AMINA Oil Ltd v. KAJEGUHAKWA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00033/2022/CA CMB RCOMAA 00023/2023/CA (Nyirandabaruta, P.J., Ngagi na Munyangeri, J.) 29 Mutarama 2024]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kwakira ikirego – Ikirego gitangwa n'abasangiye inyungu mu rubanza – Ababuranyi basangiye inyungu mu rubanza batanga ibirego byabo mu mwanzuro umwe, ukubiyemo ibisobanuro by'ikirego cyabo kandi bagahurira ku ngwate y'amagarama imwe – Iyo ikirego cy'ababuranyi basangiye inyungu mu rubanza rumwe kitakiriwe kandi cyagombaga kwakirwa ku bw'amakosa yakozwe n'urukiko, ibyemezo byose byafashwe biteshwa agaciro, ibintu bigasubira uko byahoze mbere, maze rukongera kuburaburanishwa bundi bushya mu mizi nta ngwate y'amagarama yongeye gutangwa.

Incamake y' ikibazo : Kajeguhakwa Valens avuga ko muri 2017 yeguriye umugore n'abana be imwe mu mitungo yari afite irimo n'ibigega byo kubikamo ibikomoka kuri peteroli, hanyuma baza gushinga sosiyete yitwa Excel Resources Energy Group Ltd yaje kubyara izindi sosiyete z'ubucuruzi zirimo Excel Energy Ltd.

Nyuma yaho, sosiyete Excel Energy Ltd yagiranye amasezerano n'uwitwa Mukakabayiza Amina yo kubaka *station* ku butaka bwe, maze bumvikana ko izakoresha iyo *station* mu gihe cy'imyaka makumyabiri (20), Mukakabayiza Amina akaba agomba kuyegukana ku wa 01/09/2037.

Abanyamigabane ba Excel Energy Ltd baje kwegurira Kajeguhakwa Valens *station* yubatse ku butaka bwa Mukakabayiza Amina, nyuma ku wa 11/11/2019 no ku wa 06/05/2020, Excel Energy Ltd irahindukira igirana amasezerano na AMINA Oil Ltd, Mukakabayiza Amina abereye umuyobozi n'umunyamigabane, maze Kajeguhakwa Valens avuga ko Excel Energy Ltd itagombaga gukora ayo masezerano kubera ko nta burenganzira yari igifite kuri iyo *station*, biba ngombwa ko arega Mukakabayiza Amina na AMINA Oil Ltd mu Rukiko rw'Ubucuruzi, arusaba gutesha agaciro ayo masezerano. Excel Energy Ltd yagobotse ku bushake muri urwo rubanza.

Urukiko rw'Ubucuruzi rwemeza ko amasezerano yabaye hagati ya Excel Energy Ltd Ltd na AMINA Oil Ltd ateshejwe agaciro.

Mukakabayiza Amina ntiyishimiye imikirize y'urubanza maze ajurira mu Rukiko Rukuru rw'Ubucuruzi arusaba gusuzuma niba ikirego cya Kajeguhakwa Valens cyaragombaga kwakirwa mu rwego rwa mbere no gusuzuma niba rwari rukwiye gutesha agaciro amasezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020 yabaye hagati ya Excel Energy Ltd na sosiyete AMINA Oil Ltd.

Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo ku nzitizi yatanzwe na Kajeguhakwa Valens na Excel Energy Ltd yo kutakira ubujurire bwa AMINA Oil Ltd, maze rwemeza ko iyo nzitizi ifite ishingiro.

AMINA Oil Ltd na Mukakabayiza Amina ntibishimiye icyemezo cyafashwe ku nzitizi yo kutakira ubujurire bwa AMINA Oil Ltd, bajurira mu Rukiko rw'Ubujurire bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amategeko, maze rubavutsa uburenganzira bwo gusobanura ingingo zabo z'ubujurire.

Sosiyete AMINA Oil Ltd yiregura ivuga ko kuba Urukiko Rukuru rw'Ubucuruzi rwaranze kwakira ubujurire bwayo ku mpamvu yo kudatanga ingwate y'amagarama byafatwa nko kwirengagiza amategeko, kuko asangiye inyungu n'umuyobozi wayo, bityo ko ubujurire bwagombaga kwakirwa.

Sosiyete AMINA Oil Ltd ivuga kandi ko muri uru rubanza, Urukiko Rukuru rw'Ubucuruzi na rwo rwafashe icyemezo cyo kutakira ubujurire bwayo ruvuga ko bwatanzwe mu buryo budakurikije amategeko, maze ingingo zayo z'ubujurire ntizaba zigisuzumwe, nyamara atari ko bimeze, ahubwo rwaragombaga kubwakira.

Kajeguhakwa Valens, Kajeguhakwa Angeline, Kajeguhakwa Bagabe Ariane, Kajeguhakwa Béatrice na GASARO Angelina nabo biregura bavuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze kuba rutarakiriye ubujurire bwa AMINA Oil Ltd kuko itatanze umwanzuro w'ubujurire n'ingwate y'amagarama , kuko Mukakabayiza Amina adasangiye inyungu na sosiyete abereye umuyobozi.

Incamake y'icyemezo: Iyo ikirego cy'ababuranyi basangiye inyungu mu rubanza rumwe kitakiriwe kandi cyagombaga kwakirwa ku bw'amakosa yakozwe n'urukiko, ibyemezo byose byafashwe biteshwa agaciro, ibintu bigasubira uko byahoze mbere, maze rukongera kuburaburanishwa bundi bushya mu mizi nta ngwate y'amagarama yongeye gutangwa.

Urubanza RCOMA 00315/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/03/2023 rugomba gubizwa Urukiko Rukuru rw'Ubucuruzi rukaburanishwa mu mizi bundi bushya nta ngwate y'amagarama yongeye gutangwa.

Amagarama y'urubanza abaye asubitswe.

Amategeko yashingiweho:
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 33 niya 158.

Nta manza zifashishijwe:

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kajeguhakwa Valens avuga ko muri 2017 yeguriye umugore n'abana be imwe mu mitungo yari afite irimo n'ibigega byo kubikamo ibikomoka kuri peteroli, biherereye mu Murenge wa Jabana, mu Karere ka Gasabo, mu Mujyi wa Kigali, hanyuma baza gushinga sosiyete yitwa Excel Resources Energy Group Ltd yaje kubyara izindi zirimo iyitwa Excel Energy Resources Trading Ltd yakoraga ubucuruzi bw'ibikomoka kuri peteroli yaje guhinduka Excel Energy Ltd, na yo yakoraga ubucuruzi bwo kuvana ibikomoka kuri peteroli mu mahanga, ikabiranguza ku bacuruzi batandukanye, ibindi ikabicuruza kuri *stations* za *essence* zitandukanye cyangwa izo yakodeshaga.

[2] Akomeza asobanura ko Excel Energy Ltd yagiye igirana amasezerano n'abantu begereye umuhanda, ikubaka *stations* za *essence* ku butaka bwabo kugira ngo yongere umubare wazo, nyuma y'igihe runaka ba nyir'ubutaka bakegukana izo *stations*, ari yo mpamvu ku wa 24/02/2017, Excel Energy Ltd yagiranye na Mukakabayiza Amina amasezerano yo kubaka *station* ku butaka bwe bufite UPI: 2/08/12/04/118 buherereye mu Murenge wa Runda, Akarere ka Kamonyi, Intara y'Amajyepfo, bumvikana ko izakoresha iyo *station* mu gihe cy'imyaka makumyabiri (20), Mukakabayiza Amina akaba agomba kuyegukana ku wa 01/09/2037.

[3] Abanyamigabane ba Excel Energy Ltd baje kwegurira Kajeguhakwa Valens *station* yubatse ku butaka bwa Mukakabayiza Amina, nyuma ku wa 11/11/2019 no ku wa 06/05/2020, Excel Energy Ltd irahindukira igirana amasezerano na AMINA Oil Ltd, Mukakabayiza Amina abereye umuyobozi n'umunyamigabane. Kajeguhakwa Valens avuga ko Excel Energy Ltd itagombaga gukora ayo masezerano kubera ko nta burenganzira yari igifite kuri iyo *station*, biba ngombwa ko arega Mukakabayiza Amina na AMINA Oil Ltd mu Rukiko rw'Ubucuruzi, arusaba gutesha agaciro ayo masezerano, ikirego cyandikwa kuri RCOM 00022/2021/TC. Excel Energy Ltd yagobotse ku bushake muri urwo rubanza.

[4] Mukakabayiza Amina na we yareze Excel Resources Energy Group Ltd mu Rukiko rw'Ubucuruzi, arusaba kuyitegeka kumusubiza icyangombwa kiranga ubutaka bwe bufite UPI: 2/08/12/04/118 yafatiriye no kuyitegeka kuvanaho icyemezo gishinganisha ubwo butaka, ikirego cyandikwa kuri RCOM 02053/2020/TC. Izo manza zombi zahurijwe hamwe ziburanishwa kuri RCOM 00022/2021/TC CMB RCOM 02053/2020/TC.

[5] Mukakabayiza Amina na AMINA Oil Ltd bireguye bavuga ko ikirego cya Kajeguhakwa Valens nta shingiro gikwiye guhabwa, kubera ko atazwi mu masezerano asaba ko ateshwa agaciro, kandi ko Excel Energy Ltd itigeze imenyesha Mukakabayiza Amina ko yeguriye Kajeguhakwa Valens iyo *station*. Excel Energy Ltd yagobotse urubanza ku bushake yavuze ko isanga ibyo Kajeguhakwa Valens aregera ari ukuri.

[6] Excel Energy Ltd yireguye mu mizi ivuga ko ikirego cya Mukakabayiza Amina nta shingiro gifite, kubera ko yamumenyesheje ko uburenganzira yari ifite kuri *station* yubatswe ku butaka bwe, yabuhaye Kajeguhakwa Valens.

[7] Mu rubanza RCOM 00022/2021/TC CMB RCOM 02053/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 24/03/2021, urwo Rukiko rushingiye ku kuba ku wa 07/09/2019, abanyamigabane ba Excel Energy Resources Group Ltd bareguriye Kajeguhakwa Valens uburenganzira bari bafite ku masezerano yo ku wa 24/02/2017, ku kuba Kajeguhakwa Valens ari we ufite uburenganzira kuri iyo *station* kugeza ku wa 01/09/2037, ku ngingo ya 81 y'Itegeko n˚ 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, 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:

-amasezerano yo ku itariki ya 11/11/2019 n'ayo ku wa 06/05/2020 yabaye hagati ya Excel Energy Ltd Ltd na AMINA Oil Ltd, ateshejwe agaciro;

-ishinganisha ryakozwe ku mutungo ibaruwe kuri UPI: 2/08/12/04/118 rigomba kugumaho kugeza tariki ya 01/09/2037, iki gihe cyahinduka kigashyirwa hafi cyangwa kikavaho ari uko Kajeguhakwa abyumvikanyeho na Mukakabayiza Amina;

-Mukakabayiza Amina atagomba guhabwa icyangombwa kiranga ubutaka bwe bubaruye kuri UPI: 2/08/12/04/118 nk'uko abyifuza kuko impamvu yagitanze zigihari, Kajeguhakwa Valens akazagumana icyo cyangombwa kugeza ku wa 01/09/2037, akaba ashobora kugisubiza Mukakabayiza Amina ari uko babyumvikanyeho;

- Mukakabayiza Amina yishyura Kajeguhakwa Valens amafaranga muliyoni imwe (1.000.000 Frw) y'indishyi z'akababaro, amafaranga ibihumbi magana acyenda (900.000 Frw) y'igihembo cya Avoka wamuburaniye, amafaranga ibihumbi ijana (100.000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi makumyabiri (20.000 Frw) y'igwate y'amagaramayatanze arega;

-nta ndishyi Mukakabayiza Amina yahabwa, ko nta cyo AMINA Oil Ltd yaryozwa;

nta ndishyi Excel Resources Energy Group Ltd bahabwa kuko nta zo basabye.

[8] Mukakabayiza Amina yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, arusaba ibikurikira:

a.gusuzuma niba ikirego cya Kajeguhakwa Valens cyaragombaga kwakirwa mu rwego .rwa mbere;

b.gusuzuma niba Urukiko rw'Ubucuruzi rwari rukwiye gutesha agaciro amasezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020 yabaye hagati ya Excel Energy Ltd Ltd na AMINA Oil Ltd;

c.kumenya niba Excel Energy Ltd yategekwa gusubiza Mukakabayiza Amina icyangombwa kiranga ubutaka bufite UPI: 2/08/12/04/118;

gusuzuma ishingiro ry'indishyi zingana n'amafaranga miliyoni imwe (1.000.000 Frw) n'izindi yagenewe kubera ibyo yaba yaratanze muri uru rubanza;

d.gusuzuma niba Mukakabayiza Amina na AMINA Oil Ltd batagenerwa indishyi zo gushorwa mu manza n'ibihombo byatewe n'itambamira ry'umutungo no gufatira icyangombwa kiranga ubutaka bwe;

e.gusuzuma niba Mukakabayiza Amina yasubizwa amafaranga miliyoni ebyiri n'ibihumbi magana atanu (2.500.000 Frw) harimo igihembo cya Avoka wamuburaniye mu nkiko zombi zibanza n'ikurikiranarubanza;

f.kumenya niba ibyakozwe n'umuyobozi mukuru wa Excel Energy Ltd binyuranyije n'amategeko ku buryo byateshwa agaciro.

[9] AMINA Oil Ltd yavuze ko na yo yajuriye, mbere yo kwiregura ku ngingo z'ubujurire, Kajeguhakwa Valens na Excel Energy Ltd batanga inzitizi yo kutakira ubujurire bwa AMINA Oil Ltd kubera ko itatanze ingwate y'amagarama n'imyanzuro y'ubujurire. Mukakabayiza Amina na AMINA Oil Ltd bireguye kuri iyi nzitizi bavuga ko Mukakabayiza Amina yatanze ingwate y'amagarama kandi ko hashingiwe ku ngingo ya 33 y'Itegeko n˚ 22/2018 ryo ku wa 29/04/2028 ryerekeye imiburanishirizr y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kuba asangiye inyungu mu rubanza na AMINA Oil Ltd iyo ngwate y'amagarama ihagije.

[10] Mu kwiregura ku ngingo z'ubujurire, Kajeguhakwa Valens yavuze ko nta shingiro zifite. Excel Energy Ltd na yo yireguye ivuga ko ubujurire bwa Mukakabayiza Amina nta shingiro bufite.

[11] Kuri urwo rwego, Kajeguhakwa Angeline, Kajeguhakwa Bagabe Ariane, Kamaraba Kajeguhakwa Béatrice na Gasaro Angelica bagobotse mu rubanza ku bushake.

[12] Ku wa 10/12/2021, mu rubanza rubanziriza urundi RCOMA 00315/2021/HCC, Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo ku nzitizi yatanzwe na Kajeguhakwa Valens na Excel Energy Ltd yo kutakira ubujurire bwa AMINA Oil Ltd, rushingiye ku kuba nta ngwate y'amagarama n'imyanzuro y'ubujurire AMINA Oil Ltd yatanze, rwemeza ko iyo nzitizi ifite ishingiro, ko AMINA Oil Ltd itajuririye urubanza RCOM 00022/2021/TC CMB RCOM 02053/2020/TC, ruvuga ko iburanisha ry'urubanza rizakomeza hasuzumwa impamvu z'ubujurire zatanzwe na Mukakabayiza Amina, zirebana no gutegeka Excel Energy Ltd kumusubiza icyangombwa kiranga ubutaka bwe bufite UPI:2/08/12/04/118, n'ibirebana n'indishyi zishamikiye kuri icyo kirego.

[13] AMINA Oil Ltd na Mukakabayiza Amina ntibishimiye icyemezo cyafashwe ku nzitizi yo kutakira ubujurire bwa AMINA Oil Ltd, bajurira mu Rukiko rw'Ubujurire ku wa 23/12/2021, bavuga ko kuba Urukiko Rukuru rw'Ubucuruzi rwaranze kwakira ubujurire bwa AMINA Oil Ltd ruvuga ko itatanze ingwate y'amagarama, basanga rwarirengagije amategeko, runavutsa Mukakabayiza Amina uburenganzira bwo gusobanura ingingo ze z'ubujurire, handikwa ubujurire bwatanzwe na Mukakabayiza Amina ahagarariye AMINA Oil Ltd ubwo Mukakabayiza Amina yatanze ku giti cye ntibwandikwa, ikirego cyandikwa kuri RCOMAA 00033/2022/CA.

[14] Kajeguhakwa Valens na Excel Energy Ltd bireguye ku bujurire bwa AMINA Oil Ltd, bavuga ko kuba Urukiko Rukuru rutarakiriye ubujurire bwa AMINA Oil Ltd, nta kosa rwakoze.

[15] Ku wa 06/03/2023, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza mu mizi, rushingiye ku ngingo zitandukanye z'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ku ngingo ya 3 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, rwemeje ko ubujurire rwashyikirijwe na Mukakabayiza Amina burebana no kutakira ikirego cyatanzwe na Kajeguhakwa Valens ku rwego rwa mbere, no gutesha agaciro amasezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020 yabaye hagati ya Excel Energy Ltd na AMINA Oil Ltd butakiriwe, ko izindi mpamvu z'ubujurire Mukakabayiza Amina yatanze nta shingiro zifite uretse gusa irebana n'amafaranga y'indishyi zo kutubahiriza amasezerano, ko indishyi z'akababaro zingana n'amafaranga miliyoni imwe (1.000.000 Frw) Mukakabayiza Amina yategetswe kwishyura Kajeguhakwa Valens avanweho, ingwate y'amagarama yatanzwe na Mukakabayiza Amina ajurira iherera ku Isanduku ya Leta.

[16] Ku wa 03/04/2023, Mukakabayiza Amina yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujirire bwe bwandikwa kuri RCOMAA 00023/2023/CA, uru rubanza ruhuzwa n'ubujurire bwari bwaratanzwe ku nzitizi, imanza zombi ziburanishirizwa hamwe kuri RCOMAA 00033/2022/CA CMB RCOMAAA 00023/2023/CA ku wa 24/10/2023, Mukakabayiza Amina yunganiwe na Me Komezusenge Déogratias, AMINA Oil Ltd ihagarariwe na Mukakabayiza mina yunganiwe na Me Komezusenge Déogratias, Kajeguhakwa Valens ahagarariwe na Me Habineza Gasore Gilbert afatanyije na Me Nsengiyumva Abel, Excel Energy Ltd ihagarariwe na Me

Habineza Gasore Gilbert afatanyije na Me Twiringiyemungu Joseph, Kajeguhakwa Angeline, Kajeguhakwa Bagabe Ariane, Kamaraba Kajeguhakwa Béatrice na Gasaro Angelica bahagarariwe na Me Habineza Gasore Gilbert,

[17] Mu iburanisha ryo ku wa 24/10/2023, ababuranyi bagiye impaka ku nzitizi yatanzwe n'abahagarariye Kajeguhakwa Valens yo kutakira ubujurire bwa Mukakabayiza Amina ishingiye ku kuba agaciro k'ikiburanwa katageze nibura ku mafaranga miliyoni mirongo irindwi n'eshanu (75.000.000 Frw), ku wa 03/11/2023, Urukiko rusoma icyemezo kuri iyo nzitizi, rwemeza ko nta shingiro ifite, ko ubujurire bwa Mukakabayiza Amina buri mu bubasha bw'Urukiko rw'Ubujurire, ko iburanisha rizasubukurwa ku wa 07/11/2023.

[18] Iburanisha ryabereye mu ruhame ku wa 07/11/2023, AMINA Oil Ltd ihagarariwe na Mukakabayiza Amina yunganiwe na Me Komezusenge Déogratias, akanamwunganira ku giti cye, Kajeguhakwa Valens ahagarariwe na Me Nsengiyumva Abel afatanyije na Me Habineza Gasore Gilbert, Excel Energy Ltd ihagarariwe n'umuyobozi wayo Mpongendame Dayan yunganiwe na Me Twiringiyemungu Joseph afatanyije na Me Nsengiyumva Abel, Kajeguhakwa Angeline, Kajeguhakwa Bagabe Ariane, Kamaraba Kajeguhakwa Béatrice na Gasaro Angelica bahagarariwe na Me Habineza Gasore Gilbert; uwo munsi Urukiko rufatira mu ntebe icyemezo cy'uko mu bibazo bigomba gusuzumwa, ikirebana no kumenya niba Mukakabayiza Amina yari afite inyungu n'ububasha bwo kuregera amasezerano atagizemo uruhare kigomba kuvanwamo kubera ko abatanze iyo nzitizi batigeze bajurira, iburanisha rikomeza hagibwa impaka ku ngingo y'ubujurire irebana no kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombbaga kwakira ubujurire bwa AMINA Oil Ltd ndetse n'uko byagenda mu gihe uru Rukiko rwasanga ubwo bujurire bwaragombaga kwakirwa, iburanisha kuri ibyo bibazo rirapfundikirwa, ababuranyi bamenyeshwa ko icyemezo kizasomwa ku wa 24/11/2023, ariko kubera impamvu zinyuranye, isomwa ryarwo ryimurirwa ku wa 29/01/2024.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga kwakira ubujurire bwa AMINA Oil Ltd

[19] Mukakabayiza Amina uhagarariye AMINA Oil Ltd n'umwunganira bavuga ko kuba Urukiko Rukuru rw'Ubucuruzi rwaranze kwakira ubujurire bwa AMINA Oil Ltd ku mpamvu yo kudatanga ingwate y'amagarama, basanga harabayeho kwirengagiza ibiteganywa n'ingingo ya 33 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kuko Mukakabayiza Amina asangiye inyungu na AMINA Oil Ltd. Basobanura ko Mukakabayiza Amina na AMINA Oil Ltd basangiye inyungu mu rubanza kubera impamvu zikurikira:

a.kuba Kajeguhakwa Valens yarareze Mukakabayiza Amina na AMINA Oil Ltd asaba gutesha agaciro amasezerano kandi akaba ataragaragaje icyo arega buri wese;

b.kuba AMINA Oil Ltd ari yo yishyuye ikiguzi cya s*tation* ya *essence*, iyo *station* ikaba yubatse ku butaka bwa Mukakabayiza Amina, byumvikanisha ko harimo ikintu cyafatwa nk'isangiramutungo (copropriété), bikaba biganisha ku gusangira inyungu mu rubanza, ibi na byo bikaba byaratumye batanga ubujurire bumwe n'ingwate y'amagarama imwe.

[20] Abahagarariye Kajeguhakwa Valens bakunganira Mpongendame Dayan uhagarariye Excel Energy Ltd ndetse n'uhagarariye Kajeguhakwa Angeline, Kajeguhakwa Bagabe Ariane, Kamaraba Kajeguhakwa Béatrice na GASARO Angelia biregura bavuga ko kuba Urukiko Rukuru rw'Ubucuruzi rutarakiriye ubujurire bwa AMINA Oil Ltd bitewe no kudatanga umwanzuro w'ubujurire n'ingwate y'amagarama nta kosa rwakoze, kuko Mukakabayiza Amina adasangiye inyungu na AMINA OIL Ltd. Basobanura ko amasezerano yabaye hagati ya na Excel Energy Ltd na AMINA OIL Ltd ihagarariwe na Mukakabayiza Amina nk'umuyobozi mukuru wayo kandi ko mu kujurira, AMINA Oil Ltd itari yajuririye ibyo yatsindiwe mu Rukiko rw'Ubucuruzi birebana no gutesha agaciro amasezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020.

[21] Bavuga kandi ko n'iyo hafatwa ko Mukakabayiza Amina na AMINA OIL Ltd basangiye inyungu mu rubanza, bidahagije ngo Mukakabayiza Amina atangire AMINA OIL Ltd ikirego mu Rukiko atabanje kubihererwa uburenganzira nk'uko biteganywa n'ingingo ya 231 y'Itegeko rigenga amasosiyete y'ubucuruzi ivuga ko umuntu ufite inyungu, asaba Urukiko uburenganzira bwo gutanga ikirego mu izina rya sosiyete, kugira ngo arengere inyungu ze, ko ariko muri icyo gihe ubwishyu bushyirwa mu mutungo w'iyo sosiyete.

[22] Bakomeza bavuga ko kuba mu rubanza RCOM 00053/2020/TC Mukakabayiza Amina yarareze ku giti cye, byumvikanisha ko yari afite inyungu ze bwite zidafite aho zihuriye n'iza AMINA Oil Ltd kandi ko iyo baba basangiye inyungu bari kubisobanura mu gihe cyo gutanga ikirego, ntibabisobanure mu gihe cy'iburanisha.

[23] Mu gusoza, ababuranyi bavuga ko mu gihe Urukiko rwasanga ubujurire bwa AMINA Oil Ltd bwaragombaga kwakirwa, rwasuzuma mu mizi ingingo zayo z'ubujurire yari yatanze mu Rukiko Rukuru rw'Ubucuruzi, hashingiwe ku murongo watanzwe mu rubanza RCOMAA 00028/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/09/2023, haburana Majyambere INDUSTRY Ltd na Munyaneza Valérien.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 33, 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 iteganya ko" *Iyo abasangiye inyungu mu rubanza ari benshi, barega cyangwa baregwa, buri wese ku bimureba afite uburenganzira n'inshingano by'umuburanyi. Icyakora abasangiye inyungu mu rubanza batanga ibirego byabo mu mwanzuro umwe, bagatanga ingwate y'amagarama imwe*".

[25] Iyi ngingo y'Itegeko yumvikanisha ko mu gihe abasangiye inyungu mu rubanza bagiye kuregera Urukiko, batanga umwanzuro umwe ukubiyemo ibisobanuro by'ikirego cyabo kandi bagahurira ku ngwate y'amagarama imwe.

[26] Mu rubanza RCOM 00022/2021/TC, Kajeguhakwa Valens yareze Mukakabayiza Amina na AMINA Oil Ltd, yatanze ibisobanuro ko ingingo ya 3 y'amasezerano yo ku wa 06/05/2020 iteganya ko"AMINA Oil Ltd yemeye kwishyura Excel Energy Ltd imirimo yose yo kubaka petrol station yubatse i MuganzaRunda-Kamonyi-Intara y'Amajyepfo mu kibanza gifite UPI: 2/08/12/04/118 ku kiguzi kingana n'amafaranga y'u Rwanda miliyoni magana atatu na mirongo itanu (350.000.000 Frw). Bigaragara kandi ko ubutaka bwubatsweho station AMINA Oil Ltd ari

ubwa Mukakabayiza Amina nk'uko icyangombwa kiranga ubutaka bufite UPI: 2/08/12/04/118 kiri muri dosiye kibyerekana.

[27] Dosiye y'urubanza RCOMA 00315/2021/HCC igaragaza ko abajuriye ari Mukakabayiza Amina na AMINA Oil Ltd, hakaba haratanzwe ingwate y'amagarama ingana n'amafaranga ibihumbi mirongo ine (40.000 Frw), yishyuwe na Mukakabayiza Amina.

[28] Mu mpamvu z'ubujirire zatanzwe muri urwo rubanza, harimo iyo gusaba Urukiko Rukuru rw'Ubucuruzi gusuzuma niba ikirego cya Kajeguhakwa Valens cyaragombaga kwakirwa n'umucamanza wa mbere, icyo kumenya niba Urukiko rw'Ubucuruzi rwaragombaga gutesha agaciro amasezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020 yabaye hagati ya Excel Energy Ltd na AMINA Oil Ltd, n'iyo gusuzuma niba Excel Energy Ltd yategekwa gusubiza Mukakabayiza Amina icyangombwa cye kiranga ubutaka UPI: 2/08/12/04/118.

[29] Mu rubanza RCOMA 00315/2021/HCC, Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo cyo kutakira ubujurire bwa AMINA Oil Ltd ruvuga ko nta ngwate y'amagarama iyo sosiyete yatanze ijurira ndetse nta n'imyanzuro yo kujurira yatanze.

[30] Ku birebana no kuba Mukakabayiza Amina na AMINA Oil Ltd baba basangiye inyungu mu rubanza, Urukiko rw'Ubujurire rurasanga Kajeguhakwa Valens na bagenzi be bazi neza ko inyungu za Mukakabayiza Amina na sosiyete AMINA Oil Ltd zifite aho zihuriye muri izi manza kuko iyo bitaba ibyo, nta bwo mu kuregera gutesha agaciro amasezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020, aba yarareze Mukakabayiza Amina na AMINA Oil Ltd.

[31] Ikindi kigaragaza ko AMINA Oil Ltd isangiye inyungu na Mukakabayiza Amina muri izi manza, ni uko AMINA Oil Ltd yishyuye ikiguzi cy'amafaranga yashowe hubakwa *station* ya *essence,* iyo *station* ikaba yubatswe ku butaka bwa Mukakabayiza Amina, kandi yaba icyo kiguzi cyatanzwe ndetse n'ubwo butaka, bikaba bivugwa mu masezerano asabirwa guteshwa agaciro yavuzwe haruguru.

[32] Urukiko rurasanga rero hakurikijwe ibikubiye mu masezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020, no kuba mu kuregera ko ateshwa agaciro Kajeguhakwa Valens yarareze Mukakabayiza Amina na AMINA OIL Ltd, bigaragara ko Mukakabayiza Amina na AMINA Oil Ltd basangiye inyungu muri ayo masezerano, ari na yo mpamvu basangiye inyungu mu rubanza ruyakomokaho.

[33] Urukiko rw'Ubujurire rushingiye ku biteganywa n'ingingo ya 33 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe haruguru, rurasanga kuba Mukakabayiza Amina na AMINA Oil Ltd basangiye inyungu mu rubanza RCOM 00022/2021/TC Kajeguhakwa Valens yabarezemo, ingwate y'amagarama ndetse n'umwanzuro w'ubujurire byari byatanzwe na Mukakabayiza Amina wanagaragaje ko AMINA Oil Ltd na yo ijurira, byari bihagije kugira ngo Urukiko Rukuru rw'Ubucuruzi rwakire ubujurire bwa AMINA Oil Ltd, cyane ko impamvu y'ubujurire irebana no kumenya niba Urukiko rw'Ubucuruzi rwaragombaga gutesha agaciro amasezerano yo ku wa 11/11/2019 n'ayo ku wa 06/05/2020 bigaragara ko inareba AMINA Oil Ltd nk'uwabaye muri ayo masezerano.

[34] Ku byo abahagarariye Kajeguhakwa Valens bavuga ko AMINA Oil Ltd itigeze itanga impamvu z'ubujurire zirebana n'icyemezo cyafashwe n'Urukiko rw'Ubucuruzi, byafatwa ko

itatanze umwanzuro wo kujurira, Urukiko rurasanga nta shingiro byahabwa, kubera ko umwanzuro w'ubujurire Mukakabayiza Amina yatanze ukubiyemo n'impamvu z'ubujurire zireba AMINA Oil Ltd nk'abasangiye inyungu mu rubanza.

[35] Ku byo abahagarariye Kajeguhakwa Valens bavuga ko Mukakabayiza Amina atari afite ububasha bwo gutanga ikirego cya AMINA Oil Ltd atabanje gusaba Urukiko uburenganzira, Urukiko rurasanga nta shingiro bifite kuko ikirego yatanze cyari ubujurire ku cyemezo cyafashwe ku kirego cyari cyatanzwe na Kajeguhakwa Valens ndetse n'ingingo ya 231 y'Itegeko N°007/2021 ryo ku wa 05/02/2021 rigenga amasezerano bavuga ko atubahirije ikaba nta ho ihuriye n'urubanza ruburanishwa kuko yerekeranye n'itangwa ry'ikirego kiziguye (*action oblique*).

2. Kumenya igikwiye gukorwa nyuma y'uko Urukiko rw'Ubujurire rusanze Urukiko Rukuru rw'Ubucuruzi rwaragombaga kwakira ubujurire bwa AMINA Oil Ltd

[36] Abahagarariye Kajeguhakwa Valens n'uwunganira Mpongendame Dayan uhagarariye Excel Energy Ltd bavuga ko mu gihe uru Rukiko rwasanga ubujurire bwa AMINA Oil Ltd bwaragombaga kwakirwa, rwasuzuma ubwo bujurire mu mizi rugendeye ku murongo watanzwe n'uru Rukiko mu rubanza RCOMAA 00028/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/09/2023.

[37] Uhagarariye Kajeguhakwa Angeline, Kajeguhakwa Bagabe Ariane, Kamaraba Kajeguhakwa Béatrice na Gasaro Angelica avuga ko mu gihe Urukiko rusanze ubujurire bwa AMINA Oil Ltd bwaragombaga kwakirwa, hakubahirizwa ibiteganywa n'ingingo ya 158 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

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[38] Ingingo ya 158, 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, iteganya ko"*Iyo Urukiko rwajuririwe rusanze urubanza rwari rwaregewe mu buryo bukurikije amategeko Urukiko rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, Urukiko rwajuririwe rurarwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere, rukarutesha agaciro maze rukarusubiza Urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi, nta yindi ngwate y'amagarama itanzwe.*

[39] Ibyerekeye kumenya niba Urukiko rw'Ubujurire rushobora kuburanisha ibirebana n'urubanza mu mizi mu gihe ibyo bibazo bitasuzumwe n'Urukiko rwaciye urubanza rujuririrwa cyangwa niba rutabiburanisha ku buryo uru rubanza rwakoherezwa mu Rukiko rwanze gusuzuma ibyo bibazo akaba ariho ruburanishirizwa byafashweho umurongo n'uru Rukiko mu rubanza Nº RCAA 00055/2018/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 11/10/2019, haburana Mukaminega Epiphanie na Mwiseneza Marie Laetitia buri mubyeyi ahagarariye abana be. Muri urwo rubanza, Urukiko rw'Ubujurire rwasobanuye ko hari igice kimwe cy'urubanza kitasuzumwe n'Urukiko Rukuru nyamara ari rwo rwibeshye, rwanzura ko urubanza rusubizwa urwo rukiko rukaburanishwa mu mizi nta ngwate y'amagarama yongeye gutangwa.

[40] Muri uru rubanza, Urukiko Rukuru rw'Ubucuruzi na rwo rwafashe icyemezo cyo kutakira ubujurire bwa AMINA Oil Ltd ruvuga ko bwatanzwe mu buryo budakurikije amategeko, maze ingingo zayo z'ubujurire ntizaba zigisuzumwe, nyamara atari ko bimeze, ahubwo rwaragombaga kubwakira.

[41] Kuba AMINA OIL Ltd na Mukakabayiza Amina basangiye inyungu muri uru rubanza, kandi bikaba byemejwe ko ubujurire bwa AMINA OIL Ltd bwagombaga kwakirwa mu Rukiko Rukuru rw'Ubucuruzi, bivuze ko urwo Rukiko rwakoze ikosa ryo kutababuranishirizwa hamwe nk'ababuranyi basangiye inyungu mu rubanza. Kubera iyo mpamvu kandi mu inyungu z'ubutabera, Urukiko rw'Ubujurire rurasanga, ibyemezo byose byafashwe mu rubanza n° RCOMA 00315/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/03/2023 bigomba guteshwa agaciro, ibintu bigasubira uko byahoze mbere y'uko urwo Rubanza rutangira kuburanishwa mu mizi mu Rukiko Rukuru rw'Ubucuruzi, rukongera rukaruburaburanisha mu mizi bundi bushya nta ngwate y'amagarama yongeye gutangwa nk'uko biteganywa n'ingingo ya 158, igika cya 2 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

III. ICYEMEZO CY'URUKIKO

[42] **Rwemeje** ko urubanza RCOMA 00315/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/03/2023 rusubizwa Urukiko Rukuru rw'Ubucuruzi rukaburanishwa mu mizi bundi bushya nta ngwate y'amagarama yongeye gutangwa.

[43] **Ruvuze** ko amagarama y'urubanza abaye asubitswe.