SAILER ENEREGYUG-PARTNERSHIP LTD v. ECOBANK RWANDA LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00029/2019/CA (Nyirandabaruta, P.J., Kanyange na Mukandamage, J.) 19 Kamena 2020]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gutangira ikirego sosiyete – Kutakira ubujurire butanzwe n'utabifitiye ububasha – Iyo bigaragaye ko mu itangwa ry'ubujurire Avoka wabutanze atakiri ku rutonde kandi nta nagaragaze ubutumwa bwanditse bwa sosiyete yamutumye ngo abuyitangire mu izina ryayo, ubujurire ntibwakirwa kuko buba bwaratanzwe n'utarabiherewe ububasha.

Incamake y'ikibazo: Mu 2013, Ecobank Rwanda Ltd (Ecobank) yagiranye na Sailer Energy UG-Partnership Ltd (Sailer) umwanda wa "Bank Guaranty" utarengeje 100.000.000frw na "credit line" itarengeje 200.000.000frw. Sailer ntiyujuje ibisabwa, inasaba guhabwa inguzanyo binyuranye n'uburyo impande zombi zumvikanye.

Ibi byatumye Ecobank itanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba ko amasezerano aseswa. Urukiko rwemeje ko Sailer itubahirije amasezerano ruyasesa rushingiye ku makosa yayo.

Sailer yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko urukiko rubanza rwaburanishije urubanza rwabaye itegeko ko kandi rwitiranyije amasezerano y'inguzanyo n'ibaruwa Ecobank yandikiye Sailer. Urukiko rwemeje ko ikirego cya Sailer nta shingiro gifite, ko imikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge idahindutse.

Sailer yarongeye ijuririra Urukiko rw'Ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi hari ibyo Ecobank itubahirije bikaba impamvu yo gusesa amasezerano. Ecobank nayo yatanze inzitizi yo kutakira ubujurire bwa Sailer ivuga ko bwatanzwe n'utabifitiye ububasha kuko Me Karangwa Jean watanze ubujurire bwayo atakiri ku rutonde rw'Abavoka. Kuri iyi nzitizi, Sailer yavuze ko inzitizi yatanzwe na Ecobank nta shingiro ifite, kuko Sailer Energy UG-Partnership Ltd itigeze ishaka Me Karangwa Jean Bosco nka Avoka wayo, ko ahubwo kubera ko ari umuvandimwe w'Umuvobozi Mukuru wa Sailer Energy UG-Partnership Ltd yamuhaye ububasha bwanditse (procuration) bwo kumujuririra, ko n'ubwo Karangwa Jean Bosco yari atakiri Avoka yatumwe nk'undi munyarwanda wese.

Incamake y'icyemezo: Ubujurire bwatanzwe n'uwajuriye ntibwakiriwe kuko .butatanzwe n'uhagarariye uwajuriye imbere y'amategeko, uwo yabihereye ububasha cyangwa umuburanira. Bityo, bwatanzwe binyuranye n'amategeko kuko bwatanzwe n'umuntu utabifitiye ububasha.

Inzitizi yo kutakira ikirego ifite ishingiro.
Ingwate y'amagarama yatanzwe n'uwajuriye ihwanye 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 85 na 149.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku masezerano y'imyenda y'ubwoko bubiri Ecobank Rwanda Ltd na Sailer Energy UG-Partnership Ltd bagiranye, bakayashyiraho umukono ku wa 24/09/2013; *Bank Guaranty Line* itite agaciro katarengeje 100,000,000 Frw na « crédit Line » *ifite* agaciro katarengeje 200,000,000 Frw. Ecobank Rwanda Ltd ivuga ko Sailer Energy UG-Partnership Ltd yemerewe inguzanyo ariko ntiyuzuze ibisabwa, ikayikoresha mu nzira zitari zo, inasaba guhabwa inguzanyo binyuranye n'uburyo impande zombi zumvikanye. Ibyo byatumye Ecobank Rwanda Ltd itanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge kigamije gusaba ko ayo masezerano aseswa, cyandikwa kuri n° RCOM 01079/2017/TC/NYGE.

[2] Ku munsi w'iburanisha ry'urwo rubanza, Sailer Energy UG-Partnership Ltd ntiyitabye, urubanza ruburanishwa idahari, ariko yari yaratanze inzitizi ivuga ko urwo rubanza rwaburanwe hagati y'ababuranyi bombi, Ecobank Rwanda Ltd yo igaragaza ko urubanza baburanye rudahuye n'ikiburanwa yaregeye, ko n'Urukiko rw'lkirenga rwabisobanuye mu rubanza rusobanura urundi. Urukiko rw'Ubucuruzi rwa Nyarugenge rwafashe icyemezo kuri iyo nzitizi, rwemeza ko nta shingiro ifite kuko rwasanze mu manza zombi ababuranyi ari bamwe, ariko ikiburanwa gitandukanye, maze ruburanisha mu mizi urubanza ku iseswa ry'amasezerano.

[3] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza N° RCOM 01079/2017/TC/NYGE ku wa 04/05/2018, rwemeza ko ikirego cya ECOBANK Rwanda Ltd gifite ishingiro, ko Sailer Energy UG-Partnership Ltd itubahirije inshingano z'amasezerano y'inguzanyo bagiranye, ko ayo masezerano asheshwe ku makosa yayo, ruyitegeka kwishyura Ecobank Rwanda Ltd 600.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka, runayitegeka gusubiza Ecobank Rwanda Ltd 50.000 Frw yatanzeho ingwate y'amagarama irega.

[4] Sailer Energy UG-Partnership Ltd ntiyishimiye imikirize y'urwo rubanza, irujuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwirengagije nkana imanza zaciwe (RCOMA 0094/15/HCC, RCOMA 0259//15/HCC, RCOM AA 0043/15/CS na RS/ 00001/2017/SC), ruburanisha bundi bushya urubanza rwabaye itegeko ku baburanyi bamwe no ku kiburanwa kimwe bikaba binyuranyije n'amategeko, ko rwitiranyije amasezerano y'inguzanyo n'ibaruwa n° ERW 271/CA/Sept/2013/CAD/ALLY ECOBANK RWANDA Ltd yandikiye Sailer Energy UG-Partnership Ltd.

[5] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza n° RCOMA 00412/2018/HCC ku wa 20/09/2018, rwemeza ko ubujurire bwatanzwe na Sailer Energy UG-Partnership Ltd nta shingiro bufite, ko imikirize y'urubanza n°RCOM 01079/2017/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge idahindutse, rutegeka Sailer Energy UG-Partnership Ltd kwishyura Ecobank Rwanda Ltd 600.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire, yiyongera ku yategetswe mu rubanza rwajuririwe.

[6] Sailer Energy UG-Partnership Ltd nanone ntiyishimiye imikirize y'urubanza ijurira mu Rukiko rw'Ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ko *offer letter* yo ku wa 23/09/2013, yasimbuwe n'amasezerano yo ku wa 25/09/2013 ya miliyoni 300.000.000 Frw, ko rwirengagije ko hari ibyo Sailer Energy UG-Partnership Ltd itubahirije bikaba impamvu yo gusesa amasezerano, kandi ko rwirengagije impamvu nyamukuru y'ubujurire bwayo, isaba n'indishyi, ariko Ecobank Rwanda Ltd itanga inzitizi yo kutakira ubwo bujurire, ivuga ko bwatanzwe n'utabifitiye ububasha.

[7] Iburanisha ryabereye mu ruhame ku wa 17/02/2020, Ecobank Rwanda Ltd ihagarariwe na Me Bimenyimana Eric, naho Sailer Energy UG-Partnership Ltd ihagarariwe na Me Ntabwoba, hasuzumwa inzitizi yatanzwe na Ecobank Rwanda Ltd.

[8] Nyuma yo kumva icyo impande zombi zivuga kuri iyo nzitizi, Urukiko rwapfundikiye iburanisha, rumenyesha ababuranyi ko icyemezo cyarwo kuri iyo nzitizi bazakimenyeshwa ku wa 06/02/2020, ariko mu gihe icyo cyemezo cyari kitarasomwa, ku wa 26/02/2020, mûri dosiye y'uru rubanza hongewemo inyandiko 2, bituma Urukiko rushingiye ku ngingo ya 751, igika cya 2, y'Itegeko n° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rwemeza ko ah ngombwa ko mbere y'uko rufata icyemezo ku nzitizi yatanzwe, iburanisha ripfundurwa kugira ' hgo ababuranyi bagire icyo bavuga ku bimenyetso bishya byashyizwe mûri dosiye nyuma y'iburanisha ryo ku wa 17/02/2020, rutegeka ko iburanisha rizapfundurwa ku wa 15/04/2020, ariko uwo munsi ntirwaburanishwa kubera gahunda yo kwirinda icyorezo cya COVID-19.

[9] Iburanisha ryapfunduwe ku wa 10/06/2020, Ecobank Rwanda Ltd ihagarariwe na Me Bimenyimana Eric, naho Sailer Energy UG-Partnership Ltd ititabye, ariko nk'uko dosiye ibyerekana yaramenyeshejwe umunsi w'iburanisha, Me Ntabwoba wayiburaniye mu iburanisha ryo ku wa 17/02/2020 wabwiye umwanditsi w'Urukiko kuri téléphone ko atakirurimo, akaba atarigeze yandikira Urukiko ngo arumenyeshe mu buryo budashidikanywaho ko atakiyiburanira, kandi na Nzarubara Raphaël uyihagarariye yarahujwe na dosiye, bivuze ko nawe yari azi umunsi w'iburanisha nyamara akaba atohereje Avoka wo kuyiburanira, urubanza ruburanishwa Sailer Energy UG-Partnership Ltd idahari.

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[1]Ingingo ya 75, igika cya 2, y'Itegeko n" 22/2018 ryo ku wa 29/04/2018. ryerekeye imiburanishirize y'imanza z'imbonezamubano. iz'ubucuruzi iz'umurimo n'iz'ubutegetsi: "Ivycikura, igilie cyose urubanza rularacibwa, iyo haboneise inyandiko cyangwa se ikindi kiiuu gishya cyajasha mu kugaragaza ukuri kivuuibuwe n 'iwnve mu baburanyi. asbobora kugishyikiriza urukiko. rugosuzuma niba cyakwakirwa. iyo iburanisha /yari lyarupfuurfikiw. iwiuhurnnyï asaba ko ripfundurwa ",

II. IBIBAZO BIRI MU RUBANZA N' ISESENGURA RYABYO

1) Kumenya niba ubujurire bwatanzwe na SAILER ENERGY UG-PARTNERSHIP Ltd butagomba kwakirwa

[10] Me Bimenyimana Eric, uhagarariye Ecobank Rwanda Ltd, avuga ko ikirego cyatanzwe na Sailer Energy UG-Partnership Ltd kidakwiriye kwakirwa kuko cyatanzwe na Karangwa Jean Bosco kandi Komisiyo ishinzwe imyitwarire mu Rugaga rw'aba Avoka yarafashe icyemezo n° 18/CD/2018 kimuhagarika ku wa 30/01/2018, ko kuva icyo gihe atongeye gushyirwa ku rutonde, akaba ku wa 18/10/2018, yarabyirengagije atangira Sailer Energy UG-Partnership Ltd ikirego cy'ubujurire mu Rukiko rw'Ubujurire, kandi atabifitiye ububasha.

[11] Me Bimenyimana Eric akomeza avuga ko Karangwa Jean Bosco yagombaga gusobanura ko atanze ikirego cy'undi, ko niba yari yatumwe atari gukoresha amazina ye bwite, ko niba Nzarubara Raphaël yaramuhaye ubutumwa (procuration), yagombaga gusobanura niba abumuhaye nka murumuna we cyangwa abumuhaye nk'umuntu uharagarariye sosiyete, kandi ko inyandiko avuga ko imuha ubutumwa yayishyize mûri dosiye mu gitondo cy'umunsi w'iburanisha ry'urubanza.

[12] Avuga kandi ko ibyo uhagarariye Sailer Energy UG-Partnership Ltd yavuze mu iburanisha ryo ku wa 17/02/2020 ko Karangwa Jean Bosco atanga ikirego yabikoze ashingiye ku butumwa (procuration) yahawe nka murumuna wa Nzarubara Raphaël wabumuhaye atari ukuri, kuko Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyarugenge yagaragaje ko inyandiko y'ubutumwa bwahawe Karangwa Jean Bosco uburanira Sailer Energy UG-Partnership Ltd itakorewe imbere ya Noteri w'uwo Murenge, ko rero nta n'agaciro ifite, ibyo bikaba bivuze ko Sailer Energy UG-Partnership Ltd itajuriye, kuko kugira ngo ikirego cyakirwe ugitanga agomba kuba afite ububasha n'ubushobozi, ko kuba rero ikirego cy'ubujurire cyaratanzwe na Avoka wahagaritswe udafite ubushobozi n'ububasha, ubwo bujurire budakwiye kwakirwa.

[13] Avuga na none ko uwo ari wo murongo watanzwe n'Urukiko rw'lkirenga mu rubanza RCOMA 0070/16/CS - RCOMA 0074/16/CS rwaciye ku wa 16/06/2017, aho Me Mutunzi Donat wari warahagaritswe yajuririye Ecobank Rwanda Ltd, Urukiko rukemeza ko icyo kirego cyatanzwe mu buryo budakurikije amategeko, ko rero n'ubu bujurire bwatanzwe n'Avoka wahagaritswe bwatanzwe binyuranyije n'amategeko bukaba butagomba kwakirwa.

[14] Me Ntabwoba wahagarariye Sailer Energy UG-Partnership Ltd mu iburanisha ryo ku wa 17/02/20202, yaburanye avuga ko inzitizi yatanzwe na Ecobank Rwanda Ltd nta shingiro ifite, ko Sailer Energy UG-Partnership Ltd itigeze ishaka Me Karangwa Jean Bosco nka Avoka wayo, ko ahubwo kubera ko ari umuvandimwe w'Umuvobozi Mukuru' wa Sailer Energy UG-Partnership Ltd yamuhaye ububasha bwanditse (procuration) bwo kumujuririra, ko n'ubwo Karangwa Jean Bosco yari atakiri Avoka yatumwe nk'undi munyarwanda wese, kandi ko ibyo byemewe mu mategeko, harebwe ingingo ya 85 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ibigo bifite ubuzima gatozi bishobora guhagararirwa n'uwahawe ububasha

bwanditse, kandi ko Nzarubara Raphaël nk'Umuyobozi wa Sailer Energy UG-Partnership Ltd yamuhaye ubutumwa bw'amagambo bwo kumutangira ikirego nyuma bugashyirwa mu nyandiko.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 85, igika cya 3, y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko: "Ibigo cyangwa amashyirahamwe bifite ubuzima gatozi, bishobora guhagararirwa n'abemerewe kubihagararira mu maiegeko cyangwa abo byabihereye ububasha bwanditse". Naho ingingp yaryo ya 149 ikavuga ko: "Hajurira umuburanyï, umuburanira cyangwa uwo yahaye urubanza abikoze mu buryo bumwe n'ubwo gutanga ikirego akabishyikiriza urukiko rujuririrwa".

[16] Dosiye y'uru rubanza igaragaza ko ikirego cy'ubujurire cya Sailer Energy UG-Partnership Ltd ku rubanza RCOMA 000412/2018/HCC, cyatanzwe ku wa 18/10/2018, saa cyenda n'iminota 51 (15h51) gitanzwe na Karangwa Jean Bosco, ikagaragaza n'inyandiko yo ku wa 03/07/2018, yashyizwe mûri dosiye ku wa 17/02/2020, yanditswe na Nzarubara Raphaël, Umuyobozi wa Sailer Energy UG-Partnership Ltd, abinyujije kwa Noteri w'Umurenge wa Nyarugenge, iha uburenganzira Karangwa Jean Bosco nka murumuna we, bwo gutanga ikirego no gukurikirana iby'imanza Sailer Energy UG-Partnership Ltd ifitanye na Ecobank Rwanda Ltd.

[17] Dosiye igaragaza kandi ibaruwa yo ku wa 20/02/2020, yanditswe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyarugenge, isubiza iyo Ecobank Rwanda Ltd yari yamwandikiye, igaragaza ko iyo nyandiko ya Nzarubara Raphaël yo ku wa 03/07/2018, itakorewe mu Murenge wa Nyarugenge, kandi ko n'umukono uriho atari uwa Noteri w'uwo Murenge, ndetse ko n'amakashi ari kuri iyo nyandiko atari iyo akoreshwa mu Murenge wa Nyarugenge.

[18] Urukiko rw'Ubujurire rurasanga Sailer Energy UG-Partnership Ltd yemeranya n'Avoka wa Ecobank Rwanda Ltd ko ubwo Karangwa Jean Bosco yatangaga ubujurire bwa Sailer Energy UG-Partnership Ltd yari atakiri Avoka, ko yari yarahagaritswe gukora uwo mwuga akavanwa no ku rutonde rwa ba Avoka guhera ku wa30/01/2018, bivuze ko ubwo bujurire atabutanze nka Avoka wayo nk'uko impande zombie zibyemeza.

[19] Urukiko rurasanga na none ibyo uhagarariye Sailer Energy UG-Partnership Ltd avuga ko Karangwa Jean Bosco atanga ubujurire bwayo mu mwanya wa Nzarubara Raphaël uyihagarariye, yabikoze nka murumuna we yabihereye ububasha mu magambo, nyuma akabishyira mu nyandiko igaragaza ko yahawe ubwo burenganzira (procuration), nta shingiro bifite, kuko iyo nyandiko Karangwa Jean Bosco ntayo yashyize mûri dosiye igihe yatangaga ubujurire, nyamara bigaragara ko yari ihari kuko ari iyo ku wa 03/07/2018, mbere y'uko ubujurire butangwa ku wa 18/10/2018. Byongeye kandi, Ubuyobozi bw'Umurenge wa Nyarugenge bwagaragaje ko iyo nyandiko itakorewe mûri uwo Murenge, kuko kashi n'umukono biyiriho atari ibya Noteri w'uwo Murenge, bigaragaza ko nta bubasha bwanditse Nzarubara Raphaël yigeze aha Karangwa Jean Bosco nka murumuna we, bwo kujuririra

sosiyete ahagarariye (Sailer Energy UG-Partnership Ltd). Bigaragara ahubwo ko inyandiko yashyikirijwe uru Rukiko imuha ubwo bubasha yashakishijwe mu nzira zitemewe ku mpamvu z'urubanza, ko rero Karangwa Jean Bosco yatanze ubujurire nka Avoka, yirengagije ko nta bubasha afite bwo kubikora, kuko yari atakiri we ku mpamvu z'uko yari yarahagaritswe.

[20] Urukiko rurasanga rero ubujurire bwa Sailer Energy UG-Partnership Ltd, bwaratanzwe mu buryo bunyuranyije n'ibiteganywa n'ingingo ya 85 n'iya 149 z'Itegeko n° 22/2018 ryo ku wa 29/04/2018, ryavuzwe haruguru, kuko butatanzwe n'uhagarariye Sailer Energy UG-Partnership Ltd, uwo yabihereye ububasha cyangwa uyiburanira, bivuze ko bwatanzwe binyuranyije n'amategeko kuko bwatanzwe n'umuntu utabifitiye ububasha, bukaba butagomba kwakirwa,

2) Ibyerekeye amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza

[21] Uhagarariye Ecobank Rwanda Ltd, mu mwanzuro yatanze, asaba ko Sailer Energy UG-Partnership Ltd yategekwa kuyishyura 1.000.000 Frw y'igihembo cya Avoka kubera gushorwa mu manza, ikayahabwa nubwo ikirego cyayo kitakwakirwa.

[22] Uhagarariye Sailer Energy UG-Partnership Ltd ntacyo yazivuzeho.

UKO URUKIKO RUBIBONA

[23] Urukiko rushingiye ku'ngingo ya 111[2] y'Itegeko n° 22/2018 ryo ku wa 29/04/2018, ryavuzwe haruguru, rusanga amafaranga y'igihembo cya Avoka Ecobank Rwanda Ltd isaba Sailer Energy UG-Partnership Ltd iyakwiye, kuko yashatse Avoka uyiburanira, ariko aho guhabwa 1.000.000 Frw, igahabwa 500.000 Frw, agenwe mu bushishozi bw'Urukiko, kuko ayo yaka ari menshi harebwe aho urubanza rugarukiye ku iyakirwa ryarwo.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko inzitizi yatanzwe na Ecobank Rwanda Ltd yo kutakira ubujurire bwa Sailer Energy UG-Partnership Ltd ifite ishingiro;

[25] Rwemeje ko ikirego cy'ibyagiye ku rubanza cyatanzwe na Ecobank Rwanda Ltd gifite ishingiro;

[26] Rutegetse Sailer Energy UG-Partnership Ltd guha Ecobank Rwanda Ltd 500.000 Frw y'igihembo cya Avoka wayiburaniye kuri uru rwego;

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[2] Ingingo ya 111 y' llcgeko if 22/2018 iyo ku ***ira*** 29/04/2018 ryerekeye imiburanishirize y 'iilianza z 'imbonezamubano, iz 'vbttïuruzi, iz 'unhiri'mo n 'iz 'ubutegetsi: kirego cy 'amafaranga y 'ikiirikiranariihaiiza ni ikirego gisbamikira ku kirego cy iremezo kiganuje kwishyuza ibyakoréshëjû e mu rubanza. Ikirego cy'amafarangay 'ikurikiranaruhanza kiburanishirizu'a rimwe n 'ikirego cy 'iremezo. Gishobora kandi farakiriva kikanabiiranislnt'a n iyo ikirego cy 'iremezo cyaba kiiakinwe

[27] Ruvuze ko ingwate y'amagarama y'urubanza Sailer Energy UG-Partnership Ltd yatanze ijurira ahwanye n'ibyakozwe mu rubanza.