SOTRAPROMETAL LTD v. BANQUE POPULAIRE DU RWANDA LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00031/2020/CA (Gakwaya, P.J.) 25 Kanama 2020]

Amategeko agenga imiburanishize y'imanza z'ubucuruzi – Kujuririra imanza zisaba guhagarika cyangwa gutesha agaciro cyamunara – Ibihe ubujurire butangwamo – Ikirego gisaba guhagarika cyangwa gutesha agaciro cyamunara gishobora kujuririrwa ariko kugira ngo cyakirwe kikajuririrwa mu gihe kitarenze iminsi itatu – Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 188 igika cya 2.

Incamake y'ikibazo: SOTRAPROMETAL Ltd yatanze ikirego cyihutirwa mu Rukiko rw'Ubucuruzi, isaba gutesha agaciro cyamunara yo ku wa 6/10/2018, ku mutungo ufite n° UPI 1/02/01/02/1666 wa KALISA Lucien na NSABIMANA Florence, arega Banque Populaire du Rwanda Ltd, Part of Atlas Mara n'Umwanditsi Mukuru muri RDB, ivuga ko iyo cyamunara yakozwe mu buryo bunyuranyije n'amategeko.

Uburanira Banque Populaire du Rwanda Ltd, Part of Atlas Mara yatanze inzitizi mu rubanza, avuga ko urega nta nyungu n'ububasha afite bwo gutesha agaciro cyamunara yakozwe ku mutungo wa KALISA Lucien n'umugore we, ko yatanze ikirego akerewe kuko cyamunara yemejwe ku wa 9/10/2018, we atanga ikirego ku wa 16/11/2019 kandi ko hari ibindi birego yagiye itanga asaba ko iyo cyamunara iteshwa agaciro, igatsindwa.

Urukiko rw'Ubucuruzi rwemeje ko ikirego cyatanzwe na SOTRAPROMETAL Ltd kitakiriwe kuko cyatanzwe impitagihe.

SOTRAPROMETAL Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rw'Ubucuruzi rwitiranyije ibintu kuko cyamunara yakozwe idashingiye ku cyemezo cy'umwanditsi Mukuru, ko urwo Rukiko rwirengagije ko iyo habonetse ikimenyetso gishya, ibivugwa mu ngingo ya 260 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rwashingiyeho, bidakurikizwa. Yavuze kandi ko ikirego kindi yari yatanze cyo gutesha agaciro cyamunara yakozwe ku mutungo ufite n° UPI 1/03/10/02/266, kitasuzumwe, kandi cyamunara yarabaye ku wa 10/10/2019, yandikira Umwanditsi Mukuru asabwa kuyitesha agaciro, hatangwa ikirego ku wa 26/10/2019.

Banque Populaire du Rwanda Ltd, Part of Atlas Mara yatanze inzitizi yo kutakira ikirego ku mpamvu z'uko SOTRAPROMETAL Ltd idafite ububasha, inyungu n'ubushobozi bwo gusaba gutesha agaciro cyamunara ku mutungo wanditse kuri KALISA Lucien na NSABIMANA Florence, ko SOTRAPROMETAL Ltd itagaragaza ko mbere yo gutanga ikirego, yabisabye Umwanditsi Mukuru nk'uko biteganwa n'amategeko kandi ko yatanze ikirego nyuma y'umwaka urenga cyamunara yarabaye. Urukiko Rukuru rwemeje ko izo nzitizi nta shingiro zifite kuko uwazitanze atagaragaza inenge z'ikirego ku rwego rw'Ubujurire ariko ruza no kwemeza ko ikirego cya SOTRAPROMETAL Ltd nta shingiro gifite.

SOTRAPROMETAL Ltd yongeye ijuririra Urukiko rw'Ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi n'ubwo rweretswe kopi y'urubanza n° RP 01035/2018/TGI/GSBO, rwanze gutesha agaciro cyamunara yabaye ku wa 5/7/2018 ku mutungo ufite n° UPI 1/02/01/02/1666, kandi bigaragara ko yashingiye ku mpapuro no kubuhamya bitaribyo, ko kuba SOTRAPROMETAL Ltd yarandikiye Umwanditsi Mukuru akimara kubona kopi y'urubanza rw'inshinjabyaha, ku wa 7/11/2019, akamusubiza ku wa 14/11/2019, Urukiko Rukuru rw'Ubucuruzi rukanga gusihngira ku gisubizo SOTRAPROMETAL Ltd yahawe ku wa 14/11/2019, ngo rwakire ikirego cyayo, ari ukunyuranya n'ingingo ya 260 y'Itegeko n°22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

Banque Populaire du Rwanda Ltd yatanze inzitizi isaba ko ubu bujurire butakwakirwa kuko uwajuriye atubahirije ibihe by'iminsi itatu byo kujurira bivugwa mu ngingo ya 260 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru n'ingingo yayo ya 188, igika cya kabiri (2).

Incamake y'icyemezo: Ikirego cy'ubujurire mu bijyanye no guhagarika cyangwa gutesha agaciro cyamunara kugira ngo cyakirwe kigomba gutangwa mu gihe kitarenze iminsi itatu. Bityo, ubujurire bwa SOTRAPROMETAL Ltd ntibwakiriwe kuko bwatanzwe impitagihe.

Ubujurire ntibwakiriwe.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 188 igika cya 2, iya 260 igika cya 5 n'iya 275.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] SOTRAPROMETAL Ltd yatanze ikirego cyihutirwa mu Rukiko rw'Ubucuruzi, isaba gutesha agaciro cyamunara yo ku wa 6/10/2018, ku mutungo ufite n° UPI 1/02/01/02/1666 wa Kalisa Lucien na Nsabimana Florence, arega Banque Populaire du Rwanda Ltd, Part of Atlas Mara n'Umwanditsi Mukuru muri RDB, ivuga ko iyo cyamunara yakozwe mu buryo bunyuranyije n'amategeko.

[2] Uburanira Banque Populaire du Rwanda Ltd, Part of Atlas Mara yatanze inzitizi mu rubanza, avuga ko urega nta nyungu n'ububasha afite bwo gutesha agaciro cyamunara yakozwe ku mutungo wa Kalisa Lucien n'umugore we, ko yatanze ikirego akerewe kuko cyamunara yemejwe ku wa 9/10/2018, we atanga ikirego ku wa 16/11/2019 kandi ko hari ibindi birego yagiye itanga asaba ko iyo cyamunara iteshwa agaciro, igatsindwa. Mu rubanza n° RCOM 02437/2019/TC rwo ku wa 9/12/2019, Urukiko rw'Ubucuruzi, nyuma yo gusobanura ko ikirego cyatanzwe impitagihe kuko cyamunara yakozwe ku wa 5/7/2018 nk'uko ababuranyi bose

babyemeranywaho, ariko ko SOTRAPROMETAL Ltd yatanze ikirego ku wa 16/11/2019, rwemeje ko ikirego kitariwe kuko cyatanzwe impitagihe, rutegeka SOTRAPROMETAL Ltd kwishyura Banque Populaire du Rwanda Ltd, Part of Atlas Mara 500.000 Frw y'igihembo cya Avoka na 600.000 Frw y'ikurikirnarubanza.

[3] SOTRAPROMETAL Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rw'Ubucuruzi rwitiranyije ibintu kuko cyamunara yakozwe idashingiye ku cyemezo cy'umwanditsi Mukuru, ko urwo Rukiko rwirengagije ko iyo habonetse ikimenyetso gishya, ibivugwa mu ngingo ya 260 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rwashingiyeho, bidakurikizwa. Yavuze kandi ko ikirego kindi yari yatanze cyo gutesha agaciro cyamunara yakozwe ku mutungo ufite n° UPI 1/03/10/02/266, kitasuzumwe, kandi cyamunara yarabaye ku wa 10/10/2019, yandikira Umwanditsi Mukuru asabwa kuyitesha agaciro, hatangwa ikirego ku wa 26/10/2019.

[4] Banque Populaire du Rwanda Ltd, Part of Atlas Mara yatanze inzitizi yo kutakira ikirego ku mpamvu z'uko SOTRAPROMETAL Ltd idafite ububasha, inyungu n'ubushobozi bwo gusaba gutesha agaciro cyamunara ku mutungo wanditse kuri Kalisa Lucien na Nsabimana Florence, ko SOTRAPROMETAL Ltd itagaragaza ko mbere yo gutanga ikirego, yabisabye Umwanditsi Mukuru nk'uko biteganwa n'amategeko kandi ko yatanze ikirego nyuma y'umwaka urenga cyamunara yarabaye. Urukiko Rukuru rwemeje ko izo nzitizi nta shingiro zifite kuko uwazitanze atagaragaza inenge z'ikirego ku rwego rw'Ubujurire.

[5] Urukiko rwasuzumye urubanza mu mizi, maze mu rubanza n° RCOMA 01002/2019/HCC rwo ku wa 9/1/2020, Urukiko Rukuru rw'Ubucuruzi rwemeza ko ubujurire bwa SOTRAPROMETAL Ltd nta shingiro bufite, ko urubanza n° RCOM 02437/2019/TC rwo ku wa 9/12/2019, rudahindutse.

[6] SOTRAPROMETAL Ltd yajuririye Urukiko rw'Ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi n'ubwo rweretswe kopi y'urubanza n° RP 01035/2018/TGI/GSBO, rwanze gutesha agaciro cyamunara yabaye ku wa 5/7/2018 ku mutungo ufite n° UPI 1/02/01/02/1666, kandi bigaragara ko yashingiye ku mpapuro no kubuhamya bitaribyo, ko kuba SOTRAPROMETAL Ltd yarandikiye Umwanditsi Mukuru akimara kubona kopi y'urubanza rw'inshinjabyaha, ku wa 7/11/2019, akamusubiza ku wa 14/11/2019, Urukiko Rukuru rw'Ubucuruzi rukanga gusihngira ku gisubizo SOTRAPROMETAL Ltd yahawe ku wa 14/11/2019, ngo rwakire ikirego cyayo, ari ukunyuranya n'ingingo ya 260 y'Itegeko n°22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[7] Banque Populaire du Rwanda Ltd yatanze inzitizi isaba ko ubu bujurire butakwakirwa kuko uwajuriye atubahirije ibihe byo kujurira bivugwa mu ngingo ya 260 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru n'ingingo yayo ya 188, igika cya kabiri (2).

[8] Urubanza rwaburanishijwe mu ruhame ku wa 20/8/2020, SOTRAPROMETAL Ltd ihagarariwe na BYIRINGIRO Emmanuel Clément wahawe *procuration* na Kalisa Lucien uyihagarariye, yunganirwa na Me Kamali Nyampatse Valence, Banque Populaire du Rwanda Ltd ihagarariwe na Me Gasatura Jotham, Umwanditsi Mukuru muri RDB atitabye kandi yaramenyeshejwe mu buryo bukurikije amategeko, hafatwa icyemezo cyo kuburanisha urubanza

adahari, habanza kuburanishwa ibirebana n'inzitizi yo kutubahiriza ibihe byo kujurira yatanzwe na Banque Populaire du Rwanda Ltd.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

a. Kumenya niba ubujurire bwa SOTRAPROMETAL Ltd butagomba kwakirwa kuko bwatanzwe impitagihe

[9] Me Gasatura Jotham, uburanira Banque Populaire du Rwanda Ltd, yatanze inzitizi isaba ko ubu bujurire butakwakirwa kuko uwajuriye atubahirije ibihe byo kujurira bivugwa mu ngingo ya 260 y'Itegeko n°22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi n'ingingo yayo ya 188 (igica 2), aho ikirego cyo kujurira gitangwa mu minsi itatu (3). Akomeza avuga ko urubanza n° RCOMA 01002/2019/HCC rwajuririwe rwasomwe ku wa 9/1/2020, SOTRAPROMETAL Ltd ijurira ku wa 14/1/2020, ko rero hashingiwe kuri ibyo bihe, ikirego kitakwakirwa kuko cyatanzwe mpitagihe.

[10] Me Gasatura Jotham avuga nanone ko ingingo ya 188 y'Itegeko n°22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru ivuga by'umwihariko ku birego byihutirwa, naho iya 275 y'iryo Tegeko ikaba ivuga ku birego bisanzwe, ko ibirego byihutirwa bifite ingingo yihariye.

[11] Byiringiro Emmanuel Clément avuga ko ashingiye ku ngingo ya 275 na 276 z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, mu kubara ibihe byo kujurira iminsi y'ikiruhuko na week-end bitabarwa.

[12] Me Kamali Nyampatse Valence, wunganira Byiringiro Emmanuel Clément, avuga ko umunsi wa mbere w'igikorwa utabarwa, ko hagomba kubarwa iminsi hakurikijwe ingingo y'amategeko iteganya uko ibihe bibarwa, ko iminsi yo kujuririra ari itatu (3), ariko ko ingingo ya 275 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe hauruguru, isobanura uko ibihe bibarwa ku manza zose no mu niko zose, iteganya ko umunsi icyemezo cyafatiweho utabarwa, ndetse ko n'iminsi y'ikiruhuko itabarwa. Akomeza avuga ko bene izi manza ziburanishwa mu bihe bimwe nk'iby'ibirego byihutirwa, ariko ko n'inkiko zitabyubahiriza kuko iki kirego kimaze amezi atanu kitaburanishwa, ko Urukiko rudakwiye kubaza ababuranyi impamvu bakerewe umunsi umwe, kandi narwo rutarubahirije amategeko.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 188, igika cya kabiri, y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko '' Igihe cyo kujuririra icyemezo ni iminsi itarenze itatu (3) y'akazi uhereye ku munsi icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho. Urubanza narwo rucibwa mu gihe kitarenze iminsi itatu (3) y'akazi''.

[14] Ingingo ya 260, igika cya gatanu (5), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru iteganya ko '' Ibirego bivugwa muri iyi ngingo bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa''.

[15] Ingingo ya 275 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru iteganya ko '' Ku bihe bibarwa mu minsi cyangwa mu masaha, bibarwa umunsi ku munsi, n'isaha ku isaha hakurikijwe igihe bimara kandi umunsi igikorwa cyakoreweho ntubarwamo, ahubwo habarwa umunsi wa nyuma kigomba kurangiriraho.

[16] Ingingo ya 260, igika cya gatanu (5), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru ryumvikanisha ko ibirego bisaba gutesha agaciro cyamunara bisuzumwa n'inkiko mu bihe biteganywa n'amategeko ku birebana n'ibirego byihutirwa.

[17] Dosiye y'urubanza igaragaza ko urubanza rujuririrwa n° RCOMA 01002/2019/HCC rwaciwe ku wa 9/1/2020 n'Urukiko Rukuru rw'Ubucuruzi, SOTRAPROMETAL Ltd irujuririra ku wa 14/1/2020, muri uru Rukiko.

[18] Urukiko rw'Ubujurire rurasanga ibiteganywa mu ngingo ya 275 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, bikurikizwa cyangwa byubahirizwa iyo nta bundi buryo Umushingamategeko yateganyije bwerekana uko ibihe bivugwa mu itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano bigomba kubarwa. Ibi byumvikanisha ko Umushingamategeko yagaragaje muri iyo ngingo ihame rusange rikurizwa mu kubara ibihe, ariko nk'uko bigaragara muri iryo Tegeko, hari igihe ashyiraho irengayobora kuri iyo ngingo y'imena (règle de droit substantielle), icyo gihe ibihe bikaba bibarwa uko bivugwa muri iyo ngingo yihariye igaragaza irengayobora.

[19] Urukiko rw'Ubujurire rurasanga rero ibiteganywa mu ngingo ya 188 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, ari irengayobora ku bivugwa mu ngingo ya 275 y'iryo Tegeko kuko iteganya ubundi buryo bwo kubara ibihe byo kujurira ku birebana n'ibirego byihutirwa, ariyo mpamvu by'umwihariko ibivugwa mu ngingo ya 188 bigomba gukurikizwa muri uru rubanza.

[20] Urukiko rw'Ubujurire rurasanga hashingiwe kuri iyo ngingo ya 188, igika cya kabiri, y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, igihe cyo kujurira cyaragombaga gutangira kubarwa ku wa 9/1/2020, umunsi icyemezo cyasomeweho, hakabarwa igihe cy'iminsi itatu ukuyemo iminsi y'impera z'icyumweru (week-end), bityo kuba ku itariki ya 10/1/2020 hari ku wa gatanu, umunsi w'akazi, ku ya 11/1/2020 ku wa gatandatu, umunsi w'impera y'icyumweru, ku ya 12/1/2020 ku cyumweru, umunsi w'impera y'icyumweru, naho ku ya 13/1/2020 ku wa mbere, umunsi w'akazi, bigaragara ko uhereye ku itariki ya 9, iminsi itatu yari yuzuye ku itariki ya 13, akaba ariyo tariki SOTRAPROMETAL Ltd itagombaga kurenza kugira ngo ibe yubahirije ibihe byo kujurira.

[21] Urukiko rw'Ubujurire rurasanga rero, hashingiwe ku bimaze gusobanurwa, kuba SOTRAPROMETAL Ltd yaratanze ubujurire bwayo ku wa 14/1/2020, bigaragaza ko yabutanze itubahirije ibihe byateganyijwe ku birebana n'ubujurire bw'ibirego byihutirwa.

[22] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga inzitizi yatanzwe na Banque Populaire du Rwanda Ltd ifite ishingiro, bityo ubujurire bwa SOTRAPROMETAL Ltd bukaba butagomba kwakirwa.

b. Kumenya niba Banque Populaire du Rwanda Ltd ikwiye amafaranga isaba

[23] Nk'uko bigaragara muri dosiye y'urubanza, Banque Populaire du Rwanda Ltd isaba Urukiko gutegeka SOTRAPROMETAL Ltd kuyiha 1.000.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka.

[24] Dosiye y'urubanza igaragaza ko ntacyo SOTRAPROMETAL Ltd yavuze ku bisabwa na Banque Populaire du Rwanda Ltd.

UKO URUKIKO RUBIBONA

[25] Ingingo ya 111 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 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. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gis*hobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe*''.

[26] Urukiko rw'Ubujurire rurasanga hari amafaranga Banque Populaire du Rwanda Ltd yatanze kubera uru rubanza, ikaba igomba kugenerwa amafaranga y'igihembo cya Avoka n'ay'ikururikiranarubanza, ariko ikaba itagenerwa umubare w'ayo isaba kuko itagaragaza ko ariyo koko yagiye kuri uru rubanza, ahubwo harebwe imirimo yakozwe kuri uru rubanza rugarukiye ku isuzumwa ry'inzitizi, yagenerwa kuri uru rwego 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ubujurire bwa SOTRAPROMETAL Ltd butakiriwe ;

[28] Rutegetse SOTRAPROMETAL Ltd guha Banque Populaire du Rwanda Ltd 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza;

[29] Rutegetse ko amagarama y'urubanza ahwanye n'ibyakozwe mu rubanza.