk'uko bigaragara mu rubanza RCOM 138/14/TC/Nyge mu gika cya 4, urupapuro rwa 3, uyihagarariye yasobanuye ko iyo banki yahaye umwenda sosiyete Kiiza & Louise (KL) Ltd, Kiiza Mulindwa Innoncent na Ndayizeye Andrée Louise barawishingira banatanga ingwate iri mu Rwanda, KCB Rwanda Ltd irayandikisha iza kuyigurisha, amafaranga yasigaye ikaba yarayaregeye kugirango iyabone habeho n'irangizarubanza ry'agateganyo, bikaba rero byumvikana ko, hashingiwe ku ngingo z'amategeko n'ingingo ya 22 y'amasezerano byavuzwe haruguru, KCB BANK Uganda Ltd yashoboraga kurega mu nkiko z'u Rwanda sosiyete Kiiza & Louise (KL) Ltd y'inyamahanga hamwe n'abishingizi bayo, cyane cyane ko mu byo ikurikiranye harimo inzu y'ingwate yayo yagurishijwe na KCB Rwanda Ltd.

[17] Hashingiwe ku ngingo z'amategeko n'iy'amasezerano zavuzwe haruguru no ku bisobanuro bimaze gutangwa, Urukiko rurasanga inkiko zo mu Rwanda zifite ububasha bwo kuburanisha ikirego zashyikirijwe na KCB BANK Uganda Ltd, ubujurire bwayo bukaba bufite ishingiro, bityo urubanza rukaba rugomba gukomeza mu mizi nk'uko biteganywa n'ingingo ya 171 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko iyo Urukiko rwajuririwe ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo, keretse iyo ruruhinduye ku mpamvu y'uko rwaregewe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha.

III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko ubujurire bwa KCB Bank Uganda Ltd bufite ishingiro.

[19] Rwemeje ko inkiko zo mu Rwanda zifite ububasha bwo kuburanisha ikirego cyatanzwe na KCB BANK Uganda Ltd irega sosiyete Kiiza & Louise (KL) Ltd, Kiiza Mulindwa Innoncent na Ndayizeye Andrée Louise.

[20] Rutegetse ko iburanisha mu mizi ry'urubanza rizakomeza kuwa 27/03/2018.

[21] Rutegetse ko amagarama y'urubanza asubitswe.

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[1] Ingingo ivuga ko "This Facility letter shall be governed by and construed in all respects in accordance with the laws of Uganda. Nothing in this paragraph shall limit the right of the Bank to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking or proceedings at one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not".