HORIZON SOPYRWA LTD v Dr KARIBUSHI

[Rwanda URUKIKO RW'UBUJURIRE - RCAA 00012/2023/CA (Munyangeri, P. J.) 06 Kamena 2024]

Amategeko agenga imanza z'imbonezamubano - Kwikiranura – Amasezerano yo kwikiranura - Amasezerano yo kwikiranura akozwe n'impande zombi mu bwumvikane ku rubanza ndetse ababuranyi bakemeranya ko ashyize iherezo kuri urwo rubanza, ashyikirizwa Urukiko rwaregewe, narwo rukemeza ko urwo rubanza rushyizweho iherezo.

Incamake y'ikibazo: Uru rubanza rukomoka ku butaka bwaguzwe na Dr Karibushi abuguze n'abaturage ubundi akabuhabwa n'uwitwa Muvunyi, agiye kubwiyandikishaho, umubitsi w'impapuro mpamo z'ubutaka amumenyesha ko ubwo butaka bwatambamiwe na HORIZON SOPYRWA LTD (HORIZON) bityo ko kubwiyandikishaho bidashoboka. Dr Karibushi yatanze ikirego mu Rukiko Rwisumbuye rwa Musanze asaba ko itambama ryakurwaho maze akandikwaho ubwo butaka, Urukiko rwemeza ko itambama kuri ubwo butaka rikurwaho ko ubutaka buburanwa bwandikwa kuri Dr Karibushi Ndengeye Blaise.

HORIZON ntiyishimiye imikirize y'urwo rubanza irujuririra mu Rukiko Rukuru ivuga ko Urukiko rwabanje rutari rufite ububasha bwo kuburanisha icyo kirego kuko hagombaga kuregwa Ikigo cy'umutungo kamere, hakaba harerezwe utaragombaga kuregwa kandi ko urwo rukiko rwafashe icyemezo kuri nyir' ubutaka kandi rutarigeze rwinjira mu mizi ngo rusuzume nyir' ubwo butaka. Urukiko rwasanze inzitizi nta shingiro zifite rutegeka ko urwo rubanza rwoherezwa mu Rukiko rwisumbuye hagasuzumwa nyir' umutungo uburanwa.

Ikirego kimaze kwakirwa n'Urukiko Rwisumbuye rwa Musanze, ababuranyi bemeranyije kurangiza ikibazo bafitanye mu bwumvikane ariko nyuma biza kugaragara ko ibyo bemeranyijeho bitashoboka ko bishyirwa mu bikorwa, Dr Karibushi amenyesha Urukiko ko iburanisha risubukurwa ariko ko bitakiri ngombwa gusuzuma nyir' umutungo kuko hari ikimenyetso gishingiye ku rubanza rwaciwe n'Urukiko nkemura mpaka rwa Kigali aho bagaragaza nyiri uwo mutungo ko ahubwo icyakorwa ari ugukuraho itambama akandikwaho ubwo butaka. Urukiko rwemeje ko itambama rikuweho, ko ubutaka bwandikwa kuri Dr Karibushi Ndengeye Blaise runategeka HORIZON gutanga indishyi zitandukanye. HORIZON yakomeje kujurira, urubanza rugera mu Rukiko rw'Ubujurire hanyuma ku munsi w'iburanisha isaba ko bajya mu biganiro bakumvikana n'uwo baburana. Nyuma yo kumvikana, HORIZON yaje gushyira muri dosiye y'urubanza inyandiko ikubiyemo ubwumvikane ariko Urukiko rwongera gutumaho ababuranyi bombi kuko hari ikibazo ku mazina yari muri iyo nyandiko. HORIZON yasobanuye ko mu nyandiko ya raporo y'ibiganiro by'ubwumvikane yo ku wa 03/05/2024, ahanditse amazina HORIZON SOPYRWA na SOPYRW hagomba gufatwa ko ari HORIZON SOPYRWA Ltd maze impande zombi zemeranya ko ibyo ntacyo bitwaye urubanza rurakomeza hasuzumwa niba ikibazo ababuranyi bari bafitanye cyarangizwa n'amasezerano yo kwikiranura.

Ababuranyi bombi bagaragaje ko bagize ibiganiro byaje kuvamo gukemura ikibazo bafitanye mu bwumvikane ndetse banagaragaza ibyo bumvikanyeho ko bemeranyije ko ikibazo kirangira muri ubwo buryo.

Inshamake y'icyemezo: Amasezerano yo kwikiranura akozwe n'impande zombi mu bwumvikane ku rubanza ndetse ababuranyi bakemeranya ko ashyize iherezo kuri urwo rubanza, ashyikirizwa Urukiko rwaregewe, narwo rukemeza ko urwo rubanza rushyizweho iherezo.

Urubanza RCAA 00012/2023/CA, rusojwe n'amasezerano yo kwikiranura.

Nta mategeko yashingiweho;

Imanza zifashishijwe:
RADA 00003/2024/CA, Me Muvunyi Eugēne n'URUGAGA RW'ABAVOKA MU RWANDA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/03/2024.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Dr Karibushi Ndengeye Blaise avuga ko yaguze n'abaturage ubutaka bwanditse kuri N˚ 603, uwitwa Muvunyi Paul na we amuha ubwanditse kuri N˚ 4830, nyuma Umubitsi w'impapurompamo z'ubutaka amumenyesha ko ubwo butaka butagomba kumwandikwaho kubera ko HORIZON SOPYRWA Ltd yabutambamiye mu mwaka wa 2011. Dr Karibushi Ndengeye Blaise yaregeye Urukiko Rwisumbuye rwa Musanze, arusaba gutegeka ko itambama ryashyizwe ku butaka bufite N° 603 na N˚ 4830 buherereye mu Kagari ka Kampanga, mu Murenge wa Kinigi, mu Karere ka Musanze rivanwaho, gutegeka ko ubwo butaka bumwandikwaho, agahabwa n'indishyi.

[2] Mbere yo kwiregura ku rubanza mu mizi, abahagarariye HORIZON SOPYRWA Ltd batanze inzitizi y'iburabubasha bw'Urukiko, bavuga ko ibirego birebana no gukuraho itambama bireba Ikigo Gishinzwe Imicungire n'Imikoreshereze y'Ubutaka, bikaba bigomba kuburanishwa n'Urukiko ruburanisha imanza z'ubutegetsi.

[3] Dr Karibushi Ndengeye Blaise yireguye kuri iyi nzitizi avuga ko nta shingiro ifite kuko atareze ikigo cya Leta akaba nta n'icyemezo cyafashwe n'ikigo cya Leta ari gusaba ko giteshwa agaciro, ko ahubwo yaregeye itambama ryakozwe na HORIZON SOPYRWA Ltd, bityo ko Urukiko ruburanisha imanza z'imbonezamubano arirwo rufite ububasha hakurikijwe ibiteganwa n'ingingo ya 62 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa.

[4] Mu rubanza N˚ RC 00138/2019/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 29/11/2019, urwo Rukiko rushingiye ku ngingo ya 61 n'iya 62 z'Iteka rya Minisitiri N˚ 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa, rwemeje ko:

- ikirego cyatanzwe na Dr Karibushi Ndengeye Blaise gifite ishingiro;
- inzitizi zari zatanzwe zo kutakira ikirego nta shingiro zifite;

- itambama ryakozwe na HORIZON SOPYRWA ku butaka N˚ 603 na N˚ 4830 bwa Dr Karibushi Ndengeye Blaise, buherereye mu Mudugudu wa Njejoro, Akagari ka Kampanga, Umurenge wa Kinigi, Akarere ka Musanze, rivanweho;

- ubwo butaka bufite N˚ 603 na N˚ 4830 bwandikwa kuri Dr Karibushi Ndengeye Blaise;

- HORIZON SOPYRWA yishyura Dr Karibushi Ndengeye Blaise indishyi zingana n'amafaranga miliyoni imwe n'ibihumbi ijana na makumyabiri (1.120.000 Frw) agizwe n'amafaranga ibihumbi magana atandatu (600.000 Frw) y'igihembo cya Avoka, amafaranga ibihumbi magana atanu (500.000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi makumyabiri (20.000 Frw) y'ingwate y'amagarama;

- amafaranga ibihumbi makumyabiri (20.000 Frw) Dr Karibushi Ndengeye Blaise yatanze arega ahwanye n'ibyakozwe mu rubanza.

[5] HORIZON SOPYRWA Ltd yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Musanze, ivuga ko Urukiko rubanza rutari rufite ububasha bwo kuburanisha ikirego cya Dr Karibushi Ndengeye Blaise kuko rutari kuburanisha Ikigo cy'Umutungo Kamere mu Rwanda, Urwego rw'Umubitsi w'Impapurompamo z'Ubutaka, ndetse ko harezwe utaragombaga kuregwa kuko HORIZON SOPYRWA Ltd atari yo yandika ubutaka cyangwa ngo ibe yarasabye ko itambama rikurwaho. Yavugaga kandi ko ntampamvu yo kurega yari igihari kuko itambama ryari ryararengeje amezi atandatu (6), ko rero nta gaciro ryari rigifite nk'uko biteganywa n'Iteka rya Minisitiri, ndetse ko Urukiko rwemeje ko umutungo wandikwa kuri Dr Karibushi Ndengeye Blaise nyamara rutarigeze rwinjira mu mizi y'urubanza ngo hamenyekane nyirawo.

[6] Dr Karibushi Ndengeye Blaise yireguye avuga ko impamvu yo kuregera itambama yari igihari kubera ko HORIZON SOPYRWA Ltd yarishyirishijeho itarikujeho cyangwa ngo iregere umutungo kandi ko ariyo yagombaga kuregwa kubera ko ari yo yashyirishije itambama ku mutungo uburanwa ntirikurikirane, bityo ko ikirego cyagombaga kuregerwa mu Rukiko ruburanisha imanza z'imbonezamubano.

[7] Mu rubanza N˚ RCA 00118/2019/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 09/07/2020, urwo Rukiko rushingiye ku ngingo ya 36, 3˚ y'Itegeko N˚ 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ku ngingo ya 178 y'Itegeko N˚ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rwemeje ko:

- ikirego cy'ubujurire cyatanzwe na HORIZON SOPYRWA Ltd gifite ishingiro kuri bimwe;

- inzitizi zose zatanzwe na HORIZON SOPYRWA Ltd nta shingiro zifite;

- ikibazo cyerekeranye no kumenya nyir'umutungo uvugwa muri urwo rubanza hagati ya Dr Karibushi Ndengeye Blaise na HORIZON SOPYRWA Ltd cyagombaga gusuzumwa n'Urukiko Rwisumbuye;

- urubanza rusubizwa mu Rukiko Rwisumbuye rwa Musanze, hasuzumwa ikibazo cyerekeranye no kumenya nyir'umutungo wanditse kuri N˚ 603 na N˚ 4830;

- amafaranga y'amagarama aba asubitswe.

[8] Urubanza rumaze gusubizwa mu Rukiko Rwisumbuye rwa Musanze, ababuranyi bagiriwe inama yo kurangiza ikibazo bafitanye mu bwumvikane barabyemera iburanisha rirasubikwa ndetse risubikwa inshuro nyinshi bamenyesha Urukiko ko bakiri mu biganiro biganisha ku bwumvikane, ariko bigeze aho Dr Karibushi Ndengeye Blaise ashyira muri dosiye umwanzuro w'inyongera amenyesha Urukiko ko hari imyanzuro impande zombi zari zumvikanyeho z'uburyo ingurane izatangwa, kuyishyira mu bikorwa birananirana, arusaba gukomeza urubanza ndetse amenyesha ko basanze bitakiri ngombwa gusuzuma nyir'umutungo uburanwa kuko habonetse ibimenyetso bishingiye ku cyemezo cyafashwe mu rubanza rwaciwe n'Urukiko Nkemurampaka rwa Kigali ku wa 14/09/2011 rwaburanwemo Paul Muvunyi, Faustin Kanuma, Aloys Gatemberezi, Gédéon Kayinamura na HORIZON SOPYRWA Ltd. Bityo ko Urukiko rwategeka ko itambama ryashyizwe kuri uwo mutungo rivanwaho, ukamwandikwaho, HORIZON SOPYRWA Ltd ikanamuha indishyi.

[9] Abahagarariye HORIZON SOPYRWA Ltd bireguye bavuga ko ubutaka buburanwa ibukomora ku igurishwa ry'Ikigo cya Leta cyitwaga OPYRWA ryakozwe hagamijwe kwegurira ibigo bya Leta abikorera (privatisation), uwari umutungo wa OPYRWA wegurirwa SOPYRWA, ndetse ku wa 09/12/2000 hakorwa inyandikomvugo y'ihererekanyamutungo yiswe "PROCES VERBAL DE REMISE-REPRISE ENTRE L'OPYRWA ET LA SOPYRWA"). Bavuze kandi ko basanga Dr Karibushi Ndengeye Blaise ntaho ahuriye n'urubanza rwaciwe n'Urukiko Nkemurampaka rwa Kigali ku wa 14/09/2011 kubera ko atarubayemo umuburanyi, akaba nta n'aho ruhuriye n'ubutaka bwayo yigabije, ndetse ko akwiye kubahiriza amasezerano y'ubwumvikane impande zombi zagiranye ku wa 16/03/2021, aho Dr Karibushi Ndengeye Blaise yemeye gutanga ingurane y'ubutaka bwa HORIZON SOPYRWA Ltd, gushyira mu bikorwa ibyumvikanyweho bikaba bitarananiranye, ahubwo icyananiranye ari inkurikizi z'ibyo bari bumvikanye. Basabye Urukiko gutegeka Dr Karibushi Ndengeye Blaise kuva mu butaka bwa HORIZON SOPYRWA Ltd, akanayiha indishyi.

[10] Mu rubanza N˚ RC 00084/2020/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze ku wa 18/01/2022, urwo Rukiko rushingiye ku ngingo ya 3, iya 4, iya 108 z'Itegeko N˚ 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ku ngingo ya 17 y'Itegeko N˚ 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka mu Rwanda, ku rubanza rwaciwe n'Urukiko Nkemurampaka rwa Kigali ku wa 14/09/2011 no ku ngingo ya 111 y'Itegeko N˚ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rwemeje ko:

- ikirego cya Dr Karibushi Ndengeye Blaise gifite ishingiro;

- ubutaka bwanditse kuri N˚ 603 n'ubwanditse kuri n˚ 4830, buherereye Kampanga-Kinigi-Musanze, ari ubwa Dr Karibushi Ndengeye Blaise;

- itakamba ryashyizwe ku butaka bwanditse kuri n˚ 603 n'ubwanditse kuri N˚ 4830, buherereye Kampanga-Kinigi-Musanze rivanweho, bukandikwa kuri Dr Karibushi Ndengeye Blaise;

- HORIZON SOPYRWA Ltd iha Dr Karibushi Ndengeye Blaise indishyi z'akababaro zingana n'amafaranga miliyoni imwe (1.000.000 Frw), igihembo cya Avoka kingana n'amafaranga miliyoni imwe (1.000.000 Frw), ikurikiranarubanza ringana n'amafaranga ibihumbi magana atanu (500.000 Frw), ikanamusubiza amafaranga ibihumbi makumyabiri (20.000 Frw) y'igarama yatanze aregera Urukiko.

[11] HORIZON SOPYRWA Ltd yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwayo bwandikwa kuri N˚ RCAA 00012/2023/CA, maze nyuma y'imihango ntegurarubanza yose, hemezwa ko ruzaburanishwa ku wa 06/02/2024.

[12] Uwo munsi ababuranyi baritabye, HORIZON SOPYRWA Ltd ihagarariwe na Me ABIJURU Emmanuel, Dr Karibushi Ndengeye Blaise ahagarariwe na Me Kayitare Serge. Abahagarariye impande zombi basabye ko iburanisha risubikwa kugira ngo bajye mu biganiro byo kurangiza ikibazo mu bwumvikane, Urukiko rurabibemerera, iburanisha rigenda ryimurirwa ku matariki atandukanye ariko bakomeza gusaba ko rigenda risubikwa kugira ngo bagere ku musozo w'ibiganiro.

[13] Ku wa 28/05/2024, abahagarariye HORIZON SOPYRWA Ltd bashyize muri dosiye y'urubanza inyandiko ikubiyemo ibyo impande zombi zumvikanyeho, binashyira iherezo ku rubanza rwari muri uru Rukiko. Nyuma yo gusoma ibikubiye muri iyo nyandiko, Urukiko rwasanze ari ngombwa ko ababuranyi bahamagarwa kugira ngo bagire ibisobanuro batanga ku birebana n'amwe mu mazina y'ababuranyi ayanditsemo, iburanisha ry'urubanza rishyirwa ku wa 05/06/2024.

[14] Uwo munsi ababuranyi baritabye, HORIZON SOPYRWA Ltd ihagarariwe na Me Umurerwa Christine, Dr Karibushi Ndengeye Blaise ahagarariwe na Me Kayitare Serge.

[15] Abahagarariye impande zombi basabwe kugira icyo bavuga ku kuba mu nyandiko ya raporo y'ibiganiro by'ubwumvikane hari ahanditse izina ″SOPYRWA ", ahandi hakandikwa ″HORIZON SOPYRWA" kandi umuburanyi uri mu rubanza rwakorewe ibiganiro byo gukemura ikibazo mu bwumvikane yitwa ″ HORIZON SOPYRWA Ltd ".

[16] Uhagarariye HORIZON SOPYRWA Ltd yasobanuye ko mu nyandiko ya raporo y'ibiganiro by'ubwumvikane yo ku wa 03/05/2024, ahanditse amazina ″HORIZON SOPYRWA"na " SOPYRWA" hagomba gufatwa ko ari ″ HORIZON SOPYRWA Ltd", maze impande zombi zumvikana ko atari ngombwa ko abashyize umukono ku nyandiko ya raporo y'ibiganiro by'ubwumvikane bongera guhura ngo bayisubiremo.

[17] Harasuzumwa ikibazo gikurikira:

- Kumenya niba ikibazo ababuranyi bari bafitanye cyarangizwa n'amasezerano yo kwikiranura

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba ikibazo ababuranyi bari bafitanye cyarangizwa n'amasezerano yo kwikiranura

[18] Ikibazo cyo kuba ababuranyi barangiza ikibazo bari bafitanye mu rubanza hifashishijwe ibikubiye mu masezerano yo kwikiranura cyafashweho umurongo n'uru Rukiko mu rubanza N˚ RADA 00003/2024/CA haburana Me Muvunyi Eugēne n'URUGAGA RW'ABAVOKA MU RWANDA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/03/2024.

[19] Muri urwo rubanza, impande zombi zagiranye ibiganiro byo kurangiza ikibazo zari zifitanye mu bwumvikane, zishyikiriza Urukiko inyandiko ikubiyemo ibyo zumvikanye kandi zemeranya ko bishyize iherezo ku rubanza rwari rwararegewe uru Rukiko, rwemeza ko amasezerano yo kwikiranura ashyize iherezo kuri urwo rubanza[1].

[20] No muri uru rubanza, abahagarariye HORIZON SOPYRWA Ltd bashyize muri dosiye inyandiko yo ku wa 03/05/2024, ikubiyemo ibyo sosiyete bahagarariye yumvikanye na Dr Karibushi Ndengeye Blaise, harimo ko:

- PS yashatse abandi banyamigabane ba HORIZON SOPYRWA Ltd kandi bemeye kurekura hegitari imwe (1Ha);
- impande zombi zishyira umukono ku bikubiye muri iyo nyandiko kandi ko bifatwa nk'amasezerano yo kwikiranura ku kibazo zari zifitanye;
- ku wa 28/05/2024, HORIZON SOPYRWA Ltd na Dr Karibushi Ndengeye Blaise bazamenyesha Urukiko rw'Ubujurire ko baretse urubanza bari bararuregeye;
- Dr Karibushi Ndengeye Blaise yijeje ko icyangombwa cy'umutungo ungana na hegitari ebyiri (2 Ha) kivanwa ku mazina ya Bwana GAKURU Peter kikandikwa ku mazina ya HORIZON SOPYRWA Ltd;
- HORIZON SOPYRWA Ltd ikuzaho itambama (caveat) yari yarashyize ku butaka bwaburanwaga no korohereza Dr Karibushi Ndengeye Blaise guhabwa icyangombwa cyabwo.

[21] Kubera izo mpamvu, Urukiko rurasanga amasezerano yo kwikiranura yo ku wa 03/05/2024 hagati ya HORIZON SOPYRWA Ltd na Dr Karibushi Ndengeye Blaise, ashyira iherezo ku rubanza n° RCAA 00012/2023/CA rwari mu Rukiko rw'Ubujurire.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko urubanza N° RCAA 00012/2023/CA rwari mu Rukiko rw'Ubujurire, rusojwe n'amasezerano yo kwikiranura ababuranyi bagiranye ku wa 03/05/2024.

[23] Rwemeje ko ibikubiye mu nyandiko yo ku wa 03/05/2024 nk'uko byavuzwe mu gika cya 20 cy'uru rubanza, bigomba kubahirizwa uko biri.

[24] Ruvuze ko amafaranga y'ingwate y'amagarama HORIZON SOPYRWA Ltd yatanze ijurira, ahwanye n'ibyakozwe mu rubanza.

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[1] RADA 00003/2024/CA, hagati ya Me Nsengiyumva Vincent n'URUGAGA RWA'ABAVOKA MU RWANDA, igika cya 10.