GAHIGA v. FORTIS BUSINESS HOLDINGS LLC

[Rwanda URUKIKO RW'IKIRENGA – RCA0010/11/CS (Kanyange, P.J., Mukandamage na Rugabirwa, J.) 21 Gashyantare 2014]

Amategeko agenga ububasha bw'inkiko – Ikirego gisaba ko urubanza rwaciwe n'urukiko rwo mu mahanga rurangirizwa mu Rwanda – Ibisabwa kugirango urubanza rurangirizwe mu Rwanda – Urubanza ntirurangirizwa mu Rwanda igihe mu icibwa ryarwo hatubahirijwe uburenganzira bwo kwiregura k'umuburanyi – Itegeko Nshinga rya Repuburika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryujujwe kandi ryahinduwe kugeza ubu, ingingo ya 18 – Itegeko Ngenga Nº51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 91 – Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10.

Indishyi – Indishyi zijyanye no gushorwa mu manza – Igihembo cy'Avoka – Indishyi z'ikurikiranarubanza – Indishyi zo gushorwa mu manza nta mpamvu ntizigenwa igihe uzisaba atagaragaza ishingiro ryazo – Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, agenwa mu bushishozi bw'Urukiko igihe uyasaba atagaragaza uburyo yayabazemo.

Incamake y'ikibazo: Fortis Business Holdings LLC yareze Gahiga mu Rukiko Rukuru i Kigali isaba ko urubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York rurangirizwa mu Rwanda; maze uru rukiko ruca urubanza Gahiga adahari rwemeza ko ikirego cyatanzwe mu buryo bukurikije amategeko kandi ko gifite ishingiro, rutegeka ko urwo rubanza rurangirizwa mu Rwanda.

Gahiga yasubirishijemo urwo rubanza maze urukiko rwemeza ko ikirego cye kitakiriwe bituma ajuririra Urukiko rw'Ikirenga avuga ko urukiko rwamwangiye gusubirishamo urubanza rwaciwe adahari kandi atarahamagawe kuruburana mu buryo bukurikije amategeko bikamuvutsa uburenganzira bwe bwo kwiregura.

Urukiko rwemeje ko Gahiga yavukijwe uburenganzira bwo kwiregura nk'uko biteganywa n'itegeko nshinga ry'u Rwanda akaba agomba guhabwa uburenganzira bwemerewe umuburanyi waciriwe urubanza adahari, akemererwa gusubirishamo urubanza rwaciwe n'Urukiko Rukuru i Kigali.

Mu miburanire ye Gahiga avuga ko yategetswe kwishyura 6.596.526, 37USD, nyamara urubanza rwaciwe adahamagawe ngo aburane, n'ubwo amasezerano yagiranye na Fortis Business Holdings LLC yemeye ko habaho urubanza adahamajwe. Akaba asanga ibyo binyuranyije n'amategeko ndemyagihugu ndetse n'amahame agenderwaho mu mategeko y'u Rwanda aha umuburanyi uburenganzira kwiregura.

Gahiga avuga kandi ko urubanza Fortis Business Holdings LLC isabira kurangirizwa mu Rwanda yari yanarusabiye kurangirizwa mu Busuwisi maze itsindwa mu Rukiko rubanza no mu bujurire. Bityo Gahiga asaba uru rukiko gukurikiza ibyemejwe n'izo nkiko.

Gahiga asaba na none ko Fortis Business Holdings LLC yamuha indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kubwo kumushora mu manza nta mpamvu.

Fortis Business Holdings LLC ivuga ko ibisabwa byose kugirango urubanza rurangirizwe mu Rwanda byubahirijwe kubera ko ibyakozwe mu kuruca bitanyuranyije n'amategeko

ndemyagihugu y'u Rwanda n'amahame rusange akurikizwa, ko kandi mu masezerano impande zombi zagiranye zemeranyijwe ko atari ngombwa ko Gahiga aba ahari mu rubanza ngo yiregure.

Fortis Business Holdings LLC ivuga kandi ko indishyi isabwa nta shingiro ryazo kuko ibyo isaba muri uru rubanza bikomoka ku masezerano bagiranye ubwabo, naho ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka akaba nta bimenyetso abitangira, akaba rero atayahabwa.

Incamake y'icyemezo: 1. Kuba urega atarahamagawe mu rubanza N°09103391 ngo yiregure, bifatwa nko kutubahiriza uburenganzira bwe bwo kwiregura kandi ni umuhango ndemyagihugu mu mategeko y'u Rwanda bityo rero uru rubanza ntirwarangirizwa mu Rwanda kuko mu icibwa ryarwo hatubahirijwe uburenganzira bw'umuburanyi..

2. Ibijyanye no gusuzuma niba umwenda wa Fortis Business Holdings LLC waba warishyuwe na Carl Linde ntibikiri ngombwa kuko urubanza N°09103391 rutarangirizwa mu Rwanda.

3. Indishyi zo gushorwa mu manza nta mpamvu ntizigenwa igihe uzisaba atagaragaza ishingiro ryazo.

4. Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, agenwa mu bushishozi bw'Urukiko igihe uyasaba atagaragaza uburyo yayabazemo.

Ubujurire bufite ishingiro;
Amagarama y'urubanza aherereye warezwe.

Amategeko yashingiweho:
Itegeko Nshinga rya Repuburika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryujujwe kandi ryahinduwe kugeza ubu, ingingo ya 18.
Itegeko Ngenga Nº51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 91.
Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y' URUBANZA

[1] Fortis Business Holdings LLC yareze Gahiga Médard mu Rukiko Rukuru Kigali isaba ko urubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York (The Supreme Court of the state of New York, County of New York) rurangirizwa mu Rwanda.

[2] Urukiko rwaciye urubanza RC0004/11/HC/KIG, Médard Gahiga adahari, rwemeza ko ikirego cyatanzwe mu buryo bukurikije amategeko kandi ko gifite ishingiro, rutegeka ko urwo rubanza rurangirizwa mu Rwanda.

[3] Nyuma y'icibwa ry'urubanza Médard Gahiga yarusubirishijemo, urukiko ruca urubanza RC0038/11/HC/KIG, rwemeza ko ikirego cye gisaba gusubirishamo urubanza RC0004/11/HC/KIG kitakiriwe, ko kandi ntagihundutse kuri urwo rubanza, rusobanura ko Fortis Business Holdings LLC yibeshye ikamurega bitari ngombwa, ko kandi hakurikije ikiba kigamijwe muri bene izi manza n'ibisuzumwa n'umucamanza biteganywa n'amategeko, urubanza nk'urwo rutaburanishwa hakoreshejwe uburyo bwo kunyomozanya, ko ndetse Gahiga atabashije kwerekana amategeko amwemerera gusubirishamo urubanza, ajyanye n'ubu bwoko bw'imanza.

[4] Gahiga yajuririye Urukiko rw'Ikirenga, avuga ko urukiko rwamwangiye gusubirishamo urubanza rwaciwe adahari kandi atarahamagawe kuruburana mu buryo bukurikije amategeko bikamuvutsa uburenganzira bwe bwo kwiregura.

[5] Nyuma yo gusuzuma ikibazo cyo kumenya niba icyo kirego cya Gahiga gisaba gusubirishamo urubanza RC0004/11/HC/KIG cyaragombaga kwakirwa n'Urukiko Rukuru, uru rukiko rwasanze Gahiga yarafashwe nk'umuburanyi nyamara rwirengagije ko atari yahamagawe kuburana, ko rero yavukijwe uburenganzira afite bwo kwiregura mu rukiko buteganywa mu ngingo ya 18 y'Itegeko Nshinga ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, mu gihe muri bene izo manza ubusanzwe ababuranyi bahamagarwa bakaburana, maze rwemeza ko ahabwa uburenganzira bwemerewe umuburanyi waciriwe urubanza adahari, akemererwa gusubirishamo urubanza RC0004/11/HC/KIG.

[6] Iburanisha ry'urubanza mu mizi ryakomeje mu ruhame tariki ya 14/01/2014, Fortis Business Holdings LLC iburanirwa na Me Mugisha Richard, Gahiga Médard aburanirwa na Me Rwihandagaza Richard.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba urubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York rwujuje ibisabwa kugira ngo rurangirizwe mu Rwanda

[7] Me Mugisha avuga ko Gahiga Médard na Robert Hirsch bishingiye sosiyete yitwa Hirsch &Cie ku mwenda yagurijwe na Fortis Business Holdings LLC ungana na USD 5.250.000, bityo biyemeza gufatwa nk'abayibereyemo umwenda.

[8] Mu rwego rwo gushimangira ingwate, Gahiga ngo yongeye kwishingira umwenda wa sosiyete Hirsch & Cie tariki ya 06/10/2008 hakurikijwe ibiteganywa n'ingingo ya 111 y'Itegeko ryo mu gihugu cya "Suisse" ryerekeye imirimo nshinganwa cyangwa amasezerano (Guarantee in accordance with art. 111 Suiss Code of Obligations), anasinya amasezerano y'ubwishingire (Guaranty Agreement) maze yemera ko yishingiye umwenda wavuzwe.

[9] Me Mugisha avuga na none ko hakurikijwe ingingo ya 19 y'amasezerano y'ubwishingire (Guaranty Agreement), impande zombi zemeranyije ko igihe cyo kwishyura nikigera umwenda utarishyurwa, Gahiga yemereye Fortis Business Holdings "confession of judgement in favour of the applicant" iteganywa mu ngingo ya 3218 ya "Civil practice law and rules of the state of New York", ku madorari yose yaba atarishyurwa, inyungu n'amagaranga y'ikurikiranarubanza n'igihembo cya avoka, bivuze ko hagombaga kubaho urubanza bitabaye ngombwa kumuhamagara ngo aze kuburana.

[10] Avuga rero ko ari muri urwo rwego tariki ya 11/03/2009, Fortis Business Holdings yaregeye Urukiko rw'Ikirenga rwa Leta ya New York, maze rubinyujije muri "judgement by

confession Nº09103391" Gahiga ategekwa kuyishyura USD6.596.526,37 yose hamwe, ikaba rero isaba ko urwo rubanza rwarangirizwa mu Rwanda kuko izi neza ko Gahiga ahafite imitungo yakoreshwa mu kwishyura uwo mwenda.

[11] Ku byerekeye amategeko, Me Mugisha avuga ko ashingiye ku ngingo ya 91 y'Itegeko Ngenga Nº51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ibisabwa byose kugirango urubanza rurangirizwe mu Rwanda byubahirijwe kubera ko ibyakozwe mu kuruca bitanyuranyije n'amategeko ndemyagihugu y'u Rwanda n'amahame rusange akurikizwa, ko urubanza rwaciwe rwujuje ibyangombwa, ko kandi mu masezerano impande zombi zagiranye zemeranyijwe ko atari ngombwa ko Gahiga aba ahari mu rubanza ngo yiregure.

[12] Yongeraho ko ku mwenda wose Gahiga yatsindiwe, hishyuwe gusa 1.700.000USD, hakaba nta bundi bwishyu bwabayeho.

[13] Me Rwihandagaza uburanira Gahiga avuga ko tariki ya 08/09/2008, sosiyete Hirsch & Cie yahawe na Fortis Business Holdings LLC umwenda ungana na 5.250.000USD wishingirwa na Robert Hirsch, Carl Linde na Gahiga, ko mu gihe uwo mwenda utari wishyuwe ku gihe, Fortis Business Holdings LLC yishyuje Gahiga Médard na Carl linde.

[14] Akomeza avuga ko urubanza Nº09103391 rwaciwe tariki ya 11/03/2009 n'Urukiko rw'Ikirenga rwa Leta ya New York (jugement par acquiescement – judgement by confession), Gahiga agategekwa kwishyura 6.596.526,37USD, rwaciwe adahamagawe ngo aburane, atanamenyeshejwe umunsi w'iburanisha ngo abe ahari cyangwa se ahagarariwe.

[15] Me Rwihandagaza asanga rero, n'ubwo mu masezerano yagiranye na Fortis Business Holdings LLC yemeye "jugement par acquiescement - judgement by confession", urubanza rusabirwa kurangirizwa mu Rwanda runyuranyije n'amategeko ndemyagihugu ndetse n'amahame agenderwaho mu mategeko y'u Rwanda kubera ko Gahiga yaciriwe urubanza atahamagawe ngo amenyeshwe umunsi w'urubanza, akaba atarahawe uburyo bwo kwisobanura no kurengera inyungu ze (*violation des droits de la défense*), ibyo bikaba binyuranye n'ibiteganywa n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, ndetse n'ibiteganywa n'ingingo ya 10 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko nta muburanyi ushobora gucibwa urubanza atumviswe cyangwa atahamagawe.

[16] Ku byerekeranye n'umwenda wishyuzwa, Me Rwihandagaza avuga ko Robert Hirsch yaje guhomba ku giti cye tariki ya 14/07/2009 na sosiyete Hirsch & Cie irahomba kuwa 01/12/2011, Fortis Business Holdings LLC itangaza umwenda wayo mu biro bibishinzwe i Lausanne yemererwa kwishyurwa, iza kwishyurwa 1.700.000USD yatanzwe na SAN Foundation yaguze Hôtel Megève yahoze ari iya Robert Hirsch. Avuga kandi ko hari ubundi bwishyu bwaturutse mu igurishwa ry'umutungo wa Carl Linde i Tel-Aviv muri Israel n'i Londres, ko rero hishyuwe 7.250.000USD yose hamwe, hakaba rero nta mpamvu yo gusaba ko urubanza rwavuzwe rurangirizwa mu Rwanda.

[17] Akomeza avuga ko Gahiga yatangajwe no kubona ko tariki ya 01/10/2010 yahawe itegeko rimwishyuza CHF6.474.058,80 (commandement de payer Nº01022559) hashingiwe ku rubanza rwavuzwe, arayitambamira, maze kuwa 06/10/2011 Fortis Business Holdings LLC iregera urukiko rwa Mbere rwa Canton ya Genève isaba ko urubanza rurangirizwa muri "Suisse", ariko iratsindwa nk'uko bigaragara mu rubanza rwaciwe kuwa 19/09/2012, ijuriye

nabwo iratsindwa nk'uko na none bigaragara mu rubanza rwaciwe kuwa 22/03/2013, none ibyo yatsindiwe ikaba yarabiregeye mu nkiko z'u Rwanda, agasaba uru rukiko gukurikiza ibyemejwe n'izo nkiko (jurisprudence), maze ntirwemere ko urubanza rwavuzwe haruguru rurangirizwa mu Rwanda.

UKO URUKIKO RUBIBONA

[18] Ku byerekeranye n'ibirego by'irangizwa ry'imanza zaciwe n'inkiko zo mu mahanga, ingingo ya 91 y'Itegeko Ngenga Nº51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko iteganya ko bisuzumwa harebwa ibi bikurikira:

1º ko urubanza rwaciriwe mu mahanga rutanyuranije n'amategeko rusange ndemyagihugu n'amahame ashingiweho n'amategeko y'u Rwanda;

2º ko rwaciwe burundu hakurikijwe amategeko y'Igihugu rwaciriwemo;

3º ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo, hakurikijwe ayo mategeko;

4º ko uburenganzira bwo kwiregura bwubahirijwe.

[19] Impaka muri uru rubanza zishingiye ku kuba urubanza Nº09103391 rwaciwe tariki ya 11/03/2009 n'Urukiko rw'Ikirenga rwa Leta ya New York rusabirwa kurangirizwa mu Rwanda rwaraciwe mu buryo bunyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiweho n'amategeko y'u Rwanda, no kuba uburenganzira bwo kwiregura butarubahirijwe kubera ko Gahiga yaciriwe urubanza atahamagawe ngo amenyeshwe umunsi w'urubanza, akaba atarahawe uburyo bwo kwisobanura no kurengera inyungu ze (*violation des droits de la defense*).

[20] Nk'uko bisobanuwe muri "legal dictionary[1]", "confession of judgment" ni amasezerano yanditse, aho uregwa yiyemeza ko agomba kwishyura umwenda yumvikanyeho n'umurega mu gihe atawishyuye neza, habayeho urubanza, ariko bitabaye ngombwa gukurikiza imihango isanzwe ikurikizwa mu iburanishwa ry'imanza ngo amenyeshwe ikirego ahamagazwe kuburana "confession of judgment is a written agreement in which the defendant in a lawsuit admits liability and accepts the amount of agreed-upon damages he/she must pay to plaintiff (person suing him/her), and agrees that the statement may be filed as a court judgment against him/her if he/she does not pay or perform as agreed. This avoids further legal proceedings and may prevent a legal judgment being entered (made) if the terms are fulfilled by defendant".

[21] Ku byerekeranye n'uburenganzira bwo kwiregura, ingingo ya 18 igika cya 2 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, iteganya ko kwiregura no kunganirwa ari uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego zose z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo.

[22] Naho ku birebana n'imihango y'iburanisha ry'imanza, ingingo ya 10 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nayo ishimangira ubu burenganzira bwo kwiregura ivuga ko "nta muburanyi ushobora gucirwa urubanza atumviswe cyangwa atahamagawe".

[1] http://legal-dictionary.thefreedictionary.com/Confession+of+Judgment

[23] Bigaragara ko mu rubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York, Gahiga Médard ataruhamagawemo ngo yiregure, rukaba rero rutarubahirije uburenganzira bwe bwo kwiregura buteganyijwe mu ngingo z'amategeko zimaze kuvugwa. Na none kandi imihango ya ngombwa iteganywa kugirango habeho urubanza iteganywa mu nkiko z'u Rwanda ntiyubahirijwe nk'uko bisabwa mu itegeko rigenga imiburanishirize y'imanza ryavuzwe.

[24] Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga urwo rubanza rutagomba kwemerwa kurangirizwa mu Rwanda kuko mu icibwa ryarwo rutubahirije uburenganzira bw'umuburanyi uregwa, rukaba kandi runyuranyije n'amahame ndemyagihugu agenga imiburanishirize y'imanza mu nkiko z'u Rwanda.

[25] Ibyo kandi bihuye n'ibyemejwe mu rubanza rwaciwe tariki ya 22/03/2013 na "Cour de Justice" ya Canton ya Genève mu gihugu cya Suisse, ku kirego nk'iki Fortis Business Holdings LLC yareze Gahiga Médard, aho rwavuze ko urubanza rwaciriwe mu mahanga rutemerwa kurangirizwa muri icyo gihugu iyo rutubahirije amategeko ndemyagihugu yacyo yerekeye imiburanishirize y'imanza, ateganya ko umuburanyi agomba kumenyeshwa ko yarezwe, igihe urubanza ruzabera, agatumizwa kuburana, agatanga n'imyanzuro ye. Rwasanze rero Gahiga yaraciriwe urubanza n'Urukiko rwa Leta ya New York ibyo bitubahirijwe, maze ntirwakira ubujurire bwa Fortis Business Holdings LLC.

[26] Urukiko rurasanga rero atari ngombwa gusuzuma niba urubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York rutarangirizwa mu Rwanda ku mpamvu z'uko umwenda wa Fortis Business Holdings LLC waba warishyuwe na Carl Linde.

b. Ishingiro ry'indishyi zisabwa na Gahiga Médard

[27] Me Rwihandagaza avuga ko Fortis Business Holdings LLC yareze Gahiga nta mpamvu (action téméraire et vexatoire), ikaba igomba kumuha indishyi z'akababaro zingana na 150.000.000 Frw, ikanishyura 20.000.000 Frw y'ikurikiranarubanza n'igihembo cya avoka.

[28] Me Mugisha avuga ko izo ndishyi z'akababaro Gahiga asaba Fortis Business Holdings LLC nta shingiro ryazo kuko ibyo isaba muri uru rubanza bikomoka ku masezerano bagiranye ubwabo, naho ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya avoka akaba nta bimenyetso abitangira, akaba rero atayahabwa.

UKO URUKIKO RUBIBONA

[29] Ku byerekeranye n'indishyi z'akababaro za 150.000.000Frw Gahiga asaba, urukiko rurasanga nta kigaragaza ko Fortis Business Holdings LLC yatanze ikirego cyo gusaba kurangiriza urubanza mu Rwanda idafite impamvu kuko yabonaga hari aho gishingiye, bityo akaba atagomba kuzigenerwa.

[30] Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya avoka, urukiko rurasanga 20.000.000Frw asabwa na Gahiga atagaragaza uburyo yayabazemo, akaba agomba kugenerwa mu bushishozi 500.000Frw.

III. ICYEMEZO CY'URUKIKO

[31] Rwemeje ko ikirego cya Fortis Business Holdings LLC nta shingiro gifite.

[32] Rutegetse ko urubanza Nº09103391 rwaciwe tariki ya 11/03/2009 n'Urukiko rw'Ikirenga rwa Leta ya New York rutemerewe kurangirizwa mu Rwanda.

[33] Rutegetse Fortis Business Holdings LLC kwishyura Gahiga Médard 500.000Frw y'ikurikiranarubanza n'igihembo cya avoka.

[34] Rutegetse Fortis Business Holdings LLC kwishyura 25.750Frw y'amagarama y'urubanza.