



REPUBLIC OF RWANDA
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ICYEGERANYO CY'IBYEMEZO BY'INKIKO

Icyegeranyo V. 2 - 2023
Mata, 2023



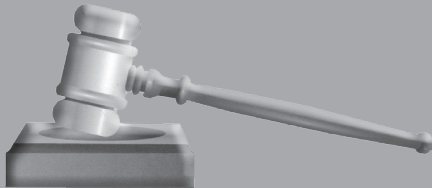
RWANDA LAW REPORTS

Law Reports V. 2 - 2023
April, 2023



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ABAGIZE KOMITE Y'UBWANDITSI

I. ITSINDA RY'ABANYAMATEGEKO BATEGUYE IMANZA

KAGABO U. Stephanie

KAVUTSE M. Claude

KUBWIMANA Jean Claude

MUJABI K. Naphtal

UWINKINDI Angelique

UWIMANA Jean Marie Vianney

II. KOMITE YEMEZA IMANZA

- Prof. Dr. NGAGI M. Alphonse** : Perezida wa Komite,
Umucamanza mu Rukiko
rw'Ubujurire
- Dr. MUHIRE G. Yves** : Visi Perezida wa Komite,
Umwarimu muri
Kaminuza y'u Rwanda
- BWIZA N. Blanche** : Umwanditsi wa Komite,
Umugenzuzi w'Inkiko
- RUKUNDAKUVUGA F. Regis** : Perezida w'Urukiko
rw'Ubujurire
- Dr. KARIMUNDA M. Aimé** : Umucamanza mu Rukiko
rw'Ikirenga
- NDAHAYO Xavier** : Perezida w'Urukiko Rukuru
- RUTAZANA Angeline** : Umugenzuzi Mukuru w'Inkiko
- KALIWABO Charles** : Umucamanza w'
Urukiko rw'Ubujurire
- Dr. SEZIRAHIGA Yves** : Umuyobozi wa ILPD
- BURAYOBERA UMUZAYIRE
Bibiane** : Visi Perezida wa Komisiyo
y'u Rwanda ishinzwe
Ivugururwa ry'Amategeko

- NSENGIYUMVA Jean Claude** : Umugenzuzi w'Inkiko
- KIBUKA Jean Luc** : Umucamanza w'Urukiko Rukuru rw'Ubucuruzi
- HABARUREMA Jean Pierre** : Umushinjacyaha ku Rwego rw'Igihugu
- BUNYOYE Grace** : Umushinjacyaha ku Rwego rw'Igihugu
- KABIBI Specioza** : Intumwa ya Leta
- MUREREREHE Saouda** : Umucamanza mu Rukiko Rukuru
- Lt. col. MADUDU A. Charles** : Umucamanza mu Rukiko rwa Gisirikare
- Dr. NSHIMIYIMANA Didace** : Perezida w'Urukiko Rwisumbuye
- GIRANEZA Clémentine** : Umucamanza mu Rukiko Rwisumbuye
- TASHOBYA Benon** : Umucamanza mu Rukiko Rwisumbuye

- BAGABO Faustin** : Avoka mu Rugaga
rw'Abavoka
- Dr. SHEMA Pierre** : Umwarimu muri ULK
- KARAKE Canisius** : Umwarimu muri UNILAK
- Dr HABIMANA Pie** : Avoka mu Rugaga rw'Abavoka
- UMUTESI Vestine** : Umucamanza mu Rukiko
rw'Ubucuruzi
- YANKURIJE Dorothee** : Perezida w'Urukiko
rw'Ibanze

IRIBURIRO

Basomyi bacu,

Tunejewe no kubagezaho icyegeranyo cy'Ibyemezo by'Inkiko, Volime 2 [2023]. Nk'uko mubizi, tubahitiramo imanza zikubiyemo bimwe mu bisubizo by'ibibazo muhura nabyo kenshi, haba mu mirimo yanyu ndetse no mu buzima bwa buri muni.

Muri iyi numero murasangamo imanza zirindwi (7) zikurikira: Urubanza rumwe (1) rw'ubutegetsu, urubanza rumwe (1) rw'imbonezambano, urubanza rumwe (1) rw'umurimo, imanza ebyiri (2) z'ubucuruzi, urubanza rumwe (1) rw'inshinyabaha n'urubanza rumwe (1) rwerekeranye n'imiburanishirize y'imanza.

Nk'uko mumaze kubimenyera imanza ziri muri iki cyegeranyo ziboneka no ku rubuga rwa murandasi rw'Urukiko rw'Ikirenga: <http://decisia.lexum.com/rlr/kn/nav.do>.

Dr NTEZILYAYO Faustin
Perezida w'Urukiko rw'Ikirenga akaba na
Perezida w'Inama Nkuru y'Ubucamanza

IBIKUBIYE MURI IKI CYEGERANYO

Iki Cyegeranyo gikubiyemo imanza zaciwe n’Urukiko rw’Ikirenga n’Urukiko rw’Ubujurire.

INYITO

Imanza ziri muri iyi volime zikoreshwa muri ubu buryo:

[2023] 2 RLR

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AMAGAMBO MPINE

1. Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Mu manza nshinjabyaha ibimenyetso byose bishatswe ku buryo buhuje n’amategeko bireemerwa, icyakora imvugo zitangiwe mu zindi nzego zitari iz’ikurikiranacyaha cyangwa mu rukiko, zigomba gushyigikirwa n’ibindi bimenyetso kugira ngo zigire agaciro gahamya ushinjwa icyaha
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2. Amategeko agenga imanza mbonezamubano – Uburyozwe – Impanuka – Umuntu afite inshingano yo kugenzura ibyo ashinzwe kurinda, kandi agomba kuryozwa icyo byangirije hatitawe ko yaba yakoze cyangwa atakoze ikosa – Umwishingizi ariyozwa mu gikigero cy’ibyo yishingiye mu masezerano
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Kurega – Kurega umwishingizi cyangwa umukoresha – uwangirijwe n’impanuka utahisemo kurega umwishingizi (action directe) ahubwo agahitamo kurega umukoresha ubwe (action personnelle), nta kosa aba akoze
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Uburyozwe – Indishyi – Indishyi zikomoka ku mpanuka zitari izo mu muhanda – Mu kubara indishyi zikomoka ku mpanuka zitari izo mu muhanda ntihashingirwa ku Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga, icyakora nta cyabuza Urukiko kwifashisha uburyo (formule) buteganyijwe muri iryo teka
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3. **Amategeko agenga imanza z'ubucuruzi** – Kwandikisha ubucuruzi – Ubucuruzi bw'ubwikorezi – Uburenganzira bwo gukora ubwikorezi – Kwandikisha ubucuruzi burimo n'ubwikorezi bitandukanye no guhabwa uburenganzira bwo gukora ubwikorezi

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mu Rugaga rw'Abavoka biba birangiye, nta zindi ngaruka bishobora kugira ku bireba ikirego cyaregewe urukiko, uretse kugenzura ko uwo muhango wabayeho cyangwa utabayeho gusa – Amabwiriza agenga ibihembo mbonera by'Abavoka, ingingo ya 40.

**NSHILI KIVU TEA FACTORY LTD (NKTF LTD)
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Amasezerano – Kumenya isesa ry'amasezerano mu buryo buteruye – Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n'ubusanzwe umuntu ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyuzwa ntirukurikirane ubwishyu, bifatwa ko rwamenye mu buryo buteruye ko urundi ruhande rwiya mbuye inshingano.

**NSHILI KIVU TEA FACTORY LTD (NKTF LTD)
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Amasezerano – Iseswa ry'amasezerano mu buryo buteruye – Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n'ubusanzwe umuntu ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyuzwa ntirukurikirane ubwishyu, bifatwa ko rwamenye mu buryo buteruye ko urundi ruhande rwiya mbuye inshingano

**NSHILI KIVU TEA FACTORY LTD (NKTF LTD)
N'UNDI v KIGALI LAW CHAMBERS (KLC).....**

Sosiyete – Imikorere y'amasosiyete – Indoor management rule – Amasezerano akozwe n'uhagarariye sosiyete agira

agaciro mu maso y'uwo bayagiranye hatitawe ku makosa yaba yakoze mu micungire yayo

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N'UNDI v KIGALI LAW CHAMBERS (KLC).....119**

4. **Amategeko agenga imanza z'ubutegetsi** – Irangiza ry'urubanza – Inyandikompesha – Umwanzuro w'ubuhuza – Ni inyandiko y'ubwumvikane iriho umukono w'impande zombi n'ubwunzi yakorewe hanze y'urukiko, igasoza urubanza nta y'indi mihango ikozwe bityo, hakarangizwa ibikubiye muri uwo mwanzuro.

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5. **Amategeko agenga imanza z'umurimo** – Umushahara w'umukozi – Kureshyeshya abakozi mu bijyanye n'umushahara – Iyo umukozi yagaragaje ko adahembwa nk'abandi bakora umurimo umwe, ni inshingano z'umukoresha gutanga ibimenyetso bivuguruza ibitangwa n'umukozi cyangwa bigaragaza ko kutabahemba kimwe bishingiye ku mpamvu zifatika kandi zumvikana. Izo mpamvu zemezwa n'Urukiko mu bushishozi bwarwo
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Umushahara w'umukozi – Kureshyeshya abakozi mu bijyanye n'umushahara – Iyo umukozi ahama ko ikimenyetso cy'uko adahembwa nk'abandi bakozi bari ku rwego rumwe nawe kandi bakora imirimo nk'iyе gifitwe n'umukoresha, ashobora gusaba Urukiko gutegeka ko uregwa akigaragaza, cyaba kitagaragajwe, Urukiko rukabyaza ingaruka uko kwifata cyangwa kwanga gutanga icyo kimenyetso ku ruhande ruregwa

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Amasezerano y'umurimo – Iseswa ry'amasezerano y'umurimo – Iyo Urukiko rwemeje ko umukozi wasezerewe mu buryo bunyuranyije n'amategeko agira imishahara ahabwa, iyo mishahara ihwanye n'umushahara atahana mu ntoki (salaire net) aho kuba umushahara mbumbe.

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6. Amategeko agenga imiburanishirize y'imanza mbonezamubano – Agaciro k'inyandiko – Inyandiko Urukiko rushingiraho – amabwiriza – Amabwiriza ni inyandiko zo mu rwego rusange zashyizweho umukono n'Umuyobozi ubifitiye ububasha, zigamije gushyira mu bikorwa itegeko cyangwa zigamije gukurikizwa ku bintu bitarebwa n'itegeko kandi zigatangazwa mu Igazeti ya Leta.

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7. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gusubirishamo urubanza ku mpamvu z'akarengane – Iyakirwa ry'ubujurire bw'uwagobokeshejwe mu bujurire– Uwagobokeshejwe mu bujurire yemerewe kujurira gusa iyo hari ibyo yaciwe.

BANQUE POPULAIRE DU RWANDA ATLAS MARA Plc v NKUSI.....1

8. Gusubirishamo urubanza ku mpamvu z'akarengane – Kuba umuburanyi mu rubanza ruburanishwa ku rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane – Umuntu utarigeze yemererwa kuba umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntabwo kuba umuburanyi mu gihe ruri gusubirwamo

keretse iyo uko kwangirwa kuba umuburanyi ariho akarengane gashingiye

BANQUE POPULAIRE DU RWANDA ATLAS MARA Plc v NKUSI.....1

Gusubirishamo urubanza ku karengane gashingiye ku kuba urukiko rwaranze kwakira ubujurire bwa kabiri– Gusuzuma imizi y'urubanza – Iyo urubanza rwaciwe mu mizi rujuririwe ntirwakirwe mu bujurire bwa kabiri, Urukiko rwashyikirijwe ikirego gisaba gusubirishamo urubanza, rusuzuma impamvu zatumye butakirwa, rukaba rwasuzuma imizi y'urubanza gusa ari uko rusanze harabaye ikosa mu kutakira ubwo bujurire

BANQUE POPULAIRE DU RWANDA ATLAS MARA Plc v NKUSI.....1

**IMANZA ZEREKERANYE
N'IMIBURANISHIRIZE Y'IMANZA**

**URUBANZA RWEREKERANYE
N'IMIBURANISHIRIZE Y'IMANZA
ZASABIWE GUSUBIRISHAMO KU
MPAMVU Z'AKARENGANE**

BANQUE POPULAIRE DU RWANDA ATLAS MARA Plc v NKUSI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM
00005/2020/SC (Nyirinkwaya., P.J., Hitiyaremye, Cyanzayire,
Muhumuza na Rukundakuvuga, J.) 27 Ugushyingo 2020]

Gusubirishamo urubanza ku mpamvu z'akarengane – Kuba umuburanyi mu rubanza ruburanishwa ku rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane – Umuntu utarigeze yemererwa kuba umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntashobora kuba umuburanyi mu gihe ruri gusubirwamo keretse iyo uko kwangirwa kuba umuburanyi ariho akarengane gashingiye.

Gusubirishamo urubanza ku mpamvu z'akarengane – Gusubirishamo urubanza ku karengane gashingiye ku kuba urukiko rwaranze kwakira ubujurire bwa kabiri– Gusuzuma imizi y'urubanza – Iyo urubanza rwaciwe mu mizi rujuririwe ntirwakirwe mu bujurire bwa kabiri, Urukiko rwashyikirijwe ikirego gisaba gusubirishamo urubanza, rusuzuma impamvu zatumye butakirwa, rukaba rwasuzuma imizi y'urubanza gusa ari uko rusanze harabaye ikosa mu kutakira ubwo bujurire.

Amategeko agenga imibruanishirize y'imanza z'ubucuruzi – Gusubirishamo urubanza ku mpamvu z'akarengane – Iyakirwa ry'ubujurire bw'uwagobokeshejwe mu bujurire– Uwagobokeshejwe mu bujurire yemerewe kujurira gusa iyo hari ibyo yaciwe.

Incamake y'ikibazo: Nkusi Evariste yaregeye Urukiko rw'Ubucuruzi rwa Nyarugenge arusaba ko rwategeka BPR

ATLAS MARA Ltd kumwishyura amafaranga ari kuri sheki yahawe na SGES/ATT nyamara Banki yo ntiyamuhe ikaba itanagaragaza inenge yazibonyemo, Urukiko rwategetse BPR ATLAS MARA Ltd kwishyura Nkusi amafaranga yose agaragara kuri sheki yahawe hakanyongeraho indishyi.

BPR ATLAS MARA Ltd ntiyemeye imikirize y'urwo rubanza irujuririra mu Rukiko Rukuru rw'Ubucuzi aho yagaragaje ko Urukiko rubanza rwirengagije ibimenyetso yatanze ndetse rukanga no guhamagaza uwasinye izo sheke. SGES/ATT yagobotse muri uru rubanza kubushake. Urukiko Rukuru rw'Ubucuzi rwaciye urubanza ruvuga ko ubujurire bwa BPR ATLAS MARA Ltd nta shingiro bufite ko nta mpamvu n'imwe yari gutuma itishyura sheki zidafite inenge yemewe kandi zatanzwe mu buryo bukurikije amategeko. Ukugobokeshwa kwa SGES/ATT Ltd ntikwemewe.

BPR ATLAS MARA Plc na SGES/ATT Ltd bombi bajuririye Urukiko rw'Ubujurire bavuga ko Inkiko zabanje zanze gusuzuma nkana ibimenyetso zashyikirijwe ndetse ko Urukiko Rukuru rw'Ubucuzi rwo rwananze ukugoboka mu rubanza kwa SGES/ATT Ltd kandi yarifite ibyo yashakaga gusobanura. Urukiko rw'Ubujurire rwanze kwakirwa ubwo bujurire ngo kuko BPR ATLAS MARA Plc yatsinzwe ku mpamvu zimwe mu nkiko zibanza zombi ariko ntirwagira icyemezo rufata ku bireba ubujurire bwa SGES/ATT Ltd.

BPR ATLAS MARA Plc yatanze ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane irabyemererwa inenga urubanza rwaciwe n'Urukiko rw'Ubujurire kuba rwaranze kwakira ubujurire bwe bwa kabiri rwirengagije ko ikibazo cyo kugobokeshwa kwa SGES/ATT Ltd itagitsindiweho mu nkiko zombi kuko cyari cyaburanweho bwa mbere mu Rukiko Rukuru

rw'Ubucuruzi ndetse rukanirengagiza ko SGES/ATT Ltd yari yajuriye kandi kuri yo bukaba bwari ubujurire bwa mbere.

Kuruhande rwa Nkusi Evariste, avuga ko BPR ATLAS MARA Plc nta karengane yagiriwe kuko kuva urubanza rwatangira yakomeje ivuga gusa ko kuba itarishyuye sheki yashyikirijwe bifite ishingiro ariko ntigaragaze ishingiro ryabyo. Naho kubusabe bwa SGES/ATT ho avuga ko idashobora kuba umuburanyi ku rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane ngo kuko nta hantu na hamwe yigeze iba umuburanyi ko ndetse naho yashatse kugoboka itabyemerewe.

Incamake y'icyemezo:1. Umuntu utarigeze yemererwa kuba umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntashobora kuba umuburanyi mu gihe ruri gusubirwamo keretse iyo uko kwangirwa kuba umuburanyi ariho akarengane gashingiye.

2. Iyo urubanza rwaciwe mu mizi rujuririwe ntirwakirwe mu bujurire bwa kabiri, Urukiko rwashyikirijwe ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, rusuzuma impamvu zatumye butakirwa, rukaba rwasuzuma urubanza mu mizi ari uko gusa rusanze harabaye ikosa mu kutakira ubwo bujurire.

3. Ntawakwitwaza ibibazo byabyukijwebwa mbere mu bujurire ngo asabe ko bishingirwaho hemezwa ko umuburanyi atatsinzwe ku mpamvu zimwe. Gutsindwa ku mpamvu zimwe bigenzurwa hashingiwe ku ngingo zatumye umuburanyi ajurira, umwanzuro wazifashweho n'impamvu zashingiweho n'inkiko zombi.

4. Uwagobokeshejwe mu bujurire yemerewe kujurira gusa iyo hari ibyo yaciwe.

Ikirego cyo gusubirishamo urubanza nta shingiro gifite.

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 63, 52, igika 3

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111

Itegeko N° 32/2009 ryo ku wa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa, ingingo ya 110.

Amabwiriza N° 04/2013 yo ku wa 27/08/2013 ya Banki Nkuru y'u Rwanda agenga ihererekanya koranamuhanga rya sheki, ingingo ya 4

Imanza zifashishijwe:

RS/REV/INJUST/CIV 0023/16/CS rwaciwe n'Urukiko rw'Ikirenga haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya 28.

RS/INJUST/RCOM 00002/2020/SC rwaciwe n'Urukiko rw'Ikirenga haburana Road Solution Pavement Product vs MAILCO Ltd, igika cya 24.

Urubanza

IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi, NKUSI Evariste asaba gutegeka BPR ATLAS MARA Plc kumwishyura 335.330.390 Frw kubera ko iyo banki yanze kumwishyura nta mpamvu yemewe n'amategeko amasheki

yahawe n'umukiriya wayo SGES/ATT Ltd nk'ubwishyu bwa serivisi yayihaye zikomoka ku masezerano y'ibikomoka kuri peteroli (carburant) yabaga yarafashe ku mwenda, ubukode bw'ibiro na parikingi, ndetse asaba n'indishyi zingana na 67.066.078 Frw.

[2] Mu rubanza RCOM 01401/2018/TC, rwaciwe ku wa 26/07/2018, Urukiko rw'Ubucuruzi rwemeje ko BPR ATLAS MARA Plc igomba kwishyura NKUSI Evariste 335.330.390 Frw ahwanye na sheki zose yashyikirijwe ntizishyure hiyongereyeho n'indishyi zose zihwanye na 61.359.470 Frw. Mu gufata icyo cyemezo, Urukiko rwashingiye ku mpamvu zikurikira:

- a. Kuba BPR ATLAS MARA Plc yaranze kwishyura sheki kandi ari inyandiko itavuguruzwa;
- b. Kuba banki itagaragaza inenge cyangwa impamvu zaba ziteganywa n'amategeko zafatwa nk'impamvu yo kutishyura sheki zatanzwe n'ubifitiye uburenganzira, kandi zitanzwe mu buryo bwemewe n'amategeko;
- c. Kuba ntawigeze atambamira izo sheki.

[3] BPR ATLAS MARA Plc ntiyishimiye imikirize y'urubanza ijuririra Urukiko Rukuru rw'Ubucuruzi inasaba ko hagobokeshwa SGES/ATT Ltd, maze ku wa 31/01/2019 mu rubanza N° RCOMA 00583/2018/HCC, urwo Rukiko rwemeza ko ukugobokeshwa ku gahato kwa SGES/ATT Ltd kutakiriwe; ko ubujurire bwa BPR ATLAS MARA Plc nta shingiro bufite, rutegeka ko imikirize y'urubanza rwajuririwe igumaho, BPR ATLAS MARA Plc igaha NKUSI Evariste indishyi mbonezamusaruro ku rwego rw'ubujurire zingana na 31.089.261 Frw na 1.000.000 Frw y'igihembo cya Avoka.

[4] Urukiko rwageze kuri uwo mwanzuro rushingiye ku mpamvu zikurikira:

- Ku byerekeye igobokeshwa rya SGES/ATT Ltd, Urukiko rwasanze itarebwa n'ikibazo kiri hagati ya BPR na NKUSI kuko icyo kibazo kidashingiye ku masezerano yabaye hagati ya SGES/ATT Ltd na NKUSI Evariste, kimwe n'uko kidashingiye ku masezerano yabaye hagati ya SGES/ATT LTD Ltd na BPR ATLAS MARA Plc. Rwasanze ahubwo ari ikibazo gishingiye ku mategeko agenga inyandiko zishobora gucuruzwa (effets de commerce), bityo SGES/ATT Ltd ikaba ntacyo yenda gutsindirwa cyangwa gutsindirwa;
- Ku bijyanye n'impamvu z'ubujurire za BPR ATLAS MARA Plc, Urukiko rwasobanuye ko itigeze igaragaza ko hari amakenga ayo ariyo yose yagize ashingiye ku nenge ziteganywa n'amategeko sheki SGES/ATT Ltd yahaye NKUSI Evariste yaba ifite; bityo ikaba yaragombaga kugendera mu murongo w'amategeko n'amabwiriza agenga sheki, ikazishyura.

[5] BPR ATLAS MARA PLCntiyishimiye icyo cyemezo, ikijuririra mu Rukiko rw'Ubujurire kuri RCOMAA 00031/2019/CA ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amategeko ndetse n'ibimenyetso yatanze maze ruyitegeka kwishyura 335.330.390 Frw n'indishyi mbonezamusaruro zingana na 31.089.261 Frw ziyongera kuri 61.359.470 Frw yaciwe mu Rukiko rw'Ubucuruzi.

[6] SGES/ATT Ltd nayo yajuririye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi cyo kutayemerera kugobokeshwa, ahubwo rukayifata nk'umutangabumya. Nyuma y'itakamba rya

SGES/ATT Ltd ku cyemezo cy'umwanditsi wari wanze kwakira ubujurire bwayo, Perezida w'Urukiko rw'Ubujurire yategetse ko ubujurire bwayo bwandikwa, bityo buhuzwa n'ubujurire bwa BPR ATLAS MARA Plc buhabwa numero RCOMAA 00051/2019/CA.

[7] Ku wa 06/03/2020, Urukiko rw'Ubujurire rwaciye urubanza RCOMAA 00031/2019/CA, ruburanisha ku nzitizi y'iburabubasha yatanzwe na NKUSI Evariste ishingiyeye ku kuba BPR ATLAS MARA Plc yaratsinzwe mu nkiko zombi zabanje ku mpamvu zimwe, rwemeza ko iyo nzitizi ifite ishingiro; rwemeza ko ikirego cya NKUSI Evariste gisaba amafaranga y'ibyakoreshejwe mu rubanza gifite ishingiro; rwemeza ko ubujurire bwa BPR ATLAS MARA Plc butari mu bubasha bw'Urukiko rw'Ubujurire, kuko BPR ATLAS MARA Plc yatsinzwe kabiri ku mpamvu zimwe.

[8] Ku bijyanye n'ubujurire bwa SGES/ATT Ltd, Urukiko rw'Ubujurire rwavuze ko ukugobokeshwa kwayo atari ikibazo cy'ingenzi muri urwo rubanza.

[9] BPR ATLAS MARA Plc yandikiye Perezida w'Urukiko rw'Ikirenga isaba gusuzuma akarengane kari mu rubanza RCOMAA 00031/2019/CA rwaciye ku wa 06/03/2020 n'Urukiko rw'Ubujurire, maze mu cyemezo cye N° 260/CJ/2020 cyo ku wa 18/05/2020, yemeza ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane; ruhabwa N° RS/INJUST/RCOM 00005/2020/SC.

[10] Urubanza rwahamagajwe ku wa 09/11/2020, BPR ATLAS MARA Plc yitaba ihagarariwe na Mugire Rwamfizi Joseph yunganiwe na Me Bugingo Jean Bosco hamwe na Me Uwamahoro Marie Grace; Nkusi Evariste ahagarariwe na Me

Twiringiyemungu Joseph, naho SGES/ATT Ltd ihagarariwe na Me Nzirabatinyi Fidèle. Mbere yo kujya mu mizi y'urubanza urukiko rwabyukije ikibazo cyo kumenya niba SGES/ATT Ltd ari umuburanyi muri uru rubanza.

[11] Me Nzirabatinyi Fidèle avuga ko SGES/ATT Ltd yinjiye mu rubanza igobokeshejwe na BPR ATLAS MARA Plc mu Rukiko Rukuru rw'Ubucuruzi, ariko ihageze ihabwa “qualité” y'umutangabuhamya. Avuga ko yajuririye icyo cyemezo mu Rukiko rw'Ubujurire ariko ikibazo cya “qualité” ya SGES/ATT Ltd nticyagarukwaho kuko ikirego cy'ubujurire bwa BPR ATLAS MARA Plc kitakiriwe. Me Nzirabatinyi Fidèle asoza avuga ko muri uru rubanza SGES/ATT Ltd yifuza gukomeza nk'umutangabuhamya kuko nta kibazo “*grief*” ifite.

[12] Abahagarariye BPR ATLAS MARA Plc bavuga ko mu Rukiko Rukuru rw'Ubucuruzi SGES/ATT Ltd yari umuburanyi ariko Umucamanza akaba yarakoze amakosa yo kuyihindurira “qualité” nyamara hari ibyo iryozwa mu ireme ry'urubanza, ko n'Urukiko rw'Ubujurire rwabivuzeho mu buryo butera akarengane kuko rwirengagije ko ababuranyi bahindutse rukavuga ko kugobokeshwa kwa SGES/ATT Ltd atari impamvu ikomeye ku buryo rwagira icyo ruyivugaho kandi yarajuririwe; ibyo akaba ari nabyo byabateye gusubirishamo urubanza ku mpamvu z'akarengane.

[13] Me Twiringiyemungu Joseph uhagarariye NKUSI Evariste avuga ko Urukiko Rukuru rw'Ubucuruzi rwasanze rutakwita umuburanyi mu rubanza utazagira icyo arutsindiramo cyangwa ngo agire icyo arutsindirwamo, maze rufata SGES/ATT Ltd nk'umutangabuhamya; ko no mu Rukiko rw'Ubujurire SGES/ATT Ltd yagaragaye ivuga ko itajurira kuko urubanza rw'Urukiko Rukuru rw'Ubucuruzi ntacyo rwayitwaye.

[14] Urukiko rumaze kumva impande zose kuri icyo kibazo cyo kumenya niba SGES/ATT Ltd ari umuburanyi, rwafatiye icyemezo mu ntebe y'abacamanza mu buryo bukurikira: “Rusanze BPR ATLAS MARA Plc yarajuririye icyemezo cy’Urukiko Rukuru rw’Ubucuruzi ariko ubujurire bwayo ntibwasuzumwa kuko Urukiko rw’Ubujurire rwasanze rudafite ububasha bwo kuburanisha urwo rubanza. Kubera izo mpamvu, Urukiko rusanga kugeza ubu SGES/ATT Ltd itafatwa nk’umuburanyi kuko itigeze yemererwa kuba umuburanyi mu rubanza rusabirwa gusubirwamo¹. Urukiko rusanga ibyo BPR ATLAS MARA Plc ivuga ko mu mpamvu zayo z’akarengane harimo kuba Urukiko rw’Ubujurire rutarasuzumye ikibazo cy’uko SGES/ATT Ltd yaba umuburanyi, ari ibyasuzumwa ari uko uru Rukiko rusanze Urukiko rw’Ubujurire rwariyambuye ububasha kandi rwari rubufite”.

[15] Iburanisha ryarakomeje, Urukiko rubanza gusuzuma izitizi ijyanye no kumenya urubanza rwaregewe mu rwego rw’akarengane.

[16] Me Twiringiyemungu Joseph avuga ko inzira BPR ATLAS MARA Plc yakoresheje isaba isubirishwamo ry’urubanza atari yo kuko inenga urubanza rwaciwe n’Urukiko Rukuru, n’ubwo urubanza isaba ko rusubirwamo ari urubanza rwaciwe n’Urukiko rw’Ubujurire. Asobanura ko urubanza rwatumye BPR ATLAS MARA Plc yandikira Perezida w’Urukiko rw’Ikirenga imusaba gusubiramo urubanza ku mpamvu z’akarengane ari urubanza N° RCOMAA

¹ Ingingo ya 63 y’itegeko rigena ububasha bw’inkiko yumvikanisha ko abashobora kuba ababuranyi mu rubanza ruburanishwa mu rwego rwo gusubirishamo urubanza ku mpamvu z’akarengane ari abari barabaye ababuranyi mu rubanza rusabirwa gusubirishwamo

00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020, aho ivuga ko Urukiko rwayirenganyije mu kuvuga ko rudafite ububasha bwo kuburanisha urubanza ku mpamvu z'uko yatsinzwe mu nkiko zibanza ku mpamvu zimwe; ariko mu gusobanura akarengane kayo ikanenga ahubwo urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kandi atari rwo yasabiye gusubirishamo, kandi ntigire icyo isobanura ku rubanza yasabiye gusubirishwamo ku mpamvu z'akarengane.

[17] Abahagarariye BPR ATLAS MARA Plc bavuga ko banki yasabye ko hasubirishwamo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko rw'Ubujurire hajuririrwa urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kandi ko bagaragaje akarengane bagiriwe mu manza zose (mu rubanza rwa rw'Urukiko rw'Ubucuruzi, urw'Urukiko Rukuru rw'Ubucuruzi n'urw'Urukiko rw'Ubujurire) kuko ari uruhererekane. I bivugwa na NKUSI Evariste ko iyo BPR ATLAS MARA Plc iba yararenganyijwe n'Urukiko Rukuru rw'Ubucuruzi iba yarandikiye Perezida w'Urukiko rw'Ubujurire, basanga ngo kwaba ari ukwirengagiza itegeko rigena ububasha bw'inkiko mu ngingo ya 58 agaka ka 1, iteganya ko umuburanyi ubonye ko hari urubanza rwamurenganyije yandikira Perezida w'Urukiko rukuriye urwamurenganyije akaba ariwe usuzuma iby'ako karengane.

[18] Urukiko rumaze kumva ibyo impande zombi zivuga ku kibazo cyo kumenya urubanza rwaregawe mu rwego rw'akarengane n'ibigomba kurusuzumwamo, rwongeye kwiherera rufata umwanzuro ukurikira: “Urukiko rusanga, nk'uko rwabitanzeho umurongo², iyo urubanza rwaciwe mu mizi

² Reba urubanza N° RS/REV/INJUST/CIV 0023/16/CS rwaciwe kuwa 27/09/2019 haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya

rujuriwe ntirwakirwe, urukiko ruregewe akarengane gashingiye kuri uko kutakirwa k’ubujurire, rusuzuma ubwo busabe ku birebana n’impamvu zatumye urwo rukiko rutakira ubujurire bwa kabiri; rukaba rwaburanisha ibyerekeye imizi y’urubanza ari uko rusanze mu kutakira ubwo bujurire bwa kabiri, urwo rukiko rwarakoze amakosa. Rusanga rero ibigomba kubanza kuvugwaho muri uru rubanza ari inenge zaba zigaragara mu rubanza RCOMAA 00031/2019/CA rwaciwe n’Urukiko rw’Ubujurire rwanze kwakira ubujurire.

[19] Iburanisha ryakomereje muri uwo murongo, abahagarariye BPR ATLAS MARA Plc bagaragaza ko Urukiko rw’Ubujurire rwirengagije ko impamvu zayitsinze ku rwego rwa mbere n’urwa kabiri atari zimwe kuko mu rwego rwa kabiri ari ikiburanwa ari n’ababuranyi byari byahindutse kuko hari hagobokeshejwe SGES/ATT Ltd kandi ifite ibyo iregwamo bitari byaburanyweho mu rwego rwa mbere; ndetse ikanongeraho ko no kuba SGES/ATT Ltd yari yajuriye byagombaga gutuma urubanza ruburanishwa mu mizi.

[20] Me Twiringiyemungu Joseph wunganira NKUSI Evariste ntiyemeranya n’ibisobanuro bya BPR ATLAS MARA Plc kuri iyo ngingo kuko asanga ikiregerwa nk’uko cyatanzwe na NKUSI Evariste yunganira kitarigeze gihinduka, kandi BPR ATLAS MARA Plc ikaba yaragitsindiye mu nkiko zombi: Urukiko rw’Ubucuruzi n’Urukiko Rukuru rw’Ubucuruzi.

28. Muri urwo rubanza, urukiko rwagize ruti “...bikaba byumvikana ko urubanza rushobora gusubirishwamo ku mpamvu z’akarengane ari urubanza rwafashe icyemezo kirenganya umuburanyi. Mu yandi magambo, urubanza rutakiriwe byafatwa ko rwarenganyije umuburanyi, iyo muri uko kutakirwa kwarwo ariho akarengane gashingiye.”

[21] Urukiko rwasoje iburanisha kuri iki kibazo, rumenyeshya ababuranyi ko mbere y'uko urubanza rukomeza, ruzabanza kugifataho umwanzuro, runabaza ababuranyi niba hari ibyo bifuzaga kongera ku byo bavuze mu myanzuro ku birebana n'indishyi zinyuranye basabye, impande zombi zemeza ko ntacyo zongeraho.

[22] Urukiko rusanga ibibazo bigomba gusuzumwa ari ibi bikurikira:

- a. Kumenya niba Urukiko rw'Ubujurire rwarakoze ikosa mu kutakira ubujurire bwa kabiri bwa BPR ATLAS MARA Plc;
- b. Ibyerekeye indishyi zisabwa n'impande zombi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Urukiko rw'Ubujurire rwarakoze ikosa mu kutakira ubujurire bwa kabiri bwa BPR ATLAS MARA Plc

[23] Abahagarariye BPR ATLAS MARA Plc bavugaga ko Urukiko rw'Ubujurire rwirengagije ko bagobokesheje SGES/ATT Ltd mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi bagira ngo igire ibyo iryozwa ariko urwo rukiko rukayigira umutangabuhamya, ibyo ndetse na SGES/ATT Ltd ikaba yari yarabijuririye, ubujurire bwayo bugahabwa nimero RCOMAA 00051/2019/CA hanyuma bugahurizwa mu rubanza rwazanywe mu karengane. Bakomeza bavugaga ko icyo kibazo cyo kugobokeshwa kwa SGES/ATT Ltd kitigeze kiburanwaho mu Rukiko rw'Ubucuruzi kuko cyaburanyweho bwa mbere mu Rukiko Rukuru rw'Ubucuruzi. Kubera izo mpamvu, bakaba

basanga BPR ATLAS MARA Plc itaratsinzwe kabiri ku mpamvu zimwe kuko ibyaburanwe mu nkiko zombi zabanjirije urw'ubujurire atari bimwe ndetse n'ababuranyi akaba atari bamwe. Bavuga ko n'ubwo ku rwego rwa mbere Urukiko rwavuze ko BPR ATLAS MARA Plc yagombaga kwishyura sheki yashyikirijwe na SGES ATT Ltd ngo zishyurwe Nkusi Evariste, n'urwa kabiri rukaba rwaragumye muri uwo murongo, Urukiko Rukuru rw'Ubucuruzi rwafashe n'ikindi cyemezo gishya kivuga ko SGES/ATT Ltd itari umuburanyi; iki cyemezo ngo akaba ari nacyo cyatumye BPR ATLAS MARA Plc itsindwa.

[24] Me Twiringiyemungu Joseph wunganira Nkusi Evariste ntiyemeranya n'ibisobanuro bya BPR ATLAS MARA Plc kuri icyo ngingo. Asobanura ko umuburanyi watanze ikirego ari na we ugaragaza akanasobanura ibyo asaba, ko NKUSI Evariste yatanze ikirego anasobanura ibikigize ari byo kutishyurwa sheki yari yahawe na SGES/ATT Ltd nyamara zaratanzwe mu buryo bukurikije amategeko; ibi akaba ari nabyo yatsindiweho mu nkiko zombi, yongeraho ko igobokeshwa rya SGES/ATT Ltd ritari buhindure impamvu zashingiweho n'izo nkiko.

UKO URUKIKO RUBIBONA

[25] Urukiko rusanga ipfundo ry'ikibazo muri uru rubanza ari ukumenya niba hari amakosa Urukiko rw'Ubujurire rwakoze mu kwanga kuburanisha urubanza mu mizi rushingiye ku kuba BPR ATLAS MARA Plc yaratsinzwe ku mpamvu zimwe mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi rutitaye ku kuba hari icyemezo cyihariye cyafashwe mu Rukiko Rukuru rw'Ubucuruzi kirebana n'igobokeshwa rya SGES/ATT Ltd ndetse rukaba rutaritaye no ku bujurire bwa SGES/ATT Ltd. Mu

gukemura iki kibazo, Urukiko rurasuzuma niba hari ingaruka icyemezo cyafashwe ku kibazo cyabyukijwe mu Rukiko rwacye urubanza ku rwego rwa kabiri cyagira ku iyakirwa cyangwa kutakirwa k'ubujurire bwa kabiri hashingiwe ku kuba umuburanyi yaratsinzwe mu nkiko zombi ku mpamvu zimwe. Rurasuzuma kandi niba ubujurire bwa SGES/ATT Ltd ubwabwo, bwaragombaga gutuma urubanza ruburanishwa mu mizi.

2. Kumenya niba ikibazo kibyukijwe mu rwego rw'ubujurire cyaba impamvu yashingirwaho mu kwemeza ko umuburanyi atatsinzwe ku mpamvu zimwe.

[26] Ingingo ya 52 y'Itegeko no 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko mu gika cyayo cya 2, ivuga ko Urukiko rw'Ubujurire rufite (kandi) ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciwe n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, ikanarondora ibigomba kuzuzwa ngo ubwo bujurire bwakirwe. Mu gika cya gatatu ariko, yongeraho indi mpamvu igira iti:” Icyakora (kandi) ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe” Urukiko rusanga iyi ari impamvu yihariye ituma urubanza rutakirwa n'iyi ibindi bikenewe ngo ubujurire bwa kabiri bwakirwe byaba byuzuye.

[27] Muri uru rubanza, BPR ATLAS MARA PLC ntiyemera ko yatsinzwe ku mpamvu zimwe kuko hari ibyaburanwe bigafatwaho icyemezo mu Rukiko Rukuru rw'Ubucuruzi birebana no kugobokeshwa kwa SGES/ATT Ltd bitari byaraburanyweho ku rwego rwa mbere. Ku bijyanye n'igisobanuro cyo gutsindwa ku mpamvu zimwe, mu rubanza

RS/INJUST/RCOM 00002/2020/SC³, uru Rukiko rwasobanuye ko “mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje ku mpamvu zimwe, harebwa icyaburanwaga n’imitekerereze ya buri rukiko mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanwe mbere arizo zagarutsweho mu bujurire, kandi ko inkiko zombi zazishubijeho mu buryo bumwe”.

[28] Mu kugenzura ko ingingo zaburanwe mbere ari nazo zaburanwe mu bujurire, uru Rukiko rusanga hagomba kwitabwa ku isano remezo iri hagati y’imanza zombi kandi iyo sano ikaba igaragarira mu mpamvu z’ubujurire n’umwanzuro urubanza ku rwego rwa kabiri rwazifasheho, kuko nk’uko bigaragara mu ngingo ya 150, 5^o-7^o CPCCSA⁴ mu gusobanura izo mpamvu, aribwo umuburanyi watsinzwe urubanza ku rwego rwa mbere agaragaza ibyo arunenga, akaba ari nabyo, nyuma yo kumva ibisobanuro by’uregwa, bifatwaho icyemezo n’Urukiko ku rwego rw’ubujurire.

[29] Iyo kuri izo ngingo zajuririwe, urukiko ruciye urubanza ku rwego rwa kabiri ruhuje umwanzuro n’impamvu zashingiweho mu kuwufata, bikagaragara ko uwajuriye yongeye

³Urubanza RS/INJUST/RCOM 00002/2020/SC rwaciye ku wa 25/09/2020 haburana Road Solution Pavement Product vs MAILCO Ltd, igika cya 24.

⁴Iyo ngingo igira iti: “Ubujurire bukorwa mu buryo bw’umwanzuro utanga ikirego, ugaragaza ibi bikurikira:

.....

5^o urutonde rw’inenge z’urubanza zisabirwa gukosorwa n’ibindi bibazo bigomba gusuzumwa;

6^o ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n’uburyo agomba gukosorwa hashingiwe ku mategeko n’ibimenyetso n’igisabwa urukiko;

7^o ibisobanuro ku birego by’inyongera mu gihe ibyo birego bihari.

gutsindwa n'impamvu zari zatumye atsindwa mbere, nibwo bifatwa ko habaye gutsindwa ku mpamvu zimwe. Mu yandi magambo, gutsindwa ku mpamvu zimwe, bigenzurwa hashingiwe ku ngingo zatumye umuburanyi ajurira, umwanzuro wazifashweho n'impamvu zashingiweho n'inkiko zombi. Ibyo bivuze ko ibindi ababuranyi bemerewe gusaba mu rwego rw'ubujurire nk'uko biteganywa mu ngingo ya 154 CPCCSA - nk'inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse nk'indishyi z'igihombo umuburanyi yagize kuva urubanza ku rwego rwa mbere ruciwe; kimwe no kugobokeshwa umuburanyi mu bujurire- bidashobora gushingirwaho hasuzumwa ko umuburanyi yatsinzwe ku mpamvu zimwe, bityo hakaba nta n'uwakwitwaza umwanzuro wabifashweho ashaka kumvikanisha ko atatsinzwe ku mpamvu zimwe kuko nyine ibyo biba bitarasuzumwe ku rwego rwa mbere; ku bw'ibyo hakaba nta n'igereranya rishobora kubikorerwaho harebwa imanza zaciwe ku nzego zombi kuko ntawe ugereranya ibidafitanye isano.

[30] Muri uru rubanza, BPR ATLAS MARA Plc yagobokesheje SGES/ATT Ltd mu bujurire, urukiko rufata umwanzuro ko uko kugobokeshwa kutakiriwe. Nk'uko byasobanuwe mu gika kibanziriza iki, Urukiko rusanga uwo mwanzuro BPR ATLAS MARA Plc idashobora kuwushingiraho ngo ivuge ko itatsinzwe ku mpamvu zimwe yitwaje ko utari wafashwe mu rubanza rwajuririwe, bikaba byumvikana ko nta n'uburyo washingirwaho hasuzumwa ko yatsinzwe ku mpamvu zimwe kuko ntacyo ugereranywa nawo mu rubanza rwaciwe ku rwego rwa mbere.

[31] Hashingiwe kuri ibyo bisobanuro, Urukiko rusanga ibyo BPR ATLAS MARA Plc ivuga ko Urukiko rw'Ubujurire rwayirenganyije rwanga kwakira ubujurire bwa kabiri

yarushyikirije kuko ikibazo cyo kugobokeshwa kwa SGES/ATT Ltd kitari mu byo yatsindiweho ku mpamvu zimwe, nta shingiro bifite.

3. Kumenya niba kuba SGES/ATT Ltd yarajuririye icyemezo yafatiwe ku kugobokeshwa kwayo byaragombaga gutuma Urukiko rw'Ubujurire ruburanisha mu mizi.

[32] Mu bisobanuro byayo, haba mu myanzuro cyangwa mu iburanisha, BPR ATLAS MARA Plc, igaragaza ko Urukiko rw'Ubujurire rwirengagije ko SGES/ATT Ltd nayo yari yajuririye; ibyo bikaba ngo byaragombaga gutuma Urukiko rw'Ubujurire ruburanisha urubanza mu mizi. Mu gusubiza kuri iyi ngingo, urukiko rusanga hagomba gusuzumwa niba ubujurire bwa SGES/ATT Ltd bwaragombaga kwakirwa n'ingaruka ibyo bifite ku karengane BPR ATLAS MARA Plc ivuga ko yagiriwe.

[33] Ku byerekeye iyakirwa ry'ubujurire bwa SGES/ATT Ltd, ingingo ya 116 a12 CPCCSA, igira iti: “Kabone n’aho urubanza rwaba ruciwe ku rwego rwa nyuma, umuburanyi yemerewe kujuririra urubanza yagobokeshejwemo inshuro imwe iyo hari ibyo yaciwe”. Nk’uko iyi ngingo ibigaragaza, uwagobokeshejwe ku gahato yemerewe kujuririra iyo hari ibyo yaciwe. Mu yandi magambo iyo ntacyo yategetswe kwishyura ubujurire bwe ntibwakirwa.

[34] Nk’uko bigaragara mu rubanza rwaciwe n’Urukiko Rukuru rw’Ubucuruzi, urukiko rwemeje ko SGES/ATT Ltd itaba umuburanyi mu rubanza idashobora kugira icyo isabamo cyangwa isabwa⁵; ko ahubwo urubanza irugumamo

⁵Reba igika cya 6 cy’urubanza N° RCOMA 00583/2018/HCC

nk'umutangabuhamya; bikaba byumvikana ko ntacyo yategetswe kwishyura icyo aricyo cyose; bityo ikaba itari yemerewe kuba yajuririra urwo rubanza.

[35] Kuba Urukiko rw'Ubujurire ntacyo rwavuze kuri ubwo bujurire, ahubwo rukavuga ko rusanga atari ikibazo cy'ingenzi⁶ uru Rukiko rusanga ntacyo rwabivugaho kuko SGES/ATT Ltd itigeze igaragaza ko hari icyo biyitwaye. Ikibazo gihari akaba ari ukumenya niba ibyo BPR ATLAS MARA Plc yabyuririraho igasaba ko urubanza rusubirwamo ku mpamvu z'akarengane.

[36] Uru rukiko rusanga impamvu ituma ikirego kitakirwa ari impamvu ireba umuburanyi urukiko rwangiye kwakira cyangwa gusuzuma ikirego, kuko urukiko rufite ububasha bwo kutakira ikirego/ubujurire bw'umuburanyi umwe ariko rukaba rwakwakira ikirego/ubujurire bw'undi cyangwa aband. Kuba rero urukiko rwaba rwarakoze ikosa ku bireba SGES/ATT Ltd, ibyo ntibihesha BPR ATLAS MARA Plc ububasha bwo kubigira ikibazo cyatuma urubanza rusubirwamo ku mpamvu z'akarengane kuko itayihagarariye.

[37] Kubera izo mpamvu zose, uru rukiko rusanga nta karengane BPR ATLAS MARA Plc yatewe n'urubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire, bityo rukaba rudashobora gusuzuma akarengane ivuga ko kari mu rubanza RCOMA 00583/2018/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi.

⁶ Reba igika cya 21 cy'urubanza N° RCOMAA 00031/2019/CA

4. Ibyerekeye indishyi

a. Indishyi zo gushorwa mu manza

[38] Me Twiringiyemungu Joseph uhagarariye NKUSI Evariste avuga ko ikirego cyatanzwe na BPR ATLAS MARA Plc kigamije gusa gukomeza kumuheza mu gihirahiro kugira ngo atabona ubwishyu bwe. Bityo akaba asaba Urukiko rw'Ikirenga kuyitegeka kwishyura uwo ahagarariye indishyi zo gushorwa mu manza ku maherere zingana na 10.000.000 Frw.

[39] Abahagarariye BPR ATLAS MARA Plc, bavuga ko banki yashowe mu manza z'amaherere, nyamara ko nta kosa yigeze ikora ahubwo yubahirije inshingano zayo uko yazisabwaga. Bityo bakaba basanga idakwiye kuryozwa ayo amafaranga. Basaba ko ahubwo NKUSI Evariste ari we wabyirengera kuko yari yasobanuriwe impamvu sheki zitishyuwe.

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga indishyi zo gushorwa mu manza zisabwa na NKUSI Evariste nta shingiro zifite kuko nta kigaragaza ku buryo budashidikanywaho ko BPR ATLAS MARA Plc yatanze ikirego mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane izi neza ko nta zindi nyungu ifitemo uretse kugira ngo NKUSI Evariste atishyurwa.

b. Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[41] Me Twiringiyemungu Joseph uhagarariye NKUSI Evariste asaba Urukiko gutegeka BPR ATLAS MARA Plc

kumwishyura igihembo cya Avoka n'amafaranga y'ikurikiranarubanza bingana na 5.000.000 Frw.

[42] Abahagarariye BPR ATLAS MARA Plc na bo basaba Urukiko rw'Ikirenga gutegeka NKUSI Evariste kuyisubiza 5.000.000 Frw akubiyemo igihembo cy'Avoka kingana na 3.000.000 Frw n'amafaranga y'ikurikiranarubanza angana na 2.000.000 Frw bashingiye ku ngingo ya 26 y'Amabwiriza N° 01/2014 agena ibihembo fatizo by'Abavoka mu Rwanda⁷ ndetse n'ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi⁸

UKO URUKIKO RUBIBONA

[43] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asabwa na BPR ATLAS MARA Plc nta shingiro afite kuko itsinzwe ibyo iburana. Rusanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka uhagarariye NKUSI Evariste asaba ayakwiye kuko ariwe utsinze uru rubanza, ariko kuko atagaragaza uburyo ayabaramo ngo anabigaragarize ibimenyetso, Urukiko rukaba rumugeneye mu bushishozi bwawo amafaranga y'igihembo cy'Avoka ibihumbi magana atanu (500.000 Frw) n'ibihumbi magana atatu (300.000 Frw) y'ukurikiranarubanza kuri uru rwego, ni ukuvuga ibihumbi magana inani (800.000 Frw) yose hamwe.

⁷Iyo ngingo ivuga ko "Igihembo cy'Avoka kiri hagati ya 500.000 Frw na 5.000.000 Frw."

⁸ Iyo ngingo igira iti: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020, cyatanzwe na BPR ATLAS MARA PLCnta shingiro gifite;

[45] Rwemeje ko nta karengane kari mu rubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020;

[46] Rwemeje ko imikirize y'urubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020 idahindutse;

[47] Rutegetse BPR ATLAS MARA PLC guha NKUSI Evariste amafaranga ibihumbi magana inani (800.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka kuri uru rwego.

IMANZA ZACIWE MU MU MIZI

URUBANZA RW'UBUTEGETSI

Re BIZIMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RAD
00002/2021/SC – (Cyanzayire, P.J., Hitiyaremye na Karimunda,
J.) 27 Nyakanga 2022]

Amategeko agenga imanza z'ubutegetsu – Irangiza ry'urubanza – Inyandikompesha – Umwanzuro w'ubuhuza – Ni inyandiko y'ubwumvikane iriho umukono w'impande zombi n'ubwunzi yakorewe hanze y'urukiko, igasozza urubanza nta y'indi mihango ikozwe bityo, hakarangizwa ibikubiye muri uwo mwanzuro.

Incamake y'ikibazo: Bizimana yaregeye Urukiko Rwisumbuye rwa Nyarugenge mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, asaba gusubizwa uburenganzira bwe kubera icyemezo cyafashwe ku butaka yaguze cyo kubucamo umuhanda atabizi, ahasigaye hagateganyirizwa ubusitani, aho abimenyeye yandikira Akarere ka Kicukiro atakamba asaba ko icyo cyemezo gikurwaho ariko ntiyasubizwa.

Urukiko rwemeje kutakira ikirego cye, rusobanura ko ibyo yaregeye bidakwiye kuregerwa mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, kuko ikirego cy'ubwo bwoko gitangwa gusa ndetse kikakirwa iyo ari ibibazo bigaragara ko nta mpaka biteje ku buryo byaba ngombwa ko undi muburanyi ahamagarwa.

Urega yajuririye Urukiko Rukuru ariko rwemeza ko ubujurire bwe budafite ishingiro rushingiye ku mpamvu zimwe n'izatanzwe n'Urukiko rubanza, rwongeraho kuba uregwa atarasubijwe ku butakambe bwe bitavuze ko afite uburenganzira ku mutungo we. Ibi byatumye asaba ko urubanza rwe

rusubirishwamo ku mpamvu z'akarengane, maze ruburanishwa mu ruhame impande zombi zifitenye ikibazo zihari. Aba bombi baje kwemera ko ikibazo cyabo gikemurwa mu nzira y'ubuhuza kuko aribwo buryo bwiza bwo gukemura impaka bafitanye.

Incamake y'icyemezo: Umwanzuro w'ubuhuza ni inyandiko y'ubwumvikane iriho umukono w'impande zombi n'ubwunzi yakorewe hanze y'urukiko, igasoza urubanza nta y'indi mihingo ikozwe bityo, hakarangizwa ibikubiye muri uwo mwanzuro.

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 9, 178 n'iya 241.

Nta manza zifashishijwe.

I. IMITERERE Y'URUBANZA

[1] Ku wa 24/03/2017, Bizimana Jacques yaguze ikibanza na Batamuriza Yvonne ku mafaranga 4.550.000, gifite UPI: 1/03/01/1981, giherereye mu Mudugudu wa Kimena, Akagari ka Karembure, Umurenge wa Gahanga, Akarere ka Kicukiro, Umujyi wa Kigali. Avuga ko haje gufatwa icyemezo cyo gucamo umuhanda atabizi, ahasigaye hagateganyirizwa ubusitani, aho abimenyeye akandikira Akarere ka Kicukiro atakamba asaba ko icyemezo gikurwaho ariko ntasubizwe.

[2] Byatumye aregera Urukiko Rwisumbuye rwa Nyarugenge mu buryo bw'inyandiko nsobanurakirego itanzwe

n'umuburanyi umwe, asaba gusubizwa uburenganzira bwe, urubanza rwandikwa kuri RAD 00208/2018/TGI/NYGE, rucibwa ku wa 06/12/2018. Urukiko rwemeje kutakira ikirego cye, rusobanura ko ibyo Bizimana Jacques yaregeye bidakwiye kuregerwa mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, kuko ikirego cy'ubwo bwoko gitangwa gusa ndetse kikakirwa iyo ari ibibazo bigaragara ko nta mpaka biteje ku buryo byaba ngombwa ko undi muburanyi ahamagarwa. Rwasobanuye kandi ko ibiteganywa mu ngingo ya 178, igika cya 5, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi¹, bitatuma ikirego cyakirwa igihe cyose bigaragara ko hari impaka kandi nta kiramirwa cyihuse kigaragarizwa urukiko.

[3] Bizimana Jacques yajuririye urwo rubanza mu Rukiko Rukuru, rwandikwa kuri RADA 00011/2019/HC/KIG, rucibwa ku wa 12/03/2019, hemezwa ko ubujurire bwe budafite ishingiro. Urukiko rwashingiye ku mpamvu zimwe n'izatanzwe n'Urukiko rubanza, rwongeraho ko kuba uregwa atarasubijwe ku butakambe bwe bitavuze ko afite uburenganzira ku mutungo we, ahubwo bimuha uburenganzira bwo kuregera inkiko kugirango ikibazo cye gisuzumwe.

¹ Ingingo ya 178, igika cya 3, ya CPCCSA iteganya ko umuyobozi utakambiwe agomba gusubiza ubwo butakambe mu gihe cy'ukwezi kumwe (1) kubarwa uhereye umunsi yabuboneyeho. Iyo adasubije, ubutakambe bufatwa nk'aho bufite ishingiro. Igika cya 5 cy'iyi ngingo gitangwa ko iyo nta gisubizo yahawe kandi atasubijwe uburenganzira bwe, ashobora gusaba urukiko ruburanisha imanza z'ubutegetsi gutegeka ko uburenganzira bwe bwubahirizwa. icyo kirego gitangwa mu gihe kitarenze ukwezi kumwe (1) mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe.

[4] Nyuma y'uko urwo rubanza ruciwe, Bizimana Jacques yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko rusubirwamo ku mpamvu z'akarengane, amaze kubisuzuma akora raporo igaragaza ko urubanza rukwiye gusubirwamo, ayohereza Perezida w'Urukiko rw'Ikirenga. Mu cyemezo nimeru 0202/CJ/2021 cyo ku wa 10/08/2021, Perezida w'Urukiko rw'Ikirenga yasabye ko urubanza rwandikwa mu bitabo by'ibirego rukongera kuburanishwa; rwandikwa kuri RS/INJUST/RAD 00002/2021/SC, ababuranyi bamenyeshwa ko ruzaburanishwa ku wa 16/11/2021.

[5] Iburanisha ry'urubanza ryabereye mu ruhame, Bizimana Jacques yunganiwe na Me Manirafasha Jean Paul, Umujyi wa Kigali wahamagajwe mu rubanza uburanirwa na Me Safari Vianney. Hashingiwe ku ngingo ya 9, igika cya 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi², ababuranyi babajijwe niba ikibazo bafite kitakemuka mu nzira y'ubuhuzwa, bemera ko aribwo buryo bwiza bwo gukemura impaka bafitanye, bumvikana ko uzababera umuhuza ari Me Kavaruganda Julien.

[6] Me Kavaruganda Julien yashyikirijwe icyemezo cy'Urukiko cyo ku wa 22/11/2021 kimushyiraho nk'umuhuza mu rubanza RS/INJUST/RC 00002/2021/SC, ahabwa igihe cyo kugeza ku wa 31/12/2021 kugirango abe yashyikirije raporo abo bireba bose. Urubanza rwongeye gushyirwa kuri gahunda y'iburanisha ku wa 13/01/2022, ariko ntirwaburanishwa kuko ku

² Umucamanza ashobora gushishikariza ababuranyi gukoresha ubwunzi iyo abona ko ari bwo buryo buboneye mu kurangiza impaka. Ashobora kubungabunga ubwe cyangwa akabohereza mu bwunzi, agasubika urubanza mu gihe ubwunzi burimo gukorwa.

wa 12/01/2022 Umuhuza yanditse asaba kongererwa igihe, agahabwa nibura kugeza ku wa 28/02/2022 kugirango abe yamaze gutanga raporo.

[7] Ku wa 21/06/2022, Umuhuza yashyikirije Urukiko raporo y'ibyavuye mu buhuza yo ku wa 17/06/2022, igaragaza ko impaka ababuranyi bari bafitanye zirebana n'ubutaka bubaruye kuri UPI: 1/03/01/1981, buherereye mu Mudugudu wa Kimena, Akagari ka Karembure, Umurenge wa Gahanga, Akarere ka Kicukiro, Umujyi wa Kigali, zarangiye abo bireba bose bumvikanye.

[8] Iburanisha ryo kwemeza umwanzuro w'ubuhuza ryabaye ku wa 27/07/2022, abari mu rubanza bose bitabye, Bizimana Jacques yunganiwe na Me Manirafasha Jean Paul, naho Umujyi wa Kigali wahamagajwe mu rubanza uburanirwa na Me Shema Gérard. Urukiko rwamenyesheje abari mu rubanza ko rwabonye inyandiko y'ubwumvikane impande zose zemeranyijweho, bavuga ko impaka bari bafitanye zakemutse burundu kandi ko nta gisigaye gusuzumwa, barusaba kwemeza umwanzuro w'ubuhuza.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

1. Kumenya niba umwanzuro w'ubuhuza wakwemezwa

[9] Hashingiwe ku mwanzuro w'ubuhuza wo ku wa 17/06/2022, ugaragaza ko abari mu rubanza bose bemeranyijwe ku bibazo bari barushyikirije, Urukiko rurasanga uru rubanza rugomba gusozwa nta yindi mihango, bityo hakazarangizwa ibikubiye muri uwo mwanzuro nk'uko biteganywa n'ingingo ya

241, 7° y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. Iyo ngingo iteganya ko inyandiko y'ubwumvikane iriho umukono w'impande zombi n'ubwunzi byakorewe hanze y'urukiko ari inyandikompesha.

III. ICYEMEZO CY'URUKIKO

[10] Rwemeje ko ikirego Urukiko rwari rwashyikirijwe mu rubanza RS/INJUST/RAD 000002/2021/SC, gikemuwe nk'uko ababuranyi babyemeranyijweho mu mwanzuro w'ubuhuza wo ku wa 17/06/2022 uri ku mugereka w'uru rubanza.

[11] Rutegetse ko umwanzuro w'ubuhuza urangizwa uko wanditse.

IMANZA Z'IMBONEZAMUBANO

MANIRARORA v RWANDA RUDNIKI LTD

[Rwanda URUKIKO RW'UBUJURIRE –RS/INJUST/RC
00013/2021/CA (Rukundakuvuga, P.J., Kamere na Ngagi) 28
Kamena 2022]

Amategeko agenga imanza mbonezamubano – Uburyozwe – Impanuka – Umuntu afite inshingano yo kugenzura ibyo ashinzwe kurinda, kandi agomba kuryozwa icyo byangirije hatitawe ko yaba yakoze cyangwa atakozwe ikosa – Umwishingizi ariyozwa mu gikigero cy'ibyo yishingiye mu masezerano.

Amategeko agenga imanza mbonezamubano – Kurega – Kurega umwishingizi cyangwa umukoresha – uwangirijwe n'impanuka utahisemo kurega umwishingizi (action directe) ahubwo agahitamwo kurega umukoresha ubwe (action personnelle), nta kosa aba akoze.

Amategeko agenga imanza mbonezamubano – Uburyozwe – Indishyi – Indishyi zikomoka ku mpanuka zitari izo mu muhanda – Mu kubara indishyi zikomoka ku mpanuka zitari izo mu muhanda ntihashingirwa ku Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, icyakora nta cyabuza Urukiko kwifashisha uburyo (formule) buteganyijwe muri iryo teka.

Amategeko agenga imburanishirize y'imanza mbonezamubano – Agaciro k'inyandiko – Inyandiko Urukiko rushingiraho – amabwiriza – Amabwiriza ni inyandiko zo mu rwego rusange zashyizweho umukono n'Umuyobozi ubifitiye ububasha, zigamije gushyira mu bikorwa itegeko cyangwa zigamije gukurikizwa ku

bintu bitarebwa n'itegeko kandi zigatangazwa mu Igazeti ya Leta.

Incamake y'ikibazo : Urubanza rwatangiye Manirarora arega Rwanda Rudniki Ltd mu Rukiko Rwisumbuye rwa Muhanga, arusaba kuyitegeka kumuha indishyi zikomoka ku mpanuka y'akazi yamuteye ubumuga buhoraho bungana na 40% kuko yari umukoresha we, hashingiwe ku Iteka rya Perezida rikurikizwa mu kubara indishyi zikomoka ku mpanuka z'ibinyabiziga. Urukiko rwaciye urubanza RC00006/2017/TGI/MHG rwaciye n'Urukiko rwemeza ko ikirego yatanze gifite ishingiro, rutegeka Rwanda Rudniki Ltd guha Manirarora indishyi zitandukanye.

Rwanda Rudniki Ltd ntiyishimiye imikirize y'urubanza, iyijuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, ivuga ko Urukiko Rwisumbuye rwa Muhanga rwayitegetse kwishyura Manirarora indishyi kandi atarigeze aba umukozi ufutanye na yo amasezerano y'akazi ugengwa n'Itegeko ry'umurimo mu Rwanda, ivuga kandi ko Urukiko mu kumugenera indishyi rwashingiye ku Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kandi impanuka yakoze atari iyo mu muhanda.

Urukiko Rukuru, Urugereko rwa Nyanza, rwaciye urubanza RCA00104/2017/HC/NYZ rwemeza ko ubujurire bwatanzwe na Rwanda Rudniki Ltd mu izina ry'Umuyobozi wayo bufite ishingiro kuri bimwe, ko imikirize y'urubanza RC00006/2017/TGI/MHG rwaciye n'Urukiko Rwisumbuye rwa Muhanga ihindutse kuri bimwe, ko indishyi zigomba kubarwa hakurikijwe Amabwiriza yatanzwe n'Ikigo gishinzwe Mine, Peteroli na Gazi mu Rwanda, rutegeka SAHAM Assurance

Rwanda Ltd mu izina ry'Umuyobozi wayo guha Manirarora indishyi zitandukanye.

Manirarora yasubirishijemo urubanza RCA00104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru Urugereko rwa Nyanza ingingo nshya avuga ko mu guca urwo rubanza habayeho uburiganya, maze uru Rukiko mu rubanza RS/REV/RC 00004/2018/HC/NYZ rwemeza ko ikirego cyo gusubirishamo urubanza RCA00104/2017/HC/NYZ ingingo nshya cyatanzwe na Manirarora kitakiriwe.

Manirarora yatakambiye Urukiko rw'Ubujurire asaba ko urubanza RCA0104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru Urugereko rwa Nyanza rusubirishwamo ku mpamvu z'akarengane, nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga, amusaba kwemeza ko urwo rubanza rusubirwamo kuko rushobora kuba rurimo akarengane. Perezida w'Urukiko rw'Ikirenga, yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, maze arwohereza mu Rukiko rw'Ubujurire kugira ngo ruzaruburanishe. Rwanda Rudniki Ltd isaba ko Sanlam AG Plc ihamagazwa mu rubanza nk'umwishingizi wayo Urukiko rurabyemera.

Uhagarariye Manirarora avuga ko amasezerano SANLAM AG Plc yagiranye na Rwanda Rudniki Ltd ataboneye kandi areba abayagiranye, akaba ariyo mpamvu bareze Rwanda Rudniki Ltd bakaba basaba Urukiko rw'Ubujurire kwemeza ko Rwanda rudniki Ltd ari yo ikwiye kuryozwa indishyi kuko itafatiye abakozi bayo ubwishingizi bukwiye.

Uhagarariye Rwanda Rudniki Ltd Avuga ko indishyi zicibwa uwakoze ikosa kandi bo nta kosa bakoze kandi ko ingingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano

yari gukoreshwa mu gihe Rwanda Rudniki Ltd yari kuba nta bwishingizi yafashe, ko rero SANLAM AG Plc ari yo igomba kwishyura indishyi bityo akaba ari nayo igomba kuregwa.

Uhagarariye SANLAM AG Plc avuga ko kuba Manirarora atarigeze arega SANLAM AG Plc asanga atari yo yaryozwa indishyi. Ko mu gihe Urukiko rwabibona ukundi, rugasanga ari yo igomba kwishyura indishyi, yakwishyura izikubiye mu masezerano yari hagati ya SANLAM AG Ltd na Rwanda Rudiniki Ltd.

Urukiko rw'Uburundi rwemeje ko nta kosa Manirarora yakoze asaba ko Rwanda Rudniki Ltd iryozwa indishyi zikomoka ku mpanuka yatewe n'ikirombe cyayo; bityo Rwanda Rudniki Ltd igomba kwishyura indishyi zikomoka ku mpanuka Manirarora yakoreye mu kirombe cyayo.

Incamake y'icyemezo: 1. Umuntu afite inshingano yo kugenzura ibyo ashinzwe kurinda, kandi agomba kuryozwa icyo byangirije hatitawe ko yaba yakoze cyangwa atakoze ikosa.

2. Uwangirijwe n'impanuka utahisemo kurega umwishingizi (action directe) ahubwo agahitamo kurega umukoresha ubwe (action personnelle), nta kosa aba akoze.

3. Amabwiriza ni inyandiko zo mu rwego rusange zashyizweho umukono n'Umuyobozi ubifitiye ububasha, zigamije gushyira mu bikorwa itegeko cyangwa zigamije gukurikizwa ku bintu bitarebwa n'itegeko kandi zigatangazwa mu Igazeti ya Leta.

4. Mu kubara indishyi zikomoka ku mpanuka zitari izo mu muhanda ntihashingirwa ku Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, icyakora nta cyabuza Urukiko kwifashisha uburyo (formule) buteganyijwe muri iryo teka.

**Ikirego cyo gusubirishamo Urubanza ku mpamvu
z'akarengane ku mpamvu z'akarengane gifite
ishingiro.**

**Urubanza rusubirishwamo ku mpamvu z'akarengane
ruhindutse kuri byose**

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha
bw'inkiko, Ingingo ya 63

Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho Igitabo cya
gatatu cy'urwunge rw'Amategeko mbonezamubano,
ingingo ya 258, 260

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
9,111

Amabwiriza N° 01/2014 agena ibihembo mbonera by'abavoka,
ingingo ya 26

Imanza zifashishijwe.

Urubanza RCAA 00008/2020/CA rwa Ndizeye Alphonse
iburana na Kibungo Medical Center na PRIME
Insurance Company Plc, rwaciwe n'Urukiko
rw'Ubujurire ku wa 25/06/2021,

Urubanza RADA0054/12/CS rwa Kabayijuka Gaspard aburana
na Leta y'u Rwanda (Minisanté) rwaciwe n'Urukiko
rw'Ikirenga ku wa 19/12/2014,

urubanza RCAA 0049/14/CS, rwa SORAS AG Ltd iburana
N'umuhoza Pacifique n'abandi rwaciwe n'Urukiko
rw'Ikirenga ku wa 25/11/2016.

Urubanza RCAA 00073/2018/CA, rwa Nyirabatesi Laurence
aburana n'Ibitaro byitiriwe Umwami Fayisali (King

Faisal Hospital) rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019,

Inyandiko z'abahanga zifashishijwe.

Philippe Le TOURNEAU et autres, Droit de la responsabilité et des contrats: régimes d'indemnisation, 10^{ème} édition, Paris, Dalloz, 2014, pp.1973-1974

Francois Terré, Philippe Smeler na Yves Lequette, Droit civil. Les obligations, 11^{ème} édition, Paris, Dalloz, 2013, p.253.

Serge GUINCHARD, Lexique des termes juridiques 2015-2016, 23^{ème} édition, 2015, Paris, Dalloz, p. 887

Gérard CORNU, Vocabulaire Juridique, 2007-, 8^{ème} édition, Paris, Quadrige/PUF, p. 789.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Manirarora Jean de Dieu yari umukozi wa sosiyete icukura amabuye y'agaciroyitwa Rwanda Rudniki Ltd kuva mu mwaka wa 2008 kugeza ku wa 29/10/2015 ubwo yakoraga impanuka, kuri iyo tariki ya 29/10/2015 yagwiriwe n'ikirombe avunika ukuguru bikomeye, ndetse anakomereka mu musaya, iyo mpanuka imusigira ubumuga buhoraho buri ku gipimo cya 40%.

[2] Manirarora Jean de Dieu yabimenyesheje Rwanda Rudniki Ltd nayo imubwira ko yareba umwishingizi w'ikirombe ari we SAHAM Assurance Rwanda Ltd, Manirarora ahageze asanga amasezerano SAHAM Assurance Rwanda Ltd (yahoze ari CORAR Assurance) yagiranye n'ubuyobozi bwa Rwanda

Rudniki Ltd ateganya ko umukozi agwiriwe n'ikirombe agapfa ahabwa 1.000.000Frw n'ibyakoreshewe mu gushingura naho ukomerekeyemo agahabwa amafaranga hakurikijwe ingano y'ubumuga yatewe n'impanuka. Manirarora Jean de Dieu abonye ayo masezerano atabonye yareze Rwanda Rudniki Ltd nk'umukoresha we mu Rukiko Rwisumbuye rwa Muhanga, arusaba kuyitegeka kumuha indishyi zikomoka ku mpanuka y'akazi yamuteye ubumuga buhoraho bungana na 40%, hashingiwe ku Iteka rya Perezida rikurikizwa mu kubara indishyi zikomoka ku mpanuka z'ibinyabiziga.

[3] Mu rubanza RC00006/2017/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 26/10/2017, urwo Rukiko rwemeje ko ikirego cyatanzwe na Manirarora Jean de Dieu gifite ishingiro, rutegeka Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 4.099.607Frw y'indishyi z'ibangamirabukungu, 432.000Frw y'indishyi z'akababaro, 432.000Frw y'indishyi z'ibangamiraburanga, 540.000Frw indishyi z'ibangamira ry'uburambe ku kazi, 100.000Frw yakoreshejwe mu kwivuzza, 50.000Frw y'ikurikirarubanza, na 500.000 Frw y'igihembo cya Avoka, yose hamwe aba 6.153.607Frw, ikanamwishyura 50.000 Frw y'amagarama y'urubanza.

[4] Rwanda Rudniki Ltd ntiyishimiye imikirize y'urubanza, iyijuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, ivuga ko Urukiko Rwisumbuye rwa Muhanga rwayitegetse kwishyura Manirarora Jean de Dieu indishyi kandi atarigeze aba umukozi ufutanye na yo amasezerano y'akazi ugengwa n'Itegeko ry'umurimo mu Rwanda, ivuga kandi ko Urukiko mu kumugenera indishyi rwashingiye ku Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyuraindishyi

ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kandi impanuka yakoze atari iyo mu muhanda.

[5] Ku wa 10/07/2018, Urukiko Rukuru, Urugereko rwa Nyanza, rwaciye urubanza RCA00104/2017/HC/NYZ rwemeza ko ubujurire bwatanzwe na Rwanda Rudniki Ltd mu izina ry'Umuyobozi wayo bufite ishingiro kuri bimwe, ko imikirize y'urubanza RC00006/2017/TGI/MHG rwaciye n'Urukiko Rwisumbuye rwa Muhanga ku wa 26/10/2017 ihindutse kuri bimwe, ko indishyi zigomba kubarwa hakurikijwe Amabwiriza yatanzwe n'Ikigo gishinzwe Mine, Peteroli na Gazi mu Rwanda, rutegeka SAHAM Assurance Rwanda Ltd mu izina ry'Umuyobozi wayoguha Manirarora Jean de Dieu indishyi zose hamwe zingana na 2.906.920Frw, ruvuga ko amagarama y'urubanza ahwanye n'ibyakoze mu rubanza.

[6] Ku wa 31/08/2018, Manirarora Jean de Dieu yasubirishijemo urubanza RCA00104/2017/HC/NYZ ingingo nshya, ikirego cyeye cyandikwa kuri RS/REV/RC 00004/2018/HC/NYZ, avuga ko mu guca urwo rubanza habayeho uburiganya. Ku wa 25/10/2018, Urukiko Rukuru, Urugereko rwa Nyanza, rwemejeko ikirego cyo gusubirishamo urubanza RCA00104/2017/HC/NYZ ingingo nshya cyatanzwe na Manirarora Jean de Dieu kitakiriwe.

[7] Manirarora Jean de Dieu yatakambiye Urukiko rw'Ubujurire asaba ko urubanza RCA00104/2017/HC/NYZ rusubirishwamo ku mpamvu z'akarengane, nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga, amusaba kwemeza ko urwo rubanza rusubirwamo kuko rushobora kuba rurimo akarengane. Ku wa 11/02/2021, Perezida w'Urukiko rw'Ikirenga, mu cyemezo cyeye N° 112/CJ/2021 yemeje ko urwo rubanza

rusubirwamo ku mpamvu z'akarengane, maze arwohereza mu Rukiko rw'Ubujurire kugira ngo ruzaruburanishe, icyo kirego cyandikwa kuri RS/INJUST/RC 00013/2021/CA.

[8] Manirarora Jean de Dieu yasubirishijemo urubanza ku mpamvu z'akarenganeavuga ko Urukiko Rukuru, Urugereko rwa Nyanza, rwategetse SAHAM Assurance Rwanda Ltd kumwishyura 2.906.920 Frw kandi itarigeze iba umuburanyi muri urwo rubanza, asaba ko Rwanda Rudniki Ltd ari yo igomba kuryozwa indishyi asaba, ko kandi zigomba kubarwa hakoreshejwe Iteka rya Perezida N° 31/01 ryoku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kubera ko nta tegeko ririhoryerekeye impanuka zabereye mu birombe bicukurwamo amabuye y'agaciro.

[9] Urubanza rwaburanishijwe mu ruhamwe ku wa 06/04/2022, Manirarora Jean deDieu ahagarariwe na Me Nzeyimana Alexis, Rwanda Rudniki Ltd ihagarariwena Me Nsengiyaremye Jean Claude, Rwanda Rudniki Ltd isaba ko Sanlam AG Plc ihamagazwa mu rubanza nk'umwishingizi wayo, Urukiko rushingiye ku biteganywa mu ngingo ya 118 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rwafatiye icyemezo mu ntebe, rwemeza ko Sanlam AG Plc ihamagazwa mu rubanza nk'umwishingizi wa Rwanda Rudniki Ltd. Urubanza rwongeye kuburanishwa ku wa 09/05/2022, Manirarora Jean de Dieu na Rwanda Rudniki Ltd bahagarariwe nka mbere, naho SANLAM AG Plc ihagarariwe na Me Rwimo Clotilde; isomwa ry'urubanza rishyirwa ku wa 30/05/2022, iyo tariki igeze ryimurirwa ku wa 17/06/2022, ariko ntirwasomwa kuri iyo tariki, ryimurirwa ku wa 28/06/2022.

[10] Muri rusange, mu iburanisha impaka hagati y'ababuranyi zibanze ku byerekeranyeko kumenya niba Rwanda Rudniki Ltd igomba gutegekwa kwishyura indishyi zikomaka ku mpanuka Manirarora Jean de Dieu yagiriye mu kirombe, kumenya icyashingirwaho hatangwa indishyi zisabwa, hamwe no kumenya ingano y'indishyizisabwa, uko zibarwa, n'ugomba kuziryoza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba RWANDA RUDNIKI Ltd igomba gutegekwa kwishyuraindishyi zikomaka ku mpanuka MANIRARORA Jean de Dieu yagiriye mu kirombe.

[11] Uhagarariye Manirarora Jean de Dieu avuga ko bashingiye ku ngingo ya 260 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCL III) yakoreshwaga igihe Manirarora Jean de Dieu yakoraga impanuka asanga RWANDA RUDNIKI Ltd ari yo igomba kuryozwa indishyi Manirarora Jean de Dieu aregera. Asobanura ko uwo ahagarariye amaze gukomerekerera mu kirombe cya Rwanda Rudniki Ltd yayandikiye hanyuma imusubiza ko ifite ubwishingizi muri SAHAM Assurance Rwanda Ltd (yahoze ari CORAR AG Ltd), ubu yahindutse SANLAM AG Plc, ko asanze amasezerano Rwanda Rudniki Ltd ifitanye na SANLAM AG Plc ateganya ko uzagwirwa n'ikirombe agapfa hazishyurwa 1.000.000 Frw, naho uzakomereka akazagenerwa indishyi hashingiwe ku ngano y'ubumuga yagize; ko yabegereye kugira ngo bumvikane ku ndishyi imusubiza ko indishyi yamuha ari 400.000 Frw ariko ko kubera ari mu bwumvikane bamuha 100.000 Frw, ko bamaze kubona ko ayo masezerano ataboneye yareze Rwanda Rudniki

Ltd kuko yari ifite inshingano yo kurinda icyo kirombe cyayo kugira ngo kitagwira umuntu.

[12] Avuga kandi ko kuba amasezerano SANLAM AG Plc yagiranye na Rwanda Rudniki Ltd ataboneye kandi akaba areba abayagiranye, ari yo mpamvu asaba Urukiko rw'Ubujurire kwemeza ko Rwanda Rudniki Ltd ari yo ikwiye kuryozwa indishyi zikwiye kuko itafatiye abakozi bayo ubwishingizi bukwiye.

[13] Uhagarariye Rwanda Rudniki Ltd avuga ko indishyi zicibwa umuntu wakoze ikosa, ko kugira ngo wemererwe gucukura amabuye y'agaciro hari ibyo ugomba kuba wujuje, ko kandi ibyo byose Rwanda Rudniki Ltd yari ibyujuje, ko ntacyo yari gukora kugira ngo Manirarora Jean de Dieu ye kugwirwa n'ikirombe. Avuga kandi ko kuba barashatse ubwishingizi muri Sanlam AG Plc (yahoze ari CORAR AG Ltd) ari ukugira ngo izishyure mu gihe cy'impanuka, ko ubwo bwishingizi yabufashe mu nyungu z'abakora mu kirombe cyayo harimo na Manirarora Jean de Dieu.

[14] Avuga kandi ko ingingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yari gukoreshwa mu gihe Rwanda RUDNIKI Ltd yari kuba nta bwishingizi yafashe, ko rero SANLAM AG Plc ari yo igomba kwishyura indishyi. Asobanura ko kuba impanuka yarabaye Rwanda Rudniki Ltd ifite ubwishingizi muri Sanlam AG Plc, ari yo yagombaga kuregwa kuko Rwanda Rudniki Ltd ari yo yagiranye na yo amasezerano y'ubwishingizi; ko kandi SAHAM Assurance Rwanda Ltd ari yo yabanje gusabwa indishyi hashingiwe kuri ayo masezerano, ko Rwanda Rudniki Ltd itazi ko yaba yaranze kuzitanga.

[15] Uhagarariye SANLAM AG Plc avuga ko kuba Manirarora Jean de Dieu atarigeze arega SANLAM AG Plc asanga atari yo yaryozwa indishyi. Ko mu gihe Urukiko rwabibona ukundi, rugasanga ari yo igomba kwishyura indishyi, yakwishyura izikubiye mu masezerano yari hagati ya SANLAM AG Ltd na Rwanda Rudiniki Ltd.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ibikurikira: “Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe”.

[17] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakoreshwaga mu gihe Manirarora Jean de Dieu yakoraga impanuka mu mwaka wa 2015, yatangaga ibikurikira: “Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse”.

[18] Ingingo ya 260, igika cya mbere, y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyibukijwe haruguru iteganya ibikurikira: “Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda”.

[19] Dosiye y'urubanza igaragaza ko Manirarora Jean de Dieu yakoreraga sosiyete yitwa Rwanda Rudniki Ltd icukura amabuye

y'agaciro yo mu bwoko bwa *Coltan*, akaba yarakoreraga mu Kirombe cyitwa Bukina gihereye mu Mudugudu wa Jabiro, Akagari ka Musongati, Umurenge wa Nyarusange, Akarereka Muhanga, Intara y'Amajyepfo. Igaragaza kandi ko ku wa 29/10/2015 saa tatu za mu gitondo (9:00), Manirarora Jean de Dieu yagwiriwe n'icyo kirombe ari muri ako kazi ko gucukura amabuye y'agaciro, ko kandi yavunitse ukuguru, ndetse anakomereka ku musaya; harimo na raporo ya muganga igaragaza ko iyo mpanuka yamusigiye ubumuga buhoraho buri ku gipimo cya 40%.

[20] Dosiye igaragaramo kandi amasezerano y'ubwishingizi Police: 220/00013216- SG yo ku wa 16/04/2015, yabaye hagati ya Rwanda Rudniki Ltd na CORAR AG Ltd yaje kuba SAHAM Assurance Rwanda Ltd, ubu ikaba ari SANLAM AG Ltd. Ayo masezerano agaragaza ko umukozi uzakomereka mu kirombe cya Rwanda Rudniki Ltd akagira ubumuga buhoraho azahabwa indishyi zihwanye na 1.000.000Frw.

[21] Muri uru rubanza, Manirarora Jean de Dieu yareze Rwanda Rudniki Ltd ayisaba indishyi kubera ko yakomerekeye mu kirombe cyayo bikamusigira ubumuga bwa 40%, ikibazo kikaba ari cyo kumenya niba iyo sosiyete itaryozwa izo ndishyi.

[22] Urukiko rusomeye hamwe ingingo ya 258 n'iya 260 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakoreshwaga mu gihe Manirarora Jean de Dieu yakoraga impanuka rusanga zigaragaza ko ihame rusange ryo mu mategeko ari uko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse, ko kandi Umuntu ataryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda. Isesengura

ry'ingingo ya 260 yibukijwe haruguru, rigaragaza ko iha inshingano yo kugenzura ibyo ashinzwe kurinda, kandi akaba agomba kubiryoza, mu gihe byaba hari cyo byangirije hatitawe we ko yaba cyangwa ataba yakoze ikosa. icyari kigamijwe muri iyi ngingo ni ukwirinda ko habaho ibyangirika ntihabeho uburyozwe hitwajwe ko nta kosa ryakozwe.

[23] Ibi bishimangirwa n'abahanga mu mategeko ari bo Philippe Le Tourneau na bagenzi be aho bavuga ko ku bijyanye n'uburyozwe buturutse ku byangijwe n'ibintu, umuntu ashinzwe kurinda (responsabilité du fait des choses) abanyamategeko bibajije hari kare uburyo umuntu ushinzwe kurinda ibintu yakwikuraho inshingano yo kuryozwa ibyangijwe n'ibyo bintu. Hemezwa ko ushinzwe kurinda ibintu nta kuntu ataryozwa ibyangijwe n'ibyo bintu kuko adashobora kwitwaza ko nta kosa yigeze akora, cyangwa se ko yitwaye nk'umuntu ushishoza kandi wita ku bintu uko bikwiye. Bakomeza bavuga ko inshingano zo gusana icyangijwe n'ikintu zifitwe n'uwafashe icyemezo cyo kugikoresha kugira ngo kimubyarire inyungu (risque profit).

[24] Abahanga mu mategeko Francois Terré, Philippe Smeler na Yves Lequette bavuga ko imanza zaciwe zashyizeho mu buryo budahinduka igisobanuro, ko kurinda ikintu bigaragazwa no gukoresha, kugenzura no kuyobora icyo kintu. Ko muri icyo gihe inshingano iba ishingiye ku bubasha. Bavuga kandi ko kurinda ikintubihuye cyane n'uburenganzira nyabwo bwo kuba nyiracyo, ko kandi ari ibisanzweko nyiri kintu afatwa ko ari we ushinzwe ku kirinda.¹

¹ « (...) la jurisprudence a fixé, puis retenu de manière constante, en dépit de quelques variantes, une définition en vertu de laquelle la garde est caractérisée par l'usage, le contrôle et la direction de la chose. La responsabilité est, dans cette mesure, attachée à l'autorité. De cette formule

[25] Abandi bahanga bavuga ko ihame ari uko ikintu cyose gishobora kuba isoko y'inshingano, cyaba icyimukanwa cyangwa ikitimukanwa, igifatika cyangwa ikidafatika, ikiri mu gikorwa cyagwa ikitari mu gikorwa, igifite inenge cyangwa ikitayifite. Ko n'ibintu bitagaragaza ikibazo icyo ari cyo cyose nabyo bishyirwa muburyozwe buturutse ku byangijwe n'ibintu. Bavuga kandi ko kenshi na kenshi kumenya ushinzwe kurinda ikintu bitagorana, ko ari nyiri icyo kintu cyangwa ugifitemu gihe impanuka yabaga.²

[26] Urukiko rurasanga Rwanda Rudniki Ltd yemera ko ari yo nyiri kirombe gicukurwamo amabuye y'agaciro yo mu bwoko bwa Coltan, ko kandi cyagwiriye Manirarora Jean de Dieu wagikoragamo ku wa 29/10/2015, agakomereka, akaba afite ubumuga buhoraho bwa 40%. Kuba rero ari yo nyiri icyo kirombe kandi mu gihe impanuka yabaga akaba ari yo yagikoreshaga ikibyaza umusaruro, bivuzeko ari yo yagicungaga, akaba ari nayo igomba kuryozwa ibyangijwe nacyo.

[27] Urukiko rurasanga, kuba Manirarora Jean de Dieu yarakorera Rwanda Rudniki Ltd hanyuma ikirombe cyayo

qui tend à définir un certain corpus, on doit, en premier lieu, déduire que la garde coïncidera très souvent avec le droit réel de propriété. Leur parenté est d'ailleurs si naturelle que le propriétaire est présumé gardien de la chose.(.)», voir Francois Terré, Philippe Smeler na Yves Lequette, Droit civil. Les obligations, 11ème édition, Paris, Dalloz, 2013, p.253.

² « Par principe, toute chose peut être source de responsabilité, qu'elle soit meuble ou immeuble, matérielle ou immatérielle, en mouvement ou inerte, viciée ou non. Dès lors, même les choses ne présentant aucune dangerosité entrent dans le champ d'application de la responsabilité du fait des choses. Le plus souvent, l'identification du gardien ne pose aucune difficulté, il s'agit à la fois du propriétaire (qui détient l'usus, le fructus et l'abus) et du détenteur de la chose lors de la réalisation du dommage.», <https://jurislog.fr/responsabilite-fait-des-choses-article> , 20/05/2022.

kikamugwira, agakomereka bikamusigira ubumuga buhoraho bwa 40%, nta kimubuza kuyishyuzwa indishyi cyane ko ari yo nyiri icyo kirombe, akaba ari nayo yagikoreshaga, akaba ari nayo yari inshinzwe kugicunga. Kuba rero Manirarora Jean de Dieu yarahisemo kurega Rwanda Rudniki Ltd ayisaba indishyi, nta kosa yakoze.

[28] Ku byo uhagarariye Rwanda Rudniki Ltd avuga ko nta kosa Rwanda Rudniki Ltd yakoze, ku buryo yagira icyo iryozwa, ko kandi ntacyo yari gukora kugira ngo Manirarora Jean de Dieu ye kugwirwa n'icyo kirombe, Urukiko rurasanga nta shingiro byahabwa, kuko uburyozwe budashingira gusa ku ikosa, nk'uko bisobanurwa n'abahanga barimo Philippe Le Tourneau n'abandi bavuzwe haruguru, ko bunashingira ku kuba umuntu ashinzwe kurinda ikintu runaka. Rurasanga rero mu gihe icyo kintu ashinzwe kurinda hari ibyo cyangirije, nta buryo ugishinzwe ataryozwa icyangijwe nacyo, kuko adashobora kwitwaza konta kosa yigeze akora, cyangwa se ko yitwaye nk'umuntu ushishoza kandi wita kubintu uko bikwiye.

[29] Urukiko rurasanga ibivugwa n'uhagarariye Rwanda Rudniki Ltd ko kuba yarafashe ubwishingizi muri SANLAM AG Plc (yahoze ari CORAR AG Ltd) ari ukugira ngo izishyure mu gihe cy'impanuka, ko kandi ingingo ya 260 y'Igitabo cyagatatu cy'urwunge rw'amategeko mbonezamubano yari gukoreshwa mu gihe Rwanda Rudniki Ltd yari kuba nta bwishingizi yafashe, ko rero SANLAM AG Plc ari yo igomba kuryozwa indishyi, ntacyo byayimarira kuko gufata ubwishingizi bitayikuraho uburyozwe, ahubwo mu gihe Rwanda Rudniki Ltd yaba iciwe indishyi zirenze amafaranga y'ubwishingizi nta cyayibuza gusaba umwishingizi kuyisimbura ku ngano y'ayo yishingiye kwishyura. Mu gihe Maniraro Jean de Dieu atahisemo kurega

umwishingizi (*action directe*) ahubwo agahitamo kurega Rwanda Rudniki Ltd ubwayo (*action personelle*), Urukiko rurasanga nta kosa yakoze, kuko yakoresheje uburenganzira bwe bwo kurega uwo ahisemo.

[30] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga nta kosa Manirarora Jean de Dieu yakoze asaba ko Rwanda Rudniki Ltd iryozwa indishyi zikomoka ku mpanuka yatewe n'ikirombe cyayo; bityo Rwanda Rudniki Ltd igomba kwishyura zikomoka ku mpanuka Manirarora Jean de Dieu yakoreye mu kirombe.

2. Kumenya icyashingirwaho mu kubara indishyi MANIRARORA Jean deDieu agomba guhabwa

[31] Uhagarariye Manirarora Jean de Dieu avuga ko nta tegeko ririho ryashingirwaho mu kubara indishyi ku bijyanye n'impanuka yabereye mu kirombe gicukurwamo amabuye y'agaciro, ko ari yo mpamvu basaba ko hashingirwa ku ngingo ya 9, agace ka 1 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ibyerekeye inshingano z'umucamanza mu gihe nta tegeko rijyanye n'ikiburanwa ririho, aho igira iti: Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko.

[32] Avuga kandi ko basaba ko hashingirwa ku Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo

kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kubera ko zose ari impanuka, no kuba uwakomerekeye mu mpanuka y'ikinyabiziga n'uwakomerekeye mu mpanuka yabereye mu kirombe bose ari abantu, ko indi mpamvu basaba Urukiko gushingira kuri iryo Teka ari uko hari urubanza N° RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014, haburana Kabayijuka na Leta y'u Rwanda, aho rwatanze umurongo ko mu gihe umuntu yagize ubumuga bidaturutse ku mpanuka yo mu muhanda, mu kugena indishyi hashobora gushingirwa ku Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru.

[33] Akomeza avuga ko iryo Teka ari naryo Urukiko Rwisumbuye rwa Muhanga rwashigiyeho mu rubanza RC00006/2017/TGI/MHG, ko Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko ibyakozwe n'Urukiko Rwisumbuye rwa Muhanga atari byo, rushingiye ku bitabo bigaragaza ibipimo ngenderwaho (Standards) bitari amategeko cyangwa amabwiriza, rubyitiranyije n'amabwiriza rubifata nk'amategeko kandi atari byo. Avuga kandi ko uretse kuba ibikubiye muri ibyo bitabo atari amabwiriza kuko atigeze asohoka mu Igazeti ya Leta, ko n'ibikubiyemo usanga bivuguruzanya, bikaba bitashingirwaho.

[34] Uhagarariye Rwanda Rudniki Ltd avuga ko nta rindi tegeko ryari gushingirwaho uretse irijyanye n'ubucukuzi bwa Mine na Kariyeri, rigahuzwa n'ibikubiye mu mabwariza yerekeye ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'Ikigo gishinzwe Mine, Peteroli na Gazi mu Rwanda. Ko ibivugwa n'urega ko ayo mabwiriza atasohotse mu Igazeti ya Leta, ko Urukiko rwabisuzuma.

[35] Avuga kandi ko mu gihe Urukiko rutashingira ku itegeko ryerekeye mine na kariyeri, asaba Urukiko rw'Ubujurire gushyiraho umurongo ku bijyanye n'impanuka yabereye mu kirombe, ko ibyo uhagarariye Manirarora Jean de Dieu avuga ko hashingirwa ku Iteka rya Perezida basanga atari byo kuko yaba ari "interprétation par analogie", ko kandi urubanza RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga rudakwiye gushingirwaho, kuko rutanga umurongo ku ikosa ry'umuganga mu kazi k'ubuganga gusa, ko ahubwo Urukiko rusanze rugomba gushyiraho umurongo utandukanye n'uwo Urukiko Rukuru, Urugereko rwa Nyanza rwashyizeho, rwajya mu mwanya w'Umushingamategeko, hanyuma rugashyiraho umurongo.

[36] Uhagarariye SANLAM AG Plc avuga ko we asanga Iteka rya Perezida ritashigirwaho kuko atari impanuka yo mu muhanda, ko kandi amabwiriza nayo atashingirwaho kuko atigeze atangazwa mu Igazeti ya Leta, ko rero Urukiko ari rwo rwashyiraho umurongo.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 9 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, iteganya ibikurikira: "Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'innyandiko z'abahanga mu mategeko".

[38] Dosiye y'urubanza igaragaza ko mu rubanza RC00006/2017/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga, urwo Rukiko rwasanze Iteka rya Perezida atari ryo rigomba gukoreshwa kuko Manirarora Jean de Dieu atakomerekejwe n'impanuka itewe n'ikinyabiziga, ahubwo yagwiriwe n'ikirombe cya Rwanda Rudniki Ltd, ikaba yaragize uburangare bwo kurinda impanuka umukozi wayo, rwemeza ko mu gutanga indishyi hagomba gushingirwa ku ngingo ya 260 y'Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho Igitabo cya gatatu cy'urwunge rw'amategeko y'imbenezamubano, ariko hakifashishwa uburyo bwo kubara indishyi busa n'ubuteganywa mu Iteka rya Perezida, ko kandi kubara indishyi muri ubwo buryo byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza Kabayijuka yarezemo Leta y'u Rwanda rwaciwe ku wa 19/12/2014, maze rumugenera 4.099.607 Frw y'indishyi mbangamirabukungu, 432.000Frw y'indishyi z'akababaro, 432.000Frw y'indishyi mbangamiraburanga na 540.000Frw y'Indishyi z'ibangamira ry'uburambe ku kazi.

[39] Imikirize y'urubanza N° RCA00104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 10/07/2018, igaragaza ko urwo Rukiko rwashingiye ku gitabo gikubiyemo ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'Ikigo gishyinzwe Mine, Peteroli na Gazi mu Rwanda cyakorewe i Kigali mu Gushyingo 2017, ku rupapuro rwa 13 mu gace ka (J) ahavuga ibikurikira: “Gufatira ubwishingizi bw'akazi abakozi bose, bwishingira gutanga ingurane ingana n'ibura na 2.000.000Frw ku bumuga buhoraho na 1.500.000Frw igihe umukozi yapfuye, hamaze kwishyurwa amafaranga yose yakoreshejwe”, maze rwemeza ko Manirarora Jean de Dieu agomba guhabwa indishyi zikomoka ku kuba impanuka yaramusigiye ubumuga bungana na

40% zingana 2.000.000Frw, runamugenera n’ayo yakoresheje yivuzza ndetse n’ayo yakoresheje mu rubanza.

[40] Urukiko rurasanga nta tegeko rihari rirebana n’impanuka yabereye mu kirombe gicukurwamo amabuye y’agaciro, kubera iyo mpamvu rushingiye ku ngingo ya 9 y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, aho ivuga ko iyo nta tegeko rijyanye n’ikiburanwa, Umucamanza ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n’inkiko, umuco, amahame rusange agenga amategeko n’inyandiko z’abahanga mu mategeko. Rurasanga rero mu kugenera Manirarora Jean de Dieu indishyi hagomba gushingirwa ku ihame rusange ryerekeye uburyozwe buturutse ku byangijwe n’ibintu umuntu ashinzwe kurinda (responsabilité du fait des choses).

[41] Urukiko rurasanga ibivugwa n’uhagarariye Manirarora Jean de Dieu ko mu gihe nta tegeko ririho rirebana n’impanuka zabereye mu kirombe basaba Urukiko gushingira ku Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga kubera ko zose ari impanuka, no kuba uwakomerekeye mu mpanuka y’ikinyabiziga n’uwakomerekeye mu mpanuka yabereye mu kirombe bose ari abantu, nta shingiro bifite, kuko nk’uko iri Teka ubwaryo ribiteganya, rirebana gusa n’impanuka zitewe n’ibinyabiziga. Izo mpanuka zikaba zitandukanye n’impanuka Manirarora Jean de Dieu yagize kuko we yakomerekeye mu kirombe, bityo iri Teka rikaba ritagomba gushingirwaho muri uru rubaza kuko ridahuye n’ikiburanwa. Urukiko rurasanga itegeko cyangwa iteka riyahariye (spécial) rigomba gukoreshwa ku mwihariko waryo,

ibidafite itegeko ryihariye bigakemurwa n'amahame cyangwa amategeko rusange.

[42] Ku byo uhagarariye Manirarora Jean de Dieu avuga ko indi mpamvu ituma basaba Urukiko gushingira ku Iteka rya Perezida N° 31/01 ryavuzwe haruguru ari uko hari urubanza RADA0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014 rwatanze umurongo ko mu gihe umuntu yagize ubumuga bidaturutse ku mpanuka yo mu muhanda, mu kugena indishyi hashobora gushingirwa kuri iryo Teka, Urukiko rurasanga nta shingiro byahabwa, kuko muri urwo rubanza, Urukiko rw'Ikirenga rwabariye Kabayijuka Gaspard indishyi mbonezamusaruro rukoresheje uburyo (formule) bugaragara muri iryo Teka ariko ntaho rwigeze rugaragaza ko rwashingiye kuri iryo Teka, kandi nta nubwo rwigeze ruvuga ko mu gihe umuntu yagize ubumuga bidaturutse ku mpanuka yo mu muhanda, mu kumugenera indishyi hashobora kwifashishwa uburyo (formule) bugaragara mu Iteka rya Perezida N°31/01 ryavuzwe haruguru, ngo rube rwarabitanzeho umurongo rutyo. Bigaragara ahubwo ko hashingiwe ku kibazo rwasuzumaga muri urwo rubanza, rwasanze rushobora kwifashisha ibikubiye muri iryo teka, ariko ntirwigeze rubicaho iteka ko ar iryo rigomba kwifashishwa mu kubara indishyi zose igihe ntacyo itegeko ryagennye; bityo rero, hakaba nta gitegeka uru Rukiko kurushingiraho.

[43] Ku kibazo cyo kumenya niba Urukiko Rukuru, Urugereko rwa Nyanza, rwaragombaga gushingira ku gitabo gikubiyemo ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'ikigo gishyinzwe Mine, Peteroli na Gazi mu Rwanda cyakorewe i Kigali mu gushyirahamwe 2017, kuko ibikubiye muri icyo gitabo rwabyise

amabwiza, Urukiko rurasanga ari ngombwa gusuzuma niba byafatwa nk'Amabwiriza.

[44] Umuhanga Serge Guinchard avuga ko amabwiriza ari inyandiko yo mu rwegorusange yashyizweho n'inzego zibifitiye ububasha, ko hari amabwiriza aba agamije gushyira mu bikorwa itegeko (*règlement d'application*) n'amabwiriza yihagije (*règlement autonome*)³. Umuhanga Gérard Cornu nawe avuga ko amabwiriza ari inyandiko yo mu rwego rusange yashyizweho n'Umuyobozi ubifitiye ububasha, agamije gukurikizwa ku bintu bitarebwa n'itegeko cyangwa agamije gushyira mu bikorwa itegeko.⁴ Muri rusange amabwiriza ni inyandiko zo mu rwego rusange zashyizweho umukono n'Umuyobozi ubifitiye ububasha, zigamije gushyira mu bikorwa itegeko cyangwa zigamije gukurikizwa ku bintu bitarebwa n'itegeko kandi zigatangazwa mu Igaseti ya Leta.

[45] Kuba nta kigaragaza ko iriya nyandiko yashingiweho n'Urukiko Rukuru, Urugerekorwa Nyanza, yujuje ibisabwa, nko kuba hari umuyobozi ubifitiye ububasha wayishyizeho umukono, no kuba yaratangajwe mu Igazeti ya Leta, birumvikana ko Urukiko Rukuru, Urugereko rwa Nyanza, rutagombaga gushingira ku bikubiye muri icyo gitabo rugenera Manirarora Jean de Dieu indishyi yasabaga, kuko nta mbaraga z'itegeko bifite.

³ *Règlement : Acte de portée générale et impersonnelle édicté par les autorités exécutives compétentes. Il y a règlement d'application et règlement autonome, (Serge GUINCHARD, Lexique des termes juridiques 2015-2016, 23^{ème} édition, 2015, Paris, Dalloz, p. 887.)*

⁴ *Règlement : Texte de portée générale émanant de l'autorité exécutive, a pour objet, soit de disposer dans des domaines non réservés au législateur, soit de développer les règles posées par la loi en vue d'en assurer l'application. (Gérard CORNU, Vocabulaire Juridique, 2007-, 8^{ème} édition, Paris, Quadriège/PUF, p. 789.)*

3. Kumenya indishyi zigomba gutangwa, uko zibarwa, n'ugomba kuziryoza

[46] Uhagarariye Manirarora Jean de Dieu avuga ko mu kubara indishyi hashingirwa ku mafaranga 15.000Frw Manirarora Jean de Dieu yatahanaga buri muni. Asobanura ko ubwo Umuyobozi wa Rwanda Rudniki Ltd yabazwaga mu bugenzacyaha, ku kibazo cya 12 yasubije ko abacukura amabuye y'agaciro bahembwa bitewe n'umusaruro, ko kandi badashobora kujya muni ya 12.000Frw/kg, ku kibazo cya 13 abajijwe ibiro umuntu umwe acukura ku muni, asubiza ko ikipe y'abantu 8 ishobora gucukura ibiro 12 ku muni, ko umuntu umwe yatahanaga 15.000Frw ku muni, ko rero ayo mafaranga ariyo agomba gushingirwaho mu kubara indishyi.

[47] Avuga kandi ko ku bijyanye n'indishyi mbangamirabukungu hadakwiye gushingirwa ku mushahara muto ntarengwa wemewe n'itegeko (SMIG) ahubwo hagomba gushingirwa kuri 15.000 Frw ku muni, ko hashingiwe kuri uwo mushahara asanga Manirarora Jean de Dieu yabarirwa indishyi mbangamirabukungu zihwanye na $(15.000 \text{ Frw} \times 12 \times 30 \times 36 \times 40\%) / 1 + (8\% \times 36) = 20.041.237 \text{ Frw}$.

[48] Uhagarariye Rwanda Rudniki Ltd avuga ko imiterere y'akazi ko gucukura amabuye y'agaciro ari uko uwacukuye yahemberwaga amabuye y'agaciro yacukuye, ko kandi hari igihe uwacukuye yatahaga ntayo yabonye, ko rero igiciro cya 15.000Frw ku muni kidakwiye gushingirwaho kuko nta kigaragaza ko Manirarora Jean de Dieu yashoboraga kubona 15.000Frw ku muni. Abajijwe kuri SMIG ya 3.000Frw yemejwe n'Urukiko rw'Ikirenga, avuga ko nayo idakwiye gushingirwaho kuko nta kigaragaza ko yashoboraga kubona 3.000Frw ku muni.

[49] Uhagarariye SANLAM AG Plc avuga ko kuba SANLAM AG Plc itarigeze iba umuburanyi mu manza zabanje, n'wareze akaba ntacyo ayisaba, ahubwo akaba asaba Urukiko gutegeka Rwanda Rudniki Ltd kumwishyura indishyi zikomoka ku mpanuka yagiriye mu kazi, asanga izo ndishyi zitaryozwa SANLAM AG Plc. Avuga kandi ko Urukiko ruramutse rubibonye ukundi rukabona ko hari icyo SANLAM AG PLC yategekwa muri uru rubanza, yategekwa kwishyura amafaranga akubiye mu masezerano yagiranye na Rwanda Rudniki Ltd ahwanye na $1.000.000\text{Frw} \times 40\% = 400.000\text{Frw}$ hatarimo amafaranga y'ibihembo by'avoka.

UKO URUKIKO RUBIBONA

[50] Ingingo ya 260, igika cya mbere, y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyariho mu gihe Manirarora Jean de Dieu yakoraga impanuka mu mwaka wa 2015 iteganya ibikorwa: Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda.

[51] Dosiye y'urubanza igaragaramo icyemezo cya muganga cyo ku wa 14/05/2016 kigaragaza ko Manirarora Jean de Dieu afite ubumuga buhoraho buri ku gipimo cya 40%. Igaragaramo kandi icyemezo cy'amavuko na kopi y'irangamuntu bya Manirarora Jean de Dieu bigaragaza ko yavuze ku wa 01/01/1986. Harimo inyandikomvugo yo mubugenzacyaha igaragaza ko Manirarora Jean de Dieu yagwiriweho n'ikirombe cya Rwanda Rudniki Ltd ku wa 29/10/2015, ko kandi muri icyo gihe yari afite imyaka 29. Inagaragaramo amasezerano y'ubwishingizi Police: 220/00013216- SG yo ku wa 16/04/2015, yabaye hagati ya Rwanda Rudniki Ltd na CORAR AG Ltd

yahindutse SANLAM AG Ltd agaragaza ko umukozi uzakomerekerwa mu kirombe cya Rwanda Rudniki Ltd akagira ubumuga buhoraho bwa 100% azahabwa indishyi zihwanye na 1.000.000Frw, naho uzakomereka akazagenerwa indishyi hashingiwe ku ngano y'ubumuga yagize.

[52] Nk'uko byagaragajwe haruguru inkiko zombi zibanza zasanze nta tegeko ryihariye riteganywa ibipimo byaherwaho mu kubara indishyi ku mpanuka yabereye mu kirombe ari yo mpamvu Urukiko Rwisumbuye rwa Muhanga rwazigennye rushingiye ku ngingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ariko ruzibara rwifashishe uburyo bwo kubara indishyi busa n'ubuteganywa mu Iteka rya Perezida, naho Urukiko Rukuru, Urugereko rwa Nyanza, rushingira ku gitabo gikubiyemo ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'Ikigo gishyinzwe Mine, Peteroli na Gazi mu Rwanda.

[53] Urukiko rurasanga nk'uko byavuzwe haruguru nta tegeko ryihariye ririho rirebana n'uburyo indishyi zikomoka ku mpanuka zabereye mu birombe bicukurwamo amabuye y'agaciro zibarwa, kubera iyo mpamvu kandi rushingiye ku biteganywa n'ingingo ya 9 y'Itegeko N° 22/2018 ryibukijwe haruguru rurasanga Manirarora Jean de Dieu agomba kugenerwa indishyi z'akababaro kubera ububabare yatewe n'impanuka yagize, n'indishyi mbonezamusaruro kubera ko impanuka yagiriye mu kirombe cya Rwanda Rudniki Ltd yamuvukije umusaruro yatoraga abona kuko yamusigiye ubumuga buhoraho buri ku gipimo cya 40%.

[54] Urukiko rurasanga Manirarora Jean de Dieu agomba kugenerwa indishyi z'akababaro mu bushishozi bw'Urukiko

nk'uko kugeza ubu byagiye bigenda ku mpanuka zo kwa muganga mu manza zitandukanye zagiye zicibwa n'uru Rukiko, harimo urubanza RCAA00073/2018/CA rwaciwe ku wa 19/07/2019, haburana Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali (King Faisal Hospital), mu gika cyarwo cya 37. Uru Rukiko, rumaze kwemeza ko ibyo Bitaro byagize uburangare, rwageneye Nyirabatesi Laurence mu bushishozi bwarwo indishyi z'akababaro zingana na 28.000.000Frw. Ibyo ni nako byagenze mu rubanza RCAA00008/2020/CA rwaciwe ku wa 25/06/2021, haburana Ndizeye Alphonse na Kibungo Medical Center, aho uru Rukiko rwemeje ko indishyi zagenwe n'Urukiko Rwisumbuye rwa Ngoma, mu bushishozi bwarwo ari zo zikurikije amategeko, akaba ari zo zigomba kugumaho, naho izagenwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, zatanzwe hashingiwe ku Iteka rya Perezida N° 31/01 ryo ku wa 25/8/2003 zikaba zarashingiye ku Itegeko ritariho kuko iryo Teko ntaho rihuriye n'ikiburanwa, hanyuma rutegeka Kibungo Medical Center guha Ndizeye Alphonse mu izina ry'umwana we Irasubiza Amani indishyi zingana na 35.000.000Frw.⁵

[55] Urukiko rurasanga, kuba Manirarora Jean de Dieu yarakomereye mu kirombe cya Rwanda Rudniki Ltd bikamuviramo ubumuga buhoraho buhwaye 40%, nta gushidikanya byaramuteye akababaro, bityo mu bushishozi rwarwo rukaba rumugeye indishyi z'akababaro zihwanye na 500.000Frw.

[56] Ku bijyanye n'indishyi mbonezamusaruro Manirarora Jean de Dieu agomba guhabwa, Urukiko rurasanga nazo zigomba

⁵ Reba igika cya 36 n'icya 46 by'urubanza No RCAA 00008/2020/CA rwaciwe ku wa 25/06/2021, haburana NDIZEYE Alphonse na KIBUNGO Medical Center na PRIME Insurance Company Plc.

kugenwa mu bushishozi bw'Urukiko ariko mu kuzibara hakitabwa ku ngano y'ubumuga yagize, ku myaka yari asigaje kugira ngo agere ku myaka 65 (imyaka yo kujya mu kiruhuko cy'izabukuru), hakanakoreshwa uburyo (formule) Urukiko rw'Ikirega rwakoresheje mu rubanza N° RADA 0054/12/CS, rubarira Kabayijuka Gaspard indishyi mbonezamusaruro kubera ubumuga yatewe n'urushinge yaterewe ku Kigo Nderabuzima cya Nyarubuye, aho Urukiko rw'Ikirenga rwafashe umushahara w'ukwezi ruwukuba n'amezi 12, rukuba n'ingano y'umubuga n'igihe cyo gukora yari asigaje, rubigabanya ku ijana.⁶

[57] Urukiko rurasanga mu kubara indishyi mbonezamusaruro Manirarora Jean de Dieu agomba guhabwa rutashigira ku mafaranga 15.000 Frw uhagarariye Manirarora Jean de Dieu avuga ko ari yo yatahanaga buri muni abishingiye kumvugo z'Umuyobozi wa Rwanda Rudniki Ltd ubwo yabazwaga mu Bugenzacyaha, kuko Umuyobozi wa Rwanda Rudniki Ltd yavuze ko umukozi yahemberwaga amabuye y'agaciro yacukuye, byumvikana ko hari igihe yashoboraga kuyabona n'igihe atashoboraga kuyabona, haba rero hatakwemezwa ko yabonaga 15.000 Frw ku muni cyane ko nawe nta kimenyetso atanga cyerekana ko ari yo yatahanaga buri muni, akaba ariyo mpamvu rusanga hagomba gushingirwa ku mushahara muto ntarengwa wemejwe n'Urukiko rw'Ikirenga mu rubanza RCAA0049/14/CS, haburana SORAS AG Ltd N'umuhoza Pacifique n'abandi⁷. Bityo rushyize mu gaciro rurasanga

⁶Reba igika cya 31 cy'urubanza No RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014, haburana KABAYIJUKA Gaspard na Leta y'u Rwanda (Minisanté).

⁷Reba igika cya 28 cy'urubanza No RCAA 0049/14/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016, haburana SORAS AG Ltd n'UMUHOZA Pacifique n'abandi

hatakwemezwa ko Manirarora Jean de Dieu yakoraga buri muni, ariko kuba yari afite icyo akora, akaba yarafite umuryago atunze nk'uko bigaragara muri dosiye ko mu gihe yakoraga impanuka yari afite abana babiri, rurasanga yarashoboraga gukora byibuze iminsi itatu (3) mu cyumweru, ni ukuvuga iminsi cumi n'ibiri (12) mu kwezi.

[58] Kubera izo mpamvu, Urukiko rugeneye Manirarora Jean de Dieu indishyi mbonezamusaruro zibazwe mu buryo bukurikira: 3.000 Frw (umushahara muto ntarengwa) x 12 (iminsi yashoboraga gukora mu kwezi) x 12 (amezi y'umwaka) x 40 (igipimo cy'ubumuga) x 36 (igihe cyo gukora yari asigaje kugira ngo agire imyaka 65): 100 = 6.220.800 Frw

[59] Ku bijyanye n'amafaranga Manirarora Jean de Dieu yakoresheje yivuzwa, Urukiko rurasanga ayo yagenewe n'Urukiko Rukuru, Urugereko rwa Nyanza ahwanyeye na 100.000Frw ari mu gaciro, cyane ko ari nayo ari mu masezerano yo ku wa 16/04/2015, Rwanda Rudniki Ltd yagiranye na SANLAM AG Ltd (yahoze ari CORAR AG Ltd)⁸, akaba rero ariyo Manirarora Jean de Dieu agomba kugenerwa muri uru rubanza.

[60] Urukiko rurasanga indishyi zose Manirarora Jean de Dieu agenewe zigomba kwishyurwa na Rwanda Rudniki Ltd ifatanyije n'umwishingizi wayo SANLAM AG Ltd (yahoze ari CORAR AG Ltd) ku kigero yishingiye kingana na 1.000.000Frw ku mukozi wagize ubumuga buhoraho bwa 100%, no ku ngano y'ubumuga ku mukozi wagize ubumuga buhoraho butageze ku 100% nk'uko bikubiye mu masezerano y'ubwishingizi Police:

⁸ Reba amasezerano y'ubwishingizi Police: 220/00013216-SG yo ku wa 16/04/2015, yabaye hagati ya RWANDA RUDNIKI Ltd na SANLAM AG Ltd, muri Tableaux, ahanditse: Frais médicaux.

220/00013216- SG yo ku wa 16/04/2015, impande zombi zagiranye⁹. Rurasanga Manirarora Jean de Dieu yaragize ubumuga buri ku gipimo cya 40%, SANLAM AG Ltd ikaba igomba kwishyura 1.000.000 Frw x40: 100 = 400.000 Frw, ikanishyura 100.000 Frw yo kwivuzwa nk'uko impande zombi zabyumvikanyeho muri ayo masezerano. Ibi ni nako uru Rukiko rwabibonye mu rubanza RCAA 00008/2020/CA rwavuzwe haruguru, aho rwemeje ko Kibungo Medical Center, ihagarariwe na Dr Kanimba Pierre Celestin, igomba kwishyura indishyi yategetswe ifatanyije n'umwishingizi wayo Prime Insurance Company Plc nk'uko babyumvikanyeho mu masezerano y'ubwishingizi N° 413/00021583- SG Police impande zombi zagiranye ku wa 24/06/2016, no ku kigero kitarenze icyo impande zombi zumvikanyeho muri ayo masezerano y'ubwishingizi.¹⁰

4. Kumenya niba amafaranga y'ibyagiye ku rubanza asabwa muri uru rubanza afite ishingiro

[61] Uhagarariye Manirarora Jean de Dieu ashingiyeye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, asaba Urukiko rw'Ubujurire gutegeka Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 2.500.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza mu nzego zose kuko yifashishije abavoka ndetse ko yanakoresheje abahesha b'inkiko mu mirimo itandukanye. Avuga kandi ko basaba gusubizwa amagarama bishyuye muri uru Rukiko ndetse na 75.000Frw y'amagarama

⁹ Reba amasezerano yavuzwe haruguru muri Tableaux, ahanditse : Invalidité suite Accident. Urebe n'igika cyanditsemo aya magambo : En cas d'invalidité permanente partielle (I.P.P), l'indemnité de l'invalidité permanente totale est réductible dans les proportions prévues à l'article 18 des conditions générales.

¹⁰ Reba igika cya 36 cy'urubanza RCAA 00008/2020/CA.

bishyuye mu Rukiko Rukuru basubirishamo urubanza ingingo nshya.

[62] Uhagarariye SANLAM AG Plc avuga ko kuba Rwanda Rudniki Ltd izi neza ko SANLAM AG Plc itigeze iba umuburanyi mu manza zabanje ariko igahitamo kuyihamagaza kuri uru rwego, ko isaba urukiko gutegeka Rwanda Rudniki Ltd kuyiha 500.000Frw y'igihembo cya Avoka.

[63] Uhagarariye Rwanda Rudniki Ltd avuga ko Manirarora Jean de Dieu nta ndishyi na nke akwiye guhabwa, kuko ari we wareze nabi. Ko n'amafaranga Sanlam AG Plc isaba nta shingiro afite kuko ari umwishingizi kuri iriya mpanuka.

[64] Avuga kandi ko Rwanda Rudniki Ltd isaba Urukiko rw'Ubujurire gutegeka Manirarora Jean de Dieu kuyiha 2.000.000Frw y'igihembo cya Avoka mu Rukiko rw'Ubujurire na 1.000.000Frw y'igihembo cya Avoka yo mu nzego ebyiri zabanje, ndetse na 2.500.000Frw yo gukurikirana urubanza ku nzego zose.

[65] Uhagarariye Manirarora Jean de Dieu yiregura ku ndishyi Rwanda RudnikiLtd isaba avuga ko ntazo yahabwa, kubera ko kuva imanza zatangira, impamvu yazo ari impanuka yatewe n'ikirombe cyayo kubera ko itashize uburyo bw'ubwirinzi ku kirombe cyayo.

UKO URUKIKO RUBIBONA

[66] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru iteganya ibikurikira: "Ikirego cy'amafaranga y'ikurikirana rubanza ni ikirego gishamikiye ku

kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo, gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[67] Ingingo ya 26, igika cya mbere, y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'abavoka iteganya ibikurikira: "Avoka w'urega wateguye dosiye n'inyandiko ashobora gusaba igihembo fatizo kiri hagati y'amafaranga 500.000 n'amafaranga 5.000.000, cyongerwaho, iyo hari imyenda yagarujwe nawe ubwe cyangwa n'intumwa ye, igihembo cyinyongera cyo kwishyuza, kibarwa hakurikijwe ijanisha riteganywa mu gace ka II k'ingingo ya 23".

[68] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Manirarora Jean de Dieu asaba afite ishingiro, ariko ayo asaba nta kigaragazako ari yo yatanze, bityo mu bushishozi bw'Urukiko rumugeneye 1.000.000Frw y'igihembo cya Avoka ku nzego zose na 500.000Frw y'ikurikiranarubanza n'amagarama, ku nzego zose, yose hamwe akaba 1.500.000Frw, agomba kwishyurwa na Rwanda Rudniki Ltd.

[69] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Rwanda Rudniki Ltd isaba nta shingiro afite kuko imyiregurire yayo nta shingiro ifite.

[70] Urukiko rurasanga amafaranga y'igihembo cya Avoka SANLAM AG Plc isaba Rwanda Rudniki Ltd kuko yayizanye muri uru rubanza nta shingiro afite, kuko nk'uko byagaragajwe haruguru SANLAM AG Plc yishingiye Rwanda Rudniki Ltd,

bityo kuba yarayiza muri uru rubanza nk'umwishingizi nta kosa yakoze.

III. ICYEMEZO CY'URUKIKO

[71] Rwemeje ko ikirego cyatanzwe na Manirarora Jean de Dieu gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA00104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 10/07/2018, gifite ishingiro kuri bimwe.

[72] Rwemeje ko imikirize y'urubanza RCA00104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 10/07/2018, gihindutse mu ngingo zayo zose.

[73] Rutegetse Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 6.220.800Frw y'indishyi mbonezamusaruro, 500.000Frw y'indishyi z'akababaro na 100.000Frw yo kwivuza, yose hamwe akaba 6.820.800Frw, SANLAM AG Plc ikishyuramo 400.000Frw y'indishyi na 100.000Frw yo kwivuza akubiye mu masezerano y'ubwishingizi CORAR AG Ltd yahindutse SANLAM AG Plc yari ifitanye na Rwanda Rudniki Ltd nk'uko byasobanuwe haruguru. Bivuze ko Rwanda Rudniki Ltd izishyura 6.320.800Frw, naho SANLAM AG Plc ikishyura 500.000Frw.

[74] Rutegetse Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 1.000.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza n'amagarama, ku nzego zose, yose hamwe akaba 1.500.000Frw.

[75] Ruvuze ko amagarama y'urubanza aherera ku Isanduku ya Leta.

URUBANZA RW'UMURIMO

MUTWARE v GUARANTY TRUST BANK (RWANDA) Ltd

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RSOC
00002/2022/SC – (Cyanzayire, P.J., Nyirinkwaya na
Karimunda, J.) 21 Ukwakira 2022]

Amategeko agenga imanza z'umurimo – Umushahara w'umukozi – Kureshyeshya abakozi mu bijyanye n'umushahara – Iyo umukozi yagaragaje ko adahembwa nk'abandi bakora umurimo umwe, ni inshingano z'umukoresha gutanga ibimenyetso bivuguruza ibitangwa n'umukozi cyangwa bigaragaza ko kutabahemba kimwe bishingiye ku mpamvu zifatika kandi zumvikana. Izo mpamvu zemezwa n'Urukiko mu bushishozi bwarwo.

Amategeko agenga imanza z'umurimo – Umushahara w'umukozi – Kureshyeshya abakozi mu bijyanye n'umushahara – Iyo umukozi ahamya ko ikimenyetso cy'uko adahembwa nk'abandi bakozi bari ku rwego rumwe nawe kandi bakora imirimo nk'iyе gifitwe n'umukoresha, ashobora gusaba Urukiko gutegeka ko uregwa akigaragaza, cyaba kitagaragajwe, Urukiko rukabyaza ingaruka uko kwifata cyangwa kwanga gutanga icyo kimenyetso ku ruhande ruregwa.

Amategeko agenga imanza z'umurimo – Amasezerano y'umurimo – Iseswa ry'amasezerano y'umurimo – Iyo Urukiko rwemeje ko umukozi wasezerewe mu buryo bunyuranyije n'amategeko agira imishahara ahabwa, iyo mishahara ihwanye n'umushahara atahana mu ntoki (salaire net) aho kuba umushahara mbumbe.

Incamake y'ikibazo: Uru rubanza rwatangijwe na Mutware avuga ko yari umukozi wa GT Bank Rwanda Plc, akora ku mwanya wa *cashier*, ariko aza kuzamurwa mu ntera agirwa *Cash Management Officer*, umwanya yamazeho amezi 20. Yasobanuye ko ku bw'impamvu zidafatika kandi zitumvikana, umukoresha yakomeje kumuhemba umushahara wa *cashier*, asaba guhembwa ikinyuranyo cy'imishahara atahawe, ndetse umushahara wa *Cash Management Officer* ukaba ariwo ubarirwaho amafaranga y'integuza n'ay'imperekeza.

Kuri iyo ngingo, Urukiko Rwisumbuye rwa Nyarugenge rwasanze ikirego cye gifite ishingiro. GT Bank Rwanda Plc yajuririye Urukiko Rukuru. Nyuma yo gusuzuma ubujurire bwayo, Urukiko Rukuru rwasanze Urega adatanga ibimenyetso bihamya ko Uregwa yari ifite inshingano zo kumuhembera umwanya wa *Cash Management Officer*. Ibi nibyo byatumye Urega asubirishamo urubanza rwaciwe n'Urukiko Rukuru ku mpamvu z'akarengane.

Muri uru rubanza habanje gusuzumwa ikibazo cyo kumenya niba Uregwa yaragombaga kongeza Urega umushahara kuko avuga ko yamaze amezi 20 azamuwe mu ntera ku mwanya wa *Cash Management Officer* atawuhemberwa ahubwo akomeza guhabwa umushahara w'umwanya yakoragaho mbere wa *cashier*. Akomeza avuga ko yandikiye Ubuyobozi bwa Banki asaba guhemberwa intera yazamuweho, aho kubibona nko guharanira uburenganzira bwe, banki ibifata nk'imyitwarire mibi, imutumiza ubutitsa muri Komisiyo y'Imyitwarire kugeza yirukanwe mu buryo bunyuranyije n'amategeko. Bityo, akaba asaba Urukiko kumugenera ikinyuranyo cy'umushahara wa *Cash Management Officer* atahembwe muri icyo gihe.

Uregwa asobanura ko ikimenyetso Urega aburanisha ashaka kugaragaza umushahara wahabwaga uwo yasimbuye ku mwanya

wa *Cash Management Officer* yagitanze bwa mbere mu Rukiko rw'Ikirenga bityo kikaba kidakwiye gushingirwaho hemezwa ko yarenganye. Akomeza avuga ko kuba Urega hari uwo yarasimbuye kuri uwo mwanya ataribyo byatuma byanze bikunze bahembwa kimwe, kuko abakozi bari ku mwanya umwe bashobora guhembwa umushahara utandukanye biturutse ku mpamvu nyinshi harimo n'iz'uburambe mu kazi.

Ku kibazo cyo kumenya niba amafaranga y'integuza n'ay'imperekeza yagenewe Urega yarabazwe mu buryo butari bwo, uyu avuga ko Uregwa yagombaga kumwishyura amafaranga y'integuza angana n'umushahara w'ukwezi kumwe, n'amafaranga y'imperekeza ahwanye n'umushahara we w'amezi abiri, bityo akaba asaba uru Rukiko kumutegeka kumuha ikinyuranyo cy'ayo yagombaga kumuha.

Uregwa avuga ko inyandiko yitwa *final pay* igaragaza ko Urega yishyuye amafaranga y'integuza y'ukwezi kumwe n'amezi abiri y'imperekeza. Asobanura ko mu kumwishyura yahawe umushahara atahana mu ntoki, bityo ko ibyo ari gusaba ko akwiye kwishyurwa integuza n'imperekeza by'umushahara mbumbe ari ugushaka indonke zidafite ibisobanuro.

Incamake y'icyemezo: 1. Ihame ni uko abantu bakora umurimo umwe bagomba guhembwa kimwe nta vangura iryo ari ryo ryose.

2. Iyo umukozi yagaragaje ko adahembwa nk'abandi bakora umurimo umwe, ni inshingano z'umukoresha gutanga ibimenyetso bivuguruza ibitangwa n'umukozi cyangwa bigaragaza ko kutabahemba kimwe bishingiye ku mpamvu zifatika kandi zumvikana. Izo mpamvu zemezwa n'Urukiko mu bushishozi bwarwo.

3. Iyo umukozi ahamya ko ikimenyetso cy'uko adahembwa nk'abandi bakozi bari ku rwego rumwe nawe kandi bakora imirimo nk'iyе gifitwe n'umukoresha, ashobora gusaba Urukiko gutegeka ko uregwa akigaragaza, cyaba kitagaragajwe, Urukiko rukabyaza ingaruka uko kwifata cyangwa kwanga gutanga icyo kimenyetso ku ruhande ruregwa.

4. Iyo Urukiko rwemeje ko umukozi wasezerewe mu buryo bunyuranyije n'amategeko agira imishahara ahabwa, iyo mishahara ihwanye n'umushahara atahana mu ntoki (*salaire net*) aho kuba umushahara mbumbe.

Ikirego gisaba gusubirishamo urubanza rwaciwe n'Urukiko Rukuru, gifite ishingiro.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 30.

Itangazo Mpuzamahanga ryerekeye uburenganzira bwa muntu ryo ku wa 10/12/1948, ingingo ya 23.

Amasezerano Nyafurika y'Uburenganzira bwa Muntu n'Abaturageyashyizweho umukono ku wa 11/11/1981 yemezwa n'Itegeko N° 10/1983 ryo ku wa 17/05/1983, ingingo ya 15.

Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 9 n'iya 40.

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 12 n'iya 111.

Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda, ingingo ya 75 n'iya 140.

Imanza zifashishijwe:

RS/INJUST/RSOC 00001/2022/SC rwaciwe n’Urukiko
rw’Ikirenga ku wa 08/07/2022, ibika bya 19 na 20.

RS/INJUST/RSOC 00001/2019/SC rwaciwe n’Urukiko
rw’Ikirenga ku wa 31/01/2019.

Imanza zo mu mahanga zifashishijwe:

Pinkas and Others v. Bosnia and Herzegovina, (Application
number. 8701/21), 04/10/2022, para 63.

Cour de cassation, civile, Chambre sociale, 12 juin 2013, 11-
14.458.

Galina Meister contre Speech Design Carrier Systems GmbH,
numero C-415/10, Cour de Justice de l’Union
Européene, 12 janvier 2012, para 47.

Cour de cassation, Chambre sociale, numero 08-43.088, 17
Mars 2010.

Cour de cassation, Chambre sociale, numero 04- 40.169, 25 Mai
2005.

Cour de Cassation, Chambre sociale, numero 00-41.63326
Novembre 2002.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Mutware Jean de Dieu avuga ko yari umukozi wa GT Bank Rwanda Plc hanyuma asezererwa ku kazi mu buryo bunyuranyije n’amategeko. Avuga ko ku wa 15/07/2017 no ku wa 04/09/2017 yandikiye Intumwa z’Abakozi muri banki kugira ngo bamukurikiranire ikibazo ariko ntiyasubizwa bituma atanga

ikirego asaba Urukiko gutegeka GT Bank Rwanda Plc kumwishyura imperekeza, integuza, insimbura kiruhuko, amasaha y'ikirenga, ibirarane by'imishahara, imisanzu yo muri SORAS n'indishyi z'akababaro. GT Bank Rwanda Plc yavuze ko Mutware Jean de Dieu yagombaga gutegereza igisubizo cy'Intumwa y'Abakozi, isaba ko ikirego kitakirwa.

[2] Mu rubanza RSOC 00468/2017/TGI/NYGE rwaciwe ku wa 14/03/2018, Urukiko Rwisumbuye rwa Nyarugenge rwasanze Mutware Jean de Dieu yarasezerewe ku wa 21/09/2017, naho Intumwa y'Abakozi muri banki yarandikiwe ku wa 15/07/2017 no ku wa 04/09/2017, bivuze ko byakozwe mbere y'uko asezererwa nyamara gusezererwa mu buryo bunyuranyije n'amategeko aribyo byaregewe inkiko, rwanzura ko ikirego kitakiriwe kuko cyatanzwe mu buryo bunyuranyije n'amategeko hashingiwe ku kuba hatarubahirijwe umuhango uteganywa n'ingingo ya 140 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 rigenga umurimo mu Rwanda.¹

[3] Ku wa 11/05/2018 Mutware Jean de Dieu yatanze ikindi kirego muri urwo Rukiko, avuga ko yirukanwe azira kuba yarasabye guhembwa umushahara uri ku ntera yari yazamuweho, ko kandi yageretsweho, ku bw'akarengane, gusiba 32.726 Frw kuri konti y'Ikigo cy'Imisoro n'Amahôro, asaba guhabwa imperekeza, integuza, insimbura kiruhuko, amasaha y'ikirenga,

¹ Iyo ngingo yateganyaga ko iyo havutse impaka zihariye ku kazi hagati y'umukozi n'umukoresha, uruhande bireba rubanza gusaba uhagarariye abakozi iyo ahari, gukemura ayo makimbirane ku bwumvikane. Iyo intumwa z'abakozi zidashoboye gukemura ayo makimbirane, uruhande bireba rubimenyeshya Umugenzuzi w'Umurimo rusaba ko yakemurwa ku bwumvikane. Iyo kumvikana bidashobotse, ikirego gishobora gushyikirizwa urukiko rubifitiye ububasha. Iyo kunyura mu nzego zivugwa muri iyi ngingo bitubahirijwe, urukiko rushobora gufata icyemezo cyo kutakira ikirego.

ibirarane by'imishahara, imisanzu yo muri SORAS n'indishyi z'akababaro. GT Bank Rwanda Plc yireguye ivuga ko Mutware Jean de Dieu yaranzwe n'imyitwarire idahwitse, ko yihanangirijwe kenshi ku makosa ubundi atihanganirwa ariko ntiyikosore, isaba Urukiko kubona ko yirukanwe ku bw'impamvu zumvikana.

[4] Mu rubanza RSOC 00184/2018/TGI/NYGE rwaciwe ku wa 10/01/2019, Urukiko Rwisumbuye rwa Nyarugenge rwasanze:

- Kuba Mutware Jean de Dieu yarandikiye ubuyobozi bwa banki asaba guhemberwa intera yazamuweho, kuba yaritabye Komisiyo y'Imyitwarire inshuro eshatu cyangwa kuba atarishyuye inguzanyo yahawe na banki ubwabyo bitafatwa nk'imyitwarire mibi yari gutuma asezererwa ku kazi kuko Mutware Jean de Dieu nta tegeko yishe aharanira uburenganzira bwe ku mushahara ukwiriye, ndetse na GT Bank Rwanda Plc ikaba iterekana ko nyuma y'amakosa Mutware Jean de Dieu yahaniwe hari andi yakoze cyangwa ngo igaragaze isano riri hagati y'amasezerano y'umurimo n'amasezerano y'inguzanyo;
- Mutware Jean de Dieu yarasabwe ibisobanuro ku bijyanye na 32.727 Frw yasibwe kuri konti y'Ikigo cy'Imisoro n'Amahôro, arabitanga ariko ntibyakirwa neza, arabihanirwa, avanwa ku mwanya yariho yimurirwa i Muhanga, bityo bikaba batari kuba impamvu yumvikana yari gutuma yirukanwa;
- Mutware Jean de Dieu adakwiye guhabwa amafaranga y'insimburakiruhuko n'ay'amasaha

y'ikirenga kuko atagaragaza ko atafashe ikiruhuko cyangwa se ko hari amasaha y'ikirenga yakoze;

- Mutware Jean de Dieu yarakoraga ku mwanya wa *Cash Management Officer* ariko agahemberwa umwanya wa *cashier*, bityo akaba agomba guhabwa ikinyuranyo cy'amafaranga atahembwe mu gihe cy'amezi 20 angana na 5.540.180 Frw, kandi agahabwa n'imisanzu ye yo muri SORAS GT Bank Rwanda Plc yafatiriye.

[5] Urukiko rwanzuye ko Mutware Jean de Dieu yirukanywe nta mpamvu yumvikana, rutegeka GT Bank Rwanda Plc kumuha 331.825 Frw y'integuza, 663.650 Frw y'imperekeza, 995.475 Frw y'indishyi z'akababaro, 5.540.180 Frw y'imishahara atahembwe, 1.200.000 Frw y'imisanzu yafatiriwe na 800.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[6] GT Bank Rwanda Plc yajuririye Urukiko Rukuru irusaba gusuzumana ubushishozi impamvu zatumye Mutware Jean de Dieu asezererwa ku kazi, rukemeza ko zumvikana, rukanatesha agaciro indishyi zose yahawe kuko atari azikwiriye. Mutware Jean de Dieu yatanze ubujurire bwuririye ku bundi asaba indishyi atahawe ku rwego rwa mbere.

[7] Mu rubanza RSOCA 00033/2019/HC/KIG rwaciwe ku wa 12/09/2019, Urukiko Rukuru rwasanze:

- Nta kosa Urukiko Rwisumbuye rwa Nyarugenge rwakoze rwemeza ko Mutware Jean de Dieu yirukanwe nta mpamvu zumvikana ndetse rumugenera indishyi z'akababaro kuko kuba atarishyuye inguzanyo y'ukwezi kwa Nyakanga 2017

atari impamvu yumvikana yari gutuma asezererwa ku kazi;

- Urukiko Rwisumbuye rwa Nyarugenge rutaragombaga guha Mutware Jean de Dieu 331.825 Frw y'integuza na 663.650 Frw y'imperekeza kuko inyandiko yiswe *final pay* ndetse n'inyandikomvugo yo kutumvikana yakozwe n'Umugenzuzi w'Umurimo zigaragaza ko yayahawe, bityo akaba avanweho;
- Mutware Jean de Dieu atarigeze yandikira GT Bank Rwanda Plc asaba guhemberwa umwanya yari yazamuweho ahubwo ko yasabaga kongererwa umushahara kubera ikibazo cy'imibereho (*an increase of at least a certain percentage in my annual pay, as the cost of live increased within years*), bityo Urukiko rukaba rutari kumugenera ikinyuranyo cy'imishahara atahembwe kandi nta kimenyetso yagaragaje gihamya ko yagombaga kujya ahembwa 548.160 Frw;
- GT Bank Rwanda Plc itari yemerewe gufatira imisanzu y'ubwishingizi ya Mutware Jean de Dieu muri SORAS kuko amasezerano y'umurimo atandukanye n'ay'inguzanyo, bityo banki ikaba igomba kuyasubiza;
- Mutware Jean de Dieu nta zindi ndishyi z'akababaro akwiriye kuko indishyi zihwanye n'umushahara w'amezi atatu yagenewe ziri mu rugero ruteganywa n'itegeko, indishyi nsimburakiruhuko akaba ntazo akwiye kuko nta kimenyetso yatanze kigaragaza ko atafashe ikiruhuko mu myaka ya 2015, 2016 na 2017.

[8] Urukiko rwanzuye ko ubujurire bwa GT Bank Rwanda Plc bufite ishingiro kuri bimwe, naho ubwuririye ku bundi bwatanzwe na Mutware Jean de Dieu nta shingiro bufite, rwemeza ko 331.825 Frw y'integuza, 663.650 Frw y'imperekeza na 5.540.180 Frw y'ikinyuranyo cy'umushahara, Mutware Jean de Dieu yari yagenewe n'Urukiko Rwisumbuye rwa Nyarugenge avanweho.

[9] Mutware Jean de Dieu yandikiye Perezida w'Urukiko rw'Ubujurire, asaba ko urubanza RSOCA 00033/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 12/09/2019 rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo. Mu cyemezo nimeru 015/CJ/2022 cyo ku wa 26/01/2022, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[10] Iburanisha ryabereye mu ruhamu ku wa 13/09/2022, Mutware Jean de Dieu yunganiwe na Me Nyirasuku Jeanne naho GT Bank Rwanda Plc iburanirwa na Me Safari Jean Bosco, hasuzumwa ibibazo byo kumenya niba GT Bank Rwanda Plc yaragombaga kongeza Mutware Jean de Dieu umushahara, niba amafaranga y'integuza n'ay'imperekeza yarabazwe mu buryo butaribwo n'ibijyanye n'igihembo cya Avoka n'amafaranga y'ikurikiranarubanza bisabwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURWA RYABYO

1. Kumenya niba GT Bank Rwanda Plc yari ifite inshingano zo kongeza umushahara Mutware Jean de Dieu

[11] Mutware Jean de Dieu na Me Nyirasuku Jeanne, umwunganira, bavuga ko Mutware Jean de Dieu yari umukozi wa GT Bank Rwanda Plc akora ku mwanya wa *Cashier*, ahembwa 331.825 Frw, ku wa 04/02/2016 azamurwa mu ntera agirwa *Cash Management Officer* asimbuye uwitwa Uwantege Yvonne wahembwaga 548.160 Frw. Basobanura ko Mutware Jean de Dieu yamaze amezi 20 ku mwanya wa *Cash Management Officer* ari no ku ntera (*grade*) imwe n’iya Uwantege Yvonne yasimbuye, ariko akomeza guhembwa umushahara wa *Cashier*. Bavuga ko ku wa 06/08/2017, hatarashira imyaka ibiri ari kuri uwo mwanya, Mutware Jean de Dieu yandikiye *email* ubuyobozi bwa GT Bank Rwanda Plc, asaba guhemberwa intera yazamuweho, aho kubibona nko guharanira uburenganzira bwe, banki ibifata nk’imyitwarire mibi, imutumiza ubutitsa muri Komisiyo y’Imyitwarire kugeza yirukanwe mu buryo bunyuranyije n’amategako ku wa 21/09/2017.

[12] Bavuga ko hejuru y’iyo *email* Mutware Jean de Dieu yandikiye ubuyobozi bwa banki ikaba intandaro yo kwitirirwa imyitwarire mibi, GT Bank Rwanda Plc yamureze kuba atarishyuye neza inguzanyo yahawe, bakibaza isano riri hagati y’amasezerano y’inguzanyo n’ay’umurimo ku buryo kutishyura neza inguzanyo byari gutuma umukozi yirukanwa mu kazi. Basaba uru Rukiko gushimangira ihame ry’uko umushahara ari ikiguzi cy’umurimo wakozwe, rugashingira ku biteganywa n’ingingo ya 75 y’Itegeko N° 13/2009 ryo ku wa 27/05/2009

rigenga umurimo mu Rwanda² rukemeza ko Mutware Jean de Dieu akwiye guhabwa ikinyuranyo cy'imishahara atahembwe ku mwanya wa *Cash Management Officer*, ahwanyane na 558.160 Frw—331.825 Frw x 20 = 5.540.180 Frw.

[13] Me Safari Jean Bosco, uburanira GT Bank Rwanda Plc, avuga ko ikimenyetso Mutware Jean de Dieu aburanisha ashaka kugaragaza ko Uwantege Yvonne yahembwaga 558.160 Frw yagitanze bwa mbere mu Rukiko rw'Ikirenga bityo kikaba kidakwiye gushingirwaho hemezwa ko yarenganye. Asobanura ko icyo kimenyetso kigaragaza ko Uwantege Yvonne yashyizwe ku mwanya wa *Cash Management Officer* ku wa 14/04/2014, ariko Mutware Jean de Dieu akirengagiza ko ku wa 17/12/2014, GT Bank Rwanda Plc yavuguruye imishahara ndetse ishira uburyo bushya bw'imihembere aho buri mukozi yatangiye guhemberwa grade ariho, kandi ko ku wa 15/06/2016, Mutware Jean de Dieu yamenyeshejwe ko ari kuri *grade ya Operation Officer One*, inyandiko yitwa *Grading Harmonization and Salary Structure* yo ku wa 17/12/2014 ikaba igaragaza ko umukozi wari kuri iyo *grade* yatahanaga umushahara ungana na 278.094 Frw.

[14] Ku kibazo cyo kumenya impamvu inyandiko yitwa *Grading Harmonization and Salary Structure* ntaho igaragara muri dosiye zabanje n'icyo kumenya niba haricyo iyi nyandiko yahinduye ku mushahara wa Uwantege Yvonne ubwo yari akiri ku mwanya wa *Cash Management Officer*, asubiza ko atabonye umwanya wo kubisuzuma, ariko ko kuba Mutware Jean de Dieu yarasimbuye Uwantege Yvonne ku mwanya wa *Cash Management Officer* ataribyoye byatuma byanze bikunze

² Ingingo ya 75 iteganya ko umushahara ni ikiguzi cy'umurimo wakoze. Uretse ubwumvikane hagati y'abagiranye amasezerano y'akazi cyangwa mu bihe byateganyijwe n'iri tegeko, udakoze nta mushahara abona.

bahembwa kimwe, kuko abakozi bari ku mwanya umwe bashobora guhembwa umushahara utandukanye biturutse ku mpamvu nyinshi harimo n'iz'uburambe mu kazi.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 30, igika cya 2, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 ivuga ko abantu bakora umurimo umwe bagomba guhembwa kimwe nta vangura iryo ari ryo ryose.

[16] Urukiko rurasanga iby'uko abakozi bakora umurimo umwe bagomba guhembwa kimwe, ari intego u Rwanda rwiyejeje guhera ku wa 18 Nzeri 1962,³ ubwo rwemeraga kugendera ku mahame y'uburenganzira bwa muntu akubiye mu Itangazo Mpuzamahanga ryerekeye uburenganzira bwa muntu ryo ku wa 10/12/1948,⁴ aho mu ngingo ryaryo ya 23, igika cya 2, rigira riti buri wese, nta vangura iryo ariryo ryose, afite uburenganzira bwo guhembwa umushahara ungana n'uwo abandi bakora imirimo nk'iyе bakora. (*Tous ont droit, sans aucune discrimination, à un salaire égal pour un travail égal.* Iyi ntego u Rwanda rwongeye kuyishimangira ubwo rwashyiraga umukono ku Masezerano Nyafurika y'Uburenganzira bwa Muntu n'Abaturage,⁵ nayo avuga mu ngingo yayo ya 15 ko buri muntu afite uburenganzira bwo gukora, agafatwa neza,

³ Reba *Déclaration du Président de la République relative au respect des accords et traités conclus par la Belgique*, in *Codes et Lois du Rwanda, Vol I*, p. 50.

⁴ Reba *Déclaration Universelle des Droits de l'Homme du 10 décembre 1948*, in *Codes et Lois du Rwanda, Vol I*, p. 66.

⁵ Yashyizweho umukono ku wa 11/11/1981 yemezwa n'Itegeko N° 10/1983 ryo ku wa 17/05/1983.

akareshyeshywa n'abandi kandi agahembwa umushahara ungana n'uwo abandi bakora umurimo nk'uwe bahembwa.⁶

[17] Ubwo burenganzira bwo gufata kimwe abakozi bari ku rwego rumwe kandi bakora imirimo imeze kimwe, nibwo bwibukijwe mu ngingo ya 30, igika cya 2, y'Itegeko Nshinga nk'uko yagaragajwe haruguru. Mu rwego rwo gushimangira iryo hame no kugira ngo ryubahirizwe uko bikwiye n'abakoresha bose, Umushingamategeko yarigarutseho mu ngingo ya 9, igika cya 3⁷, ndetse n'iya 40, agace ka 2,⁸ z'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda rikoresha ubu aho izo ngingo zivuga ko umukozi afite burenganzira bwo guhembwa umushahara ungana n'uw'abandi bakora imirimo y'agaciro kangana n'iyi akora.

[18] Ubwo mu rubanza Rugina Jason yaburanaga na SONARWA Life Insurance Company Plc uru Rukiko rwasesenguraga ikibazo cy'ishyirwa mu bikorwa ry'iryo hame ryo kureshyeshya abakozi mu by'umushahara iyo bakora imirimo imwe,⁹ uru Rukiko rwashyizeho imirongo migari ikurikira:

- Abakozi bakora imirimo imwe, banganya ubumenyi, uburambe n'ubushobozi bagomba guhembwa kimwe, iyo bitabaye ibyo haba habayeho ivangura;

⁶ «*Toute personne a le droit de travailler dans des conditions équitables et satisfaisantes et de percevoir un salaire égal pour un travail égal.*»

⁷ Iyo ngingo iteganya ko [...] Umukoresha wese agomba guhamba umushahara ungana abakozi bakora imirimo y'agaciro kangana nta vangura iryo ari ryo ryose.

⁸ Iyo ngingo iteganya ko 2^o guhembwa umushahara ungana n'uw'abandi iyo bakora imirimo y'agaciro kangana.

⁹ Reba urubanza RS/INJUST/RSOC 00001/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 08/07/2022, ibika bya 19 na 20.

- Umukozi unganya na bagenzi be ubumenyi, uburambe n'ubushobozi, udahembwa kimwe n'abo bari ku rwego rumwe, afite uburenganzira bwo guharanira guhembwa kimwe na bagenzi be cyangwa bwo gusaba ko ahembwa umushahara ukwiye;
- Nubwo nta kibuzwa umukoresha kuba yagera bamwe mu bakozi ishimwe, iyo iryo shimwe rishyizwe ku mushahara, rihabwa abakozi bese;
- Umukozi wazamuwe mu ntera ariko kuva yazamurwa mu ntera ntahembwe umushahara ungana n'uwo bagenzi be bari ku mwanya nk'uwe bahembwaga, akwiye guhembwa ikinyuranyo cy'imishahara yose atahembwe;
- icyatuma imishahara y'abakozi bari ku rwego rumwe itandukana ni igihe umukoresha abashije kugaragariza Urukiko mu buryo bufatika (objectivement/objectively) ko abakozi bahembwaga umushahara uri hejuru bafite ubumenyi budasanzwe kandi bwihariye bufitiye akamaro umurimo bakora, ibyo kandi byemezwa n'Urukiko mu bushishozi bwarwo.

[19] Ku birebana n'ugomba gutanga ibimenyetso igihe haregewe ivangura, Urukiko rusanga ihame rusange ryibukijwe mu ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ari uko urega afite inshingano zo kugaragaza ishingiro ry'ibyo aregera, yabibura uwarezwe agatsinda. Na none ariko, uvuga ko nta nshingano afite zo gukora ibyo yari ategetswe gukora agomba kugaragaza

icyazimukuyeho, yabiburira ibimenyetso, uwo baburana akamutsinda.

[20] Mu rubanza *Pinkas and Others* baburanaga na Leta ya Bosnia na Herzegovina imbere y'Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu, ikirego cyari gishingiye ku kuba abanditsi n'abacamanza bo mu nkiko za *State Courts* bataragenewe amafaranga y'ingendo, ay'amafunguro n'ayo kuba kure y'imiryango yabo. icyo kirego cyaje gusuzumwa n'inkiko ebyiri zitandukanye. Urwasuzumye ikirego cy'abacamanza rwemeza ko bayahabwa guhera mbere ya Mutarama 2013 naho urwasuzumye ikirego cy'abanditsi rwemeza ko bayahabwa guhera muri Mutarama 2013.¹⁰ Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu rwasanze kuba abo bakozi batarafashwe kimwe kandi ikirego cyari cyatanzwe hashingiwe ku ngingo zimwe z'amategeko ari ivangura ridashingiye ku mpamvu zifatika kandi zumvikana. Urukiko rwemeje ko iyo urega yagaragaje ko adafashwe kimwe n'abo bagomba gufatwa kimwe, uregwa ari we ugomba kugaragaza ko kutabafata kimwe bishingiye ku mpamvu zifatika kandi zumvikana. Iyo bitagaragajwe nta wundi mwanzuro Urukiko rwageraho uretse

¹⁰ “The special feature of the instant case is that the judges and the judicial clerks at the State Court brought a joint civil action relying on the same legal provisions, that the civil courts then severed their case into two cases on the grounds of their status (...) and reached opposite conclusions regarding one of the key legal issues raised in those cases. As a result of that special set of circumstances, all of the judicial clerks at the State Court were granted meal, travel and family separation allowances in respect of the period after January 2013 only, whereas all of the judges were granted those benefits also for the period before January 2013”. Reba urubanza *Pinkas and Others v. Bosnia and Herzegovina*, (Application no. 8701/21), 04/10/2022, para 63.

uwo kwemeza ko impamvu zashingiweho abo bantu batandukanywa zidafatika kandi zitumvikana.¹¹

[21] Urukiko rurasanga nanone Urukiko rw'Ubutabera rw'Ubumwe bw'Uburayi (*Cour de Justice de l'Union Européenne*) rwarasanze kudatanga amakuru ku ruhande ruregwa ari imwe mu mpamvu zishobora guherwaho hemezwa ko hashobora kuba harabayeho ivangura mu buryo buziguye cyangwa butaziguye. Rwongereyeho ko icyo gihe ari inshingano z'Urukiko rwajuririwe guhera kubyabaye byose mu rubanza rwohererejwe, rugasuzuma niba koko harabayeho ivangura.¹²

[22] Naho ku bireba ivangura mu by'umushahara, Urukiko Rusesa Imanza mu Bufaransa rusanga nubwo ari inshingano z'umukozi kugaragaza ibimenyetso by'uko adahembwa kimwe n'abakora imirimo imeze nk'iyi akora, iyo umukozi ahamya ko icyo kimenyetso gifitwe n'uwo baburana, ashobora gusaba Urukiko gutegeka ko uregwa akigaragaza. Iyo uregwa

¹¹ “...the Court reiterates that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (...). The Government did not offer any justification for this difference in treatment (see paragraph 56 above). The same is true in respect of the domestic courts (...). That being the case, the Court cannot but conclude that this difference in treatment had no objective and reasonable justification.” Reba urubanza Pinkas and Others v. Bosnia and Herzegovina, (Application number. 8701/21), 04/10/2022, para 65.

¹² “(...) il ne saurait être exclu qu'un refus de tout accès à l'information de la part d'une partie défenderesse peut constituer l'un des éléments à prendre en compte dans le cadre de l'établissement des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte. Il incombe à la juridiction de renvoi, en prenant en considération toutes les circonstances du litige dont elle est saisie, de vérifier si tel est le cas dans l'affaire au principal. » Reba, Galina Meister contre Speech Design Carrier Systems GmbH, n° C-415/10, Cour de Justice de l'Union Européenne, 12 janvier 2012, para 47.

atakigaragaje, Urukiko rubyaza ingaruka uko kwifata cyangwa kwanga gutanga icyo kimenyetso ku ruhande ruregwa.¹³

[23] Urwo Rukiko rwasanze kandi mu gihe umukozi yagaragaje ko yahembwaga umushahara muke ugereranyije n'uw'abandi bakozi bari ku rwego rumwe kandi bakora imirimo imwe nawe, umukoresha ntiyagarukira gusa ku kuvuga ko uwo mukozi adatanga umusaruro ushimishije. Umukoresha agomba ahubwo gutanga ibimenyetso byerekana ko iryo vangura rishingiye ku mpamvu zumvikana kandi zifatika zari gutuma umushahara w'uwo mukozi utandukanywa n'uw'abandi bari ku rwego rumwe.¹⁴ Imwe mu mpamvu ifatika kandi yumvikana ni

¹³ “(...) Mais attendu qu'il appartient au salarié qui invoque une atteinte au principe "à travail égal, salaire égal" de soumettre au juge des éléments de fait susceptibles de caractériser une inégalité de rémunération ; que lorsque le salarié soutient que la preuve de tels faits se trouve entre les mains d'une autre partie, il lui appartient de demander au juge d'en ordonner la production; que ce dernier peut ensuite tirer toute conséquence de droit en cas d'abstention ou de refus de l'autre partie de déférer à une décision ordonnant la production de ces pièces;...” Reba urubanza Cour de cassation, civile, Chambre sociale, 12 juin 2013, 11-14.458.

¹⁴ “Mais attendu que la cour d'appel, qui a constaté que depuis de nombreuses années le salarié, employé en qualité de câbleur au niveau 2, coefficient 185 de la convention collective, percevait une rémunération inférieure à celles de ses collègues n'ayant pas plus d'ancienneté que lui, occupant strictement le même poste et exerçant les mêmes fonctions, avec les mêmes niveau et coefficient, a retenu que l'employeur qui ne contestait pas cette situation de fait ne fournissait comme seule explication que la prétendue médiocre qualité du travail accompli par l'intéressé ; qu'elle a ainsi fait ressortir, abstraction faite du motif surabondant critiqué par la première branche du moyen, que l'employeur ne rapportait pas la preuve que l'inégalité de traitement dont le salarié a été la victime, reposait sur un critère objectif tenant à la différence du travail fourni ; que le moyen n'est pas fondé ...” Reba urubanza Cour de Cassation, Chambre sociale, numero 00-41.63326 novembre 2002. Reba kandi Cour de cassation, Chambre sociale, n° 04- 40.169, 25 mai 2005.

nko kuba umukozi uhembwa amafaranga menshi Arusha urega impamyabushobozi ituma mu kazi atanga umusaruro uruta utangwa n'uw'umukozi urega.¹⁵

[24] Urukiko rurasanga ibyavuzwe haruguru iyo bihujwe n'ihame ry'uko abakozi bakora umurimo umwe bagomba guhembwa kimwe, byumvikanisha ko inshingano y'umukozi ari ukwerekana ko akora umurimo nk'uw'abandi bari ku rwego rumwe nawe kandi ko umukoresha atamuhemba nk'uko ahemba abandi bakozi bari ku rwego rwe. icyo gihe, umukoresha afite inshingano zo gutanga ibimenyetso bivuguruza ibitangwa n'umukozi. Igihe umukozi avuga ko ibimenyetso bifitwe n'umukoresha, agomba gusaba Urukiko kumutegeka kubitanga, atabitanga Urukiko rugasuzumana ubushishozi ibyo rwashikirijwe n'umukozi hagamijwe gukumira ivangura ku isoko ry'umurimo.

[25] Urukiko rurasanga ku bijyanye n'uru rubanza, ikimenyetso Mutware Jean de Dieu yatanze agaragaza ishingiro ry'ibyo aregera, ari ibaruwa yo ku wa 14/04/2014 ishyira Uwantege Yvonne ku mwanya wa *Cash Management Officer* kandi imumenyesha ko azajya ahembwa 548.160 Frw. Ku kibazo cyo kumenya niba ari ubwa mbere Mutware Jean de Dieu ashyira muri dosiye icyo kimenyetso, bityo kikaba kitashingirwaho

¹⁵ “*Mais attendu qu'ayant constaté que Mme X... avait obtenu un BTS "expression visuelle" ayant nécessité deux années d'études et que le salarié auquel elle se comparait était titulaire d'un diplôme d'études supérieures spécialisées en ingénierie multimédia obtenu après cinq années de formation, la cour d'appel a pu en déduire que ces diplômes utiles à l'exercice des fonctions occupées, sanctionnant des formations professionnelles de niveaux et durées inégales, constituaient une raison objective et pertinente justifiant la différence de rémunération ; que le moyen n'est pas fondé...*” Reba urubanza Cour de cassation, Chambre sociale, numero 08-43.088, 17 mars 2010.

hasuzumwa akarengane avuga ko yagiriwe, Urukiko rurasanga muri dosiye y'urubanza RSOC 00468/2017/TGI/NYGE rwaciye n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 14/03/2018, icyo kimenyetso kiri kuri nimero ya kane ku rutonde rw'ibyo yaburanishaga.

[26] Urukiko rurasanga GT Bank Rwanda Plc, nk'umuburanyi muri urwo rubanza, yari ihagarariwe, bivuze ko icyo kimenyetso isanzwe ikizi cyane cyane ko ari nayo yacyikoreye, bityo ibyo iburanisha ko Mutware Jean de Dieu atagishingiraho akarengane ke bikaba nta shingiro bifite, kuko nubwo icyo kimenyetso kitagiye cyimurirwa muri dosiye ya buri Rukiko, bigaragara ko cyatanze mu ntangiriro z'urubanza.

[27] Ku kibazo cyo kumenya niba Mutware Jean de Dieu yari ku mwanya umwe na Uwantege Yvonne, wahoze ari *Cash Management Officer*, Urukiko rurasanga dosiye y'urubanza irimo ibaruwa yo ku wa 04/02/2016, GT Bank Rwanda Plc yandikiye Mutware Jean de Dieu imumenyesha ko guhera ku itariki ya 05/02/2016 ashyizwe ku mwanya wa *Cash Management Officer*. Ibyo bishimangirwa kandi n'icyemezo cy'umurimo (*employment certificate*) cyo ku wa 21/09/2017, kigaragaza ko Mutware Jean de Dieu yakozwe imirimo ijyanye na *Cash Management Officer* kuva ku itariki ya 05/02/2016 kugera ku itariki ya 25/06/2017, bivuze ko kugeza ku wa 26/06/2017, ubwo MUTWARE Jean de Dieu yashyirwaga ku mwanya wa *Teller* muri GT Bank Rwanda Plc, Ishami rya Muhanga, yari amaze igihe kingana hafi n'amezi cumi n'arindwi (17) ari ku mwanya wa *Cash Management Officer*.

[28] Ku kibazo cyo kumenya niba muri icyo gihe Mutware Jean de Dieu yamaze ari *Cash Management Officer* yaragombaga guhembwa 548.160 Frw nk'uko byari bimeze kuri UWANTEGE

Yvonne, Urukiko rurasanga urwandiko rwo ku wa 04/02/2016 rushyira Mutware Jean de Dieu mu mwanya wa *Cash Management Officer* ntaho ruvuga umushahara na *grade* bya nk'uko bimeze kuri Uwantege Yvonne wari washyizwe kuri *grade* ya 13, ahembwa umushahara mbumbe ungana na 548.160 Frw. Ku wa 15/06/2016, hashize amezi ane n'iminsi icumi Mutware Jean de Dieu ari mu mwanya mushya nibwo yamenyeshejwe ko ari kuri *grade* ya *Operation Officer One* hakurikijwe imiterere mishya y'imirimo muri banki, ariko nabwo ntaho banki igaragaza ko uwo mwanya ariwo uhwanyeye n'uwa *Cash Management Officer* yariho. Nyamara kandi GT Bank Rwanda Plc yivugira ko *grades* nshya zatangiye gukurikizwa guhera ku wa 17/12/2014, bivuze ko arizo zakoreshejwe no kuri Uwantege Yvonne kuva kuri iyo tariki kugeza avuye ku mwanya wa *Cash Management Officer* ariko banki ntigaragaza ko Uwantege Yvonne, wari *Cash Management Officer* yahinduriwe *grade* kugirango agirwe *Operation Officer One* ndetse ashirwe ku mushahara wa 331.825 Frw nk'uko bimeze kuri Mutware Jean de Dieu.

[29] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga mu gihe Mutware Jean de Dieu yari umukozi wa GT Bank Rwanda Plc ku mwanya wa *Cash Management Officer* kuva ku wa 04/02/2016 kugeza ku wa 26/06/2017, kandi umukozi uri muri uwo mwanya yarahembwaga umushahara mbumbe ungana na 548.160 Frw, uwo mushahara ari wo Mutware Jean de Dieu yagombaga guhembwa mu gihe kingana n'amezi 17, bityo akaba agomba guhabwa ikinyuranyo cy'uwo mushahara atahembwe n'umushahara ungana na 331.825 Frw yahembwe. icyakora, hashingiwe ku murongo watanze n'uru Rukiko mu rubanza Niwemugeni Jeannette yaburanaga na KCB Bank Rwanda Plc, w'uko umukozi usezerewe mu kazi adahabwa umushahara

mbumbe ahubwo ahabwa umushahara atahana mu ntoki (*salaire net*),¹⁶ Mutware Jean de Dieu agomba guhabwa umushahara utahanwa mu ntoki, ubariwe ku kinyuranyo cy'umushahara mbumbe kibazwe mu buryo bukurikira : $548.160 \text{ Frw} - 331.825 \text{ Frw} \times \text{amezi } 17 = 3.677.695 \text{ Frw}$. Ibi kandi byumvikanisha ko umusoro ku musaruro n'umusanzu w'ubwiteganyirize bw'abakozi bizishyurwa n'Umukoresha hakurikijwe ibiteganywa n'amategako.

2. Kumenya niba amafaranga y'integuza n'ay'imperekeza yagenewe Mutware Jean de Dieu yarabazwe mu buryo butari bwo

[30] Mutware Jean de Dieu n'umwunganira bavuga ko GT Bank Rwanda Plc yagombaga kumwishyura amafaranga y'integuza angana na 331.825 Frw , n'amafaranga y'imperekeza ahwanye n'umushahara we w'amezi abiri, ni ukuvuga $331.825 \text{ Frw} \times 2 = 663.650 \text{ Frw}$, yose hamwe akaba 995.475 Frw , ariko ko GT Bank yamwishyuye 587.803 Frw , bityo akaba asaba uru Rukiko kuyitegeka kumuha ikinyuranyo kingana na 407.672 Frw .

[31] Me Safari Jean Bosco, uburanira GT Bank Rwanda Plc, avuga ko inyangiko yitwa *final pay* igaragaza ko Mutware Jean de Dieu yishyurwe amafaranga y'integuza y'ukwezi kumwe n'amezi abiri y'imperekeza. Asobanura ko mu kumwishyura yahawe umushahara atahana mu ntoki, bityo ko ibyo ari gusaba ko akwiye kwishyurwa integuza n'imperekeza by'umushahara mbumbe ari ugushaka indonke zidafite ibisobanuro.

¹⁶ Reba urubanza RS/INJUST/RSOC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2019, igika cya 36.

UKO URUKIKO RUBIBONA

[32] Ingingo ya 12, igika cya mbere, 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 ko urega ari we ufite inshingano zo kugaragaza ishingiro ry'ibyo aregera, yabura ibimenyetso uwarezwe agatsinda.

[33] Dosiye y'urubanza irimo inyandiko yitwa *Final Pay (Notice & Leave Days & Dismissal Allowance)* yakozwe na GT Bank Rwanda Plc ku wa 21/09/2017, igaragaza ko umushahara mbumbe wa Mutware Jean de Dieu ungana na 331.825 Frw, bityo ko agenewe 331.825 Frw y'integuza na 663.650 Frw y'imperekeza, bihwanye na 995.475 Frw. Nyuma yo kvanamo 30% y'imisoro, ni ukuvuga 298.843 Frw, ubwiteganyirize bw'abakozi buhwanye na 59.928 Frw na 36.034 Frw y'iminsi itanu y'ikiruhuko yari yarahawe, hasigaye 587.803 Frw.

[34] Urukiko rurasanga hashingiwe ku murongo rwatanze mu rubanza Niwemugeni Jeannette yaburanaga na KCB Bank Ltd wibukijwe haruguru, amafaranga umukozi wazezerewe ahabwa ari ahwanye n'umushahara atahana mu ntoki (*salaire net*) aho kuba umushahara mbumbe.¹⁷ Ni ukuvuga ko mu mushahara mbumbe hagomba kubanza kvanwamo imisoro, ubwiteganyirize bw'abakozi cyangwa izindi nshingano umukozi afite kubw'Itegeko cyangwa amasezerano yakoranye n'umukoresha, bityo uretse ku bijyanye n'ingano y'umushahara mbumbe wabariweho, hakaba nta makosa GT Bank Rwanda Plc yakoze mu kwishyura Mutware Jean de Dieu amafaranga

¹⁷ Reba urubanza RS/INJUST/RSOC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2019, igikacya 36.

y'integuza n'imperekeza ahwanye n'umushahara yatahanaga mu ntoki.

[35] Urukiko rurasanga icyakora mu kubara integuza n'imperekeza, GT Bank Rwanda Plc yarashingiye ku mushahara mbumbe ungana na 331.825 Frw, aho gushingira ku mushahara mbumbe w'umukozi wari ku mwanya wa *Cash Management Officer* ungana na 548.160 Frw, bityo ayo makosa akaba ariyo agomba gukosorwa, integuza n'imperekeza bikabwirwa ku mushahara mbumbe ungana na 548.160 Frw nk'uko byasobanuwe haruguru, nyuma yo kuvanamo imisoro n'umusanzu w'ubwitateganyirize bw'abakozi, Mutware Jean de Dieu agahabwa umushahara utahanwa ubariye ku kinyuranyo cy'umushahara mbumbe kibazwe mu buryo bukurikira: $(548.160 \text{ Frw} \times 3) - (331.825 \times 3) = 645.475 \text{ Frw}$.

3. Kumenya niba hari amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza yatangwa muri uru rubanza

[36] Mutware Jean de Dieu avuga ko GT Bank Rwanda yakomeje kumusiragiza mu nkiko, bityo akaba asaba uru Rukiko kuyitegeka kwishyura 500.000 Frw y'igihembo cya Avoka yiyongera kuyo yagenewe n'inkiko zabanje.

[37] GT Bank Rwanda Plc ivuga ko Mutware Jean de Dieu yazanye ikirego kidafite ishingiro kuko asaba ibyo yahawe, akaba asanga GT Bank Rwanda Plc ariyo ikwiye kugenerwa 1.000.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kubwo gushorwa mu manza nta mpamvu.

UKO URUKIKO RUBIBONA

[38] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, igira iti: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe.

[39] Urukiko rurasanga 500.000 Frw y'igihembo cy'Avoka Mutware Jean de Dieu asaba ayakwiriye kandi ari mu rugero, naho indishyi zose zisabwa na GT Bank Rwanda Plc ntazo ikwiye kuko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[40] Rwemeje ko ikirego cya Mutware Jean de Dieu gisaba gusubirishamo urubanza RSOCA 00033/2019/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 12/09/2019 gifite ishingiro.

[41] Rutegetse GT Bank Rwanda Plc kwishyura Mutware Jean de Dieu umushara utahanwa ubariye ku mushahara mbumbe ungana na 3.677.695 Frw.

[42] Rutegetse GT Bank Rwanda Plc kwishyura Mutware Jean de Dieu umushahara utahanwa ku nteguza y'ukwezi kumwe n'imperekeza y'amezi abiri ubariye ku mushahara mbumbe ungana na 645.475 Frw.

[43] Rutegetse GT Bank Rwanda Plc guha Mutware Jean de Dieu 500.000 Frw y'igihembo cya Avoka kuri uru rwego.

IMANZA Z'UBUCURUZI

MAFAM LTD v. IKIGO CY'IMISORO N'AMAHORO (RRA)

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA
00030/2022/CA (Ngagi, P.J.,) 20 Nyakanga 2022]

Amategeko agenga imanza z'ubucuruzi – Kwandikisha ubucuruzi – Ubucuruzi bw'ubwikorezi – Uburenganzira bwo gukora ubwikorezi – Kwandikisha ubucuruzi burimo n'ubwikorezi bitandukanye no guhabwa uburenganzira bwo gukora ubwikorezi.

Amategeko agenga imanza z'ubucuruzi – Umusoro – Umusoro ku nyongeragaciro (TVA) – Ubucuruzi bw'ubwikorezi – Umusoro ku Nyongeragaciro (TVA) ku birebena n'ubwikorezi – serivisi z'ubwikorezi zikozwe n'ababihereye uruhushya zisonewe umusoro ku nyongeragaciro – Itegeko N° 40/2016 ryo ku wa 15/10/2016, ingingo ya 2, rihindura kandi ryuzuza Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yahinduye ingingo ya 6.

Incamake y'ikibazo: Ikigo cy'Imisoro n'Amahoro cyakoreye igenzura sosiyete MAFAM Ltd ku binyobwa bya BRALIRWA icuruzwa ikabitwarira abakiriya bayo, maze iyica umusoro ku nyongeragaciro ungana na 132.112.680 Frw, harimo n'ibihano byo gutubya umusoro n'ibyo gutinda kwishyura umusoro, ishingiye ku kuba kuri buri biciro MAFAM Ltd yagurishagaho ibinyobwa yaragendaga ifataho amafaranga runaka kuri fagitire ikora, ikayita ko asonewe TVA ngo kuko ajyanye n'ubwikorezi (*transport*) bw'ibicuruzwa yaranguye muri BRALIRWA, ubwikorezi ntibutangire TVA kandi butayisonewe, itagaragaje

uruhushya yahawe n'urwego rubishinzwe (RURA) rwo gukora ubwikorezi.

MAFAM Ltd yajuririye uwo musoro kwa Komiseri Mukuru wa RRA isaba ko ukurwaho kuko yawuciwe mu buryo bunyuranyije n'amategeko, ivuga ko ubwikorezi bw'ibintu ku butaka busonewe TVA, bityo ko itagomba gucibwa TVA kubera ko ubwikorezi ikora buyisonewe, bituma irega RRA mu Rukiko rw'Ubucuruzi irusaba gukuraho umusoro ku nyongeragaciro ungana na 132.112.680 Frw yaciwe kuri serivisi y'ubwikorezi kandi iwusonewe.

Urwo Rukiko rwemeje ko ikirego cya MAFAM Ltd nta shingiro gifite, rwemeza ko umusoro ku nyongeragaciro n'ibihano biwushamikiyeho bingana na 132.112.680 Frw RRA yaciye MAFAM Ltd ukurikije amategeko, bityo ko ugumyeho.

MAFAM Ltd ntiyishimiye iyo mikirize y'urubanza, maze iyijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rwashingiye icyemezo cyarwo ku kuba MAFAM Ltd idafite icyangombwa kiyemerera gukora serivisi y'ubwikorezi, kandi atari yo mpamvu Komiseri Mukuru yashingiyeho afata icyemezo, ko kandi itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y'ubwikorezi yakoze kuko iwusonewe, bityo ko itabaraga nabi umusoro yagombaga gusora, isaba kugenerwa indishyi zitandukanye.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, rwemeza ko ubujurire bwa MAFAM Ltd nta shingiro bufite, bityo ko y'urubanza rujuririrwa igumyeho.

MAFAM Ltd yajuririye na none mu Rukiko rw'Ubujurire, ivuga ko itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y'ubwikorezi kuko iwusonewe n'amategeko.

RRA ivuga ko uru rubanza rutandukanye n'imanza zabanje, ko muri izo manza abaciwe imisoro bagaragazaga ibyangombwa bibemerera gukora ubwikorezi bahawe na RURA. Ko kuba rero MAFAM Ltd nta burenganzira bwo gukora ubwikorezi yahawe n'Urwego rubishinzwe ntaho yahera ivuga ko ikora ubwikorezi. Akomeza avuga ko mu manza zabanje nubwo batagaragazaga ko bakoze ubwikorezi, ariko bari bafite ibyangombwa byerekana ko bakora ubwikorezi, ariko MAFAM Ltd itagaragaza ibimenyetso byerekana ko ikora ubwikorezi, ikaba idafite n'uruhushya yahawe na RURA bwo gukora ubwikorezi, avuga kandi ko MAFAM Ltd ubwayo yiyemerera ko yakoze serivisi y'ubwikorezi itabifitiye uburenganzira, nyamara kuva mu mwaka wa 2011 hari amabwiriza agaragaza ko ukora serivisi y'ubwikorezi agomba kuba abifitiye uburenganzira ahabwa na RURA nubwo ubucuruza buba bwandikishijwe muri RDB, bityo ko umusoro ku nyongeragaciro MAFAM Ltd yaciwe ukwiye kugumaho.

Incamake y'icyemezo: 1. Ku byerekeranye n'umusoro wa nyuma yo ku wa 15/10/2016, Urukiko rurasanga ari ngombwa kureba niba MAFAM Ltd yarakoze ubwikorezi ibifitiye uburenganzira. Urukiko rurasanga ikimenyetso kigaragara muri dosiye cyerekana ko MAFAM Ltd yari ifite uburenganzira ari icyo ku wa 16/10/2019, bivuze nyuma y'igihe umusoro uburwanwa waciriwe. Urukiko rurasanga kuba MAFAM Ltd idashoboye kugaragaza ko nyuma yo ku wa 15/10/2016, yakoze ubwikorezi ibifitiye uburenganzira butangwa na RURA, umusoro ku nyongeragaciro yaciwe guhera ku wa 15/10/2016, ubwo Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza itegeko N° 37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro ryashyirwaho yawuciwe mu buryo bukurikije amategeko, ukaba ugomba kugumaho.

2. Urukiko rurasanga na none ibyo MAFAM Ltd ivuga ko na nyuma y'aho Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza itegeko n°37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro rigiriyeho, umusoro ku nyongeragaciro yakwishyura ari uwo yaciwe hagati yo ku wa 15/10/2016 kugeza ku wa 19/07/2017, ubwo yandikishaga ibikorwa by'ubwikorezi muri RDB nta shingiro byahabwa, kuko nk'uko byasobanuwe haruguru, MAFAM Ltd yagombaga kuba ifite uburenganzira yahawe na RURA, bityo n'umusoro yaciwe nyuma yo ku wa 19/07/2017 kugeza aho iboneye uburenganzira bwa RURA nawo yagombaga kuwucibwa, bityo nawo ukaba ugomba kugumaho.

3. Ubwikorezi bw'ibicuruzwa busonewe gucibwa umusoro ku nyongeragaciro (TVA) iyo umwikorezi yabihereye uburenganzira na RURA.

**Ubujurire bufite ishingiro kuri bmwe;
Amagarama y'urubanza ahwanye n'ibyarukozwemo.**

Amategeko yashingiweho:

Itegeko N° 40/2016 ryo ku wa 15/10/2016, ingingo ya 2,
rihindura kandi ryuzuza Itegeko N° 37/2012 ryo ku wa
09/11/2012 rishyiraho umusoro ku nyongeragaciro
yahinduye ingingo ya 6,

Imanza zifashishijwe:

Urubanza RRA v SODAR LTD; RCOMAA 00034/2020/CA
rwaciwe n'Urukiko rw'Ubujurire ku wa 19/02/2021.
Urubanza RRA v SRDS LTD RCOMAA 00001/2022/CA;
rwaciwe n'Urukiko rw'Ubujurire rwaciwe ku wa
25/03/2022.

Urubanza RRA v SUGIRA LTD; RCOMAA 00057/2021/CA
n'Urukiko rw'Ubujurire rwaciwe ku wa 25/03/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Rwanda Revenue Authority (Ikigo Cy'Imisoro n'Amahoro) cyakoreye igenzura MAFAM Ltd ku binyobwa bya BRALIRWA icuruza ikabitwarira abakiriya bayo, maze iyica umusoro ku nyongeragaciro ungana na 132.112.680 Frw, harimo n'ibihano byo gutubya umusoro n'ibyo gutinda kwishyura umusoro, ishingiyeye ku kuba kuri buri biciro MAFAM Ltd yagurishagaho ibinyobwa yaragendaga ifataho amafaranga runaka kuri fagitire ikora, ikayita ko asonewe TVA ngo kuko ajyanye n'ubwikorezi (*transport*) bw'ibicuruzwa yaranguye muri BRALIRWA, ubwikorezi ntibutangire TVA kandi butayisonewe, itagaragaje uruhushya yahawe n'urwego rubishinzwe (RURA) rwo gukora ubwikorezi.

[2] MAFAM Ltd yajuririye uwo musoro kwa Komiseri Mukuru wa RRA isaba ko ukurwaho kuko yawuciwe mu buryo bunyuranyije n'amategeko, kuko ubwikorezi bw'ibintu ku butaka busonewe TVA, hashingiye ku ngingo ya 6.5 d) y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro nk'uko ryavuguruwe kugeza ubu, no kuba ifite uruhushya rwo gukora umurimo w'ubwikorezi, bityo ko itagomba gucibwa TVA kubera ko ubwikorezi ikora buyisonewe kandi ko ntayo yakiriye, ndetse ko ari na ko BRALIRWA ibikora iyo igemuriye MAFAM Ltd ibinyobwa. Komiseri Mukuru yafashe icyemezo ko umusoro MAFAM Ltd yaciwe harimo

n'ibihano byo gutubya umusoro n'ibyo gutinda kwishyura umusoro byose hamwe bingana na 132.112.680 Frw bigumaho kuko ukurikije amategeko. MAFAM Ltd ntiyanyuzwe n'icyo cyemezo, bituma irega RRA mu Rukiko rw'Ubucuruzi irusaba gukuraho umusoro ku nyongeragaciro ungana na 132.112.680 Frw yaciwe kuri serivisi y'ubwikorezi kandi iwusonewe.

[3] Mu rubanza RCOM 01431/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 08/12/2020, urwo Rukiko rwemeje ko ikirego cya MAFAM Ltd nta shingiro gifite, rwemeza ko umusoro ku nyongeragaciro n'ibihano biwushamikiyeho bingana na 132.112.680 Frw, RRA yaciye MAFAM Ltd ukurikije amategeko, ko ugumyeho; rutegeka MAFAM Ltd guha RRA 500.000 Frw y'igihembo cya Avoka.

[4] MAFAM Ltd ntiyishimiye iyo mikirize y'urubanza, maze ku wa 07/01/2021, iyijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rwashingiye icyemezo cyarwo ku kuba MAFAM Ltd idafite icyangombwa kiyemerera gukora serivisi y'ubwikorezi, kandi atari yo mpamvu Komiseri Mukuru yashingiyeho afata icyemezo, ko kandi itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y'ubwikorezi yakoze kuko iwusonewe, bityo ko itabaraga nabi umusoro yagombaga gusora, isaba kugenerwa indishyi zitandukanye.

[5] Ku wa 24/12/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00020/2021/HCC rwemeza ko ubujurire bwa MAFAM Ltd nta shingiro bufite, rwemeza ko MAFAM Ltd igomba guha RRA 400.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza; rutegeka ko hagumyeho imikirize y'urubanza rujuririrwa, ko 40.000 Frw MAFAM Ltd yatanzeho ingwate y'amagarama ijurira, ahwanye n'ibyakozwe byose mu rubanza.

[6] MAFAM Ltd yajuririye na none uru Rukiko, ivuga ko itagombaga gucibwa umusoro ku nyongeragaciro kuri serivisi y'ubwikorezi kuko iwusonewe n'amategeko, inasaba gusubizwa amafaranga y'igihembo cya Avoka, ubujurire bwayo bwandikwa kuri RCOMAA 00030/2022/CA.

[7] Iburanisha ryabaye mu ruhame ku wa 06/07/2022, MAFAM Ltd ihagarariwe na Me Twiringiyemungu Joseph, naho RRA ihagarariwe na Me Twahirwa Jean Baptiste.

[8] Muri rusange, mu iburanisha impaka hagati y'ababuranyi zibanze ku byerekeranye no kumenya niba umusoro ku nyongeragaciro n'ibihano biwushamikiyeho bingana na 132.112.680 Frw, MAFAM Ltd yaciwe bikurikije amategeko.

II. IBIBAZO BIGIZE IBURANISHA N'ISESENGURA RYABYO

1. Kumenya niba umusoro ku nyongeragaciro MAFAM Ltd yaciwe na RRA kuri serivisi y'ubwikorezi ugomba gukurwaho kuko iwusonewe n'amategeko

[9] Uhagarariye MAFAM Ltd avuga ko nyuma yuko MAFAM Ltd iciwe umusoro ku nyongeragaciro yawujuririye kwa Komseri Mukuru ku mpamvu zuko ubwikorezi bw'ibintu ku butaka busonewe TVA hashingiwe ku ngingo ya 6.5 d) y'itegeko n° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro nk'uko ryavuguruwe kugeza ubu, kandi MAFAM Ltd ifite uruhushya yandikishije ubwikorezi nk'umurimo yemerewe gukora, bityo ko MAFAM Ltd itagomba gucibwa TVA kubera ko ubwikorezi ikora buyisonewe kandi ntayo na yo yakiriye, kandi ko ari na ko BRALIRWA ibikora iyo

igemuriye MAFAM Ltd ibinyobwa, ndetse ko Ikigo cy'Imisoro n'Amahoro kitayica TVA ku bwikorezi iba yagaragaje kuri fagitire yayo, agatanga n'urugero kuri fagitire ya BRALIRWA.

[10] Avuga ko hagenzuwe kuva muri Gashyantare 2015 kugeza mu Kuboza 2015, hagenzurwa umwaka wa 2016 n'uwa 2017 no kuva muri Nyakanga kugeza Ukuboza by'umwaka wa 2018. Avuga ko kuva muri Gashyantare 2015 kugeza mu kwezi kwa cumi 2016, ubwo Itegeko ryahindukaga, Itegeko ryariho ryavugaga ko serivisi z'ubwikorezi zisonewe, ko muri icyo gihe nta burenganzira bwasabwagwa. Akomeza avuga ko kuba ukora serivisi y'ubwikorezi agomba kuba yabiherewe uburenganzira biteganywa mu Itegeko ryo mu mwaka wa 2016. Avuga ko MAFAM Ltd yandikishije ibikorwa byayo muri RDB ku wa 19/07/2017, kandi muri ibyo bikorwa harimo na serivisi y'ubwikorezi, ko kandi yemera ko hagati y'igihe Itegeko ryagiriye mu mwaka wa 2016 n'igihe MAFAM Ltd yaboneye icyangombwa kiyemerera gukora serivisi y'ubwikorezi yahawe na RDB, icyo igihe cyonyine ari cyo MAFAM Ltd kigomba gusoreshwa TVA.

[11] Avuga kandi mu gisubizo cye, Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahoro atigeze anenga izo ngingo MAFAM Ltd yatanze, ahubwo yavuze ko MAFAM Ltd yafashe igice cy'ikiguzi cy'ibinyobwa bya BRALIRWA bikwirakwizwa na MAFAM Ltd ngo iragisonera. Ko ibivugwa na Komiseri Mukuru ari na byo byemejwe n'Urukiko Rukuru rw'Ubucuruzi, aho mu gika cya 34 cy'urubanza rujurirwa Urukiko rwagize ruti: « ubwikorezi yita ko busonewe si bwo yakiriye amafaranga yabyo ahubwo yayakiriye ku bicuruzwa hanyuma akagabanya ikiguzi cyabwo acyita icy'ubwikorezi». Asobanura ko ibyo atari ukuri, kuko MAFAM Ltd igemura ibinyobwa bya BRALIRWA mu

duce yagenewe ikoresheje imodoka zayo zishinzwe gukora ako kazi, nk'uko yashoboraga gukoresha n'izindi z'abandi bantu bakora ako kazi kandi iyo serivisi batanze igasonerwa. Ko igurisha ibinyobwa ukwabyo, ikanarishya serivisi y'ubwikorezi ukwayo, iyi serivisi y'ubwikorezi akaba ari yo isonewe umusoro ku nyongeragaciro, kandi ubusonerwe bushyirwaho bukanakurwaho n'itegeko, nk'uko biteganyijwe n'ingingo ya 164 y'Itegeko Nshinga rya Repubukika y'u Rwanda. Avuga ko Ikigo cy'Imisoro n'Amahoro kitigeze gihakana ko iyo serivisi y'ubwikorezi MAFAM Ltd itayitanga cyangwa ko itemerewe kuyitanga, ndetse ko amategeko ateganya ko isonewe ku musoro ku nyongeragaciro, bityo ko nta mpamvu yo kutemera ubwo busonerwe mu gihe icyo bushingiyeho kidashidikanywaho mu buryo ubwo ari bwo bwose.

[12] Asobanura ko gukora inyemezabuguzi mu buryo butandukanya serivisi y'ubwikorezi n'ikiguzi cy'ibinyobwa ubwacyo bitabangamiye amategeko, kandi ko atari MAFAM Ltd ibikora yonyine, kuko na BRALIRWA igurisha ibinyobwa idaca TVA ku bwikorezi iba yakoreye MAFAM Ltd bujyanye no kuyigereza kuri *dépôt principal* ibinyobwa byayo. Ko rero ihame ryo kuresheshya abasoreshwa (*principe d'équité fiscale*) riba rigomba gukurikizwa kuko abasoreshwa bose bareshya imbere y'amategeko.

[13] Asobanura kandi ko mu myiregurire ya RRA, yavuze ko MAFAM Ltd ikata kuri buri kiguzi cy'ikaziye imwe amafaranga 300 iyita ay'ubwikorezi (transport), Urukiko rukabyemera rutyo ariko ko rwakoze imibare rugendeye kuri fagitire imwe yatanzwe nk'ikimenyetso mu Rukiko kandi n'izindi zose ari ko zikoze, rusanga ibivugwa na RRA ko ikata 300 Frw kuri buri kaziye atari byo, ariko rukabirengaho rukemeza ko koko MAFAM Ltd ikata

300 Frw kuri buri kaziye, naho andi asigara y'ikinyuranyo hagati y'ibiciro bya BRALIRWA n'igiciro MAFAM yagurishirijeho rutazi ibijyanye na yo.

[14] Avuga ko Urukiko rwabivuze muri aya magambo: « Ikigaragara ahubwo ni uko mu nyemezabuguzi yagaragajwe haruguru, yafataga igiciro yumvikanyeho na BRALIRWA igakuraho 300 Frw yita ay'ubwikorezi n'andi 100 Frw adatangirwa igisobanuro kandi yose akishyurwa n'umukiriya. Ibyo bigaragazwa n'uko Mutzig (33 cl) yayitanze kuri 9.910 Frw kandi ari 10.310 Frw, TURBO (50 cl) kuri 9.600 Frw kandi ari 10.000 Frw, TURBO (33 cl) kuri 7600 Frw kandi ari 8.000 Frw, AMSTEL (33 cl) kuri 11.700 Frw kandi ari 12.1000 Frw. Avuga ko ibyo byerekana ko amafaranga yishyurwaga n'umukiriya ari ay'ikiguzi cy'ibicuruzwa bya BRALIRWA, ariko yose atishyurirwaga umusoro wa TVA wuzuye, kuko hari ayo MAFAM Ltd yakuragaho 300 Frw iyita ay'ubwikorezi andi 100 Frw ntigaragaze impamvu yayo » nk'uko bigaragara mu gace ka 33 k'urubanza rujuririrwa.

[15] Asobanura ko Urukiko rwashatse guha agaciro imyiregurire ya RRA kandi rubona neza ko ibyo ivuga ko MAFAM Ltd ikata buri gihe 300 Frw kuri buri kaziye atari byo, rudasobanuye impamvu hagati y'igiciro MAFAM Ltd yagurishijeho n'icyo rwemeje ko cyashyizweho na BRALIRWA mu buryo budahinduka hazamo ikinyuranyo, ahubwo rukavuga ko « andi 100 Frw atagaragarizwa impamvu yayo », rwirengagije ingingo MAFAM Ltd yaburanishaga yuko gukurikiza ibiciro byashyizweho na BRALIRWA atari ihame, ahubwo ko ari ibyo BRALIRWA yifuzaga (recommended retail price : Rwf/bottle), mu gihe ingingo ya mbere (1) y'amasezerano zagiranye yateganyaga ko «umurunguzi (i.e. MAFAM Ltd) azakwirakwiza

ibinyobwa yubahiriza amategeko y'u Rwanda (...) harimo n'Itegeko rigenga ihiganwa mu bucuruzi», kandi ko iryo tegeko ryemera ko ibiciro bishyirwaho mu bwisanzure bw'ugura n'ugurisha, ndetse ko akenshi bishyirwaho n'ugurisha, bikaba bivuze ko ntawe utegeka uwo ari wese kugurisha ku giciro iki n'iki. Avuga ko kuba MAFAM Ltd yagabanyiriza ibiciro abo igurishije ibinyobwa ikabibatwarira, ariko ikabaca ikiguzi cy'uko kubibatwarira itabibujijwe, kuko yaba amasezerano yagiranye na BRALIRWA yaba n'amategeko agenga ubucuruzi muri rusange bitayibuzaga kubikora.

[16] Akomeza avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibijyanye no kwivuguruza kugaragazwa na RRA kuri icyo kibazo, aho cyari gisanzwe gikorera MAFAM Ltd igenzura ry'umu musoro, kigasanga uburyo yakoresheye bwo gutandukanya serivisi y'ubwikorezi n'agaciro k'ibinyobwa igurisha bihuye n'ibiteganywa n'amategeko, nk'uko bigaragazwa n'igenzura cyayikoreye mu mwaka wa 2014 no mu wa 2018. Ko kandi iyo gikoze igenzura, kiba kigamije gukosora no kwigisha, kuko iyo gisanze uburyo umusoresheye amenyekanisha umusoro buhuye n'ibyo amategeko ateganywa, bubimushimira bukamusaba kubikomeza atyo. Bityo ko kuba mu magenzura Ikigo cy'Imisoro n'Amahoro cyakoze cyarasanze MAFAM Ltd imenyekanisha umusoro mu buryo bukurikije amategeko nta cyari gutuma idakomeza kubikora, ahubwo ko ari cyo kinyuranya n'ukuri mu guhindura ibyo cyari gisanzwe kizi kandi cyemera gishiraho indi mpamvu inyuranye n'ukuri kandi cyari cyarayishimye uburyo imenyekanishamo TVA mu bucuruzi ikora.

[17] Avuga na none ko mu gika cya 35 cy'urubanza RCOMA 00020/2021/HCC Urukiko rwavuze ko « bitatuma umusoro

iregera uteshwa agaciro kuko kuba iwubara mu buryo budahuye na serivisi y'ubwikorezi ikora, ahubwo ari ugufata ikiguzi cyishyuye ibicuruzwa ikakigabanya igice kimwe kikitwa ubwikorezi, bidahuye n'ibyo itegeko riteganywa, ahubwo ko ari uburyo bwo gutubya umusoro wa TVA iba igomba kwishyurwa watanzwe n'abakiriya bayo». Avuga kandi ko Amabwiriza ya RURA, RRA ishingiraho atashingirwaho kuko icyo ashirirwaho ari ukuzuzwa itegeko, ariko adashobora guteganywa ibyo itegeko ritavuze. Asoza asaba Urukiko gutegeka ko umusoro waciwe MAFAM Ltd kuri serivisi y'ubwikorezi iwusonewe uvanweho.

[18] Abajijwe umwihariko w'uru rubanza rugereranijwe n'ianza zabanje zaciwe n'inkiko harimo n'uru Rukiko ku bijyanye n'umusoro ku nyongeragaciro ucibwa abashyinzwe gutanga ibinyobwa bya BRALIRWA (*distributeurs*), avuga ko nta mwihariko uhari kuri iki kibazo kuko ikibazo kirimo gisa n'ibibazo byakemuwe n'uru Rukiko mu manza yashyize muri sisiteme ya IECMS.

[19] Uhagarariye RRA avuga ko uru rubanza rutandukanye n'ianza zabanje, ko muri izo manza abaciwe imisoro bagaragazaga ibyangombwa bibemerera gukora ubwikorezi bahawe na RURA. Ko kuba rero MAFAM Ltd nta burenganzira bwo gukora ubwikorezi yahawe n'Urwego rubishinzwe ntaho yahera ivuga ko ikora ubwikorezi. Akomeza avuga ko mu manza zabanje nubwo batagaragazaga ko bakoze ubwikorezi, ariko bari bafite ibyangombwa byerekana ko bakora ubwikorezi, ariko MAFAM Ltd itagaragaza ibimenyetso byerekana ko ikora ubwikorezi, ikaba idafite n'uruhushya yahawe na RURA bwo gukora ubwikorezi.

[20] Asobanura ko kuba ingingo ya 2 y'Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa Itegeko n°37/2012 ryo

ku wa 09/11/2012 rishyiraho Umusoro ku nyongeragaciro, iteganya ko serivisi z'ubwikorezi zisonewe ari “serivisi z'ubwikorezi zikozwe n'ababiherewe uruhushya”, ariko ko MAFAM Ltd itagaragaza uruhushya yahawe n'urwego rubishinzwe (RURA) rwo gukora ubwikorezi, kandi n'iyi iza kuba yarakoze ubwo bwikorezi budasonewe uwo musoro, ko MAFAM Ltd igaragaza icyemezo cya RURA gifite agaciro kuva ku wa 16/10/2019 kugeza ku wa 16/10/2020 kandi igenzura (*audit*) yakorewe rirebana n'imyaka ya 2015, 2016, 2017 na 2018; ko ibyo bivuze ko icyo cyangombwa igaragaza ntacyo cyafasha muri uru rubanza, akaba ari na byo Urukiko rw'Ubucuruzi rwashingiyeho ruvuga ko MAFAM Ltd yakoze amakosa ku buryo itasonerwa TVA.

[21] Akomeza avuga ko MAFAM Ltd ubwayo yiyemerera ko yakoze serivisi y'ubwikorezi itabifitiye uburenganzira, nyamara kuva mu mwaka wa 2011 hari amabwiriza agaragaza ko ukora serivisi y'ubwikorezi agomba kuba abifitiye uburenganzira ahabwa na RURA nubwo ubucuruzi buba bwandikishijwe muri RDB, bityo ko umusoro ku nyongeragaciro MAFAM Ltd yaciwe ukwiye kugumaho.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 6,5^o,d, y'Itegeko N^o 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro iteganya ko serivisi y'ubwikorezi bwo gutwara ibintu mu nzira y'ubutaka isonewe umusoro ku nyongeragaciro

[23] Ingingo ya 2 y'Itegeko n^o 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa Itegeko N^o 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yahinduye

ingingo ya 6 yavuzwe haruguru iteganya ko serivisi z'ubwikorezi zikozwe n'ababiherewe uruhushya zisonewe umusoro ku nyongeragaciro.

[24] Isesengura ry'izi ngingo zavuzwe haruguru rigaragaza ko ingingo ya 6,5^o,d, y'Itegeko N^o 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro yashyize ho ihame ko serivisi y'ubwikorezi isonewe umusoro ku nyongeragaciro. Bivuze ko uwakoraga serivisi y'ubwikorezi yari asonewe umusoro ku nyongeragaciro. Iyi ngingo yarahinduwe mu mwaka wa 2016 hongerwamo ikigombero (*condition*) cyo kugira ngo serivisi y'ubwikorezi isonerwe umusoro ku nyongeragaciro, ukora ubwo bwikorezi agomba kuba yarabiherewe uruhushya n'Urwego rubishinzwe. Mu yandi magambo, bivuze ko mbere y'uko ingingo ya 6, 5^o,d, y'Itegeko N^o 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro ihinduka, icyasabwaga kwari ukugaragaza ko umuntu cyangwa ikigo runaka bikora ubwikorezi bitabaye ngombwa ko aba yabiherewe uburenganzira.

[25] Muri urubanza, hagomba gusuzumwa niba MAFAM Ltd yarakoze ubwikorezi, no kumenya niba igihe yakoraga ubwo bwikorezi yari isonewe umusoro ku nyongeragaciro hitabwa ku kubyo ingingo z'amategeko zavuzwe haruguru ziteganya no ku gihe umusoro uburwa waciriwe.

[26] Dosiye igaragaramo amasezerano y'imikoranire yo kurangura, MAFAM Ltd yakoranye na BRALIRWA ku wa 01/02/2015. Muri dosiye harimo na none fagitire yo ku wa 25/02/2016 igaragaza ko MAFAM Ltd yakoze ubwikorezi kandi inagaragaza amafaranga y'ubwikorezi MAFAM Ltd ivuga ko asonewe umusoro ku nyongeragaciro.

[27] Ku kibazo cyo kumenya niba MAFAM Ltd yarakoze ubwikorezi bw'ibinyobwa bya BRALIRWA, Urukiko rushingiye ku bimenyetso byibikijwe haruguru rurasanga nta gushindikanya ko MAFAM Ltd yakoze ubwikorezi bw'ibinyobwa bya BRALIRWA. Hashingiwe ku ngingo ya Ingingo ya 6,5°,d, y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, uko yubahirizwaga mbere yuko ihindurwa n'ingingo ya 2 y'Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, iyo ngingo ikaba yarateganyaga ko serivisi y'ubwikorezi bwo gutwara ibintu mu nzira y'ubutaka isonewe umusoro ku nyongeragaciro, kandi MAFAM Ltd ikaba yarakoze iyo serivisi y'ubwikorezi nk'uko bigaragazwa n'amasezerano ifitanye na BRALIRWA na fagitire yatanze, rurasanga MAFAM Ltd yari isonewe umusoro ku nyongeragaciro yaciwe mbere yo ku wa 15/10/2016, kuko ari bwo Itegeko ryongereyeho ko ukora iyo serivisi y'ubwikorezi agomba kuba yarabihereye uburenganzira.

[28] Urukiko rurasanga ibyo RRA ivuga ko Amabwiriza ya RURA yo mwaka wa 2011 yasabaga ko ukora ubwikorezi aba abifitiye uburenganzira ku buryo agomba kubahirizwa, bityo ko n'umusoro MAFAM Ltd yaciwe mbere ya 15/10/2016 wari wubahirije amategeko, nta shingiro byahabwa, kuko usibye ko ayo Mabwiriza yabayeho mbere y'Itegeko N° 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro ryateganyaga ko serivisi y'ubwikorezi isonewe nta kindi kigombero (*condition*), nta nubwo amabwiriza avuguruza itegeko, ahubwo icyo aba agamije ni ugushyira mu bikorwa itegeko no kurushaho kuryumvikanisha¹.

¹ Reba urubanza RCOMAA 00034/2020/CA rwaciwe ku wa 19/02/2021, haburana RRA na SODAR Ltd

[29] Ku byerekeranye n'umusoro wa nyuma yo ku wa 15/10/2016, Urukiko rurasanga ari ngombwa kureba niba MAFAM Ltd yakoze ubwikorezi ibifitiye uburenganzira. Urukiko rurasanga ikimenyetso kigaragara muri dosiye cyerekana ko MAFAM Ltd yari ifite uburenganzira ari icyo ku wa 16/10/2019², bivuze nyuma y'igihe umusoro uburwanwa waciriwe. Urukiko rurasanga kuba MAFAM Ltd idashoboye kugaragaza ko nyuma yo ku wa 15/10/2016, yakoze ubwikorezi ibifitiye uburenganzira butangwa na RURA, umusoro ku nyongeragaciro yaciwe guhera ku wa 15/10/2016, ubwo Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuzwa itegeko N° 37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro ryashyirwaho yawuciwe mu buryo bukurikije amategeko, ukaba ugomba kugumaho.

[30] Urukiko rurasanga ibyo uburanira MAFAM Ltd avuga ko yabonye uburenganzira bwo gukora serivisi y'ubwikorezi yahawe na RDB, kuko ku wa 19/07/2017 yandikishije ibikorwa byayo birimo na serivisi y'ubwikorezi muri RDB, nta shingiro byahabwa kuko kwandikisha ubucuruzi burimo n'ubwikorezi bitandukanye no guhabwa uburenganzira bwo gukora ubwikorezi. Urukiko rurasanga nk'uko byagiye bigaragazwa mu zindi manza zaciwe n'uru Rukiko³, nta na hamwe RDB itanga icyemezo cyo gukora serivisi y'ubwikorezi, ahubwo ubwo burenganzira butangwa na RURA, bivuze rero ko MAFAM Ltd yakoze serivisi y'ubwikorezi itabifitiye uburenganzira, bityo yagombaga gucibwa uwo musoro guhera ku wa 15/10/2016.

² Authorization for transport of goods) cyanzwe na RURA gifite agaciro guhera ku wa 16/10/2019 kugera ku wa 16/10/2020 ku modoka RAC 765 I

³ Reba urubanza RCOMAA 00001/2022/CA, rwaciwe ku wa 25/03/2022, haburana RRA na SRDS Ltd; urubanza RCOMAA 00057/2021/CA rwaciwe ku wa 25/03/2022, haburana RRA na SUGIRA Ltd

[31] Urukiko rurasanga na none ibyo MAFAM Ltd ivuga ko na nyuma y'aho Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza itegeko n°37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro rigiriyeho, umusoro ku nyongeragaciro yakwishyura ari uwo yaciwe hagati yo ku wa 15/10/2016 kugeza ku wa 19/07/2017, ubwo yandikishaga ibikorwa by'ubwikorezi muri RDB nta shingiro byahabwa, kuko nk'uko byasobanuwe haruguru, MAFAM Ltd yagombaga kuba ifite uburenganzira yahawe na RURA, bityo n'umusoro yaciwe nyuma yo ku wa 19/07/2017 kugeza aho iboneye uburenganzira bwa RURA nawo yagombaga kuwucibwa, bityo nawo ukaba ugomba kugumaho.

[32] Ku bijyanye n'ubujurire bwuririye ku bundi bwatanzwe na RRA bwo kumenya niba MAFAM Ltd yaragaragaje icyangombwa cyo gukora ubwikorezi yahawe na RURA, no kumenya ibihe byasonerwaga umusoro wa TVA birebwa n'Itegeko n° 40/2016 ryo ku wa 15/10/2016 rihindura kandi ryuzuza Itegeko N° 37/2012 ryo ku wa 9/11/2012 rishyiraho umusoro ku nyongeragaciro, Urukiko rurasanga bwashubijwe mu bujurire bwa MAFAM Ltd bumaze gusuzumwa.

2. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro

[33] Uhagarariye MAFAM Ltd ashingiye ku mabwiriza agena ibihembo mbonera by'abavoka, asaba Urukiko gutegeka RRA guha MAFAM Ltd 2.000.000 Frw y'igihembo cya Avoka.

[34] Uhagarariye RRA yiregura ku mafaranga y'igihembo cya Avoka MAFAM Ltd isaba avuga ko idakwiye kuyahabwa kubera ko ari yo yishoye mu manza zidafite aho zishingiye, ko

ahubwo RRA ari yo igomba kuyahabwa. Ashingiye ku biteganywa n'ingingo ya 111 y'itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu asaba Urukiko rw'Ubujurire gutegeka MAFAM Ltd guha RRA 2.000.000 Frw y'igihembo cya Avoka n'ibyatanzwe kuri uru rubanza kuva rutangiye, kubera kuyishora mu manza zidafite ishingiro.

[35] Uhagarariye MAFAM Ltd yiregura ku mafaranga y'igihembo cya Avoka RRA isaba avuga ko nta shingiro afite, kuko ari ingaruka y'imigendekere y'urubanza, Urukiko rukaba ruyagenera uwo rwasanze afite ukuri mu rubanza.

UKO URUKIKO RUBIBONA

[36] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa muri uru rubanza adakwiye gutangwa kuko bigaragaye ko hari umusoro ku nyongeragaciro MAFAM Ltd yaciwe mu buryo bukurikije amategeko ariko hakaba hari n'uwo RRA yayiciye kandi yari uwosonewe.

III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko ubujurire bwatanzwe na MAFAM Ltd bufite ishingiro kuri bimwe.

[38] Rwemeje ko imikirize y'urubanza RCOMA 00020/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 24/12/2021 ihindutse kuri bimwe.

[39] Rwemeje ko MAFAM Ltd isonewe kwishyura umusoro ku nyongeragaciro (TVA) yaciwe wo kuva muri Gashyantare 2015 kugeza ku wa 15/10/2016.

[40] Rwemeje ko umusoro ku nyongeragaciro (TVA) MAFAM Ltd yaciwe guhera ku wa 15/10/2016 yawuciwe mu buryo bukurikije amategeko.

[41] Rutegetse MAFAM kwishyura umusoro ku nyongeragaciro (TVA) yaciwe guhera ku wa 15/10/2016, kuko yawuciwe mu buryo bukurikije amategeko.

[42] Ruvuze ko ingwate y'amagarama yatanzwe ihwanye n'ibyakoze mu rubanza.

**NSHILI KIVU TEA FACTORY LTD
(NKTF LTD) N’UNDI v KIGALI LAW
CHAMBERS (KLC)**

[Rwanda URUKIKO RW’UBUJURIRE – RCOMAA
00003/2022/CA (Rukundakuvuga, PJ, Kanyange na Ngagi, J.)
17 Kamena 2022]

Amategeko agenga imanza z’ubucuruzi – Umwuga w’ubw’avoka – Ibihembo by’umwavoka – Ibihembo by’umwavoka n’igihembo cyose gishingiye ku masezerano Avoka agirana n’umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw’umwuga we nk’Avoka. – Amabwiriza agenga ibihembo mbonera by’Abavoka, ingingo ya 40.

Amategeko agenga imanza z’ubucuruzi– Ibihembo by’umwavoka – Impaka zijyanye n’ibihembo by’avoka – Ikirego kirebana n’ibihembo by’Avoka – icyiciro cy’ubwumvikane gikorera mu Rugaga rw’Abavoka – Iyo impande zombi zirebana n’impaka zijyane n’ibihembo by’Avoka zananiwe kumvikana, bakagana inkiko, ibyabaye mu cyiciro cy’ubwumvikane mu Rugaga rw’Abavoka biba birangiye, nta zindi ngaruka bishobora kugira ku bireba ikirego cyaregewe urukiko, uretse kugenzura ko uwo muhango wabayeho cyangwa utabayeho gusa – Amabwiriza agenga ibihembo mbonera by’Abavoka, ingingo ya 40.

Amategeko agenga imanza z’ubucuruzi – Amasezerano – Kumenya isesa ry’amasezerano mu buryo buteruye – Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n’ubusanzwe umuntu ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyurwa ntirukurikirane ubwishyu, bifatwa ko

rwamenye mu buryo buteruye ko urundi ruhande rwiya mbuye inshingano.

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Iseswa ry'amasezerano mu buryo buteruye – Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n'ubusanzwe umuntu ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyura ntirukurikirane ubwishyu, bifatwa ko rwamenye mu buryo buteruye ko urundi ruhande rwiya mbuye inshingano.

Amategeko agenga imanza z'ubucuruzi – Sosiyete – Imikorere y'amasosiyete – Indoor management rule – Amasezerano akozwe n'uhagarariye sosiyete agira agaciro mu maso y'uwo bayagiranye hatitawe ku makosa yaba yakoze mu micungire yayo.

Incamake y'ikibazo: KIGALI LAW CHAMBERS Ltd (KLC Ltd yari isanzwe yunganira mu mategeko NSHILI KIVU TEA FACTORY Ltd (NKTF Ltd) iri kumwe na NSHILI KIVU TEA PLANTATION Ltd (NKTP Ltd) ku giciro cya 200.000 Frw buri kwezi zikishyura n'ubukode bw'aho KLC Ltd ikorera. Ku wa 01/02/2018 yagiranye amasezerano mashya na Nicholas WATSON wari Umuyobozi wazo; bumvikana ko azajya yishyurwa noneho 4.000 USD buri kwezi mu gihe cy'imyaka ibiri, uherye ku wa 01/01/2019. Inama y'Ubutegetsu nshya y'izo sosiyete yarateranye, ifata imyanzuro itandukanye, irimo no guhagarika ya masezerano KLC Ltd yari imaze gusinya, ariko ntiyayimenyesha ko yahagaritswe. Umuyobozi wa KLC Ltd yanditse ibaruwa yise integuza ya nyuma asaba kwishyurwa. Iyo baruwa ntiyasubijwe, bityo KLC Ltd iregera Urukiko rw'Ubucuruzi, maze rwanzura ko icyo kirego kidashobora

kwakirwa kuko KLC Ltd itanbanje kwiyambaza Urugaga rw'Abavoka

KLC Ltd yandikiye Umukuru w'Urugaga rw'Abavoka amusaba gukemura icyo kibazo ariko ntirwashobora kugera ku mwanzuro impande zombi zumvikanyeho. Ubwo yongeye kuregera Urukiko rw'Ubucuruzi; uwo Rukiko rwemeza ko ikirego cyatanzwe na KIGALI LAW CHAMBERS Ltd gifite ishingiro, ruyigenera 96.000 USD, 1.000.000 Frw y'igihembo cya Avoka, 100.000 Frw y'ikurikiranarubanza na 20.000 Frw y'igarama. NKTF Ltd na NKTP Ltd ntizishimiye imikirize y'urubanza ziyijuririra mu Rukiko Rukuru rw'Ubucuruzi maze narwo rwemeza ko imikirize y'urubanza rwajuririwe idahindutse. NKTF Ltd na NKTP Ltd, zajuririye Urukiko rw'Ubujurire.

Incamake y'icyemezo: 1. Ibihembo by'umwavoka n'igihembo cyose gishingiye ku masezerano Avoka agirana n'umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw'umwuga we nk'Avoka.

2. Iyo impande zombi zirebana n'impaka zijyane n'ibihembo by'Avoka zananiwe kumvikana, bakagana inkiko, ibyabaye mu cyiciro cy'ubwumvikane mu Rugaga rw'Abavoka biba birangiye, nta zindi ngaruka bishobora kugira ku bireba ikirego cyaregewe urukiko, uretse kugenzura ko uwo muhango wabayeho cyangwa utabayeho gusa.

3. Amasezerano akozwe n'uhagarariye sosiyete agira agaciro mu maso y'uwo bayagiranye hatitawe ku makosa yaba yakoze mu micungire yayo.

4. Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n'ubusanzwe umuntu

ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyuza ntirukurikirane ubwishyu, bifatwa ko rwamenye mu buryo buteruye ko urundi ruhande rwiya mbuye inshingano.

**Ubujurire bwa bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi nta shingiro bufite.
Imikirize y'urubanza rwajuririwe ihindutse gusa ku
bijyanye n'amadorari abajuriye bagomba kwishyura
uregwa.**

**Abajuriye baomba gufatanya kwishyura uregwa amadorari
ibihumbi umunani (8.000 USD).**

Amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo, ingingo ya 27 na 64

Itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi, ingingo ya 142 na 151

Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya ya 88 na 89.

Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka, ingingo ya 2 na 40.

Imanza zifashishijwe:

Urubanza N° RS/INJUST/RCOM 00004/2020/SC; NEW KIGALI BUSINESS SERVICES Ltd v KASESE DISTILLERS Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/11/2021.

Inyandiko z'abahanga:

JT Pretorius; PA Delpont, Michelle Havenga & Maria Vermaas, South African Company Law through Cases, JUTA & CO, Ltd; 6th ed. 1999, p 346.

Véronique Wester-Ouisse, "Le préjudice moral des personnes morales: quand "la perversion de la cité commence par la fraude des mots", JCP, G n° 39,24 Septembre 2012.

Urubanza

I. IMITERERE Y'URUBANZA

[1] KIGALI LAW CHAMBERS Ltd ni "Law firm" ikora akazi ko kugira abantu inama mu mategeko no kuburanira abagana inkiko, ikuriwe na Me BANDORA Alfred. Mu mwaka wa 2014 yagiranye amasezerano y'igihe kizwi ashobora no kongerwa na NSHILI KIVU TEA FACTORY Ltd (NKTF Ltd) iri kumwe na NSHILI KIVU TEA PLANTATION Ltd (NKTP Ltd) y'ubufasha mu by'amategeko no kuyibera umwanditsi, ku gihembo kingana na 200.000 Frw, no kwishyura inzu KIGALI LAW CHAMBERS Ltd ikoreramo. Ku wa 01/02/2018, habayeho guhinduka kw'amasezerano, KIGALI LAW CHAMBERS Ltd (KLC Ltd) isinyana amasezerano na Perezida w'Inama y'Ubutegetsi wa NKTF Ltd na NKTP Ltd, Nicholas WATSON, ko igihembo ari 4.000 USD ku kwezi. Ku wa 01/12/2018, ku mpamvu zuko Nicholas WATSON atakundaga kuboneka yagiranye andi masezerano na KLC Ltd y'imyaka 2 yagomba gutangira 01 Mutarama 2019 akarangirana n'ukwezi ku Ukuboza 2020.

[2] Ku wa 19/01/2019 habaye inama y'Inama y'Ubutegetsi ya NKTf Ltd, yitabiriwe na MURENZI Jean na BANGANINKA Jacqueline, naho Nicholas WATSON atitabye, umwanditsi ari Me GASHAGAZA Philbert yemeza ko amafaranga yahabwaga Me BANDORA Alfred ahita ahagarikwa kuko nta rwego rwa sosiyete rwamushyizeho, ko na 4.000 USD yahabwaga mu buryo budasobanutse hashakishwa uburyo yagaruzwa. Ku wa 18/06/2019, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umuyobozi wa NKTf Ltd na NKTP Ltd, amumenyesha ko amuhaye integuza ya nyuma yo kwishyurwa ibikubiye mu masezerano bagiranye ku wa 01/12/2018. Nyuma yo kudasubizwa KLC Ltd yareze NKTf Ltd na NKTP Ltd mu Rukiko rw'Ubucuruzi ivuga ko zishe amasezerano bagiranye, isaba kwishyurwa 96.000 USD bumvikanye n'indishyi zitandukanye.

[3] Mu rubanza N° RCOM 01870/2019/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 27/12/2019, urwo Rukiko rushingiye ku ngingo 40, igika cya 1, y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka rwemeje ko ikirego cya KLC Ltd kitakiriwe kuko itabanje gushyikiriza ikibazo Umukuru w'Urugaga rw'Abavoka. Ku wa 09/01/2020, KLC Ltd ihagarariwe na Me BANDORA Alfred yandikiye Umukuru w'Urugaga rw'Abavoka amusaba gukemura ikibazo ifitanye na NKTf Ltd na NKTP Ltd. Ku wa 28/07/2020, nyuma yo gusuzuma ibyo impande zombi zivuga, Umukuru w'Urugaga yandikiwe Me BANDORA Alfred ibaruwa amuha uburenganzira bwo kwiyambaza izindi nzego. Ku wa 05/08/2020, KLC Ltd yareze NKTf Ltd na NKTP Ltd mu Rukiko rw'Ubucuruzi ivuga ko zitashoboye kubahiriza amasezerano, kuko akazi KLC Ltd yakoraga zagahaye abandi hatabayeho gusesa amasezerano bari bafitanye, isaba ko ziyishyura 96.000 USD ahwanye n'imirimo

yakoze mu gihe cy'amezi 24 nk'uko bigaragara mu masezerano zagiranye, inasaba kugenerwa indishyi zitandukanye.

[4] Ababuranira NKTF Ltd na NKTP Ltd mu kwiregura ku ngingo zigize urubanza bavuze ko ibyo KLC Ltd isaba nta gaciro byahabwa, kuko amasezerano ishingiraho yakozwe mu buryo budakurikije amategeko, aho uwahoze ari Perezida w'Inama y'Ubutegetsi Nicholas WATSON yafashe icyemezo cyo kuzamura ibihembo igomba guhabwa, akabivana kuri 200.000 Frw akabigeza kuri 4.000 USD, bitabanje kwemezwa n'abagize Inama y'Ubutegetsi; bityo ko indishyi KLC Ltd isaba idakwiye kuzihabwa.

[5] Mbere yo kwinjira mu mizi y'urubanza ababuranira NKTF Ltd na NKTP Ltd batanze inzitizi yo kutakira icyo kirego, bashingiye ku kuba Urukiko rw'Ubucuruzi rudafite ububasha bwo kukiburanisha kuko kitari mu rwego rw'ubucuruzi, n'indizitizi yuko ikibazo kitashyikirijwe Urugaga rw'Abavoka mu bihe biteganywa n'amategeko. Ku wa 08/12/2020, mu rubanza rubanziriza urundi, Urukiko rw'Ubucuruzi rwafashe icyemezo ko inzitizi zazamuwe na NKTF Ltd na NKTP Ltd nta shingiro zifite kubera ko amasezerano yakozwe mu nyungu z'ubucuruzi bwa NKTF Ltd na NKTP Ltd; no kuba amafaranga yishyuzwa azwi akaba nta mpaka ziri mu kuyagena.

[6] Mu iburanisha ryo ku wa 29/12/2020, ababuranira NKTF Ltd na NKTP Ltd basabye Urukiko kuba ruhagaritse iburanisha ku mpamvu z'uko hari ikirego cy'inshinjabyaha barega Me BANDORA Alfred, Nicholas WATSON na KLC Ltd kigukurikiranwa, banasaba ko Nicholas WATSON wahoze ari Perezida w'Inama y'Ubutegetsi ya NKTF Ltd na NKTP Ltd hamwe na Me BANDORA Alfred bagobokeshwa, maze Urukiko rw'Ubucuruzi rwemeza ko iburanisha ry'urubanza rikomeza

kuko nta kirego cy'inshinjabyaha cyari mu nkiko, runasanga Nicholas WATSON na Me BANDORA Alfred batagobokeshwa kuko batashoboraga gutambamira imikirize y'urubanza.

[7] Mu rubanza N° RCOM 01250/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/02/2021, urwo Rukiko rwemeje ko ikirego cyatanzwe na KIGALI LAW CHAMBERS Ltd gifite ishingiro, ko NKTF Ltd na NKTP Ltd batubahirije amasezerano bagiranye na KLC Ltd, ko NKTF Ltd na NKTP Ltd bagomba kwishyura KLC Ltd 96.000 USD, 1.000.000 Frw y'igihembo cya Avoka, 100.000 Frw y'ikurikiranarubanza na 20.000 Frw y'igarama; rwemeza kandi ko nta rangizarubanza ry'agateganyo rizaba.

[8] NKTF Ltd na NKTP Ltd ntizishimiye imikirize y'urubanza ziyijuririra mu Rukiko Rukuru rw'Ubucuruzi zisaba urwo Rukiko gusuzuma niba icyo kirego cyaragombaga kwakirwa kandi kitarabanje gushyikirizwa Umukuru w'Urugaga rw'Abavoka mu gihe cy'amezi abiri (2), niba Urukiko rw'Ubucuruzi rwari rufite ububasha bwo kuburanisha urwo rubanza, niba Urukiko rw'Ubucuruzi rwarafashe icyemezo rwirengagije amategeko shingiro ya sosiyete ziregwa, no gusuzuma niba Nicholas WATSON na BANDORA Alfred baragombaga kugobokeshwa ku rwego rwa mbere. KLC Ltd yireguye ivuga ko ubujurire bwa NKTF Ltd na NKTP Ltd nta shingiro bufite, itanga ubujurire bwuririye ku bundi, isaba Urukiko gusuzuma niba hakwiye gutegekwa irangizarubanza ry'agateganyo kuri 96.000 USD, inasaba indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[9] Ku wa 29/09/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOMA 00208/2021/HCC, rwemeza ko ubujurire bwatanzwe na NKTP Ltd na NKTF Ltd nta shingiro

bufite, ko ubujurire bwuririye ku bundi bwatanzwe na KLC Ltd nta shingiro bufite, ko imikirize y'urubanza N° RCOM 01250/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/02/2021 idahindutse, rutegeka ko amagarama y'urubanza aherera ku Isanduku ya Leta.

[10] NKTF Ltd na NKTP Ltd, zajuririye na none uru Rukiko, zivuga ko icyo KIGALI LAW CHAMBERS Ltd yaregeye ari igihembo cya Avoka, ko rero yagombaga kubanza kugeza icyo kibazo ku Mukuru w'Urugaga rw'Abavoka mu gihe cy'amezi abiri (2) kuva aho impaka zivukiye nk'uko biteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka ko kandi amasezerano yo ku wa 01/2018 atagombaga gushingirwaho kuko atigeze yemezwa n'Inama y'Ubutegetsiki kandi ari yo iyobora izo sosiyete; ubujurire bwazo bwandikwa kuri N° RCOMAA 00003/2022/CA.

[11] Urubanza rwaburanishijwe mu ruhamwe ku wa 04/05/2022, NSHILI KIVU TEA PLANTATION Ltd & NSHILI KIVU TEA FACTORY Ltd zihagarariwe na Me NYILIDANDI Assiel afatanyije na Me HABINEZA Gasore Gilbert, naho KIGALI LAW CHAMBERS ihagarariwe na Me BANDORA Alfred.

[12] Muri rusange, mu iburanisha impaka z'impane zombi zibanze ku byerekeranye n'iyakirwa ry'ikirego cya KLC Ltd mu Rukiko rw'Ubucuruzi NKTF Ltd na NKTP Ltd zivuga ko kitagombaga kwakirwa kuko imihango iteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka igomba gukorerwa mu Rugaga rw'Abavoka mbere y'uko ikirego nk'iki kiregerwa urukiko itubahirijwe, hamwe no kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko KLC Ltd yishyurwa amafaranga iburana rushingiye ku masezerano yo ku wa

01/12/2018 yakozwe n'umuntu utabifitiye ububasha. KLC Ltd yo yakomeje kwemeza ko ibyo nta shingiro bifite, isaba ko hagumaho imikirize y'urubanza N° RCOMA 00208/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi. Impande zombie kandi zasabye amafaranga y'ikurikiranarubanza n'indishyi zinyuranye.

[13] Urukiko, rushingiye kuri izo mpaka, rusanga hakwiye gusuzumwa ibibazo bikurikira:

- a. Kumenya niba ikibazo kiri hagati ya NSHILI KIVU TEA PLANTATION Ltd & NSHILI KIVU TEA FACTORY Ltd na KIGALI LAW CHAMBERS Ltd kirebwa n'ibiteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka
- b. Kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze gushingira ku masezerano yo ku wa 01/12/2018.
- c. Ibyerekeye indishyi n'amafaranga y'ikurikiranarubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ikibazo kiri hagati ya NSHILI KIVU TEA PLANTATION Ltd & NSHILI KIVU TEA FACTORY Ltd na KIGALI LAW CHAMBERS Ltd kirebwa n'ibiteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka.

[14] Abahagarariye NKTF Ltd na NKTP Ltd banenga kuba mu mu gika cya 16 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwaravuze ko urubanza rwose rushingiye ku kuba haravutse ikibazo giturutse ku mikoranire kuko KLC Ltd yavugaga ko imirimo bakoraga yahawe abandi kandi hatarabayeho gusesa amasezerano, ko rero kuba byararegewe mu Rukiko hatitawe ku bihe biteganywa mu ngingo 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka mu Rwanda nta tegeko ryishwe, ibyo rukabikora rwirengagije ko icyari cyaregewe ari ukutubahiriza amasezerano no kwishyura igihembo kingana na 96.000 USD, bityo ayo madolari akaba agomba gufatwa nk'igihembo cya Avoka.

[15] Basobanura ko KLC Ltd yarengeje ibihe byo kugeza ikibazo ku Mukuru w'Urugaga rw'Abavoka mu Rwanda, kuko ibaruwa ya nyuma KLC Ltd yandikiye NKTP Ltd na NKTF Ltd yayanditse ku wa 18/06/2019, akaba ari yo igombaga guherwaho habarwa ibihe byo kugeza ikibazo ku rugaga rw'Abavoka mu Rwanda. Basobanura ko KLC Ltd aho kubanza gushyikiriza ikibazo Urugaga rw'Abavoka, yatanze ikirego mu Rukiko rw'Ubucuruzi mu rubanza N° RCOM 01870/2019/TC, ku wa 27/12/2019, Urukiko rwemeza ko icyo kirego kitakiriwe, kuko imihango iteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka mu Rwanda itubahirijwe; hanyuma ku wa 09/01/2020, KLC Ltd ishshyikiriza ikibazo Urugaga rw'Abavoka mu Rwanda, ubwumvikane ntibwagerwaho, Umukuru w'Urugaga rw'Abavoka atanga uburenganzira bwo kwiyambaza izindi nzego. Bityo rero, bavuga ko iyo urebye igihe ibaruwa ya nyuma yishyuzwa yatangiwe n'igihe ikibazo cyashyikirijwe Umukuru w'Urugaga rw'Abavoka mu Rwanda, usanga ibihe by'amezi 2 biteganywa

n'ingingo ya 40 y'Amabwiriza yavuzwe haruguru bitarubahirijwe.

[16] Uhagarariye KLC Ltd yiregura avuga ko ikibazo kiri hagati ya KLC Ltd na NKTP Ltd hamwe na NKTF Ltd kitarebwa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka kuko ikiregerwa ari ukutubahiriza amasezerano no kuyica, ko kandi nta mpaka zihari ku bijyanye n'igihembo kuko cyumvikanweho n'impande zombi muri ayo masezerano, ko ari nabyo inkiko zombi zemeje. Asobanura ko mu gika cya 14 cy'urubanza N° RCOM 01250/2020/TC, Urukiko rw'Ubucuruzi rwasobanuye neza impamvu inzitizi yatanzwe nta shingiro ifite kuko nta mpaka zabayeho ku bijyanye n'igihembo kingana na 96.000 USD yishyuzwa, kuko icyaregewe ari ukutubahiriza no kwica amasezerano y'akazi KLC Ltd yagiranye na NKTP Ltd na NKTF Ltd, ko kandi byashimangiwe n'Urukiko Rukuru rw'Ubucuruzi mu gika cya 16 cy'urubanza N° RCOMA 00208/2021/HCC, kuko nyuma y'isesengura rwakoze rwemeje ko icyaregewe ari ukutubahiriza amasezerano yagengaga imikoranire y'impande zayagiranye kandi akaba atarasheshwe. Bityo ko ingingo ya 40 y'Amabwiriza ntaho ihuriye n'urubanza kuko igihembo cyishyuzwa kitagibwaho impaka.

[17] Avuga kandi ko kuba KLC Ltd yarashyikirije iki kibazo Umukuru w'Urugaga rw'Abavoka byari mu rwego rwo gukora ibyo Urukiko rwabasabye mu rubanza N° RCOM 01870/2019/TC ariko bo batemeranwaga n'icyo cyemezo kuko bagaragaje ko iki kibazo kitarebwa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka, ko kandi ari nabyo byemejwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza rujuririrwa. Avuga kandi ko Urukiko rw'Ubujuje rwasuzuma niba amezi abiri (2) ateganywa mu Mabwiriza

agenga ibihembo mbonera by'Abavoka ari indemyagihugu (*d'ordre public*) ku buryo kutayubahiriza byatuma ikirego kitakirwa mu Rukiko. Asoza asaba Urukiko rw'Ubujurire kudaha ishingiro iyi mpamvu y'ubujurire nk'uko n'inkiko zabanje zabyemeje.

UKO URUKIKO RUBIBONA

[18] Nk'uko byagaragajwe haruguru, ikibazo ababuranyi bifuzako Urukiko rusuzuma kuri iyi ngingo y'ubujurire n'icyo kumenya niba ikibazo KLC Ltd ifitanye na NKTF hamwe na NKTP Ltd kirebwa n'ibiteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka. Urukiko ruributsa ko muri iyi ngingo ya 40 havugwamo ibintu bibiri, aribyo: gushyikiriza Umukuru w'Urugaga rw'Abavoka impaka zijyanye n'ibihembo bya Avoka, no kubikora mu gihe cy'amezi abiri uherye igihe izo mpaka zavukiye.

a Ku byerekeye gushyikiriza Umukuru w'Urugaga rw'Abavoka impaka zijyanye no kugena no kwishyura ibihembo by'Avoka

[19] Ingingo ya 64, igika cya 2, y'Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo iteganya ko: *“Impaka zijyanye n'ubwishyu zimenyeshwa Umukuru w'Urugaga kugira ngo yumvikanishe impande zombi.”*

[20] Ingingo ya 27, agace ka 3, y'Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda ivuga ko *“Inama y'Urugaga ifite inshingano zo gushyiraho amabwiriza agamije guteza imbere umwuga w'ubwavoka”*.

[21] Ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka isobanura uko izo mpaka zerekeranye n'ibyo bihembo zikemurwa, muri aya magambo: *“Impaka zose zijyanye no kugena no kwishyura ibihembo by'Avoka zishyikirizwa Umukuru w'Urugaga rw'Abavoka mu mezi abiri uhereye igihe izo mpaka zavukiye. Ikirego gitangwa n'uruhande rufite inyungu, yaba umukiriya utemera ibihembo byose cyangwa igice asabwa kwishyura, yaba avoka usaba kwishyurwa ibihembo bye. Inyandiko itanga ikirego igomba guherekezwa n'ibimenyetso.”* Naho ingingo ya 2, agace 1, y'ayo Mabwiriza isobanura icyo igihembo cy'Avoka ari cyo mu buryo bukurikira: *“Ibihembo by'Avoka ni igihembo cyangwa ikiguzi Avoka ahabwa n'umugana kubera imirimo yo mu rwego rusanze, iy'ubwenge n'iyogucunga dosiye aba yamukoreye, haba imirimo yo kumugira inama, yo gusuzuma ibimenyetso, yo kujya mu nama, kumushakira ibikenewe (harimo igihe cyo gutegereza n'ingendo), kumugira inama mu nyandiko, ibiganiro kuri telefone, kumutegurira amabaruwa n'izindi nyandiko zijyanye n'ianza, kumwunganira no kumuburanira, kumutangira ikirego, igihe amara mw'iburanisha, kumukurikiranira irangizwa ry'ianza n'ibindi bikorwa, harimo no gucunga dosiye”*. Iyo ngingo, mu gace kayo ka 2, inasobanura uko Amasezerano ahoraho avoka agirana n'umugana agomba kumvikana: *“amasezerano Avoka agirana n'umukiriya, uyu akiyemeza: gushinga Avoka dosiye ze zirebana n'ibibazo by'amategeko, zose cyangwa igice cyazo; kumwishyura, akenshi ku kwezi, igihembo kidahinduka hatitawe ku gaciro ka dosiye amushinze, cyangwa igihembo kidahinduka hiyongereyeho umubare w'amafaranga ushobora guhinduka hakurikijwe imirimo yakozwe, icyagezweho, cyangwa ikindi cyose cyashingirwaho cyumvikanyweho n'impande zombi.”*

[22] Izi ngingo zose zisomewe hamwe, zumvikanisha ko ibihembo by'Avoka ari ikiguzi Avoka ahabwa n'umugana kubera imirimo itandukanye yamukoreye, ko icyo gihembo gishobora gutangwa rimwe cyangwa kikaba icya buri kwezi bitewe n'amasezerano Avoka afitanye n'Umukiriya, ko kandi impaka zose zijyanye no kugena ibyo bihembo cyangwa kubyishyura zigomba kubanza gushyikirizwa Umukuru w'Urugaga rw'Abavoka. Mu yandi magambo, bikwiye kumvikana ko igihembo cyose gishingiye ku masezerano Avoka agirana n'umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw'umwuga we nk'Avoka, afatwa nk'igihembo kirebwa n'iyi ngingo.

[23] Imikirize y'urubanza rujuririrwa N° RCOMA 00208/2021/HCC igaragaza ko ikibazo kiri muri uru rubanza ari ikibazo giturutse ku mikoranire kuko KLC Ltd ivuga ko imirimo yakoraga yahawe abandi kandi hatabayeho gusesa amasezerano inabisabira indishyi, ko rero nk'uko Urukiko rw'Ubucuruzi rwabyemeje mu rubanza N° RCOM 01870/2019/TC bitareba ibivugwa mu ngingo ya 40 y'Amabwiriza agena ibihembo by'Abavoka, bityo ko kuba byararegewe Urukiko hatitawe ku bihe biteganywa mu ngingo ya 40 y'amabwiriza agenga ibihembo mbonera by'abavoka, nta mategeko yishwe.

[24] Dosiye y'urubanza igaragaza amasezerano KLC Ltd ihagarariwe na Me BANDORA Alfred yagiranye n'Umuyobozi wa NKTP Ltd na NKTF Ltd Nicholas WATSON yashyizweho umukono ku wa 01/12/2018. Ayo masezerano agaragaza imirimo itandukanye KLC Ltd yagombaga gukora nk'Avoka, arimo kujya itanga inama mu by'amategeko, gutegura amasezerano y'ubucuruzi n'izindi nyandiko za ngombwa, no guhagararira

NKTF Ltd na NKTP Ltd mu nkiko, izi nazo ziyemeza kuja zishyura KLC Ltd 4000 USD buri kwezi.

[25] Dosiye y'urubanza igaragaramo kandi urubanza N° RCOM 01870/2019/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 27/12/2019, aho KLC Ltd yaregaga NKTF Ltd na NKTP Ltd, ikiburanwa ari: *“Kwica amasezerano y'akazi no gusaba ko yacibwa indishyi z'akababaro za \$ 20,000 USD - Gutegeka uregwa kwishyura amezi 24 twari twemeranyije angana na \$ 96,000 USD - Gutegeka uregwa kwishyura indishyi”*. Muri urwo rubanza, Urukiko rw'Ubucuruzi rushingiye ku ngingo ya 64, igika cya 2, y'Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka no ku ngingo 40, igika cya 1, y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka rwemeje ko ikirego cya KLC Ltd kitakiriwe kuko itabanje gushyikiriza ikibazo Umukuru w'Urugaga rw'Abavoka.

[26] Dosiye y'urubanza igaragaramo ibaruwa yo ku wa 18/06/2019, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umuyobozi wa NKTP Ltd na NKTF Ltd amuha integuza ya nyuma yo kwishyurwa ibikubiye mu masezerano bagiranye yashyizweho umukono ku wa 01/12/2018. Igaragaramo ibaruwa yo ku wa 09/01/2020, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umukuru w'Urugaga rw'Abavoka amusaba gukemura ikibazo KLC Ltd ifitanye na NKTF Ltd hamwe na NKTP Ltd cyo kuba izo kampani (companies) zitarubahirije amasezerano bagiranye. Igaragaramo kandi ibaruwa yo ku wa 28/07/2020, Umukuru w'Urugaga rw'Abavoka yandikiye Me BANDORA Alfred amuha uburenganzira bwo kwiyambaza izindi nzego kuko nta bwumvikane bwagezweho.

[27] Urukiko rurasanga ibyo Urukiko Rukuru rw'Ubucuruzi rwemeje ko amasezerano KLC Ltd yagiranye na NKTF Ltd na NKTP Ltd ari amasezerano asanzwe ko nta mpaka ziyarimo, bityo ko atarebwa n'ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 yavuzwe haruguru nta shingiro bifite, ku mpamvu zikurikira:

- a. Nk'uko byasobanuwe mu bika bibanziriza iki, KLC Ltd yagiranye na NKTF Ltd na NKTP Ltd amasezerano kugira ngo izihe serivisi zavuzwe haruguru hanyuma nazo ziyemeza ko zizajya ziyihemba 4.000 USD ku kwezi, ziza kutumvikana ku iyishyurwa ry'icyo gihembo kiyavugwamo, nk'uko rero byasobanuwe by'umwihariko mu gika cya 23 cy'urubanza, igihembo cyose gishingiye ku masezerano Avoka agirana n'umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw'umwuga we nk'Avoka, ayo masezerano aba ashingiye ku gihembo kirebwa n'iyi ngingo.
- b. Nk'uko kandi byagaragajwe haruguru, hari urubanza N° RCOM 01870/2019/TC rwaciye n'Urukiko rw'Ubucuruzi ku wa 27/12/2019, aho urwo Rukiko rwemeje ko ikibazo cya KLC Ltd cyagombaga kubanza gushyikirizwaga Umukuru w'Urugaga rw'Abavoka, kandi urwo rubanza ntirwajuririwe. Kuba rero rutarajuririwe kandi KLC Ltd ihagarariwe na Me BANDORA Alfred ikaba yarahisemo kubahiriza ibyemejwe muri urwo rubanza, kuko ku wa 09/01/2020 yashyikirije icyo kibazo Umukuru w'Urugaga rw'Abavoka, ku wa 28/07/2020 ibaha

uburenganzira bwo kwiyambaza izindi nzego kuko batabashije kumvikana, bigaragaza ko nawe yemeraga ko uwo muhango ugomba kubanza gukorwa mbere yo kuregera Urukiko, nk'uko biteganywa n'ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 yavuzwe haruguru.

[28] Kubera izo mpamvu zose, uru Rukiko rurasanga nta mpaka zikiriho ku bijyanye no kumenya niba ikibazo cyerekeranye n'ibihembo by'Avoka byari ngombwa ko gishyikirizwa Umukuru w'Urugaga rw'Abavoka mbere yo kuregera Urukiko. Rurasanga ahubwo ikibazo kigomba gusuzumwa ari icyo kumenya niba kuba KLC Ltd yarashyikirije izo mpaka Umukuru w'Urugaga rw'Abavoka nyuma y'amezi abiri (2) byaba impamvu ituma ikirego cyayo kitaragombaga kwakirwa mu Rukiko.

b. Kumenya niba kuba KLC Ltd yarashyikirije Umukuru w'Urugaga rw'Abavoka impaka zijyanye n'ibihembo bya Avoka nyuma y'amezi abiri byaba impamvu ituma ikirego kitakirwa mu Rukiko

[29] Ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 yibukijwe haruguru iteganya ibikurikira: “Impaka zose zijyanye no kugena no kwishyura ibihembo by'Avoka zishyikirizwa Umukuru w'Urugaga rw'Abavoka mu mezi abiri (2) uhereye igihe izo mpaka zavukiye. Ikirego gitangwa n'uruhande rufite inyungu, yaba umukiriya utemera ibihembo byose cyangwa igice asabwa kwishyura, yaba avoka usaba kwishyurwa ibihembo bye. Inyandiko itanga ikirego igomba guherekezwa n'ibimenyetso.” Igika cya 2 cy'iyi ngingo kikavuga ko “Umukuru w'Urugaga yakira ibirego akabyohereza Komisiyo y'Urugaga ishinzwe

ibihembo by'Abavoka na yo igahita itumiza impande zombi kugira ngo izumve; Komisiyo ishyikiriza raporo Umukuru w'Urugaga, na we agafata umwanzuro mu gihe ntarengwa cy'amezi abiri (2) uhereye igihe yashyikirijwe ikirego". Naho igika cya 8 cyayo kikongeraho ko "iyu Umukuru w'Urugaga amaze gufata umwanzuro akanawushyiraho umukono, awumenyesha impande zombi, zifite igihe cy'ukwezi kumwe (1) cyo kujuririra urukiko rubifitiye ububasha (ubujurire bw'ibanze kimwe n'ubujurire bwuririye ku bundi)".

[30] Nk'uko bigaragara ingingo ya 40 y'aya Mabwiriza mu duce twavuzwe mu gika kbanziriza iki, iteganya ibyiciro bibiri byo gukemuramo impaka zirebana n'ibihembo by'abavoka. Ni ukuvuga mu bwumvikane imbere y'Urugaga rw'Abavoka no mu Rukiko. Ibyo byiciro byombi bitegetswe kuba muri gahunda (*ordre*) ivugwa muri iyi ngingo, ariko buri cyose kigira amategeko yihariye n'imihango n'ibihe byubahiriza, buri cyose ku bikireba. Ni muri urwo rwego kuregera Urugaga bikorwa mu gihe kitarenze amezi abiri (2), mu gihe kuregera urukiko bikorwa mu gihe cy'ukwezi kumwe. icyiciro cyo kuregera urukiko kiba ari uko icy'ubwumvikane cyananiranye, kurangira kw'icyo cyiciro bikagaragazwa n'uko Umukuru w'Urugaga rw'Abavoka amenyesheje impande zombi umwanzuro wagezweho. Ibyo bivuze ko ibyabaye muri icyo cyiciro biba birangiye bikaba nta zindi ngaruka biba bigishobora kugira ku bireba ikirego cyaregewe urukiko, uretse kugenzura ko uwo muhango wabayeho cyangwa utabayeho gusa. Ibireba uburyo wakoze ntibiba bireba urukiko uretse igihe ibyo ari byo byaregewe. Ibyo bivuze ko umuburanyi ufite impamvu zituma atemera ko uwo muhango w'ubwumvikane ukorwa kubera kutubahirizwa kw'ibihe, aba agomba kwanga kuwujyamo, bityo ntunakorwe.

Naho iyo yemeye ko ukorwa, ntaba acyemerewe kwitwaza uburyo wakozwemo mu kwiregura (*en tant que défendeur*).

[31] Dosiye y'urubanza igaragaramo ibaruwa yo ku wa 18/06/2019, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umuyobozi wa NKTP Ltd na NKTF Ltd amuha integuza ya nyuma yo kwishyurwa ibikubiye mu masezerano bagiranye yashyizweho umukono ku wa 01/12/2018. Iyi baruwa Umuhesha w'inkiko yagaragaje ko yayohereje Nicholas WATSON kuri e-mail ye.

[32] Dosiye igaragaramo ibaruwa yo ku wa 09/01/2020, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umukuru w'Urugaga rw'Abavoka amusaba gukemura ikibazo KLC Ltd ifitanye na NKTF Ltd na NKTP Ltd cyo kuba izo sosiyete zitarubahirije amasezerano bagiranye, no kuba zitarayishyuye ibihembo bya Avoka bihwaye na 96.000 USD nk'uko byumvikanyweho mu masezerano.

[33] Dosiye igaragaramo ibaruwa yo ku wa 28/07/2020, Umukuru w'Urugaga yandikiye Me BANDORA Alfred amuha uburenganzira bwo kwiyambaza izindi nzego. Muri iyo baruwa Umukuru w'Urugaga agaragaza ko ashingiye ko impande zombi zandikiwe zisabwa ibisobanuro kuri iki kibazo ndetse zigasubiza, ko ashingiye kandi ko impande zombi zahamagawe mu muhango wo kubumvikanisha (mediation) wo ku wa 26/05/2020 ariko ntizibashe kumvikana, ko abahaye uburenganzira bwo kwiyambaza izindi nzego akaba arizo zibakemurira ikibazo.

[34] Urukiko rurasanga mu gihe impande zombi zemeye ko Urugaga rw'Abavoka ruzihuza ntihagire ubigiraho ikibazo, no ku bijyanye n'iyubahirizwa ry'ibihe kuri urwo rwego NKTF Ltd na NKTP Ltd ntizigaragaze ko zibifiteho ikibazo ahubwo zikareka

umuhango ukaba ukarangira, ntizinabiregere ngo zivuge ko uwo muhango wabaye mu buryo bunyuranyije n'amategeko, ntaho zahera zivuga ko igikorwa cy'ubwunzi ku rwego rw'Urugaga rw'Abavoka kitubahirije igihe giteganywa n'ingingo ya 40 y'Amabwiriza yavuzwe haruguru.

[35] Kubera izo mpamvu zose, Urukiko rurasanga ibivugwa n'abahagarariye NKTF Ltd na NKTP Ltd ko ikirego cya KLC Ltd kitagombaga kwakirwa kuko igihe cy'amezi (2) cyo kugeza ikibazo ku Mukuru w'Urugaga rw'Abavoka kitubahijwe, nta shingiro bifite kubera impamvu zasobanuwe haruguru; bityo iyi mpamvu y'ubujurire ikaba nta shingiro ifite.

2. Kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu gushingira ku masezerano yo ku wa 01/12/2018

[36] Abahagarariye NKTP Ltd na NKTF Ltd ntibishimiye ko ku rupapuro rwa 12 mu gika cya 27 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi mu gufata icyemezo rwashimangiye ibyemejwe n'Urukiko rw'Ubucuruzi ko KLC Ltd itari ifite inshingano zo kumenya niba ibikubiye mu masezerano yo ku wa 01/12/2018 abagize Inama y'Ubutegetsi bari babanje kubyemeza, ko ngo icy'ingenzi ari uko ayo masezerano yashyizweho umukono na Perezida w'Inama y'Ubutegetsi w'izo sosiyeti zombi. Bavuga ko ibyo binyuranyije n'amategeko, yaba amategeko yagengaga amasosiyete mu Rwanda yari ariho icyo gihe ndetse n'amategeko shingiro y'izo sosiyete kuko zose zari ziyobowe n'Inama y'Ubutegetsi (ngo binyuranye n'ibiteganywa n'ingingo ya 145 n'ya 147 z'Itegeko rigenga amasosiyete, n'ingingo ya 15 y'Amategeko shingiro ya sosiyete) kandi ikaba ari nayo yabanzaga kwiga ku myanzuro yose ireba izo sosiyete, nyamara hakaba nta nama n'imwe yigeze iterana, yaba

iy'abanyamigabane yaba iy'abagize inama y'ubutegetsu ngo ibyigeho ibifateho icyemezo. Bavuga ko Nicholas WATSON nta bubasha yari afite bwo gukorana amasezerano na KLC Ltd bitemejwe n'Inama y'Ubutegetsu y'izo sosiyete zombi kuko kuba uwasinnye yari Perezida w'Inama y'Ubutegetsu bitamuhaga uburenganzira bwo gukora ibitemejwe n'Inama y'Ubutegetsu; ko ahubwo ibyo yakoze yabikoze agamije guhombya izo sosiyete.

[37] Bakomeza bavuga ko ibyo uhagarariye KLC Ltd avuga ko bemera amasezerano yo ku wa 01/02/2018 atari byo kuko batayemera, ko n'ayo ku wa 01/12/2018 ari nayo aregerwa muri uru rubanza batayemera, kandi ko Inama y'Ubutegetsu y'izo sosiyete zombi yateranye ku wa 19/01/2019 yashyizeho ubuyobozi bushya, WATSON Nicholas akaba atakiri we Perezida w'Inama y'Ubutegetsu ndetse inama ya nyuma yayoboye akaba ari nayo KLC Ltd aheruka kwitabira, ari iyabaye ku wa 14/03/2017.

[38] Uhagarariye KLC Ltd avuga ko Nicholas WATSON yasinye nka Perezida w'Inama y'Ubutegetsu ya NKTF Ltd na NKTP Ltd, akaba yari afite ububasha bwo gusinya amasezerano, kandi akaba atari gusinywa n'abagize Inama y'Ubutegetsu bose. Avuga kandi ko nta n'ikigaragaza ko Inama y'Ubutegetsu itateranye, ko nta kuntu KLC Ltd yari kumenya niba Inama y'Ubutegetsu y'izo sosiyete zombi yarateranye cyangwa niba itateranye kuko ibyo bimenywa na ba nyiri imigabane b'izo sosiyete. Asobanura ko icyaregwe ari ubwishyu bushingiye ku masezerano yagiranye n'ubifitiye ububasha ari we Perezida w'Inama y'Ubutegetsu wa sosiyete zombi wayashyizeho umukono, kandi ko NKTF Ltd na NKTP Ltd zidahakana ayo masezerano, ko iyo ziza kuba zitayemera zari kuyaregera zisaba ko aseswa, aho gutegereza kuregwa ko zanze kwishyura. Avuga

kandi ko amasezerano yo ku wa 01/02/2018, agaragaza ko KLC Ltd igomba guhembwa 4 000 USD buri kwezi nayo yasinywe na Nicholas WATSON nka Perezida w'Inama y'Ubutegetsi kuko yashyizweho muri Kamena 2018, ko kandi ayo masezerano yo bayishyuye, akibaza impamvu bemera ayo, hanyuma bagahakana ayo ku wa 01/12/2018 aburanwa muri uru rubanza kandi yose yarasinywe na Nicholas WATSON nka Perezida w'Inama y'Ubutegetsi w'izo sosiyete zombi.

[39] Akomeza avuga ko ayo masezerano yo ku wa 01/12/2018 nta nenge afite kuko uwayasinye n'ubwo atari mu Rwanda ariko yabihamije neza muri "AFFIDAVIT" yakoze iriho n'umukono wa Noteri w'iwabo, akayohereza kuri *e-mail* kubera icyorezo cya COVID 19 cyariho, akaba atarabashaga gukora ingendo kubera izabukuru. Avuga kandi ko *Registration certificate* ya BARCO Trading Ltd igaragaza ko Nicholas WATSON n'abana be aribo ba nyiri iyo company yo mu mahanga yaje no kugura imigabane muri NKTF Ltd na NKTF Ltd, ko BARCO Trading Ltd ya Nicholas WATSON ifite imigabane irenga 92% muri izo sosiyete zombi, ko ibyo ubihuje n'ibiteganywa n'Itegeko rigenga amasosiyete ryakoreshwaga muri 2018, uhita ubona ko nyiri BARCO Trading Ltd yari afite uburenganzira busesuye bwo gusinya mu mwanya w'Inama y'Ubutegetsi kuko ari we ufitemo imigabane myinshi. Avuga na none ko Nicholas WATSON ari we ukiri Perezida w'Inama y'Ubutegetsi, ko hari indi nama yitabiriye ku wa 11/06/2018 yashyizweho umukono na Noteri.

[40] Abajijwe niba KLC Ltd yarahembwaga 4.000 USD ari uko ikoze cyangwa niba yarayahembwaga akazi kahaba cyangwa katahaba, asubiza ko ku kwezi KLC Ltd yagombaga guhembwa 4.000 USD nk'uko bikubiye mu ngingo ya 2 y'amasezerano yo ku wa 01/12/2018, ko kandi hari igihe akazi

kabaga ari kenshi ubundi kakaba ari gake, ko akazi KLC Ltd yagombaga gukora kari kavugwa muri ayo masezerano. Ku byerekeye kumenya niba yakoraze koko imirimo ikubiye muri ayo masezerano, yavuze ko bayikoze; abajijwe uwo bahaga raporo kuva ku wa 01/01/2019, asubiza ko uko bakoraga mbere ariko bakomeje gukora, ko bamubwiraga icyo agomba gukora akagikora, ko bajyaga Nshili kureba ko nta bibazo izo sosiyete zifite kuko Umuyobozi Mukuru yari amaze kugenda, kandi ko raporo yayitangaga *online*. Asoza avuga ko asaba Urukiko kudaha ishingiro iyi mpamvu y'ubujurire, no gutegeka NKTF Ltd na NKTP Ltd kwihutira kwishyura KLC Ltd.

UKO URUKIKO RUBIBONA

[41] Urukiko rusanga impaka kuri iyi ngingo zishingiye ku kumenya niba amasezerano KLC Ltd ishingiraho yishyura igihembo yarasinywe n'ubifitiye ububasha kimwe no kumenya niba igomba kwishyurwa amafaranga yose ateganywa n'ayo masezerano.

a. Kumenya niba amasezerano KLC Ltd ishingiraho yishyura yarasinywe n'ubifitiye ububasha

[42] NKTF Ltd na NKTP Ltd zivuga ko Nicholas WATSON wasinye amasezerano nka Perezida w'Inama y'Ubutegetsi yabikoze nta burenganzira abifitiye kuko nta Nama y'Ubutegetsi yateranye ngo ibimwemerere; mu gihe KLC Ltd yo ivuga ko atari ubwa mbere Nicholas WATSON amusinyira amasezerano nk'ayo, kandi akaba yarayishyuye nta kibazo. Mu gukemura izi mpaka, Urukiko ruragenzura uburyo ibyemezo byo gusinya amasezerano nk'aya muri NKTF Ltd na NKTP Ltd byafatwaga.

[43] Ingingo ya 151, igika cya 2, y'Itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi ryakoreshwaga igihe amasezerano yashyirwagaho umukono iteganya ibikurikira: “Abagize Inama y'Ubutegetsu bakorera hamwe bafatanyije mu buyobozi kandi bagomba kuba bangana n'umubare uteganyijwe mu nyandiko z'ishingwa ry'isosiyete kugira ngo inama iterane.”

[44] Ingingo ya 142, igika cya 1, y'Itegeko N°17/2018 ryo ku wa 13/04/2018 ryavuzwe haruguru iteganya ibikurikira: “Imirimo n'ibikorwa by'isosiyete biyoborwa cyangwa bikarebererwa n'Inama y'Ubutegetsu yayo ifite ububasha bwose bukenewe muri ubwo buyobozi, keretse mu gihe inyandiko z'ishingwa ry'isosiyete cyangwa iri tegeko biha ubwo bubasha abanyamigabane cyangwa undi muntu”

[45] Ingingo ya 15 y'amategeko agenga NKTF Ltd na NKTP Ltd havugwamo ko imicungire ya sosiyete ikurikiranwa n'Inama y'Ubutegetsu; ko ibyemezo by'Inama y'Ubutegetsu ya sosiyete bifatwa ku buryo bwemewe iyo hari umubare wa ngombwa w'abaje mu nama n'igihe buri cyemezo cyabonye ubwiganze bw'amajwi keretse haramutse hari izindi ngingo zigenwa n'amategeko zikurikizwa icyo gihe.

[46] Izi ngingo zisomewe hamwe, zigaragaza ko Inama y'Ubutegetsu ari yo ifite ububasha bwo kugirana amasezerano n'abandi bantu. icyakora itegeko ntirigaragaza uko bigenda iyo umuyobozi w'Inama y'Ubutegetsu afashe icyemezo kitemerwa n'abagize Inama y'Ubutegetsu. Ibi ariko byagiye bihabwa igisubizo kimaze gusa n'icyemerwa mu mahame agenga imicungire y'amasosiyete. Muri rusange, icyemezo cy'umuyobozi w'Inama y'Ubutegetsu gifatwa nk'aho cyafashwe n'abagize Inama y'Ubutegetsu mu buryo bwemewe n'amategeko

mu maso y'abagiranye amasezerano n'iyo sosiyete¹. Mu yandi magambo, sosiyete ntishobora kutishyura abo yagiranye nabo amasezerano yitwaje ko umuyobozi wayo hari ibyo atubahirije. Ahubwo, iyo ikibazo nk'icyo kivutse, ingaruka zabyo ziryoze uwo muyobozi w'Inama y'Ubutegetsi ku giti cye ariko nabwo bigaragaye ko yarengereye ububasha bwe.

[47] Dosiye y'urubanza igaragararamo amasezerano yo ku wa 01/12/2018, NKTF Ltd na NKTP Ltd zihagarariwe na Nicholas WATSON zagiranye na KLC Ltd ihagarariwe n'Umuyozozi Mukuru wayo BANDORA Alfred. Muri ayo masezerano izo sosiyeti zombi zemeranyijwe na KLC Ltd ko ari yo izajya ibafasha mu bijyanye na serivisi zijyanye n'amategeko nk'uko bikubiye mu ngingo ya mbere y'ayo masezerano, ko kandi KLC Ltd izajya ihembwa 4 000 USD ku kwezi nk'uko ingingo ya kabiri y'ayo masezerano ibiteganyaga; akaba kandi yaragombaga gutangira gukurikizwa ku wa 01/01/2019, akamara igihe cy'imyaka ibiri ariko gishobora kongerwa, ni ukuvuga ko yari kurangira ku wa 31/12/2020.²

¹ Ibi bishingira ku ihame bise “**Indoor management rule**”. This rule allows persons dealing with a company, namely through the managing director, to assume that all matters concerning internal management and procedure have been complied with. See JT Pretorius; PA Delpont, Michelle Havenga & Maria Vermaas, *South African Company Law through Cases*, JUTA & CO, Ltd; 6th ed.1999, p 346.

² *Art. 1: The duties of the Law firm shall be to provide the client with legal counsel, draft business agreements and prepare such other legal documents as the situation may necessitate, represent the client in the courts of law in Rwanda and perform such other judicial duties where the client has interests. Art. 2: The Law Firm shall be entitled to a consolidated payment of \$ 4000 US (Four Thousand American Dollars) as monthly retainer fees for the services as stipulated in the Article 1 of this contract. Art. 3: This agreement commences on 1st January 2019 and is valid for a period of two years (24 months) renewable upon agreement writing by the client and the Law Firm.*

[48] Muri dosiye hagaragaramo inyandikomvugo y'inama ya NKTF Ltd n'ya NKTP Ltd yo ku wa 14/03/2017 igaragaza ko Nicholas WATSON atorewe kuyobora Inama y'ubutegetsi mu gihe cy'amezi 12.

[49] Dosiye igaragaramo inyandikomvugo y'Inama y'Ubutegetsi ya NKTF Ltd yo ku wa 19/01/2019. Iyo nyandikomvugo igaragaza ko abagize Inama y'Ubutegetsi ari MURENZI Jean, BANGANINKA Jacqueline na Nicholas WATSON (utari witabye). Abitabiriye inama bemeje ko imirimo y'inama iyoborwa na MURENZI Jean, ko Me GASHAGAZA Philbert ayibera Umwanditsi. Muri iyo nama hemejwe ko amafaranga yahabwaga Me BANDORA Alfred ahita ahagarikwa kuko nta rwego rwa sosiyete rwamushyizeho, ko na 4.000 USD yahabwaga mu buryo budasobanutse hashakishwa uburyo yagaruzwa.

[50] Urukiko rurasanga abahagarariye NKTF Ltd na NKTP Ltd zagiranye amasezerano na KLC Ltd badahakana ko Nicholas WATSON yari Perezida w'Inama y'Ubutegetsi w'izo sosiyeti zombi mu gihe ayo masezerano yakorwaga, ahubwo bavuga ko amasezerano Nicholas WATSON yagiranye na KLC Ltd yagombaga kuba yemejwe n'Inama y'Ubutegetsi, kuko ari yo iyobora sosiyeti, ko rero kuba itarabyemeje, amasezerano yo ku wa 01/12/2018, nta gaciro agomba guhabwa.

[51] Urukiko rurasanga, kuba abahagarariye NKTF Ltd na NKTP Ltd bemera ko ku wa 01/12/2018, ubwo amasezerano yakorwaga Nicholas WATSON yari Perezida w'Inama y'Ubutegetsi ya NKTF Ltd na NKTP Ltd, zidashobora kuyahakana zitwaje ko yasinywe n'umuyobozi wayo atabyemerewe n'Inama y'Ubutegetsi kuko nk'uko byasobanuwe mu gika cya 47 ibikozwe na Perezida w'Inama y'Ubutegetsi

bifatwa nk'ibyakozwe na Sosiyete mu maso y'abandi bantu. Byongeye kandi, kuba hari andi masezerano yo ku wa 01/02/2018, Nicholas WATSON ahagarariye NKTF Ltd na NKTP Ltd yagiranye na KLC Ltd y'uko iyi izajya ihembwa 4.000 USD ku kwezi, agashyirwa mu bikorwa ndetse abandi bagize Inama y'Ubutegetsi bakaba batarabimuregeye, Urukiko rurasanga bigaragaza ko bemera ko Nicholas WATSON nka Perezida w'Inama y'Ubutegetsi w'izi sosiyete zombi yari yemerewe gukora amasezerano azihagarariye. Bityo, iyi ikaba atari inenge yatuma amasezerano yo ku wa 01/12/2018 adahabwa agaciro.

[52] Ku bivugwa n'abahagarariye NKTF Ltd na NKTP Ltd ko Nicholas WATSON nta bubasha yari afite bwo gukorana amasezerano na KLC Ltd bitemejwe n'Inama y'Ubutegetsi y'izo sosiyete zombi, ko amasezerano yo ku wa 01/02/2018 yakozwe mu buryo butandukanye n'ibiteganywa n'ingingo ya 145 na 147 y'itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyeti y'ubucuruzi ngo kuko Nicholas WATSON yakoresheje ububasha yari afite akayasinya Inama y'Ubutegetsi itateranye ngo ibyemeze, Urukiko rurasanga nta shingiro bifite kuko izo ngingo zitabuza Umuyobozi w'Inama y'Ubutegetsi kugira ibyemezo afata mu izina rya Sosiyete; ahubwo nk'uko nabyo byanasobanuwe haruguru, izo ngingo zikaba ntacyo zikemura kuri izi mpaka.

b. Kumenya niba KLC Ltd igomba kwishyurwa amafaranga yose ateganywa masezerano yo ku wa 01/12/2018

[53] NKTF Ltd na NKTP Ltd zivugaga ko Urukiko Rukuru rw'Ubucuruzi rutagomba gushingira ku masezerano yo ku wa 01/12/2018 ngo ruzitegeke kwishyura KLC Ltd 96.000 USD

kuko ayo masezerano itayemera kuko yasinyawe n'utabifitiye ububasha, ko ntacyo KLC Ltd yigeze ikora iyashingiyeho, kuko yagombaga gushyirwa mu bikorwa kuva ku wa 01/01/2019 agomba kumara igihe cy'imyaka ibiri, ariko akaba yaraje guhagarikwa n'Inama y'Ubutegetsu yateranye ku wa 19/01/2019.

[54] KLC Ltd ivuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rushingira ku masezerano yo ku wa 01/12/2018 maze rugategeka NKTF Ltd na NKTP Ltd kwishyura KLC Ltd 96.000 USD, kuko Nicholas WATSON yayasinye akiri Perezida w'Inama y'Ubutegetsu akaba yari afite ububasha bwo gusinya ayo masezerano. Ku byo kuba ntacyo yakoraga avuga ko nta shingiro byahabwa kuko yakomeje gukora nk'uko byari bisanzwe atanga raporo *online*. Naho ku bijyanye n'iseswa ry'amasezerano avuga ko yasheshwe n'abatabifitiye ububasha ko kandi atabimenyeshwe

[55] Mu gukemura izi mpaka, Urukiko rurasuzuma niba amasezerano yo ku wa 01/12/2018 atari gukomeza kubahirizwa mu gihe inama yo ku wa 19/01/2019 yemeje ko asheshwe ariko ntibimenyeshwe KLC Ltd.

[56] Ingingo ya 89 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "iyu ufite inshingano ahakanye inshingano, uko guhakana inshingano biha urundi ruhande uburenganzira bwo gusaba indishyi zishingiye ku nshingano zose zari zisigaye. ...". icyakora, ingingo ya 91, agace 1, yongeraho ko "Inshingano zo kuriha indishyi z'akababaro zishingiye ku guhakana inshingano zivaho iyo bigaragara ko uruhande rwereganyeye na rwo rutari gukora igisabwa".

[57] Izi ngingo zombi zisomewe hamwe zumvikanisha ko iyo habaye kutubahiriza ibikubiye mu masezerano, ariko urundi

ruhanda narwo rukaba rudakora inshingano zarwo, uruhanda rutayubahirije rufite inshingano yo kwishyura urwo rundi hashingiwe ku bimaze gukorwa. Ibi bishimangirwa mu ihame dusanga mu ngingo ya 84 ivuga ko *“Uruhanda rumwe (rudashobora) gusaba urundi ruhanda kurangiza inshingano zarwo rutabanje gukora ibyo rwasabwaga by’ingenzi mu gihe hari inshingano magirirane”*, hamwe n’ibiteganywa mu ngingo ya 82 aho igira iti *“ Iyo igice cy’ibisabwa ari cyo kigomba kwishyurwa gusa icyarimwe, urundi ruhanda rushobora kwishyura igice cyagereranwa n’inshingano zarangiye, keretse bigaragaye ukundi, hakurikijwe uko ibintu biteye”*.

[58] Ingingo ya 88 y’Itegeko ryavuzwe ikemura impaka ku byerekeranye no kumenya igihe guhakana inshingano byabereye. Ibivuga muri aya magambo: *“Guhakana inshingano bishobora gukorwa mu buryo bukurikira:*

1. 1° inyandiko ufite inshingano ahaye ugenewe inshingano imumenyesha ko atazakora igisabwa;
2. 2° gukora ku bushake igikorwa kigaragaza ko ufite inshingano atazakora igisabwa”.

[59] Bivuze ko uruhanda ruhakana inshingano rushobora kubikora mu buryo bweruye rumenyesha urundi mu nyandiko cyangwa rukabikora mu buryo buteruye rukora igikorwa kigaragaza ko rutazubahiriza inshingano zarwo, nko kwanga kwishyura kandi igihe cyo kwishyura cyageze. Mu yandi magambo, iyo igihe cyo kwishyurwa kigeze, uruhanda rugomba kwishyurwa ntwishyurwe, ruba rufite inshingano yo kubaza impamvu, bityo rukamenya ko nta cyahindutse ku nshingano zo kwishyura, naho ubundi ku muni rwagombaga kwishyurwa, iyo rutishyurwe bifatwa ko rwamenye ko urundi ruhanda rwiya buye inshingano.

[60] Mu magambo make, hashingiwe ku isesengura ry'ingingo zivuzwe mu bika bibanziriza iki, mu masezerano ashwirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe kandi uruhande rwishyurwa ntirukurikirane ubwishyurwa, bifatwa ko rwamenye ko urundi ruhande rwiya mbuye inshingano, bityo rukishyurwa imirimo yakozwe kugeza ubwo.

[61] Nk'uko byagaragajwe, amasezerano KLC Ltd yagiranye na NKTP Ltd na NKTF Ltd ku wa 01/12/2018 yagombaga gutangira gushyirwa mu bikorwa ku wa 01/01/2019. Ayo masezerano agaragaza ko KLC Ltd yagombaga guhembwa buri kwezi 4.000 USD mu gihe cy'imyaka ibiri (2). Bivuze ko ari amasezerano yagombaga kwishyurwa mu byiciro, buri icyiciro kikaba kingana n'ukwezi kumwe, kandi hakishyurwa ibyakozwe muri uko kwezi.

[62] Ku wa 19/01/2019, ubuyobozi bushya bwa NKTP Ltd na NKTF Ltd buhagarariwe na Bwana MURENZI Jean bwakoze inama y'Inama y'Ubutegetsi, ifata ibyemezo bitandukanye birimo no guhagarika amasezerano KLC Ltd yagiranye na NKTP Ltd na NKTF Ltd yavuzwe mu gika kibanziriza iki. Iki cyemezo ariko nticyigeze kimenyeshwa KLC Ltd mu buryo bwemewe, ahubwo ukwezi gushize, ntibigeze bamwishyura nk'uko byari biteganyijwe. icyakora na KLC Ltd, nyuma y'ukwezi, ntishyurwa igihembo cy'ukwezi bari barumvikanye mu masezerano, ahubwo yishyurwa ku wa 18/06/2019. Bivuze ko KLC Ltd yamenye ko NKTP Ltd na NKTF Ltd ziyambuye inshingano zo kwishyurwa mu buryo butemewe ku wa 31/01/2019, ubwo ukwezi kwari gushize, ikabona itishyurwa. Ibyo kuba yarabimenye kare mbere y'uko yishyurwa binashimangirwa n'uko mu ibaruwa ye yo ku wa 18/06/2019 yandikiye Umuyobozi wa NKTP Ltd na NKTF Ltd yamuhaga integuzi ya nyuma yo

kwishyurwa ibikubiye mu masezerano bagiranye yashyizweho umukono ku wa 01/12/2018; gutanga integuza ya nyuma bigaragaza ko yari yabanje kugerageza ubundi buryo busanzwe.

[63] Ikindi kigaragara cyavuzwe n'uruhande rwa NKTP Ltd na NKTF Ltd kandi na KLC Ltd ikaba nta kimenyetso yatanze kibihinyuza, ni uko nta kigaragaza ko kuva amasezerano yaseswa yakomeje gukora.

[64] Urukiko rushingiye kuri ibi bisobanuro byatanzwe no ku mategeko yasobanuwe cyane cyane mu bika bya 61 na 62, rurasanga nyuma yo guhagarika amasezerano, NKTP Ltd na NKTF Ltd zari ziyambuye inshingano zazo, ariko kuko zitabimenyesheje KLC Ltd mu buryo bweruye, bikaba bigomba gufatwa ko KLC Ltd yabimenye mu buryo buteruye, ubwo ukwezi kwashiraga ntiyishyuze. Urukiko rusanga ariko na none mu migenzereze isanzwe cyane cyane ishingiyeye mu muco nyarwanda, bishoboka ko igihe umuntu yagombaga kwishyura kigera ntiyishyuze, ahubwo akiha akanya gato ngo arebe ko ugomba kwishyura yibwiriza. Ibyo ariko na none bikaba bitagomba kurenga ukwezi gukurikiyeho. Ni muri urwo rwego Urukiko rusanga KLC Ltd igomba guhemberwa ukwezi kwa Mutarama 2019 hamwe n'ukwa Gashyantare 2019 hashingiye ku kuba ari icyo gihe ikwiye kuba yaramenyeyeho ko amasezerano yari ifitanye na NKTP Ltd na NKTF Ltd yasheshwe; ibyo bikaba bihwanye n'amadorari y'Amerika ibihumbi bine ku kwezi mu gihe cy'amezi abiri; yose hamwe akaba ari amadolari y'Amerika ibihumbi umunani: $(4.000 \text{ USD} \times 2) = 8.000 \text{ USD}$).

B. UBURIRE BWURIRIYE KU BUNDI BWA KLC Ltd

1. Kumenya niba KLC Ltd yaragombaga kugenerwa indishyi z'akababaro

[65] Abahagarariye KLC Ltd basabye Urukiko gutegeka NKTF Ltd na NKTF Ltd guha KLC Ltd indishyi z'akababaro zingana na 20.000 USD, kubera akarengane gakomeye gashingiye ku cyenewabo, kuko yazikoreye neza imyaka myinshi, zikagera kuri byinshi ku bwayo, ariko ko uwo bita MURENZI Jean waje nyuma yiyita Chairman yashatse kuyambura isoko akariha muramu we, akaba ari na ryo pfundo ry'iki kirego.

[66] Abahagarariye NKTF Ltd na NKTF Ltd biregura ku ndishyi z'akababaro KLC Ltd isaba bavuga ko nta shingiro zikwiye guhabwa kuko sosiyete bahagarariye zigaragaza ko amasezerano ashingirwaho anyuranyije n'amategeko shingiro yazo, hamwe n'ingingo ya 54 y'Itegeko N° 13 bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'Ubunoteri, iteganya uburyo inyangirakose zemejwe n'umunoteri wo mu mahanga zigira agaciro mu Rwanda, ariko ko inzira amasezerano yo ku wa 01/12/2008 yagombaga kunyuramo kugira ngo agire agaciro itubahirijwe.

UKO URUKIKO RUBIBONA

[67] Dosiye y'urubanza igaragaza ko KLC Ltd yasabye indishyi z'akababaro zihwanye na 20.000 USD kuva ku rwego rwa mbere mu Rukiko rw'Ubucuruzi ariko urwo Rukiko rusanga nta shingiro zifite kuko n'ubundi amasezerano bagiranye yari afite igihe kizwi yagombaga kumara, ko kandi kuba bavuga ko

nta cyizere cyo kongera gukorana nabo bitatangirwa indishyi. Yongeye kuzisaba mu Rukiko Rukuru rw'Ubucuruzi, urwo Rukiko rusanga KLC Ltd ari sosiyete nk'uko babyivugiye, ko rero itari umuntu yagira akababaro, izo ndishyi ikaba ntazo yagenerwa.

[68] Ibyerekeye kuba sosiyete cyangwa ikigo bitahabwa indishyi z'akababa kuko atari umuntu, uwo murongo Urukiko rw'Ikirenga rwarawuhinduye mu rubanza N° RS/INJUST/RCOM 00004/2020/SC rwaciwe ku wa 19/11/2021, NEW KIGALI BUSINESS SERVICES Ltd yaburanye na KASESE DISTILLERS Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/11/2021, aho mu gika cya 48, rwavuze ibikurikira : “Urukiko rurasanga umurongo Urukiko rw'Ikirenga rwari rwaragendeyeho mu gufata icyemezo mu rubanza Bralirwa Ltd yaburanaga na Kazigaba André na bagenzi be, rwifashishije inyandiko z'abahanga, ari wo inkiko z'ibindi bihugu zasubiyeho, ndetse n'inyandiko nshya z'abahanga mu mategeko mbonezamubano zivuga ko utakijyanye n'igihe. Muri bo hari Véronique Wester Ouisse uvuga ko ntawari ukwiye guhakana ko sosiyete zishobora gusaba indishyi z'akababaro kubera ko nk'uko bimeze ku bantu, icyubahiro cyazo, icyizere zifitiwe n'uburyo zifatwa muri rubanda bishobora kubangamirwa kandi bikagira ingaruka ku mibereho yazo, bityo ko ikibazo kidakwiye kureberwa gusa ku bikorwa by'ubucuruzi. Icyakora, asobanura ko sosiyete yifuza indishyi z'akababaro igomba kubanza kugaragaza icyo yangirijwe”³.

³ “*Au vrai, nul ne disconvient qu'une société commerciale puisse subir un dommage moral, au sens d'une atteinte à la personnalité sociale qu'elle a pu se forger aux yeux du public : la considération, la réputation voire l'honneur ne sont pas propres aux personnes physiques. Mais une société ne devrait pas pouvoir en tirer réparation que si un préjudice en résulte. Or, pour admettre*

[69] Urukiko rw'Ikirenga rwasobanuye ko iby'uko sosiyete z'ubucuruzi cyangwa ibigo bishobora guhabwa indishyi z'akababaro bimaze kuba ihame ry'amategeko agenga uburyozwe. icyakora izo ndishyi ziba zigamije gusa uburyozwe bushingiye ku buryo rubanda rushobora gutakariza icyizere sosiyete cyangwa ikigo (*réputation/reputation*) cyangwa bukaba bushingiye ku kugaruza icyubahiro cya sosiyete cyangwa ikigo kubera ko izina ryacyo ryasebejwe (*honneur/honor*). Ibi byumvikanisha ko ikigo cyangwa sosiyete (k)itasaba indishyi z'akababaro z'uko (c)yatewe agahinda (*angoisse/distress*), (c)yababajwe ku mubiri cyangwa ku mutima (*blesure physique ou mental/ physical or mental hurt*) cyangwa (c)yasuzuguwe (humiliation) kuko ibi ari umwihariko w'abantu (*personne physique*). Byongeye kandi sosiyete ntiyahabwa indishyi z'akababaro itabanje kugaragaza icyo yangirijwe. Rusobanura kandi ko indishyi z'akababaro zihabwa sosiyete cyangwa ikigo ziba zigamije gusa kugaruza agaciro iyo sosiyete cyangwa ikigo byatakaje aho kuba ibyo yahombye (*restauration de l'honneur ou de la réputation/ restoration of the honor or reputation*)⁴.

[70] Hashingiwe ku bimaze gusobanurwa mu bika bibanziriza iki, Urukiko rurasanga 20.000 USD y'indishyi z'akababaro, KLC Ltd isaba nta shingiro zahabwa kuko itigeze itakarizwa icyizere na rubanda (*réputation/reputation*) cyangwa ngo ibe yatakaje icyubahiro kubera ko izina ryayo ryasebejwe (*honneur/honor*), ku

qu'elle puisse subir un préjudice moral, il faudrait reconnaître que son image, son crédit, sa réputation lui servent à autre chose qu'à développer 'activité commerciale qui borne son objet social et donc sa personnalité juridique.' ; Véronique Wester-Ouisse, "Le préjudice moral des personnes morales : quand "la perversion de la cité commence par la fraude des mots", JCP, G n° 39,24 Septembre 2012.

⁴ Reba igika cya 50 n'icya 51 by'urubanza N° RS/INJUST/RCOM 00004/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 19/11/2021.

buryo yagenerwa indishyi z'akababaro, bityo nta ndishyi z'akababaro igomba guhabwa muri uru rubanza.

Kumenya niba amafaranga y'ibyakoreshejwe mu rubanza asabwa n'impande zombi afite ishingiro

[71] Abahagarariye NKTP Ltd na NKTF Ltd bashingiye ku ngingo ya 34 y'Amabwiriza n°01/2014 agena ibihembo mbonera by'Abavoka, basaba Urukiko rw'Ubujurire gutegeka KLC Ltd kwishyura NKTF na NKTP 5.000.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza zari zasabye kuva ku rwego rwa mbere kugera mu bujurire na 2.000.000 Frw y'igihembo cya Avoka kuri uru rwego. Bavuga kandi ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka KLC Ltd isaba mu bujurire bwuririye ku bundi nta shingiro akwiye guhabwa.

[72] Uhagarariye KLC Ltd avuga ko ihame ry'amategeko ari uko ntawushingira ku makosa ye ngo ayabyaze inyungu, ko kubera iyo mpamvu nta ndishyi NKTF na NKTP zikwiye guhabwa, kuko ari zo zabaye nyirabayazana w'izi manza, zanga kubahiriza amasezerano yo ku wa 01/12/2018 zagiranye nayo kandi *Chairman* wayasinye ari nawe wasinye ayayabanjirije.

[73] Avuga kandi ko bashingiye ku ngingo ya 152 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, basaba Urukiko rw'Ubujurire gutegeka NKTF Ltd na NKTP Ltd gufatanya gusubiza KLC Ltd 12.000.000 Frw y'ibihembo by'Abavoka, kuko kuva mu Rukiko rw'Ubucuruzi KLC Ltd yaburanirwaga n'abavoka batatu, ibihembo byabo bikaba bigomba kugenwa hitawe ku mubare wabo, ni ukuvuga

4.000.000 Frw kuri buri rwego na 5.000.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[74] Ku bijyanye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa n'impende zombi muri uru rubanza, Urukiko rurasanga nta ruhande na rumwe rugomba kuyahabwa kuko buri ruhande rufite ibyo rwatsindiye n'ibyo rwatsindiwe.

III. ICYEMEZO CY'URUKIKO

[75] Rwemeje ko ubujurire bwa NSHILI KIVU TEA FACTORY Ltd na NSHILI KIVU TEA PLANTATION Ltd bufite ishingiro kuri bimwe.

[76] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na KIGALI LAW CHAMBERS nta shingiro bufite.

[77] Rwemeje ko imikirize y'urubanza No RCOMA 00208/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 29/09/2021, ihindutse gusa ku bijyanye n'amadorari NSHILI KIVU TEA FACTORY Ltd na NSHILI KIVU TEA PLANTATION Ltd zigomba kwishyura KIGALI LAW CHAMBERS.

[78] Rutegetse NSHILI KIVU TEA FACTORY Ltd na NSHILI KIVU TEA PLANTATION gufatanya kwishyura KIGALI LAW CHAMBERS amadorari ibihumbi umunani (8.000 USD).

[79] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

URUBANZA NSHIJYABYAHA

UBUSHINJACYAHA v NZABONIMPA

[Rwanda URUKIKO RW'UBUJURIRE – RPA 00059/2018/CA
(Rugabirwa, P.J., Kaliwabo na Tugireyezu J.) 15 Nyakanga 2019]

Amategeko agenga imanza z'inshinjabyaha – Ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Mu manza nshinjabyaha ibimenyetso byose bishatswe ku buryo buhuje n'amategeko bireemerwa, icyakora imvugo zitangiwe mu zindi nzego zitari iz'ikurikiranacyaha cyangwa mu rukiko, zigomba gushyigikirwa n'ibindi bimenyetso kugira ngo zigire agaciro gahamya ushinjwa icyaha.

Incamake y'ikibazo: Uru rubanza rwatangiriye Rukiko Rukuru Uregereko rwa Musanze, uregwa akurikiranywe n'ubushinjacyaha ashinjwa gutera inkunga umutwe wa FDLR, awugemurira ibyo kurya. Urwo Rukiko rwaciye urubanza rumuhamya icyaha cyo kugira uruhare mu bikorwa by'ishyirahamwe ry'iterabwoba, rumuhanisha igifungo cy'imyaka 15. Mu gufata icyo cyemezo, urwo Rukiko rwashingiye ku buhamya bwatanze n'uwitwa Makombe no ku mvugo y'uregwa yakoreye imbere y'umusirikare wamwakiriye igihe yavaga muri RDC, no kuba izo mvugo zihuriza ku kuba uregwa yaragemuriraga ibyo kurya abagize umutwe wa FDLR akanabacumbikira, ndetse ngo akaba yarabashyikirizaga amakuru arebana n'ingabo z'u Rwanda.

Uregwa yajuririye urwo rubanza mu Rukiko rw'Ikirenga, nyuma y'ivugururwa ry'ububasha bw'inkiko, urubanza rushyikirizwa Urukiko rw'Ubujurire, yaburanye avuga ko yahamijwe icyaha atakoze, kuko hashingiwe ku buhamya bw'uwitwa Makombe wamumenesheje mu murima we agamije kuwigarurira, ko uwamushinje ari nawe wamushimuse amuvanye mu rugo rwe,

nyamara nta wundi mutangabuhamya umushinja gukorana n'abarwanyari ba FDLR. Yajuriye kandi ahakana imvugo yavugiye imbere y'umusirikare wamwakiriye ngo kuko yayemejwe ku gahato.

Ubushinjacyaha bwo buvuga ko nta nyungu umutangabuhamya yari afite mu gushinja uregwa kandi ibyo amushinja nawe ubwe akaba yarabyemeye imbere y'umusirikare wamwakiriye, kandi ko ubuhamya bwatangiwe imbere y'umusirikare bufite agaciro kuko nawe ari umugenzacyaha wa gisirikare.

Incamake y'icyemezo: 1. Nubwo mu manza nshinjabyaha ibimenyetso byose bishatswe ku buryo buhujwe n'amategeko byemerwa, nyamara agaciro kabyo karutanwa hakurikijwe ubwoko bwabyo n'uburyo byabonetsemo. Niyo mpamvu ubuhamya butangiwe mu zindi nzego zitari iz'iperereza cyangwa mu Rukiko, bugomba gushyigikirwa n'ibindi bimenyetso kugira ngo bugire agaciro gahamya ushinjwa icyaha.

**Ubujurire bufite ishingiro;
Uregwa ni umwere.**

Amategeko yashingiweho:

Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 165.

Itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 65.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nzabonimpa David wabarizwaga muri Groupement ya BUHUMBA muri RDC, yafashwe ashinjwa gutera inkunga umutwe wa FDLR, awugemurira ibyo kurya ndetse no kubaha amakuru arebana na positions z'abasirikare b'u Rwanda. MAKOMBE Deo, umuyobozi wa Groupement ya BUHUMBA yamushyikirije ingabo z'u Rwanda zikorera ku mupaka wa Kabuhanga, ndetse atanga n'ubuhamywa avuga ko NZABONIMPA David asuzugura ubutegetsi bwabo, yitwaje ko akorana n'abarwanyi ba FDLR, akaba abagemurira ibyo kurya, ahitwa i Rugali.

[2] Ku wa 31/12/2019, NZABONIMPA David yabajijwe n'umusirikare wamwakiriye, Sgt RUKUNDO, amwemerera ko afatanyije na MAKOMBE Deo bakusanyije ibyo kurya, hanyuma akabijyana kuri "dépôt" iherereye i Rugali, aho abarwanyi ba FDLR babisanze. Yavuze kandi ko hari n'igihe bamwe mu barwanyi ba FDLR bazaga iwe gutwara ibyo kurya babaguriye, abo yibuka amazina yabo akaba ari KAMURE, CYITATIRE na SIBOMANA.

[3] NZABONIMPA David yashyikirijwe Ubugenzacyaha, abazwa ahakana icyaha, avuga ko yafashwe ku kagambane ka MAKOMBE Deo kuko yashakaga kumwambura isambu ye, kandi ko kubera iyo mpamvu, uyu yamenesheje umugore n'abana be, ko atemera imvugo ye yakoreye mu nzego za gisirikare kuko yayemejwe ku gahato. Iyi myiregurire niyo yakomeje kugeza mu Rukiko Rukuru rwamuciriye urubanza ku rwego rwa mbere.

[4] Uregereko rw'Urukiko Rukuru rukorera i Musanze, rwaciye urubanza n° RP 00002/2017/HC/HC/MUS ku wa 10/04/2018,

rwahamije NZABONIMPA David icyaha cyo kugira uruhare mu bikorwa by'ishyirahamwe ry'iterabwoba, rumuhanisha igifungo cy'imyaka 15.

[5] Mu gufata icyo cyemezo, urwo Rukiko rwashingiye ku buhamya bwatanzwe na MAKOMBE Deo no ku mvugo ya NZABONIMPA Deo yakoreye imbere y'umusirikare wamwakiriye igihe yavaga muri RDC, no kuba izo mvugo zihuriza ku kuba NZABONIMPA yaragemuriraga ibyo kurya abagize umutwe wa FDLR akanabacumbikira, ndetse ngo akaba yarabashyikirizaga amakuru arebana n'ingabo z'u Rwanda.

[6] NZABONIMPA David yajuririye urwo rubanza mu Rukiko rw'Ikirenga, ubujurire bwe bwandikwa kuri n° RPA 00015/2018/SC, nyuma y'ivugururwa ry'ububasha bw'inkiko, urubanza rushyikirizwa Urukiko rw'Ubujurire, aho bwanditswe kuri n° RPA 00059/2018/CA, hashingiwe ku ngingo ya 52 n'ya 105 z'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko.

[7] NZABONIMPA David yunganiwe na Me NKUNDIRUMWANA Joseph, yajuriye avuga ko yahamijwe icyaha atakoze, kuko hashingiwe ku buhamya bwa MAKOMBE Deo wamumenesheje mu murima we agamije kuwigarurira, ko uwamushinje ari nawe wamushimuse amuvanye mu rugo rwe, nyamara nta wundi mutangabuhamya umushinja gukorana n'abarwanyari ba FDLR. Yajuriye kandi ahakana imvugo yavugiye imbere y'umusirikare wamwakiriye kuko yayemejwe ku gahato.

[8] Ubushinjacyaha buhagarariwe na RUDATINYA Gaspard, Umushinjacyaha ku rwego rw'Igihugu, buvuga ko nta nyungu MAKOMBE Deo yari afite mu gushinja NZABONIMPA kandi ibyo amushinja nawe ubwe akaba yarabyemeye imbere y'umusirikare wamwakiriye, bityo ko MAKOMBE Deo yavugiye imbere ya Sgt

RUKUNDO ifite agaciro kayo kuko nawe ari umugenzacyaha wa gisirikare.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 30/05/2019, NZABONIMPA David yunganiwe na Me NKUNDIRUMWANA Joseph, naho Ubushinjacyaha buhagarariwe na RUDATINYA Gaspard, Umushinjacyaha ku rwego rw'Igihugu.

[10] Muri uru rubanza, Urukiko rukaba rugiyeye gusuzuma niba ubuhamya bwa Makombe n'imvugo ya NZABONIMPA David byakorewe imbere ya Sgt RUKUNDO bishobora gufatwa nk'ibimenyetso bihamya ZABONIMPA David icyaha

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

- 1. Kumenya niba inyandiko mvugo yo ku wa 31/12/2016 y'ibazwa rya NZABONIMPA David n'ubuhamya bwa MAKOMBE Deo bishobora gufatwa nk'ibimenyetso bimuhamya icyaha aregwa.**

[11] NZABONIMPA David avuga ko Urukiko Rukuru rwahaye agaciro inyandiko mvugo y'ibazwa rye ryakorewe imbere y'umusirikare wamwakiriye, nyamara ngo ibiyikubiyemo akaba atabyemera kuko yabyemejwe ku bw'ibikorwa bibabaza umubiri yakorewe, kandi ko akigezwa imbere y'Umugenzacyaha yavugurije iyi nyandiko. NZABONIMPA David avuga kandi ko iyo mvugo ye iza gufatwaho ukuri, na MAKOMBE Deo yari gukurikiranwa kuko nawe yamuvuze mu bo bafatanyaga kugemurira abarwanyu ba FDLR.

[12] NZABONIMPA David yasobanuye ko yashimuswe na MAKOMBE Deo wari Chef de Groupement ya BUHUMBA (RDC),

aho nawe yari atuye, amuziza isambu ye kuko yashakaga kuyimwambura, ndetse ko na nyuma yo kumufata, yahise amenyesha umugore n'abana be. Avuga kandi ko, uyu muyobozi yahoraga amwaka amafaranga (ikoro), amubwira ko ni atayatangana azamusubiza iwabo mu Rwanda, ngo uwo mugambi akaba ariwo yashyize mu bikorwa ubwo yamubeshyeraga ko akorana na FDLR, bityo ko atemera ubuhamya bwa MAKOMBE Deo mu gihe ibikorwa amushinja nta wundi mutangabuhamya wigeze abyemeza.

[13] Me NKUNDIRUMWANA Joseph, wunganira NZABONIMPA David, avuga ko uwo yunganiye yagambaniwe na MAKOMBE Deo kubera amakimbirane bari bafitanye kuko uyu yamuhimbiye icyaha kidafitiye ibimenyetso kubera ko ariwe mutangabuhamya rukumbi ubimushinja. Avuga kandi ko NZABONIMPA David yashinjwe icyaha cyo gutanga amakuru arebana n'ingabo z'u Rwanda ariko abamushinja ntibasobanure amakuru yatanze n'uwo yayashyikirije.

[14] Me NKUNDIRUMWANA Joseph avuga kandi ko inyandiko mvugo yakorewe imbere ya Sgt RUKUNDO, umusirikare wakiriye NZABONIMPA David, itagombye kuba ikimenyetso gishinja uwo yunganira kuko byakozwe n'umukozi utabifitiye ububasha, kandi ko ibiyikubiyemo NZABONIMPA David yabivuguruje akigera mu Bugenzacyaha, aho yisobanuye nta gahato ashyizweho n'umusirikare wamubajije.

[15] Ubushinjacyaha buvuga ko bujurire bwa NZABONIMPA David nta gaciro bufite kubera ko ibazwa rye ryakozwe n'umusirikare ufite ububasha bwo gukora iperereza, kandi ko ibyo yabajijwe yabyisobanuyeho mu bwisanzure, ko atashoboraga gushyirwaho agahato ngo ibisobanuro yatanze bihuze neza n'uburyo MAKOMBE Deo, umushinja, abisobanura. Avuga kandi ko NZABONIMPA David yagiye yivuguruza ku birebana n'amakimbirane yari afitanye na

MAKOMBE kuko yatangiye avuga ko uyu yabanje kumenesha umugore n'abana be, ariko ko imbere y'uru Rukiko avuga ko MAKOMBE Deo yabirukanye nyuma y'ifungwa rye. Ubushinjacyaha busoza buvuga ko NZABONIMPA David yashinje MAKOMBE Deo kuba barafatanyije mu kugemurira abarwanyari ba FDLR agamije kumwihimuraho, ariko ko atagomba kwireguza kuko kuba uwo ashinja atarakurikiranwa.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 65 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko: “Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa.”

[17] Urukiko rurasanga, Urukiko Rukuru, Urugereko rwa Musanze, mu guhamya icyaha NZABONIMPA David rwashingiye ku kimenyetso kimwe rukumbi kigizwe n'imvugo yavugiye mu nzego za gisirikare ku wa 31/12/2016, akimara gushyikirizwa ingabo z'u Rwanda, aho yemeraga icyaha akanasobanura uburyo yakoranaga na FDRL, maze urwo Rukiko rwemeza ko iyo mvugo isobanura ku buryo burambuye imikorere y'icyaha, ko kandi NZABONIMPA David atashoboye kugaragaza ikimenyetso cy'uko yashyizweho agahato, cyangwa amakimbirane yaba yari afitanye na MAKOMBE Deo wamushinje icyo cyaha.

[18] Urukiko rurasanga MAKOMBE Deo, wari Chef de Groupement de BUHUMBA, akaba yarafashe NZABONIMPA David akanamushyikiriza ingabo z'u Rwanda, ari nawe wenyine umushinja gukorana na FDLR, kandi muri iyo mvugo ye, MAKOMBE Deo

akaba anahamya ko NZABONIMPA David amusuzugura yitwaje ko akorana n'abayobozi ba FDLR.

[19] Urukiko rurasanga, ubuhamya bw'umuntu umwe, wari usanzwe ari n'umuyobozi wa NZABONIMPA David, univugira ko NZABONIMPA David amusuzugura, ndetse agashinjwa n'uwo yafashe ko yamenesheje umugore we n'abana, birutera ugushidikanya ku cyaha amushinja cyo gukorana n'umutwe w'iteraboba wa FDLR.

[20] Urukiko rurasanga, n'ubwo mu manza nshinjabyaha ibimenyetso byose bishatswe ku buryo buhuje n'amategeko byemerwa, nyamara agaciro kabyo karutanwa hakurikijwe ubwoko bwabyo n'uburyo byabonetsemo. Niyo mpamvu ubuhamya butangiwe mu zindi nzego zitari iz'iperereza cyangwa mu Rukiko, bugomba gushyigikirwa n'ibindi bimenyetso kugira ngo bugire agaciro gahamya ushinjwa icyaha.

[21] Urukiko rurasanga imvugo ya NZABONIMPA David yavugiye mu rwego rwa gisirikare ku wa 31/12/2016, ariko akaba yarahise ayivuguruzwa akigera mu Bugenzacyaha, itafatwa nk'ikimenyetso cyihagije kigaragaza ko yakoze icyaha mu gihe iyo mvugo itunganiwe n'ikindi kimenyetso.

[22] Urukiko rurasanga, nta gikorwa na kimwe Ubushinjacyaha bwatanze kigaragaza ko NZABONIMPA yatanze amakuru mu mutwe wa FDLR arebana n'ingabo z'u Rwanda, bityo iki cyaha akaba akwiye kugihanagurwaho kuko yagihamijwe n'Urukiko Rukuru, Urugereko rwa Musanze nta bimenyetso bikimushinja.

[23] Urukiko rurasanga, NZABONIMPA David agomba kugirwa mwere ku byaha akurikiranyweho ku bwo gushidikanya ku bijyanye n'bimenyetso byatanzwe nk'uko biteganywa n'ingingo ya 165 y'Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize

y’ianza z’inshinjabyaha, iteganya ko “Gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze”

III. ICYEMEZO CY’URUKIKO

[24] Rwemeje ko ubujurire bwa NZABONIMPA David bufite ishingiro ;

[25] Rwemeje ko NZABONIMPA David agizwe umwere ku cyaha cyo gukorana n’umutwe w’iterabwoba ;

[26] Ruvuze ko imikirize y’urubanza n° RP 00002/2017/HC/MUS rwaciye n’Urukiko Rukuru, Urugereko rwa Musanze, ku wa 10/04/2018, ihindutse mu ngingo zarwo zose;

[27] Rutegetse ko NZABONIMPA David ahita afungurwa urubanza rukimara gusomwa ;

[28] Rutegetse ko amagarama y’uru rubanza aherera ku Isanduku ya Leta.

**RWANDA LAW
REPORTS**

ENGLISH VERSION

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PREFACE

Dear Readers,

We are pleased to present to you the Law Reports Volume 2 [2023]. As usual, we select cases that solve some of the legal issues you encounter, either in your career or in your daily life.

This volume contains eight (7) cases, which includes; one (1) administrative case, one (1) civil case, one (1) labour case, two (2) commercial cases, one (1) criminal case and one (1) procedural case.

These cases can be accessed on the website of the judiciary: <http://decisia.lexum.com/rlr/en/nav.do>.

Dr NTEZILYAYO Faustin
President of the Supreme Court and
President of the High Council of Judiciary

SCOPE OF THE REPORTS

These reports cover cases decided by the Supreme Court and Court of Appeal.

CITATION

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BANQUE POPULAIRE DU RWANDA ATLAS MARA PLC V. NKUSI.....1

PROCEDURAL CASE

**CASE RELATED TO THE
PROCEDURE FOR REVIEW OF A
JUDGMENT DUE TO INJUSTICE**

BANQUE POPULAIRE DU RWANDA ATLAS MARA PLC V. NKUSI

[Rwanda Supreme Court- RS/INJUST/RCOM 0000/2020/ SC
(Nyirinkwaya., P.J., Cyanzayire, Muhumuza and
Rukundakuvuga, J.) 27 November 2020]

Review of a judgment on grounds of being vitiated by injustice – Party to the case that is under review on the grounds of injustice-related grounds – A person who was not initially admitted to be a party in a case that is requested to be reviewed on the grounds of injustice cannot be a party during the review unless the refusal to be a party is the alleged ground of injustice.

Review of a judgment on grounds of being vitiated by injustice – Reviewing a case on grounds of injustice based on the inadmissibility of the second appeal by the court – Hearing of the case on merits – When a case tried on the merits is appealed and not admitted on the second appeal, the court that is seized with the motion to review it due to injustice first examine the reasons as to why the second appeal was rejected, and it can only further hear it on merits when it finds that the previous court erred in not rejecting the appeal.

Commercial procedure – Admissibility of appeal filed by a litigant who intervened into the case at the appeal level – A litigant who was forced to intervene in a case at the appeal level, can be allowed to appeal if the court ordered costs against her/her.

Facts: Nkusi Evariste seized the Commercial Court of Nyarugenge requesting the Court to order to BPR ATLAS

MARA Ltd to pay him the amount mentioned on the cheques that SGES/ATT had drawn to him, the Bank refused to give him the money and it did not provide any related justification. The Court ordered BPR ATLAS MARA Plc to pay all the amount mentioned on the cheques in addition to related damages.

BPR ATLAS MARA Plc was not satisfied with the decision and appealed against the ruling before the Commercial High Court, where it stated that the previous Court disregarded the elements of evidence it produced and it did not summon the cheque drawer to intervene in the case. SGES/ATT Ltd voluntarily intervened in the case. The Commercial High Court heard the case and decided that the appeal filed by BPR ATLAS MARA Ltd is not grounded and the Bank had no genuine reasons for refusing to pay the cheques without defect and legally drawn. The intervention of SGES/ATT was not admitted.

BPR ATLAS MARA Plc together with SGES/ATT appealed against the above ruling to the Court of Appeal. They stated that the lower courts have deliberately declined to examine the elements of evidence produced, and they also added that the Commercial High Court has even refused to hear from SGES/ATT which had thereby intervened and wanted to give some clarifications on the matter. The Court of Appeal did not admit the appeal filed by BPR ATLAS MARA, it held that the appellant has lost the very case in lower courts for the same reasons and it did not rule about the appeal lodged by SGES/ATT Ltd.

BPR ATLAS MARA Ltd applied for the review of the judgment on grounds of being vitiated by injustice and the review was granted. It challenged the judgment rendered by the Court of Appeal which did not admit its second appeal by disregarding that it did not lose on the issue concerning SGES/ATT intervention in

the lower courts and which was tried for the first time in the Commercial High Court, it disregarded that SGES/ATT Ltd had lodged an appeal which it considered as the first one.

Nkusi Evariste states that BPR ATLAS MARA PLC is not a victim of injustice because, since the institution of proceedings, it kept arguing that it had valid reasons for refusing to pay the cheques without providing any justification. Concerning the request of SGES/ATT Ltd, Nkusi argues that it cannot be a litigant at the level of the review of the judgment vitiated by injustice as it has never been a party to the concerned cases, and even when it requested to intervene into the case, the request was not admitted.

Held 1. A person who has initially been denied to be a party to a case for review on grounds of injustice cannot be a party to it when it is under review unless the claimed injustice is based on such denial.

2. When a case tried on the merits is appealed and not admitted on the second appeal, the court that is seized for a related claim seeking the judgment review has to first analyse the reasons as to why the second appeal was not admitted, it examines the reasons of the appeal inadmissibility, it examines the merits of such a case only if it finds that the lower court erred on such inadmissibility of the appeal.

3. No one shall invoke and bring forth issues raised for the first time at the appeal level and claim that he/she has not lost the case for the same reasons. Losing a case for the same reasons is examined based on the grounds for which a party filed an appeal, the decisions taken on those grounds, and the motivation of both courts.

4. A person who intervened at the appeal level is entitled to lodge an appeal, only if he/she was fined.

The application for review of the judgment lacks merit.

Statutes and statutory referred to:

Law N° 30/2018 of 02/06/2018 determining the jurisdictions of courts, articles 63,52, paragraph 3;

Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 111;

Law N° 32/2009 of 18/11/2009 governing negotiable instruments, article 110;

Rwanda Central Bank regulations no 04/2013 of 27/08/2013 relating to cheques electronic transactions, article 4

Cases referred to:

RS/REV/INJUST/CIV 0023/16/CS rendered by the Supreme Court with Rutayihura et al. v. Mukamabano Charlotte, paragraph 28;

RS/INJUST/RCOM 00002/2020/SC rendered by the Supreme Court with Road Solution Pavement Products v. Mailco Ltd, paragraph 24.

Judgment

I. BACKGROUND OF THE CASE

[1] The case started from the Commercial Court, Nkusi Evariste requested the Court to order BPR ATLAS MARA Plc to pay him 335,330,393 Frw, alleging that the Bank has deliberately declined to pay the cheques legally drawn he got from its client SGES/ATT Ltd for the payment of services delivered on basis of the contract related to the fuel consumed on credit, the rent of office and parking. He also requested 67,066,078 Frw as case-related damages

[2] In the judgment RCOM 01401/2018/TC rendered on 26/07/2018, the Commercial Court held that BPR ATLAS MARA Plc ought to pay to Nkusi Evariste a sum of 335,330,390 Frw indicated on all unpaid cheques deposited to it for payment, plus 61,359,470 Frw. In so deciding, the Court relied on the following grounds :

- a. The fact that BPR ATLAS MARA Plc refused to pay the cheque which is a clear and unconditional order ;
- b. The fact that the Bank failed to provide defects or legally acceptable grounds to be considered as valid for not paying the cheques legally drawn by authorized person
- c. The fact that nobody has opposed the cheque payment.

[3] BPR ATLAS MARA Plc was not satisfied with the ruling and it lodged an appeal against it to the Commercial High Court and requested the Court for SGES/ATT Ltd intervention in the case. On 31/01/2019 the seized Court heard the case RCOMA 00583/2018/HCC, it declared inadmissible the SGES/ATT Ltd forced intervention and ungrounded the appeal filed by BPR

ATLAS MARA Plc. The Court held that the appealed judgment is sustained and BPR ATLAS MARA Plc should pay to Nkusi Evariste at appeal level the sum of 31,089,261 Frw as compensation for pecuniary loss and 1,000,000 Rwf for the lawyer's fee.

[4] The Court's motivation was based on the following grounds :

- With regard to SGES/ATT Ltd intervention, the Court found that it is not related to the dispute between Nkusi Evariste and BPR ATLAS MARA Ltd, as the dispute does not result from the contract between SGES/ATT Ltd and BPR ATLAS MARA Plc. The Court found that the dispute is based on the laws that govern negotiable instruments, therefore SGES/ATT Ltd has nothing to either lose or win in this case.
- With regard to the appeal grounds of BPR ATLA MARA Plc, the Court explained that it did not indicate any concern related to legally acceptable defects of the cheques that SGES/ATT Ltd had drawn to Nkusi Evariste; therefore, it should apply the laws that govern negotiable instruments and pay the cheques.

[5] BPR ATLAS MARA Plc was not satisfied with the ruling and appealed against the judgment before the Court of Appeal. The appeal was registered as RCOMAA 00031/2019/CA. The Bank stated that the Commercial High Court disregarded the laws and the elements of evidence it produced and that it ordered it to pay 335,330,390 Frw and the compensation for pecuniary loss amounting to 31, 089,261 Frw in addition to 61,359,470 Frw ordered by the Commercial Court.

[6] SGES/ATT Ltd has as well appealed against the decision of the Commercial High Court which did not admit its intervention and considered it as a witness. Following its claim against the decision of the court registrar who did not register its appeal, the President of the Court of Appeal ordered to register the appeal of SGES/ ATT Ltd and thus it was combined with that of BPR ATLAS MARA Plc and they were registered as RCOMAA 00051/2019/CA.

[7] On 06/03/2020, the Court of Appeal heard the case RCOMAA 00031/2019/CA and it heard about the objection on the lack of jurisdiction raised by Nkusi Evariste based on the fact that BPR ATLAS MARA Plc has lost the very case before both the previous courts for the same reasons. The Court held that the objection is founded, it decided that the claim of Nkusi Evariste for the procedural fee has merit, it ruled that the appeal filed by BPR ATLAS MARA Plc does not fall in the jurisdiction of the Court of Appeal as BPR ATLAS MARA Plc lost in the two lower courts for the same reasons.

[8] With regard to the appeal filed by SGES/ATT Ltd, the Court of Appeal held that its intervention, in this case, is not a main issue.

[9] BPR ATLAS MARA Plc petitioned the President of the Supreme Court and requested him to examine the injustice in the judgment RCOMAA 00031/2019/CA rendered by the Court of Appeal on 06/03/2020 and by the decision n0 260/CJ/2020 of 18/05/2020, he ordered that the case be re-adjudicated for injustice-related grounds, and the case was then registered as RS/INJUST/RCOM 00005/2020/SC.

[10] The case was called on 09/11/2020, BPR ATLAS MARA Plc appeared represented by Counsel Mugire Rwamfizi Joseph together with Counsel Bugingo Jean Bosco and Counsel Uwamahoro Marie Grace, Nkusi Evariste was represented by Counsel Twiringiyemungu Joseph while SGES/ATT Ltd was represented by Counsel Nzirabatinyi Fidèle. Before hearing the case on its merits, the Court raised the issue of determining whether SGES/ATT is a party in this case.

[11] Counsel Nzirabatinyi Fidèle argues that SGES/ATT is a party, in this case, following the request of BPR ATLAS MARA Plc for its intervention before the Commercial High Court, but it appeared in the quality of the witness. He stated that it appealed against the ruling before the Court of Appeal, but the issue of the quality of SGES/ATT was not examined because the appeal filed by BPR ATLAS MARA Plc was not admitted. Counsel Nzirabatinyi Fidèle submits that SGES/ATT Ltd would like to stand as a witness in this case since it has any grievance.

[12] The legal counsel to BPR ATLAS MARA Plc argue that SGES/ATT Ltd was a litigant before the Commercial High Court, but the judge erred by changing its quality while it has liability in this case and the Court of Appeal decided on this issue in a manner causing injustice since it disregarded the fact that the litigants have changed and it held that SGES/ATT Ltd intervention is not a main issue so that the Court can decide on it while it was subject of appeal; for these reasons, it applied for the review of the judgment on the grounds of injustice.

[13] Counsel Twiringiyemungu Joseph who represents Nkusi Evariste argued that the Commercial High Court found that it could not qualify as party a person who would not lose nor win in the case and it considered SGES/ATT Ltd as a witness ; before

the Court of Appeal, SGES/ATT Ltd indicated that it could not appeal because the ruling of the Commercial High Court did not affect it.

[14] After hearing all parties on the issue of determining whether SGES/ATT Ltd is a litigant in this case, the Court decide on the bench as follows : “It finds that BPR ATLAS MARA Plc appealed the ruling of the Commercial High Court before the Court of Appeal, but its appeal was not examined because the Court of Appeal held that it lacks jurisdiction to hear such case. For those grounds, the Court finds that SGES/ATT Ltd cannot be considered a party because it was never allowed to be a party in this case¹. The Court finds that the statements of BPR ATLAS MARA Plc that the grounds of injustice include the fact that the Court of Appeal did not examine whether SGES/ATT Ltd was a party in the case, can be analyzed if this Court finds that the Court of Appeal withdrew itself of the jurisdiction while it has it”.

[15] The hearing continued, and the Court first examined the objection raised about the determination of the case subject to review on grounds of injustice.

[16] Counsel Twiringiyemungu Joseph argues that the procedure used by BPR ATLAS MARA Plc to apply for the judgment review is not correct because it challenges the ruling of the Commercial High Court even if it applies for the review of the judgment rendered by the Court of Appeal. He explains that the ruling that prompted BPR ATLAS MARA to petition the President of the Supreme Court praying to him for the review of

¹ Article 63 of the law that determining the Jurisdiction of Courts denotes that the parties entitled to plead in the case under review on grounds of injustice are those who had been parties to the case for review.

the judgment vitiated by injustice is the judgment RCOMAA 00031/2019/CA rendered by the Court of Appeal on 06/03/2020, where it stated that the Court wronged it when it held that it lacks jurisdiction to hear the case since it lost the case before the lower courts for the same reasons. However, in explaining the injustice, it challenged the judgment rendered by the Commercial High Court while it is not the case for which it sought review, and it did not provide any explanation about the judgment for which it sought review on the grounds of injustice.

[17] The legal counsel to BPR ATLAS MARA Plc submitted that the Bank requested the review of the judgment rendered by the Court of Appeal following the appeal against the judgment decided by the Commercial High Court, and it pointed out the injustice suffered in all cases (in the Commercial Court, the Commercial High Court and the Court of Appeal) as it is a hierarchical order. Concerning the statements of Nkusi Evariste who argued that if BPR ATLAS MARA Plc was wronged by the Commercial High Court, it would have petitioned the President of the Court of Appeal, they found that it amounts to the disregard of article 58, paragraph 1 of the law determining the jurisdiction of courts which states that “When a party to the case identifies injustice in his/her case, he/she submits an application to that effect in writing to the President of the court immediately higher than the one having tried the case at last instance, for him/her to examine the alleged injustice.”

[18] After hearing all the parties on the issue of determining the case subject to review on the grounds of injustice and the related issues to be analysed, the Court held as follows: “The

Court found that, as it is the position it indicated², when a case tried on the merits is appealed and not admitted; the court seized for injustice based for the appeal inadmissibility examines the application on the grounds for which the court did not admit the second appeal, it can hear the case on the merits if it finds that by declaring inadmissible the second appeal, the court erred. Therefore, the Court finds that it has to first examine the defects that may be in je judgment RCOMAA 00031/2019/CA rendered by the Court of Appeal which did not admit the appeal.

[19] The same position was held during the hearing. The legal counsel to BPR ATLAS MARA Plc indicated that the Court of Appeal disregarded that it did not lose at the first and second levels for the same reasons because, at the second level, the parties and the subject matter changed, as SGES/ATT Ltd had intervened in the case and there was a claim against it which was examined at the first level and also the fact that SGES/ATT Ltd had as well filed an appeal would be a ground for hearing the case on the merits.

[20] Counsel Twiringiyemungu Joseph who assists Nkusi Evariste disagrees with the Bank's legal counsel on that issue since he finds that the subject matter filed by Nkusi Evariste has never changed, and BPR ATLAS MARA Plc lost the case before both courts : the Commercial Court and the Commercial High Court.

² See case RS/REV/INJUST/CIV 0023/16/CS of 27/09/2019 Rutabayihu et al. vs Mukamabano Charlotte, paragraph 28. In that case the Court ruled that "... it is obvious that a case likely to be subject to review on grounds of injustice is a case in which unfair decision was taken against a party. In other words, a case which was not admitted can be considered as unfair in case the injustice is based on its inadmissibility".

[21] The Court closed the hearing on that issue, and the Court notified the parties that, before the hearing continuation, it shall decide on it. The Court asked litigants if anyone has to make an additional statement about the claimed damages, and both parties replied that they have nothing else to add.

[22] The Court finds that the legal issues to be analysed are the following :

- a. Determine whether the Court of Appeal erred by declaring inadmissible the second appeal filed by BPR ATLAS MARA Plc
- b. Issues related to the damages claimed by both parties.

II. ANALYSIS OF THE LEGAL ISSUES OF THE CASE

1. Determine whether the Court of Appeal erred by declaring inadmissible the second appeal filed by BPR ATLAS MARA Plc

[23] The legal counsel to BPR ATLAS MARA Plc argues that the Court of Appeal disregarded the fact that it requested for SGES/ATT Ltd intervention in the case tried by the Commercial High Court for being held accountable for its liability, but the Court qualified it as a witness, and SGES/ATT Ltd had appealed against such issue, the appeal was registered as RCOMAA 00051/2019/CA which was later combined with the application for the review on grounds of injustice. They further state that the issue related to SGES/ATT Ltd intervention in the case has never been litigated before the Commercial Court as it was only examined for the first time before the Commercial High Court. Therefore, they note that BPR ATLAS MARA Plc has not lost

the case twice for the same reasons because the subject matters in the lower courts are different and even the litigants were not the same in both Courts. The legal counsel of BPR ATLAS MARA Plc sustain that, even if on the first level the Court held that BPR ATLAS MARA Plc should pay the cheques deposited by SGES/ATT Ltd for the payment of Nkusi Evariste, and the Court of the second level held the same position, the Commercial High Court took a new decision that SGES/ATT Ltd is not a party ; and due to this decision, BPR ATLAS MARA Plc lost the case.

[24] Counsel Twiringiyemungu Joseph who represents Nkusi Evariste does not agree with BPR ATLAS MARA Plc on the above issue. He argue that the party who filed the claim explains his/her allegations. Nkusi Evariste lodged a claim and explained its contents, meaning the failure to be paid the cheques gotten from SGES/ATT Ltd while these cheques were legally drawn. It lost on this issue in both Courts. He also added that the intervention of SGES/ATT Ltd did not change the grounds on which those Courts relied.

DETERMINATION OF THE COURT

[25] The Court finds that the main issue of this case is to determine whether the Court of Appeal erred by refraining from hearing the case on the merits based on the fact that BPR ATLAS MARA Plc lost for the same reasons at the levels of the Commercial Court and the Commercial High Court without taking into account the specific decision taken by the Commercial High Court in relation to SGES/ATT Ltd intervention and without considering SGES/ATT Ltd appeal. For settling this issue, the Court examines whether the ruling on the issue raised by the Court which tried the judgment at the second level can

affect the admissibility or inadmissibility of the second appeal based on the fact that the party lost at the levels of both courts for the same reasons. It also has to examine whether the appeal filed by SGES/ATT Ltd would serve as grounds for the hearing of the case on the merits.

2. Determine whether an issue raised at the appeal level can serve as ground to decide that a party has not lost a case for the same grounds

[26] The article 52, paragraph 2 of the Law n0 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that “The Court of Appeal has also jurisdiction to try at the second level of appeal cases tried by the High Court, the Commercial High Court and Military High Court. The Court of Appeal has also jurisdiction to try at the second level of appeal cases tried by the High Court, the Commercial High Court and Military High Court” and it thereby highlights the required conditions for the admissibility of such a second appeal. And, the third paragraph of the very article adds that “However, the appeal at second instance cannot be admissible for cases in which parties have admitted charges brought against them or a party who has lost his/her case in both courts for the same reasons”. This Court finds that this is a specific reason for the inadmissibility of the claim even if other requirements for the second appeal admissibility are fulfilled.

[27] In this case, BPR ATLAS MARA Plc does not agree that it lost the case for the same reasons because there are issues related to SGES/ATT Ltd intervention examined and decided by the Commercial High Court and they have not been litigated at the first level. For the sake of defining what is meant by losing a case for the same reasons, in the case RS/INJUST/RCOM

00002/2020/SC³ this Court expounded that “ by examining whether a litigant has lost a case in both lower courts for the same reasons, an attention is drawn to the dispute subject matter, the analysis made by each court in indicating the underlying grounds, for taking the decision, and in determining whether the issues examined in the first instance were reiterated at the appeal level and whether both courts handled them similarly”.

[28] In determining whether the issues examined in the first instance were reiterated at the appeal level, this Court finds that it is necessary to take into account the main connection between the two rulings since it is this connection that must be reflected at the appeal level, and the decision taken at the second level as provided under article 150, paragraphs 5 -7 of the Law relating civil, commercial, labour and administrative procedure⁴ in explaining those reasons, whereby the losing party at the first instance indicates all the defects on which the decision is taken by the Court at the appellate level following the respondent’s explanations.

[29] Concerning the appeal grounds, when the Court at the second level took a decision similar to the supporting reasons of the ruling and the appellant has again lost the case for the same reasons for which he lost it at the first instance, it is therefore

³ Case RS/INJUST/RCOM 00002/2020/SC of 25/09/2020 Road Solution Pavement Products v. MAILCO Ltd, paragraph 24

⁴ That article provides that: “The application for appeal is done by means of submissions filing the claim and containing.... 5° the list of grievances from the judgement and other issues to be analysed again; 6° the explanation for each grievance or problem indicating the errors committed and the way in which they must be modified on the basis of the law and the means of proof and the claim. 7° the explanation for additional claim if there is any.

concluded that the appellant has lost the case for the same reasons. In other words, losing a case for the same reasons is examined by analysis of the reasons that made a litigant appeal, the related court's decision, and the corresponding supporting explanations that lower courts have thereof given. This means that other claims entitled to parties at the appellate level as provided under article 154 of the Law relating to civil, commercial, labour, and administrative procedure, such as interests, rents, and other accessories which were realized since the pronouncement of the judgment and moral damages for the loss suffered from the time the judgment was delivered at the first instance, and claiming the third party intervention, cannot constitute a ground for analysis and determination of whether a litigant has lost a case for the same reasons; therefore, no one can rely on the decisions taken about those issues to insinuate that he/she has not lost the case for the same reasons as those issues were not examined at the first instance; thus, it is not possible to compare those issues in consideration of the judgments delivered at both levels as it is not possible to compare unrelated issues.

[30] In this case, BPR ATLAS MARA Plc requested the intervention of SGES/ATT Ltd at the appellate level, and the Court declared inadmissible such an intervention. As expounded in the precedent paragraph, the Court finds that BPR ATLAS MARA Plc cannot rely on such a decision to submit that it did not lose the case for the same reasons by pretexting that it was not taken in the appealed judgment, it cannot be referred to for determining whether the litigant lost the case for the same reasons as there is no issue to compare with it in the judgment rendered at the first instance.

[31] Based on those explanations, the Court finds baseless the statements of BPR ATLAS MARA Plc which alleges that the Court of Appeal has wronged it by not admitting its second appeal because the issue of SGES/ATT Ltd intervention into the case was not among the issues for which he lost the case for the same reasons.

3. Determine whether the fact that SGES/ATT Ltd lodged appeal against the decision on its intervention into the case could be a ground for the Court of Appeal to hear the case on the merits

[32] According to its explanations, in the pleading and the submissions, BPR ATLAS MARA Plc indicated that the Court of Appeal disregarded the fact that SGES/ATT Ltd had as well lodged an appeal, and that could be a ground for the Court of Appeal to hear the case on the merits. By retorting to this issue, the Court finds that it is necessary to examine whether the appeal of SGES/ATT Ltd should be admitted, and the effects on the injustice that BPR ATLAS MARA Plc allegedly suffered.

[33] With regard to the admissibility of the appeal filed by SGES/ATT Ltd, article 116, paragraph 2 of the Law relating to the civil, commercial, labour, and administrative procedure provides that “Even if the case is decided at the last instance, a party is authorized to appeal against a case he/she was summoned to intervene only once when he/she was fined.” As stipulated by this article, a party that has been forced to intervene has a right to an appeal in case he/she was fined. In other words, if such a party is not charged to pay, his/her appeal is inadmissible.

[34] As decided in the judgment rendered by the Commercial High Court, the Court held that SGES/ATT Ltd cannot be a party

in the case in which it has no claim or it is not ordered to pay⁵; rather it was witness in the case, and it is evident that the Court did not charge it anything; and it is therefore clear that it had no right to appeal in this case.

[35] Due to the fact that the Court of Appeal did not decide about the appeal, instead it held that it is not a main issue⁶, this Court finds that it cannot decide about it as SGES/ATT Ltd did not indicate that it is detrimental to it. The only issue is to determine whether BPR ATLAS MARA Plc can invoke it to request for the judgment review on grounds of injustice.

[36] This Court finds that the inadmissibility of a claim depends on a party whose the claim is not admitted or examined by the court; it is in the discretion of the court to not admit claim/appeal of a litigant and admit the claim/ appeal of another or others. The fact that the Court could have erred about SGES/ATT Ltd does not entitle BPR ATLAS MARA Plc to take it as an issue for which the judgment should be reviewed on grounds of injustice as it does not represent it.

[37] Considering all the provided explanations, this Court finds that BPR ATLAS MARA Plc did not suffer from injustice due to the case RCOMAA 00031/2019/CA rendered by the Court of Appeal, therefore, it cannot examine the injustice alleged in the judgment RCOMA 00583/2018/HCC rendered by the Commercial High Court.

⁵ See paragraph 6 of case RCOMA 00583/2018/HCC

⁶ See paragraph 21 of case RCOMAA 00031/2019/CA

4. Concerning the damages
a. Damages for being dragged in unnecessary lawsuits

[38] Counsel Twiringiyemungu Joseph who represents Nkusi Evariste submits that the claim filed by BPR ATLAS MARA Plc is meant for creating confusion and blocking his payment. He, therefore, prays the Court to order it to pay his client a sum of 10,000,000 Frw for being dragged into unnecessary lawsuits.

[39] The legal counsel of BPR ATLAS MARA Plc state that the Bank has been dragged into unnecessary lawsuits while it did not commit any mistake, but it respected its obligations as required. Therefore, they submit that it cannot be held liable for the payment of such an amount. They sustain that Nkusi Evariste should be held liable because he was provided with explanations why the cheques were not paid.

DETERMINATION OF THE COURT

[40] The Court finds that the damages for being dragged in unnecessary lawsuits claimed by Nkusi Evariste are not grounded because there is no evidence beyond reasonable doubt that BPR ATLAS MARA Plc filed an application for the judgment review on the grounds of injustice knowing that it intended to block NKUSI Evariste payment.

b. Lawyer's fee and procedural fee

[41] Counsel Twiringiyemungu Joseph representing Nkusi Evariste prayed the Court to order to BPR ATLAS MARA Plc to pay to his client a sum of 5,000,000 Frw for the lawyer's fee and procedural fee.

[42] The legal counsel to BPR ATLAS MARA Plc have as well requested the Supreme Court to order to Nkusi Evariste to pay to the Bank 5,000,000 Frw, a sum that includes 3,000,000 Rwf for the lawyer's fee, and 2,000,000 Frw for the procedural fee. They so requested with reference to article 26 of the Regulation n0 01/2014 determining the scale of Advocates' fees in Rwanda⁷; as well as to the article 111 of 29/04/2018 of the Law relating to civil, commercial, labour and administrative procedure⁸.

DETERMINATION OF THE COURT

[43] The Court finds that the lawyer's fee and the procedural fee claimed by BPR ATLAS MARA Plc are baseless because it loses the case. It finds that Nkusi Evariste deserves the lawyer's fee and the procedural fee because he wins this case, but since he cannot account well for the damages he claimed neither does he provide the related evidence, the Court has, in its discretion awarded him 500,000 Frw for the lawyer's fee and 300,000 Frw for the procedural fee, the total sum is 800,000 Frw.

III. DECISION OF THE COURT

[44] Holds that the application for the review on grounds of the injustice of the judgment RCOMMAA 00031/2019/CA

⁷ That article provides that "the advocate's fee shall range between 500,000 Rwf and 5,000,000 Rwf"

⁸ That article provides that "The claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings"

rendered on 06/03/2020 by the Court of Appeal as BPR ATLAS MARA Plc is unfounded.

[45] Holds that the judgment RCOMAA 00031/2019/CA rendered by the Court of Appeal on 06/03/2020 is not tainted with injustice.

[46] Holds that the ruling of the judgment RCOMAA 00031/2019/CA rendered by the Court of Appeal on 6/03/2020 is sustained.

[47] Orders to BPR ATLAS MARA Plc to pay Nkusi Evariste 800,000 Frw for lawyer's fee and procedural fee at this instance.

CASES IN MERIT

ADMINISTRATIVE CASE

Re BIZIMANA

[Rwanda SUPREME COURT – RS/INJUST/RAD
00002/2021/SC – (Cyanzayire, P.J., Hitiyaremye and
Karimunda, J.) July 27, 2022]

Administrative law – Execution of the judgment – Enforcement order – Settlement agreement – It is a settlement agreement signed by the parties and the mediators made out of the court, which concludes the case without any further procedure, therefore, the provisions of the agreement are the ones enforced.

Facts: Bizimana filed a claim before the Intermediate Court of Nyarugenge by way of unilateral application, requesting to have his rights on his plot of land following the decision taken for the road demarcation without being informed and the remaining part was reserved to public garden, he made a formal request to the District of Kicukiro requesting for the revocation of that decision but he did not get any response.

The Court rejected his claim, it explained that his claim must not be lodged by way of unilateral application, given that such claim is filed and admitted when it is an issue that seems not to be controversial and not necessarily requiring the intervention of the other party.

The claimant filed an appeal before the High Court which declared his appeal unfounded based on the same grounds as those provided by the lower Court and it added that the fact that the claimant did not get any response concerning his claim does not mean that he has the right on his property. This led him to apply for the judgment review on grounds of injustice and the

case was tried in the presence of the parties to the dispute. Both parties agreed that the dispute should be settled by way of mediation as the best way of handling it.

Held: Settlement agreement is a settlement agreement signed by the parties and the mediators made out of the court, which concludes the case without any further procedure, therefore, the provisions of the agreement are executed. The settlement agreement shall be enforced as signed.

Statutes and statutory referred to:

Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 9, 178 and 241.

No Cases referred to.

Judgment

II. BACKGROUND OF THE CASE

[1] On 24/03/2017, Bizimana Jacques bought a plot of land from Batamuriza Yvonne on 4,550,000 Frw with UPI 1/03/01/1981, located in Kimena Village, Karembure Cell, Gahanga Sector, Kicukiro District, Kigali City. He states that a decision was taken during road demarcation without being informed and the remaining part was reserved for the public garden, when he was aware of the fact, he claimed in writing to

the District of Kicukiro for the annulment of such a decision, but he did not get any response.

[2] To that effect, he filed a claim before the Intermediate Court of Nyarugenge by way of unilateral application, requesting to recover his rights, the case was recorded on RAD 00208/2018/TGI/NYGE, and it was rendered on 06/12/2018. The Court declared inadmissible his claim, it explained that his claim must not be lodged by way of unilateral application, given that such a claim is filed and admitted when it is an issue that seems not to be controversial and not necessarily requiring the intervention of the other party. It also expounded that the provisions of article 178, paragraph 5 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure¹ cannot justify the claim inadmissibility as long as it seems controversial and there is no certain interest to be safeguarded which is evident to the Court.

[3] Bizimana Jacques lodged an appeal before the High Court against the judgment, the claim was registered on RADA 00011/2019/HC/KIG, the judgment was rendered on 12/03/2019 and it was ruled that his appeal was ungrounded. The Court relied on the same grounds as those provided by the lower Court, it added that the fact that the claimant did not get any response

¹ Article 178, paragraph 5 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “The authority is required to respond in a period of one (1) month which runs from the date he/she received the informal appeal. If he/she does not respond, the request is considered as founded”. The paragraph 5 of the same article reads that “In case the applicant does not get response and not recover his/her rights, he/she can request an administrative court to order the applicant to be reinstated in his/her rights. The claim is filed within one (1) month by way of unilateral request.”

concerning his claim does not mean that he has the right to his property, rather he is entitled to seize the courts seeking the ruling on his case.

[4] Following pronouncement of the the judgment, Bizimana Jacques petitioned the President of the Court of Appeal seeking its review on the grounds of injustice, after its analysis, he prepared a report indicating that the judgment must be reviewed and he sent it to the President of the Supreme Court. By the decision number 0202/CJ/2021 of 10/08/2021, the President of the Supreme Court ordered for the registration of the application for being re-adjudicated; it was registered on RS/INJUST/RAD 00002/2021/SC, the parties were notified that it should be heard on 16/11/2021.

[5] The hearing was held in public, Bizimana Jacques was assisted by Counsel Manirafasha Jean Paul, the City of Kigali was summoned and represented by Counsel Safari Vianney. On basis of article 9, paragraph 3 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure², the parties were asked if their dispute cannot be settled through mediation process, they agreed that it is the best way of handling their dispute, they agreed that their mediator would be Counsel Kavaruganda Julien.

[6] Counsel Kavaruganda Julien received on 22/11/2021 the decision appointing him as the mediator in the case RS/INJUST/RC 00002/2021/SC, he was given a time until

² A judge may encourage parties to use conciliation if he/she believes that conciliation is the most appropriate way to resolve the dispute. He/she may him/herself mediate between the parties or help them find a mediator of their choice and postpones the hearing for the entire duration of conciliation

31/12/2021 for submitting the report to all concerned parties. The case was again planned on the cause list of 13/01/2022, but it was not heard because on 12/01/2022 the appointed mediator requested in writing the additional time at least until at 28/02/2022 for the report submission.

[7] On 21/06/2022, the mediator submitted to the Court the report of the mediation findings of 17/06/2022, which indicates that the dispute between the parties relating to the plot of land registered on UPI:1/03/01/1981, located in Kimena Village, Karembure Cell, Gahanga Sctor, Kicukiro District, Kigali City was settled by mutual agreement.

[8] The hearing meant for approval of settlement agreement was held on 27/07/2022, all parties were present, Bizimana Jacques was assisted by Counsel Manirafasha Jean Paul and the City of Kigali summoned was represented by Counsel Shema Gérard. The Court notified to the parties that it received the settlement agreement, they agreed that their dispute was completely settled and there is no further issue to be analysed, they requested the Court to approve the settlement agreement.

II. LEGAL ISSUE OF THE CASE AND ITS ANALYSIS

1. Whether the settlement agreement can be approved

[9] Basing on the settlement agreement of 17/06/2022 which indicates that all parties to the case agreed on the dispute between them, the Court deems that this case must be concluded without

any further procedure, therefore, the agreement content shall be enforced as provided under article 241, 7° of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure. This article provides that the agreement contract signed by the parties and dispute mediation concluded out of court constitute an enforcement order.

III. DECISION OF THE COURT

[10] Holds that the claim filed to the Court in the case RS/INJUST/RAD 000002/2021/SC is settled as agreed by the parties through the settlement agreement of 17/06/2022 hereinafter attached.

[11] Holds that the settlement agreement shall be enforced as signed.

CIVIL CASES

MANIRARORA v. RWANDA RUDNIKI LTD

[Rwanda COURT OF APPEAL-RS/INJUST/RC
00013/2021/CA (Rukundakuvuga, P.J., Kamere and Ngagi, J.)
28 June 2022]

Civil law – Torts liability- work related accidents – A person has an obligation of inspection over objects/subjects that are under his/her stewardship; and the steward is legally liable for the torts committed by third parties that are under his/her stewardship.

Civil law – suing – suing an insurer or an employer-a victim of work related accident who chooses not to sue the insurer but sues the employer does no wrong.

Civil law – Torts liability – Damages resulting from accidents other than road – related accidents – while computing the damages resulting from non-road related accidents, the Presidential order that establishes the indemnity for road-related accident does not apply; however, its formula can serve for a reference.

Civil procedure – the validity of an act- an act that the Court might consider – Regulations- Regulations refer to a general act that was enacted and signed by a competent authority with an aim of implementing a given law or with a purpose of regulating some other aspects that are not governed by any law. Regulations must be published under the State Official Gazette.

Facts: This case started from Muhanga Intermediate Court with Manirarora suing Rwanda Rudniki Ltd whereby Manirarora

prayed the Court to order Rwanda Rudniki Ltd to pay him for damages resulting from work-related accidents, and thus computing them with reference to the Presidential order establishing the indemnity for automobiles related accidents, arguing that he was an employee for the defendant and he thereof sustained 40% of body permanent incapacity. The seized Court heard case RC 00006/20107/TGI/MHG and held that the filed claim has a justification and it ordered Rwanda Rudniki Ltd to pay Manirarora for a variety of damages.

Rwanda Rudniki Ltd was not satisfied with the ruling and they appealed to Nyanza High Court Chamber, and lamented that Muhanga Intermediate Court ordered them to pay damages to Manirarora, a person with whom they have never had any Rwandan labour law related agreement. In addition to that, Rwanda Rudniki Ltd has as well appealed that the Court computed the above damages with reference to the Presidential order establishing damages for automobile related accidents, yet the claimant had never had any road-related accident.

Nyanza High Court Chamber heard case RCA 00104/2017/HC/NYZ and held that the appeal by Rwanda Rudniki Ltd filed in the name of its Managing Director has merit in part; the above appellate court has also moved that the ruling of case RC 00006/2017/TGI/MHG rendered by Muhanga Intermediate Court changes in part, and that the requested damages will be computed with reference to the Regulations by Rwanda Mines, Petroleum and Gas Board; and the Court ordered SAHAM Assurance Rwanda Ltd, in the name of its Managing Director, to Manirarora for various damages.

Manirarora petitioned to Nyanza High Court Chamber and applied for review for case RCA 00104/HC/NYZ rendered by Nyanza High Court, and he alleged the ruling contains deceit.,

the court heard the case RS/REV/RC 00004/2018/HC/NYZ and it held the application for the review of case RCA 00104/2017/HC/NYZ filed by Manirarora is not admitted.

Manirarora petitioned the Court of Appeal and besought for the review of case RCA 0104/2017/HC/NYZ rendered by Nyanza High Court Chamber due to injustice related grounds. The President of the Court of Appeal analysed the application and he wrote to the President of the Supreme Court requesting to allow the review of the concerned case as it seemed to be containing some injustice. The president of the Supreme Court confirmed for the injustice related review, and the case was sent into the Court of Appeal for review. Rwanda Rudniki Ltd requested to have Sanlam AG Plc, their risk insurer, intervene in the case, and Sanlam intervention was granted.

Manirarora's representative submitted that the risk insurance agreement between SANLAM AG PLC and Rwanda Rudniki Ltd was not fair, and that such an agreement solely concerns those who concluded it. He adds that that is the reason as to why they chose to sue Rwanda Rudniki Ltd and he requested the Court to move that the suing procedure was appropriate since it is Rwanda Rudniki Ltd that has failed to conclude fair risk insurance for its employees.

Rwanda Rudniki Ltd representative submits that the charged damages have no justification as it is unfair to be charged for damages without a tort. He argues that article 260 of the civil code was to penalise them if they had never take any risk insurance, but since they already have the insurance policy, it is up to SUNLAM AG Plc, the insurer, who are responsible for the payments, therefore the very people to be sued.

SANLAM AG Plc representative argued that Manirarora has never sued SANLAM AG Plc, therefore they have nothing to be charged for in this case. He however added that in case the court finds it otherwise, and sees that SANLAM AG Plc ought to pay for some damages, let the payments be effected in the limits of the agreement that SANLAM AG Plc concluded with Rwanda Rudniki Ltd.

The Court of Appeal held that Maniraroro did no wrong to sue Rwanda Rudniki Ltd for the payment of his work-related accident, since he had this accident while at work at their mine concession, and the Court moved that Rwanda Rudniki Ltd is liable for payment for damages related to the accident that Maniraroro sustained while working at their mining concession.

Held: 1. A person has an obligation of inspection over the objects that are under his/her stewardship; and the steward is legally liable for the torts committed by third parties under his/her custody

2. A victim of work related accident who chooses not to sue the insurer but sues the employer does no wrong.

3. Regulations refer to a general act that was enacted and signed by a competent authority with an aim of implementing a given law or with a purpose of regulating some other aspects that are not governed by any other law. Regulations must be published under the State Official Gazette.

4. While computing the damages resulting from non-road related accidents, the Presidential order that establishes the indemnity for road-related accident does not apply; however its formula can serve for a reference

The application for an injustice related case-review has a justification.

The judgment that is under review for injustice related review has entirely changed

Statutes referred to:

Law N° 30/2018 of 02/06/2018 determining the jurisdiction of Courts, article 63.

Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, articles 9 and 111.

Regulations N° 01/2014 relating to the Scale of Advocates' fees, article 26

Law of 30 July 1888 Civil Code book III, articles 258 and 260.

Cases referred to:

RADA 0054/12/CS; Kayijuka Gaspard v. The Government of Rwanda (Minisanté) rendered by the Supreme Court on the 19/12/2014,

RCAA 0049/14/CS; SORAS AG Ltd v. Umuhoza Pacific et al. rendered by the Supreme Court on the 25/11/2016;

RCAA 00073/2018/CA; Nyirabatesi Laurence v. King Faisal Hospital rendered by the Court of Appeal on the 19/07/2019.

RCAA 0008/2020/CA; Ndizeye Alphonse v. Kibungo Medical Center together with Prime Insurance Company Plc rendered by the Court of Appeal on 25/06/2021.

Legal doctrine referred to :

Philippe Le TOURNEAU et autres, Droit de la responsabilité et des contrats: régimes d'indemnisation, 10^{ème} édition, Paris, Dalloz, 2014, pp.1973-1974

Francois Terré, Philippe Smeler na Yves Lequette, Droit civil. Les obligations, 11^{ème} édition, Paris, Dalloz, 2013, p.253.

Serge GUINCHARD, Lexique des termes juridiques 2015-2016, 23^{ème} édition, 2015, Paris, Dalloz, p. 887

Gérard CORNU, Vocabulaire Juridique, 2007-, 8^{ème} édition, Paris, Quadrige/PUF, p. 789.

Judgment

I. THE BACKGROUND OF THE CASE

[1] Manirarora Jean de Dieu was an employee of Rwanda Rudniki Ltd, a mining company, for which he worked from since 2008 up to 29/10/2015 the date at which he had work-related accident as the mine he was working in collapsed on him and it broke him the leg and he sustained serious injuries on one side of the head. This accident left his body with 40% of a permanent incapacity.

[2] Manirarora Jean de Dieu notified Rwanda Rudniki of his accident, but they told him to report the accident to SAHAM Assurance Rwanda Ltd, the mine's insurer. Manirarora Jean de Dieu approached SAHAM Assurance Rwanda Ltd (the former CORAR Insurance company) as the mine's Insurer, but he found that Rwanda Rudniki Ltd and the Insurer had signed an

agreement stipulating that on the top of funeral expenses, the Insurer will only disburse 1,000,000 Rwf for any worker who dies in the mine, while any worker who sustains any injuries will be compensated in the right proportion of the sustained incapacity. Manirarora found the above insurance policy unfair, and he sued Rwanda Rudniki Ltd, his employer, before Muhanga Intermediate Court and prayed the Court to order Rwanda Rudniki Ltd to pay him compensation for the 40% of body permanent incapacity that he sustained ; he so requested in reference to a President order that establishes indemnity for automobile related accidents.

[3] In case RC 00006/2017/TGI/ MHG rendered by Muhanga Intermediate Court on 26/10/2017, this court held that the claim filed by Manirarora Jean de Dieu has merit, and it ordered Rwanda Rudniki to pay Manirarora Jean de Dieu 4,099,607 Rwf for the incurred economic loss, 432,000 Rwf for moral damages, 432,000 Rwf for body distortion and 540,000 Rwf for the loss of employment and 100,000 Rwf spent on medication plus 50,000 for case related expenses and 500,000 Rwf for the Counsel fee. The total damages amounted to a sum of 6,153,607 Rwf and the Court ordered Rwanda Rudniki Ltd to refund him the 50,000 Rwf for the Court fees.

[4] Rwanda Rudniki Ltd was not satisfied with the above ruling and they appealed to Nyanza High Court Chamber, and lamented that Muhanga Intermediate Court ordered them to pay damages to Manirarora, a person with whom they have never had any Rwandan labour law related agreement. In addition to that , Rwanda Rudniki Ltd has as well appealed that the Court computed the above damages with reference to the Presidential order n0 31/01 of 25/08/2003 establishing indemnity for

automobile related accidents, yet the claimant had never had any road-related accident.

[5] On the 10/07/2018, Nyanza High Court Chamber heard case RCA 00104/2017/HC/NYZ and held that the appeal filed by Rwanda Rudniki in the name of his Managing Director has merit in part, and the very court held that the ruling of case RC 00006/2017/TGI/MHG as decided by Muhanga Intermediate Court on the 26/10/2017 changes in part, the court has also held the required damages shall be computed in reference to Rwanda Mines, Petroleum and Gas Board, and the Court ordered SAHAM Assurance Rwanda Ltd and in the name of its Managing Director, to give Manirarora Jean de Dieu 2,906,920 Rwf and the Court moved that the court fees equate the proceeding expenses.

[6] On 31/08/2018, Manirarora Jean de Dieu applied for the review of case RCA 00104/2017/HC/NYZ and his claim was registered as RS/REV/RC 00004/2018/HC/NYZ, and he submitted that the concerned judgment contained deceit. On the 25/10/2018, Nyanza High Court Chamber held that the application for review of case RCA 00104/2017/HC/NYZ filed by Manirarora Jean de Dieu is thereby not admitted.

[7] Manirarora Jean de Dieu petitioned the Court of Appeal and he sought for the review of case RCA 00104/2017/HC/NYZ for injustice related grounds. The President of the Court of Appeal analysed the petition, and he wrote to the President of the Supreme Court and requested him to have the concerned case reviewed for a plausible injustice. On the 11/02/2021, the President of the Supreme Court issued a writ n0 112/CJ/2021 and ordered the case to be reviewed for injustice related grounds. He

sent the case to the Court of Appeal for a review, and the case was docketed as RS/INJUST/RC 00013/2021/CA

[8] Manirarora Jean de Dieu applied for the case review for injustice related grounds, and he submitted that Nyanza High Court Chamber ordered SAHAM Assurance Rwanda to pay him 2,906,920 Rwf for damages yet SAHAM Assurance has never been a litigant into this case. Maniraroro Jean de Dieu argued that it is Rwanda Rudniki Ltd that is liable for the payment of the damages and he requested that the damages should be computed in reference to the Presidential Order n0 31/01 of 25/08/2003 establishing the indemnity for automobile related accidents since there is no law that pertains to mine concessions-related accidents

[9] The case was heard in public on 06/04/2022 with Manirarora Jean de Dieu represented by Counsel Nzeyimana Alexis whereas Rwanda Rudniki Ltd, was represented by Counsel Nsengiyaremye Jean Claude. Rwanda Rudniki Ltd requested to have Sanlam AG Plc, their insurer, intervening into the case, and the Court referred to article 118 of the law no 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, and it instantly held to summon Sanlam AG Plc, Rwanda Rudniki's risks insurer, to intervene into the case. The case was again heard on the 09/05/2022 with both Manirarora Jean de Dieu together with Rwanda Rudniki Ltd again represented as before while Sanlam AG Plc was represented by Counsel Rwimo Clotilde, the pronouncement of the case was scheduled on the 30/05/2022, but when this date come, the pronouncement was adjourned to 17/06/2022, but still it did not occur, not until the 28/06/2022.

[10] In the course of hearing, most of the debates between the litigants were about to determine whether Rwanda Rudniki Ltd

should be ordered to pay any damages related to the mine accident that Manirarora Jean de Dieu sustained from their concession, the debates were also about determining the right amount of the requested damages, their computation, and the liable person.

II. ISSUES OF THE CASES AND THEIR CORRESPONDING ANALYSIS

1. Whether Rwanda Rudniki Ltd should be ordered to pay for damages resulting from the accident that Manirarora Jean de Dieu has sustained from their mine concession.

[11] The Counsel that represents Manirarora Jean de Dieu referred to article 260 of civil code book III, then in force when Manirarora sustained the accident, and argued that it is Rwanda Rudniki Ltd that is liable to the payment of the damages that Manirarora Jean de Dieu has claimed for. He explains that when Manirarora Jean de Dieu sustained the accident from Rwanda Rudniki's mining concession, he hurried to notify them of the accident, and they informed that they have an insurance policy with SAHAM Assurance Rwanda Ltd (the former CORAR AG Ltd) which later changed to be SANLAM AG Plc, he goes on to say that he approached the insurer, and he found that the insurance policy that Rwanda Rudniki Ltd signed with SANLAM AG Plc stipulated that when an employee does in the mines, the insurer will pay 1,000,000 Rwf for the indemnity, but when an employee happens to have any mine-related accident and sustains injuries, the insurer indemnifies the employee in proportion to the sustained body invalidity. Manirarora Jean de Dieu submits that he approached the insurer for the issue, and they informed that he can only be entitled to 400,000Rwf alone. But since the issue was

to be amicably solved, they allowed to give 100,000 Rwf. But when Maniraroro Jean de Dieu found that such an insurance policy was unfair he chose to sue Rwanda Rudniki Ltd, as the employer, who had a duty to make sure that mine concession does not cause any accident.

[12] He also that the Insurance policy that Rwanda Rudniki Ltd signed with SANLAM AG Plc is unfair, and that it only binds those who contracted it. He therefore prays the Court of Appeal to hold that it is Rwanda Rudniki Ltd who is liable for the payment of damages from their mine-related accidents since they contracted for an unfair risk insurance policy.

[13] Rwanda Rudniki representative argues that damages are normally charged for wrong doing. He adds that for anyone to start a business of mine extraction, they must first fulfil all the related requirements, and that Rwanda Rudniki Ltd has fulfilled all the requirements and that there was not anything lest they could do to stop the mine from collapsing on Manirarora Jean de Dieu. He also adds that the fact that Rwanda Rudniki Ltd contracted an insurance policy with SANLAM AG Plc (the former CORAR AG Ltd), was for the Insurer to pay for an eventual accidents related damages, and the policy was for the benefit of all the employees with Manirarora Jean de included.

[14] He also adds that article 260 of Civil code book III could only apply if Rwanda Rudniki Ltd had not contracted for the risk insurance policy. He therefore argues that it is SANLAM AG Plc, the insurer, who is to pay for the claimed indemnity. He explains that the accident occurred when Rwanda Rudniki Ltd had already contracted an insurance agreement with SANLAM AG Plc, he therefore argues that it is the insurer who was supposed to be sued, more so that Manirarora Jean de Dieu, had actually

approached them first, and more so that Rwanda Rudniki Ltd did not even know whether the insurer declined to pay for the claimed indemnity.

[15] SANLAM AG Plc representative argues that since Manirarora Jean de Dieu, the victim, has never sued SANLAM AG Plc, he sees no reason as to why SANLAM AG Plc should be charged for the requested damages. He however adds that in case the Court finds it otherwise and holds SANLAM AG Plc for the payment, the requested damages should be paid as per the existing agreement between SANLAM AG Ltd and Rwanda Rudniki Ltd.

DETERMINATION OF THE COURT

[16] Article 63 of the Law n0 30/2018 of 02/06/2018 determining the Jurisdiction of Courts provides that “When the Supreme Court or any other court designated by the President of the Supreme Court receives an application for review of a judgment on grounds of being vitiated by injustice, it examines the merits of the case anew and in the presence of all parties”

[17] Article 258 of Civil code book III that was in force in 2015 when Manirarora Jean de Dieu had the accident provides the following “ Tort brings liability and binds the liable person for the payment of the related damages”

[18] Paragraph one of article 260 of the above mentioned Civil Code book III provides that “ Tort liability does not always result from the person’s own fault, it can as well result from the third party’s faults for whom a person has an obligation of management and stewardship”

[19] The case file indicates that Manirarora Jean de Dieu was working for Rwanda Rudiniki Ltd, a company that traded in extraction of Coltan minerals, he worked in Bukina mine concession located in Jabiro Village, Musongati Cell, Nyarusange Sector of Muhanga District in the Southern Province. The case contains details indicating that on the 29/10/2015 at around 9:00 am, Manirarora Jean de Dieu had an accident while working in the above mentioned mine, where it collapsed on him and it broke him the leg and he sustained an injury on one side of the head. The file again contains a related medical report indicating that the accident left him with 40% of body permanent incapacity.

[20] With the above, the file contains an insurance policy : 220/00013216-SG of 16/04/2015 concluded between Rwanda Rudniki Ltd and CORAR AG Ltd, which later changed to be SAHAM Assurance Rwanda Ltd, and currently known as SANLAM AG Ltd. The above insurance policy agreement allows 1,000,000 Rwf to indemnify any employee who sustains the body permanent incapacity from mine work-related accidents.

[21] For this case, Manirarora Jean de Dieu sued Rwanda Rudniki Ltd, and wants them to give him damages due to mine work related accident that he sustained when he was working for the company, and which left him with 40% of body permanent incapacity. One of the issues for analysis here is to determine whether Rwanda Rudniki Ltd is liable for the payment of claimed damages.

[22] When the Court read both articles 258 and 260 of Civil code book III that then was in force when Manirarora Jean de Dieu sustained the accident, the Court found that any tort that causes damages to another person's interest call for a liability and

a subsequent damage repair, and the Court has again found that tort liability does not always result for the person's own fault, as it can as well result from torts committed by third parties for whom a person has a duty of management and custody. The analysis of article 260 makes it clear that a custodian has a legal duty of supervision over the objects or subjects that are under his/her custodianship, and this places them in a situation of liability to third parties irrespective of whether they, themselves have or have not committed any tort. The above article was meant to cater for damage repair, and intended to avoid any situation of damage-related void liability.

[23] This is corroborated by legal scholars that include Philippe Le Tourneau who commented about civil liability resulting for torts committed by objects that are under one's responsibility (responsabilité du fais des choses) legal scholars wondered if there is any way a custodian can distance him/herself away from the liability of torts committed by their objects/ subjects, and they found that there no way a custodian can separate him/herself from torts committed by objects/subjects under his/her custodianship, neither can a custodian claim to have thereof committed no fault, nor can he/she claim to have done all their best to avoid any wrong. The scholars continue to say that the obligation of damage-repair goes to the person who deliberately chose to utilise a certain tool and for a certain profit.

[24] Some other law experts that include François Terré, Philippe Smeler and Yves Lequette concurred to say that a related case law precedent asserts the obligation of supervision over an object/subject comes with the right to use, to inspect and to manage it. They also add it is this very obligation of supervision that actually confers the really ownership over an object, adding

that it is actually normal that the obligation of custody goes to the owner of an object/subject¹.

[25] Some other scholars concur to believe in the principle by which any property whether movable or immovable, material or immaterial, in use or at rest, defected or not can be a source of a liability. They say that even properties that show no sign of deflection can be a source of tort liability. They say that it is actually a not so hard to determine the custodian of a certain property since it is quite often either the owner of the object or the person who possessed it by the time of the concerned accident.²

[26] The Court found that Rwanda Rudniki Ltd acknowledges the ownership of the Coltan mine concession that collapsed on Manirarora Jean de Dieu on the 29/10/2015, whereby it injured him and left his body with 40% of permanent incapacity. Being

¹ « (...) la jurisprudence a fixé, puis retenu de manière constante, en dépit de quelques variantes, une définition en vertu de laquelle la garde est caractérisée par l'usage, le contrôle et la direction de la chose. La responsabilité est, dans cette mesure, attachée à l'autorité. De cette formule qui tend à définir un certain corpus, on doit, en premier lieu, déduire que la garde coïncidera très souvent avec le droit réel de propriété. Leur parenté est d'ailleurs si naturelle que le propriétaire est présumé gardien de la chose. (...)», voir François Terré, Philippe Smelter na Yves Lequette, Droit civil. Les obligations, 11^{ème} édition, Paris, Dalloz, 2013, p.253

² « Par principe, toute chose peut être source de responsabilité, qu'elle soit meuble ou immeuble, matérielle ou immatérielle, en mouvement ou inerte, viciée ou non. Dès lors, même les choses ne présentant aucune dangerosité entrent dans le champ d'application de la responsabilité du fait des choses. Le plus souvent, l'identification du gardien ne pose ne pose aucune difficulté, il s'agit à la fois du propriétaire (qui détient l'usus, le fructus et l'abusus) et du détenteur de la chose lors de la réalisation du dommage.», <https://jurislogie.fr/responsabilite-fait-des-choses-article> , 20/05/2022.

the owner of the concerned mine concession at the time of the accident, and exploiting it for a profit indicates that it is Rwanda Rudniki Ltd that was managing the concession, and it is therefore the very company that is liable for the payment of the mine-related damages.

[27] The Court found that the fact that Manirarora Jean de Dieu was working in the mine concession that belongs to Rwanda Rudniki Ltd, whereby he had work related accident which left his body with 40% of permanent incapacity, gives him a right to sue them for damage-repair not only as the owners of the mine concession but also as the employer whose duty was to watch the mine and ovoid any eventual damage. And for Manirarora Jean de Dieu who chose to sue Rwanda Rudniki Ltd for payment of the sustained damages, the Court found no wrong.

[28] With regard to a defence that Rwanda Rudniki Ltd representative submitted arguing that Rwanda Rudniki Ltd did no wrong that can make them be charged for damages, adding that the company had nothing to do that could have avoided the accident, the Court held the above defence void moving that tort liability does not always originate for one's fault just as it has been explained by the above mentioned law experts such as Tourneau et al. reminding that damage liability can as well results from torts committed by objects/subjects that are under a person's custodianship. Arguing that a custodian has no way of distancing him/her from a liability resulting from torts committed by their objects, neither can they claim to have committed no fault, nor can they can claim to have done their best to avoid any wrong.

[29] The Court found that the submissions by Rwanda Rudniki Ltd by which he argues that the Company had an insurance policy with SANLAM AG Plc (the former CORAR AG Ltd) for the

sake of payment for accident related damages, and the argument by which he submits that article 260 of Civil book III could only apply if Rwanda Rudniki Ltd had not contracted for risk insurance, moving that it is SANLAM AG Plc, the insurer, who is liable for payment of the requested damages; the Court found the above defence pointless moving that the insurance policy does not free Rwanda Rudniki Ltd for the concerned tort liability; However, the Court has added that in case Rwanda Rudniki Ltd is charged with damages that outweigh the insurance policy agreement, they always reserve a right to request the insure to help pay part of the damages but in limits of their insurance agreement. As for Manirarora Jean de Dieu who chose not to sue the insurer (action directe) but sued Rwanda Rudniki Ltd, the employer (action personnele), the Court thereof found no wrong, since the plaintiff had a right to make a choice.

[30] With all the above provided explanations, the Court found that Manirarora Jean de Dieu did no wrong in suing Rwanda Rudniki Ltd for payment of damages that resulted from their mine-related accident. The Court therefore held that it is Rwanda Rudiniki Ltd that is liable to indemnify Manirarora Jean de Dieu for the accident that he sustained from their mine concession.

2. Determination of a base for the computation of the damages that Manirarora Jean de Dieu has requested for.

[31] The Counsel who represents Manirarora Jean de Dieu in this case raises a concern over the lack of an existing law that can swiftly apply to the computation of damages resulting from mine-work related accidents. He therefore requested the Court to refer to sub-paragraph one of article 9 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure which stipulates that : «a judge

adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine.”

[32] He also suggests that the Court can as well refer the above damage computation to the Presidential Order n0 31/01 of 25/08/2003 establishing a procedure for the compensation to victims of motor vehicles related accidents, he so suggested with an argument that whether a person survived an accident by a motor vehicle, or whether one sustained the accident from a mining concession, both are the accidents, and both the victims are equally humans. He more so wanted the Court to refer to the above mentioned Presidential order, since the Supreme Court so did in a similar case no RADA 0054/12/CS of 19/12/2014 with Kayijuka v. the Government of Rwanda whereby the Court set a precedent clarifying that if a victim happens to sustain an invalidity resulting from an accident other than road-related accidents, the damages for such a victim can be computed with reference to the above mentioned Presidential order n0 31/01 of 25/08/2003.

[33] He again submits that it still the very Presidential order that Muhanga Intermediate Court referred to for case RC 00006/2017/TGI/MHG, a reference that Nyanza High Court Chamber rejected, since it instead referred to a relegated set of standards but which are provided by some other publications yet these publications were neither laws nor regulations but the Court has unfairly taken them for laws. He adds that not only the above publications have never featured any State Official Gazette, their

own contents are so contradictory that they cannot serve for a credible reference.

[34] Rwanda Rudniki Ltd representative argues that there was not any other law for reference except the sole regulations relating to extractions of mines and quarries in Rwanda and this had to be coupled with a set of measures of security and safety as per the regulations of Rwanda Mines, Petroleum and Gas Board. And he requested the Court to examine the merit of the argument by which the complainant claims that such regulations never featured the Official Gazzete.

[35] He also added that in case the Court opts not to refer to the existing regulations that govern Mines and Quarry in Rwanda, the Court of Appeal must set a precedent that would serve for a reference over cases relating to mine-work accidents, adding that the argument by the representative of Manararora Jean de Dieu of relating this case to the cited Presidential order makes no sense since such reference would simply bring in a loose interpretation (*Interprétation par analogie*). He as well argued that the above mentioned case RADA 0054/12/CS rendered by the Supreme Court cannot serve a reference for this situation, he said that the above case gave a precedent for only a medical practitioner who is exercising his/her medical profession ; and he instead suggested that in case this Court finds the ruling of Nyanza High Court Chamber unfit, this Court should act as a legislator and set a fitting precedent.

[36] SANLAM AG Plc representative argues that the above mentioned Presidential order cannot serve a reference for this case ; since the concerned accident is not road-related, he again argues that neither the above mentioned Rwanda Mines, Petroleum and Gas regulations fit since they have never been

published in the State Official Gazette ; he moves that it now this Court that should set an adequate precedent.

DETERMINATION OF THE COURT

[37] Article 9 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides the following : “a judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine.”

[38] The case file contains the ruling of case RC 00006/2017/TGI/MHG rendered by Muhanga Intermediate Court. This Court held that the Presidential Order is not fit to serve a reference for this case owing to a fact that Manirarora Jean de Dieu did not suffer from a motor vehicle accident. He is a victim of mine work accident while working Rwanda Rudniki Ltd, a mining company, that was not precautious enough to avoid the accident to befall on their employee. The Court held that the related damages shall be computed with reference to article 260 of a law of 30 July 1888 instituting the Civil Code Book III, but the Court specified that a certain formula from the above mentioned Presidential order, should be used for the computation of the required damages. The Court added such a method of damage computation was set as a precedent by the Supreme Court in a certain case between Kabayijuka and the Government of Rwanda heard on the 19/12/2014, whereby the Court allowed Kabayijuka 4,099.607 Rwf for the incurred economic loss, 432,000 Rwf for moral damage, 432,000 Rwf for body physical

distortion, and 540,000 Rwf for loss of current and future employment.

[39] The ruling of Nyanza High Court Chamber on case RCA 00104/2017/HC/NYZ of 10/07/2017 indicates that the court referred the computation of the damages on a set of guiding standard security and safety measures for extraction of mines and quarries as compiled by Rwanda Mines, Petroleum and Gaza Board, done in Kigali in the month of November 2017. Sub-paragraph (J) of page 13 reads as follows “the insurance policy for all the employees pays a compensation that amounts to 2,000,000 for an employee who sustained a permanent incapacity and 1,500,000 Rwf for an employee who dies thereof, added to a prior payment for all the related expenses”; the Court therefore held to allow Maniragaba Jean de Dieu 2,000,000 Rwf for he survived an accident with left his body with 40% of a permanent incapacity. The court has as well allowed him refund for all the related medical bills and the incurred case related expenses.

[40] The court found no law that pertains to mine-work related accidents and for this matter, it referred to article 9 of the above mentioned Law n0 22/2018 of 29/04/2018 which stipulates that in the absence of the applicable rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine. The Court has therefore held to base the computation of damages that Manirarora Jean de Dieu requests for on the general principles that govern the liability that results from torts committed by objects/subjects that are under one’s responsibility. (Responsabilité du fait des choses)

[41] The Court found that the request by Manirarora Jean de Dieu who submits that due to lack of a law that applies to mine-

work accidents, damages that the victim claims for should be computed with reference to the Presidential order n0 31/01 of 25/08/2003 establishing mechanisms for compensation to victims of motor vehicles related accidents, arguing that both are the accidents and victims are equally humans, the Court found the above argument pointless, more so that the Presidential itself is clear and it solely caters for motor vehicle related accidents, and that is far different for the situation of Manirarora Jean de Dieu who sustained his accident from a mine concession . The Court has therefore held not to refer to the above Presidential order due to a deference of the litigation matter at hand. It held to move that any special decree, or special law has to serve the purpose of its own particularity. And that any other situation that lacks applicable rules, should be handled with reference to the existing principles or any other general legislations.

[42] With regard to the argument by the representative of Manirarora Jean de Dieu who insists that one of the reasons that made them to suggest a reference to the above mentioned Presidential Order is prompted by a certain similar case n0 RADA 0054/12/CS rendered by the Supreme Court on 19/12/2014 whereby this Court set a related precedent, and it moved that damages resulting from non-motor vehicle related accidents should be determined with reference to the said Presidential order, This Court has found the above argument pointless, since for the above cited case, the Supreme Court referred to a certain formula found in the Presidential Order for the computation of the economic loss allowable to Kabayijuka Gaspard, but the Court has never said to have referred to that Order, neither did it set such a precedent by which the computation of damages resulting from non-motor vehicle accidents should always refer to the very formula as it features in

the above mentioned Presidential order n0 31/01. The Court has never set such a precedent. Apparently, and due to the issues that the Court was examining, it found it appropriate to refer to the provisions of the above Presidential order, but it never set it to be a precedent for the subsequent similar issues. And this court therefore found nothing that might make it to refer to the above cited case no RADA 0054/12/CS.

[43] With regard to whether Nyanza High Court Chamber was to refer its ruling on a set of standard mine and quarry mining security and safety measures, compiled by Rwanda Mines, Petroleum and Gas Board, done in Kigali in November 2017, and which Nyanza High Court Chamber took for regulations, this Court has deemed important to assess and determine whether such mining security and safety measures can really qualify to be in lieu of the applicable regulations.

[44] Act that was enacted and signed by a competent authority with an aim of implementing a given law (règlement d'application), but regulations can as well on their own, with no law to inforce (règlement autonome). Gérard Cornu, another law expert defined regulations as a general act that was enacted and signed by a competent authority with an aim of enforcing a given law or with a purpose of regulating some other aspects that are not governed by any other law. Regulations must be published under the State Official Gazette.

[45] Since the above compilation of the standard mining security and safety measures that Nyanza High Court Chamber referred to for the computation of damages it allotted to Manirarora Jean de Dieu lacked the important requirements, such having been signed by a competent authority, or having been published in the State Office Gazette, it is quite obvious that

Nyanza High Court Chamber was not supposed to make it a reference for the computation of the damages for Manirarora Jean de Dieu since such a compilation is not legally binding.

3. Determination of possible damages, their computation and the liable person.

[46] The representative of Manirarora Jean de Dieu argues that the possible damages should be determined in reference to the 15,000 Rwf that Manirarora Jean de Dieu was earning each day. He reminded that when Rwanda Rudiniki Managing Director was answering question 12 of his interrogation, he replied that mine workers earn in proportion to their work productivity, but they cannot earn less than 12,000 Rwf/ Kg, while for question 13 when asked about individual mine work productivity per a person, he replied that a team of 8 workers can produce 12 kilograms per a day, and which translates into 1,500 Frw daily pay per a worker. And therefore he concludes that this is the very amount that can serve a reference for the computation of damages,

[47] He also argues that the computation of the indemnity for the economic loss should not be referred to the normal Minimum wages index (SMIG) and he requested base the computation of the above damages on the 15,000 Rw, indicating that with this amount, the economic loss for Manirarora Jean de Dieu should be computed as $(15,000 \text{ Rwf} \times 12 \times 30 \times 36 \times 40\%) / 1 + (8\% \times 36) = 20,041, 237 \text{ Rwf}$.

[48] Rwanda Rudiniki Ltd representatives explains that the routine practice in the mining work is structured in such a way that miners earn as per their productivity, and that at times, a miner works but goes home unpaid if he got no minerals to submit ; he therefore argues that basing the computation of the requested

damages is wrong since Manirarora Jean de Dieu has nothing to prove that he would regularly earn the 15,000 Rwf per a day. When asked about referring the computation on the 3,000 Rwf, the Minimum wages Index (SMIG) that was once fixed by the Supreme Court, he replied that such a reference is as well not fit, since there is nothing that proves that Manirarora Jean de Dieu would regularly earn this amount per a day.

[49] SANLAM AG Plc representative argues that since they have never been a party to this case, as the claimant has from all along never sued them since he had nothing to sue them for but he chose to sue Rwanda Rudniki Ltd, he therefore argues that he sees no reasons at to why SANLAM AG Plc should be charged for the above damages. He however submits that in case the court finds it otherwise and establishes that SANLAM AG Plc ought to pay for any due, he suggests that SANLAM AG Plc should ordered to pay the due in the limits of the agreement it signed with Rwanda Rudniki Ltd, and that is 1,000,000 Rwf \times 40% and with the Counsel fee exclusive.

DETERMINATION OF THE COURT

[50] Paragraph one of article 260 of Civil Code book III that was in force in 2015 when Manirarora Jean de Dieu had the accident provides the following : “Tort liability does not always result from the person’s own fault, it can as well result from the third party’s faults for whom a person has an obligation of management and stewardship”

[51] The case file contains a medical certificate of 14/05/2016 that indicates that the body of Manirarora Jean de Dieu has a permanent incapacity of 40%. The very file contains a birth

certificate and a photocopy of the National Identity card that indicate that Manirarora Jean de Dieu was born on 01/01/1986. The file again contains statements from Rwanda Investigation Bureau (RIB) indicating that Manirarora Jean de Dieu sustained an accident on the 29/10/2015 while working in Rwanda Rudniki Ltd' mine concession, and that by the time of the accident he was 29 years old. The case file again contains an insurance policy n0 220/00013216-SG of 16/04/2015 that Rwanda Rudniki Ltd had concluded with the then CORAR AG Ltd, the current SANLAM AG Ltd, a policy by which they agreed that a worker who gets mine work related accident and sustains 100% of body incapacity, the insurer will pay 1,000,000 Rwf for indemnity, and that for other percentages of incapacity, the victim will be indemnified in the right proportion of the sustained incapacity.

[52] As it has been above highlighted, both the previous courts found no law that applies to the computation of compensations to the victims of mine work related accidents, and that is why Muhanga Intermediate Court chose to referred to article 260 of Civil Code book III, but computed the compensation with a reference to a formula that resembles the one found in the Presidential Order, yet this order is meant for the computation of compensations for victims of motor vehicle related accidents. Whereas Nyanza High Court Chamber, referred the damage-computation on a set a standard security and safety measures that govern mines and quarry concessions as compiled by Rwanda Mines, Petroleum and Gas Board.

[53] Just as it has been above mentioned, the Court found no existing law applies to the computation of compensation for victims of mine work-related accidents, and for that reason, the Court held to refer to article 9 of the above mentioned law n0

22/2018, and moved to hold that Manirarora Jean de Dieu deserves indemnity for moral damages, and a compensation for the economic loss resulting from an accident that he sustained from Rwanda Rudniki mining concession and which left him with 40% of body permanent incapacity.

[54] The Court found that Manirarora Jean de Dieu deserves an indemnity that can be determined at the court's discretion, just as it has always be the case for the medical-related accidents that this Court has so far heard; and these included case RCAA 00073/2018/CA of 19/07/2019 with Nyirabatesi Laurence v. King Faisal Hospital, paragraph 37; whereby this Court, and in its own discretion, having established that the Hospital did some wrong, allowed Nyirabatesi Lawrence 28,000,000 Rwf for moral compensation. This is also what happened in case RCAA 00008/2020/CA of 25/06/2021 with Ndiziye Alphonse v. Kibungo Medical Centre, whereby this Court held to stay the claimed indemnity as it had has discretionally been pronounced by Ngoma Intermediate Court, and thus holding to quash the ruling of Rwamagana High Court Chamber, as the latter referred the claimed indemnity of the Presidential Order n0 31/01/ of 25/08/2003, underscoring that Rwamagana High Court Chamber based their ruling on an empty law since this Presidential order had nothing to do with the subject matter at hand; and the Court therefore ordered Kibungo Medical Center to give 35,000,000 Rwf³ to Ndizeye Alphonse as an indemnity for and in name of his child Irasubiza Amani.

³ See paragraphs 36 and 46 of case RCAA 00008/2020/CA of 25/06/2021 with Ndizeye Aplonse v. Kibungo medical Centre together with Prime Insurance Company Plc.

[55] The Court found that Manirarora Jean de Dieu sustained an accident while working in Rwanda Rudniki mining concessions, and the accident left him with 40% of body permanent incapacity ; and the Court understands that this accident caused a moral damage, and the court allowed him 500,000 for related moral damage compensation.

[56] With regard to the economic loss, the Court found that Manirarora Jean de Dieu still deserves a compensation that has to be determined in the court's own discretion and the limits of the sustained incapacity with a reference to his remaining employability period before he reaches 65 (the retirement age). For the indemnity computation formula, the Court held to use a certain formula that it once used in case n0 RADA 0054/12/CS with Kabayijuka Gaspard v. Nyarubuye Health Centre, whereby the Court took the victim's monthly salary and multiplied it with the 12 months of the year, and this product was again multiplied by the victim's incapacity percentage, and again multiplied with the victim's remaining employability period and the whole was divided by a hundred.⁴

[57] For the computation of the economic loss that Manirarora Jean de Dieu incurred, the Court held not to base on the 15,000 Rwf that the victim's representative brought forth as the victim's daily earning citing a statement that Rwanda Rudniki Ltd Managing Director submitted before the prosecution; The court held not to base on the above amount moving that the victim has no proof to convince the court that he was regularly earning the claimed amount, since it is clear that there were mixed

⁴ See paragraph 31 of case RADA 0054 /12/CS with Kabayijuka Gaspard v. the Government of Rwanda (on the behalf of its Ministry of Health) rendered by the Supreme Court on the 19/12/2014.

probabilities that he could or could not earn a daily pay of 15,000 Rwf as he claims. And that is why the Court held to base the claimed damage computation on the Minimum Salary Wage index as it was once set by the Supreme Court in the ruling of case RCAA 0049/14/CS with SORAS AG Ltd v. Umuhoza Pacifique et al.⁵ The Court has therefore and in its own discretion held not to move that Manirarora Jean de Dieu was a regular worker, but since the file indicates that he was employed, and that by the time the accident he had a family and two children he catered for, the Court has discretionally approximated that he worked three (3) days a week which translates into twelve (12) days a month.

[58] For the above reasons, the Court held to allow Manirarora Jean de Dieu an economic loss that is computed as follows : 3000 Rwf (the minimum wage index) × 12 (days that could work per a month) × 40 (the percentage of his incapacity) × 36 (his remaining employability age for him to turn 65) : 100 = 6,220,800 Rwf.

[59] With regard to the expenses that Manirarora Jean de Dieu incurred on medical bills, The Court held to stay the 100,000 Rwf that was previously pronounced by Nyanza High Court Chamber; more so that this is the very amount that features in the insurance contract of that Rwanda Rudniki Ltd had concluded with SANLAM AG Ltd (the former CORAR AG Ltd) on the

⁵ See paragraph 28 of case RCAA 0049/14/CS with SORAS AG Ltd v. Umuhoza Pacific rendered by the Supreme Court on the 25/11/2014.

16/04/2015⁶. And this Court moves to stay the very amount for this case.

[60] The court found that it is Rwanda Rudniki Ltd who is liable for the payment of all the damages that Manirarora Jean de Dieu is claiming for, with SANLAM AG Ltd (the former CORAR AG Ltd), their insurer, contributing for the payment but with the limits and terms of their insurance agreement whereby they agreed for a payment of 1,000,000 Rwf for a worker who happens to sustain 100% of body permanent incapacity, and for a proportional payment for a miner who sustains less than 100% of body permanent incapacity, just as it is outlined in the insurance policy n0: 220/00013216-SG that both parties have entered into on the 16/04/2015⁷. The Court therefore finds that that Manirarora Jean de Dieu has sustained 40% of body permanent incapacity, and that SANLAM AG Ltd ought to pay $1,000,000 \text{ Rwf} \times 40\% = 400,000 \text{ Rwf}$ plus a medical bill of 100,000 Rwf just as per the terms of the agreement. This is exactly what this Court did for the ruling of the above mentioned case RCAA 00008/2020/CA where the Court ordered Kibungo Medical Centre, represented by Dr. Kanimba Pierre Celestin to team up with Prime Insurance Company Plc, their insurer, and pay for the claimed damage compensation as per their agreement as contained in the Insurance policy n0 413/00021583-SG

⁶ See the Insurance agreement, Policy: 220/00012216-SG of 16/04/2015 concluded between Rwanda Rudniki Ltd and SANLAM AG Ltd, check the tables and find about: Medical bills (frais médicaux)

⁷ Check the tables of the above mentioned agreement and find about: Accident related incapacity and find about the paragraph that has this wording: En cas d'invalidité permanente partielle (I.P.P), l'indemnité de l'invalidité permanente totale est réductible dans les proportions prévues à l'article 18 des conditions générales

concluded on the 26/06/2016 with the insurer contributing in proportion and limits of the insurance agreement.⁸

4 Whether the compensation for this case related expenses is worthy claiming.

[61] The representative of Manirarora Jean de Dieu referred to article 111 of the above mentioned law n0 22/2018 of 29/04/2018 and prayed the Court of Appeal to order Rwanda Rudniki Ltd to give Manirarira Jean de Dieu 2,500,000 Rwf for the Counsel fee and 500,000 Rwf for case-related costs, arguing that hired lawyers and court bailiffs for this case. He as well prayed the Court to be refunded with the court fee that they paid at this level together with the 75,000 Rwf court fee they paid to the High Court for the review of this very case.

[62] SANLAM AG Plc submits that Rwanda Rudniki Ltd was well aware that SANLAM AG Plc has all along never been a party in this case, and they have unnecessarily made the Insurer to intervene into this case, and he prayed the Court to order Rwanda Rudniki Ltd to pay SANLAM AG Plc 500,000 Rwf for the Counsel fee.

[63] Rwanda Rudniki Ltd representative argues that Manirarora Jean de Dieu deserves no compensation since it is him who faulted the suing procedure. He also added that damages SANLAM AG Plc requested for are not justified since SANLAM AG Plc is the insurer for the concerned accident.

[64] He also adds that Rwanda Rudniki prays the Court of Appeal to order Manirarora Jean de Dieu to pay them 2,000,0000

⁸ See paragraph 36 of case RCAA 00008/2020/CA

Rwf as the Counsel fee at this level of case appeal, and 1,000,000 Rwf for Counsel fee for both the previous instances, and he requested 2,500,000 Rwf for case-related expenses.

[65] Manirarora Jean de Dieu's representative rebutted the damages that Rwanda Rudniki Ltd requested for, arguing that this case was from all along triggered by an accident that occurred from their mining concession due to lack of proper mining security and safety measures.

DETERMINATION OF THE COURT

[66] Article 111 of the above mentioned law n0 22/2018 of 29/04/2018 provides the following : "the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted"

[67] Paragraph one of article 26 of the Regulations n0 01/2014 establishing the scale of Advocates' fees provides the following: "the Advocate for the applicant who has prepared the file and drafted documents may claim a base fee ranging from 500,000 RWF to 5,000,000 FRW, to which shall be added, in the event of recovery whether doing it directly or indirectly through his/her Agent, an additional fee for recovery determined according to the percentages set up in point II of Article 23"

[68] The Court finds that Manirarora Jean de Dieu deserves compensation for both the Counsel fee and the incurred case-related expenses. But since he cannot account for all the

compensation he has requested for, the Court has discretionarily awarded him 1,000,000 Rwf for Counsel fee at all the instances and 500,000 Rwf for the incurred case-related expenses at all the levels, which brings the total sum to 1,500,000 Rwf, and it is to be paid by Rwanda Rudniki Ltd.

[69] The Court found that Rwanda Rudniki Ltd deserves no compensation neither for the Counsel fee nor for the incurred case-related expenses since their arguments for defence are found pointless.

[70] The Court found damages that SANLAM AG Plc charges Rwanda Rudniki Ltd unworthy ; moving, just as it has been mentioned above that SANLAM AG Plc insured Rwanda Rudniki for the risks, and the latter did no wrong to have SANLAM AG Plc, as their risk insurer, intervening in the case.

III DECISION OF THE CASE

[71] Holds that the application for injustice-related review of case RCA 00104/2017/HC/NYZ rendered by Nyanza High Court Chamber on the 10/07/2018 has merit in part.

[72] Holds to radically change the ruling of case RCA 00104/2017/HC/NYZ rendered by Nyanza High Court Chamber on the 10/07/2018.

[73] Orders Rwanda Rudniki Ltd to give Manirarora Jean de Dieu 6,220,800 Rwf for the incurred economic loss, 500,000Rwf for the undergone moral damage and 100,000 Rwf for the medical bills, and the total sum comes to 6,820,800 Rwf whereby SANLAM AG Plc will co-pay 400,000 for the insurance

indemnity and the 100,000 Rwf for medical bills refund as per the terms of the above mentioned insurance agreement that CORAR AG Ltd, the now SANLAM AG Plc had concluded with Rwanda Rudniki Ltd. This means that Rwanda Rudniki Ltd will pay the final sum of 6,320.800 Rwf, while SANLAM AG Plc will have to pay a total sum of 500,000Rwf.

[74] Orders Rwanda Rudniki Ltd to give Manirarora Jean de Dieu 1,000,000 Rwf for the Counsel fee and 500,000 Rwf for the incurred case-related expenses, which sums up to 1,500,000 Rwf.

[75] Rules that the Court fees stay consigned with the State treasury.

LABOUR CASE

MUTWARE v. GUARANTY TRUST BANK (RWANDA) Ltd

[Rwanda SUPREME COURT – RS/INJUST/RSOC
00002/2022/SC– (Cyanzayire, P.J., Nyirinkwaya and
Karimunda, J.) October 21, 2022]

Labour law– Salary of an employee – Equality of employees in relation to salaries – In case an employee proves that he/she is not paid the same salary as others performing the same work, it is the obligation of the employer to provide evidence that contradicts the employee's allegations or proving that the non-payment is based on objective and reasonable grounds. Such grounds shall be approved by the Court at its discretion.

Labour law – Salary of an employee – Equality of employees in relation to salaries – In case an employee proves that he/she is not paid the same salary as other employees who are at the same level and perform the same work is possessed by the employer, he/she may request the Court to order to the respondent to produce it when it has not been produced, and the Court shall hold liable the respondent for such behavior or refusal to provide such evidence to the side of the respondent.

Labour law – Employment contract – Termination of employment contract – In case the Court declares that an employee who was illegally dismissed has to be paid salaries, those salaries are equal to the net salary instead of the gross salary.

Facts: This case was initiated by Mutware arguing that he was an employee of GT Bank Rwanda Plc, he worked as a cashier, but he was promoted to the position of Cash Management Officer, a

position he held for 20 months. He explained that due to unreasonable and incomprehensible grounds, the employer continued paying him the cashier's salary, he requested to be paid the difference between the salaries that were not given, and the Cash Management Officer's salary should be based on the calculation of notice allowance and termination benefits.

On that issue, the Intermediate Court of Nyarugenge found that his claim was justified. GT Bank Rwanda Plc appealed to the High Court. After examining its appeal, the High Court found that the claimant failed to prove that the respondent had the obligation to pay him for the position of Cash Management Officer. This is what prompted the respondent to apply for a review of the judgment rendered by the High Court on grounds of injustice.

In this case, the Court first examined whether the respondent should have increased the claimant's salary because he claims that he spent 20 months in the position of Cash Management Officer without being paid for that position, but he continued to be paid the salary of the position he previously held as a cashier. He further adds that he wrote to the Bank's Management requesting for being remunerated for the position he was promoted to, instead of considering it as defending his rights, the Bank considered it as misconduct, it repeatedly invited him to the Disciplinary Committee until he was illegally dismissed. Therefore, he requests the Court to award him the unpaid difference of the salaries of the position of the Cash Management Officer.

The respondent explains that the evidence on which the claimant relied to prove the salary that was given to the person he replaced in the position of Cash Management Officer was produced for the first time in the Supreme Court and therefore it should not be considered to prove that he suffered from injustice. He further

avers that the fact that the claimant replaced someone else in that position does not necessarily mean that they must be paid the same salary, because the employees in the same position may be paid different salaries due to many reasons including work experience.

On the issue of whether the notice allowance and termination benefits awarded to the claimant were inadequately calculated, the latter argues that the respondent should have paid him the notice allowance equal to one month's salary, and termination benefits equal to his salary of two months, so he prays this instant Court to order him to award to him the difference of the salaries he should be paid.

The respondent claims that the final pay indicates that the claimant has been paid one month's notice allowance and two months' termination benefits. He explains that in paying him he had given him a net salary, so to claim that he should be paid the notice allowance and the termination benefits equal to the gross salary is to seek unjustified benefits.

Held: 1. The principle is that all individuals, without any form of discrimination, have the right to equal pay for equal work.

2. In case an employee proves that he/she is not paid the same salary as others performing the same work, it is the obligation of the employer to provide evidence that contradicts the employee's allegations or proves that the non-payment is based on objective and reasonable grounds. Such grounds shall be approved by the Court at its discretion.

3. In case an employee proves that he/she is not paid the same salary as other employees who are at the same level and perform the same work possessed by the employer, he/she may request

the Court to order the respondent to produce it, when it has not been produced, and the Court shall hold liable the respondent for such behavior or refusal to provide such evidence to the side of the respondent.

4. In case the Court declares that an employee who was illegally dismissed has to be paid some salaries, those salaries are equal to the net salary instead of the gross salary.

The application for review of the judgment rendered by the High Court on grounds of injustice is grounded.

Statutes and statutory referred to:

Constitution of the Republic of Rwanda of 2003 was revised in 2015, article 30.

Universal Declaration of Human Rights of 10/12/1948, article 23.

The African Charter on Human and Peoples' Rights of 27/06/1981 as ratified by Law n° 10/1983 of 01/07/1983, article 15.

Law n° 66/2018 of 30/08/2018 regulating labour in Rwanda, articles 9 and 40.

Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 12 and 111.

Law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, articles 75 and 140.

Domestic cases referred to:

RS/INJUST/RSOC 00001/2022/SC SONARWA Life Assurance Company Ltd v Rugina decided by the Supreme Court on 08/07/2022.

RS/INJUST/RSOC 00001/2019/SC; Niwemugeni v KCB Rwanda Ltd decided by the Supreme Court on 31/01/2019.

Foreign case referred to:

Pinkas and Others v. Bosnia and Herzegovina, (Application number. 8701/21), 04/10/2022, para 63.

Cour de cassation, civile, Chambre sociale, 12 juin 2013, 11-14.458.

Galina Meister contre Speech Design Carrier Systems GmbH, numero C-415/10, Cour de Justice de l'Union Européene, 12 Janvier 2012, para 47.

Cour de cassation, Chambre sociale, numéro 08-43.088, 17 Mars 2010.

Cour de cassation, Chambre sociale, numéro 04- 40.169, 25 Mai 2005.

Cour de Cassation, Chambre sociale, numéro 00-41.63326 Novembre 2002.

Judgment

I. BACKGROUND OF THE CASE

[1] The case started in the Intermediate Court of Nyarugenge, Mutware Jean de Dieu claimed that he was an employee of GT Bank Rwanda Plc and was illegally dismissed from the job. He adds that on 15/07/2017 and 04/09/2017 he wrote to the Bank's Staff Delegates for the issue settlement, but he did not get a response, so he filed a claim requesting the Court to order GT Bank Rwanda Plc to pay him the termination benefits, the notice allowance, the leave compensative indemnity, the overtime, the

arrears of salaries, SORAS contributions and damages. GT Bank Rwanda Plc pleaded that Mutware Jean de Dieu would have waited for the response of the employees' delegates, and it requests the Court to declare inadmissible the claim.

[2] In the case RSOC 00468/2017/TGI/NYGE decided on 14/03/2018, the Intermediate Court of Nyarugenge found that Mutware Jean de Dieu was dismissed on 21/09/2017, while the employees' delegate in the Bank was notified on 15/07/2017 and 04/09/2017, which means that it was done before he was dismissed but the illegal dismissal was the subject-matter before the courts, it declared inadmissible the claim because it was illegally filed based on the fact that it did not comply with the modality stipulated by article 140 of Law n^o13/2009 of 27/05/2009 regulating labour in Rwanda.¹

[3] On 11/05/2018, Mutware Jean de Dieu filed another claim in the same Court, saying that he was fired because he requested to be paid the salary at the level he had been promoted to and that he was unfairly accused of deleting 32,726 Frw from the account of the Rwanda Revenue Authority, and he is seeking to be entitled to the termination benefits, the notice allowance, the leave compensative indemnity, the overtime, the arrears of salaries, SORAS contributions and damages. GT Bank Rwanda Plc states that Mutware Jean de Dieu was characterized by unethical behavior, he was repeatedly warned for mistakes that were

¹ That article provided that “should there be any individual labour dispute between a worker and an employer; the concerned party shall request the workers' delegate to settle it amicably. Where the workers' delegates fail to settle the dispute, the concerned party shall refer the matter to the Labour Inspector for an out-of-court settlement. When conciliation efforts fail, the dispute may be taken before the competent court. When all the steps referred to above have not gone through, the court may declare the claim inadmissible”.

otherwise intolerable but he did not change, he requests the Court to declare that he was fired for reasonable grounds.

[4] In the case RSOC 00184/2018/TGI/NYGE decided on 10/01/2019, the Intermediate Court of Nyarugenge found that:

- The fact that Mutware Jean de Dieu wrote to the Bank's management requesting to be paid for the position he was promoted to, the fact that he attended the Disciplinary Committee three times, or that he did not pay the loan received from the Bank should not be considered as misconduct that would lead to his dismissal because Mutware Jean de Dieu did not violate the law while defending his right to a fair salary, and GT Bank Rwanda Plc does not prove that after the mistakes that Mutware Jean de Dieu was punished for, there are others he committed or prove that there is the relationship between the employment contract and the loan contract;
- Mutware Jean de Dieu was required to provide explanations about 32,727 Frw deleted from the account of the Rwanda Revenue Authority, he provided them but they were not admitted, he was punished to that effect, he was removed from his position and transferred to Muhanga, so it would not be a reasonable ground for being dismissed;
- Mutware Jean de Dieu should not be paid the leave compensative indemnity, the overtime because he does not prove that he did not take a leave or that he worked for overtime;

- Mutware Jean de Dieu was working as Cash Management Officer but he was paid as a cashier, so he should receive the difference of unpaid money for 20 months amounting to 5,540,180 Frw, and he should be given SORAS contributions seized by GT Bank Rwanda Plc.

[5] The Court concluded that Mutware Jean de Dieu was fired without reasonable grounds, it ordered GT Bank Rwanda Plc to pay him 331,825 Frw for the notice allowance, 663,650 Frw for the termination benefits, 995,475 Frw for the damages, 5,540,180 Frw for unpaid salaries, 1,200,000 Frw of the seized contributions and 800,000 Frw of the counsel's and procedural fees.

[6] GT Bank Rwanda Plc appealed to the High Court praying for a prudent review of the grounds leading Mutware Jean de Dieu to be dismissed from his job, and declaring that they are objective, and nullifying all damages awarded because he did not deserve them. Mutware Jean de Dieu filed a cross-appeal for damages that were not granted in the first instance.

[7] In the case RSOCA 00033/2019/HC/KIG decided on 12/09/2019, the High Court found that:

- The Intermediate Court of Nyarugenge did not err in upholding that Mutware Jean de Dieu was dismissed without reasonable grounds and awarded him moral damages because the fact that he did not pay the loan for July 2017 was not a reasonable ground for being dismissed;
- The Intermediate Court of Nyarugenge should not have awarded Mutware Jean de Dieu 331,825 Frw

for the notice allowance, and 663,650 Frw for the termination benefits because the document entitled the final pay and the memorandum of disagreement made by the Labour Inspector indicate that they were given to him, therefore they are canceled;

- Mutware Jean de Dieu never wrote to GT Bank Rwanda Plc requesting payment for the position he had been promoted to but he requested an increase in salary due to a social problem (*an increase of at least a certain percentage in my annual pay, as the cost of living increased within years*), therefore, the Court would not have awarded him the unpaid difference of salary and there was no evidence proving that he should have been paid 548,160 Frw;
- GT Bank Rwanda Plc was not allowed to seize the insurance contributions of Mutware Jean de Dieu in SORAS because the employment contract is different from the loan contract, so the Bank must take them back;
- Mutware Jean de Dieu does not deserve any other moral damages because the damages equal to the three months' salary fall within the amount stipulated by the law, and he has not entitled to the leave compensative indemnity because he failed to prove that he did not take leave in 2015, 2016 and 2017.

[8] The Court concluded that the appeal of GT Bank Rwanda Plc is grounded in parts, while the cross-appeal filed by Mutware

Jean de Dieu is unfounded, it held that 331,825 Frw for the notice allowance, 663,650 Frw for the terminal benefits and 5,540,180 Frw for the difference in salary awarded to Mutware Jean de Dieu by the Intermediate Court of Nyarugenge are canceled.

[9] Mutware Jean de Dieu wrote to the President of the Court of Appeal, requesting that the case RSOCA 00033/2019/HC/KIG decided by the High Court on 12/09/2019 be reviewed on grounds of injustice. Having reviewed the request, the President of the Court of Appeal wrote to the President of the Supreme Court requesting the judgment to be reviewed. In decision number 015/CJ/2022 of 26/01/2022, the President of the Supreme Court decided that the judgment shall be sent to the Registry of the Supreme Court to be re-adjudicated.

[10] The hearing was held in public on 13/09/2022, Mutware Jean de Dieu assisted by Counsel Nyirasuku Jeanne and GT Bank Rwanda Plc represented by Counsel Safari Jean Bosco, and it examined whether GT Bank Rwanda Plc would increase the salary of Mutware Jean, whether the notice allowance and the termination benefits were inadequately calculated and the issues related to the counsel's and procedural fees claim in this case.

II. ANALYSIS OF LEGAL ISSUES

1. Determine whether GT Bank Rwanda Plc had the obligation to increase the salary of Mutware Jean de Dieu

[11] Mutware Jean de Dieu and his Legal Counsel Nyirasuku Jeanne state that Mutware Jean de Dieu was an employee of GT Bank Rwanda Plc working as a Cashier, he was paid 331,825

Frw, on 04/02/2016 he was promoted to the position of Cash Management Officer replacing Uwantege Yvonne who was paid 548,160 Frw. They explain that Mutware Jean de Dieu spent 20 months as Cash Management Officer at the same level as Uwantege Yvonne, whom he replaced, but he continued to be paid the salary of a Cashier. They submit that on 06/08/2017, without exceeding two years in that position, Mutware Jean de Dieu sent an email to the management of GT Bank Rwanda Plc, requesting to be remunerated for the position to which he was promoted, instead of considering it as defending his rights, the Bank considered it as misconduct, it repeatedly invited him to appear in the Disciplinary Committee until he was illegally dismissed on 09/21/2017.

[12] They aver that in addition to that email Mutware Jean de Dieu wrote to the Bank's management which is the reason for being accused of misconduct, GT Bank Rwanda Plc accused him of not properly paying the loan he received, they wonder about the link between the loan contract and the employment contract so that defaulting on the loan would result in his dismissal. They pray this instant Court to support the principle that the salary is the price for the work done, based on the provisions of article 75 of Law n^o 13/2009 of 27/05/2009 regulating labour in Rwanda², and hold that Mutware Jean de Dieu would be awarded the difference in unpaid salaries for the position of Cash Management Officer, equal to 558,160 Frw–331,825 Frw x 20 = 5,540,180 Frw.

² The salary is the price for the work done. Unless agreed upon between the concerned parties or for cases provided for by this law, no salary is to be paid in the event of absence from work.

[13] Counsel Safari Jean Bosco, representing GT Bank Rwanda Plc, avers that the evidence that Mutware Jean de Dieu presented to prove that Uwantege Yvonne was paid 558,160 Frw was produced for the first time in the Supreme Court and therefore it should not be considered to prove that he suffered from injustice. He explains that the evidence proves that Uwantege Yvonne was appointed to the position of Cash Management Officer on 14/04/2014, but Mutware Jean de Dieu disregards that on 17/12/2014, GT Bank Rwanda Plc revised the salaries and established a new method of where each employee started to be paid based on the current level, and that on 15/06/2016, Mutware Jean de Dieu was informed that he is at the grade of Operation Officer One, the document entitled Grading Harmonization and Salary Structure dated 17/12/2014 indicates that the employee at that grade was paid a net salary equal to 278,094 Frw.

[14] On the issue of whether the document entitled Grading Harmonization and Salary Structure does not appear in the previous case files and whether this document changed the salary of Uwantege Yvonne by the time she was still in the position of Cash Management Officer, he replied that he did not have time to review it, but the fact that Mutware Jean de Dieu replaced Uwantege Yvonne at the position of Cash Management Officer does not mean that they should necessarily be paid the same salary, because the employees in the same position may be paid different salaries due to many reasons including the work experience.

DETERMINATION OF THE COURT

[15] Paragraph 2 of article 30 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 states that “all individuals, without any form of discrimination, have the right to equal pay for equal work”.

[16] The Court finds that the employees who perform the same work should be paid the same salary, which is a goal that Rwanda has committed to since September 18, 1962³, when it ratified the Universal Declaration on Human Rights dated 10 /12/1948⁴, where in its paragraph 2 of article 23 it states that “Everyone, without any discrimination, has the right to equal pay for equal work”. This goal was reaffirmed by Rwanda when it signed the African Convention on Human and People's Rights, which also states in article 15 that “Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work”.⁵

[17] Such right to equal treatment of employees of the same level performing the same work is what has been reiterated in paragraph 2 of article 30 of the Constitution as stated above. In order to strengthen this principle and ensure that it is properly respected by all employers, the Legislator referred to it in

³ See *Déclaration du Président de la République relative au respect des accords et traités conclus par la Belgique*, in *Codes et Lois du Rwanda, Vol I*, p. 50.

⁴ See *Déclaration Universelle des Droits de l'Homme du 10 décembre 1948*, in *Codes et Lois du Rwanda, Vol I*, p. 66

⁵ «*Toute personne a le droit de travailler dans des conditions équitables et satisfaisantes et de percevoir un salaire égal pour un travail égal.* »

paragraph 3⁶ of article 9, and paragraph 2⁷ of article 40 of Law N^o 66/2018 of 30 /08/2018 regulating labour in Rwanda which is into force where these articles provide that all individuals, without any form of discrimination, have the right to equal pay for equal work of the same value.

[18] In the case of *Rugina Jason v. SONARWA Life Insurance Company Plc*, this instant Court analysed the issue related to the enforcement of the principle of equal pay of employees for equal works⁸, this instant Court set the following broad positions:

- The employees performing the same work, with equal knowledge, experience, and skills must be paid the same salary, otherwise, there would be discrimination;
- An employee with knowledge, experience, and skills equal to his/her colleague, who is not paid the same salary as those at the same level, has the right to claim the same pay as his/her colleagues or for a fair salary;
- Although nothing bars an employer from granting a bonus to some employees, if the bonus is included in the salary, it has to be given to all employees;

⁶ That article provides that “Every employer must pay employees equal salary for work of equal value without discrimination of any kind”.

⁷That article provides that "the rights of an employee include the following: 2^o to receive equal salary for works of equal value without discrimination of any kind”.

⁸See Judgment RS/INJUST/RSOC 00001/2022/SC decided by Supreme Court on 08/07/2022, paragraphs 19 and 20.

- An employee who has been promoted but since being promoted has not been paid the same salary as his/her colleagues in the same position were being paid, he/she should be paid the difference of all unpaid salaries;
- The difference in the salaries of employees at the same level is justified when the employer can objectively prove to the Court that the employees who were paid a higher salary have special and particular knowledge that is useful for the work they do, and this is approved by the Court in its discretion.

[19] Regarding the one who must provide evidence when a discrimination claim is filed, the Court finds the general principle mentioned in article 12 of Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure which provides that "the claimant must prove a claim, failing which the respondent wins the case. Likewise, a party who alleges that he/she has been discharged from an obligation established by evidence must justify the cause as a result of which the obligation has been extinguished. Failure to do so, the other party wins the case".

[20] In the case of *Pinkas and Others v. the State of Bosnia and Herzegovina* before the European Court of Human Rights, the claim was based on the fact that the registrars and judges of the State Courts were not provided with allowances for transport, meals, and remoteness from their families. The claim was heard by two different courts. The Court that examined the judges' claim held that they should be awarded the allowances from

before January 2013⁹ and the Court which examined the registrars' claim held that they should be awarded the allowances from January 2013. The European Court of Human Rights found that these employees had not been equally treated and the claim filed based on the same provisions of the law was the discrimination not based on objective and reasonable grounds. The Court declared that if the claimant proves that he/she was not equally treated like others, the respondent is the one who must prove that the unequal treatment is based on objective and reasonable grounds. If the evidence is not produced, the Court would reach no other conclusion than to uphold that the grounds on which these people were discriminated against are not objective nor reasonable.¹⁰

[21] The Court also finds that the Court of Justice of the European Union has found that the failure to provide information

⁹ *"The special feature of the instant case is that the judges and the judicial clerks at the State Court brought a joint civil action relying on the same legal provisions, that the civil courts then severed their case into two cases on the grounds of their status (...) and reached opposite conclusions regarding one of the key legal issues raised in those cases. As a result of that special set of circumstances, all of the judicial clerks at the State Court were granted meal, travel, and family separation allowances in respect of the period after January 2013 only, whereas all of the judges were granted those benefits also for the period before January 2013".* See Judgment *Pinkas and Others v. Bosnia and Herzegovina*, (Application no. 8701/21), 04/10/2022, para 63.

¹⁰ *"...the Court reiterates that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (...). The Government did not offer any justification for this difference in treatment (see paragraph 56 above). The same is true in respect of the domestic courts (...). That being the case, the Court cannot but conclude that this difference in treatment had no objective and reasonable justification."* See Judgment *Pinkas and Others v. Bosnia and Herzegovina*, (Application number. 8701/21), 04/10/2022, para 65.

by a respondent may constitute one of the factors to be taken into account in establishing the facts from which it may be presumed that there has been direct or indirect discrimination. It added that at that time it is the responsibility of the appellate court to take into account all the circumstances of the case before it examines whether there has been real discrimination.¹¹

[22] Regarding the discrimination related to salary, the Court of Cassation in France finds that even though the employee has to prove that he/she is not equally paid like other employees for equal work if the employee proves that the evidence is held by the respondent, he/she may request the Court to order to the respondent to produce it. If the respondent does not produce it, the Court shall hold liable the respondent for such behavior or refusal to provide such evidence to the side of the respondent.¹²

¹¹ “(...) *il ne saurait être exclu qu'un refus de tout accès à l'information de la part d'une partie défenderesse peut constituer l'un des éléments à prendre en compte dans le cadre de l'établissement des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte. Il incombe à la juridiction de renvoi, en prenant en considération toutes les circonstances du litige dont elle est saisie, de vérifier si tel est le cas dans l'affaire au principal.* » See, *Galina Meister contre Speech Design Carrier Systems GmbH*, n° C-415/10, Cour de Justice de l'Union Européenne, 12 janvier 2012, para 47.

¹² “(...) *Mais attendu qu'il appartient au salarié qui invoque une atteinte au principe "à travail égal, salaire égal" de soumettre au juge des éléments de fait susceptibles de caractériser une inégalité de rémunération ; que lorsque le salarié soutient que la preuve de tels faits se trouve entre les mains d'une autre partie, il lui appartient de demander au juge d'en ordonner la production; que ce dernier peut ensuite tirer toute conséquence de droit en cas d'abstention ou de refus de l'autre partie de déférer à une décision ordonnant la production de ces pièces;...*” See Judgment Cour de cassation, civile, Chambre sociale, 12 juin 2013, 11-14.458.

[23] The Court also found that while the employee proves that he/she was paid less than other employees at the same level for equal work, the employer is not limited to stating that the employee was not producing satisfactory results. Instead, the employer must provide evidence proving that the discrimination is based on objective and reasonable grounds that would make the employee's salary different from that of others at the same level¹³. One of the objective and reasonable grounds is that the employee who is being highly paid has a high degree so he/she is more productive at work than the employee who complains.¹⁴

¹³ “*Mais attendu que la cour d'appel, qui a constaté que depuis de nombreuses années le salarié, employé en qualité de câbleur au niveau 2, coefficient 185 de la convention collective, percevait une rémunération inférieure à celles de ses collègues n'ayant pas plus d'ancienneté que lui, occupant strictement le même poste et exerçant les mêmes fonctions, avec les mêmes niveau et coefficient, a retenu que l'employeur qui ne contestait pas cette situation de fait ne fournissait comme seule explication que la prétendue médiocre qualité du travail accompli par l'intéressé ; qu'elle a ainsi fait ressortir, abstraction faite du motif surabondant critiqué par la première branche du moyen, que l'employeur ne rapportait pas la preuve que l'inégalité de traitement dont le salarié a été la victime, reposait sur un critère objectif tenant à la différence du travail fourni ; que le moyen n'est pas fondé ...*” See Judgment Cour de Cassation, Chambre sociale, numero 00-41.63326 novembre 2002. See also Cour de cassation, Chambre sociale, n° 04- 40.169, 25 mai 2005.

¹⁴ “*Mais attendu qu'ayant constaté que Mme X... avait obtenu un BTS "expression visuelle" ayant nécessité deux années d'études et que le salarié auquel elle se comparait était titulaire d'un diplôme d'études supérieures spécialisées en ingénierie multimédia obtenu après cinq années de formation, la cour d'appel a pu en déduire que ces diplômes utiles à l'exercice des fonctions occupées, sanctionnant des formations professionnelles de niveaux et durées inégales, constituaient une raison objective et pertinente justifiant la différence de rémunération ; que le moyen n'est pas fondé...*” See Judgment Cour de cassation, Chambre sociale, numero 08-43.088, 17 mars 2010.

[24] The Court finds that linking the above-mentioned statements with the principle of equal pay of employees for equal work denotes that the employee should prove that he/she performs the same work as others of the same level like him and that the employer does not pay him as he/she pays other employees of the same level. In that case, the employer has the obligation to provide evidence that contradicts the employee's allegations. When the employee claims that the evidence is in the possession of the employer, he/she must request the Court to order him/her to provide it, if he/she fails to do so, the Court will carefully examine the elements of evidence produced by the employee to prevent the discrimination in the labour market.

[25] The Court finds that the evidence produced by Mutware Jean de Dieu to prove the basis of his claim is the letter dated 14/04/2014 appointing Uwantege Yvonne to the position of Cash Management Officer and notifying her that she will be paid 548,160 Frw. On the issue of whether it is the first time that Mutware Jean de Dieu has produced the evidence, and therefore it could not be relied on in examining the injustice he alleges to have suffered, the Court finds that in the case file, RSOC 00468/2017/TGI/NYGE decided on 14/03/2018 by the Intermediate Court of Nyarugenge, the evidence is on number four on the list of other elements of evidence he produced.

[26] The Court finds that GT Bank Rwanda Plc, as a party to the case, was represented, this means that it was aware of such evidence especially that it produced it, so its allegations that Mutware Jean de Dieu could not rely on it to prove his injustice are unfounded because although that evidence has not been included in each Court's file, it is evident that it was produced at the beginning of the trial.

[27] On the issue of whether Mutware Jean de Dieu was in the same position as Uwantege Yvonne, former Cash Management Officer, the Court finds that in the case file, there is a letter dated 04/02/2016, by which GT Bank Rwanda Plc notified Mutware Jean de Dieu that from 05/02/2016 he is appointed to the position of Cash Management Officer. This is also upheld by the employment certificate dated 21/09/2017, which indicates that Mutware Jean de Dieu worked as a Cash Management Officer from 05/02/2016 to 25/06/2017, which means that until 26/06/2017, when MUTWARE Jean de Dieu was appointed to the position of Teller in GT Bank Rwanda Plc, Muhanga Branch, he had been for about seventeen (17) months on the position of Cash Management Officer.

[28] On the issue of whether Mutware Jean de Dieu, for the period he was Cash Management Officer, should have been paid 548,160 Frw as was the case for UWANTEGE Yvonne, the Court finds that the letter dated 04/02/2016 appointing Mutware Jean de Dieu to the position of Cash Management Officer does not mention his salary and grade, as it was the case for Uwantege Yvonne, who was placed at grade 13, and she was paid a gross salary of 548,160 Frw. On 15/06/2016, four months and ten days later, Mutware Jean de Dieu, being in a new position, was notified that he is at the grade of Operation Officer One according to the new job structure in the Bank, but the Bank has not indicated that this position is equivalent to the position of Cash Management Officer he held. However, GT Bank Rwanda Plc alleges that the new grades were effective from 17/12/2014, which means that they were also applied to Uwantege Yvonne from that date until when she left the position of Cash Management Officer, but the Bank does not indicate that Uwantege Yvonne, who was Cash Management Officer was appointed to the grade of Operation

Officer One and given a salary of 331,825 Frw as it was the case for Mutware Jean de Dieu.

[29] Based on the aforementioned explanations, the Court finds that by the time Mutware Jean de Dieu was an employee of GT Bank Rwanda Plc to the position of Cash Management Officer from 04/02/2016 to 26/06/2017, and the employee to that position was paid a gross salary equal to 548,160 Frw, Mutware Jean de Dieu would have been paid a such salary for a period equal to 17 months, so he should be given the difference between the unpaid salary and he was paid the salary equal to 331,825 Frw. However, based on the position set by this instant Court in the case of Niwemugeni Jeannette v. KCB Bank Rwanda Plc, a dismissed employee is not given a gross salary but is given a net salary¹⁵, Mutware Jean de Dieu should be given an unpaid net salary, calculated on the difference of the gross salary calculated as follows: $548,160 \text{ Frw} - 331,825 \text{ Frw} \times 17 \text{ months} = 3,677,695 \text{ Frw}$. This also means that the income tax and social security contributions will be paid by the Employer in accordance with the provisions of the law.

2. Determine whether the notice allowance and the termination benefits awarded to Mutware Jean de Dieu were inadequately calculated

[30] Mutware Jean de Dieu and his legal counsel state that GT Bank Rwanda Plc would have paid him the notice allowance amounting to 331,825 Frw, and the termination benefits equal to his two months' salary, that is $331,825 \text{ Frw} \times 2 = 663,650 \text{ Frw}$, all totaling to 995,475 Frw, but GT Bank paid him 587,803 Frw,

¹⁵ See judgment RS/INJUST/RSOC 00001/2019/SC decided by the Supreme Court on 31/01/2019, paragraph 36.

so he is praying this instant Court to order to it to pay to him the difference amounting to 407,672 Frw.

[31] Counsel Safari Jean Bosco representing GT Bank Rwanda Plc, submits that the document entitled the final pay indicates that Mutware Jean de Dieu was paid one month's notice allowance and two months of termination benefits. He explains that in paying him he was given a net salary, so to claim that he should be paid the notice allowance and the termination benefits of a gross salary is not justified.

DETERMINATION OF THE COURT

[32] Article 12, paragraph one of Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “the claimant must prove a claim, failing which the respondent wins the case”.

[33] The case file contains a document entitled the Final Pay (Notice & Leave Days & Dismissal Allowance) prepared by GT Bank Rwanda Plc on 21/09/2017, which indicates that the gross salary of Mutware Jean de Dieu is 331,825 Frw so that he is awarded 331,825 Frw for the notice allowance and 663,650 Frw for the termination benefits, all amounting to 995,475 Frw. After deducting 30% of taxes, meaning 298,843 Frw, the social security contributions equal 59,928 Frw and 36,034 Frw of the five days of leave which had been granted, the remaining amount is 587,803 Frw.

[34] The Court finds that, based on the position set in the case of Niwemugeni Jeannette v. KCB Bank Ltd mentioned above, the dismissed employee receives the amount of money equal to the

net salary instead of the gross salary¹⁶. This means that the taxes, the social security contributions, or other legal or contractual obligations with the employer must first be deducted from the gross salary, so except for the amount of gross salary which serves for calculation, GT Bank Rwanda Plc did not commit any mistake in paying to Mutware Jean de Dieu the notice allowance and terminal benefits equal to the net salary.

[35] However, the Court finds that in calculating the notice allowance and termination benefits, GT Bank Rwanda Plc based on the gross salary of 331,825 Frw, instead of basing on the gross salary of the employee in the position of Cash Management Officer of 548,160 Frw, so these mistakes must be corrected, the notice allowance and the termination benefits are calculated based on the gross salary equal to 548,160 Frw as explained above, after deducting the taxes and the social security contributions, Mutware Jean de Dieu is awarded a net salary calculated on the difference of the gross salary calculated as follows: $(548,160 \text{ Frw} \times 3) - (331,825 \times 3) = 645,475 \text{ Frw}$.

3. Determine whether the counsel's and procedural fees should be awarded in this instant case

[36] Mutware Jean de Dieu argues that GT Bank Rwanda has dragged him into unnecessary lawsuits, and therefore he is praying this Court to pay 500,000 Frw as counsel's fee in addition to the fees granted by the lower courts.

[37] GT Bank Rwanda Plc submits that Mutware Jean de Dieu filed an unfounded claim because he is requesting what he was

¹⁶ See judgment RS/INJUST/RSOC 00001/2019/SC decided by the Supreme Court on 31/01/2019, paragraph 36.

awarded, and it finds that GT Bank Rwanda Plc should be awarded 1,000,000 Frw as counsel and procedural fees for having been dragged into unnecessary lawsuits.

DETERMINATION OF THE COURT

[38] Article 111 of Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, provides that "the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time as the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted".

[39] The Court finds that the amount of 500,000 Frw for counsel's fee claimed by Mutware Jean de Dieu is founded and reasonable, while all the damages claimed by GT Bank Rwanda Plc are not grounded because it loses the case.

III. DECISION OF THE COURT

[40] Holds that the claim filed by Mutware Jean de Dieu seeking the review of the judgment RSOCA 00033/2019/HC/KIG decided by the High Court on 12/09/2019 is grounded.

[41] Orders to GT Bank Rwanda Plc to pay Mutware Jean de Dieu an unpaid net salary equal to 3,677,695 Frw.

[42] Orders to GT Bank Rwanda Plc to pay to Mutware Jean de Dieu the net salary of notice allowance for one month and the

termination benefits of two months calculated on a gross salary equal to 645,475 Frw.

[43] Orders to GT Bank Rwanda Plc to pay Mutware Jean de Dieu 500,000 Frw for counsel's fee at this instance.

COMMERCIAL CASES

MAFAM LTD v. RWANDA REVENUE AUTHORITY (RRA)

[Rwanda COURT OF APPEAL – RCOMAA 00030/2022/CA
(Ngagi, P.J.,) July 20, 2022]

Commercial law – Registration of business – Transportation business – Transportation business – Registration of a transportation business is different from getting a license to operate a transportation business.

Commercial law – Tax – Value Added Tax (VAT) – Transportation Business – Value Added Tax (VAT) on Transportation – Transportation services provided by licensed person are exempted from Value Added Tax – Law N°40/2016 of 15/10/2016, article 2 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the Value Added Tax as modified and complemented to date which modified article 6.

Facts: Rwanda Revenue Authority conducted an audit on the company MAFAM Ltd for BRALIRWA beverages that it sells to its customers, and imposed a value-added tax amounting to 132,112,680 Frw, including penalties for tax evasion and late payment of tax, based on the fact that for every sale price, MAFAM Ltd used to deduct a certain amount from the invoice, considering it as exempted from VAT because it is related to transportation of the goods that it wholesaled from BRALIRWA, it did not pay VAT for the transportation services which were not exempted from it, without indicating the license for transportation services issued by the competent organ (RURA).

MAFAM Ltd appealed against such tax to the Commissioner General of RRA seeking its removal because it was illegally deducted, it submits that the transportation of goods by road is exempted from VAT, so it should not be imposed VAT because the transportation business it runs is exempted from it, therefore it sued RRA in the Commercial Court requesting the removal of the VAT amounting to 132,112,680 Frw deducted from the transportation service while it was exempted from it.

The same Court declared the claim of MAFAM Ltd unfounded and upheld that the value added tax and penalties amounting to 132,112,680 Frw levied to MAFAM Ltd by RRA were legally imposed, and therefore maintained.

MAFAM Ltd was not satisfied with the court decision and appealed to the Commercial High Court stating that the Court based its decision on the fact that MAFAM Ltd does not have a license for transportation services, which is not the reason which the Commissioner General based his decision, and that it should not have been levied the value added tax for the transportation service it performed because it was exempted from it, so it did not wrongly calculate the tax it should pay, it claimed for different damages.

The Commercial High Court adjudicated the case and declared the appeal of MAFAM Ltd unfounded, and the appealed judgment was sustained.

MAFAM Ltd appealed again to the Court of Appeal, arguing that it should not have imposed the value added tax on the transportation service as it was exempted from it according to the law.

RRA advances that this case is different from the previous cases, in those cases the taxpayers presented the licenses for providing

transportation services issued by RURA. Therefore, due to the fact that MAFAM Ltd does not have a license for transportation services issued by the competent organ, it cannot pretend that it provides transportation services. It further adds that in the previous cases, even though they did not indicate that they provided transportation services, they had the licenses proving that they provided such services, but MAFAM Ltd does not provide evidence proving that it provides transportation services, and it does not have the license issued by RURA to provide transportation services, and he submits that MAFAM Ltd itself admits that it provided unauthorized transportation services, but since 2011 regulations are providing that the transportation service provider must be licensed by RURA, even if the business is registered in RDB, thus the value added tax levied to MAFAM Ltd should be maintained.

Held: 1. With regard to the last tax of 15/10/2016, the Court deems it necessary to determine whether MAFAM Ltd has provided authorized transportation service. The Court finds that the evidence in the case file indicates that MAFAM Ltd had a license dated 16/10/2019, meaning after the imposition of the disputed tax. The Court finds that since MAFAM Ltd fails to prove that after 15/10/2016, it provided transportation services licensed by RURA, the value added tax imposed from 15/10/2016 by the time of application of the Law N°40/2016 of 15/10/2016, article 2 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the Value Added Tax as modified and complemented to date was levied in accordance with the law and must be maintained.

2. The Court also finds baseless the statements of MAFAM Ltd that even after the Law N°40/2016 of 15/10/2016, article 2

modifying and complementing Law n°37/2012 of 09/11/2012 establishing the value added tax as modified and complemented to date was into force, it should pay the value added tax imposed from 15/10/2016 to 19/07/2017, when it registered the transportation business in RDB, because, as explained above, MAFAM Ltd should have the license issued by RURA, therefore the tax levied after 19/07/2017 until it got the license issued by RURA should be imposed, therefore it should also be maintained.

3. Transportation of goods is exempted from value-added tax (VAT) if the service provider is authorized by RURA. Appeal has merits in parts;

The court fees cover the expenses of judicial proceedings.

Statutes and statutory referred to:

Law N°40/2016 of 15/10/2016, article 2 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the Value Added Tax as modified and complemented to date which modified article 6,

Case laws referred to:

Judgment RRA v SODAR LTD; RCOMAA 00034/2020/CA decided by the Court of Appeal on 19/02/2021.

Judgment RRA v SRDS LTD RCOMAA 00001/2022/CA decided by the Court of Appeal on 25/03/2022.

Judgment RRA v SUGIRA LTD ; RCOMAA 00057/2021/CA decided by the Court of Appeal on 25/03/2022

Judgment

I. BACKGROUND OF THE CASE

[1] Rwanda Revenue Authority has conducted an audit of MAFAM Ltd on BRALIRWA beverages that it sells to its customers, and imposed a value added tax amounting to 132,112,680 Frw, including penalties for tax evasion and late payment of tax, based on the fact that for each sale price, MAFAM Ltd used to deduct a certain amount from the invoice, considering it as exempted from VAT because it is related to the transportation of the goods that it wholesaled from BRALIRWA, it does not pay for the transportation service which was not exempted from it, without indicating the license for transportation services issued by the competent organ (RURA).

[2] MAFAM Ltd appealed against that tax to the Commissioner General of RRA seeking its removal because it was illegally imposed, given that the transportation of goods by road is exempted from VAT, based on article 6.5 d) of Law n°37/2012 of 09/11/2012 establishing the value added tax as modified to date, and it has the license to provide transportation services so that it should not be imposed VAT because the transportation service it provides is exempted and it did not get it, even BRALIRWA so proceeds when it supplies beverages to MAFAM Ltd. The Commissioner General decided that the tax imposed on MAFAM Ltd and the penalties for tax evasion as well as late payment of tax amounting to 132,112,680 Frw should be maintained as per the law. MAFAM Ltd was not satisfied with the decision, so it sued RRA in the Commercial Court seeking the removal of the VAT amounting to 132,112,680 Frw imposed for the transportation service which was exempted from it.

[3] In the case RCOM 01431/2020/TC decided by the Commercial Court on 08/12/2020, the same Court ruled that the claim of MAFAM Ltd is unfounded, it declared that the value added tax and penalties attached to it amounting to 132,112,680 Frw imposed to MAFAM Ltd by RRA were legally levied and maintained ; it ordered to MAFAM Ltd to pay to RRA 500,000 Frw as counsel's fees.

[4] MAFAM Ltd was not satisfied with the court decision, and on 07/01/2021, it lodged an appeal to the Commercial High Court stating that the Court based its decision on the fact that MAFAM Ltd does not have a license for providing transportation services, while it was not the reason on which the Commissioner General based in taking the decision, the value added tax would not be imposed for the transportation services which were exempted from it, so it did not wrongly calculate the tax it should pay, it claimed for different damages.

[5] On 24/12/2021, the High Commercial Court ruled in RCOMA 00020/2021/HCC that MAFAM Ltd's appeal is unfounded, it declared that MAFAM Ltd must pay RRA 400,000 Frw as counsel's fees and 100,000 Frw as procedural fees; it ordered that the appealed judgment is sustained, the amount of 40,000 Frw MAFAM Ltd deposited as court fees cover the expenses of judicial proceedings.

[6] MAFAM Ltd appealed again to this instant Court, stating that Value Added Tax should not be deducted from the transportation service as it was exempted from it according to the law, and requesting to be refunded the counsel's fees, its appeal was registered on RCOMAA 00030/2022/CA.

[7] The hearing was held in public on 06/07/2022, MAFAM Ltd was represented by Counsel Twiringiyemungu Joseph, and RRA was represented by Counsel Twahirwa Jean Baptiste.

[8] In general, in the course of the hearing, the debates between the parties were focused on whether the levied value added tax and related penalties amounting to 132,112,680 Frw were legally imposed on MAFAM Ltd.

II. ANALYSIS OF LEGAL ISSUES

1. Determine whether the Value Added Tax charged to MAFAM Ltd by RRA on the transportation service should be removed as it is exempted by the law

[9] The legal counsel of MAFAM Ltd states that when MAFAM Ltd was ordered to pay the imposed Value Added Tax, it appealed to the Commissioner General on the grounds that the transportation of goods by road is exempted from VAT based on article 6.5 d) of Law n°37/2012 of 09/11/2012 establishing the Value Added Tax as modified to date, and MAFAM Ltd has a license for having registered transportation as authorized activity, VAT should not be imposed to MAFAM Ltd which provides exempted transportation service and it did not get it, and even BRALIRWA so proceeds when it supplies beverages to MAFAM Ltd, and that the Rwanda Revenue Authority does not charge VAT to it on the transportation service for which it establishes invoice and it mentions the example on BRALIRWA's invoice.

[10] He submits that the audit covered the period from February to December 2015, 2016, and 2017 and from July to December 2018. He state that from February 2015 to October

2016, at the time the Law was modified, the existing law provided that transportation services were exempted, and the license was not required. He further submits that the license for the transportation service was provided under the Law of 2016. He sustains that MAFAM Ltd registered its activities in RDB on 19/07/2017, and these activities include transportation services, he admits that between the time the Law came into force in 2016 and the time MAFAM Ltd obtained the license to operate the transportation service issued by RDB, that is the only time MAFAM Ltd should be imposed of VAT.

[11] He also submits that the Commissioner General of Rwanda Revenue Authority did not criticize the grounds given by MAFAM Ltd, but he stated that MAFAM Ltd exempted a part of the price of BRALIRWA drinks distributed by MAFAM Ltd. The statements of the Commissioner General were also upheld by the Commercial High Court, where in paragraph 34 of the appealed case, the Court decided that : « The transportation it alleges that it is exempted is not the one from which it gets money, rather it gets it from the goods and then reduces its cost and considers it as transportation ». He explains that this is not true, because MAFAM Ltd delivers BRALIRWA drinks to the designated areas using its vehicles meant for that service, as it could use the vehicles of other people who perform the same work, and the services they provide are exempted. It sells beverages separately, and it separately charges for the transportation service, this service is exempted from Value Added Tax and the exemption is established and removed by law, as provided by article 164 of the Constitution of the Republic of Rwanda. He sustains that Rwanda Revenue Authority has not denied that MAFAM Ltd does not provide transportation service or is not authorized to provide it, and the law provides that it is

exempted from value added tax, therefore there is no reason not to recognize such exemption when its basis is undoubtful in any way.

[12] He explains that separately establishing an invoice for the transportation service and the cost of the drinks does not violate the law and that it is not a particular case for MAFAM Ltd, because even BRALIRWA which sells beverages does not deduct VAT on the transportation service provided to MAFAM Ltd concerning the transportation of beverages to its main store. Therefore, the tax fairness principle must be applied because all taxpayers are equal before the law.

[13] He also explains that in the defense submissions of RRA, it avers that MAFAM Ltd deducts 300 Frw from the cost of each rack it considers as transportation cost, the Court admits it as such, but it did the calculations based on one invoice produced as evidence in the Court and other invoices were prepared in the same way, it finds that RRA's statements that it deducts 300 Frw from each rack are not true, but it disregards such fact and confirms that MAFAM Ltd deducts 300 Frw to each rack, while it is not aware of the remaining difference between the prices of BRALIRWA and MAFAM.

[14] He states that the Court decided as follows : "What is evident is that on the invoice presented above, it gets the price agreed with BRALIRWA and deducts 300 Frw allegedly for transportation and unjustified amount of 100 Frw and all fees are paid by the customer. This is evidenced by the fact that Mutzig (33 cl) was offered at 9,910 Frw whereas it is 10,310 Frw, TURBO (50 cl) at 9,600 Frw whereas it is 10,000 Frw, TURBO (33 cl) at 7,600 Frw whereas it is 8,000 Frw, AMSTEL (33 cl) for 11,700 Frw whereas it is 12,1000 Frw. He submits that this

indicates that the money paid by the customer was for the cost of the products of BRALIRWA, but the Value Added Tax was not fully deducted from all costs, because MAFAM Ltd deducted 300 Frw allegedly for transportation and unjustified 100 Frw » as indicated in paragraph 33 of the appealed judgment.

[15] He explains that the Court intended to support the statements of RRA while it notes that its statements that MAFAM Ltd always deducts 300 Frw for each rack are not true, without explaining the difference between the retail price of MAFAM Ltd and the price fixed by BRALIRWA as asserted by the Court, rather it avers that « another amount of 100 Frw is not justified", it disregarded the ground of MAFAM Ltd which pleaded that it is not a principle to comply with the prices set by BRALIRWA, rather it was recommended retail price, while the article 1 of the contract they concluded stipulated that "the distributor (i.e. MAFAM Ltd) will distribute beverages in compliance with the laws of Rwanda (...) including the competition law", and that the law provides that the price is freely set by the buyer and seller, and it is often set by the seller, which means that no one orders to anyone to sell at a given price. He avers that it is not prohibited that MAFAM Ltd would reduce the prices for those who buy the drinks and transport them but it deducts the transportation price because in general such practice is not prohibited by the contract concluded with BRALIRWA and the business laws.

[16] He further submits that the Commercial High Court disregarded the contradictions indicated by the RRA on that issue, it regularly conducted the tax audit for MAFAM Ltd, and it found that the method used to separate the transportation service from the drink sale complies with the provisions of the law, as indicated by the audit carried out in 2014 and 2018. It

conducts an audit to correct and educate, when it finds that the procedure used by the taxpayer to declare the tax complies with the provisions of the law, it appreciates him for that and requests him to keep it up. Therefore, the fact that during the audit, Rwanda Revenue Authority found that MAFAM Ltd declares the tax according to the law, and nothing could prevent it from doing so, rather it acts contrary to reality by changing what it already knows and it relies on another reason contrary to the reality while it had appreciated the procedure used to declare VAT on its business.

[17] He also adds that in paragraph 35 of the judgment RCOMA 00020/2021/HCC, the Court decided that " the claimed tax should not be removed due to the fact that it is calculated in a way that does not correspond to the transportation service, rather it is to take the cost paid for the product and reduce a part considered as transportation, which is inconsistent with the provisions of the law, rather it is a way of decreasing the VAT paid by its customers which it should pay". He also submits that the Regulations of RURA on which RRA is based should not be considered because they come into force to complement the law, but they cannot stipulate what the law does not provide. He concludes by praying for the Court to order that the tax levied to MAFAM Ltd for the exempted transportation service be removed.

[18] When he was asked about the particularity of this case compared to previous cases decided by the courts, including this instant Court regarding the value added tax imposed on the distributors of BRALIRWA beverages, he replies that there is no particularity on this point because the underlying issue is similar

with the issues that have been analysed by this instant Court in the cases uploaded in the IECMS.

[19] The legal counsel of RRA advances that this case is different from the previous cases, in those cases the taxpayers presented the licenses allowing them to provide transportation services issued by RURA. Therefore, the fact that MAFAM Ltd does not have the license to provide transportation services issued by the competent organ, it cannot pretend that it provides transportation services. He further adds that in the previous cases, although they did not prove that they provided transportation services, they had licenses proving that they provided transportation services, but MAFAM Ltd did not provide evidence to prove that it performed transportation services, and it did not have the license issued by RURA for providing transportation services.

[20] He explains that article 2 of Law N°40/2016 of 15/10/2016 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the value added tax, provides that transportation services exempted are transportation services performed by licensed persons; MAFAM Ltd does not provide the license issued by the competent organ (RURA) to provide transportation services, and even if it has provided the transportation services not exempted from that tax, MAFAM Ltd presents a license issued by RURA which is valid from 16/10/2019 to 16/10/2020 and the audit covered the years 2015, 2016, 2017 and 2018; which means that the license presented cannot be referred to in this instant case, the Commercial Court relied on those facts for upholding that MAFAM Ltd made mistakes so that it cannot be exempted from VAT.

[21] He further adds that MAFAM Ltd itself admits to having performed unauthorized transportation service, however, since 2011 there are regulations stating that the transportation service provider must be licensed by RURA even if the business is registered in RDB so that the Value Added Tax that was charged to MAFAM Ltd should be maintained.

DETERMINATION OF THE COURT

[22] Article 6,5°, d, of the Law n0 37/2012 of 09/11/2012 establishing the value added tax stipulates that the transport of goods by road is exempted from value added tax.

[23] Article 2 of Law n0 40/2016 of 15/10/2016 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the value added tax modifying article 6 mentioned above provides that transportation services by licensed persons are exempted from VAT.

[24] The analysis of the aforementioned articles proves that article 6.5°, d, of Law n0 37/2012 of 09/11/2012 establishing the value added tax provided for the principle that the transportation service is exempted from the value added tax. It means that the person who provided the transportation service was exempted from the value added tax. This article was amended in 2016 by adding the condition required for the transportation service to be exempted from the value added tax, the person who performs such service must be licensed by the competent organ. In other words, it means that before the modification of article 6, 5°, d, of Law n0 37/2012 of 09/11/2012 establishing the value added tax, the requirement was to prove that a person or company provides the transportation services without prior authorisation.

[25] In this instant case, it must be examined whether MAFAM Ltd performed the transportation services, whether during that period it provides such services, it was exempted from the value added tax by taking into account the above-mentioned legal provisions and the period for which the disputed tax was charged.

[26] The case file contains the wholesale agreement concluded between MAFAM Ltd and BRALIRWA on 01/02/2015 as well as the invoice dated 25/02/2016 which indicates that MAFAM Ltd has provided transportation services and the transportation fees exempted from the value added tax as alleged by MAFAM Ltd.

[27] On the issue of whether MAFAM Ltd transported BRALIRWA drinks, the Court, basing on the elements of evidence above produced, finds that there is no doubt that MAFAM Ltd transported BRALIRWA drinks. Basing on article 6.5, d, of Law n^o 37/2012 of 09/11/2012 establishing the value added tax, as it was enforced before being modified by article 2 of Law n^o 40/2016 of 15/10/2016 modifying and complementing Law n^o 37/2012 of 09/11/2012 establishing the value added tax, such article provides that the transport of goods by road was exempted from the value added tax, and MAFAM Ltd performed such transportation service as proved by the contract concluded with BRALIRWA and the invoice presented, it finds that MAFAM Ltd was exempted from the value added tax that was imposed before 15/10/2016, because it is the time the new law adds that the transportation service provider must be licensed.

[28] The Court finds unfounded the statements of RRA that Regulations of RURA of 2011 required that the transportation service provider has to be licensed so that they should be

complied with, and the tax imposed to MAFAM Ltd before 15/10/2016 was consistent with the law, because even if these Regulations came into force before the Law n°37/2012 of 09/11/2012 establishing the value added tax which provided that the transportation service is exempted without any other condition, the regulations do not contradict the law, but instead their purpose is to enforce the law and make it more clear¹.

[29] With regard to the tax imposed after 15/10/2016, the Court finds that it is necessary to determine whether MAFAM Ltd performed licensed transportation services. The Court finds that the only evidence in the case file proving that MAFAM Ltd was licensed is dated on 16/10/2019² which means after the imposition of the disputed tax. The Court finds that since MAFAM Ltd fails to prove that after 15/10/2016, it provided the transportation services with the license issued by RURA, the value added tax was charged from 15/10/2016, when Law N°40/2016 of 15/10/2016 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the value added tax came into force, it was levied in accordance with the law, and must be maintained.

[30] The Court finds baseless the statements of the counsel for MAFAM Ltd that it was granted the license for transportation services issued by RDB, because on 19/07/2017 it registered in RDB its activities including transportation services, because the registration of a business which includes transport is different from being granted a license to provide transportation services.

¹ See judgment RCOMAA 00034/2020/CA decided on 19/02/2021, RRA v. SODAR Ltd.

² Authorization for transport of goods) issued by RURA valid from 16/10/2019 until 16/10/2020 on vehicle RAC 765 I.

The Court finds that, as it has been upheld in other cases decided by this instant Court³, RDB does not grant a license to provide transport service, but this license is issued by RURA, which means that MAFAM Ltd performed transport service without license, therefore, it should be imposed such tax from 15/10/2016.

[31] The Court also finds unfounded the statements of MAFAM Ltd that even after the enactment of the Law N°40/2016 of 15/10/2016 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the value added tax, the tax it should pay is the tax imposed between 15/10/2016 and 19/07/2017, when it registered in RDB the transport activities, because as explained above, MAFAM Ltd should have been licensed by RURA, so the tax which was imposed after 19/07/2017 until it was licensed by RURA, had to be imposed and is maintained.

[32] Regarding the cross-appeal filed by RRA to determine whether MAFAM Ltd presented the license to provide the transportation service issued by RURA, and the period concerned with the VAT exemption in accordance with Law N°40/2016 of 15/10/2016 modifying and complementing Law n°37/2012 of 09/11/2012 establishing the value added tax, the Court finds that it has been examined in the appeal of MAFAM Ltd which was analysed.

³ See judgment RCOMAA 00001/2022/CA, decided on 25/03/2022, RRA v. SRDS Ltd; judgment RCOMAA 00057/2021/CA decided on 25/03/2022, RRA v. SUGIRA Ltd

2. Determine whether the court fees and counsel's fees claimed in this instant case are founded

[33] Basing on the Regulation fixing the scale of fees for Advocates, the legal counsel of MAFAM Ltd requests the Court to order to RRA to pay to MAFAM Ltd 2,000,000 Frw as counsel's fees.

[34] The legal counsel of RRA pleads about the counsel's fees claimed by MAFAM Ltd and states that it should not be awarded such amount because it dragged itself into unnecessary lawsuits, rather RRA deserves them. Basing on the provisions of Article 111 of Law n0 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, he requests the Court of Appeal to order to MAFAM Ltd to award to RRA 2,000,000 Frw as counsel's fees and procedural fees from the beginning, for having been dragged into unnecessary lawsuits.

[35] The legal counsel of MAFAM Ltd pleads about the amount of counsel's fees claimed by RRA and sbmits that they are unfounded, because it is the result of the case proceedings, and the Court awards them to a truthful party.

DETERMINATION OF THE COURT

[36] The Court finds that the counsel's and procedural fees claimed in this cae should not be awarded because it is evident that there is the value added tax imposed to MAFAM Ltd according to the law but there is also the exempted value added tax imposed to MAFAM Ltd by RRA.

III. DECISION OF THE COURT

[37] Declares that the appeal lodged by MAFAM Ltd is founded in parts.

[38] Declares that the judgment RCOMA 00020/2021/HCC decided by the Commercial High Court on 24/12/2021 is changed in parts.

[39] Declares that MAFAM Ltd is exempted from the value added tax (VAT) levied from February 2015 to 15/10/2016.

[40] Declares that the value added tax (VAT) imposed to MAFAM Ltd from 15/10/2016 was imposed in accordance with the law.

[41] Orders to MAFAM to pay the value added tax (VAT) imposed from 15/10/2016, because it was levied in accordance with the law.

[42] Orders that the court fees cover the expenses of judicial proceedings.

**NSHILI KIVU TEA FACTORY LTD
(NKTF LTD) Et al v KIGALI LAW
CHAMBERS (KLC)**

[Rwanda COURT OF APPEAL - RCOMAA 00003/2022/CA
(Rukundakuvuga, PJ, Kanyange and Ngagi, J.) 17 June 2022]

Commercial law – Advocate's profession–Professional fees – Professional fee is any remuneration based on a contract between an advocate and a client to assist the latter in his or her profession as an Advocate – Regulation fixing the scale of fees for advocates, article 40.

Commercial law – Professional fees – Disputes over professional fees – Claim relating to professional fees – Mediation phase is conducted in the Bar Association – If the parties in disputes over professional fee fail to reach an agreement by resorting to courts, what was done in the mediation phase in the Bar Association is considered as null and cannot affect the claim filed to the court, except to ensure whether that procedure was followed or not. Regulation fixing the scale of fees for Advocates, article 40.

Commercial law – Contract – Implicit termination of the contract – For contracts which are performed in installments, if the performance in installment is due and is not paid after a reasonable time, in which the creditor can wait for the debtor to voluntarily pay elapses, and the creditor does not follow up with the payment, it is deemed that the creditor has implicitly known that the debtor has relieved himself or herself from obligations.

Commercial law – Companies–Functioning of companies – Indoor management rule – Contract made by a company representative is binding to the contracting party, irrespective of the mistakes she or he has made in the management of the company.

Facts: KIGALI LAW CHAMBERS Ltd (KLC Ltd was hired as legal counsel of NSHILI KIVU TEA FACTORY Ltd (NKTF Ltd) and NSHILI KIVU PLANTATION Ltd (NKTP) for a monthly professional fee of 200,000 Frw and they paid the rental fee for the office of KLC Ltd. On 01/02/2018, it entered into a new contract for two years with Nicholas WATSON who was the Chairperson of the Board of Directors; they agreed that he would be paid 4,000 USD per month within a period of two years from 01/01/2019. The meeting of the new Board of Directors of those companies took various decisions, including the suspension of the contract signed by KLC Ltd but it did not notify it of the contract suspension. The Managing Director of KLC Ltd wrote a letter he has considered as a final notice requesting the payment. No reply was provided to that letter, thus KLC Ltd filed a claim to the Commercial Court which held that the claim is not admissible because KLC Ltd did not firstly seize the Bar Association.

KLC Ltd wrote a letter to the President of the Bar Association requesting him to settle the issue but it failed to reach the parties' agreement. It again filed a claim to the Commercial Court which held that the claim lodged by KIGALI LAW CHAMBERS Ltd has merit, it awarded it 96,000 USD, 1,000,000 Frw for representation fee, 100,000 Frw of procedural fee and 20,000 Frw of court fee. NKTF Ltd and NKTP Ltd were dissatisfied with the court ruling and appealed to the Commercial High

Court and the Court held that the appealed judgment is sustained. NKTF Ltd and NKTP appealed to the Court of Appeal.

Held:1. Professional fee is any remuneration based on a contract between an advocate and a client to assist the latter in his or her profession as an Advocate.

2. In case the parties to the disputes over professional fees fail to reach an agreement by resorting to courts, what was done in the mediation phase in the Bar Association is considered null and cannot affect the claim filed to the court, except ensure whether that procedure was followed or not.

3. Contract made by a company representative is binding to the contracting party, irrespective of the mistakes she or he has made in the management of the company.

4. For contracts that are performed in installments, if the performance in installments is due and is not paid after a reasonable time, in which the creditor can wait for the debtor to voluntarily pay elapses, and the creditor does not follow up with the payment, it is deemed that the creditor has implicitly known that the debtor has relieved himself or herself from obligations.

The appeal has merit on some issues.

The cross appeal lacks merit.

The ruling of the appealed judgment changes only with regard to the dollars to be paid by the appellants to the respondent.

The appellants should jointly pay the respondent eight thousand United States Dollars (8.000 USD).

The deposited court fees cover the expenses of the judicial proceedings.

Statutes and statutory referred to:

Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, articles 27 and 64

Law n° 17/2018 of 13/04/2018 governing companies, articles 142 and 151

Law n° 45/2011 of 25/11/2011 governing contracts, articles 88 and 89.

Regulation n° 01/2014 fixing the scale of fees for advocates, articles 2 and 40.

Cases referred to:

Judgment N° RS/INJUST/RCOM 00004/2020/SC; NEW KIGALI BUSINESS SERVICES Ltd v KASESE DISTILLERS Ltd, decided by the Supreme Court on 19/11/2021.

Authors referred to:

JT Pretorius; PA Delpot, Michelle Havenga&Maria Vermaas, South Africa, Company Law through cases, JUTA&CO, Ltd, 6th ed.1999, p.346.

Véronique Wester-Ouisse, ``Le préjudice moral des personnes morales: Quand ``la perversion de la cité commence par la fraude des mots``,JCP,G n° 39,24 Septembre 2012.

Judgment

I. BACKGROUND OF THE CASE

[1] KIGALI LAW CHAMBERS Ltd is a law firm that counsels and represents the litigants before the courts and it is managed by Counsel Bandora Alfred. In 2014, it entered into a fixed term contract which was subject to renewal, with NSHILI KIVU TEA FACTORY Ltd (NKTF Ltd) and NSHILI KIVU TEA PLANTATION Ltd (NKTP Ltd) providing legal aid and being its secretary for a fee of 200,000 Frw as well as paying the rental fee for the office of KIGALI LAW CHAMBERS Ltd. On 01/02/2018, the contract was modified, KIGALI LAW CHAMBERS Ltd (KLC Ltd) signed a contract with Nicholas WATSON, the Chairperson of the Board of Directors of NKTF Ltd and NKTP Ltd, at a monthly fee of 4,000 USD. On 01/12/2018, due to the fact that Nicholas WATSON was rarely available, he signed another two-year contract with KLC Ltd which would be effective from 01/01/2019 to December 2020.

[2] On 19/01/2019, it was held a meeting of the Board of Directors of NKTF Ltd attended by MURENZI Jean and BANGANINKA Jacqueline but Nicholas WATSON was absent, the secretary was Counsel GASHAGAZA Philbert and it decided on the immediate suspension of the payment made to Counsel Bandora Alfred on ground that he was not appointed by any company organ and on the recovery of 4,000 USD unduly paid to him. On 18/06/2019, KLC Ltd represented by its Managing Director Counsel BANDORA Alfred wrote a letter to the President of the Board of Directors of NKTF Ltd and NKTP Ltd, notifying him that he gave him the final notice for the payment provided under the contract signed on 01/12/2018.

After getting no reply, KLC Ltd sued NKTF Ltd and NKTP Ltd in the Commercial Court claiming that they have breached the contract and requesting to be paid the agreed amount of 96.000 USD and various damages.

[3] In the judgment RCOM 01870/2019/TC, rendered by the Commercial Court on 27/12/2019, basing on article 40, paragraph 1 of Regulation n° 01/2014 fixing the scale of fees for advocates, the Court dismissed the claim of KLC Ltd on the ground that it did not firstly refer it to the President of the Bar Association. On 09/01/2020, KLC Ltd through its Managing Director Counsel BANDORA Alfred wrote a letter to the President of the Rwanda Bar Association requesting him to settle the dispute it has with NKTF Ltd and NKTP Ltd. On 28/07/2020, after examining the allegations of both parties, the President of the Bar Association wrote a letter to Counsel BANDORA Alfred allowing him to resort to other organs. On 05/08/2020, KLC Ltd sued NKTF Ltd and NKTP Ltd in the Commercial Court stating that they failed to respect the contract because the works to be performed by KLC Ltd were assigned to others without the termination of the contract they concluded, it claimed 96,000 USD covering the tasks performed during the 24 months as indicated in the contract they concluded, it requested to be granted various damages.

[4] The legal counsel to NKTF Ltd and NKTP Ltd in their defence on the case issues stated that the request of KLC Ltd cannot be considered as based because the contract on which it relies was not legally made since the former President of the Board of Directors, Nicholas WATSON took a unilateral decision to increase the professional fee from 200,000 Frw to 4,000 USD without the approval of the Board of Directors

members and therefore KLC Ltd does not deserve the claimed damages.

[5] Before the hearing of the case on the merits, the legal counsel to NKTF Ltd and NKTP Ltd raised the objection on the claim of inadmissibility based on the lack of the jurisdiction of the Commercial Court to hear the case because it is not commercial and another objection related to the fact that the application was not addressed to the President of the Bar Association within the time limits as per the laws. On 08/12/2020, in the interlocutory judgment, the Commercial Court ruled that the objections raised by NKTF Ltd and NKTP Ltd are baseless on the ground that the contract was made for the business interests of NKTF Ltd and NKTP Ltd and the amount of money to be paid is justified so that there is no dispute over its determination.

[6] During the hearing of 29/12/2020, the legal counsel to NKTF Ltd and NKTP Ltd requested the Court to suspend the hearing on the ground that there is an ongoing criminal action against Counsel Bandora Alfred, Nicholas WATSON, and KLC Ltd and they also requested for the intervention of Nicholas WATSON, the former Chairperson of the Board of Directors of NKTF Ltd and NKTP Ltd together with Counsel Bandora Alfred, the Commercial Court decided for the continuation of the case hearing, because there was no criminal action before the Court, it found that Nicholas WATSON and Counsel BANDORA Alfred should not intervene because they could not interfere with the judgment ruling.

[7] In the judgment RCOM 01250/2020/TC of 18/02/2021 rendered by the Commercial Court on 18/02/2021, the same Court held that the claim filed by KIGALI LAW CHAMBERS

Ltd has merit and that NKTF Ltd and NKTP Ltd breached the contract they concluded with KLC Ltd and ordered them to pay to KLC Ltd 96,000 USD, 1,000,000 Frw of advocate fee, 100,000 Frw of procedural fee and 20,000 Frw of court fee and ordered that there will be no provisional judgment execution.

[8] NKTF Ltd and NKTP Ltd were dissatisfied with the ruling of the judgment and lodged an appeal to the Commercial High Court and requested the Court to examine whether that claim should have been admitted without first referring to the President of the Bar Association within two months (2), whether the Commercial Court had the jurisdiction to hear the case, whether the Commercial Court ruled regardless of the Articles of association of the sued companies, and whether Nicholas WATSON and Counsel BANDORA Alfred should intervene on the first level. KLC Ltd in its defence stated that the appeal of NKTF Ltd and NKTP Ltd is groundless, it filed a cross appeal requesting the Court to examine whether the provisional judgment execution on 96,000 USD should be ordered and it also requested moral damages, procedural fee, and lawyer's fee.

[9] On 29/09/2021, the Commercial High Court delivered the judgment RCOMA 00208/2021/HCC and held that the appeal of NKTP Ltd and NKTP Ltd lacks merit as well as the cross appeal of KLC Ltd and that the judgment RCOM 01250/2020/TC rendered by the Commercial Court on 18/02/2021 is sustained and it ordered that the court fee is borne to the Public Treasury.

[10] NKTF Ltd and NKTP Ltd appealed to the instant Court, stating that the subject matter of KIGALI LAW CHAMBERS Ltd was about the advocate fee and therefore, it should first have referred the claim to the President of the Bar Association within

two months (2) starting from when disputes arose as per article 40 of Regulation fixing the scale of fees for advocates and that the contract of 01/2018 should not serve as the basis since it was not approved by the Board of Directors as it is the governing organ of those companies, their appeal was registered on case n° RCOMAA 00003/2022/CA.

[11] The hearing was held in public on 04/05/2022, NSHILI KIVU TEA PLANTATION Ltd & NSHILI KIVU TEA FACTORY Ltd were represented by Counsel NYILIDANDI Assiel and Counsel HABINEZA Gasore Gilbert, while KIGALI LAW CHAMBERS Ltd was represented by Counsel BANDORA Alfred.

[12] Generally, in the course of the hearing, the debates of both parties were focused on the admissibility of KLC Ltd's claim in the Commercial Court, NKTF Ltd and NKTP Ltd sustain that it should not have been admitted since it did not comply with the procedure provided under article 40 of Regulation fixing the scale of fees for advocates which should firstly be followed in the Bar Association prior to filing a claim of this nature, and the Commercial High Court decided that KLC Ltd should be paid the claimed amount of money basing on the contract of 01/12/2018 made by an incompetent person. KLC Ltd contended that such allegations are baseless, it requested to uphold the decision of the judgment N° RCOMA 00208/2021/HCC delivered by the Commercial High Court. Both parties requested for procedural fees and various damages.

[13] Basing on those debates, the Court that the following issues shall be analysed:

- a. Determine whether the issue between NSHILI KIVU TEA PLANTATION Ltd and NSHILI KIVU TEA FACTORY Ltd and KIGALI LAW CHAMBERS Ltd is related to the provisions of article 40 of Regulation fixing the scale of fees for advocates.
- b. Determine whether the Commercial High Court erred by basing on the contract of 01/12/2018.
- c. Issues related to damages and procedural fees.

II. ANALYSIS OF LEGAL ISSUES OF THE CASE

1. Determine whether the issue between NSHILI KIVU TEA PLANTATION Ltd and NSHILI KIVU TEA FACTORY Ltd and KIGALI LAW CHAMBERS Ltd is related to the provisions of article 40 of Regulation fixing the scale of fees for advocates.

[14] The legal counsel for NKTF Ltd and NKTP Ltd sustain that, in paragraph 16 of the appealed judgment, the Commercial High Court held that any case arising from the issue of collaboration because KLC Ltd stated that the works which it performed were assigned to others without prior termination of the contract and there was no law which was violated by the fact that the claim was brought before the Court regardless of the time limit provided under article 40 of Regulation fixing the scale of fees for advocates, and the Court so proceeded without considering that the subject matter was the breach of contract and the payment of a professional fee amounting to 96,000 USD, thus such amount should be considered as lawyer's fee.

[15] They explain that KLC Ltd did not comply with the time limit for referring the claim to the President of the Rwanda Bar Association because the last letter dated 18/06/2019 of KLC Ltd to NKTP Ltd and NKTF Ltd would have been the starting point to calculate the time limit to refer the issue to the President of Rwanda Bar Association. They elucidate that KLC Ltd, instead of addressing the disputes to the President of the Bar, filed a claim in the Commercial Court in the case RCOM 01870/2019/TC rendered on 27/12/2019, and the Court dismissed the claim because it did not comply with the procedure provided under article 40 of Regulation fixing the scale of fees for advocates; on 09/01/2020, KLC Ltd has referred the issue to the President of Rwanda Bar Association but the agreement was not reached, therefore the President of the Bar Association authorized it to resort to other organs. They therefore state that in consideration of the transmission date of the last letter requesting for the payment and the date of application to the President of Rwanda Bar Association, it is evident that the period of 2 months provided under article 40 of the above mentioned Regulation was not complied with.

[16] The legal counsel for KLC Ltd in his defence maintains that the issue between KLC Ltd with NKTP Ltd and NKTF Ltd is not related to article 40 of the Regulation fixing the scale of fees for advocates because the subject matter is the non-performance and the breach of the contract and there are no disputes about the professional fee since it was agreed on by both parties in this contract and the two Courts so held. He elucidates that in paragraph 14 of the judgment RCOM 01250/2020/TC, the Commercial Court motivated why the raised objection is baseless because there were no disputes as to the payment of a professional fee amounting to 96,000 USD since the subject

matter was about the failure to perform and the breach of the service contract KLC Ltd had with NKTP Ltd and NKTF Ltd, this was upheld by the Commercial High Court in paragraph 16 of the judgment RCOMA 00208/2021/HCC because, on basis of its analysis, the Court held that the subject matter was related to the non-performance of the contract governing the collaboration between the parties to it and which was not terminated. Therefore, article 40 of the Regulation is under no circumstances related to the case under litigation because the professional fee claimed is not disputable.

[17] He also states that the fact that KLC Ltd has referred the issue to the President of the Bar Association was in the context of enforcing the Court decision in the judgment RCOM 01870/2019/TC, but they disagreed on that decision since they indicated that the issue is not related to the article 40 of Regulation fixing the scale of fees for advocates, the same was upheld by the Commercial High Court in the appealed judgment. He also sustains that the Commercial Court has to examine whether the period of two months provided under the Regulation fixing the scale of fees for advocates is of public order so that the contract non-performance could lead to the inadmissibility of the claim before the Court. He concludes by requesting the Court to dismiss this objection as the lower courts have so upheld.

DETERMINATION OF THE COURT

[18] As above explained, the litigants request the Court to determine at this ground of appeal whether the issue between KLC Ltd and NKTF Ltd, and NKTP Ltd is related to article 40 of the Regulation fixing the scale of fees for advocates. The

Court recalls that article 40 concerns two issues namely: referring the disputes over the professional fees for advocates to the President of the Bar Association and addressing it within two months computed from when the disputes arose.

a. Referring the disputes over the professional fees for advocates to the President of the Bar Association

[19] Article 64, paragraph 2 of the Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, stipulates that “*disagreements concerning the payment of fees shall be referred to the President of the Bar Association for mediating the two parties*”.

[20] Article 27 (3) of Law n° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning, provides that “*the Council of the Bar is responsible for putting in place regulations meant for the promotion of advocates ‘profession’.*”

[21] Article 40 (1) of the Regulation fixing the scale of fees for advocates explains how the fees related disputes are solved in the following words: "All disputes relating to the fixing or payment of fees shall be addressed to the President of the Bar, within two months from the day on which the dispute arose. The complaint shall be filed by any interested party, whether at the initiative of the client who disputes all or part of the fees that are claimed, or the advocates who seek the payment of his or her fee note. The letter of complaint should be accompanied by supporting documents". Article 2 (1) of the same Regulation defines professional fee as follows: “Professional fee is remuneration or compensation due to the Advocate for the

material, intellectual and administrative works he/she performs, whether for consultation, examining documents, meetings, proceedings (including waiting and travel time), notices, telephone interviews, drafting correspondence and pleadings, assistance and pleadings, provision of advice, the time of hearings, monitoring of enforcement of judgments and other services, including the administrative handling of the file". Article 2 (2) explains how the permanent agreement between an Advocate and a client should be understood: "a contract between an Advocate and a client in which the latter undertakes to assign to the Advocate all or part of his/her legal cases and pay him/her, usually on a monthly basis, a fixed and unchanging fee, regardless of the importance of the litigation, or a fixed fee plus a variable amount, depending on the services performed, the results or any other basis agreed by the parties".

[22] These articles denote that a professional fee is a cost that a client gives to an advocate in compensation for the different works he/she has performed for the client and that remuneration may be given once or monthly depending on the contract between an Advocate and his/her client, and all disputes related to the fixing or payment should first be referred to the President of the Bar Association. In other words, it should be understood that any fee based on a contract between an Advocate and a client to assist him/her in his or her profession as an Advocate, is considered as remuneration concerned by this article.

[23] The decision of the appealed judgment RCOMA 00208/2021/HCC indicates that the issue of this case arises from the collaboration because KLC Ltd states that the works it was performing were assigned to others without prior termination of the contract and for which it seeks damages, and as the

Commercial Court has upheld in the judgment RCOM 0187/2019/TC, it is out of the scope of article 40 of Regulation fixing the scale of fees for Advocates, therefore there was no violation of laws in filing the claim to the Court without complying with the time limit provided under article 40 of Regulation fixing the scale of fees for Advocates.

[24] The case file contains the contract signed on 01/12/2018 between KLC Ltd represented by Counsel BANDORA Alfred and Nicholas WATSON, the Chairperson of the Board of Directors of NKTP Ltd and NKTF Ltd. The contract indicates different services KLC Ltd would deliver as Advocate, including the provision of legal advice, drafting commercial contracts and other necessary documents, and representing NKTF Ltd and NKTF Ltd before courts, both companies committed themselves to pay KLC Ltd 4,000 USD per month.

[25] The case file contains also the judgment RCOM 01870/2019/TC rendered by the Commercial Court on 27/12/2019, in which KLC Ltd sued NKTF Ltd and NKTP Ltd, and the subject matter was: "*Breach of service contract and requesting of moral damages of 20,000USD- Ordering to the respondent to pay the 24 month agreed amount of 96,000 USD- Ordering to the respondent to pay damages*". Basing on article 64, paragraph 2 of Law N° 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organization and functioning and article 40, paragraph 1 of Regulation fixing the scale of fees for Advocates, the Commercial Court has dismissed the claim on ground that it did not firstly refer it to the President of the Bar Association.

[26] The case file contains the letter dated 18/06/2019 written by the Managing Director of KLC Ltd, Counsel BANDORA

Alfred to the Chairperson of the Board of Directors of NKTP Ltd and NKTF Ltd for notifying him as the last notice to make payment as provided under the contract they jointly signed on 01/12/2018. The case file contains the letter of 09/01/2020 written on behalf of KLC Ltd by Counsel BANDORA Alfred to the President of the Bar Association requesting him to address the issue between KLC Ltd and NKTF Ltd and NKTP Ltd relating to the breach of the contract by those companies. It contains also the letter of 28/07/2020 written by the President of the Bar Association to Counsel BANDORA Alfred allowing him to resort to other organs because the mediation was not successful.

[27] The Court finds ungrounded the ruling of the Commercial High Court which held that the contract between KLC Ltd and NKTF Ltd and NKTP Ltd is ordinary, without disputes, therefore it is not in the scope of article 40, paragraph 1 of Regulation N° 01/2014 above mentioned due to the following reasons:

- a. As explained in the previous paragraphs, KLC Ltd concluded the contract with NKTP Ltd and NKTF Ltd to provide the services above mentioned, and those companies were committed to paying it a monthly remuneration of 4,000 USD, later they failed to agree on the payment of the mentioned remuneration, as it was especially explained in paragraph 23 of the judgment, any remuneration based on the contract between an advocate and a client to assist the latter in his or her profession as an advocate, that contract in question is based on the remuneration stipulated by this article.

b. As explained above, there is a judgment RCOM 01870/2019/TC rendered on 27/12/2019 by the Commercial Court which held that the claim of KLC Ltd would firstly be referred to the President of the Bar Association and that judgment was not appealed. Due to the fact that KLC Ltd represented by Counsel BANDORA Alfred complied with the decision of that judgment by referring the disputes to the President of the Bar Association on 09/01/2020 and was authorized on 28/07/2020 by the President of the Bar Association to resort to other organs since no agreement was reached, it is clear that KLC Ltd has agreed that the procedure has to be followed before seizing the courts as provided under article 40, paragraph 1 of Regulation N° 01/2014 abovementioned.

[28] Due to those reasons, this Court finds that there are no disputes to determine whether the issue over the professional fee would necessarily first be referred to the President of the Bar Association before seizing the courts. Rather, it finds that the issue to be analysed is determining whether the fact that KLC Ltd referred the issue to the President of the Bar Association after two months (2) would be the ground of the claim inadmissibility before the Court.

b. Determine whether the fact that KLC Ltd referred the disputes to the President of the Bar Association after two months would be the ground for the claim to be rejected.

[29] Article 40, paragraph 1 of Regulation N° 01/2014 above mentioned provides that: "All disputes relating to the fixing or payment of fees shall be addressed to the President of the Bar, within two months from the day on which the dispute arose. The

complaint shall be filed by any interested party, whether at the initiative of the client who disputes all or part of the fees that are claimed, or the advocates who seek the payment of his or her fee note. The letter of complaint should be accompanied by supporting documents". Paragraph 2 of that article provides that "The President of the Bar shall receive complaints and directs them to the commission of the Bar responsible for fees issues which, in turn, shall summon the parties to a hearing session and submit its report to the President of the Bar. The latter shall decide within two (2) months from the date of its referral by the President of the Bar". Paragraph 8 provides that "Once the decision has been made and signed by the President of the Bar, it shall be notified to the parties who have each, for a period of one (1) month to lodge an appeal (principal or incidental) with the competent court".

[30] As provided under the abovementioned paragraphs of the article 40 of the Regulation, such article stipulates two steps for settling disputes relating to fees for Advocates, meaning through mediation before the President of the Bar and before the Court. The two steps must be followed according to the order provided under this article, but each has its specific laws, procedure, and time limit. In this context, the issue is referred to the President of the Bar within a period of two (2) months, while the Court is seized within a period of one (1) month. The Court is seized when the mediation has failed; such a step ends upon the decision notification to the parties in disputes by the President of the Bar. This means that what was done in that phase is completely concluded and could not affect the case already in court, except to check if that procedure was followed or not. The conditions in which it was followed do not concern the court, except when they constitute the subject matter. This

means that a party who has reasons for not consenting to the mediation due to non-compliance with the time limit, he/she must not participate in it, thus it is not held. Once he/ she consented to it, it is no longer possible for him/her as the defendant to object against the conditions in which it was conducted.

[31] The case file contains the letter of 18/06/2019 written by Counsel BANDORA Alfred on behalf of KLC Ltd to the Chairperson of the Board of Directors of NKTP Ltd and NKTF Ltd notifying him as final notice to make the payment according to the contract signed on 01/12/2018. The court bailiff indicated that he sent it to Nicholas WATSON through his e-mail.

[32] The case file contains the letter dated 09/01/2020, written by counsel BANDORA Alfred on behalf of KLC Ltd to the President of the Bar requesting him to settle the issue between KLC Ltd and NKTF Ltd and NKTP Ltd relating to the contract breach by those companies and to the outstanding payment of a professional fee amounting to 96,000 USD as was agreed upon in accordance with the contract.

[33] The case file contains the letter of 28/07/2020 written by the President of the Bar to Counsel BANDORA Alfred allowing him to resort to other organs. Basing on the fact that both parties were required to provide provided explanations, the fact that both parties were summoned to the mediation of 26/05/2020 and failed to reach an agreement, the President of the Bar allowed them to have recourse to other organs competent to handle their disputes.

[34] The Court finds that since the two parties consented to be mediated by the President of the Bar and no one challenged

the procedure, since NKTF Ltd and NKTP Ltd did not challenge the compliance with the time limit at that level, they did not contest the mediation session which was conducted to its completion without claiming that the mediation was illegally conducted, they have no basis to pretend that the mediation session before the Bar did not comply with the time limit prescribed by article 40 of Regulation above mentioned.

[35] Because of those reasons aforementioned, the Court finds ungrounded the allegations of NKTF Ltd and NKTP Ltd that the claim of KLC Ltd should not have been admitted because of the non-compliance with the period of two months for referring the disputes to the President of the Bar, therefore this ground of the appeal is baseless.

2. Determine whether the Commercial High Court erred by basing on the contract of 01/12/2018

[36] The legal counsel to NKTP Ltd and NKTF Ltd were not satisfied by the fact that on page 12 in paragraph 27 of the appealed judgment, the Commercial High Court upheld the decision of the Commercial Court that KLC Ltd had no obligations of ensuring if the terms of the contract of 01/12/2018 were approved by the Board of Directors, the essential element is that it was signed by the President of the Board of Directors of those two companies. They sustain that such procedure is inconsistent with the laws, either the law governing companies in Rwanda or the Articles of Association of those companies as they were managed by the Board of Directors (It is contrary to articles 145 and 147 of Law governing companies, article 15 of their Articles of association) which was competent to examine all the resolutions concerning those companies, but no meeting of shareholders or Board of Directors members was held to

analyse and take the decision thereof. They state that Nicholas WATSON was not competent to enter into a contract with KLC Ltd without the approval of the Board of Directors of those two companies because the fact that he signed as the President of the Board of Directors does not entitle him to do what is not approved by the Board of Directors, but he so proceeded with the purpose of causing the loss to the companies.

[37] They further submit that the statements of the legal counsel of KLC Ltd that they acknowledge the contract of 01/02/2018 are not correct because they do not recognize it as they do not recognize the contract of 01/12/2018 under litigation in the instant case and that the meeting of those two companies convened on 19/01/2019 has established new Board of Directors, Nicholas WATSON is no longer the Chairperson of the Board of Directors and the last meeting he chaired and in which KLC Ltd attended was held on of 14/03/2017.

[38] The legal counsel for KLC Ltd submits that Nicholas WATSON signed the contract as the Chairperson of the Board of Directors of NKTF Ltd and NKTP Ltd, he was competent to sign the contract and it could not be signed by all members of the Board of Directors. He also maintains that there is no evidence that the meeting of the Board of Directors was not held, KLC Ltd could not know whether the meeting of the Board of Directors of those two companies was held or not because the meeting issue is known by the shareholders of those companies. He explains that the subject matter is the payment based on the contract concluded with the competent person who is the President of the Board of Directors of the two companies and who signed it, KNTP Ltd and NKTF Ltd do not object to the contract and if they could recognize it, they could challenge it

before the court seeking its invalidation, instead of waiting to be sued for failure to make payment. He also states that the contract of 01/02/2018 indicating that KLC Ltd should be paid 4,000 USD per month was signed by Nicholas WATSON as the Chairperson of the Board of Directors because he was appointed in June 2018 and they made payment according to that contract, he wonders himself how they recognize it and reject that of 01/12/2018 under litigation in this case while they all were signed by Nicholas WATSON as the Chairperson of the Board of Directors of those two companies.

[39] He further submits that the contract of 01/12/2018 has no defects even though the signatory was not in Rwanda, he made an affidavit bearing a signature of the notary in his country and sent it through e-mail due to the COVID-19 Pandemic as he could not travel due to his old age. He also maintains that the registration certificate of BARCO Trading Ltd indicates that Nicholas WATSON and his children are the owners of that foreign company which paid for shares in NKTP Ltd and NKTF Ltd, BARCO Trading Ltd of Nicholas WATSON holds more than 92% of shares in those companies if you link those facts to the provisions of the Law governing companies into force in 2018, you realize that the owner of BARCO Trading Ltd was fully entitled to sign on behalf of the Board of Directors since he was the majority shareholder. He also states that Nicholas WATSON is still the Chairperson of the Board of Directors because he attended another meeting on 11/06/2018 which bears the Notary's signature.

[40] When he was questioned if KLC Ltd was paid 4,000 USD in compensation for the work performed or when the work was performed or not, he responded that KLC Ltd had to be paid

4,000 USD per month as it is provided under article 2 of the contract dated 01/12/2018, sometimes the workload could be high or low, the work to be performed by KLC Ltd was provided in the contract. As to whether it performed the work provided in the contract, he submitted that it performed it, when he was asked to whom they reported from 01/01/2019, he responded that they continued to proceed in the same way as before, they used to instruct him what to do and he did it, they used to go to Nshili to check if those companies had no problems since the Chairperson of the Board of Directors has already left and that the report was sent online. He concludes by requesting the Court to dismiss this ground of appeal and order NKTF Ltd and NKTP to promptly pay KLC Ltd.

DETERMINATION OF THE COURT

[41] The Court finds that the disputes on this issue are related to determining whether the contract on which KLC Ltd bases claiming the payment of professional fees was signed by a competent person as well as determining whether KLC Ltd must be paid the total amount of money provided under the contract.

a. Determine whether the contract on which KLC Ltd bases in claiming the payment of professional fees was signed by a competent person

[42] NKTF Ltd and NKTP Ltd state that Nicholas WATSON who signed the contract as the Chairperson of the Board of Directors so proceeded without any authorization since there was no meeting of the Board of Directors that authorized him to do so, while KLC Ltd submits that it is not the first time that Nicholas WATSON signs the similar contract and he was paid

without any problem. In resolving these disputes, the Court will analyse the procedure according to which were taken the decisions relating to signing the contracts like this one in NKTF Ltd and NKTP Ltd.

[43] Article 151, paragraph 2 of Law N° 17/2018 of 13/04/2018 governing companies which was into force when the contract was signed, provides as follows: “*Members of the Board of Directors must act in a collegial administration and must be of a sufficient number provided for in incorporation documents of the company for a meeting to be attained*”.

[44] Article 142, paragraph 1 of Law N° 17/2018 of 13/04/2018 abovementioned provides the following: “*The business and affairs of a company are managed by or under the direction of the Board of Directors of the company which has all powers necessary for the management except where the company’s incorporation documents or this Law expressly reserve those powers to the shareholders or any other person*”.

[45] Article 15 of Article of the Association of NKTF Ltd and NKTP Ltd provides that the management of a company is entrusted to the Board of Directors, and the decisions of the Board of Directors of the company are legally taken when the required quorum of the shareholders who attend the meeting is reached and when the decision has got the majority votes except when other articles provide otherwise at that time.

[46] Those articles jointly read denote that the Board of Directors is competent to make contracts with other people. However, the law is not clear as to what happens if the Chairperson of the Board of Directors takes a decision not approved by the Board of Directors. However, this has got a

solution that is almost acceptable in the principles governing the management of companies. Generally, the decision of the Chairperson of the Board of Directors is considered as legally taken by the Board of Directors vis-a-vis the persons who contracted with that company¹. In other words, the company cannot decline to pay the persons who contracted with it on the ground that its Chairperson failed to comply with the procedure. However, when such an issue arises, the Chairperson of the Board of Directors is personally held liable for the consequences in case it is proven that the latter misused his powers.

[47] The case file contains the contract of 01/12/2018 concluded by the Chairperson of the Board of Directors, Nicholas WATSON on behalf of NKTF Ltd and NKTP Ltd, and Counsel BANDORA Alfred on behalf of KLC Ltd. In the contract, those two companies agreed with KLC Ltd that the latter would provide them with legal services as per article one of that contract for a monthly payment of 4,000 USD as it is stipulated by article two, and that contract had to be effective from 01/01/2019 and it would last for a renewable period of two years, meaning that it would end on 31/12/2020.

¹ This is based on the principle called “**Indoor management rule**” This rule allows persons dealing with a company, namely through the managing director, to assume that all matters concerning internal management and procedure have been complied with. See JT Pretorius; PA Delpont, Michelle Havenga & Maria Vermaas, *South African Company Law through Cases*, JUTA & CO, Ltd; 6th ed. 1999, p 346.

² Article 1: *The duties of the Law firm shall be to provide the client with legal counsel, draft business agreements and prepare such other legal documents as the situation may necessitate, represent the client in the courts of law in Rwanda and perform such other judicial duties where the client has interests.* Art. 2: *The Law Firm shall be entitled to a consolidated payment of \$ 4000 US (Four Thousand American Dollars) as monthly retainer fees for the services as stipulated in article 1 of this contract.* Art. 3: *This agreement*

[48] The case file contains the minutes of the meeting of NKTF Ltd and NKTP Ltd of 14/03/2017 which indicates that Nicholas WATSON is elected to be the Chairperson of the Board of Directors for a term of twelve months (12).

[49] The case file contains the minutes of the meeting of NKTF Ltd on 19/01/2019. The minutes indicate that the Board of Directors is composed of MURENZI Jean, BANGANINKA Jacqueline, and Nicholas WATSON (who did not attend the meeting). Those who attended the meeting decided that it should be chaired by MURENZI Jean and GASHAGAZA Philbert was its secretary. The meeting took a decision on the immediate suspension of the payment made to Counsel BANDORA Alfred since he was not appointed by any company organ and on the recovery of 4,000 USD unduly paid to him.

[50] The Court finds that the legal counsel for NKTF Ltd and KTP Ltd which had a contract with KLC Ltd, do not deny that Nicholas WATSON was the Chairperson of the Board of Directors of those two companies by the time the contract was concluded, rather they submit that the contract made between Nicholas WATSON and KLC Ltd would have been approved by the Board of Directors which is the company managing organ; due to the fact, it did not approve the contract of 01/12/2018, such contract should be invalidated.

[51] Due to the fact that the legal counsel for NKTF Ltd and NKTP Ltd agree that on 01/12/2018 when the contract was concluded Nicholas WATSON was the Chairperson of the Board of Directors of NKTF Ltd and NKTP Ltd, the Court finds

commences on 1st January 2019 and is valid for a period of two years (24 months) renewable upon agreement writing by the client and the Law Firm.

that the latter cannot deny the contract on the ground that it was signed by its Chairperson without being authorized by the Board of Directors because as it was explained in paragraph 47, the acts of the Chairperson of the Board of Directors are deemed to be the acts of the company vis-a-vis other people. Furthermore, due to the fact that there is another contract of 01/02/2018 concluded by Nicholas WATSON, on behalf of NKTF Ltd and NKTP Ltd, and KLC Ltd according to which the latter had to be paid 4,000 USD per month and which was performed and other members of the Board of Directors did not sue him for that, the Court finds that it is clear that they agree that Nicholas WATSON, as the Chairperson of the Board of Directors of those two companies, was entitled to make a contract on their behalf. Therefore, this is not a defect that can justify the invalidation of the contract of 01/12/2018.

[52] Concerning the statements of the legal counsel of NKTF Ltd and NKTP Ltd that Nicholas WATSON was not competent to make a contract with KLC Ltd without the approval of the Board of Directors of those two companies, the contract of 01/02/2018 was made according to the procedure inconsistent with the provisions of articles 145 and 147 of Law N° 17/2018 of 13/04/2018 governing companies on the ground that Nicholas WATSON has misused his powers by signing it without the approval by the meeting of the Board of Directors, the Court finds that they are baseless because those articles do not prohibit the Chairperson of the Board of Directors from taking decisions on behalf of the company, rather, as explained above, those articles do not serve for the settlement of the disputes.

b. Determine whether KLC Ltd has to be paid all the total amount of money provided in the contract of 01/12/2018

[53] NKTF Ltd and NKTP Ltd submit that the Commercial High Court should not have based on the contract of 01/2/2018 in ordering them to pay KLC Ltd 96,000 USD because they do not recognize that contract on grounds that it was signed by an incompetent person, KLC Ltd did nothing on basis of it, because it should be effective from 01/01/2019 with a duration of two years but it was suspended on 19/01/2019 by the Board of Directors.

[54] KLC Ltd sustains that the Commercial High Court did not err by basing on the contract of 01/12/2018 to order NKT F Ltd and NKTP Ltd to pay to it 96, 000 USD because Nicholas WATSON signed it when he was still the Chairperson of the Board of Directors and was competent to sign that contract. As to the fact that KLC Ltd was doing nothing, he maintains that it is groundless because it continued to work as usual and submitted reports online. As to the termination of the contract, he submits that it was terminated by incompetent persons and it was not notified.

[55] In resolving these disputes, the Court will examine whether the contract of 01/12/2018 should be maintained while the meeting of 19/01/2019 decided that it was terminated without notifying KLC Ltd.

[56] Article 89 of Law N° 45/2011 of 25/11/2011 governing contracts provides that “If the debtor repudiates the obligations, such repudiation gives the other party the right to claim for damages for all remaining obligations”. Article 91 (1) provides that "a party's obligation to pay damages on the repudiation of

the obligation is extinguished if it appears that the aggrieved party does not perform his or her obligations".

[57] Those articles read jointly denote that if the contract is breached and the other party does not perform his or her obligations, the breaching party has the obligation to pay the other party basing on what has been already performed. This is emphasized by the principle found in article 84 which provides that "*One party shall not require the other party his or her obligations unless that party has performed his or her main obligations in case mutual obligations*" also Article 82 provides that "*Where only part of obligations is due at one time, the other party can perform a part that is comparable to performed obligations unless the circumstances indicate otherwise*".

[58] Article 88 of the Law mentioned above resolves the disputes as to determining the time of the repudiation of the obligations. It reads as follows: "Repudiation of obligations may be made through the following:

1⁰ a statement by the debtor to the creditor indicating that the debtor will not perform the obligations;

2⁰ a voluntary act indicating that the debtor will not perform the obligations".

[59] This means that the party who repudiates the obligations may do it explicitly by notifying the other party through writing or do it implicitly through an act indicating that he or she will not perform his or her obligations, like refusing to pay when the debt is due. In other words, when the payment is due and the creditor does not get paid, he or she has an obligation to ask why in order to know if there was no change as to the obligations to pay, but generally if the payment is due and the creditor is not

paid it is deemed that the latter has known that the debtor has relieved himself or herself from obligations.

[60] Briefly, basing on the analysis of the articles mentioned in the previous paragraphs, regarding the contracts that are performed in installments, when the payment in installment is due and not paid and the creditor fails to follow up, he or she is deemed to have known that the debtor has relieved himself or herself from obligations, consequently, the creditor claims for the payment of the works so far performed.

[61] As expounded, the contract of 01/12/2018 KLC Ltd made with NKTP Ltd and NKTF Ltd had to be effective from 01/01/2019. That contract indicates that KLC Ltd had to be paid 4,000 USD per month for a period of two (2) years. It means that the contract had to be performed in installments, each installment equal to one month and to pay for the works done in that very month.

[62] On 19/01/2019, the new management organ of NKTP Ltd and NKTF Ltd represented by Mr. MURENZI Jean held a meeting of the Board of Directors and took various decisions including the one of terminating the contract mentioned in the previous paragraph which KLC Ltd made with NKTP Ltd and NKTF Ltd. This decision was not expressly notified to KLC Ltd, consequently, and contrary to the provision of the contract, it was not paid for the last month. However, KLC Ltd did not claim for the payment agreed on in the contract until 18/06/2019 after one month has already elapsed. It means that KLC Ltd has known that NKTP Ltd and NKTF Ltd implicitly relieved themselves from obligations on 31/01/2019 after realizing that one month has elapsed without being paid. The fact that it has early known that before claiming for the payment is highlighted

by the final notice letter of 18/06/2019 to the Chairperson of the Board of Directors of NKTP Ltd and NKTF Ltd notifying him to pay what is provided for in the contract which was signed on 01/12/2018, issuing a notice letter means that KLC Ltd has before attempted other ordinary means.

[63] Another obvious point made by NKTP Ltd and NKTF Ltd and which was not contradicted by KLC Ltd is that there is no evidence, since the termination of the contract, that KLC Ltd continued to work.

[64] Basing on the explanations provided and on the interpretation of the laws especially in paragraphs 61 and 62, the Court finds that after terminating the contract, NKTP Ltd and NKTF Ltd had relieved themselves from their obligations but because they did not expressly notify KLC Ltd, it must be construed that KLC Ltd implicitly knew it when the entire month has elapsed without being paid. The Court finds however that according to the normal practice deriving from Rwandan culture, when the payment is due and not paid, the creditor waits for a short time to pass without claiming the payment in order to let the debtor voluntarily pay. This cannot go beyond the following month. In this context, the Court finds that KLC Ltd should be paid for January 2019 and February 2019 on the ground that it is the exact time it should have known the termination of its contract with NKTP Ltd and NKTF Ltd, this is equal to four thousand United States Dollars per month for twelve months, totally it is eight thousand United States Dollars (4.000USD x 2) =8.000USD).

B. CROSS APPEAL OF KLC Ltd

1. Determine whether KLC Ltd had to be granted damages.

[65] The legal counsel of KLC Ltd requested the Court to order NKTP Ltd and NKTF Ltd to pay KLC Ltd moral damages amounting to 20,000 USD arising from nepotism-based injustice since it worked well for them for many years thereby achieving a lot, but the person called MURENZI Jean who came later calling himself the chairperson took away the work from it and give it to his brother-in-law, and this is the main point of the claim.

[66] The legal counsel of NKTP Ltd and NKTF Ltd submits that the damages claimed by KLC Ltd should not be considered because the companies they represent demonstrate that the contract KLC Ltd is based on, is inconsistent with their Articles of association, as well as article 54 of Law N° 13 bis/2014 of 21/05/2014 governing the Office of Notary, it provides the manner in which the deeds notarized by a foreign notary have probative value in Rwanda but the procedure which the contract of 01/12/2018 should go through to have a probative value was not followed.

DETERMINATION OF THE COURT

[67] The case file indicates that KLC Ltd requested damages amounting to 20,000 USD from the first level in the Commercial Court but that Court found them baseless since the contract between them was a fixed term contract and stated that they do not expect to work again with them cannot give rise to the

payment of damages. It also requested damages in the Commercial High Court but the Court finds that KLC Ltd is a company, it is not a natural person who can experience suffering, and it cannot be granted such damages.

[68] Regarding the fact that a company or an entity cannot be awarded moral damages because they are not a natural person, this position was overruled by the Supreme Court in the judgment N° RS/INJUST/RCOM0004/2020/SC rendered on 19/11/2021, NEW KIGALI BUSINESS SERVICES Ltd v KASESE DISTILLERS Ltd, where in its paragraph 48, the Court held that: “The Court finds that the precedent previously based on by the Supreme Court in deciding the judgment of Bralirwa Ltd v Kazigaba Andre’et al, where it based on the author statements, and which was re-examined by the courts of other countries, and even by modern authors on civil laws indicate that the position is outdated. Among them, there is Véronique Wester Ouisse who states that no one should disagree that companies may request moral damages because, as it is for the natural persons, their dignity, their public trust, and reputation may interfere and affect their functioning, therefore the issue should not only be considered on the side of business activities. However, she explains that “the company that wishes to claim for damages have to first establish the harm suffered”³.

³“Au vrai, nul ne disconvient qu’une société commerciale puisse subir un dommage moral, au sens d’une atteinte à la personnalité sociale qu’elle a pu se forger aux yeux du public: la considération, la réputation voire l’honneur ne sont pas propres aux personnes physiques. Mais une société ne devrait pas pouvoir en tirer réparation que si un préjudice en résulte. Or, pour admettre qu’elle puisse subir un préjudice moral, il faudrait reconnaître que son image, son crédit, sa réputation lui servent à autre chose qu’à développer ’activité commerciale qui borne son objet social et donc sa personnalité juridique.” ; Véronique Wester-Ouisse, “Le préjudice moral des personnes morales :

[69] The Supreme Court expounded that the fact that companies or entities can be awarded damages has already become the principle of liability laws. However, those moral damages are aimed at liability based on how the public may lose trust in the company or entity (reputation) or based on restoring the dignity of the company or entity because its name was brought into disrepute/held in dishonor. This means that the company or entity cannot claim moral damages on the ground that it was distressed, physically inflicted or mentally hurt, or humiliated because this is a peculiarity of natural persons. Furthermore, a company cannot be awarded damages without first establishing the harm it suffered. The Court also explains that the moral damages that can be awarded to a company or entity are aimed at restoring the lost dignity of a company or entity rather than the loss they suffered.⁴

[70] Basing on the explanations in the previous paragraphs, the Court finds baseless 20,000 USD of moral damages claimed by KLC Ltd since it did not lose public trust nor dignity because its name was not dishonoured, to the extent that it can be awarded moral damages, therefore it should not be awarded moral damages in this case.

2. Determine whether the procedural fees claimed by both parties are grounded.

[71] The legal counsel for NKTP Ltd and NKTF Ltd, based on article 34 of Regulation N° 01/2014 fixing the scale of fees

quand "la perversion de la cité commence par la fraude des mots", *JCP*, G n° 39,24 Septembre 2012.

⁴ See Paragraphs 50 and 51 of Judgement N° RS/INJUST/RCOM 00004/2020/SC rendered by Supreme Court on 19/11/2021.

for Advocates, request the Court of Appeal to order KLC Ltd to pay NKTF Ltd and NKTP Ltd 5,000,000 Frw as lawyers fees and 1,000,000 Frw as procedural fees which were early requested from the first level up to the appeal level, and 2,000,000 Frw of lawyer's fees at this level. They also state that the procedural fees and lawyer's fees claimed by KLC Ltd in the cross appeal are not grounded and should not be awarded.

[72] The legal counsel of KLC Ltd submits that there is a legal principle stipulates that no one should base on his or her mistakes to make profits, and because of that reason NKTP Ltd and NKTF Ltd should not be awarded damages since they are the root cause of these cases by failing to perform the contract of 01/12/2018 signed by the Chairperson who also signed the previous contract.

[73] He further avers that based on article 152 of Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labor, and administrative procedure, they request the Court of Appeal to order NKTF Ltd and NKTP Ltd to jointly refund 12,000,000 Frw as lawyers fees to KLC Ltd because it was represented by three lawyers from the Commercial Court and that their fees should be awarded irrespective of their number, that is to say, that it is 4,000,000 Frw at each level and 5,000,000 Frw as procedural fees.

DETERMINATION OF THE COURT

[74] Regarding the advocate and procedural fees requested by both parties in this case, the Court finds that no party should be awarded damages because each one has lost and won in some aspects.

III. DECISION OF THE COURT

[75] Holds that the appeal of NSHILI KIVU TEA FACTORY Ltd and NSHILI KIVU TEA PLANTATION Ltd has merit in some aspects.

[76] Holds that the cross appeal of KIGALI LAW CHAMBERS lacks merit.

[77] Holds that the judgment RCOMA 00208/2021/HCC rendered by the Commercial High Court on 29/09/2021 is overruled only in relation to the Dollars NSHILI KIVU TEA FACTORY Ltd and NSHILI KIVU TEA PLANTATION Ltd should pay to KIGALI LAW CHAMBERS.

[78] Orders to NSHILI KIVU TEA FACTORY Ltd and NSHILI KIVU TEA PLANTATION Ltd to jointly pay KIGALI LAW CHAMBERS eight thousand United States Dollars (8,000 USD).

[79] Decides that the deposited court fee covers the expenses of the judicial proceedings.

CRIMINAL CASE

PROSECUTION v NZABONIMPA

[Rwanda COURT OF APPEAL – RPA 00059/2018/CA
(Rugabirwa, P.J., Kaliwabo and Tugireyezu, J.) July 15, 2019]

Law relating to evidence – Evidence in criminal cases – All elements of evidence collected in accordance with the law are admissible, however, statements made before organs other than the prosecution, investigation, or courts must be accompanied by other corroborating evidence for them to be considered as incriminating evidence.

Facts: The case started before the High Court, Musanze Chamber, the Prosecution sued the defendant for providing assistance to the FDLR group by supplying food to it. The very Court heard the case and convicted him of participation in terrorist acts, and accordingly sentenced him to 15 years imprisonment. The Court based its decision on the testimony provided by Makombe and on the defendant's statements made before a military officer who received him from DRC, and on the fact that both statements indicate that the defendant used to supply food to members of FDLR and accommodate them, and he is also accused of providing information about Rwanda Defence Forces to FDLR.

The defendant appealed to the Supreme Court, and following the judicial reforms, the case was transferred to the Court of Appeal. He pleaded that he was convicted for an offense he did not commit, because the Court relied on the testimony of Makombe whom he had chased from his land, and the very witness was the one who kidnapped him from his home, and more of that, no other person is accusing him of working with FDLR forces. In his

appeal, the defendant also denied the statement he made before a military officer who received him since he was forced to admit it.

For the Prosecution, the witness has no interest in accusing the defendant, and his testimony corroborates with the statements made by the defendant himself before the military officer who received him, and such statements are valid since they were made before a military officer who is also a military investigation officer.

Held: Even though all elements of evidence collected in accordance with the law are admitted, their validity varies according to their nature and collection procedure. This is why testimonies made before organs other than the investigation or courts must be accompanied by other corroborating evidence for them to be considered incriminating evidence.

The appeal has merit;

Statutes and statutory instruments referred to:

Law no 30/2013 of 24/5/2013 relating to the code of criminal procedure, article 165;

Law no 15/2004 of 12/06/2004 relating to evidence and its production, article 65.

No cases referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] Nzabonimpa David, a former resident of BUHUMBA Village in DRC, was arrested for providing assistance to the FDLR organization by supplying food to it as well as providing that organization the information related to the positions of Rwanda Defence Forces. MAKOMBE Deo, head of BUHUMBA Village brought him to Rwanda Defence Forces at the Kabuhanga border and testified that NZABONIMPA David does not respect their administration, on the pretext that he works with FDLR combatants by supplying food to them in Rugali.

[2] On 31/12/2019, NZABONIMPA David was interrogated by Sgt RUKUNDO and revealed to him that, in collaboration with MAKOMBE Deo, collected food and stored it in the warehouse in Rugali, where FDLR combatants found it. He also admitted that FDLR combatants, some of which he still remembers their names, namely KAMURE, CYITATIRE, and SIBOMANA, were used to coming to his home to take the food they have purchased for them.

[3] NZABONIMPA David was transferred to the Investigation Bureau for interrogation and denied the charge, stating that he was a victim of the conspiracy by MAKOMBE Deo who intended to grab his land, and for that reason, the latter chased from home his wife and children, and the defendant further rejected the statement he made before military organs since he admitted it by force. He maintained such pleading up to the High Court which heard his case at first instance.

[4] The High Court, Musanze Chamber, heard the case RP 00002/2017/HC/HC/MUS on 10/04/2018 and convicted NZABONIMPA David of participation in terrorist activities, and sentenced him to a 15-year imprisonment.

[5] The very Court relied its decision on the testimony delivered by MAKOMBE Deo and on the statements made by NZABONIMPA Deo before a military officer who received him from DRC, and on the fact that those statements indicate that the defendant used to supply food to the combatants of FDLR and accommodate them, and he is also accused of providing information about Rwanda Defence Forces to FDLR.

[6] NZABONIMPA David appealed against such a ruling before the Supreme Court, and his appeal was registered to n° RPA 00015/2018/SC, but following the judicial reforms, the case was transferred to the Court of Appeal and registered to n° RPA 00059/2018/CA, as per the provisions of articles 52 and 105 of the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts.

[7] NZABONIMPA David and his legal Counsel NKUNDIRUMWANA Joseph appealed stating that the defendant was convicted of the offence he did not commit because the Court relied on the testimony by Makombe whom he had chased from his land, and the very witness was the one who kidnapped him from his home, and more of that, no other person is accusing him of working with FDLR forces. In his appeal, the defendant also denied the statement he made before a military officer who received him since he was forced to admit it.

[8] The Prosecution represented by RUDATINYA Gaspard, National Prosecutor, argues that MAKOMBE Deo had no interest

in accusing NZABONIMPA, and his testimony corroborates with the statements made by the defendant himself before the military officer who received him, and such statements of MAKOMBE Deo before Sgt RUKUNDO are valid since the latter is also a military investigation officer.

[9] The case was heard in public on 30/05/2019, NZABONIMPA David being assisted by Counsel NKUNDIRUMWANA Joseph, while the Prosecution was represented by RUDATINYA Gaspard, National Prosecutor.

[10] In the instant case, the Court intends to determine whether the testimony by Makombe and the statements of NZABONIMPA David made before Sgt RUKUNDO should be considered as evidence incriminating NZABONIMPA David.

II. ANALYSIS OF THE LEGAL ISSUE

1. Whether the statements by NZABONIMPA David during his interrogation of 31/12/2016 and the testimony of MAKOMBE Deo should be considered as evidence incriminating NZABONIMPA David

[11] NZABONIMPA David alleges that the High Court considered his statement of interrogation made before a military officer who received him, while he denies its content because he made that statement under torture, and he contradicted the very statement as soon as he was brought before an Investigator. NZABONIMPA David further states that if the disputed statement was considered true, MAKOMBE Deo should have also been brought before justice since he mentioned him as the person who helped him in supplying food to FDLR.

[12] NZABONIMPA David submitted that he was kidnapped by MAKOMBE Deo, who was the head of BUHUMBA Village, where he was also residing, and that kidnapping emanated from his land MAKOMBE intended to grab from him, and that he informed his wife and children after he was arrested. He added that the said Leader has never ceased to ask him for money, threatening him that he will deport him to his homeland Rwanda if he refuses to pay such money, and this is the very plan he implemented when he decided to wrongly accuse him of collaborating with FDLR, and based on the foregoing, he rejects the testimony issued by MAKOMBE Deo since there is any person other than him accusing him of the same acts.

[13] Counsel NKUNDIRUMWANA Joseph assisting NZABONIMPA David states that his client is a victim of the conspiracy by MAKOMBE Deo, a conspiracy emanating from the disputes between them which led the latter to wrongly accuse him of offence lacking any evidence to corroborate it, but only because he was the sole witness against him. He adds that NZABONIMPA David was accused of providing information relating to Rwanda Defence Forces but those accusing him failed to explain the nature and destination of such information.

[14] Counsel NKUNDIRUMWANA Joseph further states that the statement made before Sgt RUKUNDO, a military officer who received NZABONIMPA David, should not be an element of evidence incriminating his client since it was made by an incompetent person, in addition, NZABONIMPA David refuted such statement as soon as he was brought before the Investigation, where he freely presented his submission before a military officer who interrogated him.

[15] The Prosecution finds the appeal lodged by NZABONIMPA David unfounded on the ground that he was interrogated by a military officer who was authorized to conduct the investigation, and such interrogation was freely done because if he had made such a statement under threat, it should not have similar content with the elucidations issued by MAKOMBE Deo, who accuses him. He further states that NZABONIMPA David has been contradicting himself on matters relating to the disputes between him and MAKOMBE Deo, because at the beginning he stated that the latter first chased his wife and children from home, but once before this Court, he stated that MAKOMBE Deo chased them after his arrestation. In their conclusion, the Prosecution states that NZABONIMPA David accused MAKOMBE Deo of being his accomplice in supplying food to FDLR to take revenge on him, but he should not defend himself based on the fact that the person he is accusing has not yet been brought before justice.

DETERMINATION OF THE COURT

[16] Article 65 of Law no 15/2004 of 12/06/2004 relating to evidence and its production reads that: “Only the court can assess the relevance, pertinence and admissibility or rejection of testimonial evidence”.

[17] The instant Court finds that, in convicting NZABONIMPA David, the High Court, Musanze Chamber, relied on the sole evidence consisting of the defendant’s statement made before the military organs on 31/12/2016 after he was brought to Rwanda Defence Forces, where he admitted the charge and explained how he collaborated with FDLR, and the very Court held that such statement provides all details about the

commission of the offence, and NZABONIMPA David failed to produce evidence that he made such statement being under threat, or the disputes he had with MAKOMBE Deo who accused him of such offence.

[18] The Court finds that MAKOMBE Deo who was the Head of the village and who arrested and brought NZABONIMPA David to Rwanda Defence Forces and is the sole witness accusing the defendant of working with FDLR, and in his statement, MAKOMBE Deo testifies that NZABONIMPA David disrespects him on the pretext that the latter works with FDLR leaders.

[19] The Court finds that a testimony delivered by a single witness who is a leader of NZABONIMPA David and who himself states that the defendant disrespects him, and the same witness is accused of chasing the defendant's wife and children, raises the court's doubt about the offence of collaborating with FDLR he is accusing him.

[20] The Court finds that, even though all elements of evidence collected in accordance with the law are admitted, their validity varies according to their nature and collection procedure. This is why testimonies made before organs other than the investigation or courts must be accompanied by other corroborating evidence for them to be considered incriminating evidence.

[21] It is in the finding of the Court that the statement made by NZABONIMPA David before the military organ on 31/12/2016, a statement which he refuted as soon as he was brought before the Investigation Bureau, such statement cannot be considered sufficient evidence proving that he committed such offence in case there is no other corroborating evidence.

[22] The Court finds that the Prosecution did not manage to present any act proving that NZABONIMPA provided to FDLR the information about the Rwanda Defence Forces, therefore, he should be acquitted of such an offence since the High Court, Musanze Chamber, did not rely on any evidence to convict him.

[23] The Court finds that NZABONIMPA David has to be acquitted of the charges brought against him due to the doubt about the evidence produced as per article 165 of the Law n° 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure which reads that "the benefit of the doubt is given to the accused. If the proceedings conducted as completely as possible do not enable judges to find reliable evidence proving beyond reasonable doubt that the accused committed the offence, the judges order his or her acquittal".

III. DECISION OF THE COURT

[24] Holds that the appeal lodged by NZABONIMPA David has merit ;

[25] Holds that NZABONIMPA David is not guilty of the offence of collaborating with a terrorist organisation ;

[26] Declares that the judgment n° RP 00002/2017/HC/MUS rendered by the High Court, Musanze Chamber, on 10/04/2018 is reversed ;

[27] Orders the immediate release of NZABONIMPA David as soon as the judgment is pronounced ;

[28] Orders that the court fee, in this case, be borne to the Public Treasury.

RLR