ELYON EXPERT INTERNATIONAL LTD v FANTASTIC INVESTMENT GROUP LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00010/2021/SC, (Cyanzayire, P.J., Nyirinkwaya na Karimunda, J.) 14 Mata 2022]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Imiburanishirize y'imanza – Gusubirishamo urubanza ingingo – Gutandukanya iyakira n'iburanisha mu mizi ry'urubanza rusubirishwamo ingingo nshya – Urukiko rwashyikirijwe ikirego cyo gusubirishamo urubanza ingingo nshya, rugisuzuma mu byiciro bibiri – Mu cyiciro cya mbere, hasuzumwa ibijyanye n'iyakirwa ry'ikirego, rukabifataho umwanzuro – Iyo urukiko rusanze nta mpamvu ihari yatuma ikirego cyakirwa, urubanza ruhagararira aho, urwasabirwaga gusubirwamo rukagumana agaciro karwo – Naho iyo urukiko rusanze hari impamvu yatuma ikirego cyakirwa, hakurikiraho icyiciro cya kabiri cyo kuburanisha urubanza mu mizi – 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 174.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Imiburanishirize y'imanza – Gusubirishamo urubanza ingingo – Ikimenyetso gishya kimara impaka – Uburanisha ikimenyetso gishya, agomba kugaragariza Urukiko ko icyo kimenyetso cyari gisanzwe kiriho igihe yaburanaga, ariko akaba atarigeze amenya ko gihari – Ashobora kandi kugaragariza Urukiko ko yari azi ko ikimenyetso gihari cyangwa gishobora gushakwa igihe yaburanaga, ariko akaba atarashoboraga kukibona kubera impamvu zumvikana yasobanurira Urukiko – 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 170.

Incamake y'ikibazo: Elyon Expert International Ltd yasabye inguzanyo mu kigo cyitwa GROFIN gicunga amafaranga ya sosiyete SGB Fund Rwanda Ltd igamije kubaka inzu, maze ikorana na sosiyete Fantastic Investment Group Ltd amasezerano yo kuyubakira, impande uko ari eshatu zumvikana ko iyo nguzanyo izanyuzwa kuri konti ya Elyon Expert International Ltd kuko ariyo yagombaga gukora ibikorwa byo kubaka inzu yatangirwaga inguzanyo.

Nyuma y'uko iyo nguzanyo itanzwe, Elyon Expert International Ltd na Fantastic Investment Group Ltd ntibumvikanye ku mikoreshereze yayo. Elyon Expert International Ltd ivuga ko uko kutumvikana kwatewe n'uko Fantastic Investment Group Ltd yihutiye gushaka guhabwa amafaranga yose kandi atari byo byumvikanyweho, irabyanga kuko byari kuba binyuranye n'icyerekezo cy'umushinga.

Elyon Expert International Ltd ivuga ko impaka zo kutumvikana ku mikoreshereze y'ayo mafaranga zatumye impande zombi zemeranya gusesa amasezerano mu nyandiko bise amasezerano yo kwikiranura, maze bumvikana ko Elyon Expert International Ltd isubiza amafaranga yose yaciye kuri konti yayo, ikayanyuza kuri GROFIN.

Fantastic Investment Group Ltd nayo yiyemeza kwishyura 12.000.000Frw mu minsi itatu nk'indishyi z'ibyari bimaze kugerwaho na Elyon Expert International Ltd n'ibyo yari ivukijwe kuzabona (perte subie et manque à gagner).

Elyon Expert International Ltd yareze Fantastic Investment Group Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge irusaba gutegeka kuyishyura umwenda wa 12.000.000Frw, inyungu zawo za 20%, indishyi z'akababaro zingana na 5.000.000Frw, amafaranga y'ikurikiranarubanza angana na 200.000Frw n'igihembo cy'Avoka kingana na 4.000.000Frw.

Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza rwemeza ko Fantastic Investment Group Ltd yishyura Elyon Expert International Ltd umwenda w'amafaranga bumvikanye mu masezerano yo kwikiranura, hamwe n'indishyi z'ubukererwe.

Fantastic Investment Group Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwahaye agaciro inyandiko yiswe amasezerano y'umwenda itarigeze ikorwa cyangwa ngo ishyirweho umukono nayo. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

Fantastic Investment Group Ltd yasubirishijemo ingingo nshya urubanza RCOMA 00441/2017/CHC/HCC, ivuga ko habonetse ikimenyetso gishya kigizwe na raporo yakozwe na Rwanda Forensic Laboratory igaragaza ko inyandiko Elyon Expert International Ltd yashingiyeho ibishyuza umwenda waburanywe ari impimbano.

Elyon Expert International Ltd yireguye ivuga ko inyandiko yashingiweho nk'ikimenyetso gishya itakwitwa impimbano bitaremejwe mu rubanza rwabaye itegeko.

Elyon Expert International Ltd yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RS/REV/RCOM 00010/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rusubirishwamo ku mpamvu z'akarengane, kuko urwo Rukiko rwaciye urubanza mu mizi rutabanje gufata umwanzuro ku bijyanye n'iyakirwa ry'ikirego, ngo rusuzume niba ikimenyetso cyatanzwe ari gishya kandi kimara impaka nk'uko amategeko abiteganya.

Elyon Expert International Ltd ivuga kandi ko ikimenyetso kigizwe na Raporo ya Rwanda Forensic Laboratory kitigeze gisuzumwa mu mizi kuko umucamanza yacyeretswe gusa ariko ntikiburanishweho, ko yagombaga guhabwa umwanya ikagira icyo ikivugaho nyuma yo kwemeza ko ikirego cy'ingingo nshya cyakiriwe.

Fantastic Investment Group Ltd yiregura ivuga ko kuba umucamanza yaraciye urubanza mu mizi ari uko n'ibijyanye n'urubanza mu mizi byari byavuzweho, akavuga kandi ko kuba ikimenyetso gishya cyaragaragazaga ko imikono iri ku masezerano aburanwa atari iyayo byatumye ahita akuraho imanza zabanje.

Elyon Expert International Ltd ivuga ko raporo yakozwe na Rwanda Forensic Laboratory itari ikwiriye gufatwa nk'ikimenyetso gishya kandi cya kamarampaka ari uko yari itarafatwaho umwanzuro n'Ubushinjacyaha, hakaba haragombaga gutegerezwa umwanzuro w'urukiko kugira ngo byemezwe ko ari impimbano koko.

Incamake y'icyemezo: 1. Urukiko rwashyikirijwe ikirego cyo gusubirishamo urubanza ingingo nshya, rugisuzuma mu byiciro bibiri. Mu cyiciro cya mbere, hasuzumwa ibijyanye n'iyakirwa ry'ikirego, rukabifataho umwanzuro. Iyo urukiko rusanze nta mpamvu ihari yatuma ikirego cyakirwa, urubanza ruhagararira aho, urwasabirwaga gusubirwamo rukagumana agaciro karwo. Naho iyo urukiko rusanze hari impamvu yatuma ikirego cyakirwa, hakurikiraho icyiciro cya kabiri cyo kuburanisha urubanza mu mizi.

2. Uburanisha ikimenyetso gishya, agomba kugaragariza Urukiko ko icyo kimenyetso cyari gisanzwe kiriho igihe yaburanaga, ariko akaba atarigeze amenya ko gihari. Ashobora kandi kugaragariza Urukiko ko yari azi ko ikimenyetso gihari cyangwa gishobora gushakwa igihe yaburanaga, ariko akaba atarashoboraga kukibona kubera impamvu zumvikana yasobanurira Urukiko

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;
Ikirego cyatanzwe mu Rukiko Rukuru rw'Ubucuruzi gisaba gusubirishamo ingingo nshya urubanza RCOMA 00441/2017/CHC/HCC, kitagombaga kwakirwa ngo gisuzumwe;
urwo rubanza rukaba rugumanye agaciro karwo;
Urubanza RS/REV/RCOM 00010/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruvanyweho.

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 13, iya 170 niya 174.

Imanza zifashishijwe:

Brasseries et Limonaderies du Rwanda (BRALIRWA) Ltd v Sindikubwabo Cyprien.RS/REV/COM 0001/13/CS rwaciwe n'Urukikorw'Ikirenga ku wa 26/02/2016.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 10/07/2016, Elyon Expert International Ltd yagiranye na Fantastic Investment Group Ltd amasezerano yo kuyubakira inzu. Kugira ngo iyo nzu ishobore kubakwa, Fantastic Investment Group Ltd yasabye inguzanyo ikigo cyitwa GROFIN gicunga amafaranga ya SGB Fund Rwanda Ltd, icyo kigo cyemera gutanga inguzanyo ingana na 316.220.854Frw, impande uko ari eshatu zumvikana ko izanyuzwa kuri konti ya Elyon Expert International Ltd kuko ariyo yagombaga gukora ibikorwa byo kubaka inzu yatangirwaga inguzanyo.

[2] Nyuma y'uko iyo nguzanyo itanzwe, Elyon Expert International Ltd na Fantastic Investment Group Ltd ntibumvikanye ku mikoreshereze yayo. Elyon Expert International Ltd ivuga ko uko kutumvikana kwatewe n'uko Fantastic Investment Group Ltd yihutiye gushaka guhabwa amafaranga yose kandi atari byo byumvikanyweho, irabyanga kuko byari kuba binyuranye n'icyerekezo cy'umushinga (*déviation du projet).*

[3] Elyon Expert International Ltd ivuga ko impaka zo kutumvikana ku mikoreshereze y'ayo mafaranga zatumye ku wa 23/12/2016 impande zombi zemeranya gusesa amasezerano mu nyandiko bise amasezerano yo kwikiranura, maze bumvikana ko Elyon Expert International Ltd isubiza amafaranga yose yaciye kuri konti yayo, ikayanyuza kuri GROFIN, na Fantastic Investment Group Ltd yiyemeza kwishyura 12.000.000Frw mu minsi itatu nk'indishyi z'ibyari

bimaze kugerwaho na Elyon Expert International Ltd n'ibyo yari ivukijwe kuzabona (*perte subie et manque à gagner*). Elyon Expert International Ltd ivuga kandi ko uburenganzira bwo kohereza ayo mafaranga yabutanze uwo munsi ku wa 23/12/2016, ariko ko Fantastic Investment Group Ltd yanze kwishyura ibyo yari yemeye.

[4] Byatumye Elyon Expert International Ltd iregera Urukiko rw'Ubucuruzi rwa Nyarugenge irusaba gutegeka Fantastic Investment Group Ltd kuyishyura umwenda wa 12.000.000Frw, inyungu zawo za 20%, indishyi z'akababaro zingana na 5.000.000Frw, amafaranga y'ikurikiranarubanza angana na 200.000Frw n'igihembo cy'Avoka kingana na 4.000.000Frw. Fantastic Investment Group Ltd mu kwiregura yavugaga ko inyandiko mvugo yo ku wa 23/12/2016 itayizi, ko itigeze iyisinya, ko nta kintu na kimwe cyari gutuma igira amafaranga yemera kwishyura Elyon Expert International Ltd mu gihe nta murimo n'umwe yigeze ikora kuko amasezerano yo ku wa 10/07/2016 yananiwe kuyubahiriza.

[5] Ku wa 14/06/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM 00365/2017/TC/NYGE, rwemeza ko Fantastic Investment Group Ltd yishyura Elyon Expert International Ltd umwenda w'amafaranga bumvikanye mu masezerano yo kwikiranura ungana na 12.000.000Frw, indishyi z'ubukererwe zingana na 900.000 Frw na 525.000Frw y'ikurikiranarubanza n'igihembo cy' Avoka, ikanayisubiza ingwate y'amagarama yatanze irega.

[6] Fantastic Investment Group Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwahaye agaciro inyandiko yiswe amasezerano y'umwenda itarigeze ikorwa cyangwa ngo ishyirweho umukono na Fantastic Investment Group Ltd. Ku wa 13/10/2017, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00441/2017/CHC/HCC rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe, usibye gusa amafaranga y'igihembo cy'Avoka ku rwego rw'ubujurire.

[7] Fantastic Investment Group Ltd yasubirishijemo ingingo nshya urubanza RCOMA 00441/2017/CHC/HCC, ivuga ko habonetse ikimenyetso gishya kigizwe na raporo yakozwe na Rwanda Forensic Laboratory igaragaza ko inyandiko Elyon Expert International Ltd yashingiyeho ibishyuza umwenda waburanywe mu rubanza rumaze kuvugwa ndetse no mu rwarubanjirije, ari impimbano. Elyon Expert International Ltd yireguye ivuga ko inyandiko yashingiweho nk'ikimenyetso gishya itakwitwa impimbano bitaremejwe mu rubanza rwabaye itegeko, ko kandi iyo nyandiko Fantastic Investment Goup Ltd nayo yayubahirije kuko hari amafaranga yishyuye ku mwenda waregewe, ibyo bikaba bigomba kuyishimangira.

[8] Ku wa 11/10/2018, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RS/REV/RCOM 00010/2018/CHC/HCC rushingiye kuri raporo ya Rwanda Forensic Laboratory[1], rwemeza ko inyandikomvugo yafashwe nk'amasezerano yo kwikiranura itagombaga kwitirirwa Fantastic Investment Group Ltd, ko urubanza RCOMA 00441/2017/CHC/HCC n'urwarubanjirije RCOM 00365/2017/TC/NYGE ziteshejwe agaciro; rutegeka Elyon Expert International Ltd guha

1 Raporo ya Rwanda Forensic Laboratory ivuga ko bamaze gukora isuzuma n'igereranya ry'imikono (signatures) mu mazina ya Nkurikiyimfura Jean Paul na kashe (stamps) ya Fantastic Investment Group Ltd igibwaho impaka yo ku wa 23/12/2016 n'imikono na kashe bitagibwaho impaka bashyikirijwe, basanga imikono itagibwaho impaka ya Nkurikiyimfura Jean Paul iri ku nyandiko zitandukanye bashyikirijwe, itandukanye n'umukono ugibwaho impaka uri mu mazina ye ku nyandiko mvugo yo ku wa 23/12/2016, ko kashe iteye ku nyandiko mvugo igibwaho impaka yo ku wa 23/12/2016, itandukanye na kashe iteye ku nyandiko zitagibwaho impaka.

Fantastic Investment Group Ltd indishyi z'ibyo yatanze mu manza ku rwego rwa mbere no ku rwego rw'ubujurire zihwanye na 2.000.000 Frw, ikanayisubiza amagarama yose yishyuye itanga ibirego.

[9] Elyon Expert International Ltd yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RS/REV/RCOM 00010/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/10/2018 rusubirishwamo ku mpamvu z'akarengane, kuko urwo Rukiko rwaciye urubanza mu mizi rutabanje gufata umwanzuro ku bijyanye n'iyakirwa ry'ikirego, ngo rusuzume niba ikimenyetso cyatanzwe ari gishya kandi kimara impaka nk'uko amategeko abiteganya. Amaze kubisuzuma, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, nawe amaze gusuzuma raporo yarukorewe, yemeza ko urubanza rusubirwamo ku mpamvu z'akarengane n'Urukiko rw'Ikirenga, rwandikwa kuri RS/INJUST/RCOM 00010/2021/SC.

[10] Iburanisha ry'urubanza ryashyizwe ku wa 07/03/2022, ribera mu ruhame, Elyon Expert International Ltd ihagarariwe na Me Niyitegeka Eraste naho Fantastic Investment Group Ltd ihagarariwe na Me Bayisabe Irenée.

[11] Muri uru rubanza, ibibazo byasuzumwe ni ibi bikurikira :

- Kumenya niba umucamanza yaraciye urubanza RS/REV/RCOM 00010/2018/CHC/HCC mu mizi atabanje gufata umwanzuro ku bijyanye n'iyakirwa ry'ikirego;
- Kumenya niba raporo yakozwe na Rwanda Forensic Laboratory ku nyandiko yo ku wa 23/12/2016 yafatwa nk'ikimenyetso gishya cyari gutuma urubanza RCOMA 00441/2017/CHC/HCC rusubirishwamo ingingo nshya;
- Ibyerekeye indishyi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

II.b. Kumenya niba umucamanza yaraciye urubanza RS/REV/RCOM 00010/2018/CHC/HCC mu mizi atabanje gufata umwanzuro ku bijyanye n'iyakirwa ry'ikirego

[12] Me Niyitegeka Eraste uhagarariye Elyon Expert International Ltd avuga ko umucamanza mu Rukiko Rukuru rw'Ubucuruzi yaburanishije gusa ku bijyanye no kumenya niba ikimenyetso cyatanzwe ari gishya, akaba yaragombaga kubanza gufata umwanzuro ku bijyanye n'iyakirwa ry'ikirego, nyamara afata icyemezo mu mizi y'urubanza kandi itaraburanishijweho, anemeza ko imanza zabanje ziteshejwe agaciro. Avuga ko umucamanza yirengagije ibiteganywa n'ingingo ya 174 y'Itegeko N$_o$ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bityo akaba asaba ko urubanza RS/REV/RCOM 00010/2018/CHC/HCC rwavanwaho, hakubahirizwa ibyategetswe n'urubanza RCOMA 00441/2017/CHC/HCC.

[13] Avuga ko ikimenyetso kigizwe na Raporo ya Rwanda Forensic Laboratory kitigeze gisuzumwa mu mizi kuko umucamanza yacyeretswe gusa ariko ntikiburanishweho, ko Elyon

Expert International Ltd yagombaga guhabwa umwanya ikagira icyo ikivugaho nyuma yo kwemeza ko ikirego cy'ingingo nshya cyakiriwe.

[14] Me Bayisabe Irené uhagarariye Fantastic Investment Group Ltd avuga ko kuba umucamanza yaraciye urubanza mu mizi ari uko n'ibijyanye n'urubanza mu mizi byari byavuzweho, kuko 12.000.000Frw ziburanwa zari zavuzwe mu iburanisha. Asobanura ko ibiteganywa mu ngingo ya 174 y'Itegeko ryavuzwe haruguru byubahirijwe kuko umucamanza yafashe icyemezo ku iyakira ry'ingingo nshya, akavuga kandi ko kuba ikimenyetso gishya cyaragaragazaga ko imikono iri ku masezerano aburanwa atari iya Fantastic Investment Group Ltd aribyo byatumye ahita akuraho imanza zabanje.

[15] Akomeza avuga ko kuba itegeko rivuga ko habanza gusuzumwa ibirebana n'iyakirwa ry'ikirego bitavuze ko hababo undi munsi wo kuburanisha, ko umucamanza ashobora kubikorera icyarimwe mu iburanisha rimwe; ku bireba uru rubanza akaba asanga nta mpamvu yari ihari yo kongera kuburanisha kuko byose byari byavuzweho mu rubanza.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 174 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 mu gika cyayo cya mbere ko *urukiko rwaregewe gusubirishamo urubanza ingingo nshya rubanza gusuzuma ibijyanye n'iyakirwa ry'ikirego, rukabifataho icyemezo;* mu gika cya kabiri, *igateganya ko iyo ikirego cyo gusubiramo urubanza kitakiriwe, urubanza rwa mbere rugumana agaciro karwo*.

[17] Ibiteganyijwe muri iyi ngingo, byumvikanisha ko urukiko rwashyikirijwe ikirego cyo gusubirishamo urubanza ingingo nshya, rugisuzuma mu byiciro bibiri. Mu cyiciro cya mbere, hasuzumwa ibijyanye n'iyakirwa ry'ikirego hashingiwe ku mpamvu ziteganywa mu ngingo ya 170 y'iri tegeko rimaze kuvugwa[2], rukabifataho umwanzuro. Iyo urukiko rusanze nta mpamvu ihari yatuma ikirego cyakirwa, urubanza ruhagararira aho, urwasabirwaga gusubirwamo rukagumana agaciro karwo. Naho iyo urukiko rusanze hari impamvu yatuma ikirego cyakirwa, hakurikiraho icyiciro cya kabiri, rugasubiramo urubanza nk'uko rwabiregewe, bivuga ko urubanza rwongera rukaburanishwa mu mizi.

[18] Ingingo ya 13 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko *umuburanyi adashobora gucirwa urubanza atumviswe cyangwa atahamagawe*. Ibi bikaba

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2 Urubanza rushobora gusubirishwamo ingingo nshya kubera imwe mu mpamvu zikurikira:

1o iyo habayemo uburiganya bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana;

2° urubanza rwaciwe hashingiwe ku mpapuro cyangwa ku buhamya byaje kugaragara cyangwa kwemezwa n'urukiko ko ari ibihimbano nyuma y'icibwa ry'urwo rubanza;

3° iyo, kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo; 4° urubanza rushingiye ku rubanza rw'inshinjabyaha rwaje gukurwaho nyuma;

5° urubanza rushingiye ku byakozwe mu iburanisha bikozwe mu izina ry'umuntu utarigeze atanga ubwo bubasha mu buryo ubwo ari bwo bwose, cyangwa ngo yemere cyangwa yemeze ibyakozwe.

bivuga ko, igihe umucamanza afashe umwanzuro ko hari impamvu yatuma urubanza rusubirwamo, akongera kuruburanisha mu mizi, agomba kongera kumva ababuranyi bose ku bijyanye nyine n'imizi y'urubanza.

[19] Ku bijyanye n'urubanza RS/REV/RCOM 00010/2018/CHC/HCC, bigaragara ko umucamanza atatandukanyije icyiciro cyo gusuzuma ibijyanye n'iyakirwa ry'ikirego, n'icyiciro cyo gusuzuma ibijyanye n'imizi y'urubanza mu gihe yari kuba asanze hari impamvu yatuma ikirego gisaba gusubirishamo urubanza ingingo nshya cyakirwa. Mu isesengura ry'ibibazo bigize urubanza, umucamanza yagaragaje ko ikibazo gisuzumwa ari ukumenya niba raporo ya Rwanda Forensic Laboratory (ku nyandiko yo ku wa 23/12/2016) yaba impamvu yo gusubirishamo urubanza ingingo nshya, aba ari nabyo ababuranyi batangaho ibisobanuro byabo. Mu gufata umwanzuro, aho kugirango agaragaze niba koko iyo raporo ari ikimenyetso gishya cyatuma urubanza rusubirwamo, rukongera kuburanishwa mu mizi ; cyangwa niba atari ikimenyetso gishya cyatuma ikirego cyakirwa, urubanza rugahagararira aho, yahise afata umwanzuro ujyanye n'imizi y'urubanza, yemeza ko inyandikomvugo yafashwe nk'amasezerano yo kwikiranura itagombaga kwitirirwa Fantastic Investment Group Ltd, ko urubanza RCOMA 00441/2017/CHC/HCC (rwasabirwaga gusubirwamo) n'urwarubanjirije RCOM 00365/2017/TC/NYGE ziteshejwe agaciro[3].

[20] Ubwo buryo umucamanza yatwaye urubanza, bwanatumye afata icyemezo atabanje kumva ibisobanuro by'ababuranyi ku bijyanye n'imizi y'urubanza, bikaba binyuranye n'ibiteganywa n'ingingo ya 13 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 yavuzwe haruguru.

[21] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rusanga umucamanza yaraciye urubanza RS/REV/RCOM 00010/2018/CHC/HCC mu mizi atabanje gufata umwanzuro ku bijyanye n'iyakirwa ry'ingingo nshya, bikaba binyuranyije n'ibiteganywa mu ngingo ya 174 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

II.b. Kumenya niba raporo yakozwe na Rwanda Forensic Laboratory ku nyandiko yo ku wa 23/12/2016 yafatwa nk'ikimenyetso gishya cyari gutuma urubanza RCOMA 00441/2017/CHC/HCC rusubirishwamo ingingo nshya

[22] Me Niyitegeka Eraste uhagarariye Elyon Expert International Ltd avuga ko raporo yakozwe na Rwanda Forensic Laboratory itari ikwiriye gufatwa nk'ikimenyetso gishya kuko inyandiko iyo raporo yashingiyeho yo ku wa 23/12/2016 yari ikubiyemo inshingano n'uburenganzira bya buri ruhande mu masezerano, kandi ko inshingano za Elyon Expert International Ltd yari yaramaze kuzubahiriza ndetse na Fantastic Investment Group Ltd ikaba itabihakana. Avuga ko ahubwo inshingano za Fantastic Investment Group Ltd itazubahirije, ikajya gupimisha inyandiko ivuga ko ari impimbano, kandi yari yayikoresheje ubwayo mu gusubirana uburenganzira buyivugwamo, bivuga ko yari ayizi.

[23] Avuga kandi ko impamvu iriya raporo itagombaga gufatwa nk'ikimenyetso gishya kandi cya kamarampaka, ari uko yari itarafatwaho umwanzuro n'Ubushinjacyaha, hakaba haragombaga gutegerezwa umwanzuro w'urukiko kugira ngo byemezwe ko ari impimbano koko. Akomeza

3 Ntibinasobanutse impamvu izo manza zateshejwe agaciro kandi icyo umucamanza yari akoze ari uguhindura imikirize y'urubanza rwasabirwaga gusubirishwamo ingingo nshya.

avuga ko ikirego kiregera inyandiko mpimbano cyatanzwe mu Bugenzacyaha ku wa 20/10/2017, nyuma y'icibwa ry'urubanza mu Rukiko Rukuru rw'Ubucuruzi kuko rwasomwe ku wa 13/10/2017, dosiye iza gushyingurwa ku wa 31/12/2017 kubera kubura ibimenyetso. Yongeraho ko mu iburanisha ry'urubanza rwasubirishijwemo ingingo nshya, uhagarariye Fantastic Investment Group Ltd atigeze asaba ko iburanisha rihagarara ngo bategereze urubanza rw'inshinjabyaha ku masezerano bita amahimbano.

[24] Me Bayisabe Irené uhagarariye Fantastic Invetment Group Ltd avuga ko asanga urubanza rutagomba gukurwaho kuko raporo y'umuhanga yatumye rufatwamo icyemezo ikiriho, ndetse uwo ahagarariye akaba yarakomeje guhakana amasezerano bagaragaza, akaba asanga ari uburyo bwo gukomeza kubashora mu manza ku maherere.

[25] Avuga ko dosiye bari baregeye mu Bugenzacyaha itashyinguwe kubera kubura ibimenyetso nk'uko uwo baburana abivuga, ko ahubwo babuze uwo bakurikiranaho icyaha. Ku bijyanye n'igihe ikirego nshinjabyaha cyatangiwe, Me Bayisabe Irenée yemeye ko ariwe wanditse ibaruwa igitanga mu Bugenzacyaha ku wa 20/10/2017; akavuga ko kuba kitaratanzwe urubanza rukiburanishwa byatewe n'uko babonaga bigaragarira buri wese ko amasezerano ari amahimbano, ku buryo n'umucamanza yari kubibona.

UKO URUKIKO RUBIBONA

[26] Ingingo ya 170 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igaragaza urutonde rw'impamvu zituma urubanza rushobora gusubirishwamo ingingo nshya. Mu gace kayo ka 3°, iyi ngingo iteganya ko urubanza rushobora gusubirwamo *iyo kuva aho ruciriwe, habonetse ikimenyetso gishya kimara impaka* kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo.

[27] Mu gika cya kabiri cy'iyi ngingo, hateganyijwe ko ikimenyetso gishya ari ikimenyetso umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga. Ibi byumvikanisha neza ko, uburanisha ikimenyetso gishya, agomba kugaragariza Urukiko ko icyo kimenyetso cyari gisanzwe kiriho igihe yaburanaga, ariko akaba atarigeze amenya ko gihari. Ashobora kandi kugaragariza Urukiko ko yari azi ko ikimenyetso gihari cyangwa gishobora gushakwa igihe yaburanaga, ariko akaba atarashoboraga kukibona kubera impamvu zumvikana yasobanurira Urukiko.

[28] Mu rubanza Brasseries et Limonaderies du Rwanda (BRALIRWA) Ltd yaburanaga na Sindikubwabo Cyprien[4], uru Rukiko rwifashishije umurongo ukurikizwa no mu nkiko z'ahandi[5],

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4 Urubanza RS/REV/COM 0001/13/CS rwo ku wa 26/02/2016, Brasseries et Limonaderies du Rwanda (BRALIRWA) Ltd vs Sindikubwabo Cyprien, para 27.

5 "…la requête civile n'est point ouverte pour des faits dont la partie a eu connaissance avant le jugement, qu'à pareil faits doivent être assimilés ceux dont elle a délibérément omis de recueillir la preuve ; qu'étant acquis, par les constatations mêmes du jugement dont la rétractation est poursuivie, que les défendeurs ont refusé d'introduire une demande de renseignements auprès de l'administration des postes, leur requête civile ne réunit pas les conditions légales de recevabilité… » *Monier c. Vanderhoute et Vanhumbeeck*, Cour de Cassation de la Belgique, 1ère Chambre, 16 Mai 1974, in *Pasicrisie Belge*, Bruxelles, Ets Emile Bruylant, 1974, p. 965.

rwasobanuye ko *ikirego gisubirishamo urubanza ingingo nshya kitakirwa iyo impamvu gishingiraho zari zisanzwe zizwi n'ugitanga, kandi ko no mu mpamvu umuburanyi yari azi hakwiye gushyirwamo n'ibimenyetso atashatse urubanza rusabirwa gusubirishwamo rutaraba ndakuka kandi yarashoboraga kubibona nko mu gihe umuburanyi yirengagije kwiyambaza urwego rwa Leta ngo rumuhe amakuru yari akenewe mu rubanza.*

[29] Ku bijyanye n'uru rubanza, ikimenyetso gishya Fantastic Investment Group Ltd yashingiyeho isaba gusubirishamo urubanza ingingo nshya, ni raporo yatanzwe na *Kigali*[6] *Forensic Laboratory* ku wa 20/11/2017 igaragaza ko umukono na kashe bigaragara ku nyandiko yo ku wa 23/12/2016 yiswe amasezerano yo kwikiranura, ari nayo yashingiweho mu rubanza rusabirwa gusubirwamo, bitandukanye n'ibitagibwaho impaka bisanzwe bikoreshwa na Fantastic Investment Group Ltd.

[30] Urukiko rusanga, nk'uko ababuranyi ku mpande zombi babyemeranyijweho mu iburanisha ryo ku wa 07/03/2022, iyo raporo ya Rwanda Forensic Laboratory yarabonetse nyuma y'ibaruwa yo ku wa 20/10/2017, Me Bayisabe Irenée yandikiye Ubugenzacyaha mu Karere ka Nyarugenge mu mwanya wa Fantastic Investment Group Ltd, atanga ikirego kiregwamo Nzahumunyurwa Jean Claude icyaha cyo gukora no gukoresha inyandiko mpimbano. Ikigaragara, akaba ari uko iyo baruwa yanditswe urubanza rwasabiwe gusubirwamo rumaze gucibwa ku wa 13/10/2017.

[31] Urukiko rusanga, inyandiko yaregewe ko ari impimbano imanza zimaze gucibwa, yarakoreshejwe kuva imanza zatangira mu Rukiko rw'Ubucuruzi rwa Nyarugenge kugera zirangira mu Rukiko Rukuru rw'Ubucuruzi, Fantastic Investment Group Ltd ikaba itabasha gusobanura icyayibujije kugana iyo nzira yatumye ibona ikimenyetso yita gishya, cyangwa ngo igaragaze ko yabigerageje bikayinanira igihe urubanza rwari rukiburanishwa rutaraba ndakuka, cyane ko yashoboraga no gusaba ko urubanza ruba ruhagaze hategerejwe igisubizo ku kirego cy'inyandiko mpimbano.

[32] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga raporo yakozwe na Rwanda Forensic Laboratory ku nyandiko yo ku wa 23/12/2016 itafatwa nk'ikimenyetso gishya cyari gutuma urubanza RCOMA 00441/2017/CHC/HCC rusubirishwamo ingingo nshya; bityo urubanza RS/REV/RCOM 00010/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/10/2018 rukaba nta gaciro rufite.

II.c. Ibijyanye n'indishyi zasabwe n'ababuranyi

[33] Me Niyitegeka Eraste uhagarariye Elyon Expert International Ltd avuga ko asaba igihembo cy'Avoka ku rwego rw'Urukiko rw'Ikirenga kingana na 1.000.000Frw n'amafaranga y'ikurikiranarubanza angana na 500.000Frw.

[34] Me Bayisabe Irenée uhagarariye Fantastic Investiment Group Ltd avuga ko izo ndishyi nta shingiro zifite, kuko aribo bakomeje kwishora mu manza, akaba asaba Urukiko gutegeka Elyon Expert International Ltd gusubiza uwo ahagarariye amafaranga yatakaje mu manza angana na

6 Raporo yanditseho ko itanzwe na Kigali Forensic Laboratory, ariko inyito y'icyo Kigo ivugwa mu itegeko rigishyiraho ni Rwanda Forensic Laboratory, ari nayo ikomeza gureshwa muri uru rubanza.

2.000.000Frw kuri uru rwego, akubiyemo 1.500.000Frw y’ igihembo cy’Avoka na 500.000Frw y’ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[35] Igika cya mbere cy’ingingo ya 111 y’Itegeko № 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi giteganya ko ikirego cy’amafaranga y’ikurikiranarubanza ari ikirego gishamikira ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[36] Urukiko rusanga byarabaye ngombwa ko Elyon Expert International Ltd ikurikirana urubanza, igashaka n’Avoka uyiburanira, ikaba rero ikwiye kugenerwa amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka, ariko kuko ayo isaba ari menshi kandi ikaba itayatangira ibimenyetso, ikaba igenewe mu bushishozi bw’Urukiko 300.000Frw y’ikurikiranarubanza na 500.000Frw y’igihembo cy’Avoka, yose hamwe akaba 800.000Frw.

[37] Urukiko rusanga amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka Fantastic Investment Group Ltd isaba itayagenerwa kuko itsinzwe urubanza.

III. ICYEMEZO CY’URUKIKO

[38] Rwemeje ko ikirego cyatanzwe na Elyon Expert International Ltd cyo gusubirishamo, ku mpamvu z’akarengane, urubanza RS/REV/RCOM 00010/2018/CHC/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 11/10/2018, gifite ishingiro ;

[39] Rwemeje ko ikirego Fantastic Investment Group Ltd yatanze mu Rukiko Rukuru rw’Ubucuruzi isaba gusubirishamo ingingo nshya urubanza RCOMA 00441/2017/CHC/HCC rwaciwe n’urwo Rukiko ku wa 13/10/2017, kitagombaga kwakirwa ngo gisuzumwe ; urwo rubanza rukaba rugumanye agaciro karwo ;

[40] Rwemeje ko urubanza RS/REV/RCOM 00010/2018/CHC/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 11/10/2018, ruvanyweho ;

[41] Rutegetse Fantastic Investment Group Ltd kwishyura Elyon Expert International Ltd 800.000 Frw y’ikurikiranarubanza n’igihembo cy’Avoka.