AKARERE KA GICUMBI v WOORD GROUP LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00035/2022/CA (Rukundakuvuga, PJ, Kanyange na Ngagi, J.) 13 Kamena 2022]

Amategeko agenga imanza mboneramubano – Ububasha bw'inkiko – Urukiko rw'ubujurire – Ubujurire bwa kabiri –Isuzuma ry'ububasha bw'urukiko bushingiye ku ndishyi zagenwe mu rubanza cyangwa agaciro k'ikiburanwa – Iyo hari indishyi zagenwe mu rubanza ari zo zigomba gushingirwaho, naho byaba ngombwa ko hashingirwa ku gacirok'ikiburanwa hakarebwa agaciro kemejwe n'urukiko nyuma y'impaka z'ababuranyi – Naho haba nta gaciro kagenwe n'inkiko hagashingirwa ku kagenwe n'umuhanga iyo bibaye gombwa – Ntabwo iyakirwa ry'ubujurire bwa kabiri rishingirwa ku gaciro umuburanyi yigeneye ubwe.

Incamake y'ikibazo: WOORD GROUP Ltd yareze Akarere ka Gicumbi mu Rukiko rw'Ubucuruzi ivuga ko kasheshe amasezeano bari afitanye mu buryo bunyuranyije n'amategeko, isaba ko kategekwa kubahiriza amasezerano impande zombi zagiranye. Muri ayo masezerano WOORD GROUP Ltd yagombaga kugemura inzugi 238 n'amadirishya 476, kubikinga, no gushyiramo ibirahuri n'amaserire, naho Akarere ka Gicumbi kiyemeza kuzayishyura 96.328.120 Frw.

Nyuma yo gusuzuma niba WOORD GROUP Ltd yarubahirije amasezerano yagiranye n'Akarere ka Gicumbi ku buryo yakwishyurwa amafaranga iregera, urwo Rukiko rwemeje ko WOORD GROUP Ltd itubahirije amasezerano yagiranye n'Akarere ka Gicumbi, rwemeza ko Akarere ka Gicumbi kagomba kwiyishyura 48.164.060 Frw y'icyiciro cya mbere cy'isoko, kandi ko nta ndishyi zigomba gutangwa.

Impande zombi zajuririye Urukiko Rukuru rw'Ubucuruzi, WOORD GROUP Ltd ivuga ko Urukiko rw'Ubucuruzi rwirengagije ibimenyetso yatanze, isaba ko byakosorwa, inasaba ko Akarere ka Gicumbi kacibwa inyungu za 18% n'indishyi zitandukanye. Akarere ka Gicumbi nako kajuriye gasaba Urukiko kongera gusuzuma niba WOORD GROUP Ltd yarubahirije amasezerano bagiranye, gasaba ko amafaranga WOORD GROUP Ltd yagenewe ku rwego rwa mbere avanwaho.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire rwashyikirijwe na WOORD GROUP Ltd nta shingiro bufite, ko n'ubujurire bw' Akarere ka Gicumbi nta shingiro bufite, ko hagumyeho imikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi.

Akarere ka Gicumbi kajuririye muri uru Rukiko ariko WOORD GROUP Ltd ibanza gutanga inzitizi yo kutakira ubujurire bwa kabiri bwako kubera ko butari mu bubasha bw'Urukiko rw'Ubujurire aho indishyi zagenwe mu rubanza rwajuririwe zitageze kuziteganya n'itegeko. Aha Akarere kiregura kuri iyi nzitizi kavuga ko nta shingiro ifite, kubera ko umwenda WOORD GROUP Ltd ukishyuza ungana na 96.000.000 Frw hashingiwe ku masezerano bagiranye ari muri *system*, ayo mafaranga akaba arenze 75.000.000 Frw ateganywa n'itegeko.

Incamake y'icyemezo: Iyakirwa ry'ubujurire bwa kabiri ntishingira ku gaciro k'ikiburanwa ahubwo harebwa agaciro kemejwe n'urukiko nyuma y'impaka z'ababuranyi; haba nta gaciro kagenwe n'inkiko hagashingirwa ku kagenwe n'umuhanga iyo bibaye gombwa. Bityo, ubujurire

bw’Akarere ka Gicumbi ntiburi mu bubasha bw’Urukiko rw’Ubujurire kuko kategetswe kwishyura WOORD GROUP Ltd 48.164.060 Frw akaba atagera kuri 75.000.000 Frw ateganywa n’itegeko.

Inzitizi y’iburabubasha ifite ishingiro.
Amagarama yatanzwe ahwanye n’ibyakozwe.

Amategeko yashingiweho:
Itegeko N°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 111.

Imanza zifashishijwe:
Habyarimana Charles na MTN RWANDACELL Ltd n’abandi, RCOMAA 00013/2021/CA rwaciwe n’Urukiko rw’Ubujurire.
Rutabingwa Jean Paul na MINERALS SUPPLY AFRICA Ltd (MISA Ltd), RCOMAA 00050/2020/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 24/12/2020
Georges Nihal Bopearatchy na KARONGI TEA FACTORY Ltd, RSOCAA 0004/2018/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 09/11/2018.
Mabuye Joseph, Nzizera Alexandre, PAJ REAL ESTATE Ltd na WAREHOUSE barega Shane Martin Dale na Mugiraneza Pascal, RCOMAA 00004/2020/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 11/12/2020.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Ku wa 23/04/2020, Akarere ka Gicumbi kagiranye amasezerano na WOORD GROUP Ltd, yiswe “*Contract of supply and fixing of metallic door and window including glasses for wb projects*”, muri ayo masezerano WOORD GROUP Ltd yiyemeje kugemura inzugi 238 n’amadirishya 476, kubikinga, no gushyiramo ibirahuri n’amaserire, naho Akarere ka Gicumbi kiyemeza kuzayishyura 96.328.120 Frw. Ayo masezerano yagombaga kumara igihe cy’amezi atatu (3), abarwa uhereye igihe yakorewe kugeza ku wa 22/07/2020, kandi yateganyaga ko izo nzugi n’amadirishya bizagemurwa mu byiciro bibiri, aho ku cyiciro cya mbere hagombaga kugemurwa kimwe cya kabiri cyabyo, hanyuma ku cyiciro cya kabiri hakagemurwa ibisigaye.

[2] WOOD GROUP Ltd ivuga ko yakoze izo nzugi n’amadirishya mu gihe cyari giteganyijwe, yajya kubikinga igasanga imirimo yo kubaka amashuri amwe n’amwe itararangira, bigatuma ku wa 18/07/2020 isaba inyongera ku minsi yo kurangiza akazi kugira ngo itegereze abubaka amashuri babanze bayarangize ibone gukinga inzugi n’amadirishya; ku wa 04/08/2020, Akarere ka Gicumbi kayongerera iminsi makumyabiri n’umwe (21). Ku wa 25/11/2020, Akarere ka Gicumbi kasheshe ayo amasezerano ku mpamvu z’uko ibipimo by’ibati rikoze inzugi ridahuje n’ibyari muri DAO, kandi amasezerano yararangiye n’inzugi zaramaze gukingwa, kagamije kutayishyura.

[3] Ibyo byatumye WOORD GROUP Ltd irega Akarere ka Gicumbi mu Rukiko rw'Ubucuruzi ivuga ko kasheshe amasezeano mu buryo bunyuranyije n'amategeko, isaba ko kategekwa kubahiriza amasezerano impande zombi zagiranye kakayishyura 96.328.120 Frw nk'igihembo cy'imirimo yakoze, isaba n'indishyi zitandukanye. Akarere ka Gicumbi kireguye kavuga ko kasheshe amasezerano bitewe n'uko WOORD GROUP Ltd yagemuye ibikoresho bidahuye n'ibisabwa muri DAO kandi ko indishyi zisabwa nta shingiro zifite.

[4] Mu rubanza RCOM 01992/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/03/2021, nyuma yo gusuzuma niba WOORD GROUP Ltd yarubahirije amasezerano yagiranye n'Akarere ka Gicumbi ku buryo yakwishyurwa amafaranga iregera, urwo Rukiko rwemeje ko WOORD GROUP Ltd itubahirije amasezerano yagiranye n'Akarere ka Gicumbi, rwemeza ko Akarere ka Gicumbi kagomba kwishyura WOORD GROUP Ltd 48.164.060 Frw y'icyiciro cya mbere cy'isoko, kandi ko nta ndishyi zigomba gutangwa.

[5] Impande zombi ntizishimiye imikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi ziyijuririra mu Rukiko Rukuru rw'Ubucuruzi, WOORD GROUP Ltd ivuga ko Urukiko rw'Ubucuruzi rwirengagije ibimenyetso yatanze, isaba ko byakosorwa, inasaba ko Akarere ka Gicumbi kacibwa inyungu za 18% n'indishyi zitandukanye; ubujurire bwayo bwandikwa kuri RCOMA 00303/2021/HCC. Akarere ka Gicumbi nako kajuriye gasaba Urukiko kongera gusuzuma niba WOORD GROUP Ltd yarubahirije amasezerano yagiranye n'Akarere ka Gicumbi, gasaba ko amafaranga WOORD GROUP Ltd yagenewe ku rwego rwa mbere avanwaho, ubujurire bwako bwanditswe kuri RCOMA 00305/2021/HCC. Izo manza zombi zahurijwe hamwe mu rubanza RCOMA 00303-00305/2021/HCC ziburanishirizwa hamwe.

[6] Ku wa 11/02/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00303-00305/2021/HCC, rwemeza ko ubujurire rwashyikirijwe na WOORD GROUP Ltd nta shingiro bufite, ko n'ubujurire bw' Akarere ka Gicumbi nta shingiro bufite, rwemeza ko hagumyeho imikirize y'urubanza RCOM 01992/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/03/2021, ruvuga ko ingwate y'amagarama yatanzwe na buri ruhande rujurira iherereye ku Isanduku ya Leta.

[7] Akarere ka Gicumbi ntikishimiye imikirize y'urubanza karujuririra muri uru Rukiko, ubujurire bwako bwandikwa kuri RCOMAA 00035/2022/CA, kavuga ko WOORD GROUP Ltd itubahirije ibyari bikubiye mu masezerano impande zombi zagiranye no muri DAO, ikaba yaragemuye ibikoresho bidahuye n'ibisabwa muri DAO, akaba ari na yo mpamvu yatumye gasesa ayo masezerano, ko kandi kayasheshe gakurikije ibyo amategeko ateganya, gasaba ko 48.164.060 Frw kategetswe kwishyura yakurwaho.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 06/06/2022, Akarere ka Gicumbi gahagarariwe na Me Ndengeyingoma Louise, naho WOORD GROUP Ltd ihagarariwe na Me Musore Gakunzi Valery na Me Serugo Jean Baptiste.

[9] Mbere y'uko WOORD GROUP Ltd yiregura ku mpamvu z'ubujurire yabanje gutanga inzitizi yo kutakira ubujurire bwa kabiri bwatanzwe n'Akarere ka Gicumbi kubera ko butari mu bubasha bw'Urukiko rw'Ubujurire kuko indishyi zagenwe mu rubanza rwajuririwe zitageze kuri 75.000.000 Frw ateganywa mu ngingo ya 52, igika cya 2, agace ka 8º, y'Itegeko Nº 30/2018 ryo

ku wa 02/06/2018 rigena ububasha bw'inkiko; bityo Urukiko rwemeza ko iyo ngingo ibanza gusuzumwa mbere yo kwinjira mu mizi y'urubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ubujurire bw'Akarere ka Gicumbi butari mu bubasha bw'Urukiko rw'Ubujurire

[10] Abahagarariye WOORD GROUP Ltd bashingiye ku ngingo ya 52, agace ka 8, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya 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, iyo izo manza: 8º zagenwemo n'urukiko indishyi zingana nibura na 75.000.000 Frw cyangwa zifite agaciro kagenwe n'umucamanza mu gihe habaye impaka kangana na 75.000.000 Frw", bavuga ko ubujurire bw'Akarere ka Gicumbi budakwiye kwakirwa kubera ko butari mu basha bw'Urukiko rw'Ubujurire.

[11] Basobanura ko mu rubanza RCOMA 00303-00305/2021/HCC rujuririrwa, Akarere ka Gicumbi kategetswe kwishyura WOORD GROUP Ltd 48.164.060 Frw, indishyi zagenwe n'Urukiko zikaba zitageze kuri 75.000.000 Frw ziteganywa n'Itegeko kugira ngo ubujurire bwa kabiri bwakirwe mu Rukiko rw'Ubujurire. Bavuga kandi ko hari umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RCOMAA 00023/2017/SC rwa BRALIRWA na GISA Frédiane, aho mu gika cya 23, urwo Rukiko rwemeje ko urugero rw'indishyi zagenwe n'Umucamanza ari rwo rushingirwaho mu kugena ububasha bw'Urukiko aho kuba agaciro k'ikiburanwa.

[12] Uhagarariye Akarere ka Gicumbi yiregura kuri iyi nzitizi avuga ko nta shingiro ifite, kubera ko umwenda WOORD GROUP Ltd yishyuza Akarere ka Gicumbi ungana na 96.000.000 Frw hashingiwe ku masezerano bagiranye ari muri system, ayo mafaranga akaba arenze 75.000.000 Frw. Abajijwe icyo avuga ku rubanza rwaciwe n'Urukiko rw'Ikirenga ruvuga ko urugero rw'indishyi zagenwe n'Urukiko arirwo rushingirwaho mu kugena ububasha bw'Urukiko aho kuba agaciro k'ikiburanwa asubiza ko ntacyo aruvugaho, ko Urukiko ari rwo rwabifataho icyemezo.

[13] Impaka kuri iki kibazo zishingiye ku kumenya ikigomba gushingirwaho mu kwemeza ko ubujurire bwa kabiri bwakirwa hagati y'indishyi zasabwe mu itangwa ry' ikirego n'indishyi zagenwe n'Urukiko.

[14] Ingingo ya 52, igika cya 2, agace ka 8, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ibikurikira: 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, iyo izo manza: 8° zagenwemo n'urukiko indishyi zingana nibura na miliyoni mirongo irindwi n'eshanu z'amafaranga y'u Rwanda (75.000.000 Frw) cyangwa zifite agaciro kagenwe n'umucamanza mu gihe habaye impaka kangana na miliyoni mirongo irindwi n'eshanu z'amafaranga y'u Rwanda (75.000.000 Frw).

[15] Urukiko rurasanga icyo iyi ngingo ivuga, nk'uko byagiye binagarukwaho mu manza zitandukanye zaciwe n'Uru Rukiko, ari uko iyo hari indishyi zagenwe mu rubanza ari zo zigomba

gushingirwaho, naho byaba ngombwa ko hashingirwa ku gaciro k'ikiburanwa hakarebwa agaciro kemejwe n'urukiko nyuma y'impaka z'ababuranyi; haba nta gaciro kagenwe n'inkiko hagashingirwa ku kagenwe n'umuhanga iyo bibaye gombwa. Mu yandi magambo, ku bijyanye n'iyakirwa ry'ubujurire bwa kabiri, umushingamategeko ntiyashatse ko hashingirwa ku gaciro umuburanyi yigeneye ubwe.

[16] Ibi niko byemejwe n'Urukiko rw'Ubujurire mu rubanza RCOMAA 00050/2020/CA rwaciwe ku wa 24/12/2020 mu bika bya 23 na 24, haburana Rutabingwa Jean Paul na MINERALS SUPPLY AFRICA Ltd (MISA Ltd)[1]. Uyu murongo ni nawo Urukiko rw'Ubujurire rwakomeje gukurikiza mu manza zitandukanye zirimo urubanza RCOMAA 00013/2021/CA haburana Habyarimana Charles na MTN RWANDACELL Ltd n'abandi mu gika cyarwo cya 39; mu rubanza RSOCAA 0004/2018/CA rwaciwe ku wa 09/11/2018, haburana Georges Nihal Bopearatchy na KARONGI TEA FACTORY Ltd, no mu rubanza RCOMAA 00004/2020/CA rwaciwe ku wa 11/12/2020, hajuriyemo Mabuye Joseph, Nzizera Alexandre, PAJ REAL ESTATE Ltd na WAREHOUSE barega Shane Martin Dale na Mugiraneza Pascal.

[17] Ku bijyanye n'uru rubanza, WOORD GROUP Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi irusaba gutegeka Akarere ka Gicumbi kwishyura 96.328.120 Frw akomoka ku masezerano bagiranye ku wa 23/04/2020 n'indishyi zitandukanye zikomoka mu gusesa amasezerano mu buryo budakurikije amategeko, urwo Rukiko rwemeje ko Akarere ka Gicumbi kagomba kwishyura WOORD GROUP Ltd 48.164.060 Frw y'icyiciro cya mbere cy'isoko. Impande zombi zajuririye Urukiko Rukuru rw'Ubucuruzi, maze mu rubanza RCOMA 00303-00305/2021/HCC, urwo Rukiko rwemeza ko ubujurire rwashyikirijwe na WOORD GROUP Ltd nta shingiro bufite, ko n'ubujurire bw'Akarere ka Gicumbi nta shingiro bufite, rwemeza ko hagumyeho imikirize y'urubanza RCOM 01992/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/03/2021.

[18] Urukiko rurasanga, kuba WOORD GROUP Ltd yarareze Akarere ka Gicumbi isaba kwishyurwa 96.328.120 Frw akomoka ku masezerano bagiranye, nyuma y'impaka Urukiko rukayigenera 48.164.060 Frw, ayo yagenewe n'Urukiko ari yo agomba gushingirwaho hasuzumwa ko ubujurire bw'Akarere ka Gicumbi buri mu bubasha bw'Urukiko rw'Ubujurire nk'uko byasobanuwe mu bika bya 15 na 16 by'uru rubanza, aho kuba ayasabwe na WOORD GROUP Ltd ku rwego rwa mbere nk'uko Me Ndengeyingoma Louise uhagarariye Akarere ka Gicumbi ashaka ku byumvikanisha.

[19] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ubujurire bw'Akarere ka Gicumbi butakiriwe, kuko butari mu bubasha bw'Urukiko rw'Ubujurire kuko Akarere ka Gicumbi kategetswe kwishyura WOORD GROUP Ltd 48.164.060 Frw, indishyi zatanzwe n'Urukiko zikaba zitagera kuri 75.000.000 Frw ziteganywa mu ngingo ya 52, igika cya 2, agace ka 8º, y'Itegeko N° 30/2018 ryavuzwe haruguru.

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

[1] Ku birebana n'ikibazo cyo kumenya niba Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha ubujurire bwa Rutabingwa Jean Paul ku rwego rwa kabiri, mu ngingo ya 52, igika cya kabiri, agace ka 8º, yavuzwe haruguru, havugwamo ko agaciro k'ikiburanwa mu rubanza gashingirwaho ari akemejwe n'umucamanza.

[20] Uhagarariye WOORD GROUP Ltd avuga ko WOORD GROUP Ltd isaba Urukiko rw'Ubujurire gutegeka Akarere ka Gicumbi kuyiha 3.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Abavoka bayiburanira.

[21] Uhagarariye Akarere ka Gicumbi yiregura ku mafaranga y'ikurikiranarubanza n'igihembo cya Avoka avuga ntazo WOORD GROUP Ltd yahabwa kubera ko nta ruhare kagize mu iseswa ry'amasezerano impande zombi zagiranye. Avuga kandi ko Akarerere ka Gicumbi ariko gakwiye kugenerwa 3.000.000 Frw y'igihembo cya Avoka kuva ku rwego rwa mbere kugeza kuri uru rwego rw'Ubujurire**.**

UKO URUKIKO RUBIBONA

[22] 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'ubutegetsi iteganya ibikurikira: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

[23] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza WOORD GROUP Ltd isaba ikwiye kuyahabwa, kuko byabaye ngombwa ko ishaka Abavoka bo kuyiburanira, ariko rukaba rusanga ayo isaba ari menshi harebwe ko urubanza rugarukiye ku nzitizi y'iburabubasha gusa; bityo mu bushishozi bwarwo rukaba ruyigeneye 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego, agomba gutangwa n'Akarere ka Gicumbi.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe na WOORD GROUP Ltd ifite ishingiro.

[25] Rwemeje ko ubujurire bw'Akarere ka Gicumbi butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

[26] Rutegetse Akarere ka Gicumbi kwishyura WOORD GROUP Ltd 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego.

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