BUFCOFFEE LTD v TEUSCHER INVEST LTD (KIVUBELT COFFEE LTD)

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00012/2022/CA (Ngagi, PJ) 22 Nyakanga 2022]

Amategeko agenga imiburanishirije y'imanza – Impamvu zimwe – Impamvu zimwe zisuzumirwa mu bisubizo byatanzwe ku mpamvu z'ubujurire hagereranywa ibyavuzwe mu rubanza rujuririrwa n'ibyavuzwe mu rwego rw'ubujurire kuri izo mpamvu

Incamake y'ikibazo: TEUSCHER INVEST Ltd yareze BUFCOFFEE Ltd mu Rukiko rw'Ubucuruzi, irusaba kuyitegeka kuyishyura 94.017 USD iyibereyemo n'inyungu zayo za 1% buri kwezi zibazwe guhera ku wa 10/07/2018, ivuga ko yagemuye ikawa nk'uko byari biteganyijwe mu masezerano yagiranye na BUFCOFFEE Ltd, igenda ikora invoice ku madorari y'Amerika 5,5 ku kiro (5,5 USD/kg), uretse invoice n°22/2017 yo ku wa 13/12/2017 na n°001/2016 yo ku wa 21/04/2016 zakozwe ku giciro cy'amadorari 4 ku kiro. Ku wa 05/01/2021 urwo Rukiko rwaciye urubanza N° RCOM 01651/2020/TC rwemeza ko ikirego rwashyikirijwe na TEUSCHER INVEST Ltd gifite ishingiro, rutegeka ko BUFCOFFEE Ltd igomba kwishyura TEUSCHER INVEST Ltd 94.017 USD y'umwenda iyibereyemo na 20.627.496,5 Frw y'inyungu zitangwa mu mwanya w'indishyi, runayitegeka kwishyura 100.000 Frw y'ikurikiranarubanza, 500.000 Frw y'igihembo cya Avoka na 20.000 Frw y'ingwate y'amagarama.

BUFCOFFEE Ltd ntiyishimiye iyo mikirize y'urubanza, iyijuririra mu Rukiko Rukuru rw'Ubucuruzi isaba ko urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwateshwa agaciro. Ku wa 19/11/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOMA 00116/2021/HCC rwemeza ko ubujurire rwashyikirijwe na BUFCOFFEE Ltd nta shingiro bufite, ijuririra na none Urukiko rw'Ubujurire, mu iburanisha KIVUBELT COFFEE Ltd yahoze yitwa TEUSCHER INVEST Ltd itanga inzitizi y'iburabubasha ry'Urukiko rw'Ubujurire kuko BUFCOFFEE Ltd yatsinze mu nkiko zombi ku mpamvu zimwe.

Incamake y'icyemezo: Inkiko zombi zabanje zashingiye ku mpamvu nyamukuru yo kuba nta bimenyetso BUFCOFEE Ltd igaragaza biyikuraho umwenda TEUSCHER INVEST Ltd iregera kandi yo yawugaragarije ibimenyetso; bityo ku kibazo cya mbere cyasuzumwe n'Urukiko rw'Ubucuruzi, Urukiko Rukuru rw'Ubucuruzi narwo rugisuzuma mu ngingo ebyiri, BUFCOFEE Ltd yatsinzwe kuri izo nkiko zombi hashingiwe ku mpamvu zimwe. Bityo inzitizi y'iburabubasha yatanzwe ikaba ifite ishingiro.

Inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe, ifite ishingiro;
Ubujurire ntibwakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire;
Uwareze agomba mu bujurire kwishyura uwarezwe 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, yose hamwe akaba 700.000 Frw.
Amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52

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 54 na 111

Imanza zashingiweho:

Urubanza N◦ RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS hagati ya Bank of Kigali Ltd na MULISA KANA Martin rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017

Urubanza Nº RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019, haburana KOPERATIVE DUKUNDUMURIMO (KOADU) na KING CONSTRUCTION AND SERVICE COMPANY (KICOSECA)

Urubanza Nº RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 12/04/2015, BUFCOFFEE Ltd yagiranye amasezerano na TEUSCHER INVEST Ltd, aho TEUSCHER INVEST Ltd yagombaga kujya igemurira BUFCOFFEE Ltd ikawa ikayigura, ayo masezerano yagombaga kumara imyaka 5 uhereye mu mwaka wa 2015 kugeza mu mwaka wa 2019. Impande zombi zumvikanye ko igiciro cy'ikawa ya *grade A1, Screen 15 and higher* ari 5,5 *US Dollar* naho kuri *Screen* zifite 12 zivuga ko zizumvikana hakurikijwe igiciro cyo ku isoko (*Market price*), ko kandi mu gihe TEUSCHER INVEST Ltd igemuriye BUFCOFFEE Ltd ikawa, iyi igomba kujya ihita yishyura nyuma yo kubona *Certificate of Receipt* na *invoice*.

[2] TEUSCHER INVEST Ltd yagemuye ikawa nk'uko byari biteganyijwe mu masezerano, igenda ikora *invoice* bisanzwe ku madorari y'Amerika 5,5 ku kiro (5,5 USD/kg), uretse *invoice* n°22/2017 yo ku wa 13/12/2017 na n°001/2016 yo ku wa 21/04/2016 zakozwe ku giciro cy'amadorari 4 ku kiro. TEUSCHER INVEST Ltd ivuga ko BUFCOFFEE Ltd yagiye iyishyura buhoro buhoro, hanyuma ikaza kunanirwa kwishyura hasigaye 94.017 USD itarishyura.

[3] TEUSCHER INVEST Ltd yareze BUFCOFFEE Ltd mu Rukiko rw'Ubucuruzi, irusaba kuyitegeka kuyishyura 94.017 USD iyibereyemo n'inyungu zayo za 1% buri kwezi zibazwe guhera ku wa 10/07/2018. BUFCOFFEE Ltd yireguye ivuga ko ikirego cya TEUSCHER INVEST Ltd nta shingiro gifite kubera kubura ibimenyetso by'amadolari iregera.

[4] Mu rubanza N° RCOM 01651/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 05/01/2021, urwo Rukiko rwemeje ko ikirego rwashyikirijwe na TEUSCHER INVEST Ltd gifite ishingiro, ko ikirego kiregera kwiregura rwashyikirijwe na BUFCOFFEE Ltd nta shingiro gifite, rwemeza ko BUFCOFFEE Ltd ibereyemo TEUSCHER INVEST Ltd umwenda wa 94.017 USD, rutegeka ko BUFCOFFEE Ltd igomba kwishyura TEUSCHER INVEST Ltd 94.017 USD y'umwenda iyibereyemo na 20.627.496,5 Frw y'inyungu zitangwa mu mwanya w'indishyi, runayitegeka kwishyura TEUSCHER INVEST Ltd 100.000 Frw y'ikurikiranarubanza, 500.000 Frw y'igihembo cya Avoka na 20.000 Frw y'ingwate y'amagarama.

[5] BUFCOFFEE Ltd ntiyishimiye iyo mikirize y'urubanza, iyijuririra mu Rukiko Rukuru rw'Ubucuruzi isaba ko urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwateshwa agaciro hashingiwe

ku kuba TEUSCHER INVEST Ltd itarabashije kugaragaza ko kawa yose yagemuraga yabaga ifite amanota angana na 84%, no kuba harabayeho kwitiranya kwakira ikawa no gupima ikawa.

[6] Ku wa 19/11/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOMA 00116/2021/HCC rwemeza ko ubujurire rwashyikirijwe na BUFCOFFEE Ltd nta shingiro bufite, ko hagumyeho imikirize y'urubanza Nº RCOM 01651/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 05/01/2021; rutegeka BUFCOFFEE Ltd kwishyura TEUSCHER INVEST Ltd 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza yo ku rwego rw'ubujurire; runategeka ko ingwate y'amagarama yatanzwe na BUFCOFFEE Ltd ijurira ihwanye n'ibyakozwe mu rubanza.

[7] BUFCOFFEE Ltd yajuririye na none Urukiko rw'Ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi rwumvise nabi ibikubiye mu masezerano runakoresha nabi ingingo ya 64 y'itegeko rigenga amasezerano ndetse n'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, ko rwageneye TEUSCHER INVEST Ltd indishyi zitateganyijwe mu masezerano, isaba Urukiko gusuzuma niba hari igihombo TEUSCHER INVEST Ltd yateje BUFCOFFEE Ltd ku buryo yakiryozwa, inasaba indishyi z'ikurikiranarubanza n'iz'igihembo cya Avoka, ubujurire bwayo bwandikwa kuri Nº RCOMAA 00012/2022/CA.

[8] Iburanisha mu ruhame ryabaye ku wa 13/07/2022, BUFCOFFEE Ltd, ititabye, naho KIVUBELT COFFEE Ltd ihagarariwe na Me RUSANGANWA Jean Bosco, maze Urukiko rufatiye icyemezo mu ntebe rwemeza ko urubanza ruburanishwa BUFCOFFEE Ltd idahari, urubanza ruciwe rukazafatwa nk'aho rwaburanishijwe ihari nk'uko biteganywa n'ingingo ya 54 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Urubanza ruburanishwa ku nzitizi y'iburabubasha yatanzwe na KIVUBELT COFFEE Ltd.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ubujurire bwa BUFCOFFEE Ltd butari mu bubasha bw'Urukiko rw'Ubujurire kuko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe

[9] Uhagarariye KIVUBELT COFFEE Ltd ashingiye ku ngingo ya 52, igika cya 3, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, avuga ko ubujurire bwatanzwe na BUFCOFFEE Ltd butari mu bubasha bw'Urukiko rw'Ubujurire, kubera ko yatsinzwe hashingiwe ku mpamvu zimwe mu nkiko zombi.

[10] Asobanura ko ku birebana n'umwenda wa 94.017 USD, mu gika cya 18 cy'urubanza No RCOM 01651/2020/TC, Urukiko rw'Ubucuruzi rutahaye ishingiro imvugo z'uhagarariye BUFCOFFEE Ltd zuko yishyuye nta mwenda iyisigayemo kuko yakagombye kuba yarerekanye uko yishyuye buri *invoice* yashyikirijwe muzo TEUSCHER INVEST Ltd yashingiyeho irega ari zo: Nº 018/2017 yo ku wa 22/09/2017, Nº 019/2017 yo ku wa 12/10/2017, ifite Nº 021/2017 yo ku wa 17/11/2017, n'ifite Nº 022/2017 yo ku wa 13/12/2017, ko kandi kuva mu gika cya 21 kugeza ku cya 28 by'urwo rubanza, Urukiko rw'Ubucuruzi rwasanze BUFCOFFEE Ltd itarashoboye kugaragaza impamvu ziyikuriraho umwenda iregwa, mu gihe TEUSCHER INVEST Ltd

iwugaragariza ibimenyetso, bityo rutegeka BUFCOFEE Ltd kuwishyura wose wa 94.017 USD n'inyungu zo kutawishyurira ku gihe zitangwa mu mwanya w'indishyi nk'uko biteganywa n'ingingo ya 64 n'iya 144 z'Itegeko n° 45/2011 rigenga amasezerano ndetse n'ingingo ya 12 y'Itegeko N₀ 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru.

[11] Avuga ko ibyo bihura n'ibyashingiweho n'Urukiko Rukuru rw'Ubucuruzi mu rubanza N₀ RCOMA 00116/2021/HCC bigaragara mu gika cya 12 n'icya 13, aho narwo rwashingiye ku ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano no ku ngingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. Ndetse ko binahura n'ibikubiye mu bika bya 15, 16, 17, 18, 22, 24 na 25, aho Urukiko Rukuru rw'Ubucuruzi rwagarutse ku buryo ibiciro byahabwaga kawa byagenwaga ndetse n'uko yishyurwaga hashingiwe ku manota yagize mu gihe cy'isogongera, cyane cyane mu gika cya 18, aho rwavuze ko rusanga impamvu itangwa na BUFCOFEE Ltd ijurira irebana no kuba TEUSCHER INVEST Ltd itarashoboye kugaragaza ko kawa yayo yahoraga igira amanota ari hejuru ya 84%, nta shingiro ifite, ko nk'uko byasobanuwe igiciro cy'ikawa ifite amanota ari munsi ya 84%, kitari kugenwa n'uruhande rumwe. Avuga ko rero BUFCOFEE Ltd yajuriye itagaragaza ingano y'ikawa yagize amanota ari munsi ya 84%, n'igiciro cyaba cyaremeranyijweho n'impande zombi niba koko hari ikawa yagize ayo manota. Ibyo bikaba byaragarutsweho mu gika cya 26 n'icya 27 by'urubanza rwaciwe n'urwo Rukiko.

[12] Avuga kandi ko ku byerekeye indishyi mu gika cya 25 cy'urubanza N₀ RCOM 01651/2020/TC, Urukiko rw'Ubucuruzi rushingiye ku kuba BUFCOFFEE Ltd itarubahirije ibiteganyijwe n'ingingo ya 8 y'amasezerano yagiranye na TEUSCHER INVEST Ltd, ko mu gihe iyigemuriye kawa imaze gusogongerwa yagombaga kubahiriza inshingano zayo ikayishyura, igomba guha TEUSCHER INVEST Ltd inyungu zibikomokaho nk'uko biteganywa n'ingingo ya 144 y'Itegeko N°45/2011 rigenga amasezerano. Avuga ko ibyo byagarutsweho mu gika cya 33 n'icya 34 by'urubanza N₀ RCOMA 00116/2021/HCC, aho Urukiko Rukuru rw'Ubucuruzi rwashingiye ku isesengura ryakozwe n'Urukiko rw'Ubucuruzi mu gika cya 25 cy'urubanza N₀ RCOM 01651/2020/TC, rukavuga ko amafaranga yaciwe ari inyungu zigamije gusiba igihombo BUFCOFFEE Ltd yateje TEUSCHER INVEST Ltd hashingiwe ku biteganywa n'ingingo ya 144 y'Itegeko N° 45/2011 rigenga amasezerano; bityo ko inkiko zombi mu kugenera TEUSCHER INVEST Ltd inyungu zashingiye ku ngingo ya 144 y'Itegeko n°45/2011 rigenga amasezerano.

[13] Akomeza avuga ko ku birebana n'igihombo BUFCOFEE LTD ivuga ko yatejwe na TEUSCHER INVEST Ltd kuva mu gika cya 33 kugeza ku cya 36 cy'urubanza N₀ RCOM 01651/2020/TC, Urukiko rw'Ubucuruzi rushingiye ku kuba igihombo BUFCOFFEE Ltd ivuga kitarigeze kivugwa mu mabaruwa na e-mails impande zombi zandikiranye, kikagaragazwa bwa mbere mu kwiregura ku kirego cyatanzwe na TEUSCHER INVEST Ltd, rwemeje ko icyo gihombo kitakwishyurwa. Ko ibyo bihura n'ibyavuzwe mu rubanza N₀ RCOMA 00116/2021/HCC bigaragara kuva mu gika cya 37 kugeza ku cya 42, aho Urukiko Rukuru rw'Ubucuruzi rwashingiye ku byavuzwe n'Urukiko rw'Ubucuruzi, rukavuga ko ibyo BUFCOFFEE Ltd ivuga itabitangira ibimenyetso; bityo ko inkiko zombi mu kwemeza ko nta gihombo BUFCOFFE Ltd igomba kwishyurwa zashingiye ku kuba nta bimenyetso yazishyikirije.

[14] Mu gusoza, avuga ko BUFCOFFE Ltd yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, bityo ubujurire bwayo bukaba butagomba kwakirwa kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

[15] Uhagarariye BUFCOFFEE Ltd yiregura kuri iyi nzitizi avuga ko nta shingiro ifite, ko BUFCOFFEE Ltd itatsinzwe hashingiwe ku mpamvu zimwe mu nkiko zombi, ko ibyo babishingira ku bisobanuro n'ibika by'incarubanza bitangwa n'uhagarariye TEUSCHER INVEST Ltd, ko ikindi kigaragaza ko impamvu zashingiweho n'Urukiko rw'Ubucuruzi mu gufata icyemezo atari zo zashingiweho n'Urukiko Rukuru rw'Ubucuruzi ngo ni uko ibibazo inkiko zombi zasuzumye atari bimwe, no kuba zitarashingiye ku mategeko amwe mu gufata icyemezo; bityo ko ubu bujurire bugomba kwakirwa kuko buri mu babasha bw'Urukiko rw'Ubujurire.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 52, igika cya 3, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ibikurikira: "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".

[17] Ikibazo cyo kumenya niba impamvu zashingiweho umuburanyi atsindwa ku rwego rwa mbere n'urwa kabiri ari zimwe, kigomba gusuzumwa hasesengurwa imikirize y'urubanza ku rwego rwa mbere n'urwa kabiri, ingingo z'ingenzi zasuzumwe, impamvu buri rukiko rwashingiyeho kugira ngo rugere ku cyemezo, byaramuka bigaragaye ko ari zimwe, ubujurire ntibube buri mu bubasha bw'Urukiko rw'Ubujurire.

[18] Ku bijyanye n'ibisobanuro by'impamvu zimwe, Urukiko rw'Ikirenga ndetse n'uru Rukiko zemeza ko impamvu zimwe zivugwa muri iyi ngingo zigomba kumvikana nk'ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabaye no ku byo amategeko ateganya, ko impamvu ari zo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo ziherwaho ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko, bitewe n'uko buri cyemezo cy'Urukiko kigomba kuba cyasobanuriwe impamvu[1].

[19] Na none mu rubanza Nº RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd[2], urwo Rukiko rwasobanuye ko mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa.

[20] Nk'uko bigaragara mu rubanza Nₒ RCOM 01651/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 05/01/2021, TEUSCHER INVEST Ltd yahindutse KIVUBELT COFFEE Ltd yareze BUFCOFFEE Ltd isaba Urukiko kuyitegeka kuyishyura 94.017 USD iyibereyemo n'inyungu zayo za 1% buri kwezi zibazwe guhera ku wa 10/07/2018. Urwo Rukiko rwasuzumye

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[1] Urubanza N◦ RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS hagati ya Bank of Kigali Ltd na MULISA KANA Martin rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017, igika cya 21. Reba kandi igika cya 12 cy'urubanza rubanziriza urundi mu rubanza Nº RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019, haburana KOPERATIVE DUKUNDUMURIMO (KOADU) na KING CONSTRUCTION AND SERVICE COMPANY (KICOSECA).

[2] Reba igika cya 18 cy'urwo rubanza. Reba na none urubanza Urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24.

ibibazo by'ingenzi bikurikira: kumenya niba hari umwenda BUFCOFFEE Ltd ibereyemo TEUSCHER INVEST Ltd n'ingano yawo; kumenya niba inyungu z'ubukererwe zibariye kuri 1% ku kwezi z'umwenda wishyuzwa, TEUSCHER INVEST Ltd iregera yazihabwa no kumenya niba TEUSHCER INVEST Ltd yategekwa kwishyura igihombo cyose BUFCOFFEE Ltd ivuga ko yayiteje kubera kutayigemurira ikawa bumvikanye ndetse na *qualit*é bumvikanye mu masezerano.

[21] Mu rubanza No RCOMA 00116/2021/HCC rwaciwe ku wa 19/11/2021, Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo by'ingenzi bikurikira: kumenya niba TEUSCHER INVEST Ltd itarashoboye kugaragaza ko kawa yayo yahoraga igira amanota ari hejuru ya 84%; kumenya niba harabayeho kwitiranya kwakira ikawa no kuzipima bigatuma hafatwa icyemezo kidakwiye; kumenya niba haratanzwe indishyi mbonezamusaruro ku rwego rwa mbere zidafite ishingiro no kumenya niba BUFCOFFEE Ltd yahabwa indishyi zituruka ku kuba TEUSCHER INVEST Ltd itaragemuye ikawa yose no kuba itaratanze *qualit*é bumvikanye mu masezerano.

[22] Ku byo kumenya niba hari umwenda BUFCOFFEE Ltd ibereyemo TEUSCHER INVEST Ltd n'ingano yawo; Urukiko rw'Ubucuruzi nyuma yo kugaragaza ibimenyetso bitandukanye (reba ibika bya 11-15),TEUSCHER INVEST Ltd yarushyikirije, rubishingiyeho, rwasanze ibyo BUFCOFEE Ltd ivuga ko uko ingano (quantité) y'ikawa zagemurwaga na TEUSCHER INVEST Ltd atariko zishyurwaga kuko ngo iyi BUFCOFEE Ltd yabanza kuziha amanota hanyuma ikabona kwemeza amafaranga iri bwishyure nyuma nta shingiro bifite kuko kubirebana n'ingano cyangwa *quantité*, nk'uko bigaragara kuri *Coffee Receipt Notes* zitandukanye umukozi w'iyi BUFCOFEE Ltd witwa UWIMANA Claudine yabaga yashyizeho umukono ko yakiriye ikawa igemuwe, hagiye hariho ingano y'ibiro byose hamwe TEUSCHER INVEST Ltd igemuye n'ingano y'ibiro bisigaye nyuma yo gupimwa, kandi ibyo biro bigaragara ko ari byo bisigaye nyuma yo gupimwa ni byo TEUSCHER INVEST Ltd yakoreraga *invoices* hanyuma zigashyikirizwa BUFCOFEE Ltd kugira ngo yishyure.

[23] Urukiko rw'Ubucuruzi rushingiye ku bisobanuro byerekana ko ibyo BUFCOFEE Ltd yireguza nta shingiro bifite, rwasanze BUFCOFEE Ltd itagaragaza impamvu ziyikuraho umwenda TEUSCHER INVEST Ltd iregera kandi yo yawugaragarije ibimenyetso, rwemeza ko igomba gutegekwa kuwishyura wose uko wakabaye ungana na 94.017 USD n'inyungu zo kutawishyurira ku igihe zitangwa mu umwanya w'indishyi nk'uko biteganywa n'ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ivuga ko uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda.

[24] Mu rubanza No RCOMA 00116/2021/HCC rwaciwe ku wa 19/11/2021, iki kibazo cyagarutsweho ariko gisuzumwa mu ngingo ebyiri z'ubujurire bwa BUFCOFEE Ltd aho ivuga ko TEUSCHER INVEST Ltd itashoboye kugaragaza ko kawa yayo yahoraga igira amanota ari hejuru ya 84%, Urukiko rw'Ubucuruzi rubirengaho rwemeza ko BUFCOFEE Ltd ikibereyemo TEUSCHER INVEST Ltd umwenda wa 9.4017 USD, ko kandi harabayeho kwitiranya kwakira ikawa no kuzipima bigatuma hafatwa icyemezo kidakwiye.

[25] Ku kibazo cyo kugaragaza ko kawa yayo yahoraga igira amanota ari hejuru ya 84%, Urukiko Rukuru rw'Ubucuruzi rwasanze ahubwo BUFCOFEE Ltd itagaragaza ingano y'ikawa yagize amanota ari munsi ya 84%, n'igiciro cyemeranyijwe n'impande zombi kuri iyo kawa ku buryo yabiheraho ivuga ko ikawa yahawe yamaze kuyishyura. Rwasanze kandi BUFCOFEE Ltd

itigaragaza igiciro yo ubwayo yaba yarageneye ikawa yahawe ku buryo yagihuza n'ingano y'ikawa yahawe bigahura n'amafaranga yishyuye.

[26] Ku kibazo cy'uko Urukiko rwitiranyije kwakira ikawa no kuzipima bigatuma hafatwa icyemezo kidakwiye, Urukiko Rukuru rw'Ubucuruzi narwo rumaze gusuzuma ibimenyetso bitandukanye birimo *Coffee Receipt Notes* zitandukanye, no kwibutsa ibisobanuro byatanzwe n'Urukiko rw'Ubucuruzi, rwasanze BUFCOFEE Ltd itagaragaza ko hari ikawa yagize amanota ari munsi ya 84%, bigakurikirwa no kwemeranywa ku giciro, ko kandi BUFCOFEE Ltd itagaragaza amadolari yaba yarishyuye ajyanye n'amanota ikawa yagize, nubwo yaba ari munsi yayo TEUSCHER INVEST Ltd yishyuza, ku buryo ikibazo cyasigara kuri icyo kinyuranyo.

[27] Urukiko rurasanga kuri ikibazo inkiko zombi zabanje zarashingiye ku mpamvu nyamukuru yo kuba nta bimenyetso BUFCOFEE Ltd igaragaza biyikuraho umwenda TEUSCHER INVEST Ltd iregera kandi yo yawugaragarije ibimenyetso; bityo ku kibazo cya mbere cyasuzumwe n'Urukiko rw'Ubucuruzi, Urukiko Rukuru rw'Ubucuruzi narwo rugisuzuma mu ngingo ebyiri, BUFCOFEE Ltd yatsinzwe kuri izo nkiko zombi hashingiwe ku mpamvu zimwe.

[28] Ku kibazo cyo kumenya niba inyungu z'ubukererwe zibariye kuri 1% ku kwezi z'umwenda wishyuzwa, TEUSCHER INVEST Ltd iregera yazihabwa, Urukiko rw'Ubucuruzi rwasanze kuba mu ngingo ya 8 y'amasezerano yiswe *Long Term suppy Agreement* yo kugemura ikawa impande zombi zagiranye, BUFCOFFEE Ltd yari yiyemeje kuzajya ihita yishyura TEUSCHER INVEST Ltd ikimara kubona aho yakiriye ikawa n'inyandiko yishyuza ariko ikaba itarabikoze ngo yuzuze izo nshingano yiyemeje igomba gutanga inyungu zizikomokaho nk'uko biteganywa n'ingingo ya 144 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano; izo nyungu zikaba zigamije gusiba igihombo cyatejwe no kwica amasezerano.

[29] Kuri iki kibazo kijyanjye n'indishyi mbonezamusaruro TEUSCHER INVEST Ltd yasabaga, Urukiko Rukuru rw'Ubucuruzi narwo rushingiye ku ngingo ya 144 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, rwasanze kuba BUFCOFFEE Ltd yarishe amasezerano arebana no kutishyura amafaranga, hanyuma Urukiko rugategeka ko yishyura inyungu zibazwe kuva yabona aho yakiriye ikawa n'inyandiko yishyuza, nta kosa rwakoze kuko inyungu ari ingaruka zo kutubahiriza amasezerano.

[30] Urukiko rurasanga kuri iki kibazo, BUFCOFFEE Ltd yaratsinzwe mu nkiko zombi hashingiwe ku mpamvu imwe yo kuba yarishe amasezerano, ikiba igomba kubitangira indishyi.

[31] Ku byo kumenya niba TEUSHCER INVEST LTD yategekwa kwishyura igihombo cyose BUFCOFFEE Ltd ivuga ko yamuteje kubera kutayigemurira ikawa bumvikanye ndetse na *qualité* bumvikanye mu masezerano, Urukiko rw'Ubucuruzi, nyuma yo kugaragaza ingingo z'amategeko rushingiyeho, rwasanze ikimenyetso BUFCOFFEE Ltd ishingiraho cy'igihombo ivuga ko yagize kubera ko TEUSCHER INVEST LTD itayigemurira ikawa bumvikanye ndetse na *qualité* bumvikanye mu masezerano nta gaciro rwagiha kuko biboneka ko iyo nyandiko ari iyakozwe ku wa 20/11/2020 na MUHIRWA Samuel MD/BUFCOFFEE Ltd ku igiti cye, ikaba itaragaragarijwe TEUSCHER INVEST Ltd nk'uruhande rurebwa n'amasezerano yiswe *Long Term Suppy Agreement* yo kugemura ikawa yashyizweho umukono ku wa 12/04/2015 mbere yo kuyitanga nk'ikimenyetso cyayo. Kandi bikaba biboneka ko yakozwe ku wa 20/11/2020 nyuma y'uko Urukiko ruregewe (22/10/2020).

[32] Kuri iki kibazo, Urukiko Rukuru rw'Ubucuruzi, narwo rwasanze BUFCCOFFEE Ltd nta kimenyetso itanga cy'uko hari ikawa itujuje ubuziranenge yaba yaragemuriwe na TEUSCHER INVEST Ltd. Rwasanze BUFCCOFFEE Ltd idasobanura ukuntu iyo kawa itari yujuje ubuziranenge kandi mbere yo kuyakira harabanzaga kubaho gupimwa no guhabwa amanota. Rwasanze kandi BUFCCOFFEE Ltd ari yo yari ifite inshingano yo gutanga ikimenyetso cy'uko uwo bagiranye amasezerano yagize uburyarya mu kutagemura ingano y'ikawa bumvikanye. Mu kwanzura kuri iyi ngingo, Urukiko rwasanze impamvu y'ubujurire irebana no kuba BUFCOFFEE Ltd itarahawe indishyi zituruka ku kuba TEUSCHER INVEST Ltd itaragemuye ikawa yose no kuba itaratanze *qualité* bumvikanye mu masezerano nta shingiro ifite kuko uko kwica amasezerano ku birebana n'ingano n'ubuziranenge bw'ikawa bidatangirwa ibimenyetso.

[33] Urukiko rurasanga kuri iyi ngingo, BUFCOFFEE Ltd yaratsinzwe mu nkiko zombi no kuba BUFCCOFFEE Ltd nta kimenyetso itanga cy'uko hari ikawa itujuje ubuziranenge yaba yaragemuriwe na TEUSCHER INVEST Ltd, no kuba kandi nta n'ikimenyetso itanga cyerekana ko itagemuriwe ingano y'ikawe bumvikanye mu masezerano.

[34] Urikiko rurasanga ibyo uhagarariye BUFCOFFEE Ltd avuga ko uwo ahagarariye atatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe kubera ko ibibazo inkiko zombi zasuzumye atari bimwe, nta shingiro byahabwa kuko nk'uko byasobanuwe haruguru ibibazo byasuzumwe ni bimwe, usibye ko Urukiko Rukuru rw'Ubucuruzi mu gusuzuma ubujurire bwa BUFCOFFEE Ltd rwagabanijemo kabiri ikibazo cya mbere cyari cyasuzumwe n'Urukiko rw'Ubucuruzi, kuko uwajuriye ari ko yabikoze, ariko rushingira ku mpamvu zatanzwe n'urwo Rukiko.

[35] Urukiko rurasanga na none ibyo uhagarariye BUFCOFFEE Ltd avuga ko uwo ahagarariye atatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe kubera ko zitashingiye ku mategeko amwe mu gufata icyemezo, nabyo nta shingiro byahabwa, kuko usibye ku bivuga gusa, ntabwo agaragaza ayo mategeko avuga, kandi nta nubwo bivuze ko ikirebwa ari uko amategeko yashingiweho ari amwe byanze bikunze, ahubwo harebwa ko imitekerereze y'inkiko zombi kuri icyo kibazo zashyikirijwe ari imwe.

[36] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga BUFCOFFEE Ltd yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, bityo ubujurire bwayo bukaba butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

2.Kumenya niba indishyi z'akababaro, inyungu, amafaranga y'ikurikirarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro

[37] Uhagarariye BUFCOFFEE Ltd asaba Urukiko rw'Ubujurire gutegeka TEUSCHER INVEST Ltd yahindutse KIVUBELT COFFEE Ltd guha BUFCOFFE Ltd 5.000.000 Frw y'indishyi z'akababaro kubera ko yayishyuye fagitire zayo zose nk'uko yaziyizaniraga, ariko ikabirengaho igakomeza kuyisebya mu nkiko no mu ruhando rw'abandi bacuruzi, no kuyisubiza 5.000.000 Frw y'igihembo cya Avoka, 500.000 Frw y'ikurikiranarubanza na 5.000.000 Frw yo gushorwa mu manza ku maherere.

[38] Uhagarariye KIVUBELT COFFEE Ltd yiregura ku ndishyi z'akababaro zingana na 5.000.000 Frw BUFCOFFEE Ltd isaba avuga ko nta shingiro zifite, kubera ko nta kosa KIVUBELT COFFEE Ltd yayikoreye, no kuba BUFCOFFEE Ltd nka sosiyete idashobora

kugaragaza uburyo yababaye. Ku bijyanye n'amafaranga 5.500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka BUFCOFFEE ltd isaba, avuga ko na yo nta shingiro afite kubera ko BUFCOFFEE Ltd ari yo yabaye nyirabayazana w'imanza ikaba yarazitsindiwe, kuko ari yo yishe amazeserano, ndetse ko n'indishyi zo gushorwa mu manza isaba ntaho zishingiye.

[39] Avuga kandi ko batanze ubujurire bwuririye ku bundi basaba Urukiko rw'Ubujurire gutegeka ko inyungu zakomeza kubarwa kugeza urubanza ruciwe, kubera gukomeza gushora KIVUBELT COFFEE Ltd mu manza z'amaherere, no gutegeka BUFCOFFEE Ltd kuyishyura 1.000.000 Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cya Avoka kuri uru rwego rw'ubujurire yiyongera kuyo yaciwe mu nkiko zabanje.

[40] Uhagarariye BUFCOFFEE Ltd yiregura ku nyungu n'indishyi TEUSCHER INVEST Ltd isaba avuga ko ntazo yahabwa kubera ko nta shingiro zifite.

UKO URUKIKO RUBIBONA

[41] Ku bijyanye n'indishyi z'akababaro zisabwa no gutegeka ko inyungu zakomeza kubarwa kugeza urubanza ruciwe bisabwa n'ababuranyi, Urukiko rurasanga rutabisuzuma kuko ubujurire bwa BUFCOFFEE Ltd butakiriwe.

[42] Ku bijyanye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa muri uru rubanza, Urukiko rurasanga KIVUBELT COFFEE Ltd ari yo ikwiye kuyahabwa kuko inzitizi yatanze ifite ishingiro kandi bikaba byarabaye ngombwa ko ishaka Avoka wo kuyiburanira; bityo hashingiwe ku ngingo ya 111 y'Itegeko N° 22/2016 ryo ku wa 28/04/2018 ryibukijwe haruguru iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, ko kiburanishirizwa rimwe n'ikirego cy'iremezo, ko kandi gishobora kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe, Urukiko rugeneye, mu bushishozi bwarwo, KIVUBELT COFFEE Ltd, 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuko ayo isaba ari menshi harebwe aho urubanza rugarukiye; akaba agomba gutangwa na BUFCOFFEE Ltd.

III. ICYEMEZO CY 'URUKIKO

[43] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe na KIVUBELT COFFEE Ltd yahoze yitwa TEUSCHER INVEST Ltd, ifite ishingiro;

[44] Rwemeje ko ubujurire bwa BUFCOFFEE Ltd butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire;

[45] Rutegetse BUFCOFFEE Ltd kwishyura KIVUBELT COFFEE Ltd yahoze yitwa TEUSCHER INVEST Ltd 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, yose hamwe akaba 700.000 Frw.

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