

**DEVELOPMENT BANK OF RWANDA
LTD (BRD Ltd) v. SPLENDID
KALISIMBI Ltd**

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA
00058/2018/CA (Mukanyundo, P.J., Munyangeri na
Mukandamage, J.) 10 Gicurasi 2019]

Amategeko yerekeranye n'imanza z'ubucuruzi – Sosiyete – Igihombo – Iyo hamaze kwemezwa ikurikirana ry'igihombo cya sosiyete, nta mutungo wayo wakurwa mu yindi mbere y'igabana ry'ababerewemo imyenda nubwo waba waratanzweho ingwate. Itegeko N° 35/2013 ryo ku wa 29/05/2013 rihindura kandi ryuzuzwa Itegeko N°12/2009 ryo ku wa 26/05/2009 ryerekeye izahura ry'ubucuruzi n'irangiza ry'ibibazo biturutse ku gihombo, ingingo ya 4.

Incamake y'ikibazo: BRD Ltd yahaye sosiyete Splendid inguzanyo, nayo iyaha ingwate, iyo sosiyete ntiyabashije kwishyura nkuko byumvikanyweho, nyuma yaje kugwa mu gihombo, byemezwa n'Urukiko, maze rushyiraho umucungamutungo w'agateganyo.

Mu gihe BRD Ltd yari yaratangiye gusaba kugurisha ingwate yahawe, umucungamutungo wa Splendid yaje kuyimenyesha ko gukurikirana umwenda yayihaye bibaye bisubitswe, kubera gahunda yo gutangiza ikurikirana ry' igihombo, ibyo bituma BRD Ltd iyirega mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kukuraho icyemezo gisubika ikurikiranwa ry'umwenda kugirango ibashe kugurisha ingwate. Urukiko rwemeje ko ikirego nta shingiro gifite kuko Splendid yari yaguye mu

gihombo kandi ingwate ikaba itakurwa mu mitungo wa Splendid ngo igurishwe mbere yuko habaho gahunda y'igabana nk'uko itegeko ribitegenya.

BRD Ltd yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko umucamanza mu rukiko rubanza yaruciye ku bitarasabwe ivuga ko yarusabaga gukuraho icyemezo cy'isubikwa ryo gukurikirana no kugurisha ingwate, Urukiko ntirwabisuzuma ahubwo rusuzuma gusa irebana n'igihombo, ivuga kandi ko umucungamutungo w'agateganyo atubahirije amategeko ubwo yangaga kuvana ingwate mu mutungo wa Splendid kugirango igurishwe. Uru rukiko rwemeza ko imikirize y'urubanza rwo mu Rukiko rw'Ubucuruzi rwa Nyarugenge idahindutse, rutegeka ko umutungo watanzweho ingwate utavanwa mu mitungo igomba kugurishwa.

BRD Ltd yongeye ijurira mu Rukiko rw'Ikirenga, nyuma y'ivugururwa ry'inkiko, urubanza rwimurirwa mu Rukiko rw'Ubujurire, ivuga ko Urukiko Rukuru rw'Ubucuruzi rutasuzumye ingingo z'ubujurire zijyanye no kumenya niba Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza ku kitarasabwe ivuga ko yasabaga gukuraho icyemezo ahubwo rugafata icyemezo ku birebebana n'ishyirwa mu gihombo rya sosiyete splendid, no kuba kandi umucungamutungo w'agateganyo atarubahirije amategeko yanga gukura ingwate mu mutungo wa Splendid ngo igurishwe.

Sosiyete Splendid yiregura ivuga ko hashingiwe ku mpamvu ziteganywa n'itegeko ryerekeye izahura ry'ubucuruzi, gukurikirana ingwate birahagarara, ivuga kandi ko kuba iri mu gihombo, Urukiko Rukuru rw'Ubucuruzi ntirwari gufata icyemezo kigira ingaruka kuri splendid mu gihe yahombye.

Incamake y'icyemezo: 1. Iyo hamaze kwemezwa ikurikirana ry'igihombo cya sosiyete, nta mutungo wayo wakurwa mu yindi mbere y'igabana ry'ababerewemo imyenda nubwo waba waratanzweho ingwate.

**Ubujurire nta shingiro bufite.
Amagarama y'urubanza ahwanye n'ibyakozwe muri uru
rubanza.**

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko N° 35/2013 ryo ku wa 29/05/2013 rihindura kandi ryuzuza Itegeko N° 12/2009 ryo ku wa 26/05/2009 ryerekeye izahura ry'ubucuruzi n'irangiza ry'ibibazo biturutse ku gihombo, ingingo ya 4.

Nta manza zifashishijwe.

Urubanza

L.IMITERERE Y'URUBANZA

[1] Ku wa 09/09/2016 Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM 00985/16/TC/NYGE, rwemeza itangizwa ry'uburyo bw'ikurikirana bwerekeye igihombo muri Sosiyete Splendid Kalisimbi Ltd, runashyiraho umucungamutungo w'agateganyo wayo Me Mukwende Milimo

Olivier, ahabwa inshingano nyamukuru yo gufasha Splendid Kalisimbi Ltd gukomeza gukora.

[2] Ku wa 14/09/2016 Me Mukwende Milimo Olivier yandikiye BRD Ltd ibaruwa ayimenyeshya ko gukurikirana umwenda yari ifitiwe na Splendid Kalisimbi Ltd bibaye bisubitswe kubera ko Urukiko rwemeje itangizwa ry'uburyo bw'ikurikirana bwerekeye igihombo muri iyo sosiyete.

[3] Ku wa 21/01/2017, BRD Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba icyemezo gikuraho isubika ryo gukurikirana umwenda wayo ufite ingwate, kuko nta gahunda y'izahura (*plan de redressement*) yatanzwe n'umucungamutungo w'agateganyo wa Splendid Kalisimbi Ltd ngo yemezwe n'Urukiko, ko iramutse yaranatanzwe nta gaciro yagira, kuko itabanje kwemezwa n'inama y'ababerewemo imyenda (*comité de créanciers*), kandi ko n'izahura ritashoboka mu gihe umucungamutungo w'agateganyo adakoranye na komite y'ababerewemo imyenda, ndetse nta na gahunda ihamye y'izahura afite. Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya BRD Ltd nta shingiro gifite, ruyitegeka kwishyura Splendid Kalisimbi Ltd indishyi z'igihombo cya Avoka.

[4] BRD Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko umucamanza yaciye urubanza ku bitarasabwe, ko Urukiko rwemeje ko habayeho gahunda y'izahura yatanzwe na Splendid Kalisimbi Ltd en liquidation kandi nta bimenyetso, rukirengagiza ko hari amategeko atarubahirijwe n'umucungamutungo w'agateganyo, ndetse ko rwemeje ko izahura rya Splendid Kalisimbi Ltd rishoboka mu buryo bunyuranyije n'amategeko.

[5] Urwo Rukiko rwemeje ko imikirize y'urubanza RCOM 00351/2017/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge idahindutse, rutegeka ko umutungo uri mu kibanza N° 1/01/09/03/867, mu Mujyi wa Kigali, Akarere ka Nyarugenge, Umurenge wa Nyarugenge, Akagari ka Kiyovu, utavanwa mu mitungo ya Splendid Kalisimbi Ltd en liquidation igomba kugurishwa.

[6] BRD Ltd yajuririye Urukiko rw'Ikirenga, urubanza rwimurirwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ruhabwa RCAA 00058/2018/CA.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 26/03/2019, BRD Ltd iburanirwa na Me Mugeni Anita, Splendid Kalisimbi Ltd en liquidation ihagarariwe n'umucungamutungo w'agateganyo Me Mukwende Milimo Olivier, yunganiwe na Me Murutasibe Joseph hamwe na Me Nyiringabo Théoneste.

[8] Mu ntangiro y'iburanisha Me Murutasibe Joseph, yavuze ko inzitizi y'iburabubasha batanze y'uko BRD Ltd yatsinzwe ku mpamvu zimwe mu nzego zombi zabanje bayiretse, ariko bakomeje inzitizi y'iburabubasha irebana nuko nta gaciro k'ikiburanwa kageze kuri 50.000.000 Frw kemejwe n'umucamanza igihe habaye impaka. Nyuma yo kumva impande zombi kuri iyo nzitizi, Urukiko rwafatiye icyemezo mu ntebe, maze rushingiye ku biteganywa n'ingingo ya 28, igika cya 2, agace ka 7°, y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2002 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga rusanga urubanza ruri mu bubasha bwarwo kuko ingwate BRD Ltd isaba kugurisha ifite agaciro gasumba kure

50.000.000Frw yateganyijwe n’itegeko kubera ko kangana na 2.300.000.000Frw, rukomerezaho iburanisha mu mizi y’urubanza.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO

1. Kumenya niba hari amategeko atarubahirijwe mu rubanza rujuririrwa

a) Ku byerekeranye no kuba umucamanza yaraciye urubanza ku kitarajuririwe

[9] Me Mugeni Anita uhagarariye BRD Ltd avuga ko umucamanza yaciye urubanza ku kitarajuririwe, kuko BRD Ltd yajuririye gukuraho icyemezo cyafashwe ku kirego kirebana no gusaba ko icyemezo gisubika ikurikirana ry’umwenda ufite ingwate kivanwaho, ariko urukiko rukaba rutarigeze rugisuzuma ngo rugifateho icyemezo ahubwo rukaba rwarafashe icyemezo ku byerekeye ishagirwa mu gihombo rya Splendid Kalisimbi Ltd.

[10] Me Mugeni Anita avuga ko batunguwe no kubona umucungamutungo w’agateganyo agaragaza icyemezo cy’urukiko cyo kongerera Splendid Kalisimbi Ltd en liquidation igihe cy’izahura cyatanzwe amezi atandatu ateganywa n’itegeko yararangiye.

[11] Me Murutasibe Joseph na Me Nyiringabo Théoneste bavuga ko ingingo ya 4, y’itegeko ryerekeye izahura ry’ubucuruzi n’irangiza ry’ibibazo biturutse ku gihombo ryo mu mwaka wa 2013, iteganya impamvu zituma gukurikirana ingwate bivanwaho, kandi ko sosiyete Splendid Kalisimbi Ltd en liquidation iri mu gihombo, akaba ari nta mpamvu y’ibyo

BRD Ltd isaba. Bavuga ko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ingingo z'ubujurire rwari rwashyikirijwe ruzifataho icyemezo kandi ko rutari gufata icyemezo kigira ingaruka kuri Splendid Kalisimbi Ltd en liquidation mu gihe yahombye, ikaba itakiriho nk'umucuruzi.

[12] Bakomeza bavuga ko inama y'ababerewemo imyenda yatinze kujyaho bitewe n'amananiza umucungamutungo w'agateganyo yashyizweho na BRD Ltd, ari nayo mpamvu igihe cy'izahura cyongerewe.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 4 y'Itegeko N° 35/2013 ryo ku wa 29/05/2013 ihindura kandi ikuzuzza ingingo ya 37 y'Itegeko N°12/2009 ryo ku wa 26/05/2009 ryerekeye izahura ry'ubucuruzi n'irangiza ry'ibibazo biturutse ku gihombo iteganya ko *“uhereye ku itariki y'itangizwa ry'uburyo bw'ikurikirana ry'igihombo:*

- 1° Gutangiza cyangwa gukomeza ibirego by'umuntu ubwe cyangwa uburyo bw'ikurikirana bureba ibintu by'ugomba kwishyura hamwe n'uburenganzira, inshingano cyangwa uburyozwe by'ugomba kwishyura biba bisubitswe;
- 2° Kurangiza imanza zirebana n'umutungo w'urimo umwenda biba bisubitswe;
- 3° Uburenganzira bwo guhagarika amasezerano n'ugomba kwishyura buba busubitswe;

4° Uburenganzira bwo guhererekanya, gutangaho ingwate cyangwa bwo gukoresha umutungo w'ugomba kwishyura buba busubitswe.

[14] Dosiye y'urubanza igaragaza ko BRD Ltd yareze isaba gukuraho icyemezo cyasubitse ikurikirana ry'umwenda ufite ingwate, ishaka kwemererwa kugurisha ingwate yari yarahawe na Splendid Kalisimbi Ltd en liquidation igihe iyi yari yarashyiriweho itangiza ry'uburyo bw'ikurikirana bwerekeye igihombo, ndetse urukiko rwarashyizeho umucungamutungo w'agateganyo, ariko Urukiko rw'Ubucuruzi rwa Nyarugenge ruza kwemeza ko Splendid Kalisimbi Ltd en liquidation yahombye uru rubanza rugeze mu bujirire.

[15] Dosiye y'urubanza igaragaza ko mu bujirire Urukiko Rukuru rw'Ubucuruzi, rwari rwasabwe gusuzuma niba Urukiko rw'Ubucuruzi rwa Nyarugenge rwaracye urubanza ku kitarasabwe, gusuzuma niba nta kimenyetso cyatanzwe kigaragaza ko habayeho gahunda y'izahura yatanzwe na Splendid Kalisimbi Ltd en liquidation, gusuzuma niba umucungamutungo w'agateganyo atarubahirije amategeko no gusuzuma niba urukiko rwaremeje ko izahura rya Splendid Kalisimbi Ltd en liquidation rishoboka mu buryo bunyuranyije n'amategeko, ariko urukiko rusanga hari ibitagomba gusuzumwa, kuko nyuma y'ipfundikira ry'urubanza hagaragaye icyemezo cyashize mu gihombo Splendid Kalisimbi Ltd en liquidation, bituma Urukiko rusuzuma gusa niba ingwate yahawe BRD Ltd yakurwa mu mutungo ugomba kugurishwa n'uwashinzwe iseswa rya Splendid Kalisimbi Ltd en liquidation n'isaranganyamutungo wayo, ariko rusanga icyifuzo cya BRD Ltd nta shingiro gifite kubera ko igomba gutegereza gahunda y'igabana kuko iri mu baberewemo imyenda bagomba

kwishyurwa mbere kandi ingwate yahawe nyirayo nawe akiyifiteho uburenganzira.

[16] Urukiko rurasanga, ibyo BRD Ltd ivuga ko Urukiko Rukuru rw'Ubucuruzi rutasuzumye ingingo z'ubujurire zijyanye no kumenya niba Urukiko rw'Ubucuruzi rwa Nyarugenge rwaracye urubanza ku kitarasabwe, gusuzuma niba nta kimenyetso cyatanzwe kigaragaza ko habayeho gahunda y'izahura yatanzwe na Splendid Kalisimbi Ltd en liquidation, gusuzuma niba umucungamutungo w'agateganyo atarubahirije amategeko no gusuzuma niba Urukiko rwaremeje ko izahura rya Splendid Kalisimbi Ltd en liquidation rishoboka mu buryo bunyuranyije n'amategeko zavuzwe haruguru bitahabwa ishingiro, kubera ko, nk'uko byasobanuwe mu gika cya 9, cy'urubanza rujuririrwa, yasabaga ibidashoboka hashingiwe ku ngingo ya 4 y'Itegeko N° 35/2013 ryo ku wa 29/05/2013 ryavuzwe haruguru, iteganya ko "uhereye ku itariki y'itangizwa ry'uburyo bw'ikurikirana ry'igihombo gutangiza cyangwa gukomeza ibirego by'umuntu ubwe cyangwa uburyo bw'ikurikirana bureba ibintu by'ugomba kwishyura hamwe n'uburenganzira, inshingano cyangwa uburyozwe by'ugomba kwishyura biba bisubitswe, bityo rero Urukiko Rukuru rw'Ubucuruzi rukaba nta kosa rwakoze, kuko rutagombaga gufata icyemezo ku birebana n'izahura rya sosiyete cyangwa uburyo bw'ikurikirana bureba ibintu byayo kubera ko Splendid Kalisimbi Ltd yari yarangije gushyirwa mu gihomba.

b) Ku birebana no kumenya niba ingwate BRD Ltd yahawe yakurwa mu mitungo igomba kugurishwa n'uwashinzwe iseswa n'isaranganyamutungo.

[17] Me Mugeni Anita avuga ko, BRD Ltd yahawe ingwate na Splendid Kalisimbi Ltd en liquidation none ikaba

yarashyizwe mu cyamunara, bikaba bitinze kandi ko kuva icyo ngwate yarishingiye na BRD Ltd 100%, bivuze ko igihe habaye iseswa, ifite uburenganzira bwo gukuramo ingwate yayo ikayigurishiriza nk'uko biteganywa n'ingingo ya 37 ter, y'Itegeko ryerekeye izahura ry'ubucuruzi n'irangiza ry'ibibazo biturutse ku gihombo ryo mu mwaka wa 2009 yagiye ivugururwa mu mwaka wa 2013-2018.

[18] Me Mukwende Milimo Olivier, uhagarariye Splendid Kalisimbi Ltd en liquidation avuga ko ubushake bwo guteza cyamunara buhari, ko BRD Ltd imaze kwishyurwa 99.000.000 Frw kandi ko itagomba kwishyurwa yonyine, kuko hari n'abandi babereyemo umwenda barimo RSSB, RAA, BPR Ltd n'Akarere ka Nyarugenge.

[19] Me Nyiringabo Théoneste avuga ko ibyo BRD Ltd isaba bitakorwa mu gihe sosiyete yasheshwe, ahubwo ko ibyo bikorwa mu gihe cy'izahura.

UKO URUKIKO RUBIBONA

[20] Urukiko rurasanga ibisabwa na BRD Ltd ko ingwate yahawe yakurwa mu mutungo wa Splendid Kalisimbi Ltd en liquidation ugomba kugurishwa n'ushinzwe igihombo, nta shingiro byahabwa, kuko nk'uko biteganywa n'ingingo ya 4 y'Itegeko N°35/2013 ryo ku wa 29/05/2013 ihindura kandi ikuzuzwa ingingo ya 37, y'Itegeko N°12/2009 ryo ku wa 26/05/2009 ryavuzwe haruguru, nkuko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye mu gika cya 15, cy'urubanza rujuririrwa, kuba Splendid Kalisimbi Ltd en *liquidation* yarasheshwe, ntaho Urukiko rwahera rutegeka ko ingwate BRD Ltd ikurikiranye ikurwa mu yindi mitungo igurishwa, kuko

iseswa riba rigamije kugurisha ingwate kugira ngo ababerewemo umwenda bishyurwe.

[21] Hashingiwe ku bisobanuro byatanzwe, Urukiko rurasanga, kuba umwenda BRD Ltd yatanze ufitiwe ingwate kuri uwo mutungo, igomba gutegereza igurisha ry'umutungo wa Splendid Kalisimbi Ltd en liquidation, ikishyurwa, nk'uko biteganywa n'amategeko.

2. Ku bijyanye n'indishyi zasabwe muri uru rubanza

[22] Ababuranira Splendid Kalisimbi Ltd en liquidation bavuga ko yakomeje kuburana uru rubanza ku rwego rw'ubujurire bwa kabiri, basaba Urukiko rw'Ubujurire gutegeka ko yakwishyurwa igihembo cya Avoka kingana na miliyoni eshatu (3.000.000Frw) kuri buri rwego, n'amafaranga y'ikurikiranarubanza angana na miliyoni ebyiri (2.000.000Frw) ku nzego zose urubanza rwaburanishijwemo.

[23] Uburanira BRD Ltd avuga ko indishyi zisabwa nta shingiro ryazo kuko ari uburenganzira ihabwa n'amategeko bwo kugaragaza ibyo itishimiye mu mikirize y'urubanza rujuririrwa harimo n'amategeko atarubahirijwe.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza.

[25] Urukiko rurasanga Splendid Kalisimbi Ltd en liquidation yaraburaniwe n’aba Avoka yishyura, bityo BRD Ltd igomba kuyiha 500.000Frw y’igihembo cya Avoka na 300.000Frw y’ikurikiranarubanza agenwe mu bushishozi bw’Urukiko kuko ayo isaba ari ikirenga.

III. ICYEMEZO CY’URUKIKO

[26] Rwemeje ko ubujurire bwatanzwe na BRD Ltd nta shingiro bufite.

[27] Rwemeje ko urubanza RCOMA 00476/2017/CHC/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 19/05/2017 rudahindutse, uretse amafaranga y’ikurikiranarubanza n’igihembo cya Avoka agenewe Splendid Kalisimbi Ltd (en liquidation) kuri uru rwego.

[28] Rutegetse BRD Ltd guha Splendid Kalisimbi Ltd en liquidation 800.000Frw akubiyemo ay’ikurikiranarubanza n’igihembo cya Avoka.

[29] Ruvuze ko amagarama yatanzwe ahwanyeye n’ibyakozwe muri uru rubanza.