

DELTA PETROLEUM LTD v. NSENGIYUMVA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RC 0001/14/CS (Rugege, P.J., Mugenzi na Munyangeri, J.) 12 Nzeri 2014]

Amategako agenga imiburanishirize y'ianza z'imbonezamubano – Inzitizi y'iburabubasha – Irangizarubanza – Impaka zishingiye ku irangiza ry'urubanza – Urukiko rufite ububasha bwo kuburanisha ikirego kijyanye n'impaka zivutse mu irangiza ry'urubanza – Urukiko rwaciye urubanza bwa nyuma rugomba kumvikana nk'urukiko rwinjiye mu mizi y'urubanza ku buryo budasubirwaho bityo impaka zivutse mu irangiza ryarwo zikemurwa n'urwo Rukiko kuko ari rwo rwasobanura neza imikirize yarwo mu mizi, hagamijwe kubahiriza ibyarutegetswemo – Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 195 n'ya 208.

Incamake y'ikibazo: Mu rwego rwo kurangiza urubanza RS/REV/INJUST /CIV 0005/13/CS rwaciye n'Urukiko rw'Ikirenga ruvanaho urubanza RC 0235/12/TGI/NYGE na RCA 0195/13/TGI/NYGE kandi rukemeza urubanza RC 0496/12/TB/NYGE rwaciye n'urukiko rw'Ibanze rwa Nyarugenge kuwa 17/10/2012 Gahongayire yaburanyemo na na Milimo Gaspard, abahesha b'inkiko batandukanye bagiye bandikira DELTA PETROLEUM Ltd bayitegeka gushyikiriza Gahongayire, station ikoreramo iherereye i Nyabugogo mu kibanza n° 5686 no kujya imuha amafaranga y'ubukode bw'inzu iri muri icyo kibanza.

DELTA PETROLEUM Ltd ntiyubahirije ibyo yategetse maze undi muhesha w'inkiko witwa Nsengiyumva John abisabwe na Gahongayire Winifrida, afunga inzu ya station ikodeshwa na DELTA PETROLEUM, anafatira ibicuruzwa byayo biri muri station ndetse n'ibikoresho byayo. Nyuma yaho Gahongayire Winifrida yandikiye DELTA PETROLEUM ibaruwa y'integuza yo kuzwa gutwara ibicuruzwa n'ibikoresho byayo byafatiriwe mu kurangiza urubanza, itabikora mbere yo kuwa 16/05/2014 bikagurishwa ndetse DELTA ikazirengera igihombo icyo aricyo cyose.

Ibyo byatumye DELTA PETROLEUM itanga ikirego mu Rukiko rw'Ikirenga isaba ko rwakemura impaka mu kurangiza urubanza RS/REV/INJUST/CIV 0005/13/CS. Iburanisha ritangiye, Me Niyomugabo uburanira umwe mu baregwa witwa Nsengiyumva John yasabye ko hasuzumwa inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga, avuga ko ikirego cy'uru rubanza cyagombaga gushyikirizwa Urukiko rw'Ibanze rwa Nyarugenge kuko DELTA PETROLEUM yareze isaba ko hakemurwa impaka zishingiye ku irangiza ry'urubanza RS/REV/INJ/CIV 0005/13/CS rwaciye n'Urukiko rw'Ikirenga, yirengagije ko urubanza rurangizwa ari RC 0496/12/TB/NYG rwaciye mu mizi n'Urukiko rw'Ibanze rwa Nyarugenge. Ababuranira DELTA PETROLEUM, ababuranira Gahongayire, ndetse n'uburanira Milimo Gaspard bavuga ko urwo rubanza rwaciye bwa nyuma n'Urukiko rw'Ikirenga bityo rukaba arirwo rufite ububasha bwo kuburanisha uru rubanza kuko ngo ntaho Itegeko ryateganyije ko urukiko rwaciye urubanza bwa nyuma rugomba kuba ari urwaruciye mu mizi yarwo. Iyo nzitizi niyo ababuranyi bagiyeho impaka maze Urukiko rwemeza ko ariyo ruzabanza gufataho icyemezo.

Incamake y'icyemezo: Urukiko rwaciye urubanza bwa nyuma rugomba kumvikana nk'urukiko rwinjiye mu mizi y'urubanza ku buryo budasubirwaho rugakemura ikibazo cyaburanwaga,

rukanagira ibyo rutegeka bigomba kubahirizwa mu irangizwa ryarwo, bityo impaka zivutse mu irangiza ry'urubanza zikemurwa n'urukiko rwaruciye bwa nyuma kuko ari rwo rwasobanura neza imikirize yarwo mu mizi, hagamijwe kubahiriza ibyarutegetswe.

**Inzitizi y'iburabubasha yazamuwe n'umwe mu baregwa ifite ishingiro.
Urukiko rw'Ikirenga nta bubasha rufite bwo kuburanisha ikirego kijyanye n'impaka zavutse mu irangiza ry'uru rubanza.
Urubanza rwohererejwe Urukiko rw'Ibanze rwa Nyarugenge kugirango abe arirwo ruruburanisha.**

Amategako yashingiweho:

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 195 n'ya 208.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tariki ya 20 Werurwe 2014 Umuhesha w'inkiko wa Minisiteri y'Ubutabera Muhire Constatin yamenyesheje DELTA PETROLEUM Ltd ko igomba gushyikiriza Gahongayire Winifrida, bitarenze tariki ya 8 Mata 2014, station ikoreramo iherereye Nyabugogo mu kibanza n° 5686, harangizwa urubanza RS/REV/INJUST /CIV 0005/13/CS rwaciye n'Urukiko rw'Ikirenga ruvanaho urubanza RC 0235/12/TGI/NYGE na RCA 0195/13/TGI/NYGE kandi rukemeza urubanza RC 0496/12/TB/NYGE rwo kuwa 17/10/2012.

[2] Mu ibaruwa yo kuwa 02/04/2014 DELTA PETROLEUM yamenyesheje umuhesha w'inkiko ko ibyo yategetse DELTA PETROLEUM gukora bidateganijwe mu rubanza bityo imusaba gusubira kuri iryo tegeko bitabaye ngombwa kwitabaza inkiko.

[3] Tariki ya 22 Werurwe 2014 Rusanganwa Eugène umuhesha w'inkiko muri Minisiteri y'Ubutabera yahaye DELTA PETROLEUM itegeko ryo kujya ishyikiriza Gahongayire Winifrida amafaranga y'ubukode bw'inzu ikodesha iri mu kibanza n° 5686 Nyabugogo ibyo bigakorwa bitarenze tariki ya 24 Mata 2014.

[4] Tariki 24/04/2014 DELTA PETROLEUM yamenyesheje Umuhesha w'inkiko Rusanganwa Eugène ko mu gushyira mu bikorwa amasezerano y'ubukode bw'inzu ikodeshwa, hishyuwe ubukode bw'inyaka itanu (5). Ibyo bikaba byarakozwe tariki 17/10/2013, bityo ko nta bukode bwo kwishyura buhari.

[5] Tariki ya 12/05/2014 umuhesha w'inkiko witwa Nsengiyumva John, abisabwe na Gahongayire Winifrida, yafunze inzu ya station ikodeshwa na DELTA PETROLEUM afatira ibicuruzwa byayo biri muri station n'ibikoresho byayo.

[6] Uburanira DELTA PETROLEUM Ltd avuga ko ibyo byakozwe nta tegeko abanje kuyiha kandi atayimenyeshaje urubanza arangiza urwo arirwo. Akanavuga ko DELTA PETROLEUM yasabye umuhesha w'inkiko kuyigaragariza urubanza arangiza inamusaba *exploit de commandement* yaba yarakoze akabyanga.

[7] Tariki ya 15/05/2014 Gahongayire Winifrida yandikiye DELTA PETROLEUM ibaruwa y'integuza yo kuza gutwara ibicuruzwa n'ibikoresho byayo byafatiriwe mu kurangiza urubanza, ngo DELTA PETROLEUM itabikora mbere ya 16/05/2014 bikagurishwa ndetse DELTA ikazirengera igihombo icyo aricyo cyose.

[8] Ibyo byatumye DELTA PETROLEUM itanga ikirego mu Rukiko rw'Ikirenga isaba ko rwakemura impaka mu kurangiza urubanza RS/REV/INJUST/CIV 0005/13/CS, urubanza ruburanishwa mu ruhame ku wa 10/06/2014, DELTA PETROLEUM iburanirwa na Me Gatera Gashabana hamwe na Me Nkurunziza Francois Xavier, Nsengiyumva John aburanirwa na Me Niyomugabo, Gahongayire aburanirwa na Me Niyomugabo Christophe na Me Gahongerwa Gorette, naho Milimo Gaspard aburanirwa na Me Nzirabatinyi Fidèle.

[9] Iburanisha ritangiye, Me Niyomugabo uburanira Nsengiyumva John yasabye ko hasuzumwa inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga, avuga ko ikirego cy'uru rubanza cyagombaga gushyikirizwa Urukiko rw'Ibanze rwa Nyarugenge kuko ari rwo rwaciye bwa nyuma urubanza rwateye impaka mu irangizwa ryarwo, naho ababuranira DELTA PETROLEUM, ababuranira Gahongayire, ndetse n'uburanira Milimo Gaspard bakavugaga ko urwo rubanza rwaciye bwa nyuma n'Urukiko rw'Ikirenga. Iyo nzitizi niyo ababuranyi bagiye ho impaka, Urukiko rwemeza ko ariyo ruzabanza gufataho icyemezo.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya urukiko rufite ububasha ku kirego kijyanye n'impaka zavutse mu irangiza ry'urubanza Gahongayire asabira kurangizwa.

[10] Mu nzitizi Me Niyomugabo uburanira Nsengiyumva yatanze, asobanura ko DELTA yareze ishingiyeye ku ngingo ya 208 y'Itegeko ryo ku wa 14/06/2012 ryerekeye imburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, asaba ko hakemurwa impaka zishingiyeye ku irangiza ry'urubanza RS/REV/INJ/CIV 0005/13/CS rwaciye n'Urukiko rw'Ikirenga, yirengagije ko urubanza rurangizwa ari RC 0496/12/TB/NYG nk'uko DELTA PETROLEUM yagiye ibimenyeshwa nko mu itegeko ry'Umuhesha w'inkiko ryashyikirijwe Me Nkurunziza no mu zindi nyandiko.

[11] Asobanura ko n'urubanza RS/REV/INJ/CIV 0005/13/CS rwavuzwe haruguru rwavanyeho izindi manza zabaye, rugumishaho gusa imikirize y'urubanza RC 0496/12/TB/NYG. Avuga ko Urukiko rw'Ikirenga rwemeye ko urubanza RC 0496/12/TB/NYG rwari rwarabaye itegeko, nyamara Urukiko Rwisumbuye rukora amakosa yo kuruca mu mizi, akaba asanga ibyo byose bigaragaza ko urubanza rurangizwa ari urwo rwaciye n'Urukiko rw'Ibanze, akaba ari narwo rufite ububasha bwo gukemura impaka zavuka mu irangizwa ryarwo.

[12] Avuga ko hari n'inyandiko nyinshi zigaragaza ko urubanza rurangizwa ari rw'Urukiko rw'Ibanze rwa Nyarugenge, zirimo Itegeko ry'umuhesha w'inkiko ryashyikirijwe Me Nkurunziza uburanira DELTA PETROLEUM, bamugaragariza urubanza urwo ari rwo (0496/12/TB/NYG) n'icyemezo cyarwo, hibutswe n'igihe rwabamenyesherejwe.

[13] Anavuga ko muri urwo rubanza icyaregerwaga kwari ugushinganisha imitungo Gahongayire ahuriyeho na Milimo, naho urw'Urukiko rw'Ikirenga rukaba ntacyo rwakemuraga kuri icyo kibazo, rukaba rwarakuyeho gusa urubanza rwaciwe n'Urukiko Rwisumbuye rutubahirije ibihe by'ubujurire.

[14] Uburanira Nsengiyumva anavuga ko abaregwa ubwabo babyiyemerera, kuko mu myanzuro ya Me Nkurunziza hari aho yivugira ko urubanza rwaciwe n'Urukiko rw'Ibanze rwa Nyarugenge ari rwo rurangizwa, ndetse n'inyandiko y'abemeye kurangiza urubanza ku neza (bagiranye amasezerano na Gahongayire) ikaba igaragaza ko urubanza rurangizwa ari 0496/12/TB/NYG.

[15] Me Nzirabatinyi uburanira Milimo avuga ko n'ubwo uwo aburanira ari ku ruhande rw'abitwa abaregwa, asanga inzitizi yabyukijwe n'uburanira Nsengiyumva idafite ishingiro, inyandiko z'abahesha b'inkiko Rusanganwa na Muhire Me Niyomugabo avuga ko zigaragaza urubanza rurangizwa zikaba nta gaciro zahabwa kuko Minisitiri w'Ubutabera wari wabashinze irangiza ry'urubanza yabahagaritse bataratangira kuko Gahongayire yari yagaragaje ko atabafitiye icyizere, naho umuhesha Nsengiyumva akaba atarashingiyeye ku by'abo ba mbere.

[16] Asobanura ko, hashingiwe ku ngingo ya 208 yavuzwe haruguru, asanga Urukiko rw'Ikirenga ari rwo rufite ububasha kuri uru rubanza kuko ari rwo rwaruciye bwa nyuma, iyo ngingo ikaba itavuga ko kuruca bwa nyuma ari ukuba rwararwinjiye mu mizi, atanga urugero ku manza zaciriwe hanzu zisabirwa kurangirizwa mu Rwanda maze inkiko zemeje ko zirangirizwa mu Rwanda (exequatur) akaba ari nazo zifite ububasha bwo gukemura impaka zavuka mu irangizwa ryazo nk'uko biteganywa n'iyi ngingo kandi zitaraziciye mu mizi. Anavuga ko kuba Urukiko rw'Ikirenga rwaraciye urwo rubanza ku mpamvu z'akarengane bisabwe n'Urwego rw'Umuvunyi hakurikijwe ingingo za 79 na 81 z'Itegeko rigenga Urukiko rw'Ikirenga, bigaragaza ko uru rukiko ari rwo rwaruciye bwa nyuma.

[17] Me Nkurunziza na Me Gatera Gashabana baburanira DELTA PETROLIUM bavuga ko kuba Urukiko rw'Ikirenga rwaragize ibyarwo ibyemezo byari byafashwe n'Urukiko rw'Ibanze bisobanuye ko ari Urukiko rw'Ikirenga rwaciye urubanza bwa nyuma, bakaba basanga rero n'umuhesha w'inkiko Nsengiyumva yarahereye ku rubanza rw'Urukiko rw'Ikirenga kuko ari rwo rwaciye urubanza bwa nyuma, rukemeza icyemezo cyari cyafashwe n'Urukiko rw'Ibanze. Bavuga ko ingingo ya 208 yavuzwe haruguru igomba kwumvikana uko yanditse, ntiyongerwemo ibisobanuro byo kuba urubanza rwaraciye "mu mizi" bitayigaragaramo, bakaba basanga ababyukije iriya nzitizi bagamije gusa gutinza urubanza.

[18] Me Gahongerwa uburanira Gahongayire avuga ko ingingo ya 79 y'Itegeko rigenga Urukiko rw'Ikirenga ntaho ihuriye n'ikibazo cy'uru rubanza, akaba asanga Urukiko rwaciye urubanza bwa nyuma ari urwakemuye ikibazo cyari kirugize, arirwo rw'Ibanze, naho Urukiko rw'Ikirenga rukaba gusa rwarakuyeho akarengane ko kuba Urukiko Rwisumbuye rwarakiriye rukaburanisha urubanza rwari rwarabaye itegeko.

UKO URUKIKO RUBIBONA

[19] Dosiye y'uru rubanza igaragaza ko Urukiko rw'Ikirenga, mu rubanza RS/REV/INJ/CIV 0005/13/CS, rwakuyeho urubanza RC 0235/12/TGI/NYGE n'urubanza RCA 0195/13/TGI/NYGE rukemeza ko hagumaho imikirize y'urubanza RC 0495/12/TB/NYGE rwo kuwa 17/10/2012 ku mpamvu z'uko Urukiko Rwisumbuye rwa Nyarugenge rwakiriye rukaburanisha urubanza kandi rwari rwararengeje igihe cy'ubujurire.

[20] Ingingo ya 208 y'itegeko n°21/2012 ryo ku wa 14/06/2012 ryerekeye imburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko impaka zishingiye ku irangiza ry'urubanza ryaba riri gukorwa cyangwa ryarangiye zikemurwa n'urukiko rwaruciye bwa nyuma cyangwa urwemeje ko urubanza rwo mu mahanga rurangizwa mu Rwanda.

[21] Urukiko rwaciye urubanza bwa nyuma ruvugwa muri iyo ngingo ya 208 rugomba kumvikana nk'urukiko rwinjiye mu mizi y'urubanza ku buryo budasubirwaho rugakemura ikibazo cyaburanwaga, rukanagira ibyo rutegeka bigomba kubahirizwa mu irangizwa ryarwo, ari nayo mpamvu Umushingamategeko yateganyije, muri iyo ngingo y'itegeko, ko impaka zivutse mu irangiza ry'urubanza zikemurwa n'urukiko rwaruciye bwa nyuma, kuko ari rwo rwasobanura neza imikirize yarwo mu mizi, hagamijwe kubahiriza ibyarutegetswemo, nk'uko ingingo ya 195 y'itegeko n°21/2012 ryo ku wa 14/06/2012 iteganya ko irangiza ry'ianza n'iry'inyandiko rigamije guha uwatsinze ibintu afitiye uburenganzira bwo guhabwa, akabibona ubwabyo cyangwa akabona ingurane.

[22] Bigaragara rero ko Urukiko rw'Ikirenga rwaciye urubanza RS/REV/INJ/CIV 0005/13/CS rugakemura gusa ikibazo kijyanye n'iyubahirizwa ry'amategeko agenga imburanishirize y'ianza rutinjiye mu mizi yarwo atari rwo rwasabwa gukiranura impaka zijyanye n'irangizwa ryarwo kandi zishingiye ku mikirize y'urubanza ku cyaburanwe mu mizi, ahubwo urw'Ibanze rwa Nyarugenge n'Urwisumbuye rwa Nyarugenge ari zo zonyine zinjiye mu mizi y'urubanza, hakaza kuguma ho gusa urwaciye n'Urukiko rw'Ibanze nyuma y'uko iz'Urukiko Rwisumbuye zivanyweho, bityo, urubanza ruriho rwaciye bwa nyuma rugomba kurangizwa akaba ari urwo rwaciye n'Urukiko rw'Ibanze rwa Nyarugenge, rufite numero 0495/12/TB/NYGE.

[23] Hashingiwe ku bisobanuro bigaragajwe haruguru, Urukiko rurasanga ikirego rwashyikirijwe na DELTA PETROLIUM kigamije gukemura impaka zavutse mu irangiza ry'urubanza rwabaye hagati ya Milimo na Gahongayire, ari rwo 0495/12/TB/NYGE, kitari mu bubasha bw'uru Rukiko, ahubwo kiri mu bubasha bw'Urukiko rw'Ibanze rwa Nyarugenge rwaruciye bwa nyuma mu mizi.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yatanzwe na Me Niyomugabo uburanira Nsengiyumva John ifite ishingiro.

[25] Rwemeje ko Urukiko rw'Ikirenga nta bubasha rufite bwo kuburanisha ikirego kiyanye n'impaka zavutse mu irangiza ry'Urubanza Gahongayire asabira kurangizwa.

[26] Rutegetse ko uru rubanza rwoherezwa mu Rukiko rw'Ibanze rwa Nyarugenge kugirango abe ari rwo ruruburanisha.