QI ZHICHENG v WANG YONGFEI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00043/2019/CA (Munyangeri, P.J.) 06 Ukuboza 2019]

Amategeko agenga imanza z'ubucuruzi – Ubukemurampaka – Gutesha agaciro umwanzuro w'ubukemurampaka – Iyo inteko y'abakemurampaka itahaye umuburanyi uburenganzira bwo kumenya ibyo aregwa ngo abyiregureho icyemezo cyayo kivanwaho.

Incamake y'ikibazo: Urega n'uregwa bari bafatanyije sosiyete yitwa *TANGREN TRADING Ltd*, nyuma baza kutumvikana bituma bayisesa, ariko batandukana bataragabana umutungo bari bayifitemo. Urega yakomeje gukorera aho bakoreraga anahafungura resitora. Uregwa akavuga ko mugenzi we yakomeje gukoresha ibikoresho byari ibya sosiyete bari bahuriyeho, ariko adafite uburenganzira bwo gufungura ubucuruzi nk'ubwo ataramwishyura umugabane we. Urega nawe avuga ko mugenzi we yafunguye indi sosiyete ikora ibintu bias n'ibye kandi nta burenganzira abitangiye nk'uko byari byaremeranyijwe mu masezerano bagiranye. Avuga kandi ko hari imodoka nayo yari yaguze mu mutungo wa sosiyete akayiyandikishaho; bityo ko yashyirwa mu bigomba kugabanwa.

Ikibazo cyashyikirijwe abakemurampaka ariko basanga uburyo sosiyete yacungwaga nta micungire mibi yabayeho. Bavuze kandi ko ikibazo cya *concurrence déloyale* yakozwe na n'uregwa ko gifite ishingiro kuko n'ubwo Atari umunyamigabane wayo cyangwa umuyobozi wayo ariko ko hari aho yari ahuriye nayo kuko nomero ya telefoni yakoreshwaga yari iye. Hemejwe kandi ko imodoka yaguzwe mu mutungo wa sosiyete ijya mubigabanwa.

Uregwa yaregeye Urukiko Rukuru rw'Ubucuruzi, asaba ko icyemezo cy'ubukemurampaka cyavanwaho teshwa agaciro kuko atigeze ahabwa uburenganzira bwo kubyiregura ku bimenyetso byashingiweho n'abakemurampaka.

Uru Urukiko Rukuru rw'Ubucuruzi rwasanze ikirego cy'uregwa gifite ishingro bituma ruvanaho umwanzuro wafashwe n'Inteko y'Abakemurampaka kuko atarashoboye kubona uburyo bukwiye bwo kwiregura kubera atigeze amenyeshwa ibimenyetso byashingiweho.

Urega yajuririye Urukiko rw'Ubujurire, avuga ko uregwa atagombaga kujuririra umwanzuro w'abakemurampaka mu Rukiko, ahubwo ko yagombaga gusaba ko usubirwamo, ko Urukiko Rukuru rw'Ubucuruzi rutagombaga gutesha agaciro umwanzuro w'abakemurampaka.

Incamake y'icyemezo: Umuburanyi utamenyeshejwe ikimenyetso ngo acyisobanureho yemeza ko ikintu cyangwa nomero ya telefone ko atari iye, ndetse ahabwe uburenganzira bwo kugira icyo abivugaho, ni impamvu zituma icyemezo cy'abakemurampaka kivanwaho.

Ubujurire nta shingiro bufite.
Urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ntiruhindutse.
Amagarama ahwanye n'ibyarukozwemo.

Amategeko yashingiweho:

Itegeko Nº 005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, ingingo ya 45 na 47.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] WANG YONGFEI na QI ZHICHENG bari bafatanyije sosiyete yitwa TANGREN TRADING Ltd, nyuma baza kutumvikana bituma bayisesa, ariko batandukana bataragabana umutungo bari bayifitemo. QI ZHICHENG yakomeje gukorera aho bakoreraga afungura resitora (restaurent) yitwa TANGREN RESTAURENT. WANG YONGFEI akavuga ko mugenzi we yakomeje gukoresha ibikoresho byari ibya sosiyete bari bahuriyeho, ariko adafite uburenganzira bwo gufungura ubucuruzi nk'ubwo ataramwishyura umugabane we.

[2] QI ZHICHENG nawe avuga ko WANG YONG FEI ntacyo yahabwa, kuko ubwo yari Gérant wa sosiyete bari bafatanyije yafunguye indi sosiyete yitwa TANGREN HOTEL yakoraga ibintu bimwe nta burenganzira amusabye, kandi bitari byemewe mu masezerano bagiranye. Ikindi avuga ko imodoka yo mu bwoko ba toyota Fortuner yaguze mu mutungo wa sosiyete akayiyandikishaho yashyirwa mu mutungo ugomba kugabanwa kuko yahombeje byinshi igihe yacungaga sosiyete.

[3] Icyo kibazo cyashyikirijwe Abakemurampaka, maze bavuga ko uburyo sosiyete yacungwaga bitatuma hagaragazwa imicungire mibi yaba yarabayeho. Bavuze kandi ko ikibazo cya concurrence déloyale yakozwe na WANG YONG FEI gifite ishingiro kuko byagaragaye ko n'ubwo atari mu banyamigabane ba TANGREN HOTEL ntabe na gérant wayo, ariko afite aho ahuriye nayo, kuko nomero za téléphone yatanze muri KIAC zigaragara no kuri Paneau publicitaire ya TANGREN HOTEL. Hemejwe kandi ko imodoka Fortuner ijya mu bigabanwa kuko yavuye mu mutungo wa sosiyete. Hemezwa ko urutonde (liste) rw'imitungo yagaragajwe ariwo mutungo uzagabanwa, hagashyirwaho umuhanga ugaragaza agaciro kabyo kugira ngo babashe kubigabana. Hemejwe kandi ko kuba na QI ZHICHENG yarafunguye indi sosiyete yitwa TANGREN RESTAURENT nta burenganzira ahawe na mugenzi we, agakorera hahandi bakoreraga ibikorwa bimwe, bigaragaza ko ibikorwa bya buri ruhande bigomba guhwaniramo ntihagire ugira icyo yishyuza undi, cyane cyane ko ntawe ugaragaza nta gushidikanya icyo ibikorwa by'undi byamuhombeje. Hemejwe ko TANGREN RESTAURENT ikomeza gukorera aho TANGREN TRADING Ltd yakoreraga, ko buri wese yirengera ibyo yatakaje ku rubanza ariko WANG YONG FEI akagarurira QI ZHICHENG 938 $ nk'igice cy'ibyishyuwe ku bukemurampaka.

[4] WANG YONG FEI yaregeye Urukiko Rukuru rw'Ubucuruzi, asaba ko icyemezo cy'ubukemurampaka cyateshwa agaciro kuko atigeze ahabwa uburenganzira bwo kubyiregura ku bimenyetso byashingiweho n'abakemurampaka. Yavuze kandi ko hari ibyasabwe bitafashweho icyemezo hakaba n'ibyafashweho icyemezo bitararegewe, asaba n'indishyi.

[5] Mu rubanza No RCOMA 00020/2018/CHC/HCC, Urukiko Rukuru rw'Ubucuruzi rwasanze WANG YONG FEI atarashoboye kubona uburyo bukwiye bwo kwiregura kubera atigeze amenyeshwa ibimenyetso byashingiweho ngo ahabwe umwanya wo kubyireguraho, bityo ko icyemezo cy'abakemurampaka kigomba kuvanwaho.

[6] QI ZHICHENG yajuririye Urukiko rw'Ubujurire, avuga ko WANG YONG FEI atagombaga kujuririra umwanzuro w'abakemurampaka mu Rukiko, ahubwo ko yagombaga gusaba ko usubirwamo, ko Urukiko Rukuru rw'Ubucuruzi rutagombaga gutesha agaciro umwanzuro w'abakemurampaka hashingiwe ku kuba WANG YONGFEI atarahawe umwanya wo kwiregura, kandi ko QI ZHICHENG yategetswe gutanga amafaranga y'ibyagiye ku rubanza bidakwiye.

[7] Urubanza rwaburanishijwe ku wa 04/11/2019, QI ZHICHENG ahagarariwe na Me NKUBA Milton, naho WANG YONGFEI ahagarariwe na Me NSENGIYUMVA Abel.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaratesheje agaciro umwanzuro w'ubukemurampaka mu buryo bwemewe n'amategeko

[8] Me NKUBA Milton uhagarariye QI ZHICHENG avuga ko Urukiko Rukuru rw'Ubucuruzi rwavanyeho icyemezo cy'Abakemurampaka cyo ku wa 11/06/2018, ko yari yarugaragarije ko rutagombaga kwakira ikirego cya WANG YONG FEI, kubera ko atigeze yubahiriza ibiteganywa n'ingingo ya 45 y'Itegeko N° 005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, igaragaza ko ibyo WANG YONG FEI agomba kuba yarasabye gusubirishamo icyemezo cy''Abakemurampaka, kugikosoza cyangwa se gusobanuza ibyaba bidasobanutse.

[9] Avuga kandi ko ingingo ya 45 y'Itegeko N° 005/2008 ryo ku wa 14/02/2008 ryavuzwe iteganya ko " mu gihe cy'iminsi mirongo itatu (30) amenyeshejwe imyanzuro, uwiyambaje ubukemurampaka ashobora, amaze kubimenyesha uwo bafitanye ikibazo, gutanga ikirego gisaba Inteko y'Abakemurampaka gusubiramo iyo myanzuro, igihe bigaragara ko yafashwe hashingiwe ku buriganya cyangwa hashingiwe ku mpapuro mpimbano cyangwa ku buhamya bw'ibinyoma. Igihe inteko isanze icyo kirego gifite ishingiro, isubiramo imisuzumire mu gihe kitarenze iminsi cumi n'itanu (15) ", ubwayo yari ihagije kugira ngo ubujurire bwa WANG YONG FEI bube butarakiriwe kubera ko inzira yanyuzemo atariyo yagombaga kuba yarakoresheje, kuko atubahirije ibiteganywa mu ngingo ivuzwe.

[10] Akomeza avuga ko yagombaga gusaba Inteko gusubiramo uwo mwanzuro, gukosora ahari amakosa cyangwa se gutanga ubusobanuro ku ngingo bigaragara ko idasobanutse. Kuba rero Urukiko rwarakiriye ubujurire bwa WANG YONG FEI ndetse rukanatesha agaciro umwanzuro w'Abakemurampaka, asanga rwarirengagije ko WANG YONG FEI yahisemo kwirengagiza ibiteganywa n'ingingo ya 45 y'Itegeko rigenga Ubukemurampaka ryavuzwe haruguru, bikaba ari impamvu ituma ubwo bujurire bwe butaragombaga kwakirwa ngo bunasuzumwe, kuko butari bwujuje ibisabwa.

[11] Asoza QI avuga ko inteko y'abakemurampaka yabasabye gukora urutonde rw'ibyo baburana, ZHICHENG akora urutonde rurimo imodoka ya Fortuner, imodoka ya Fortuner ariko yongeramo n'ibindi bintu byasigaye, nanone Urukiko rushingira kuri nomero za telefone 0788888809 ya urutonde rurimo WANG YONGFEI nawe akora WANG YONGFEI yari ku cyapa cy'aho yafunguye indi restaurant, kandi ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko iyo nomero ya telephone batigeze bayijyaho impaka kandi yari ku cyapa kigaragaza umuntu wahamagara kuri TANGREN Hotel, ndetse ko n'imodoka ya Fortuner batayigiyeho impaka, bityo ko iyo WANG YONGFEI abona ko abakemurampaka bashingiye kuri iyo nomero, yari kuvuga ko atari iye, ndetse akaba yanavuga ko imodoka ya Fortuner itari mu mutungo basangiye, bityo ko batumva ukuntu Urukiko Rukuru rw'Ubucuruzi rwemeje ko hari ibitaragiweho impaka.

[12] Me NSENGIYUMVA Abel avuga ko ibyo urega avuga ko WANG YONG FEI atagombaga kujuririra umwanzuro w'Abakemurampaka, ko ahubwo yagombaga gusaba ko usubirwamo nta shingiro bifite kuko mu biteganywa n'ingingo ya 45 y'itegeko ry'ubukemurampaka nta na kimwe cyagaragaye.cyatuma WANG YONGFEI yemererwa gusubira mu bakemurampaka.

[13] Avuga na none ko ikibazo telephone yaje gukemura ari ukureba niba harabayeho concurence déloyale bituma QI ZHICHENG atsindwa. Ko iyo telephone yari iri ku cyapa kuri Hoteri Ninzi kandi ko iyo nzu yari yarashenywe kera ubwo abakemurampaka bafataga icyemezo, ko iyo baba barahawe uburenganzira bwo kubivugaho bari kubaza urukiko aho icyo cyapa kiri.

[14] Asoza avuga ko ikimenyetso urukiko rwashingiyeho cyuko imodoka ya Fortuner yaguzwe mu mafaranga ya company batigeze bakimenyeshwa, akaba yumva ko yavanwa mu bigabanwa, kuko itaguzwe mu mafaranga ya company, kubera ko carte jaune yanditse kuri WANG YONGFEI.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 47 y'Itegeko No 005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi iteganya ko "imyanzuro yafashwe hakoreshejwe ubukemurampaka ishobora kuvanwaho n'urukiko ruvugwa mu ngingo ya 8 y'iri tegeko igihe gusa: uwiyambaje ubukemurampaka asaba iryo vanwaho atanze ibimenyetso ko b) atamenyeshejwe uko bikwiye ishyirwaho ry'ubukemurampaka, cyangwa imigendekere y'ubukemurampaka, cyangwa atashoboye kubona uburyo bwo kwiregura kubera impamvu runaka".

[16] Dosiye y'urubanza igaragaza ko ababuranyi bashyikirije inteko y'Abakemurampaka urutonde rw'umutungo wa TANGREN TRADING Ltd bifuza kugabana, ugizwe n'imitungo itandukanye, irimo n'imodoka ya fortuner yafatiweho icyemezo n'abakemurampaka.

[17] Urukiko Rukuru rw'Ubucuruzi rwakuyeho icyemezo cy'abakemurampaka hashingiwe ku kuba telephone yatanzwe na WANG YONG FEI igaragaza ko yakoze concurrence deloyale, no kuba amafaranga yaguze imodoka ya fortuner yarayakuye mu mutungo wa sosiyete TANGREN TRADING Ltd.

[18] Urukiko rurasanga, kuba inteko y'abakemurampaka yaremeje ko WANG YONG FEI yakoze concurence déloyale hashingiwe kuri no tamenyeshejwe icyo kimenyetso ngo acyisobanureho yemeza ko iyo nomero ari iye cyangwa ko atari iye, cyangwa ngo yemere ko iyo nomero yashyizwe kuri icyo cyapa, cyangwa ko itigeze igishyirwaho, no kuba ataremenyeshejwe

ikimenyetso cy’uko imodoka FORTUNER yaguzwe mu mafaranga ya sosiyete TANGREN TRADING Ltd ngo ahabwe uburenganzira bwo kugira icyo abivugaho, ari impamvu zituma icyemezo cy’abakemurampaka kivanwaho hashingiwe ku ngingo ya 47 y’Itegeko No 005/2008 ryo ku wa 14/02/2008 ryavuzwe haruguru, nkuko Urukiko Rukuru rw’Ubucuruzi rwabigenje.

[19] Ku bijyanye no kumenya niba WANG YONGFEI yari gusaba ko umwanzuro w’abakemurampaka usubirwamo n’inteko y’abakemurampaka, aho kuregera kuwukuraho mu Rukiko, bigaragaza ko WANG YONGFEI atareze avuga ko umwanzuro w’abakemurampaka wafashwe hashingiwe ku mpapuro mpimbano cyangwa ubuhamya bw’ibinyoma cyangwa ubundi buriganya nk’uko biteganywa n’ingingo ya 45 y'Itegeko N° 005/2008 ryo ku wa 14/02/2008 ryavuzwe, iteganya ko " mu gihe cy’iminsi mirongo itatu (30) amenyeshejwe imyanzuro, uwiyambaje ubukemurampaka ashobora, amaze kubimenyesha uwo bafitanye ikibazo, gutanga ikirego gisaba Inteko y’Abakemurampaka gusubiramo iyo myanzuro, igihe telefone ye 0788888809, yayishyizwe kuri panneau publicitaire ya sosiyete yafunguye yitwa TANGREN Hotel, bigaragara ko yafashwe hashingiwe ku buriganya cyangwa hashingiwe ku mpapuro mpimbano cyangwa ku buhamya bw’ibinyoma, ahubwo yaregeye ko atigeze amenyeshwa ibimenyetso byashingiweho hafatwa icyemezo cy’abakemurampaka kugirango ahabwe umwanya wo kubyireguraho, Urukiko rukaba rurasanga, ibivugwa na QI WANG YONGFEI yari afiteho ikibazo.

[20] Hashingiwe ku ingingo ya 47 y'Itegeko N° 005/2008 ryo ku wa 14/02/2008 ryavuzwe, no ku bisobanuro byatanzwe, Urukiko rurasanga, ubujurire bwa QI ZHICHENG nta shingiro bufite.

2. Kumenya niba indishyi zasabwe muri uru rubanza zifite ishingiro

[21] Me NKUBA Milton uhagarariye QI ZHICHENG asaba gutegeka WANG YONGFEI guha QI ZHICHENG 500.000 Frw, kubera kumushora mu manza agatakaza amafaranga, na 1.000.000 Frw y’igihembo cya Avoka, akamusubiza n’igarama yatanze ingana na 50.000 Frw.

[22] Me NSENGIYUMVA Abel uhagarariye WANG YONGFEI avuga ko indishyi QI ZHICHENG asaba adakwiye kuzihabwa, kuko ariwe wishoye mu manza, ahubwo ko akwiye gusubiza WANG YONGFEI 1.000.000 Frw yatanze y’igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[23] Ingingo ya 111, y’Itegeko-Ngenga No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko « ikirego cy’amafaranga y’ikurikiranarubanza ni ikirego gishamikira ku kirego cy’iremezo, kigamije kwishyuza ibyakoreshejwe mu rubanza».

[24] Urukiko rurasanga WANG YONGFEI akwiye guhabwa gusa amafaranga y’igihembo yahaye Avoka kugira ngo amuhagararire mu rubanza zingana na 1.000.000 Frw, kuko arizo zumvikana impamvu yazo, naho QI ZHICHENG akaba adakwiye guhabwa indishyi kuko atsindwa n’urubanza.

II. ICYEMEZO CY’URUKIKO

[25] Rwemeje ko ubujurire bwatanzwe na QI ZHICHENG nta shingiro bufite.

[26] Rwemeje ko urubanza No RCOMA 00020/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 18/12/2018, rudahindutse.

[27] Rutegetse QI ZHICHENG guha WANG YONGFEI amafaranga y'igihembo cya Avoka angana 1.000.000 frw.

[28] Rutegetse ko amagarama yatanzwe kuri uru rubanza ahwanye n'ibyarukozwemo.