ERJB v. UWAMARIYA

[Rwanda URUKIKO RW'UBUCURUZI – RCOM 00269/2021/TC (Rwigema, P.J.,) 14 Ukuboza 2021]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'inkiko – Irangizwa ry'ibyemezo nkemurampaka bihatira umuyobozi ishyirwa mu bikorwa byabyo – Ikirego gihatira umuyobozi gushyira mu bikorwa icyemezo cy'ubukempurampaka kiri mu bubasha bw'Urukiko rw'Ubucuruzi.

Incamake y'ikibazo: Sosiyete E.R.J.B Ltd yagiranye amasezerano y'ubwubatsi bw'ibyumba by'amashuri na Minisiteri y'uburezi, ayo masezerano akaba yarateganyaga ko ibibazo bizayavukamo bizakemurwa mu bwumvikane, byananirana hakitabazwa ubukemurampaka.

Ubwumvikane hagati y' impande zombi bwarananiranwe maze sosiyete E.R.J.B Ltd ishyikiriza ikibazo cyayo Ubukemurampaka, irega Minisiteri y'uburezi ivuga ko itubahirije inshingano zayo zo kuyishyura imirimo yayikoreye, Ubukemurampaka nabwo butegeka minisiteri kwishyura umwenda yari isigayemo, hamwe n'inyungu zawo.

E.R.J.B Ltd yareze minisitiri mu Rukiko rw' Ubucuruzi ivuga ko icyemezo cyafashwe n'ubukemurampaka cyategekaga Minisiteri abereye umuyobozi kwishyura umwenda iyifitiye kitigeze gishyirwa mu bikorwa, bityo ko isaba uru Rukiko guhamagaza Minisitiri kugirango yisobanure, inasaba ko umunyamabanga uhoraho muri iyi minisiteri agobokeshwa ku gahato muri uru rubanza, ndetse agahatirwa gushira mu bikorwa icyemezo cyafashwe n' ubukemurampaka kuko nk'ushinzwe ingengo y'imari (chief Budget) yatambamira iyishyurwa ry'amafaranga yayo yategetswe mu rubanza nkemurampaka.
Minisitiri w'Uburezi yatanze inzitizi muri uru Rukiko avuga ko ikirego kidakwiye kwakirwa n' Urukiko rw 'Ubucuruzi kuko rudafite ububasha avuga ko ahubwo ubukempurampaka bwafashe icyemezo nibwo bufite ububasha bwo guhamagaza umuyobozi kugirango yisobanure ku mpamvu zatumye adashyira mu bikorwa icyemezo cyafashwe n' Ubukempuramaka cyamutegekaga kwishyura, asaba ko ibibazo bijyanye n'Ubukemurampaka byakemurwa n'Urukiko Rukuru rw' Ubucuruzi.

Incamake y'icyemezo: Ikirego gihatira umuyobozi gushyira mu bikorwa icyemezo cy' Ubukempurampaka kiri mu bubasha bw'Urukiko rw'Ubucuruzi.

Inzitizi nta shingiro zifite.
Amagarama y'urubanza arasubitswe.

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 183,184, 241 n'iya 242.

Imanza zifashishijwe:

Urubanza RCOM 00014/2019/HCC; CELA CompanyLtd v Philip Cotton rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 10/04/2019.

Urubanza RCOMAA 00018/2018/CA-RCOMAA00024/2018/CA; Murekatete Laetitia n'abandi v GT Bank rwaciwe n'Urukiko rw'Ubujurire kuwa 16/11/2018.

Urubanza

I. IMITERERE Y'URUBANZA

[1] E.R.J.B Ltd yagiranye amasezerano na Leta y'u Rwanda (Minisiteri y'uburezi) y'ubwubatsi bw'ibyumba by'amashuri n'ubwiherero ku giciro cya 418,397,293Frw, ayo masezerano akaba yarateganyaga ko ibibazo bizayavukamo bizakemurwa mu bwumvikane, byananirana hakitabazwa ubukemurampaka.

[2] E.R.J.B Ltd yashyikirije ikibazo Ubukemurampaka irega Minisiteri y'uburezi (MINEDUC) ko itubahirije inshingano zayo zo kuyishyura imirimo yayikoreye, Ukemurampaka butegeka iyo minisiteri kwishyura E.R.J.B Ltd 41.496.440Frw y'umwenda yari isigayemo, 37.144.831Frw y'inyungu z'uwo mwenda, 3.000.000Frw y'igihembo cy'Avoka n'ikurikiranarubanza na 5,881USD y'ikiguzi cy'Umukemurampaka.

[3] Ubukemurampaka bwategetse kandi Leta y'u Rwanda (Minisiteri y'Uburezi) kwishyura amafaranga avugwa haruguru mu gihe kitarenze iminsi mirongo itatu (30) kuva icyemezo gishyizweho umukono, byaba bidakozwe hakabarwa inyungu zingana na 8.131%Frw ku mwaka.

[4] E.R.J.B Ltd ivuga ko icyemezo cy'ubukemurampaka kivugwa haruguru kitigeze gishyirwa mu bikorwa na Leta y'u Rwanda, bityo ikaregera urukiko Uwamariya Valentine nka minisitiri w'uburezi kugira ngo ategekwe gushyira mu bikorwa icyo cyemezo, ndetse ikanasaba ko Karake charles nawe agobokeshwa ku gahato muri uru rubanza kugira ngo nawe nk'Umunyamabanga uhoraho muri iyo minisiteri ategekwe gushyira mu bikorwa icyo cyemezo.

[5] Me Habumuremyi Prosper uburanira Uwamariya Valentine atanga inzitizi y'iburabubasha bw'urukiko, bityo agasaba ko ikirego kitakirwa. Kubijyanye no kugobokesha umunyamabanga uhoraho muri MINEDUC avuga ko bitari ngombwa ko agobokeshwa kuko atabangamira ishyirwa mu bikorwa ry'icyemezo cy'urukiko.

[6] Muri uru rubanza, urukiko rusuzuma:

- Niba nta bubasha rufite bwo kuburanisha iki kirego;

- Niba Karake charles akwiye kugobokeshwa ku gahato mu rubanza.

II. ISESENGURA RY'URUBANZA

1. Gusuzuma niba Urukiko nta bubasha rufite bwo kuburanisha iki kirego

[7] Me Habumuremyi Prosper uburanira Uwamariya Valentine avuga ko ingingo ya 184 y’itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi iz'umurimo n'iz'ubutegetsi, yashingiweho hatangwa ikirego, irebana gusa n’imanza z'ubutegetsi. Akomeza avuga ko Urukiko rw’Ubucuruzi nta bubasha rufite bwo kuburanisha iki kirego kuko hashingiye kuri iyo ngingo, Urukiko rufite ububasha bwo guhamagaza umuyobozi kugira ngo yisobanure ari urwafashe icyemezo, bityo kuba icyemezo kiregerwa cyarafashwe n’Ubukemurampaka, Urukiko rw'Ubucuruzi rudafite ububasha bwo gumahamagara Uwamariya ngo yisobanure kandi atarirwo rwafashe icyemezo ERJB Ltd ishaka ko cyubahirizwa, bityo agasanga ikirego cyakagombye koherezwa Ubucyempurampaka.

[8] Me Yankurije Dative uburanira E.R.J.B Ltd avuga ko ashingiye ku ngingo ya 1 y’itegeko ryavuzwa haruguru, iryo tegeko rigenga rigenga imiburanishirize y’izindi manza mu gihe nta yandi mategeko yihariye agenga imiburanishirize yazo, ari yo mpamvu ikirego cya E.R.J.B Ltd gishingiye ku ngingo ya 184 y’iryo tegeko, bityo ko urukiko rw’ubucuruzi rufite ububasha bwo kuburanisha iki kirego kuko nta kibazo cy'ubukemurampaka kiri muri urubanza.

[9] Me Habumuremyi akomeza avuga ko Mujawamariya asaba ko ibibazo bijyanye n’Ubukemurampaka byakemurwa n'Urukiko Rukuru rw'Ubucuruzi, hashingiwe ku ngingo ya 82 y’itegeko ryavuzwe haruguru; naho Me Bayingana Janvier nawe uburanira E.R.J.B Ltd akavuga ko iyo ngingo yahuzwa n’ibiteganywa mu ngingo ya 47 y’itegeko rigenga ubukemurampaka.

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[10] Ingingo ya 184 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi nk’uko ryahinduwe kugeza ubu ivuga ko “Umuyobozi wanze kubahiriza ibyategetswe mu rubanza ashobora guhamagarwa mu rukiko rwafashe icyemezo kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, bisabwe n’umuburanyi ubifitemo inyungu.”

[11] Urukiko rurasanga n’ubwo ingingo imaze kuvugwa iri mu mutwe w’itegeko urebana n’imiburanishirize y’imanza z’ubutegetsi; uwo mutwe ugizwe n’ibyiciro bibiri, ari byo: a)Uburyo imanza zo mu rwego rw’ubutegetsi ziregerwa n’uko ziburanishwa; b) Igihano gihatira kubahiriza icyemezo cy’urukiko; muri iki cyiciro cya kabiri umushingamategeko mu ngingo ya 184 ivuga haruguru, akaba yaragenwe ko umuyobozi wanze kubahiriza ibyategetswe mu rubanza ashobora guhamagarwa mu rukiko rwafashe icyemezo kugira ngo yisobanure, ibi bikaba bigaragaza ko ububasha bwo guhamagaza uwo muyobozi bufitwe n’Urukiko rwaciye urwo rubanza, cyane cyane ko ari rwo rushobora kumva impaka ku ishyirwa mu bikorwa ry’icyemezo rwategetse kurusha urundi rukiko urwari rwo rwose rutaburanishije urwo rubanza, bityo bikaba byumvikana ko mu gihe urubanza rwaciwe n’Urukiko rw’Ubucuruzi nta cyarubuza ububasha bwo guhamagaza umuyobozi uregwa kuba yaranze kubahiriza ibyemezo rwategetse; ibi bikaba byaranashimangiwe n’Urukiko Rukuru rw’Ubucuruzi mu rubanza RCOM 00014/2019/HCC rwaciye kuwa 10/04/2019, aho rwategetse umuyobozi wa Kaminuza y’uRwanda Philip COTTON ko nta adakora ku buryo bwose kugira ngo iyo Kaminuza yishyure CELA Company Ltd 54,915,000Frw bitarenze

kuwa 10/06/2019, azajya acibwa 250.000 Frw buri munsi y'igihano kimuhatira kurangiza urwo rubanza kaminuza yatinzwe n'iyo sosiyete[1].

[12] Kubijyanye n'ibyerekeranye uru rubanza aho urukiko rwaregewe abayobozi ba Minisiteri y'Uburezi kugira ngo bisobanure ku kuba baranze gushyira mu bikorwa icyemezo cy'ubukemurampaka cyo ku wa 15/05/2020, Urukiko rurasanga itegeko rivugwa haruguru nta cyo ryagenwe ku umuyobozi wanze kubahiriza ibyategetswe mu rubanza rw'Ubukemurampaka, ko nawe ashobora guhamagarwa mu rukiko kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza.

[13] Rurasanga imirimo y'ubukemurampaka isozwa n'isomwa ry'imyanzuro mu mizi cyangwan'icyemezo gisoza imirimo y'ubukemurampaka gifashwe n'Inteko y'Abakemurampaka, igihe gusuzuma ikibazo cyaregewe birangiye nk'uko biteganywa n'ingingo ya 44 y'ItegekoN° 005/2008 ryo kuwa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, iri tegeko rikaba ntacyo riteganya ku gukomeza imirimo y'ubukemurampaka kubyerekeranye ishyirwa mu bikorwa ry'imyanzuro yabwo, haregwa umuyobozi wanzekuyishyira mu bikorwa kugira ngo yisobanure.

[14] Rurasanga kandi nta masezerano y'ubukemurampaka ari hagati ya ERJB Ltd na Uwamariya Valentine nk'uko biteganywa n'ingingo ya 9 y'itegeko ryavuzwe haruguru ryerekeye ubukemurampaka, ku buryo byakwambura urukiko ububasha bwo kuburanisha uru rubanza nk'uko biteganywa n'ingingo ya 10 y'iryo tegeko.

[15] Urukiko rurasanga kuba ikiregerwa "Gusaba urukiko gutegeka Umuyobozi gushyira mu bikorwa icyemezo cy'ubukemurampaka cyo ku wa 15/05/2020" kitari mu bubasha bw'ubukemurampaka, mu gihe ntacyo itegeko ribiteganyaho nta rundi rukiko rwagakwiye kugira ububasha bwo kuburanisha iki kirego, rutari Urukiko rw'Ubucuruzi kuko arirwo rufite ububasha bwo kuburanisha ibibazo by'ubucuruzi mu gihe ababuranyi batasezeranye ko bizakemurwa n'Ubukemurampaka ndetse icyemezo kivugwa ko cyanze kubahirizwa n'abayobozi ba Minisiteri y'uburezi kikaba cyerekeranye n'amasoko ya Leta, ari mu bubasha bw'uru Rukiko[2], bityo akaba arirwo rukwiye guhamagaza umuyobozi bireba kugira ngo yisobanure ku mpamvu zamubujije kubahiriza icyemezo kijyanye n'ayo masoko kuko nta rundi Rukiko rubifitiye ububasha ndetse akaba nta rundi rwasobanukirwa neza impamvu zatumye umuyobozi uregwa atubahiriza ibyategetswe kurusha urukiko rusanzwe ruburanisha imanza nk'izo igihe zitaregewe Ubukemurampaka.

[16] Ibimaze kuvugwa haruguru bishimangirwa nanone no kuba imanza zaciwe n'inteko y'Ubukemurampaka (arbitral awards) zishirwaho inyandikompuruza n'umwanditsi w'Urukiko, aho zishobora kurangizwa ku gahato zimaze kugenzurwa no kwemezwa n'uwo mwanditsi nk'uko biteganywa n'ingingo ya 241 n'iya 242 z'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 kugeza ubu, bityo kuba icyemezo cy'Ubukemurampaka cyo ku wa 13/05/2020

[1] Urubanza RCOM 00014/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 10/04/2019, CELA Company Ltd na Philip Cotton igika cya 8 & 27.
[2] Ingingo ya 81 y'itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, igika cya 1, agace ka 16°.

cyarashyizweho inyandikompuruza n'umwanditsi w'Urukiko rw'Ubucuruzi kuwa 29/6/2020[3], kugira ngo kirangizwe ku neza cyangwa ku ngufu za Leta, nta cyabuza Urukiko rwashyizeho iyo nyandikompuruza guhamagaza umuyobozi wanze kubahiriza ibyategetswe kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, bisabwe n'umuburanyi ubifitemo inyungu; kubw'ibi Urukiko rw'Ubucuruzi rukaba rufite ububasha ku kirego rwaregewe na ERJB Ltd kijyanye n'ishyirwa mu bikorwa ry'icyemezo cy'Ubukemurampaka.

[17] Igika cya 3 cy'ingingo ya 54 y'Amasezerano Mpuzamahanga yo gukemura impaka z'ishoramari hagati ya Leta n'abantu ku giti cyabo bakomoka mu bindi bihugu (ICSID Convention[4]) yashyizweho umukono n'u Rwanda kuwa 21 Mata 1978 yemezwa n'arwo kuwa 14 Ugushyingo 1979,[5] iteganya "ko irangizwa ry'ibyemezo nkemurampaka rigengwa n'amategeko asanzwe agenga ibyerekeranye n'imanza mu igihugu zirangizwamo."[6] Urukiko rurasanga n'ubwo muri uru rubanza icyemezo cy'ubukemurampaka cyerekeranye na Leta y'u Rwanda na ERJB Ltd nka sosiyete yo mu Rwanda, nta cyabuza ko irangangizwa ry'icyo cyemezo rigengwa naryo n'amategeko agenga ibyerekeranye n'irangizwa ry'imanza mu Rwanda (laws concerning the execution of judgments in the State in whose territories such execution is sought).

[18] Rurasanga amategeko agenga irangizwa ry'imanza mu gihugu nta fatira ateganya kubyerekeranye n'umutungo wa Leta y'u Rwanda igihe yatsinzwe urubanza, ahubwo ingingo ya 183 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 kugeza ubu, igika cya 3 iteganya ko "Iyo urubanza rwabaye itegeko rutegeka Leta, Umujyi wa Kigali, ubuyobozi bw'Akarere cyangwa urundi rwego rwa Leta kuriha amafaranga rwagennye, ayo mafaranga agomba kwishyurwa mu mezi atandatu (6) uhereye ku munsi w'imenyeshwa ry'urubanza",atakwishyurwa Umuyobozi wanze kubahiriza ibyategetswe mu rubanza agahamagarwa mu rukiko kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza zaba nta shingiro zifite, agahabwa igihano gihatira uwo umuyobozi ubwe kubahiriza urubanza mu gihe cyose ruzaba rutararangizwa nk'uko biteganywa n'ingingo ya 184 y'iryo tegeko.

[19] Rurasanga kuba nta mategeko yihariye agenga irangizwa ry'ibyemezo nkemurampaka igihe bitashyizwe mu bikorwa na Leta y'uRwanda, iryo rangizwa rikwiye kugengwa n'amategeko asanzwe agenga ibyerekeranye n'irangizwa ry'imanza nk'uko binateganywa mu masezerano mpuzamahanga yavuzwe haruguru, bityo kuba umuyobozi wa Leta yahamagazwa kugirango yisobanure ku mpamvu zamubujije kubahiriza ibyategetswe mu rubanza rusanzwe Leta yatsinzwe, akaba n'icyabuza ko ahamagazwa mu Rukiko ruri ku rwego rumwe n'Urwego rw'ubucyemurampaka rwafashe icyemezo (ruburanisha ku rwego rwa mbere imanza zerekeranye n'amasoko ya Leta) kugira ngo yisobanure ku mpamvu zamubujije kubahiriza icyo cyemezo, bityo Urukiko rw'Ubucuruzi rukaba rufite ububasha bwo guhamagaza umuyobozi wa Minisiteri

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[3] Icyemezo cy'ubukemurampaka hagati ya E.R.J.B Ltd na Leta y'uRwanda (MINEDUC), cyaashwe ku wa 13/05/2020, urupapuro rwa 19.
4 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (also known as ICSID Convention).
[4] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (also known as ICSID Convention).
[5]Urubuga rwa murandasi https://icsid.worldbank.org/sites/default/files/ICSID-3. pdf, rwasuwe kuwa 11/12/2021
[6] Article 54 (3) of the ICSID Convention "*Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought*."

y'uburezi kugira ngo yisobanure ku mpamvu zabujije Leta y'uRwanda (MINEDUC) kubahiriza ibyategetswe mu rubanza nkemurampaka yaburanyemona E.R.J.B Ltd; kubw'ibi inzitizi y'iburabubasha bw'urukiko itangwa na UwamariyaValentine ikaba nta shingiro ifite.

2. **Gusuzuma niba Karake charles akwiye kugobokeshwa ku gahato muri uru rubanza.**

[20] Me Bayingana asaba Urukiko kugobokesha ku gahato Karake Charles nk'umunyamabanga uhoraho muri Minisiteri y'uburezi kuko nk'ushinzwe ingengo y'imari (chief Budget) yatambamira iyishyurwa ry'amafaranga ya E.R.J.B Ltd Leta y'uRwanda yategetswe mu rubanza nkemurampaka.

[21] Me Habumuremyi avuga ko asanga umunyamabanga uhoraho muri minisiteri nta bubasha afite bwo kubangamira ishyirwamubikorwa ry'icyemezo cy'urukiko, bityo ko bitari ngombwa kumugobokesha mu rubanza.

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[22] Ingingo ya 115 y'itegeko ryavuzwe haruguru ryerekeye imiburanishirize y'imanza, igika cya1 ivuga ko "Kugobokesha ku gahato umuburanyi mu rubanza bisabwa n'umuburanyi ushaka ko umuntu utari mu rubanza aruzanwamo kugira ngo na we aburane, hato atazatambamira imikirize yarwo."

[23] Urukiko rushingiye ku ngingo imaze kuvugwa, rurasanga ukugobokesha ku gahato bikorwa ku muburanyi wifuza ko uwagobokeshejwe ku gahato agira ibyo acibwa, ibi bikaba bishoboka gusa iyo ubisaba agamije ko uwagobokeshejwe amenya imikirize y'urubanza kugira ngo akumire ko yazatambamira imikirize yarwo; ibi bikaba byarashimangiwe ndetse n'Urukiko rw'Ubujurire mu rubanza RCOMA 00018/2018/CA - RCOMAA00024/2018/CA rwaciwe kuwa 16/11/2018.[7]

[24] Rurasanga muri uru rubanza ingingo (issues) zisabwa urukiko gusuzuma ari gutegeka "Minisitiri w'uburezi n'Umunyamabanga wihariye muri Minisiteri y'Uburezi mu Rwanda gushyira mu bikorwa icyemezo cyafashwe n'inteko y'abakemurampaka." no "Kumenya niba Minisitiri w'Uburezi n'Umunyamabanga wa uhoraho muri Minisiteri y'uburezi bakwiriye gutegekwa gutanga indishyi muri uru rubanza." Urukiko rurasanga Umunyamabanga wa uhoraho (Permanent secretary) muri Minisiteri y'uburezi atafatirwa icyemezo kandi atahawe umwanya wo kwisobanura, bityo hashingiwe ku ngingo ya 115 akaba agomba kugobokeshwa ku gahato mu rubanza kugira ngo na we aruburane, hato atazatambamira ishyirwa mu bikorwa ry'imikirize yarwo cyane cyane ko ari nawe ushinzwe ingengo y'imari muri iyo minisiteri.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ikirego inzitizi zitangwa na Uwamariya Valentine mu rubanza RCOM 00269/2021/TC zidafite ishingiro.

[7] Urubanza RCOMAA 00018/2018/CA-RCOMAA00024/2018/CA rwaciwe n'Urukiko rw'Ubujurire kuwa 16/11/2018, haburana Murekatete Laetitia, Kajeguhakwa Valens, SGP Ltd, SP Ltd na GT Bank, igika cya 41

[26] Rwemeje ko Urukiko rw'Ubucuruzi rufite ububasha bwo kuburanisha ikirego rwaregewe na ERJB Ltd;

[27] Rwemeje ko Karake charles Umunyamabanga wa uhoraho (Permanent secretary) muri Minisiteri y'uburezi agobokeshwa ku gahato muri uru rubanza.

[28] Rwemeje ko iburanisha rizakomeza kuwa 28 Ukuboza 2021 saa mbiri n'igice (08:30h) za mu gitondo.