RADIANT INSURANCE COMPANY LTD v RWANDA AGRICULTURE BOARD (RAB)

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00026/2018/CA – (Karimunda, P.J, Munyangeri na Kanyange, J.) 08 Gashyantare 2019]

Amategeko agenga amasoko ya Leta – Amafaranga ahabwa uwatsindiye isoko rya Leta kugirango atangire imirimo (Avansi) – Isubizwa rya avansi ntirireberwa ku gaciro k'imirimo imaze gukorwa kuko Avansi ubwayo atari ubwishyu, Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko N˚ 05/2013 ryo ku wa 13/2/2013, ingingo ya 89.

Incamake y'ikibazo: Ikigo cy'Igihugu gishinzwe Ubuhinzi n'Ubworozi mu Rwanda (RAB) cyagiranye amasezerano na ETECO (Entreprise de Construction, Commerce, Mines et Carrières) yo kubaka laboratoire, maze RAB iha iyo sosiyete avansi yo gutangira imirimo. Radiant Insurance Company Ltd nayo yishingira iyo avansi. RAB yaje gusesa amasezerano y'isoko, avansi yatanze itararangira kwishyurwa hanyuma impande zombi zikora ihwanyamyenda hagati ya avansi yari isigaje kwishyurwa n'agaciro k'imirimo yakozwe ariko avansi yatanzwe ntiyashiramo, ibi byatumye RAB ivuga ko asigaye agomba kwishyurwa na Radiant Insurance Company Ltd ariko yo ikavuga ko imirimo ETECO yakoze ifite agaciro karuta avansi yatanzwe.Ibyo byatumye RAB irega Radiant Insurance Company mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba ko Radiant Insurance Company Ltd iyishyura amafaranga ETECO

iyigomba. Urwo Rukiko rwemeje ko ikirego cya RAB gitite ishingiro rutegeka Radiant Insurance Company kuyishyura amafaranga yasigaye kuri avansi yahawe ETECO ndetse n'indishyi zinyuranye.

Radiant Insurance Company ntiyishimiye imikirize y'urubanza maze ijuririra Urukiko Rukuru rw'Ubucuruzi ivuga ko itagomba gutegekwa kwishyura avansi yo gutangira imirimo kuko yakoreshejwe imirimo yose yari yatangiwe. Urwo Rukiko rwemeje ko ubujurire bwa Radiant Insurance Company bufite ishingiro, ko ingwate yo gutangira imirimo yari yarahaye RAB yakoreshejwe yose ku mirimo ijyanye n'isoko yari yaratangiwe.

RAB yajuririye Urukiko rw'Ikirenga ariko ubwo bujurire bwimurirwa mu Rukiko rw'Ubujurire nyuma y'ivugururwa ry'amategeko. Mu bujurire bwayo, RAB ivuga ko amasezerano yabaye hagati yayo na Radiant yavugaga ko ingwate izasaza ari uko avansi yose yishyuwe, bityo ko icyari kigambiriwe ari uko uwatanze avansi ayigaruza yose, ikavuga rero ko isanga hatagomba kurebwa gusa ko avansi yakoreshejwe imirimo runaka, ahubwo hakwiye no kwitabwa ku kuba mu masezerano barumvikanye ko ubwishyu buzakatwa kuri buri facture, hitabwa ko ingwate izasaza avansi imaze kwishyurwa, hakanitabwa ko mu byo ingwate iba igamije harimo nuko avansi yose yishyurwa.

Radiant yo yiregura ivuga ko icyo yishingiye ari uko avansi yose yo gutangira imirimo ikoreshwa icyo yatangiwe, ntihagire ibindi ikoreshwa, ko ingwate ifatirwa gusa igihe yose cyangwa igice cyayo bikoreshejwe ibitajyanye n'isoko yatangiwe, ko rero nta handi RAB yashingira isaba kwishyurwa ingwate.

Incamake y'icyemezo: Isubizwa rya avansi ntirireberwa ku gaciro k'imirimo imaze gukorwa kuko Avansi ubwayo atari ubwishyu, bityo Radiant Insurance Company Ltd igomba kwishyura RAB avansi yari isigaje kwishyurwa.

Ubujurire bufite ishingiro;
Ubujurire bwuririye ku bundi, nta shingiro bufite;
Urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruhindutse mu ngingo zarwo zose;
Uregwa agomba gusubiza uwajuriye ingwate y'amagarama yatanze ajurira.

Amategeko yashingiweho:
Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko N° 05/2013 ryo ku wa 13/2/2013 (ryakoreshwaga icyo gihe), ingingo 89.

Imanza zifashishijwe:
Forest Company Volcanoes Gorrillas (FCVG) Ltd v Ikigo cy'Imisoro n'Amahoro (RRA), RCOMAA 00055/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 29/9/2017

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ikibazo kiri muri uru rubanza gishigiye kuri avansi yo gutangira imirimo Rwanda Agriculture Board (RAB) yahaye ETECO (*Entreprise de Construction, Commerce, Mines et Carrières*), ishingiye ku masezerano yo kubaka *laboratoire* yo ku wa 20/10/2014, Radiant Insurance Company Ltd yishingira iyo avansi nk'uko bigaragazwa n'inyandiko y'ingwate Nº RD001RCOA140815/03695 yo ku wa 11/09/2014, ariko ayo mazezerano y'isoko aseswa na RAB ku wa 22/12/2015, ETECO itararangiza kwishyura avansi yahawe bitewe nuko yayishyuraga kuri buri fagitire yakoraga hakatwa amafaranga angana na 20%, kuri fagitire eshatu (3) ETECO yari imaze gukora, RAB ikaba yari yiyishyuye avansi ingana na 60.239.971Frw, hasigara avansi ingana na 107.796.028Frw.

[2] Bitewe nuko nyuma ya fagitire ya gatatu ETECO yakoze imirimo ifite agaciro ka 53.878.560Frw, hakozwe ihwanyamyenda hagati ya avansi yari isigaje kwishyura n'agaciro k'iyo mirimo (107.976.028Frw – 53.878.560Frw), hasigara 54.017.468Frw, RAB ivuga ko agomba kwishyurwa na Radiant Insurance Company Ltd kuko amasezerano yari ifitanye na ETECO yasheshwe itararangiza kwishyura avansi yahawe, naho Radiant Insurance Company Ltd ikavuga ko itakwishyura iyo avansi kuko yakoreshejwe mu mirimo y'isoko kandi iyo mirimo ikaba irenze avansi yatanzwe

[3] Nyuma yo kutumvikana ku iyishyurwa rya avansi ETECO yari itararangiza kwishyura, RAB yareze Radiant Insurance Company Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge, isaba ko yategekwa kwishyura 54.0170.468Frw ETECO iyigomba, n'indishyi zo gushorwa mu manza. Urwo Rukiko rwaciye urubanza RCOM 531/2017/TC/NYGE ku wa 27/7/2017, rwemeza ko ikirego cya RAB gifite ishingiro,

rutegeka Radiant Insurance Company Ltd kwishyura 54.0170.468Frw yasigaye kuri avansi yahawe ETECO, ikanishyura 500.000Frw y'indishyi zo gushorwa mu manza, 500.000Frw y'igihembo cya Avoka, no gusubiza RAB 50.000Frw yatanzeho ingwate y'amagarama.

[4] Radiant Insurance Company Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko itagombaga gutegekwa kwishyura avansi yo gutangira imirimo kuko yakoreshejwe imirimo yose yari yatangiwe, mu rubanza RCOMA 0055/2017/CHC/HCC rwaciwe ku wa 28/12/2017, urwo Rukiko rwemeza ko ubujurire bwa Radiant Insurance Company Ltd bufite ishingiro, ko ingwate yo gutangira imirimo yari yarahaye RAB yakoreshejwe yose ku mirimo ijyanye n'isoko yari yaratangiwe, ari nayo mpamvu y'ukubaho k'ubwishingizi, ko Radiant Insurance Company Ltd nta kindi igomba kwishyura RAB gikomoka kuri ubwo bwishingizi. Rwategetse RAB kwishyura Radiant Insurance Company Ltd indishyi z'ikurikiranarubanza n'igihembo cya Avoka ku rwego rubanza n'urw'ubujurire, zingana na 1.000.000Frw no kuyisubiza 75.000Frw yatanzeho ingwate y'amagarama ijurira, rutegeka kandi ko imikirirze y'urubanza RCOM 00531/2017/NYGE rwaciwe ku wa 27/07/2017 ihindutse.

[5] RAB yajuririye mu Rukiko rw'Ikirenga, isaba Urukiko gusuzuma niba iyo avansi yo gutangira imirimo yakoreshejwe imirimo ijyanye n'isoko itagomba kwishyurwa yose, inasaba gusuzuma niba yaragombaga gucibwa indishyi kandi Radiant Insurance Company Ltd ariyo yishe amasezerano. Radiant Insurance Company Ltd yo ivuga ko icyo yishingiye ari uko avansi yo gutangira imiromo ikoreshwa icyo yatangiwe, kandi ko

byari ngombwa ko RAB icibwa indishyi kuko yayishoye mu rubanza bitari ngombwa.

[6] Nyuma y'ivugururwa ry'amategeko, ubujurire bwa RAB bwimuriwe mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, urubanza ruburanishwa mu ruhame ku wa 9/1/2019, Radiant Insurance Company Ltd ihagarariwe na Me Ruzindana Ignace na Me Twagiramungu Joseph, RAB ihagarariwe na Me Kayiranga Rukumbi Bernard, Me Kabibi Spéciose na Me Umwali Munyentwari Claire.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba kuba avansi yo gutangira imirimo yarakoreshejwe mu mirimo y'isoko, bivanaho inshingano za Radiant Insurance Company Ltd zo kwishyura igice cya avansi ETECO itishyuye.

[7] Mu mwanzuro wa RAB, ivuga ko Radiant Insurance Company Ltd yishingiye avansi yahawe ETECO, mu masezerano bakaba barateganyije uburyo iyo avansi yagombaga kugenda yishyurwa, ko hashingiwe ku ngingo ya 89 y'Itegeko rigenga amasoko ya Leta, RAB yagiye yiyishyura kuri fagitire ETECO yayihaga ariko ntiyarangiza kwishyura avansi yose bitewe nuko amasezerano yasheshwe imirimo itarangiye, ko ariyo mpamvu Radiant Insurance Company Ltd igomba kwishyura amafaranga ya avansi yasigaye havuyemo ayo RAB igomba ETECO nkuko yagaragajwe muri raporo y'isozwa ry'imirimo.

[8] Ikomeza ivuga ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kwita ku bikubiye mu nyandiko ya Radiant Insurance Company Ltd yo kwishingira avansi yo gutangira imirimo, ivuga ko *The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire after the complete reimbursement of the advance amount. Consequently, any demand for payment under this guarantee must be reiceved by us at that time*, bivuze ko inshingano y'umwishingizi itagarukira gusa ku gukoresha avansi mu mirimo y'isoko ahubwo hari n'inshingano yo kugarurira avansi urwego rwayitanze, ko kandi uretse itegeko rigenga amasoko ya Leta, n'ingingo ya 64 y'itegeko rigenga amasezerano ivuga ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye.

[9] Ivuga kandi ko imyumvire yayo ihuye n'ibyemejwe mu rundi rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi (Nº RCOMA 00254/2017/CHC/HCC) hagati y'Akarere ka Bugesera na Radiant Insurance Company Ltd, kandi Radiant ikaba itararujuririye.

[10] Mu bindi bisobanuro ababuranira RAB batanze, bavuga ko ibyo abahagarariye Radiant Insurance Company Ltd bavuga ko ntacyo igomba kwishyura kuko avansi yose yakoreshejwe imirimo y'isoko, ko ingwate ifatirwa iyo idakoreshejwe imirimo y'isoko, atari byo, ahubwo ko RAB yari kwishyurwa mu buryo buteganywa n'ingingo ya 89 y'Itegeko rigenga amasoko ya Leta aho kuba iya 88, kuko ingwate igomba kugarukira urwego rwatanze isoko.

[11] Bavuga kandi ko mu masezerano yabaye hagati ya RAB na Radiant Insurance Company Ltd ahavugwa ko ingwate izasaza ari uko avansi yose yishyuwe, icyari kigambiriwe ari uko uwatanze avansi ayigaruza yose, kandi ko ayo masezerano ari hagati yabo bombi gusa, rwiyemezamirimo we akaba ntaho yasinye. Basanga hatagomba kurebwa gusa ko avansi yakoreshejwe imirimo runaka, ahubwo hakwiye no kwitabwa ku kuba mu masezerano barumvikanye ko ubwishyu buzakatwa kuri *facture*, ko ingwate izasaza avansi imaze kwishyurwa, hakanitabwa ko mu byo ingwate iba igamije, harimo n'uko avansi yose yishyurwa.

[12] Radiant Insurance Company Ltd yo ivuga ko icyo yishingiye, ari uko avansi yose yo gutangira imirimo ikoreshwa icyo yatangiwe, ntihagire ibindi ikoreshwa (ingingo ya 88 y'Itegeko rigenga amasoko ya Leta), ko ingwate ifatirwa gusa igihe yose cyangwa igice cyayo bikoreshejwe ibitajyanye n'isoko yatangiwe, ko rero nta handi RAB yashingira isaba kwishyurwa ingwate, yirengagije ibiteganywa n'iyi ngingo ya 88.

[13] Isobanura ko RAB yemera ko ETECO yakoze akazi karenze agaciro k'ingwate kuko yakoze imirimo ingana na 355.361.917 Frw, bivuze ko avansi yose yahawe yakoreshejwe icyo yatangiwe, ko ibivugwa na RAB by'uko isoko ryasheshwe ETECO itararangiza kwishyura avansi yahawe, itabishingiraho isaba Radiant Insurance Company Ltd kwishyurwa iyo avansi itarishyuwe kuko atari byo yishingiye, kuko avansi yose yagombaga kwishyurwa ari uko isoko ridasheshwe, rikarangira, ko ahubwo kuba isoko ryarasheshwe imirimo itarangiye, bivuze ko na rwiyemezamirimo atarangije kwishyura avansi, ariyo mpamvu Radiant Insurance Company Ltd yishyujwe ingwate yo kurangiza neza imirimo ingana na 84.018.000Frw, ayo

mafaranga akaba arenze kure ayo RAB yishyuza angana na 54.017.468Frw, kandi iyo isoko ridaseswa, ingwate yo kurangiza imirimo ntiyari kwishyuzwa.

[14] Ikomeza ivuga ko ikibazo Rwanda Agriculture Board yibaza cyo kumenya niba iyo avansi yo gutangira imirimo yarakoreshejwe mu mirimo ijyanye n'isoko, itagomba kwishyurwa yose, kitareba umwishingizi, kuko icyo umwishingizi yishingira ari uko avansi yo gutangira imirimo ikoreshwa yose icyo yagenewe, bitaba ibyo igafatirwa n'urwego rwatanze isoko, ko kandi ingingo ya 89 y'Itegeko rigenga amasoko ya Leta ivuga uburyo ingwate yishyurwa na rwiyemezamirimo, ireba uwatanze isoko n'uwarihawe, ikaba itareba umwishingizi.

[15] Isobanura kandi ko kuba yarishingiye ko avansi yo gutangira imirimo izakoreshwa ibyo yagenewe, RAB yagombye kugaragaza ko avansi yakoreshejwe ibindi bitarebana n'isoko, akaba aribwo isaba Radiant Insurance Company Ltd kwishyura nk'uko biteganywa n'ingingo ya 88 y'Itegeko rigenga amasoko ya Leta.

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[16] Ikibazo kigomba gusuzumwa, ni icyo kumenya niba mu gihe avansi yo gutangira imirimo yakoreshejwe mu mirimo y'isoko, bivanaho inshingano z'uwayishingiye zo kwishyura avansi itarishyuwe n'uwatsindiye isoko.

[17] Ku birebana na avansi yo gutangira imirimo, ingingo ya 89 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko N°

05/2013 ryo ku wa 13/2/2013, iteganya ko "Avansi yahawe uwegukanye isoko isubizwa hakoreshejwe ikatwa ry'umubare runaka w'amafaranga ku nyemezabuguzi zatanzwe kandi zemejwe. Igitabo cy'Amabwiriza agenga ipiganwa giteganya ijanisha ry'amafaranga azagenda akatwa kugeza igihe avansi yose yishyuriwe. Ingwate ya avansi isubizwa uwegukanye isoko mu minsi mirongo itatu (30) uhereye igihe avansi yose yatanzwe yishyuriwe".

[18] Iyi ngingo ivuga ibyerekeye uburyo avansi yishyurwa nk'uko umutwe wayo ubigaragaza ''iyishyurwa rya avansi'', yumvikanisha ko iyo rwiyemezamirimo watsindiye isoko ahawe avansi, bidasobanura ko ari ubwishyu aba ahawe, ahubwo ko ari amafaranga aba agomba gusubiza urwego rwatanze isoko, agenda akatwa kuri fagitire zemejwe, yamara gusubizwa yose, akaba aribwo ingwate nayo isubizwa. Ibimaze kuvugwa ni nako byasobanuwe n'Urukiko rw'Ikirenga mu rubanza RCOMAA 0055/2016/SC rwaciwe ku wa 29/9/2017, aho rwavuze ko avansi yo gutangira imirimo ari amafaranga ahabwa uwatsindiye isoko kugira ngo abashe gutangira gushyira mu bikorwa isoko yatsindiye, ko nta gice cy'umurimo runaka aba yishyuriwe ku buryo yafatwa nk'ubwishyu, ahubwo uko uwatsindiye isoko agenda yishyuza agaciro k'imirimo yakoze, agenda avanamo (déduction) ingano runaka ya avansi nk'uko byumvikanyweho n'impande zagiranye amasezerano, akazarangiza kwishyura imirimo yakoze yose, avansi yose isubijwe uwamuhaye isoko, ko rero kuba avansi isubizwa uwatanze isoko, itafatwa nk'ubwishyu kuri iryo soko.

[19] Inyandiko y'ingwate ya avansi yo gutangira imirimo "Advance payment guarantee RD 001RCOA 1408157/0395 '' Radiant Insurance Company Ltd yatanze ku wa 11/9/2014, ivuga

ko yemeye kwishingira igiteranyo cy’amafaranga atarenga 168.035.999RWF, izishyura imaze kugaragarizwa ubusabe bwanditse buherekejwe n’inyandiko igaragaza ko rwiyemezamirimo atubahirije inshingano ziri mu masezerano, akoresha avansi yahawe mu zindi nyungu zinyuranye n’imirimo yasezeranye gukora irebana n’isoko[1]. Muri iyi nyandiko kandi, mu gika cya nyuma havugwamo ko amafaranga atangiwe ingwate azagenda agabanurwa n’ubwishyu bwa avansi buzajya bukorwa na rwiyemezamirimo, kandi ko ingwate izareka kugira agaciro igihe avansi yose izaba imaze kwishyurwa[2].

[20] Urukiko rurasanga ibivugwa mu nyandiko y’ingwate, hari igice kimwe gihura n’ibiteganywa n’ingingo ya 88 y’Itegeko N° 12/2007 ryo ku wa 27/03/2007 ryavuzwe haruguru, ivuga ko iyo uwegukanye isoko akoresheje avansi yose cyangwa igice cyayo mu bikorwa bindi bidafite aho bihuriye n’isoko, iyo avansi ihita ifatwa nk’umwenda ugomba kwishyurwa hafatiriwe ingwate yose cyangwa igice, ikindi gice kikaba gihura n’ibivugwa mu ngingo ya 89 (in fine) yavuzwe haruguru, kuko nayo iteganya ko

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[1] “*At the request of the Contractor, we RADIANT INSURANCE COMPANY LTD, P.O.BOX 1861 KIGALI, hereby irrevocably undertake to pay you any sum or sums not exceeding in total amount of ONE HUNDRED SIXTY EIGHT MILLION THIRTY FIVE THOUSAND NINE HUNDRED NINETY NINE RWANDAN FRANCS (168,035,999 RWF) upon receipt by us of your demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the works”*.

[2] “*The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire after the complete reimbursement of the advance amount. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date*”.

ingwate ya avansi isubizwa uwegukanye isoko mu minsi mirongo itatu (30) uhereye igihe avansi yose yatanzwe yishyuriwe''.

[21] Urukiko rurasanga kuba mu nyandiko y'ingwate, havugwamo ko inyandiko yishyuza ingwate igomba kuba iherekejwe n'indi igaragaza ko rwiyemezamirimo yakoresheje avansi mu yindi mirimo itajyanye n'isoko, bidakwiye gufatwa ko ariyo mpamvu yonyine yatuma urwego rwatanze isoko rusubizwa avansi, kuko ako ari agace kamwe mu tugize inyandiko y'ingwate, kakaba kadakwiye kurebwa konyine, kuko mu gace ka nyuma k'iyo nyandiko Radiant Insurance Company Ltd yanemeye ko ingwate izaba itagifite agaciro mu gihe avansi izaba yarangije kwishyurwa, bivuze ko mu gihe itarishyurwa rero, ingwate iba igifite agaciro, na avansi ikaba igomba kwishyurwa, nk'uko binateganywa mu ngingo ya 89 yavuzwe haruguru, kandi bikaba binahura n'ibisobanuro byatanzwe n'Urukiko rw'Ikirenga ku birebana na avansi yo gutangira imirimo nk'uko byagaragajwe.

[22] Ku bivugwa na Radiant Insurance Company Ltd by'uko imirimo ETECO yari imaze gukora ifite agaciro karenze avansi yatanzwe bityo ko ntacyo RAB igomba kwishyuza, Urukiko rurasanga nta shingiro bifite, kuko nk'uko byasobanuwe haruguru, avansi si ubwishyu ku buryo isubizwa ryayo ryareberwa ku gaciro k'imirimo yari imaze gukorwa, ahubwo igomba gusubizwa urwego rwatanze isoko nk'uko ingingo ya 89 y'Itegeko ryavuzwe haruguru ibiteganya, bikaba byaranumvikanyweho mu gika cya nyuma cy'inyandiko y'ingwate yo gutangira imirimo. Byongeye kandi, ibivugwa na Radiant Insurance Company Ltd ko imirimo ETECO yakoze ifite agaciro karenze avansi yahawe, ibivuga yirengagije ko ETECO

itahawe avansi gusa ahubwo ko yanahawe amafaranga y'ubwishyu bw'imirimo yari imaze gukora.

[23] Urukiko rurasanga rero, Urukiko Rukuru rw'Ubucuruzi rutaragombaga gushingira ku mpamvu irebana no kuba avansi isubizwa gusa iyo itakoreshejwe imirimo itajyanye n'isoko, ngo ruyirutishe irebana no kuba ingwate izareka kugira agaciro igihe avansi yose izaba imaze kwishyurwa, kandi izo mpamvu zombi ziri mu nyandiko imwe Radiant Insurance yasinye, zikaba zinahura n'ibiteganywa n'Itegeko rigenga amasoko ya Leta.

[24] Urukiko rushingiye ku ngingo z'amategeko zagaragajwe haruguru no ku bisobanuro byatanzwe, rurasanga Radiant Insurance Company Ltd igomba kwishyura RAB avansi yari isigaje kwishyurwa ihwanye na 54.0170.468Frw.

2. Kumenya niba RAB yaragombaga gucibwa indishyi

[25] Ababuranira RAB bavuga ko Urukiko rwayitegetse kwishyura Radiant Insurance Company Ltd indishyi zingana na 1.000.000Frw yo gushorwa mu manza na 75.000 Frw y'amagarama yatanzwe, kandi ariyo itarubahirije amasezerano bakoranye, bigatuma ijya mu manza kugira ngo irenganurwe. Basanga ahubwo Radiant Insurance Company Ltd ariyo ikwiye kwishyura indishyi kuko kutubahiriza amasezerano bakoranye byatumye RAB ijya mu manza, ikaba isaba Urukiko rw'Ubujurire kubona ko nta ndishyi yari ikwiye gucibwa.

[26] Ababuranira Radiant Insurance Company Ltd bavuga ko byari ngombwa ko RAB icibwa indishyi kuko yayishoye mu rubanza rutari ngombwa, ko yo yari yishingiye ko avansi yahawe ETECO ikoreshwa icyo yayiherewe kandi ko yabikoze kuko RAB igaragaza ko yakoze imirimo ihwanye na 355.361.917Frw,

bivuga ko yakoze imirimo ikubye inshuro zirenga ebyiri agaciro k'ingwate yatanzwe, ko rero ntacyo RAB yagombaga gusaba gusubizwa kuko ibyo yari yishingiye byakozwe.

UKO URUKIKO RUBIBONA

[27] Urukiko rurasanga nk'uko byasobanuwe haruguru, Radiant Insurance Company Ltd yaragombaga gusubiza RAB avansi yatanze, kuko isoko ryasheshwe itararangiza kwishyurwa, kandi Radiant Insurance Company Ltd ikaba ariyo yari yarishingiye avansi yose yahawe ETECO, bivuze ko indishyi RAB yaciwe n'Urukiko Rukuru rw'Ubucuruzi nta shingiro zifite, bityo izo yaciwe zingana na 1000.000Frw yo gushorwa mu manza na 75.000 Frw y'amagarama ikaba itagomba kuzitanga.

3. Ibirebana n'indishyi Radiant Insurance Company Ltd isaba

[28] Mu bujurire bwuririye ku bundi, Radiant Insurance Company Ltd ivuga ko RAB ikomeje kuyikurura mu manza zitari ngombwa, ikaba isaba ko yacibwa indishyi zingana na 2.000.000Frw hamwe na 800.000Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego.

[29] Ababuranira RAB bavuga ko izo ndishyi nta shingiro zifite kuko ifite uburenganzira bwo kwiyambaza inzira y'ubujurire, usibye ko n'indishyi zisabwa ari umurengera kandi Radiant Insurance Company Ltd ikaba itagaragaza akababaro yagize

UKO URUKIKO RUBIBONA

[30] Urukiko rurasanga indishyi Radiant Insurance Company Ltd isaba idakwiye kuzihabwa, kuko, nk'uko byasobanuwe haruguru, ariyo yagombaga kwishyura avansi yo gutangira imirimo RAB yahaye ETECO nk'uko yabyiyemeje, ariko ikaba itarayishyuye bigatuma RAB yiyambaza inkiko, kuba itsindwa n'uru rubanza, byumvikana ko n'indishyi isaba nta shingiro zifite.

III. ICYEMEZO CY'URUKIKO

[31] Rwemeje ko ubujurire bwa Rwanda Agriculture Board (RAB) bufite ishingiro;

[32] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Radiant Insurance Company Ltd, nta shingiro bufite;

[33] Rutegetse Radiant Insurance Company Ltd kwishyura Rwanda Agriculture Board (RAB) 54.017.468 Frw yasigaye kuri avansi yahawe ETECO;

[34] Rwemeje ko indishyi Rwanda Agriculture Board (RAB) yaciwe n'Urukiko Rukuru rw'Ubucuruzi zivanyweho;

[35] Ruvuze ko urubanza RCOMA 00553/2017/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 28/12/2017 ruhindutse mu ngingo zarwo zose.

[36] Rutegetse Radiant Insurance Company Ltd gusubiza Rwanda Agriculture Board 100.000 Frw y'ingwate y'amagarama yatanze ijurira.