HOTEL OKAPI v. BPR

[Rwanda URUKIKO RW'IKIRENGA – RCOMA 0032/12/CS (Mugenzi, P.J., Kanyange na Munyangeri, J.) 14 Werurwe 2014]

Amategeko y'ubucuruzi – Sosiyeti z'ubucuruzi – Ububasha bwo guhagararira sosiyeti mu masezerano igirana n'abandi – Uwafashe umwenda yitwaje ko ahagarariye sosiyeti nyamara ntimwigarike cyangwa ngo imurege kwiha ububasha bifatwa nk'aho wafashwe mu izina ryayo.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Ibisa no guhabwa ubutumwa – Kubahiriza amasezerano – Iyo bisa nk'aho hari uwabiherewe ubutumwa, undi muntu akibwira ko uwo bagiye kugirana amasezerano yabuhawe, ayo masezerano agomba gushyirwa mu bikorwa uko yakabaye n'usa n'uwatanze bene ubwo butumwa – Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 33.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Ubwishingire – Kwishyura k'umwishingizi hatabanje gushakwa ubwishyu mu bintu by'ugomba kwishyura mu gihe yabyiyemereye mu masezerano y'ubwishingire – Igihe uwishingiye uwahawe umwenda yemeye kwishyura hatabanje kwishyuza uwawuhawe, uberewemo umwenda afite uburenganzira bwo kwishyuza umwishingizi ku giti cye cyangwa akabishyuza bose icyarimwe – Itegeko.ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 560.

Incamake y'ikibazo: HOTEL OKAPI ihagarariwe na Nkunda Leatitia yagiranye amasezerano y'inguzanyo na Banki y'Abaturage y'u Rwanda, ishami rya Remera; iyo nguzanyo yashyizwe kuri konti ya HOTEL OKAPI yasinywagaho na Nkunda Leatitia na Rumanyika Jean Marie Vianney wari umuyobozi wayo. Banki y'Abaturage y'u Rwanda yasabye HOTEL OKAPI kuyishyura, Rumanyika Jean Marie Vianney wari uyihagarariye ayisubiza ko atazi uwo mwenda ngo kuko amasezerano yasinywe n'umuntu itemera.

Banki y'Abaturage y'u Rwanda yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko HOTEL OKAPI ihagarariwe na Rumanyika Jean Marie Vianney ifatanya na Nkunda Leatitia kwishyura umwenda n'inyungu zawo Nkunda Leatitia yishingiye. Urukiko Rukuru rw'Ubucuruzi rwemeza ko abarezwe bafatanya kwishyura umwenda n'inyungu zawo.

Urukiko rw'Ikirenga rwajuririwe na HOTEL OKAPI ihagarariwe na Rumanyika Jean Marie Vianney, Nkunda Leatitia akagobokeshwa, Rumanyika Jean Marie Vianney yavuze ko Banki y'Abaturage yagize uburangare bwo guha umwenda umuntu utarufite ububasha bwo kuyihagararira. Nkunda Leatitia we yavuze ko yari umwishingizi kandi uwo yishingiye akaba atabuze ubwishyu, bityo ko yagombye kuryozwa uwo mwenda ari uko uwo yishingiye adashoboye kuwishyura n'ubwo we yari yariyemereye kuzahita yishyura bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu bintu bya HOTEL OKAPI.

Naho ku ruhande rwa Banki y'abaturage y'u Rwanda, yo yagaragaje ko iyo konti yagiye ikoreshwa na Rumanyika Jean Marie Vianney na Nkunda ku matariki atandukanye, bityo akaba nta burangare Banki yagize mugutanga umwenda kubera ko Nkunda wakoreshaga iyo konti atigeze aregwa kwiha ububasha kuri yo ikanavuga ko Nkunda Laetitia nk'umwishingizi w'umwenda agomba gufatanya na HOTEL OKAPI kwishyura kubera ko yayibereye umwishingizi magirirane.

Muri uru rubanza kandi Banki y'Abaturage y'u Rwanda yatanze ubujurire bwuririye ku bundi isaba kwishyurwa umwenda remezo, inyungu z'ubukererwe, amafaranga y'ikurikirana rubanza n'igihembo cya avoka; naho Nkunda Leatitia we akaba yarasabaga ko atategekwa kwishyura umwenda kubera ko we ari umwishingizi kandi uwo yishingiye akaba atabuze ubwishyu.

Incamake y'icyemezo: 1. Iyo umwe mubafite uburenganzira bwo gusinya kuri konti kandi iyo konti ikanyuzwaho inguzanyo isabwe n'umwe muribo bisa nk'aho yabiherewe ubutumwa. Amasezerano akozwe muri ubwo buryo agomba gushyirwa mu bikorwa uko yakabaye n'usa n'uwatanze ubwo butumwa. Uwitwa nyiri konti ntashobora kuvuga ko atamutumye mu gihe atamwigaritse cyangwa ngo amurege ko yihaye ububasha. Bityo, uwajuriye agomba gushyira mu bikorwa amasezerano y'umwenda wasinywe n'uwagobokeshejwe.

2. Mu gihe bisa nk'aho hari uwahawe ubutumwa, undi muntu ashobora kwibwira ko uwo bagiye kugirana amasezerano yabuhawe, kandi ko iyi myumvire ye ishobora gutuma uyu muntu atagenzura ububasha bw'uriya. Amasezerano akozwe muri ubwo buryo agomba gushyirwa mu bikorwa uko yakabaye n'usa n'uwatanze bene ubwo butumwa.

3. Uwishingiye undi agomba kwishyura ugomba kwishyurwa gusa iyo ugomba kwishyura atashoboye kubikora. Ubwishyu bugomba kubanza gushakwa mu bintu by'ugomba kwishyura, keretse iyo uwamwishingiye yiyemereye kuzahita yishyura bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu bintu by'ugomba kwishyura. Bityo kuba uwagobokeshejwe yariyemereye kuzishyura umwenda yishingiye bitabaye ngombwa ko ubwishyu bubanza gushakirwa kuwahawe umwenda, uwatanze inguzanyo afite uburenganzira bwo kumurega wenyine. Ariko kandi bashobora gufatanya kwishyura umwenda mu gihe uwawubahaye ahisemo kubaregera icyarimwe, uwarezwe akaba aribyo yakoze, bityo bakaba bagomba gufatanya kwishyura umwenda remezo, inyungu zawo n'igihembo cy'Avoka.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bw'uwarezwe bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bw'uwagobokeshejwe nta shingiro bufite.
Uwajuriye n'uwagobokeshejwe bagomba gufatanya kwishyura uwarezwe.

Amategeko yashingiweho:

Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 33 n'iya 560 (Ingingo ya 33 niyo yakoreshwaga igihe amasezerano yakorwaga ikaba yarasimbuwe n'Ingingo ya 64 y'itegeko n^{o} 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano).

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

Philippe, T., et Loïc, C., Droit de la Responsabilité, Dalloz Action, Paris, p.544.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Inkomoko y'uru rubanza ni amasezerano y'inguzanyo yabaye kuwa 29/04/2008 hagati ya Banki y'Abaturage y'u Rwanda Ishami rya Remera na HOTEL OKAPI yari ihagarariwe na Nkunda Laetitia, Banki y'Abaturage y'u Rwanda ikavuga ko yasabye HOTEL OKAPI ko yishyura uwo mwenda ikayisubiza ko itazi uwo mwenda ngo kuko amasezerano yawo yasinywe n'umuntu itemera.

[2] Banki y'Abaturage y'u Rwanda yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko Urukiko rutegeka HOTEL OKAPI ihagarariwe na Rumanyika Jean Marie Vianney afatanyije na Nkunda Laetitia agobokeshejwe wishingiye uwo mwenda kuyishyura amafaranga y'umwenda remezo n'inyungu zawo zibazwe kugera kuwa 04/08/2009.

[3] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya Banki y'Abaturage y'u Rwanda gifite ishingiro, rutegeka HOTEL OKAPI ihagarariwe na Rumanyika JMV ifatanyije na Nkunda Laetitia kwishyura BPR 31.490.040 frw akubiyemo umwenda remezo, inyungu zawo n'amafaranga y'ikurikiranarubanza.

[4] HOTEL OKAPI yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amategeko shingiro yayo kubera ko rwemeje ko Nkunda ariwe wari uhagarariye HOTEL OKAPI, nyamara nta cyemezo kibigaragaza, ko ahubwo BPR yagize uburangare igaha umwenda umuntu udahagarariye HOTEL OKAPI. Nkunda wagobokeshejwe muri uru rubanza yemeza ko yakoze amasezerano mu izina rya HOTEL OKAPI, ko n'amafaranga yagiye kuri konti yayo agakoreshwa mu nyungu zayo.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 04/02/2014 HOTEL OKAPI iburanirwa na Me Bizimana Shoshi, Nkunda Laetitia aburanirwa na Me Rwigema Aimable naho Banki y'Abaturage y'u Rwanda iburanirwa na Me Ntaganda Kabare Festo.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya uwahawe umwenda wa 20.000.000 frw hagati ya HOTEL OKAPI na Nkunda.

[6] Me Shoshi uburanira HOTEL OKAPI avuga ko umucamanza wo mu Rukiko Rukuru rw'Ubucuruzi yirengagije amategeko shingiro ya HOTEL OKAPI aho yemeje ko Nkunda Laetitia yari ayihagarariye mu gihe yasinyaga amasezerano y'inguzanyo kandi yari yahawe amategeko shingiro yerekana ko Rumanyika JMV ari we uhagarariye iyo HOTEL.

[7] Avuga ko BPR yagize uburangare isinyana amasezerano n'umuntu utabifitiye ububasha, ko iby'uko HOTEL OKAPI yagiye ihagararirwa n'abantu benshi bidahagije kubera ko amategeko shingiro yayo agaragaza neza ko ihagarariwe na Rumanyika JMV, ko rero igomba kwirengera ingaruka zabyo.

[8] Asobanura ko HOTEL OKAPI itafashe uwo mwenda ihagarariwe na Nkunda Laetitia, ko ifite inyandikomvugo y'inama rusange idasanzwe y'abanyamuryango ba HOTEL OKAPI yo kuwa 19/09/2007 yemejwe na Notaire igaragaza neza ko uhagarariye HOTEL OKAPI ari Rumanyika JMV, naho Nkunda Laetitia yakodesheje iyo HOTEL gusa agasinya amasezerano mu buryo bw'uburiganya, nyamara HOTEL OKAPI yari yarumvikanye nawe ko amafaranga y'ubukode azajya yishyura umwenda wa HOTEL OKAPI ibereyemo Banki, akaba ari muri urwo rwego babyitiranyije.

[9] Avuga ko kuba Nkunda yari yemerewe gusinya kuri konti ya HOTEL byatewe nuko bishyuranaga, naho ku kibazo kijyanye n'ingano y'umwenda Me Shoshi avuga ko uwo aburanira atemera uwo mwenda ko nta n'impamvu ihari yo kwisobanura ku ngano yawo kuko atari cyo cyajuririwe.

[10] Me Rwigema uburanira Nkunda avuga ko umucamanza atirengagije amategeko shingiro ya HOTEL OKAPI, ko ahubwo yasanze HOTEL yaragiye igira abayihagarariye benshi kandi batagaragara mu mategeko shingiro yayo, ko ari nabwo buryo Nkunda yagiyeho, akaba yarafashe inguzanyo nk'uhagarariye HOTEL OKAPI amafaranga agashyirwa kuri konti yayo, akajya akurwaho akajya kwishyura umwenda HOTEL OKAPI ihagarariwe na Rumanyika yari ifitiye BCR nk'uko bigaragazwa na historique ya konti nº 401.200.783.111 ya HOTEL OKAPI nk'aho ku itariki 11/06/2008 yakuweho 12.098.747frw.

[11] Akomeza avuga ko bitumvikana ukuntu Rumanyika ahagarariye HOTEL OKAPI yakomeje gukoresha iyi konti anemera ko we na Nkunda bakomeza kujya bayisinyaho kandi akabikora nyuma y'uko iyo nguzanyo imaze gufatwa, HOTEL OKAPI ikaba ishaka kwivanaho inshingano zayo kandi bigaragara ko yakoresheje ayo mafaranga ihagarariwe na Rumanyika.

[12] Me Ntaganda uburanira Banki y'Abaturage y'u Rwanda avuga ko inguzanyo yatswe na HOTEL OKAPI ihagarariwe na Nkunda, ko Rumanyika na Nkunda Laetitia, bombi bemerewe kubikuza kuri iyo konti, bikaba bigaragara ko iyo konti yagiye ikoreshwa na Rumanyika Jean Marie Vianney na Nkunda ku matariki atandukanye, bityo akaba nta burangare Banki yagize mugutanga umwenda kubera ko Nkunda wakoreshaga iyo konti atigeze aregwa kwiha ububasha kuri yo, umwenda bishyuza HOTEL OKAPI na Nkunda Laetitia kugeza ubu ukaba ugeze kuri 44.487.042 frw.

UKO URUKIKO RUBIBONA

[13] Inyandiko ziri muri dosiye y'urubanza zigaragaza ko amasezerano y'inguzanyo yasinywe kuwa 28/04/2008 yabaye hagati ya HOTEL OKAPI na Banki y'Abaturage y'u Rwanda, agasinywa na Nkunda, akaba yaremeye ko yishingiye umwenda wahawe HOTEL OKAPI ku bw'amasezerano Banki y'Abaturage y'u Rwanda ishami rya Remera ifitanye n'iyo HOTEL.

[14] Dosiye igaragaza kandi ko hafunguwe konti nº 401.200.783.111 ya HOTEL OKAPI[1] yasinywagaho na Rumanyika na Nkunda, igomba gushyirwaho amafaranga Banki itanzeho inguzanyo.

[15] Urukiko rurasanga, ubwo Nkunda yasinyiraga inguzanyo ya OKAPI atarabanje kugaragariza BPR ibyemezo bihagije by'uko yari ahagarariye koko OKAPI mu buryo bukurikije amategeko, ariko nanone bikaba bigaragara ko hari ibyo iyo banki yashingiyeho icyizere ifata Nkunda nk'uwatumwe na OKAPI ayihagarariye, birimo kuba inyandiko igaragaza abafite uburenganzira bwo gusinyira konti ya OKAPI ari Rumanyika na Nkunda bagaragajwe kuri iyo nyandiko nka Perezida w'Inama y'Ubutegetsi na Visi Perezida wa mbere, kandi iyo konti akaba ariyo yasabiwe kunyuzwaho iyo nguzanyo akaba ari nako byagenze, binakubitiyeho ko OKAPI yakoreshaga iyo konti itarigaritse Nkunda ko yaba yarayikoreye ibyo itamutumye.

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[1] Reba inyandiko zinyuranye ziri muri dosiye y'urubanza kuva kuri Cote ya 84-88.

[16] Urukiko rurasanga ibyo bihuje kandi n'ibisobanuro by'abahanga mu mategeko nk'abitwa Philippe le Tourneau na Loïc Cadiet, bavuga ko mu gihe bisa nk'aho hari uwabiherewe ubutumwa (mandat apparent), undi muntu ashobora kwibwira ko uwo bagiye kugirana amasezerano yabiherewe ubutumwa, kandi ko iyi myumvire ye ishobora gutuma uyu muntu atagenzura ububasha bw'uriya, kandi ko amasezerano akozwe muri ubwo buryo agomba gushyirwa mu bikorwa uko yakabaye n'usa n'uwatanze bene ubwo butumwa (mandant)[2].

[17] Urukiko rurasanga nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje, HOTEL OKAPI igomba gushyira mu bikorwa amasezerano y'umwenda yasinye kuwa 28/04/2008 ihagarariwe na Nkunda Laetitia hashingiwe ku ngingo ya 33 y'igitabo cya gatatu cy'amategeko mbonezamubano iteganya ko amasezerano akozwe mu buryo bukurikije amategeko abera itegeko abayagiranye[3].

b. Ku byerekeye ubujurire bwa BPR bwuririye ku bundi

[18] BPR yasabye ko urugero rw'umwenda rwabarirwa ku gihe tugezemo, ikaba yishyuza ubu 40.470.040 frw, hamwe n'andi 4.017.004 frw y'ikurikiranarubanza n'igihembo cya avoka.

[19] Urukiko rurasanga, amafaranga BPR igomba kwishyurwa kugeza kuwa 09/12/2013 nk'uko iyasaba ari 39.670.040 frw, ni ukuvuga 20.000.000 frw zibariwe inyungu zisanzwe za 14% hamwe na 4% z'ubukererwe mu gihe cy'iminsi 1059 nk'uko BPR yabigaragarije inyandiko yo kuwa 09/12/2013 abo baburana bakaba batarayivuguruje.

[20] Urukiko rurasanga, ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya avoka BPR yaka, itayahabwa kuko ari ikirenga itagaragariza ibisobanuro, Urukiko rukaba rwayigenera 500.000 frw yiyongera kuri 500.000 frw yagenewe ku rwego rwa mbere.

c. Ku byerekeye ubujurire bwa Nkunda bwuririye ku bwa HOTEL OKAPI

[21] Me Rwigema uburanira Nkunda Laetitia asaba ko atategekwa kwishyura umwenda kubera ko we ari umwishingizi kandi uwo yishingiye akaba atabuze ubwishyu, ko yagombye kuryozwa uwo mwenda ari uko uwo yishingiye adashoboye kwishyura.

[22] Me Shoshi uburanira HOTEL OKAPI avuga ko ku bujurire bwuririye ku bundi butanzwe na Nkunda ntacyo yabuvugaho, ko hazarebwa ibyo umucamanza wa mbere yamutegetse, naho Me Kabare Ntaganda Festo uburanira Banki y'Abaturage y'u Rwanda akavuga ko Nkunda Laetitia nk'umwishingizi w'umwenda agomba gufatanya na HOTEL OKAPI kwishyura kubera ko yayibereye umwishingizi magiririrane (caution solidaire), asaba 500.000 frw y'ikurikiranarubanza n'igihembo cy'avoka.

UKO URUKIKO RUBIBONA

[23] Dosiye y'urubanza igaragaza ko kuwa 29/05/2008 Banki y'Abaturage y'u Rwanda, Ishami rya Remera yagiranye amasezerano y'ubwishingire na Nkunda Laetitia, ku nguzanyo

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[2] "Le mandat apparent suppose la croyance légitime du tiers dans l'existence du mandat, qui suppose elle-même que les circonstances le dispensaient de vérifier les pouvoirs du pseudo mandataire. La totalité des effets de la convention conclue par le mandataire apparent doivent être exécutés par le prétendu mandant".

[3] Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya.

ya 20.000.000frw n'inyungu zayo yagurije HOTEL OKAPI, akiyemeza ko azishyura iyo nguzanyo bitabaye ngombwa ko Banki y'Abaturage ibanza gushakira ubwishyu mu mitungo ya hotel okapi[4].

[24] Ku kibazo cyo kumenya niba Banki y'Abaturage y'u Rwanda, Ishami rya Remera ifite uburenganzira bwo gukurikirana uwishingiye umwenda bitabaye ngombwa ko ibanza gukurikirana uwo yishingiye wenyine, ingingo ya 560 y'igitabo cya gatatu cy'amategeko mbonezamubano, iteganya ko "Uwishingiye undi ashinzwe kwishyura ugomba kwishyurwa gusa iyo ugomba kwishyura atashoboye kubikora, ubwishyu bugomba kubanza gushakwa mu bintu by'ugomba kwishyura, keretse rero uwamwishingiye yariyemereye kuzahita yishyura bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu bintu by'ugomba kwishyura".

[25] Urukiko rurasanga mu masezerano Nkunda Laetitia yasinye, harateganyijwemo ko yemeye kuzishyura umwenda yishingiye bitabaye ngombwa ko ubwishyu bubanza gushakirwa kuri HOTEL OKAPI yahawe umwenda, bityo Banki y'Abaturage y'u Rwanda ikaba ifite uburenganzira bwo kurega Nkunda Laetitia wishingiye umwenda wenyine cyangwa ikabaregera hamwe ari nabyo yakoze isaba ko bafatanya kuwishyura (condamnation in solidum), bityo hashingiwe ku masezerano no ku ngingo ya 560 byavuzwe haruguru Nkunda Laetitia akaba agomba kwishyura umwenda remezo n'inyungu zawo afanyije na HOTEL OKAPI ihagarariwe na Rumanyika Jean Marie Vianney.

[26] Urukiko rurasanga 500.000 frw y'ikurikiranarubanza n'igihembo cy'avoka Banki y'Abaturage y'u Rwanda yasabye ikwiye kuyahabwa kuko byabaye ngombwa ko kuri uru rwego yifashisha uwuyiburanira ikanamuhemba.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ubujurire bwa HOTEL OKAPI ihagarariwe na Rumanyika Jean Marie Vianney nta shingiro bufite.

[28] Rwemeje ko ubujurire bwuririye ku bundi bwa Banki y'Abaturage y'u Rwanda bufite ishingiro kuri bimwe.

[29] Rwemeje ko ubujurire bwuririye ku bundi bwa Nkunda Laetitia nta shingiro bufite.

[30] Rutegetse HOTEL OKAPI na Nkunda Laetitia gufatanya kwishyura Banki y'Abaturage y'u Rwanda 40.670.040 frw (39.670.040 frw+500.000 frw+500.000 frw).

[31] Rugitegetse HOTEL OKAPI na Nkunda Laetitia gufatanya kwishyura amagarama y'urubanza angana na 44.400 frw.

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[4] Ingingo ya 3 y'amasezerano y'ubwishingire yabaye hagati ya Banki y'Abaturage y'u Rwanda, Ishami rya Remera na Nkunda Laetitia.