THOMAS ET PIRON GRANDS LACS LTD v. WHITEFIELD INVESTMENT COMPANY LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00002/2024/CA (Kamere, P.J.)
21 Kamena 2024]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Indishyi – Itangwa ry'indishyi mu kirego cyihutirwa – Nta ndishyi zitangwa iyo ikiburanishwa mu rubanza ari ikirego cyihutirwa ku buryo hafatwamo icyemezo cy'agateganyo.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru rw'Ubucuruzi THOMAS ET PIRON GRANDS LACS LTD iregera kwemeza ko icyiswe umwanzuro w'Ubukemurampaka wafashwe n'umukemurampampaka Emmanuel Ochola Odhiambo ku kibazo yari ifitanye na Whitefield Investment Company Ltd atari icyemezo kubera ko cyafashwe n'udafite ububasha ndetse ishingiye kuri icyo kirego mu gihe urubanza rutaraburanishwa itanga ikirego cyihutirwa isaba guhagarika irangiza rya cyo.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego nta shingiro gifite, ko irangiza ry'icyo cyemezo rikomeza.

THOMAS ET PIRON GRANDS LACS Ltd yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, Whitefield Investment Company Ltd itanga ubujurire bwuririye ku bundi isaba guhabwa indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, ivuga ko yashowe kenshi mu manza z'amaherere.

THOMAS ET PIRON GRANDS LACS Ltd yiregura ivuga ko indishyi zisabwa mu kirego cy'iremezo, zidasabwa muri référé (ikirego cyihutirwa) kuko mu kirego cyihutirwa hafatirwa gusa mesures conservatoires (ibyemezo by'agateganyo).

Incamake y'icyemezo: Iyo ikiburanishwa mu rubanza ari ikirego cyihutirwa ku buryo hafatwamo icyemezo cy'agateganyo mu gihe hagitegerejwe icyemezo cya burundu kizafatwa mu rubanza rw'iremezo, nta ndishyi zitangwa.

Ubujurire nta shingiro bufite.

Nta mategeko yashingiweho

Imanza zifashishijwe:

Urubanza RCOM 00001/2019/SC; Umwizerwa vs Ikigo cy'Imisoro n'Amahooro rwaciwe n'Urukiko rw'Ikirenga ku wa 22/02/2019.

Urubanza RCOMA 00006/2022/CA; Nzirorera Cyprien vs Muhimpundu Rosine rwaciwe n'Urukiko rw'Ubujurire rwaciwe ku wa 23/05/2022.

Urubanza RCOM 00003/2022/CA; TOP TOWER HOTEL Ltd n'abandi baburana vs BPR ATLAS MARA Plc rwaciwe n'Urukiko rw'Ubujurire ku wa 11/05/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 16/08/2018, Umukemurampaka Emmanuel OCHOLA ODHIAMBO yafashe icyemezo ku kibazo cyari hagati ya WHITEFIELD INVESTMENT COMPANY Ltd na THOMAS ET PIRON GRAND LACS LIMITED. Ku wa 08/08/2023, THOMAS ET PIRON GRANDS LACS LIMITED yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi cyandikwa kuri RCOM 00028/2023/HCC, irusaba kwemeza ko icyiswe umwanzuro w'Ubukemurampaka atari icyemezo kubera ko cyafashwe n'umuntu udafite ububasha.

[2] Mu gihe urubanza ku kirego kimaze kuvugwa haruguru rwari rugitegereje kuburanishwa, THOMAS ET PIRON GRANDS LACS LIMITED yatanze na none muri urwo rukiko ikirego cyihutirwa, cyandikwa kuri RCOM 00005/2024/HCC, isaba guhagarika irangiza ry'icyemezo cyavuzwe haruguru cy'umukemurampaka Emmanuel OCHOLA ODHIAMBO.

[3] Ku wa 09/04/2024, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOM 00005/2024/HCC, rwemeza ko ikirego cyihutirwa cyatanzwe na THOMAS ET PIRON GRANDS LACS LIMITED nta shingiro gifite, ko irangiza ry'Icyemezo cy'Umukemurampaka Emmanuel OCHOLA ODHIAMBO cyo ku wa 16/08/2018, rikomeza.

[4] Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko icyemezo kimaze kuvugwa haruguru rwagishingiye ku manza zinyuranye zitanga umurongo ku byerekeranye n'ubwihutirwe butuma hafatwa icyemezo cy'agateganyo, nk'urubanza RC 0001/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 23/02/2018 n'urubanza RCOM 00003/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/01/2019, rubona ko ubwihutirwe bugaragazwa n'uhagarariye THOMAS ET PIRON GRANDS LACS LIMITED bw'uko iramutse itsinze urubanza rw'iremezo itazashobora kugaruza imitungo yayo itimukanwa yatangiye gutezwa cyamunara nta shingiro bufite, kuko imitungo yayo yarimo kurangirizwaho icyemezo cy'umukemurampaka ari imitungo itimukanwa idashobora kurigiswa nk'uko byaba bimeze ku mitungo yimukanwa. Urukiko rukaba rwarasobanuye ko mu gihe THOMAS ET PIRON GRANDS LACS LIMITED yazaramuka itsinze urubanza rw'iremezo, ibintu bizaba byashobora gusubira uko byari bimeze mbere y'irangizwa ry'icyemezo, ubugure bugateshwa agaciro igasubizwa imitungo yayo, WHITEFIELD INVESTMENT COMPANY Ltd yagurishije igasubiza amafaranga y'ubugure yakiriye, bityo rusanga irangiza ry'icyemezo cy'umukemurampaka ku mitungo ya THOMAS ET PIRON GRANDS LACS LIMITED itaragurishwa ritagomba guhagarara.

[5] THOMAS ET PIRON GRANDS LACS LIMITED yajuririye icyo cyemezo muri uru Rukiko rw'Ubujurire, ubujurire bwandikwa kuri RCOMA 00002/2024/CA. Ku wa 03/06/2024, urubanza ruburanishwa THOMAS ET PIRON GRAND LACS LIMITED ihagarariwe na Me Zitoni Pierre Claver naho WHITEFIELD INVESTMENT COMPANY Ltd ihagarariwe na Me Munyandamutsa Jean Pierre, isomwa ryarwo rishyirwa ku wa 21/06/2024.

[6] Hashingiwe ku mpaka ababuranyi bagaragaje ko bafitanye, harasuzumwa ikibazo cyo kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarirengagije ko irangizwa ry'icyemezo

cy’umukemurampaka Emmanuel OCHOLA ODHIAMBO cyo ku wa 16/08/2018 ryahagarikwa, n’ikibazo kirebana n’indishyi, amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asabwa n’uregwa.

II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA

- **Gusuzuma niba Urukiko Rukuru rw’Ubucuruzi rwarirengagije ko irangizwa ry’icyemezo cy’umukemurampaka Emmanuel OCHOLA ODHIAMBO cyo ku wa 16/08/2018 ryahagarikwa**

[7] THOMAS ET PIRON GRANDS LACS Ltd ivuga ko inenge zituma ijurira ari ukuba :

- Umucamanza yaremeje ko irangizarubanza ryarangiye kandi yaragararagarijwe ibimenyetso by’uko rigikomeza, akabyirengagiza nkana ntabishingireho ;
- Umucamanza yaraciye urubanza ku ngingo itaregewe kuko nta muntu wigeze asaba Urukiko guhagarika cyamunara ku mutungo wamaze kugurishwa ;
- Umucamanza yaratondaguye imanza nyinshi nk'icyitegererezo adasobanura ahozihuriye n'icyaregewe mu gihe yasuzumaga ubwihutire buvugwa mu ngingo ya 185 y’Itegeko ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi.

[8] Me Munyendamutsa Jean Pierre, uburanira WHITEFIELD INVESTMENT COMPANY Ltd, avuga ko mu bisobanuro byose THOMAS ET PIRON GRANDS LACS LIMITED yatanze nta na kimwe igaragaza cyavuguruza icyemezo cyafashwe n’Urukiko Rukuru rw’Ubucuruzi nk’uko biteganywa mu ngingo ya 150 y’Itegeko rigenga imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ko ku rwego rubanza no kuri uru rwego rw’ubujurire yagaragaje ko mu gihe cy’iburanisha ry’urubanza rwajuririwe hari hakiri imitungo ibiri ibaruye kuri UPI: 1/02/09/02/4096 na UPI: 1/02/09/02/4142 yari itaragurishwa, bikaba ari nabyo Urukiko Rukuru rw’Ubucuruzi rwashingiyeho rwemeza ko ku bireba imitungo yari isigaye ya THOMAS ET PIRON GRAND LACS nta bwihutirwe buri mu guhagarika cyamunara, kubera ko imitungo THOMAS ET PIRON GRAND LACS LIMITED isabira guhagarikirwa cyamunara ari imitungo itimukanwa kandi ko mu gihe yatsinda ikirego remezo yatanze byaba bishoboka ko yagarurwa mu maboko yayo maze WHITEFIELD INVESTMENT COMPANY Ltd na yo igasubiza amafaranga yaba yarakiriye akomoka muri cyamunara. Asobanura kandi ko ikigaragaza ko cyamunara yari itararangira burundu ari uko mu buryo bw’ikoranabuhanga ikorwamo sisitemu yari gufunguka bwa nyuma ku wa 29/04/2024, ari nabwo hafatwa ko iyo mitungo yagurishijwe umwe ukegukanwa n’uwitwa Rumaraninda Mechack undi ukegukanwa na Ngendakuriyo Gilbert, bityo ko mu bujurire nta kindi uburanira THOMAS ET PIRON GRANDS LACS Ltd yagaragaje kirengagizwe kandi kigaragaza ubwihutire bwo guhagarika irangizwa ry’icyemezo cy’umukemurampaka ku mitungo y’uwo aburanira ; bityo agasaba uru Rukiko kudahindura icyemezo kijuririrwa cyafashwe n’Urukiko Rukuru rw’Ubucuruzi.

UKO URUKIKO RUBIBONA

[9] Ikibazo ababuranyi bafitanye gishingiye ku kumenya niba hari ibimenyetso byatanzwe ku rwego rubanza na THOMAS ET PIRON GRANDS LACS LIMITED by'uko irangiza ry'icyemezo cy'umukemurampaka Emmanuel OCHOLA ODHIAMBO cyo ku wa 16/08/2018 rigikomeza kandi harimo ubwihutirwe ko rihagarara ariko bikirengagizwa n'Urukiko Rukuru rw'Ubucuruzi.

[10] Ingingo ya 12, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda".

[11] Urukiko rurasanga uburanira WHITEFIELD INVESTMENT COMPANY Ltd avuga ko haba ku rwego rubanza ndetse no kuri uru rwego rw'ubujurire, THOMAS ET PIRON GRANDS LAC Ltd itashoboye kugaragaza ko ihagarikwa ry'irangiza ry'icyemezo cy'umukemurampaka ku mitungo yayo itimukanwa ririmo ubwihutirwe, ndetse ko n'imitungo yayo ibiri yari isigaye itaratezwa cyamunara ubwo hacibwaga urubanza rujurirwa ubu yamaze kugurishwa mu cyamunara cyasojwe ku wa 29/04/2024.

[12] Dosiye y'urubanza igaragaza ko icyasuzumwe mu rubanza rujuririrwa ari ukumenya niba guharika irangiza ry'icyemezo cy'umukemurampaka ku mitungo ya THOMAS ET PIRON GRANDS LACS LIMITED yamaze kugurishwa bifite impamvu no kumenya niba hari ubwihutirwe buhari bwatuma irangiza ry'icyo cyemezo ku mitungo yayo itaragurishwa rihagarara, mu gika cya 14 cy'urwo rubanza Urukiko rusanga nta mpamvu ihari yo gusaba ko irangizwa ry'icyo cyemezo cy'umukemurampaka kuri iyo mitungo rihagarara ku mitungo yamaze kugurishwa, naho ku mitungo yari itaragurishwa ikibazo gisuzumwa mu bika bya 18-23 by'urwo rubanza, Urukiko rushingiye ku biteganywa n'ingingo ya 185 y'Itegeko N° 22/2018 ryavuzwe haruguru n'umurongo wafashwe mu rubanza RC 0001/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 23/02/2018 (narwo rushingiye ku nyandiko z'abahanga mu mategeko), rusanga ku kibazo cy'ubwihutirwe bigenwa mu bushishozi bw'umucamanza bitewe n'imiterere y'urubanza afite kuko ibishingirwaho byose Umushingamategeko w'u Rwanda atabirondoye. Mu gufata icyemezo Urukiko Rukuru rw'Ubucuruzi rwashingiye kandi ku rubanza RCOM 00003/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 22/01/2019 aho rwemeje ko ubwihutirwe buvugwa muri iyo ngingo ya 185 yavuzwe haruguru bunashingirwaho kugira ngo Urukiko rufate icyemezo cy'agateganyo mu buryo bwihuta, busaba ibintu bibiri by'ingenzi, ari byo gukumira ikintu kibi cyugarije ndetse n'imbogamizi igomba kurengwa, maze rubona imitungo irimo kurangirizwaho icyemezo cy'umukemurampaka ari imitungo itimukanwa idashobora kurigiswa nk'uko byaba bimeze ku mitungo yimukanwa, rusanga rero irangiza ry'icyemezo cy'umukemurampaka Emmanuel OCHOLA ODHIAMBO ku mitungo ya THOMAS ET PIRON GRANDS LACS LIMITED itaragurishwa ritagomba guhagarara.

[13] Urukiko rw'Ubujurire rurasanga kuri uru rwego rw'ubujurire ibivugwa n'uhagarariye THOMAS ET PIRON GRANDS LACS LIMITED ko Urukiko rwaciye urubanza rujurirwa hari ibimenyetso rwirengagije nta shingiro bifite hashingiwe ku bitegenywa n'ingingo ya 12 y'Itegeko N° 22/2018 yibukijwe haruguru, kuko bimenyetso byirengagijwe ntabyo yigeze abasha kurugaragariza.

[14] Urukiko rurasanga kandi uretse no kuba uhagarariye THOMAS ET PIRON GRANDS LACS LIMITED atarabashije kugaragaza ibimenyetso byirengagijwe, bigatuma uwo aburanira

akomeza gutsindwa urubanza no muri ubu bujurire, nta n’ubwo ubu byashoboka guhagarika irangizwa ry’icyemezo cy’umukemurampaka kuko n’imitungo ibiri ibaruye kuri UPI: 1/02/09/02/4096 na UPI: 1/02/09/02/4142 yari isigaye itararangirizwaho icyo cyemezo ubu yamaze kugurishwa muri cyamunara ku wa 29/04/2024 ikegukanwa n’abitwa Rumaraninda Mechack ndetse na Ngendakuriyo Gilbert nk’uko uburanira WHITEFIELD INVESTMENT COMPANY Ltd yabigaragarije ibimenyetso bitashoboye kuvuguruzwa n’uhagarariye THOMAS ET PIRON GRANDS LACS LIMITED, icyaburanwanga kikaba kitagihari kuko Urukiko rutahagarika irangizwa ry’icyemezo ku mitungo cyamaze kurangirizwaho.

[15] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rw’Ubujurire rurasanga impamvu zose z’ubujurire zatanzwe na THOMAS ET PIRON GRANDS LACS LIMITED nta shingiro zifite, hagomba kugumaho imikirize y’urubanza rwajuririwe.

- **Ibijyanye n’indishyi, amafaranga y’ikurikiranarubanza n’ay’igihembo cya Avoka asabwa na WHITEFIELD INVESTMENT COMPANY Ltd**

[16] WHITEFIELD INVESTMENT COMPANY Ltd isaba Urukiko gutegeka THOMAS ET PIRON GRANDS LACS kuyishyura 5.000.000 Frw kubera gushorwa mu manza ku maherere kubera ko buri gihe irega ibirego igatsindwa ikongera kubisubiramo, 3.000.000 Frw y’igihembo cya Avoka, 10.000.000 Frw y‘indishyi z’akababaro kubera ko igenda iyisebya mu manza zitandukanye kandi yari yarayihaye akazi ikanayishyura amafaranga bumvikanye ariko yo ikanga gukora ibyo bumvikanye mu masezerano kuva muri 2016 kugeza ubu itabona ibyayo kubera kuyirushya gusa.

[17] Me Zitoni Pierre Claver uhagarariye THOMAS ET PIRON GRAND LACS Ltd avuga ko n’ubwo ingingo y’Itegeko yabiteganyaga yakuwemo, indishyi zisabwa mu kirego cy’iremezo, zidasabwa muri référé (ikirego cyihutirwa) kuko mu kirego cyihutirwa hafatirwa gusa mesures conservatoires (ibyemezo by’agateganyo).

UKO URUKIKO RUBIBONA

[18] Urukiko rurasanga, indishyi, amafaranga y’igihembo cya Avoka n’ay’ikurikiranarubanza WHITEFIELD INVESTMENT COMPANY Ltd isaba Urukiko gutegeka THOMAS ET PIRON GRAND LACS Ltd kuyishyura itagomba kuyahabwa, kuko ikiburanishwa muri uru rubanza ari ikirego cyihutirwa gishamikiye ku rubanza rw’iremezo rukiri mu Rukiko Rukuru rw’Ubucuruzi, ku buryo icyemezo gifatwa ari icyemezo cy’agateganyo mu gihe hategerejwe icyemezo cya burundu kizafatwa mu iburanisha ry’urwo rubanza rw’iremezo. Ibi ni na ko Urukiko rw’Ikirenga rwabibonye mu rubanza RCOM 00001/2019/SC rwaciwe ku wa 22/02/2019, haburana Umurungi Umwizerwa n’Ikigo cy’Imisoro n’Amahooro[1], ndetse n’uru Rukiko rw’Ubujurire mu rubanza RCOMA 00006/2022/CA rwaciwe ku wa 23/05/2022, haburana Nzirorera Cyprien na Muhimpundu Rosine[2], ndetse n’urubanza RCOM 00003/2022/CA rwaciwe ku wa 11/05/2022, TOP TOWER HOTEL Ltd n’abandi baburana na BPR ATLAS MARA Plc[3].

---

[1] Reba Urubanza mu gika cya 26 n’icya 27.
[2] Reba Urubanza mu gika cya 26.
[3] Reba mu gika cyarwo cya 22.

III. ICYEMEZO CY’URUKIKO

[19] Rwemeje ko ubujurire bwatanzwe na THOMAS ET PIRON GRANDS LACS LIMITED nta shingiro bufite;

[20] Rwemeje ko nta gihindutse ku mikirize y’urubanza RCOM 00005/2024/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 09/04/2024 ;

[21] Ruvuze ko amafaranga y’amagarama y’uru rubanza yatazwe na THOMAS ET PIRON GRANDS LACS LIMITED ahwanye n’ibyarukozwemo.