HORIZON SOPYRWA Ltd vs YANKUNDIYE

[Rwanda URUKIKO RW’IKIRENGA - RS/INJUST/RC 00023/2022/SC (Cyanzayire, P.J., Hitiyaremye, Karimunda, J.) 30 Kamena 2023]

Amategeko agenga imanza z’imbonezamubano – Imanza ku mitungo itimukanwa – Ubutaka – Icyemezo gihamya nyiri ubutaka - Acte de notoriété yatanzwe kandi yashyizweho umukono n’Umunyamabanga Nshingwabikorwa w’Umurenge, ntiyafatwa nk’icyemezo cy’umutungo gihamya nyir’ubutaka kubera ko atari we amategeko aha ububasha bwo gusinya bene ibyo byemezo.

Incamake y’ikibazo: Ikigo cya Leta cy’iterambere ry’ibireti cyaje kwegurirwa abashoramri batanu (5) barimo uwitwa Gatemberezi bahita bashinga sosiyiete y’ubucuruzi bise SOPYRWA Sarl. Gatemberezi mu izina rya SOPYRWA Sarl yaje gukora inyandiko yo guha Yankundiye igice cy’ubutaka bwa SOPYRWA avuga ko yagaragaje imikoranire myiza n’uruganda rwayo akaba ariyo mpamvu ahawe ubwo butaka. Abanyamigabane bageze igihe bagabana amasambu ya Sosiyete hanyuma Gatemberezi ahabwa isambu iri Karandaryi n’iri ku Ikora ari n’aho yari yarahaye Yankundiye.

HORIZON Ltd yaguze imigabane yose yo muri SOPYRWA Sarl, bumvikana n’uburyo izajya yishyura ariko igeze aho ihagarika kwishyura ivuga ko yasanze hari ubutaka bumwe bwagurishijwe indi ikaba yaribarujweho n’abahoze ari abanyamigabane bayo. Ibi byatumye hatangwa ikirego mu Ubukemurampaka hanyuma hemezwa ko abari abanyamigabane ba SOPYRWA Sarl bagomba gusubiza imitungo yose, yaba yaratanzwe cyangwa yaragurishijwe, ikagarurwa mu mutungo wa HORIZON SOPYRWA Ltd, uretse abafite ibyangombwa byayo bahawe n’ubuyobozi bubifitiye ububasha. HORIZON yaje kwibaruzaho uwo mutungo wose harimo n’ubutaka Gatemberezi yari yarahaye Yankundiye.

Yankundiye yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu arega HORIZON SOPYRWA Ltd ko yamuhagaritse kubaka mu butaka bwe no kuba yarabwibarujeho kandi nawe abufitiye acte de notoriété yatanzwe ku wa 25/06/2008. Urukiko rwemeje ko inyubako iri mu butaka buburanwa bugizwe n’ikibanza N° 1200 igomba kuvanwaho kuko ubutaka ari ubwa HORIZON. Yankundiye yajuririye urwo rubanza mu Rukiko Rukuru urugereko rwa Musanze hanyuma rwemeza ko ikibanza N° 1200 ari icye. Nyuma habayeho imanza zitandukanye ariko hemezwa ko imikirize y’urubanza 0009/013/TGI/RBV rwaciwe n’Urukiko Rwisumbuye rwa Rubavu ihindutse, ko ikibanza N° 1200 kibarurwa kuri Yankundiye.

Uru rubanza rwaje gusabirwa gusubirwamo ku mpamvu z’akarengane hanyuma ruhabwa Urukiko rw’Ikirenga rurusubiramo harebwa ikibazo kirebana no kumenya nyir’ikibanza N° 1200, hagati ya Yankundiye na HORIZON SOPYRWA Ltd. HORIZON ivuga ko Gatemberezi yatanze ubutaka butari ubwe kuko bwari ubwa SOPYRWA kandi abutanga itamuhaye ubwo bubabasha dore ko yabutanze ku wa 22/01/2007 mbere y’uko abuhabwa n’inama rusange kuko yabuhawe ku wa 15/07/2007. Ikomeza isobanura ko SOPYRWA yari ifite icyangombwa cy’inkondabutaka bityo kikaba cyaragombaga gusimburwa n’ikindi cyangombwa cy’inkondabukata kandi siko byagenze. Yankundiye avuga ko afite icyangombwa cy’ubutaka acte de notoriété” yahawe ku itariki ya 25/06/2008 ishyizweho umukono n’Umunyamabanga Nshingwabikorwa w’Umurenge wa Jenda bityo ubwo butaka akaba asanga abutunze mu buryo bwemewe n’amategeko.

Incamake y'icyemezo: Acte de notoriété yari ifitwe na Yankundiye ubwo hafatwaga icyemezo cy'Abakemurampaka ku itariki ya 14/09/2011, ntiyafatwa nk'icyemezo cy'umutungo gihamya nyir'ubutaka kubera ko ari inyandiko yasinywe n'Umunyamabanga Nshingwabikorwa w'Umurenge, akaba atari we amategeko aha ububasha bwo gusinya bene ibyo byemezo bityo ubwo butaka bukaba bugomba gusubizwa HORIZON SOPYRWA Ltd.

Ikirego gisaba gusubirishamo ku mpamvu z'akarengane urubanza gifite ishingiro.

Amategeko yifashishijwe atagikoreshwa:
Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda, ingingo ya 6, 26;
Iteka rya Minisitiri N° 002/2008 ryo ku itariki ya 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 13.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ikigo cya Leta cy'Iterambere ry'Ibireti cyahoze cyitwa OPYRWA cyeguriwe abikorera mu mwaka wa 2001, kigurwa n'abashoramari 5 aribo: Muvunyi Paul, Kinuma Faustin, Gatemberezi Aloys, Nzabagamba Sylvain na Kayinamura Gédéon. Bamaze kucyegukana, bahise bashinga Sosiyete y'Ubucuruzi bayita SOPYRWA Sarl ifite icyicaro mu Ruhengeri (ubu ni Musanze).

[2] Ku itariki ya 22/01/2007, Gatemberezi Aloys yakoze inyandiko avuga ko, mu izina rya SOPYRWA Sarl, ahaye Yankundiye Epimaque ubutaka bufite Nº 1200 bwari ubwa SOPYRWA Sarl kubera ko afitanye imikoranire myiza n'urwo ruganda. Ku itariki ya 15/07/2007, Inama Rusange y'Abanyamigabane ba SOPYRWA Sarl, yarateranye igabana amasambu yayo, Gatemberezi Aloys ahabwa isambu iri Karandaryi n'iri ku i Kora mu Murenge wa Jenda, ari naho harimo ikibanza yari yarahaye Yankundiye Epimaque waje kucyubakamo inzu anacyibaruzaho igihe cy'ibarura ry'ubutaka mu mwaka wa 2012.

[3] Ku itariki ya 20/06/2008, HORIZON Ltd yaguze imigabane ingana na 70% muri SOPYRWA Sarl, ku itariki ya 30/11/2009 yongera kugura imigabane 30% yari isigaye ihita yegukana SOPYRWA Sarl yose ihindura n'izina yitwa HORIZON SOPYRWA Ltd. Nyuma yo kwemeranya ko iguze imigabane yose no guhindura izina, bumvikanye uburyo imigabane yose izishyurwa ariko ntibyubahirizwa. Mu mpamvu HORIZON SOPYRWA Ltd yatanze zatumye idakomeza kwishyura, harimo ko yasanze hari imitungo yari iya SOPYRWA Sarl yibarujweho n'abahoze ari abanyamigabane bayo kandi nayo yakagombye kuba iri mu mutungo wayo. Uko kutumvikana byatumye abari abanyamigabane ba SOPYRWA Sarl batanga ikirego mu Bukemurampaka basaba kwishyurwa imigabane yose.

[4] Ku itariki ya 14/09/2011, Abakemurampaka bemeje ko abari abanyamigabane ba SOPYRWA Sarl bagomba gusubiza imitungo yose, yaba yaratanzwe cyangwa yaragurishijwe, ikagarurwa mu mutungo wa HORIZON SOPYRWA Ltd, uretse abafite ibyangombwa byayo bahawe n'ubuyobozi bubifitiye ububasha. Nyuma y'icyo cyemezo, HORIZON SOPYRWA Ltd yibarujeho umutungo wose harimo n'ubutaka Gatemberezi Aloys yari yarahaye Yankundiye Epimaque, inamuhagarika gukomeza kubaka kuri ubwo butaka.

[5] Yankundiye Epimaque yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu irega HORIZON SOPYRWA Ltd ko yamuhagaritse kubaka mu butaka bwe no kuba yarabwibarujeho kandi nawe abufitiye ibyangombwa bigizwe na acte de notoriété yahawe ku itariki ya 25/06/2008, asaba n'indishyi zingana na 34.000.000 Frw, Gatemberezi Aloys agobokeshwa mu rubanza.

[6] Ku itariki ya 19/11/2013, urwo Rukiko rwaciye urubanza Nº RC 0009/013/TGI/RBV, rwemeza ko inyubako iri mu kibanza Nº 1200 giherereye mu Mudugudu wa Bukinanyana, Umurenge wa Jenda, Akarere ka Nyabihu, kiri mu isambu ya HORIZON SOPYRWA Ltd igomba kuvanwaho, ko ikibanza irimo ari icya HORIZON SOPYRWA Ltd, ko kuba yaracyibarujeho bifite ishingiro.

[7] Yankundiye Epimaque yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, ku itariki ya 04/02/2015, urwo Rukiko ruca urubanza Nº RCA 0172/13/HC/MUS, rwemeza ko ubujurire bwa Yankundiye Epimaque bufite ishingiro, ko ikibanza no 1200 kiri mu Mudugudu wa Kageri, Akagari ka Bukinanyana, Umurenge wa Jenda, Akarere ka Nyabihu ari icye.

[8] HORIZON SOPYRWA Ltd yatanze ikirego cyo gusubirishamo urubanza N° RCA 0172/13/HC/MUS kuko rwaburanishijwe idahari, ku itariki ya 12/02/2016, Urukiko Rukuru, Urugereko rwa Musanze, ruca urubanza N° RCA 0033/15/HC/MUS rwemeza ko nta mpamvu idasanzwe kandi ikomeye yatumye HORIZON SOPYRWA Ltd ititabira iburanisha ryo ku itariki ya 18/12/2014, rwemeza ko ikirego cyo gusubirishamo urubanza N° RCA 0172/13/HC/MUS kitakiriwe.

[9] HORIZON SOPYRWA Ltd yatanze ikirego cyo gusubirishamo ingingo nshya urubanza N° RCA 0172/13/HC/MUS, ivuga ko Urukiko rwakoze amakosa yo kwitiranya ibintu uko bitari rukemeza ko Gatemberezi Aloys yatanze ikibanza yahawe nk'umunyamigabane wa SOPYRWA Sarl, kandi yaragitanze ku itariki ya 22/01/2007, Inama Rusange yamuhaye isambu irimo icyo kibanza igaterana ku ya 15/07/2007, yaramaze kugitanga.

[10] Ku itariki ya 30/06/2017, Urukiko Rukuru, Urugereko rwa Musaze, rwaciye urubanza N° RCA 0027/16/HC/MUS rwemeza ko urubanza N° RCA 0172/13/HC/MUS rwasubirishijwemo ingingo nshya rutaye agaciro, ariko rukomeza kwemeza ko imikirize y'urubanza N° RC 0009/013/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ihindutse mu ngingo zarwo zose, rutegeka ko ikibanza cyabaruwe by'agateganyo kuri Nº 1200 kiri mu Mudugudu wa Kageri, Akagari ka Bukinanyana, Umurenge wa Jenda, Akarere ka Nyabihu, gifite 35 m kuri 20 m cyandikwa kuri Yankundiye Epimaque.

[11] Urwo Rukiko rwageze kuri uwo mwanzuro rushingiye ku mpamvu zikurikira:

i. Kuba mbere y'uko HORIZON Ltd igura imigabane muri SOPYRWA Sarl, amasezerano y'impano yo ku itariki ya 22/01/2007 nta kibazo yari ateje ku banyamigabane ba SOPYRWA Sarl kubera ko Inama Rusange ya SOPYRWA Sarl yateranye ku itariki ya 15/07/2007 yaje kwegurira iyo sambu yose Gatemberezi Aloys, ibi bikaba byerekana ko abari bagize SOPYRWA Sarl icyo gihe nta kibazo bagize kuri ayo masezerano y'impano, cyane cyane ko abari bafite imigabane muri SOPYRWA Sarl (Assemblée Générale) bari babyumvikanyeho mu nama yavuzwe haruguru;

ii. Kuba abanyamigabane ba SOPYRWA Sarl barateranye ku itariki ya 15/07/2007 bakagabana imwe mu mitungo yabo binyuze mu nama rusange, nta burenganzira HORIZON SOPYRWA Ltd yari ifite bwo gutesha agaciro ibyemezo byafashwe n'inama rusange yo ku itariki ya 15/07/2007, kubera ko HORIZON Ltd yaje kugura imigabane muri SOPYRWA Sarl mu mwaka wa 2008 ibyemezo byo kugabana imwe mu mitungo yayo byaramaze gufatwa mu mwaka wa 2007;

iii. Kuba mu ihererekanyabubasha ryabaye ku itariki ya 19/09/2008, nta rutonde rw'imitungo itimukanwa yaba yarahawe HORIZON Ltd rwigeze rugaragazwa ku buryo byari gufasha Urukiko kumenya niba imigabane baguze ingana na 70% haba harimo n'ikibanza cyahawe Yankundiye Epimaque.

[12] Ku itariki ya 11/08/2017, HORIZON SOPYRWA Ltd yandikiye Urwego rw'Umuvunyi isaba ko urubanza Nº RCA 0027/16/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku itariki ya 30/06/2017, rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma ubusabe bwayo, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo, nawe amaze gusuzuma raporo yakozwe n'Ubugenzuzi bw'Inkiko kuri icyo kibazo ategeka ko rwongera kuburanishwa, ruhabwa Nº RS/INJUST/RC 00023/2022/SC.

[13] Urubanza rwaburanishijwe mu ruhame ku itariki ya 29/05/2023, HORIZON SOPYRWA Ltd ihagarariwe na Me Abijuru Emmanuel, Yankundiye Epimaque akaba ataritabye ariko yarahamagajwe mu buryo bukurikije amategeko, Urukiko rufata icyemezo cyo kuburanisha urubanza adahari. Gatemberezi Aloys waregwaga hamwe nawe muri uru rubanza nawe ntiyitabye, HORIZON SOPYRWA Ltd imenyesha Urukiko ko mu nama ntegurarubanza yabaye ku itariki ya 10/03/2023 bumvikanye, ikaba ntacyo ikimurega, Urukiko rufata umwanzuro wo kuburanisha urubanza nawe adahari.

[14] Urukiko rwasuzumye ikibazo kirebana no kumenya nyir'ikibanza Nº 1200 kiri mu Mudugudu wa Kageri, Akagari ka Bukinanyana, Umurenge wa Jenda, Akarere ka Nyabihu, Intara y'Iburengerazuba, hagati ya Yankundiye Epimaque na HORIZON SOPYRWA Ltd. Rwasuzumye kandi n'ikibazo kijyanye n'indishyi zisabwa na HORIZON SOPYRWA Ltd muri uru rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

- **Kumenya nyir'ikibanza Nº 1200 kiri mu Mudugudu wa Kageri, Akagari ka Bukinanyana, Umurenge wa Jenda, Akarere ka Nyabihu, Intara y'Iburengerazuba, hagati ya Yankundiye Epimaque na HORIZON SOPYRWA Ltd.**

[15] Me Abijuru Emmanuel uhagarariye HORIZON SOPYRWA Ltd avuga ko ikibanza kiburanwa ari icyayo ashingiye ku mpamvu zikurikira:

i. Urukiko Rukuru, Urugereko rwa Musanze, rwemeje ko Yankundiye Epimaque yahawe ikibanza kiburanwa na nyiracyo Gatemberezi Aloys ku itariki ya 22/01/2007 nawe wagihawe na SOPYRWA Sarl ku itariki ya 15/07/2007, nyamara ibyo nta kuri kurimo kubera ko, hakurikijwe ibyanditswe mu rupapuro rw'impano rwo ku itariki ya 22/01/2007, bigaragara ko Gatemberezi Aloys yatanze icyo kibanza akurikije ububasha ahabwa na SOPYRWA Sarl, bisobanuye ko atatanze umutungo we bwite, ahubwo yatanze umutungo wa SOPYRWA Sarl.

ii. Kuba nta bubasha cyangwa ubutumwa Gatemberezi Aloys yigeze ahabwa bwo gutanga imitungo ya SOPYRWA Sarl. Inyandiko bwite yiswe amasezerano y'impano yo ku itariki ya 22/01/2007, nta gaciro yahabwa kubera ko nta bubasha Gatemberezi Aloys yari afite bwo gutanga umutungo wa sosiyete uko yishakiye, ko kandi nta mpano y'ubutaka mu Rwanda ishobora kugira agaciro idakoreshejwe inyandikomvaho (acte authentique) itanzwe n'urwego rubifitiye ububasha (Noteri w'Ubutaka).

iii. Hakurikijwe amategeko agenga amasosiyete y'ubucuruzi, umutungo wa sosiyete ntushobora gutangwa n'umunyamigabane mu buryo yishakiye, kuko uburenganzira bw'umunyamigabane bugarukira gusa ku migabane afite muri sosiyete no ku rwunguko (iyo rwabonetse) rubariwe ku migabane atunze. Ingingo ya 25 ya statuts za SOPYRWA Sarl yemereraga Inama Rusange gufata icyemezo cyo kugabana inyungu, bikaba bihura n'ingingo ya mbere y'Itegeko ryo mu mwaka wa 1988 ryagengaga amasosiyete y'ubucuruzi.

iv. Kuba inyungu zivugwa mu mategeko ntaho zihuriye n'icyemezo abari abanyamigabane ba SOPYRWA Sarl bafashe ku itariki ya 15/07/2007, cyo kwigabanya imwe mu mitungo itimukanwa y'iyo sosiyete.

v. Gatemberezi Aloys yahawe n'Inama rusange yo ku itariki ya 15/07/2007 isambu ifite nomero 177, naho isambu yahawe Yankundiye Epimaque ikaba yaratanzwe ku itariki ya 22/01/2007, bivuze ko isambu yatanzwe na Gatemberezi Aloys itari iye bwite.

vi. Ubutaka bwose bwo ku i Kora, mu Murenge wa Jenda, bufite hegitari 4.64, HORIZON SOPYRWA Ltd ibufitiye "titre de pleine propriété foncière, inkondabutaka yatanzwe bwa mbere ku itariki ya 22/01/2002 (certificat d'enregistrement d'une propriété foncière), ikandikwa kuri Vol RT XIX Folio 93 yatanzwe na Conservateur des Titres Fonciers ku itariki ya 24/01/2002, ivugururwa ku itariki ya 25/04/2017, ubwo hatangwaga certificate of freehold title ifite UPI: 3/04/02/01/1133 yakozwe ku izina rya HORIZON SOPYRWA Ltd. Nta gaciro inyandiko iyo ariyo yose yerekeye umutungo utimukanwa, cyane cyane acte de notoriété n'icyemezo cy'agateganyo gihabwa uwabaruje ubutaka, byagira imbere ya "Titre de pleine propriété" (Freehold land Title/icyemezo cy'inkondabutaka.

vii. Amasezerano yabaye hagati ya Leta y'u Rwanda na SOPYRWA Sarl mu rwego rwa "Privatisation", yashingiye ku Itegeko ryo mu 1988 ribuza uwegukanye umutungo muri privatisation guhindura icyo wagenewe. Ubutaka bweguriwe SOPYRWA Sarl bwari bugenewe ubuhinzi, cyane cyane ibireti, nyamara ubwo Yankundiye Epimaque aburana yabushyizemo inyubako yo guturamo.

viii. Urukiko Rukuru rwemeje ko ari HORIZON Group Ltd nk'umunyamigabane wa SOPYRWA Sarl iri kuburana na Yankundiye Epimaque ibyo yiherewe na SOPYRWA Sarl kandi atari ukuri, kuko SOPYRWA Sarl yaje guhindura izina ikitwa HORIZON SOPYRWA Ltd, iyi ikaba ariyo iburana kandi ikaba ari nayo nyir'umutungo w'ubutaka Yankundiye Epimaque yashatse kwigarurira. Kuba sosiyete SOPYRWA Sarl yarahinduye izina, ntibiyambura ububasha bwo gukurikirana ibyababaye ku mutungo wayo mbere y'uko ihindura izina hashingiwe ku ngingo ya 42 y'Itegeko rigenga amasosiyete y'ubucuruzi ryo muri 1988, kuko guhindura izina nta ngaruka bigira ku mimerere ya sosiyete (statut juridique).

ix. Kuba harabayeho kwitiranya ubugure bw'imigabane (Actions/Shares) n'ubugure bw'imitungo y'ikigo (Avoirs de la société). Urukiko Rukuru, Urugereko rwa Musanze, rwavuze ko mu ihererekanyabubasha ryabaye ku itariki ya 19/09/2008 nta rutonde rw'imitungo itimukanwa yaba yarahawe HORIZON Ltd rwigeze rugaragazwa, ku buryo byafasha kumenya niba mu migabane baguze ingana na 70% harimo n'ikibanza cyahawe Yankundiye Epimaque. Muri iki gisobanuro, harimo kwitiranya HORIZON Ltd/HORIZON Group Ltd nk'umunyamigabane na SOPYRWA Sarl. Ihererekanyabubasha rivugwa si ihererekanya ry'ibyaguzwe, ahubwo ryatewe ni uko Ubuyobozi bwa SOPYRWA Sarl bwari buhindutse. Icyakozwe kuri iyo tariki ni ihererekanyabubasha hagati y'Inama y'Ubutegetsi ya SOPYRWA Sarl iyobowe na Muvunyi Paul yari icyuye igihe, n'Imana y'ubutegetsi nshya iyobowe na ZIGIRA John. Ibyo bikaba bitandukanye n'ihererekanya ry'imigabane ryabaye hagati ya Gatemberezi Aloys n'abo bari kumwe muri SOPYRWA Sarl na HORIZON Group Ltd nyuma yo kuyigura.

x. Imiburanire ya HORIZON SOPYRWA Ltd si ukuba ikibanza kiburanwa ari icyayo biturutse ku kuba yarakiguze igihe yaguraga imigabane muri SOPYRWA Sarl mu mwaka wa 2008, ahubwo ni icyayo kubera ko yacyeguriwe na Leta mu byari bigize umutungo wa OPYRWA, kandi ikaba yarakiboneye icyemezo cy'inkondabutaka guhera mu mwaka wa 2002 kugeza uyu munsi. Byongeye kandi, ubwo butaka bwose bwo ku i Kora, bugaragara mu rutonde rw'imitungo yari iya OPYRWA Leta y'u Rwanda yeguriye SOPYRWA Sarl muri privatisation.

xi. Ikibanza kiburanwa ni agace k'ubutaka bwose bwa HORIZON SOPYRWA Ltd bufite hegitari 4.64, ahaburanwa hakaba hangana na metero 35 kuri metero 20, kandi igihe cyose ikaba yari ibufiteho icyemezo cy'inkondabutaka (" *Certificat d'enregistrement d'une propriété foncière" Vol RT.XIX Folio 93*) cyatanzwe n'umwanditsi w'impapurompampo z'ubutaka ku itariki ya 24/01/2002. Icyo cyemezo nta kindi cyagihinduye cyangwa ngo kigiteshe agaciro, kugeza ubwo cyasimbuwe na Certificate of freehold title yo ku itariki ya 25/04/2017 mu rwego rwo guhuza ibyangombwa bya kera n'amategeko mashya agenga imicungire y'ubutaka.

xii. Urukiko Nkemurampaka « *Sentence Arbitrale Définitive* » rwemeje ko ikimenyetso cy'uburenganzira ku butaka ari icyemezo cy'iyandikisha ry'inkondabutaka, kandi ko kuva SOPYRWA Sarl yari isanzwe ifite bene icyo cyemezo, naho Muvunyi Paul, Kinuma Faustin, Gatemberezi Aloys bakaba batagaragaza ko bahawe icyemezo cy'inkondabutaka gishya kigaragaza ko habaye ihererekanya ry'ubwo butaka, ubwo butaka bugomba kugarurirwa SOPYRWA Sarl bukaguma mu mutungo wayo. Kuba rero SOPYRWA Sarl yari ifite icyangombwa cy'inkondabutaka, ubutaka Gatemberezi Aloys yita ko yahawe ku

i Kora buri mu bwo yategetswe n'Ubukemurampaka gusubiza muri SOPYRWA Sarl, bityo n'impano yaba yarabukozeho ikaba nta gaciro igomba guhabwa.

UKO URUKIKO RUBIBONA

[16] Nk'uko byasobanuwe haruguru, ubutaka buburanwa muri uru rubanza bukomoka ku mpano Yankundiye Epimaque yahawe na Gatemberezi Aloys, uyu nawe akavuga ko ubwo butaka buri mu bwo yeguriwe n'Inama Rusange ya SOPYRWA Sarl yateranye ku itariki ya 15/07/2007 nk'uko bigaragazwa n'inyandiko mvugo y'iyo nama.

[17] Ikibazo kirebana n'umutungo wari uwa SOPYRWA Sarl mbere y'uko yegukanwa na HORIZON SOPYRWA Ltd, harimo n'ikibanza kiburanwa, Urukiko rw'Ikirenga rurasanga cyarakemuwe n'Urukiko rw'Abakemurampaka mu cyemezo cyabaye itegeko rwafashe ku itariki ya 14/09/2011. Muri icyo cyemezo, Abakemurampaka basanze ubutaka bwose bwari bufitwe na SOPYRWA Sarl, hashingiwe ku masezerano yo mu mwaka wa 2001 iyo sosiyete yagiranye na Leta y'u Rwanda ubwo yayeguriraga Ikigo gishinzwe guteza imbere ibireti mu Rwanda (OPYRWA), bugomba gusubizwa uregwa (uwaregwaga icyo gihe yari HORIZON SOPYRWA Ltd), uretse ubwari butunzwe n'ababufitiye ibyangombwa bitangwa n'urwego rubifitiye ububasha. Abakemurampaka babivuze muri aya magambo mu rurimi rw'igifaransa: […] *En conséquence, le Tribunal considère que l'ensemble des terrains et plantations sur lesquels SOPYRWA SARL détenait un droit de fait de pleine jouissance sur la base du contrat de 2001 précédemment évoqué et dont les détenteurs actuels ne justifient à ce jour d'aucun document y relatif dûment établi par les autorités compétentes en la manière doit être restitué à la défenderesse*[1].

[18] Imyanzuro yafashwe n'Abakemurampaka muri icyo cyemezo, iteye mu buryo bukurikira:

- Dutegetse abarega (Muvunyi Paul, Kinuma Faustin, Gatemberezi Aloys na Kayinamura Gédéon) gusubiza uregwa (HORIZON SOPYRWA Ltd) imitungo yose, iyimukanwa n'itimukanwa, bigaruriye hakurikijwe inyandiko mvugo itemewe n'amategeko yo ku itariki 15/07/2007 (Condamne les demandeurs à la restitution en faveur de la défenderesse des biens meubles et immeubles prétendument cédés ou aliénés en vertu du procès-verbal irrégulier du 15/07/2007;

- Tuvuze ko imitungo yonyine itimukanwa (ubutaka n'ibihingwa) itazasubizwa ari iyo abarega cyangwa se abandi, bafitiye ibyangombwa byatanzwe n'ubuyobozi bubifitiye ububasha (*Dit que seuls ne seront pas restitués les biens immeubles (terrains ou plantations) pour lesquels à ce jour, l'administration foncière avait dûment établi des documents (contrat de location/bail, autorisation de bâtir, …) en faveur des demandeurs ou des tiers*[2]".

[19] Ikibazo gisigaye, akaba ari ukureba niba ku itariki ya 14/09/2011, ubwo Abakemurampaka bafataga icyemezo kimaze kuvugwa, Yankundiye Epimaque yari afite icyemezo cy'umutungo ku

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[1] Sentence Arbitrale Définitive, en cause: Muvunyi Paul, Kinuma Faustin, Gatemberezi Aloys et Kayinamura Gédéon vs HORIZON Group Ltd, 5ème Clause (De la Condamnation des demandeurs à la réstitution des biens meubles et immeubles dans le patrimoine de la SOPYRWA Sarl), page 16.

[2] Sentence Arbitrale De finitive …, Conclusions, page 19.

butaka buburanwa gitangwa n'urwego rubifitiye ububasha, bityo we akaba atari ategetswe kubusubiza HORIZON SOPYRWA Ltd.

[20] Ingingo ya 6, igika cya 2, y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda ryakurikizwaga icyo gihe, iteganya ko uburyo bwo kubona impapurompamo z'umutungo bwite w'ubutaka bugenwa n'Iteka rya Minisitiri ufite ubutaka mu nshingano ze, naho ingingo ya 26, igika cya mbere, y'iryo Tegeko Ngenga, igateganya ko kwemeza ko ubutaka butanzwe cyangwa bukodeshejwe ku buryo burambye bigaragazwa n'icyemezo gihamya iyandikwa ry'ubutaka gitangwa n'umubitsi w'impapurompamo z'ubutaka.

[21] Ingingo ya 13 y'Iteka rya Minisitiri N° 002/2008 ryo ku itariki ya 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa naryo ryakurikizwaga icyo gihe, iteganya ko Umubitsi w'Impapurompamo n'Ababitsi b'Impapurompamo bungirije mu mafasi babarizwamo aribo bonyine bafite ububasha bwo gutanga ibyemezo by'umutungo bwite w'ubutaka.

[22] Icyemezo cy'umutungo cyari gifitwe na Yankundiye Epimaque kigaragaza ko ariwe nyir'ubutaka buburanwa nk'uko yakiburanishije mu Rukiko rwaciye urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane no mu zindi manza zabanje, ni "acte de notoriété" yahawe ku itariki ya 25/06/2008 ishyizweho umukono n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Jenda. Igisigaye akaba ari ukumenya niba iyo "acte de notoriété" ari icyangombwa cyemewe n'amategeko cyemeza ko umuntu ariwe nyir'ubutaka.

[23] Hashingiwe ku biteganywa mu ngingo ya 26, igika cya mbere, y'Itegeko Ngenga n° 08/2005 ryavuzwe haruguru ndetse no mu ya 13 y'Iteka rya Minisitiri N° 002/2008 naryo ryavuzwe haruguru, Urukiko rurasanga inyandiko ya « Acte de notoriété » yari ifitwe na Yankundiye Epimaque ubwo hafatwaga icyemezo cy'Abakemurampaka ku itariki ya 14/09/2011, itafatwa nk'icyemezo cy'umutungo gihamya nyir'ubutaka kubera ko ari inyandiko yasinywe n'Umunyamabanga Nshingwabikorwa w'Umurenge, akaba atari we amategeko aha ububasha bwo gusinya bene ibyo byemezo. Koko rero, ingingo ya 26, igika cya mbere, y'Itegeko Ngenga rimaze kuvugwa, iteganya ko kwemeza ko ubutaka butanzwe bigaragazwa n'icyemezo gihamya iyandikwa ry'ubutaka gitangwa n'umubitsi w'impapurompamo z'ubutaka; naho ingingo 13 y'Iteka rya Minisitiri naryo rimaze kuvugwa, igateganya ko ibyemezo by'umutungo bwite w'ubutaka bitangwa n'Umubitsi w'Impapurompamo n'Ababitsi b'Impapurompamo z'ubutaka bungirije mu mafasi babarizwamo.

[24] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga igihe icyemezo cy'abakemurampaka cyafatwaga ku itariki ya 14/09/2011, Yankundiye Epimaque nta cyangombwa gitangwa n'ubuyobozi bubifitiye ububasha yari afite ku kibanza gifite N° 1200 kiri mu Mudugudu wa Kageri, Akagari ka Bukinanyana, Umurenge wa Jenda, Akarere ka Nyabihu, Intara y'Iburengerazuba ari nacyo kiburanwa, bityo ubwo butaka nabwo bukaba bwaragombaga gusubizwa HORIZON SOPYRWA Ltd. Kubera iyo mpamvu, Urukiko rurasanga ikirego gisaba gusubirishamo ku mpamvu z'akarengane urubanza nº RCA 0027/16/HC/MUS cyatanzwe na HORIZON SOPYRWA Ltd gifite ishingiro, urwo rubanza rukaba ruhindutse mu ngingo zarwo zose.

- **Ku bijyanye n'indishyi zisabwa na HORIZON SOPYRWA Ltd.**

[25] Me Abijuru Emmanuel uhagarariye HORIZON SOPYRWA Ltd, avuga ko isaba uru Rukiko kuyikuriraho indishyi zose yari yaciwe n'Urukiko Rukuru, Urugereko rwa Musanze. Avuga kandi ko, kubera ko Yankundiye Epimaque yayizanye mu nkiko kandi azi neza ko ubutaka buburanwa butigeze buba ubwe, yategekwa kuyiha indishyi z'ikurikiranarubanza zingana na 1.000.000 Frw, 3.000.000 Frw y'igihembo cy'Avoka ku nzego zabanje (Urukiko Rwisumbuye, Urukiko Rukuru mu rwego rw'ubujurire, Urukiko Rukuru mu rwego rwo gusubirishamo urubanza ingingo nshya). Agategekwa kandi kwishyura 2.000.000 Frw y'ibyakozwe mu gusaba ko urubanza rusubirwamo ku mpamvu z'akarengane ku Rwego rw'Umuvunyi ndetse no muri uru rubanza.

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[26] Ku birebana n'indishyi zinyuranye HORIZON SOPYRWA Ltd yari yaciwe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, ikaba isaba ko zose zakurwaho, Urukiko rurasanga kuba urwo rubanza ruhindutse mu ngingo zarwo zose, byumvikana ko ibyarutegetswemo byose nabyo bihindutse.

[27] Ku birebana n'indishyi z'ikurikiranarubanza ndetse n'amafaranga y'igihembo cy'Avoka HORIZON SOPYRWA Ltd ivuga ko yakoresheje mu manza zabanje, kuba Yankundiye Epimaque ariwe washoje urubanza kandi bikaba birangiye ariwe utsinzwe, Urukiko rurasanga hari amafaranga agomba guha HORIZON SOPYRWA Ltd. Urukiko rurasanga ariko 1.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cya Avoka isaba akabije kuba menshi mu gihe itagaragaza ko ariyo yakoresheje koko, bityo mu bushishozi bwarwo ikaba igenewe 750.000 Frw y'ikurikiranarubanza na 1.500.000 Frw y'igihembo cya Avoka mu manza eshatu yaburanye (rumwe mu Rukiko Rwisumbuye n'ebyiri mu Rukiko Rukuru), yose hamwe akaba 2.250.000 Frw.

[28] Ku birebana n'andi mafaranga isaba ivuga ko yayakoresheje mu gusubirishamo urubanza ku mpamvu z'akarengane, Urukiko rurasanga nayo igomba kuyahabwa, ariko kubera ko 2.000.000 Frw isaba nayo akabije kuba menshi kandi idashobora kugaragaza ko ariyo yakoresheje koko, mu bushishozi bw'Urukiko igenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[29] Rwemeje ko ikirego cyatanzwe na HORIZON SOPYRWA Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00027/16/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku itariki ya 30/06/2017, gifite ishingiro;

[30] Rwemeje ko urwo rubanza ruhindutse mu ngingo zarwo zose;

[31] Rwemeje ko ubutaka burimo ikibanza n° 1200 buri mu Mudugudu wa Kageri, Akagari ka Bukinanyana, Umurenge wa Jenda, Akarere ka Nyabihu, Intara y'Iburengerazuba ari ubwa HORIZON SOPYRWA Ltd;

[32] Rutegetse Yankundiye Epimaque guha HORIZON SOPYRWA Ltd, 3.050.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza nk'ubo yasobanuwe haruguru.