KINAZI CASSAVA PLANT LTD v JBT Co. LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00038/2022/CA- RCOMAA 00039/2022/CA (Ngagi, PJ) 20 Nyakanga 2022]

Amategeko agenga imanza z'ubucuruzi – Amasezerano magirirane cyangwa mpandezombi – Kudashyira mu bikorwa amasezerano – Gusubiza ikiguzi n'inyungu – Igipimo kibarirwaho inyungu – Inyungu ku kiguzi cyangwa asubizwa zibarwa ku gipimo mpuzandengo Banki zitangiraho cya 18%.

Incamake y'ikibazo: JBT Co Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi isaba ko rutegeka KINAZI CASSAVA PLANT Ltd kuyishyura ikinyuranyo cy'ikiguzi (balance) kingana na 464.838 USD itishyuwe, inyungu z'ubukererwe zingana na 18% y'umwenda, indishyi z'akababaro zingana na 10.000 USD, 10.000 USD y'igihembo cya Avoka na 2,500 USD y'ikurikiranarubanza, biturutse ku masezerano bagiranye agamije kugemura ibikoresho bitunganya imyumbati no kubishinga (installation), ivuga ko yashyikirije KINAZI CASSAVA PLANT Ltd ibyo bikoresho, ariko ko yo itashoboye kuzuza inshingano yayo y'ibanze yo gutegura ahagombaga gushyirwa ibikoresho byagemuwe ari nayo mpamvu itabashije kubishinga. KINAZI CASSAVA PLANT Ltd yireguye ivuga ko itishe amasezerano kuko impande zombi zitigeze zumvikana igihe ntarengwa "Installation na commissioning" bigomba gukorerwa, itanga n'ikirego kiregera kwiregura isaba Urukiko gutegeka JBT Co. Ltd kuyisubiza 747.900 USD yarengeje ku yo yagombaga kwishyura.

Urwo Rukiko Rwemeje ko ikirego cya JBT Co Ltd gifite ishingiro, ko KINAZI CASSAVA PLANT Ltd yishe amasezerano, rusuzuma ikirego kiregera kwiregura cya KINAZI CASSAVA PLANT Ltd rusanga nta shingiro gifite. KINAZI CASSAVA PLANT Ltd ntiyishimiye iyo mikirize y'urubanza, iyijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko mu masezerano impande zombi zagiranye, ku bushake bwazo, zitigeze zumvikana ku gihe cyo gutegura no kugaragaza aho izo mashini zigomba gushyirwa ndetse ko zitanumvikanye igihe *installation* izarangirira. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire rwashyikirijwe na KINAZI CASSAVA PLANT Ltd bufite ishingiro kuri bimwe, ijurira na none mu Rukiko rw'Ubujurire ivuga ko Urukiko rwayitegetse kwishyura JBT Co. Ltd amafaranga arenga agaciro k'ibyagemuwe kuko hari ibikoresho bitagemuwe, ko Urukiko mu gice kirebana na *Installation and other* rutaragombaga gukuramo igiciro cya *installation* gusa kuko hari n'ibindi bikubiyemo bitakozwe.

Incamake y'icyemezo: 1. Inyungu ku kiguzi cyangwa asubizwa zibarwa ku gipimo mpuzandengo Banki zitangiraho cya 18%.

2. Amasezerano magirirane cyangwa mpandezombi bisobanura ko impande zombi zifite inshingano rumwe ku rundi. Muri bene ayo masezerano, buri ruhande ruba rufite inshingano rwiyemeje gushyira mu bikorwa, ku buryo iyo hari uruhande rudashyize mu bikorwa ishingano zarwo, urundi ruhande narwo ntabwo rwasabwa gusohoza ibikubiye muri ayo masezerano; bivuze ko buri nshingano iba ifite ingurane yayo. Bityo kuba JBT CO. Ltd itarakoze imirimo yo gushinga ibikoresho ahabugenewe (*installation*), kandi nayo ikaba ibyemera, ariko ikavuga ko byatewe na KINAZI CASSAVA PLANT Ltd itarayeretse aho kubishinga, ntabwo yasaba kwishyurwa igiciro

cyo gushinga ibikoresho ahabugenewe (*installation*), kandi nayo yivugira ko itayikoze, kuko icyo giciro ari ingurane y'imirimo yakozwe; birumvikana rero ko JBT CO. Ltd itahabwa ikiguzi cy'imirimo itakoze.

Ubujurire bw'umwe bufite ishingiro kuri bimwe.
Ubujurire buririye ku bundi bufite ishingiro kuri bimwe.
Imikirize y'urubanza rwaciwe, ihindutse kuri bimwe.

Amategeko yashingiweho:
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo 2, 12, 64 na144.
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.

Imanza zifashishizwe:
Urubanza MAHESHE v ECOBANK Ltd; N° RCOMA 0027/13/CS rwaciwe n'Urukikorw'Ikirenga ku wa 14/11/2014.
Urubanza NDAYISABA n'undi v RUTAGENGWA; No RCAA 00033/2020/CA rwaciwe n'Urukikorw'Ubujurire ku wa 14/01/2022.
Urubanza MUZIMA v Succession HABIMANA n'abandi No RCAA 00003/2021/CA-RCAA 00004/2021/CA rwaciwe n'Urukikorw'Ubujurire ku wa 15/07/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] KINAZI CASSAVA PLANT Ltd na JBT Co Ltd zagiranye amasezerano y'ubucuruzi ku wa 11/04/2014, ayo masezerano akaba yari agamije kugemura ibikoresho bitunganya imyumbati no kubishinga (*installation*) ahabugenewe ku ruganda rwa KINAZI CASSAVA PLANT Ltd, ku giciro cya 4.042.458 USD, nk'uko bikubiye mu ngingo ya mbere n'iya 3 z'ayo masezerano. JBT Co Ltd yagemuye ibikoresho nk'uko impande zombi zabyumvikanye mu masezerano ariko ntibyabasha gushingwa (*installed*) ku ruganda rwa KINAZI CASSAVA PLANT Ltd.

[2] Ku wa 31/8/2020, JBT Co Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi ivuga ko yashyikirije KINAZI CASSAVA PLANT Ltd ibikoresho byujuje ubuziranenge kuko byemejwe n'impande zombi hifashishijwe inzobere, ariko ko KINAZI CASSAVA PLANT Ltd itashoboye kuzuza inshingano yayo y'ibanze yo gutegura ahagombaga gushyirwa ibikoresho byagemuwe ari nayo mpamvu itabashije kubishinga. Isobanura ko yasabye KINAZI CASSAVA PLANT Ltd inshuro zirenga imwe kuyereka aho ibikoresho yatumije ikanabishyikirizwa bizashyirwa ku ruganda, kugira ngo irangize inshingano zayo, ariko bitakunze hagashira imyaka irenga itandatu (6) bidakorwa, ndetse ko n'ibyo bikoresho bishobora kuba byaramaze kwangirika ku buryo no kubikoresha byaba bitagikunze. Ku bw'ibyo isaba Urukiko gutegeka KINAZI CASSAVA PLANT Ltd kuyishyura ikinyuranyo cy'ikiguzi (*balance*) kingana 464.838 USD itishyuwe, inyungu z'ubukererwe zingana na 18% y'umwenda, indishyi z'akababaro zingana na 10.000 USD, 10.000 USD y'igihembo cya Avoka na 2,500 USD y'ikurikiranarubanza.

[3] KINAZI CASSAVA PLANT Ltd yireguye ivuga ko itishe amasezerano kuko impande zombi zitigeze zumvikana igihe ntarengwa "*Installation* na *commissioning*" bigomba gukorerwa, ari nayo mpamvu bitarakorwa; ko atari ibyo gusa JBT Ltd itarakora kuko mu masezerano impande zombi zari zanumvikanye ko JBT CO Ltd izatanga amahugurwa ku bakozi ba KCP Ltd ariko ayo mahugurwa atigeze akorwa. KINAZI CASSAVA PLANT Ltd yatanze ikirego kiregera kwiregura isaba Urukiko gutegeka JBT Co. Ltd kuyisubiza 747.900 USD yarengeje ku yo yagombaga kwishyura.

[4] Mu rubanza NO RCOM 01388/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 17/11/2020, urwo Rukiko rwasuzumye ikirego kiregera kwiregura cya KINAZI CASSAVA PLANT Ltd rusanga nta shingiro gifite, kuko agaciro k'ibyakozwe na JBT CO Ltd karenze 70%, kandi amasezerano akaba atararangiye biturutse kuri KINAZI CASSAVA PLANT Ltd. Rwemeje ko ikirego cya JBT Co Ltd gifite ishingiro, ko KINAZI CASSAVA PLANT Ltd yishe amasezerano yo ku wa 11/04/2014 yagiranye na JBT Co. Ltd, ikaba igomba kwishyura JBT CO. Ltd amadolari yose zumvikanye mu masezerano zagiranye ku wa 11/04/2014 angana na 4.042.458 USD, ikayishyura ayasigaye itarayishyura angana na 464.838 USD n'inyungu zawo zingana na 23.939 USD, 1.000.000 Frw y'igihembo cya Avoka, 200.000 Frw y'ikurikiranarubanza na 20.000 Frw y'ingwate y'amagarama, yose hamwe ikishyura 488.777 USD na 1.220.000 Frw.

[5] KINAZI CASSAVA PLANT Ltd ntiyishimiye iyo mikirize y'urubanza, iyijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko mu masezerano impande zombi zagiranye, ku bushake bwazo, zitigeze zumvikana ku gihe cyo gutegura no kugaragaza aho izo mashini zigomba gushyirwa (*installation*) ndetse ko zitanumvikanye igihe *installation* izarangirira, inenga kuba Urukiko rwarayitegetse kwishyura JBT Co. Ltd amafaranga yose y'amasezerano asigaye rwirengagije ko "*Installation*" y'izo mashini itarakorwa, kandi buri gikorwa cyari gifite agaciro kacyo, ikaba yarategetswe kwishyura ibyo itarakorerwa kandi bitarateganyijwe mu masezerano. Ivuga kandi ko nta nyungu zagombaga gutangwa, ko n'uburyo zabazwe atari bwo, inavuga ko ikirego kiregera kwiregura yatanze kitumviswe neza.

[6] Ku wa 11/02/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N$_o$ RCOMA 00866/2020/HCC rwemeza ko ubujurire rwashyikirijwe na KINAZI CASSAVA PLANT Ltd bufite ishingiro kuri bimwe, ko urubanza rwajuririwe ruhindutse kuri bimwe by'uko KINAZI CASSAVA PLANT Ltd itegetswe kwishyura JBT Co. Ltd 264.838 USD y'umwenda, n'inyungu zingana na 5. 304 USD. Ruyitegeka kandi kwishyura JBT Co. Ltd 1.000.000 Frw y'igihembo cya Avoka, 200.000 Frw y'ikurikiranarubanza na 20.000 Frw y'ingwate y'amagarama yategetswe ku rwego rwa mbere. Ruvuga ko ingwate y'amagarama yatanzwe mu kujurira iherereye ku Isanduku ya Leta.

[7] KINAZI CASSAVA PLANT Ltd yajuririye na none uru Rukiko, ubujurire bwayo bwandikwa kuri Nº RCOMAA 00038/2022/CA, ivuga ko Urukiko rwayitegetse kwishyura JBT Co. Ltd amafaranga arenga agaciro k'ibyagemuwe, ko Urukiko mu gice kirebana na *Installation and other* rutaragombaga gukuramo igiciro cya *installation* gusa kuko hari n'ibindi bikubiyemo bitakozwe, ko kandi rutarahaye agaciro ikirego kiregera kwiregura cyasabaga ko JBT Co Ltd isubiza KCP Ltd 747.900 USD yarenze ku yo yagombaga kuba yarishyuye. JBT Co Ltd nayo yarajuriye, ubujurire bwayo bwandikwa kuri nº CMB 00039/2022/CA, ku mpamvu zo kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ukudashinga ibikoresho (*installation*) ku ruganda byaturutse ku makosa ya KINAZI CASSAVA PLANT Ltd ariko ntiruyihanishe kwishyura

amadolari yose yari asigaye kwishyurwa ku isoko ryose, no kuba rwaratanze inyungu z'ubukererwe rugendeye ku gipimo cy'ibitsa nk'aho ari inyungu zisanzwe, aho kugendera ku nyungu z'ubucuruzi, inasaba indishyi zitandukanye. Izo manza zombi zahurijwe hamwe mu rubanza Nº RCOMAA 00038/2022/CA-CMB 00039/2022/CA kugira ngo ziburanishirizwe hamwe mu rubanza rumwe.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 06/07/2022, KINAZI CASSAVA PLANT Ltd ihagarariwe na Me IRAZIRIKANA Israël, naho JBT CO Ltd ihagarariwe na Me MUCYO Donatien.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA KINAZI CASSAVA PLANT LTD

1. Gusuzuma niba Urukiko rwarategetse KINAZI CASSAVA PLANT Ltd kwishyura JBT Co Ltd amafaranga arenga agaciro k'ibyagemuwe.

[9] Uhagarariye KINAZI CASSAVA PLANT Ltd avuga ko ibikoresho byagemuwe na JBT Co. Ltd bigaragara kuri *Certificate of Conformity*, ko rero iyo ufashe urutonde rw'ibikoresho JBT Co. Ltd yagombaga kugemura bigaragara mu nyandiko y'isoko ukaruhuza n'ibigaragara kuri *Cetificate of Confirmity* yashingiweho hemezwa ko JBT Co. Ltd yagemuye ibikoresho, usanga hari ibikoresho bifite agaciro ka 736.000 USD, JBT Co.Ltd itigeze igemura, ariko ko nabyo Urukiko Rukuru rw'Ubucuruzi rwategetse KINAZI CASSAVA PLANT Ltd kubyishyura.

[10] Asobanura ko mu gika cya 27 cy'urubanza rujuririrwa Urukiko Rukuru rw'Ubucuruzi rwavuze ko impande zombi zemeranywa ko ibikoresho byaguzwe (*supply*) ariko ko bitashyizwe ahateganyijwe *(installation*) ngo bikoreshwe, rwirengagije ibisobanuro KINAZI CASSAVA PLANT Ltd yatanze by'uko ibikoresho byagemuwe na JBT Co. Ltd ari ibigaragara kuri *Certificate of Conformity* yo ku wa 17/08/2015, ari na byo yemera ko byageze i Kigali, bikaba bifite agaciro ka 2.255.000 USD, ikaba yaranabyishyuye ndetse ikanarenza ubwishyu yagombaga gutanga; bityo ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kuyitegeka kwishyura amadorari arenga agaciro k'ibikoresho byagemuwe.

[11] Asobanura kandi ko ibikoresho Urukiko Rukuru rw'Ubucuruzi rwategetse KINAZI CASSAVA PLANT Ltd kwishyura bitaragemuwe ari ibi: 1. Item 100-04 Feeler; 2. Item 200-02 Root storage tanker; 3. Item 300-04 Pulp tank; 4. Item 600-05 Vaccum tank; 5. Item 600-06 Vaccum Pump; 6. Item 600-07 Feed Pump; 7. Item 800-01 Storage tank; 8. Item 1100-03 Piping; 9. Item 700-01,02 Feeder; 10. Item 700-03 Air filter & Hood; 11. Item 700-04 Turbo Blower; 12. Item 700-5A, B Steam Air Heater; 13. Item 700-06 Dry Duct; 14. Item 700-07 Duct insration; 15. Item 700-08A-D, Dry cyclone; 16. Item 700-10 Screw Conveyor; 17. Item 700-11 Screw Conveyor; 18. Item 700-12 Screw Conveyor; 19. Item 700-13 Exaust Duct; 20. Item 700-14 Exaust Turbo Blower; 21. Item 700-15 Cooling Filter & Hood; 22. Item 700-16 Cooling Duct; 23. Item 700-17 Cooling Cyclone; 24. Item 700-18 Screw Conveyor; 25. Item 700-19 Screw Conveyor; 26. Item 700-19 Cooling Turbo Blower; 27. Item 700-20 Exaust Duct; 28. Item 700-21 Trap & BYPASS; 29. Item 700-22 Steam Hader & Valve.

[12] Akomeza avuga ko Urukiko Rukuru rw'Ubucuruzi rwagombaga gusuzuma niba koko ibikoresho byose nk'uko byagaragaraga mu gitabo cy'ipiganwa byagemuwe, aho kwemeza ko ibikoresho byose byagemuwe rushingiye gusa ku mvugo ya JBT Co. Ltd zidaherekejwe n'ibimenyetso bifatika, ari na byo byatumye rutegeka KINAZI CASSAVA PLANT Ltd kwishyura JBT Co. Ltd amafaranga y'umurengera.

[13] Avuga na none ko Urukiko Rukuru rw'Ubucuruzi rwanyuranije n'ibiteganywa n'ingingo ya 81 y'Itegeko rigenga amasezerano, iteganya ko kwica amasezerano bitanga uburenganzira ku ndishyi z'akababaro kandi bigatanga indishyi ku gice cy'inshingano zisigaye zo gukora igisabwa, kandi mbere yuko rugena amafaranga KINAZI CASSAVA PLANT Ltd yagombaga kwishyura, rwagombaga kubanza gusuzuma niba amasezerano yarubahirijwe uko yakabaye cyangwa niba hari igice cyayo kitashyizwe mu bikorwa. Avuga ko ari nako Urukiko rw'Ikirenga rwabibonye mu rubanza Nº RCOMAA 00043/2017/SC rwaciwe ku wa 22/09/2017, aho mu gika cyarwo cya 33, 35 n'icya 40 rwatanze umurongo ko ubwishyu buturuka mu kwica amasezerano bugomba kuba bungana n'ibyakozwe gusa. Ibyo bikaba bisobanuye ko Urukiko ruba rufite inshingano yo kumenyesha ingano y'ibyakozwe n'ibitarakozwe. Bityo ko kugenera JBT Co. Ltd amafaranga atangana n'ibyakozwe binyuranye n'amategeko, ndetse ko ari ukwikungahaza nta mpamvu (Enrchisement sans cause).

[14] Uhagarariye JBT Co Ltd yiregura kuri iyi ngingo y'ubujurire avuga ko ibikoresho byose byumvikanyweho mu masezerano impande zombi zagiranye byagemuwe, ko rero ibyo KCP Ltd isobanura yumvikanisha ko hari ibikoresho bimwe itagemuriwe, nta shingiro byahabwa. Asobanura ko mu iburanisha ry'urubanza rujuririrwa bagaragaje ibimenyetso bigaragaza ko ibikoresho byose byaguzwe, bigapakizwa, bikagera mu Rwanda binyuze ahantu hatandukanye, bigakorerwa igenzura n'inzego zibishinzwe, hanyuma bigashyirwa mu bubiko (stock) bwa KCP Ltd, ko ikimenyetso kiruta byose kibigaragaza ari e-mail yo 24/05/2016, KCP Ltd yandikiye JBT Co. Ltd yemeje ko ibikoresho byose byagemuwe biri mububiko bwayo kandi ko bimeze neza.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 64 y' Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ibikurikira: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".

[16] Ingingo ya 12 y'Itegeko №22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira: Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda.

[17] Dosiye y'urubanza igaragaza amasezerano yashyiweho umukono ku wa 11/04/2014, hagati ya KINAZI CASSAVA PLANT Ltd na JBT Co Ltd. Mu ngingo yayo ya mbere, JBT Co. Ltd yiyemeje kugemurira KINAZI CASSAVA PLANT Ltd ibikoresho byo gutunganya imyumbati ku giciro cya 4.042.458 USD, mu ngingo ya karindwi (7), KINAZI CASSAVA PLANT Ltd nayo yiyemeza kwishyura 4.042.458 USD yo kugura ibikoresho no kubishyira ahateganyijwe kubaka uruganda *(supply and installation of equipment*). Ingingo ya gatatu y'ayo masezerano iteganya inshingano zitandukanye za JBT Co. Ltd, iy'ingezi muri zo ikaba yari iyo kugemura ibikoresho bitunganya imyumbati no kubishinga ahabugenewe ku ruganda rwa KINAZI CASSAVA PLANT

Ltd, naho ingingo ya kane (4) igateganya inshingano za KINAZI CASSAVA PLANT Ltd, iz'ingenzi muri zo akaba ari izo gutegura ahazashyirwa ibikoresho byavuzwe, no kwishyura ikiguzi cy'ibikoresho na serivisi zo kubishinga (*installation*).

[18] Dosiye y'urubanza igaragaza inyandiko yiswe *Certificate of Conformity* yo ku wa 17/08/2015, igaragaza ibikoresho byagemuwe na JBT Co. Ltd. Igaragaramo kandi ubutumwa bwo kuri *e-mail* bwa KINAZI CASSAVA PLANT Ltd bwo ku wa 24/05/2016, bugaragaza ko ibikoresho byose byoherejwe byahageze kandi bibitswe mu buryo bwiza. Igaragaza na none ko mu iburanisha ry'urubanza rujuririrwa ryo ku wa 30/12/2021, uhagarariye KINAZI CASSAVA PLANT Ltd yemereye imbere y'Urukiko ko ibitarakozwe na JBT Co. Ltd ari ibijyanye na *Installation and O'ther*, biri kuri Item 1400, ariko ko ibindi babyemera.

[19] Urukiko rushingiye ku nyandiko yo ku wa 17/08/2015, yiswe *Certificate of Conformity* igaragaza ibikoresho byagemuwe na JBT Co. Ltd, no kubutumwa bugufi bwo kuri *e-mail* bwa KINAZI CASSAVA PLANT Ltd bwo ku wa 24/05/2016, bugaragaza ko ibikoresho byose byoherejwe byahageze kandi bibitswe mu buryo bwiza. Rushingiye kandi ku kuba KINAZI CASSAVA PLANT Ltd nta kimenyetso itanga cyerekana ko yaba yarigeze yandikira JBT Co. Ltd iyimenyesha ko hari ibikoresho itagemuye, kandi akaba ari imwe mu nshingano z'uwohererejwe imizigo cyangwa ibicuruzwa (*destinataire*) yo kwerekana ibyo atashyikirijwe cyangwa ibyangiritse, ikaba itarabikoze, rurasanga ibyo ari ibimenyetso byerekana ko JBT Co. Ltd yagemuye ibikoresho impande zombi zumvikanye mu masezerano. Urukiko rurasanga rero ibivugwa n'uhagarariye KINAZI CASSAVA PLANT Ltd ko iyo ufashe urutonde rw'ibikoresho JBT Co Ltd yagombaga kugemura bigaragara mu nyandiko y'isoko ukaruhuza n'ibigaragara kuri *Cetificate of confirmity* yashingiweho hemezwa ko JBT Co. Ltd yagemuye ibikoresho, usanga hari ibikoresho bifite agaciro ka 736,000 USD JBT Co. Ltd itigeze igemura, nta shingiro bifite.

2. Gusuzuma niba hari ibindi bitakozwe na JBT CO Ltd bikubiye mu gikorwa cyo gushinga ibikoresho ahabugenewe n'ibindi (*installation* and other) bigomba gukurwa mu giciro cyishyuzwa.

[20] Uhagarariye KINAZI CASSAVA PLANT Ltd avuga ko gushinga ibikoresho ahabugenewe n'ibindi (*installation and other*) harimo ibindi bikorwa bitakozwe JBT CO. Ltd bigomba gukurwa mu giciro kigomba kwishyurwa, birimo *Spare parts* ifite agaciro ka 92.000 USD, *piping* ifite agaciro ka 100.000 USD na *training* ifite agaciro ka 8.000 USD, ko rero muri ayo 8000 USD hafatwa ko 4000 USD ari byo byari bigenewe amahurwa yagombaga gukorerwa mu Rwanda.

[21] Asobanura ko mu gika cya 34 n'icya 35 by'urubanza Nₒ RCOMA 00866/2020/HCC, Urukiko rwasesenguye igice kirebana na *Installation and other* maze rusanga gifite agaciro ka 780.000 USD, akubiyemo *Panel and Control Box* ya 200.000 USD, *Piping* 100.000 USD, *spare part* ya 92.000 USD, *Training* ya 8.000 USD, *Equipment add packing charges* ya 50.000 USD, *Installation* ya 200.000 USD na *Inland trucking ya* 130.000 USD, ariko ko mu gika cya 35 rwavuze ko rusanga 200.000 USD arebana na *installation* ari yo yonyine akwiye gukurwa mu yo JBT Co Ltd igomba kwishyurwa, rwirengagije ibisobanuro KINAZI CASSAVA PLANT Ltd yatanze, ndetse n'ibimenyetso yarushyikirije, kuko ibirebana na *Spare Parts* bitigeze bigemurwa, nk'uko bigaragazwa n'inyandiko ya *Certificate of Confirmity* impande zombi zemeranywaho ko

ibikoresho biyivugwamo byageze i Kigali. Ko rero Urukiko mu kwemeza ko *spare parts* zishurwa nta kimenyetso rwashingiyeho kigaragaza ko zaba zaraje.

[22] Asobanura kandi ko *piping* atari igikoresho cyagombaga kugemurwa ahubwo ko ari akazi ko guhuza amatiyo igihe ibikorwa byo guterateranya uruganda byari kuba bitangiye, ariko ko Urukiko rwayifashe nk'aho ari igikoresho cyagombaga kugemurwa, rwirengagije ibisobanuro KINAZI CASSAVA PLANT Ltd yatanze, nta n'ikimenyetso rushingiyeho.

[23] Akomeza avuga ko ashingiye ku ngingo ya 3 y'amasezerano yo ku wa 11/04/2014 yabaye hagati ya KINAZI CASSAVA PLANT Ltd na JBT Co Ltd, ivuga ko abakozi 2 b'aba *technicien* ba KINAZI CASSAVA PLANT Ltd bagombaga guhugurirwa muri Koreya mu gihe cy'iminsi 21, ndetse ko n'abakozi bayo ba *operators and maintenance* bagombaga guhugurirwa mu Rwanda mu gihe cy'iminsi 28 nyuma yuko uruganda rumaze guteranywa ndetse rwatangiye no gukoreshwa, ariko ko nubwo Urukiko rwari kubona ko abakozi babiri bonyine ari bo bakoreye amahugurwa muri Koreya, rwagombaga no kumva ibisobanuro KINAZI CASSAVA PLANT Ltd yatanze, ko hari n'amahugurwa yagombaga kubera mu Rwanda ariko ntakorwe na yo yagombaga kugenerwa agaciro kayo, hanyuma kagakurwa mu madorari Urukiko rwagombaga gutekega KINAZI CASSAVA PLANT Ltd kwishyura; bityo ko kuba mu gikorwa cyo gushinga ibikoresho (*Installation and Other)* Urukiko rwarakuyemo 200.000 USD bya *installation*, rwagombaga no gukuramo 100.000 USD bya *piping*, 92,000 USD bya *spare part*, ndetse rukanakuramo nibura 4000 USD ugenekereje by'amahugurwa yagombaga kubera mu Rwanda.

[24] Avuga na none ibyo uhagarariye JBT CO. Ltd avuga ko ingingo irebana n'amahugurwa y'abakozi ba *operators and maintenance* ba KINAZI CASSAVA PLANT Ltd itasuzumwa kuko itaburanwe nta shingiro byahabwa kuko yaburanyweho, kandi ko ibyerekeye amahugurwa yabo binakubiye mu ngingo ya 3 y'amasezerano yo ku wa 11/04/2014, iteganya ko JBT CO. Ltd yagombaga guhugura ba *operators and maintenance* ba KINAZI CASSAVA PLANT Ltd mu gihe cy'iminsi 28.

[25] Uhagarariye JBT CO Ltd yiregura kuri iyi ngingo y'ubujurire avuga ko amadolari Urukiko rwemeje ko KINAZI CASSAVA PLANT Ltd yishyura angana n'ibikoresho byagemuwe nk'uko bigaragazwa na e-mail yo ku wa 24/05/2016, KINAZI CASSAVA PLANT Ltd ubwayo yiyandikiye. Ku bijyanye no kumenya niba abakozi ba KINAZI CASSAVA PLANT Ltd barahuguwe, avuga ko bahuguwe nk'uko bigaragazwa na Paseporo, amatike ndetse n'inyandiko zigaragaza ko bacumbikiwe muri Koreya. Ku birebana n'amahugurwa yagombaga kubera mu Rwanda, avuga ko bitagomba gusuzumirwa muri ubu bujurire, kuko bitigeze biburanwaho mu rubanza rujuririrwa.

[26] Avuga na none ko kudakora *installation* byatewe na KINAZI CASSAVA PLANT Ltd, ko bashingiye ku ngingo ya 64 y'Itegeko rigenga amasezerano basaba Urukiko kuyitegeka kwishyura ikiguzi cyayo nk'indishyi zo kuba itarubahirije ibyo impande zombi zumvikanye mu masezerano.

UKO URUKIKO RUBIBONA

[27] Ingingo ya 3, igika cya mbere, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ibikurikira: *Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana*.

[28] Dosiye y'urubanza igaragaza inyandiko y'ipiganwa yatanzwe na JBT CO. Ltd, igice kirebana na *Installation and Other* cyagenewe USD 780.000 abazwe muri ubu buryo: *Panel and control box= USD 200.000; Piping= USD 100.000; spare Part and training= USD 100.000; Equipment add packing charges= USD 50.000; Installation and O'ther= USD 200.000; Inland trucking= USD 130.000*. Igaragaza kandi inyandiko yakozwe na JBT CO. Ltd yo ku wa 15/11/2021, ikaba igaragaza ko *spare Part* ifite agaciro ka 92.000 USD, naho amahugurwa afite agaciro ka 8.000 USD.

[29] Nk'uko byagaragajwe haruguru, *piping* (imiyoboro) ifite agaciro ka 100.000 USD kandi nayo iri mu bigize i gikorwa cyo gushinga ibikoresho ahabugenewe n'ibindi *(installation and other*), kuba rero Urukiko Rukuru rw'Ubucuruzi rwarasanze igikorwa cyo gushinga ibikoresho ahabugenewe (*installation*) kitarakozwe hanyuma rukagikura mu bigomba kwishyurwa na KINAZI CASSAVA PLANT Ltd, birumvikana ko n'ibijyanye na *piping* (imiyoboro) nabyo bigomba gukurwa mu byo KINAZI CASSAVA PLANT Ltd igomba kwishyura, kuko bitumvikana ukuntu JBT Co. Ltd yari gukora imiyoboro kandi batarayeretse aho ishinga ibikoresho byagombaga gukora uruganda (*installation*).

[30] Ku bijyanye na *Panel and control box*, *Spare Part*, *Equipment add packing charges na Inland trucking*, Urukiko rurasanga nta kimenyetso KINAZI CASSAVA PLANT Ltd igaragaza cyerekana ko itabyakiriye, bityo ibyo isaba ko agaciro kabyo nako kagamba gukurwa mu byo igomba kwishyura nta shingiro bifite.

[31] Urukiko rurasanga ingingo ya 3 y'amasezerano impande zombi zagiranye igaragaza ko mu nshingano za JBT Co. Ltd harimo gutanga amahugurwa ku bakozi babiri ba KINAZI CASSAVA PLANT Ltd bashinzwe ibya tekiniki, bakayakorera muri Korea mu gihe cy'iminsi 21, no gutanga amahugurwa ku bakozi bakora muri serivisi ya tekinike mu gihe cy'iminsi 28 nyuma yo gutangira imirimo. Urukiko rurasanga KINAZI CASSAVA PLANT Ltd yemera ko abakozi babiri bayo bagiye mu mahugurwa muri Korea, ibyo yemera bikaba biyitsindisha nk'uko biteganywa n'ingingo ya 110 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo yibukijwe haruguru, iteganya ko ukwiyemerera mu rubanza ari amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera, ko kandi ayo magambo atsindisha uwayavuze.

[32] Nk'uko byagaragajwe haruguru mu nshingano za JBT Co. Ltd zikubiye mu masezerano harimo no gutanga amahugurwa ku bakozi ba KINAZI CASSAVA PLANT Ltd bakora muri serivisi ya tekinike mu gihe cy'iminsi 28 nyuma yo gutangira imirimo, ariko ayo masezerano ntagaragaza aho ayo mahugurwa yari kubera n'igiciro cyayo. Urukiko rurasanga nubwo mu masezerano hatagarajwe aho ayo mahugurwa azabera ariko kuba yari gukorwa nyuma yo gutangira imirimo, bivuze ko yari kubera mu Rwanda cyane ko ayari kubera hanze y' u Rwanda yari yateganyijwe muri ayo masezerano kandi akaba yarabayeho. Rurasanga rero, kuba nta kimenyetso kigaragaza ko ayo mahugurwa yagombaga kubera mu Rwanda yakozwe byumvikana ko JBT Co. Ltd itakwishyurwa umurimo itakoze.

[33] Urukiko rurasanga mu masezerano impande zombi zagiranye nta giciro cyagenewe amahugurwa yagombaga gutangwa nyuma yo gutangira imirimo, bityo kuba impande zombi zemeranya ko amahugurwa yari afite agaciro ka 8.000 USD kandi hakaba harakozwe amahugurwa yabereye muri Korea gusa, amahugurwa yagombaga gukorwa nyuma yo gutangira imirimo

yagenerwa igiciro mu bushishozi bw'Urukiko hashingiwe ku giciro cyagenewe amahugurwa cyane ko KINAZI CASSAVA PLANT Ltd nayo ivuga ko ugenekereje ayo mahurwa yari gutwara ½ cy'igiciro cy'amahurwa, ni ukuvuga ½ cya 8000 USD gihwanye na 4.000 USD, rusanga ariko amahugurwa yari kubera mu Rwanda atahabwa igiciro kingana n'amahugurwa yabereye muri Korea kuko byasabye amatike y'indege no gucumbika muri hoteri, bityo mu bushishozi bwarwo rugeneye amahugurwa yari kubera mu Rwanda 2.000 USD agomba kuvanwa mu madorari KINAZI CASSAVA PLANT Ltd igomba kwishyura.

[34] Urukiko rurasanga ibyo uhagarariye JBT Co. Ltd avuga ko ibijyanye n'amahurwa yari kubera mu Rwanda kitaburanweho mu manza zabanjye, bityo kikaba kidakwiye gusuzumwa nta shingiro bifite, kuko mu myiregurire ya KINAZI CASSAVA PLANT Ltd yavugaga ku bijyanye n'amahugurwa, kandi nk'uko byagaragajwe haruguru amahugurwa yagombaga gutangwa nyuma yo gutangira imirimo arateganyijwe mu masezerano impande zombi zagiranye, bityo rero uretse no kuba byaraburwanwe, nta nubwo KINAZI CASSAVA PLANT Ltd ibujijwe gutanga ibisobanuro bishya mu bujurire nk'uko biteganywa mu ngingo ya 154, igika cya 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko bitabujijwe mu rwego rw'ubujurire gutanga ibisobanuro bishya cyangwa ibimenyetso bishya bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere.

3. Gusuzuma niba Urukiko Rukuru rw'Ubucuruzi rwarakoze ikosa ryo kudaha ishingiro ikirego kiregera kwiregura cya KINAZI CASSAVA PLANT Ltd cyasabaga ko JBT Co Ltd iyisubiza 747.900 USD yarenze ku yo yagombaga kwishyura.

[35] Uhagarariye KINAZI CASSAVA PLANT Ltd avuga ko mu gika cya 51 cy'urubanza N° RCOMA 00866/2020/HCC rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwavuze ko KINAZI CASSAVA PLANT Ltd ikwiye kwishyura igiciro cy'ibyo yahawe n'ibindi byakozwe, ko na KINAZI CASSAVA PLANT Ltd yemera ko ibyakozwe byose bikwiye kwishyurwa, ariko muri icyo gika rwavuze kandi ko ibigomba kuva mu byishyurwa ari 200.000 USD ajyanye na *installation*, ngo naho ibyo kuyisubiza amadolari y'umurengera ivuga ko yishyuye bitahabwa ishingiro, kuko JBT Co Ltd yakoze ibirenze 70%, no kuba amasezerano atararangiye ari yo biturutseho. Ko rero basanga ibi byumvikanisha ko kuba amasezerano atararangiye biturutse kuri KINAZI CASSAVA PLANT Ltd ikwiye kubihanirwa yishyura amadolari arenga ku bwishyu bw'ibyakozwe, bakaba basanga kuba KINAZI CASSAVA PLANT Ltd yaba yarishe amasezerano nubwo yo itabyemera, bidahesha JBT Co Ltd uburenganzira bwo kwishyurwa ibyo itakoze.

[36] Asobanura ko kuba muri icyo gika Urukiko rwaravuze ko JBT Co. Ltd yakoze ibirenze 70% y'ibyagombaga gukorwa byose atari byo, kuko nta kimenyetso rwabishingiyeho, kuko ibyagemuwe bifite agaciro ka 2.555.000 USD, naho amasezerano yose akagira agaciro ka 4.042.458 USD. Asoza asaba Urukiko rw'Ubujurire kuzabisuzuma maze rukemeza ko 3.577.620 USD yishyuwe JBT Co. Ltd hakurwamo amadolari arenga ku bwishyu bw'ibikoresho JBT Co. Ltd yagemuye n'ibyo yakoze agasubizwa KINAZI CASSAVA PLANT Ltd.

[37] Uhagarariye JBT Co Ltd yiregura avuga ko impamvu Urukiko rutahaye agaciro ikirego kiregera kwiregura cya KCP Ltd ari uko ibyasabwaga muri iki kirego bidafite ishingiro, ko nta kuntu KINAZI CASSAVA PLANT Ltd yaregwa kutubahiriza amasezerano no kutishyura ibikoresho yagemuriwe, ngo hanyuma nayo ivuge ko yishyuye amafaranga menshi.

UKO URUKIKO RUBIBONA

[38] Ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira: "*Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda*".

[39] Dosiye y'urubanza igaragaza ko JBT CO. Ltd yatanze ikirego isaba Urukiko kwemeza ko KINAZI CASSAVA PLANT Ltd itubahirije amasezerano yagiranye na JBT CO. Ltd yo ku wa 11/04/2014 no kuyitegeka kwishyura ikinyuranyo cy'ikiguzi kingana na 464,838 USD, inyungu z'ubukererwe zingana na 18% y'umwenda, indishyi z'akababaro zingana na 10,000 USD; 10,000 USD y'igihembo cy'Avoka na 2.500 USD y'ikurikiranarubanza.

[40] Dosiye y'urubanza igaragaza ko kuva ku rwego rwa mbere KINAZI CASSAVA PLANT Ltd yatanze ikirego kiregera kwiregura isaba gusubizwa 747.900 USD, ivuga ko ari ayarenze ku yo yagombaga kwishyura JBT Co. Ltd, hanyuma urwo Rukiko rwemeza ko icyo kirego kiregera kwiregura nta shingiro gifite, irabijuririra n'Urukiko Rukuru rw'Ubucuruzi rwemeza ko ubujurire bwayo ku bijyanye n'irego kiregera kwiregura yatanze mu Rukiko rw'Ubucuruzi nta shingiro bufite.

[41] Nk'uko byagaragajwe haruguru, hari ikinyuranyo hagati y'amadolari KINAZI CASSAVA PLANT Ltd yagombaga kwishyura JBT Co. Ltd by'agaciro k'ibikoresho yayigemuriye n'imirimo yakoze n'ubwishyu yahawe, ari nayo mpamvu mu rubanza rujuririrwa KINAZI CASSAVA PLANT Ltd yategetswe kwishyura icyo kinyuranyo.

[42] Urukiko rurasanga, usibye kuba KINAZI CASSAVA PLANT Ltd ivuga ko hari amadolari yarenze ku bwishyu yagombaga kwishyura JBT CO Ltd, ariko ntigaragaze ikimenyetso cyerekana ko ibikoresho yagemuriwe na JBT CO. Ltd n'imirimo yakoze bifite agaciro kari munsi y'ubwishyu yahawe, nk'uko rero byagaragajwe haruguru hari amadorari KINAZI CASSAVA PLANT Ltd itishyuye JBT CO. Ltd y'ibikoresho yayigemuriye n'imirimo yayikoreye, bikaba rero bitumvikana ukuntu KINAZI CASSAVA PLANT Ltd ivuga ko yishyuye arenze ayo yagombaga kwishyura, bityo ubujurire bwayo kuri iyi ngingo nta shingiro bufite.

B. UBUJURIRE BWA JBT Co. Ltd

4. Gusuzuma niba KINAZI CASSAVA PLANT Ltd yaragombaga gutegekwa kwishyura amadolari yose yari asigaye kwishyurwa ku isoko ryose mu gihe kudashinga ibikoresho (installation) ku ruganda byaturutse ku makosa yayo.

[43] Uhagarariye JBT Co Ltd avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko ukudashinga ibikoresho ku ruganda (*installation*) byaturutse ku makosa ya KINAZI CASSAVA PLANT Ltd yo kutagaragaza aho ibikoresho byagemuwe byagombaga gushingwa, ariko ntirwayitegeka guha JBT Co. Ltd amadolari yumvikanyweho mu masezerano zagiranye ngo yishyurwe serivisi yo gushinga ibikoresho (*installation*).

[44] Asobanura ko mu gace ka 31 n'aka 32 k'urubanza No RCOMA 00866/2020/HCC rwajuririwe, Urukiko rwemeje ko ibitarakozwe mu masezerano byaturutse kuri KINAZI CASSAVA PLANT Ltd, ariko ntirwavuga ku ngaruka (*conséquence*s) zo kwica amasezerano,

ruyitegeka gusa kwishyura ikiguzi cy'ibikoresho byagemuwe, nk'aho ibyo ari igihano cyo kwica amasezerano, rwirengagije ko gushinga ibikoresho *(installation*) ari kimwe mu byari bigize amasezerano, kandi ko kuba bitarakozwe byayiturutseho ikaba igomba kubihanirwa yishyura amadolari yose yari ateganyijwe mumasezerano. Ko kandi muri icyo gikorwa cyo gushinga ibikoresho (*installation*) ari ho honyine JBT Co Ltd yari iteze inyungu muri iryo soko, kuko ibindi byose byari ukwishyura gusa ibikoresho byagemuwe nta yindi nyungu ibikuramo.

[45] Uhagarariye KINAZI CASSAVA PLANT Ltd yiregura avuga ko ibyo JBT CO Ltd ivuga nta shingiro bifite, ngo kuko binyuranye n'ingingo ya 81 y'Itegeko rigenga amasezerano. Asobanura ko itegeko ridateganya ko igihe amasezerano cyangwa igice cy'amasezerano bidashoboye kubahirizwa hishyurwa agaciro kose k'amasezerano cyangwa k'igice kitubahirijwe, ko ahubwo bitanga uburenganzira ku ndishyi zibarwa hashingiwe ku gice cy'amasezerano kitubahirijwe cyangwa ku masezerano atarubahirijwe; bityo ko ntaho Urukiko rwagombaga gushingira ruha JBT Co Ltd amafaranga yo gushinga ibikoresho (*installation*) kandi bitarakozwe.

UKO URUKIKO RUBIBONA

[46] Ingingo ya 2, agace ka 4º, y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano magirirane cyangwa mpandezombi ari amasezerano abayagiranye bayemeye ku buryo bw‟ingenerane bamwe ku bandi bisobanura ko impande zombi zifite inshingano rumwe ku rundi. Mu yandi magambo, muri bene ayo masezerano, buri ruhande ruba rufite inshingano rwiyemeje gushyira mu bikorwa, ku buryo iyo hari uruhande rudashyize mu bikorwa ishingano zarwo, urundi ruhande narwo ntabwo rwasabwa gusohoza ibikubiye muri ayo masezerano; bivuze ko buri nshingano iba ifite ingurane yayo (*contrepartie/consideration*).

[47] Urukiko rurasanga, amasezerano hagati KINAZI CASSAVA PLANT Ltd na JBT CO. Ltd ari magirirane. Kuba JBT CO. Ltd itarakoze imirimo yo gushinga ibikoresho ahabugenewe (*installation*), kandi nayo ikaba ibyemera, ariko ikavuga ko byatewe na KINAZI CASSAVA PLANT Ltd itarayeretse aho kubishinga, ntabwo yasaba kwishyurwa igiciro cyo gushinga ibikoresho ahabugenewe (*installation*), kandi nayo yivugira ko itayikoze, kuko icyo giciro ari ingurane y'imirimo yakozwe; birumvikana rero ko JBT CO. Ltd itahabwa ikiguzi cy'imirimo itakoze; bityo ubujurire bwayo kuri iyi ngingo nta shingiro bufite.

5. Gusuzuma niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kubarira inyungu ku gipimo cy'ibitsa.

[48] Uhagarariye JBT Co Ltd avuga ko mu kubara inyungu z'ubukererwe Urukiko Rukuru rw'Ubucuruzi rwagendeye ku gipimo cy'ibitsa nkaho ari inyungu zisanzwe, aho kugendera ku nyungu z'ubucuruzi nk'uko Urukiko rw'Ubucuruzi rwazibaze, kuko kugira ngo JBT Co. Ltd ikore isoko rivugwa byabaye ngombwa ko ifata inguzanyo muri banki, kandi ko KINAZI CASSAVA PLANT Ltd yari ibizi neza; bityo ko hatari kugenderwa ku gipimo cy'ibitsa, ko ahubwo Urukiko rwagombaga kugendera ku gipimo cy'inyungu zisanzwe zikurikizwa na za banki.

[49] Uhagarariye KINAZI CASSAVA PLANT Ltd yiregura ku nyungu JBT CO Ltd isaba avuga ko nta shingiro zifite, kuko ntacyo yigeze ihomba cyane ko yishyuwe agaciro k'ibyo yakoze byose ndetse kanarenga. Avuga kandi ko Urukiko rusanze izo nyungu zigomba gutangwa rwazibarira ku gipimo cy'ibitsa nk'uko byagiye bigenda mu manza bashyikirije Urukiko.

UKO URUKIKO RUBIBONA

[50] Ingingo ya 144 y' Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi cyangwa ashobora kumenyekana, inyungu zibarwa uhereye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira".

[51] 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'ubutegetsi, 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'inyandiko z'abahanga mu mategeko*".

[52] Dosiye y'urubanza igaragaza ko Urukiko rw'Ubucuruzi rwabariye inyungu ku gipimo Banki itangiraho inguzanyo gihwanye na 18%, naho Urukiko Rukuru rw'Ubucuruzi rubarira inyungu ku gipimo cy'ibitsa cya Banki Nkuru y'Igihugu.

[53] Kuri iki kibazo kijyanye n'uburyo inyungu zibarwa, Urukiko rurasanga nta Tegeko ririho rigena igikipimo kibarirwaho inyungu, ari nayo mpamvu mu manza zimwe habarirwa ku gipimo Banki zitangiraho inguzanyo gihwanye na 18%, mu zindi manza hagashingirwa ku gipimo cy'ibitsa cya Banki Nkuru y'u Rwanda.

[54] Urukiko rurasanga ibisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi, aho rwemeje ko mu kubara inyungu hadashingirwa ku gipimo banki itangiraho inguzanyo, ahubwo hashingirwa ku gipimo cy'ibitsa cya Banki Nkuru y'Igihugu, nta shingiro bifite kuko ntaho binyuranyije n'amategeko kubarira inyungu ku gipimo banki zitangiraho inguzanyo cya 18%; bityo uru Rukiko rurasanga igipimo cya 18% aricyo gikwiye kubarirwaho inyungu muri uru rubanza ari cyo gipimo kigereranyije Banki zitangiraho inguzanyo.

[55] Urukiko rurasanga inyungu zibariwe ku kigero cya 18% arizo Urukiko rw'Ikirenga rwatanze mu rubanza N° RCOMA 0027/13/CS rwaciwe ku wa 14/11/2014, haburana MAHESHE Munyerenkana Floride na ECOBANK Ltd, akaba ari nazo zatanzwe n'uru Rukiko mu rubanza N° RCAA 00033/2020/CA rwaciwe ku wa 14/01/2022, haburana NDAYISABA Jean Damascène na RUTAGENGWA Georges hamwe na RUTAGENGWA Matter Elisabeth[1] ndetse no mu rubanza N° RCAA 00003/2021/CA-RCAA 00004/2021/CA rwaciwe ku wa 15/07/2022, haburana MUZIMA Rutikanga Frederick na Succession HABIMANA ihagarariwe na KARIGIRWA Félicité n'abandi.[2]

[56] Hashingiwe ku ngingo z'amategeko zavuzwe haruguru no kubisobanuro byatanzwe, Urukiko rurasanga JBT CO. Ltd igomba guhabwa inyungu zibariwe kuri 18%, zibazwe kuva ku wa 27/08/2020, umunsi KINAZI CASSAVA PLANT Ltd yandikiwe yihanangizwa kugeza uyu munsi urubanza ruciriweho (ku wa 20/07/2022). Urukiko rurasanga amadorari KINAZI

[1] Reba igika cya 32 n'icya 34 by'urubanza N° RCAA 00033/2020/CA rwavuzwe haruguru
[2] Reba igika cya 53 cy'urubanza N° RCAA 00003/2021/CA-RCAA 00004/2021/CA rwavuzwe haruguru.

CASSAVA PLANT Ltd igomba kwishyura ahwanye na 264.838 USD yagenewe na n'Urukiko Rukuru rw'ubucuruzi havuyemo 100.000 USD ya piping na 2.000 USD y'amahurwa yagombaga kubera mu Rwanda, hagasigara 162.000 USD ari nayo agomba kubarirwa inyungi, ni ukuvuga 162.838 USDX18X688 (iminsi): 100x365 = 55.248 USD yose hamwe akaba 217.284 USD.

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

[57] Uhagarariye KINAZI CASSAVA PLANT Ltd isaba Urukiko rw'Ubujurire gutegeka JBT CO Ltd kuyisubiza 5.000.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza, yose hamwe akaba 6.000.000 Frw.

[58] Uhagarariye JBT Co Ltd yiregura ku mafaranga y'ikurikiranarubanza n'igihembo cya Avoka KINAZI CASSAVA PLANT Ltd isaba avuga ko ntayo yahabwa, kubera ko ubujurire bwayo nta shingiro bufite.

[59] Avuga kandi ko ashingiye ku ngingo ya 111 y'Itegeko Nº 22/2018 ryo ryibukijwe haruguru, asaba Urukiko rw'Ubujurire gutegeka KINAZI CASSAVA PLANT Ltd guha JBT Co. Ltd 10.000 USD y'igihembo cya Avoka na 2.500 USD y'ikurikiranarubanza nk'uko yayasabye kuva ku rwego rwa mbere ndetse no ku rwego rw'ubujurire bwa mbere. Asobanura ko mu rubanza rujuririrwa Urukiko Rukuru rw'Ubucuruzi rwemeje ko JBT Co. Ltd ihabwa 264.838 USD ariko ntirwayigenera amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka ngo kuko JBT Co. Ltd ntacyo yatsindiye kuri urwo rwego; bityo ko kuba KINAZI CASSAVA PLANT itaratsindiye ibyo yari yarajuririye byose nta mpamvu yari gutuma Urukiko rutagenera JBT Co. Ltd indishyi z'ikurikiranarubanza n'igihembo cya Avoka kuri urwo rwego rw'ubujurire mu gihe hari ibyo yatsindiye.

[60] Uhagarariye KINAZI CASSAVA PLANT Ltd yiregura kuri 10.000 USD y'igihembo cya Avoka na 2.500 USD y'ikurikiranarubanza JBT Co. Ltd isaba avuga ko ntayo yahabwa, kubera ko ari yo yishoye mu manza nta mpamvu, ikaba ikwiye kwirengera ingaruka zabyo, ko kandi agaciro k'ibyo JBT Co. Ltd yakoze byose yakishyuwe.

UKO URUKIKO RUBIBONA

[61] Urukiko rurasanga kuri uru rwego nta ruhande rukwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kuko buri ruhande rufite ibyo rutsindiye n'ibyo rwatsindiwe. Urukiko rurasanga JBT Co. Ltd igomba guhabwa 1.000. 000 Frw y'igihembo cya Avoka, 200.000 Frw y'ikurikiranarubanza na 20.000 Frw y'ingwate y'amagarama nk'uko yategetswe mu manza zabanje kuko KINAZI CASSAVA PLANT Ltd itayajuririye.

III.ICYEMEZO CY`URUKIKO

[62] Rwemeje ko ubujurire bwa KINAZI CASSAVA PLANT Ltd bufite ishingiro kuri bimwe.

[63] (Rwemeje ko ubujurire bwatanzwe na JBT Co. Ltd bufite ishingiro kuri bimwe.

[64] Rwemeje ko imikirize y'urubanza No RCOMA 00866/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/02/2022, ihindutse kuri bimwe.

[65] Rwemeje ko KINAZI CASSAVA PLANT Ltd igomba kwishyura JBT Co. Ltd 162.838 USD y'umwenda n'inyungu zayo zihwanye na 55.248 USD.

[66] Rutegetse ko KINAZI CASSAVA PLANT Ltd kwishyura JBT CO. Ltd 164.838 USD y'umwenda na 55.248 USD y'inyungu zayo.

[67] Rutegetse KINAZI CASSAVA PLANT Ltd kwishyura JBT CO. Ltd 1.000. 000 Frw y'igihembo cya Avoka, 200.000 Frw y'ikurikiranarubanza na 20.000 Frw y' ingwate y'amagarama nk'uko yategetswe mu manza zabanje.

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