CAYRIER v. LETSHEGO RWANDA LTD N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00044/2019/CA (Kanyange, P.J.) 19 Gashyantare 2020]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ubujurire bwa kabiri ku kirego gisaba gutesha agaciro cyamunara – Ikirego gisaba gutesha agaciro cyamunara gishobora kujuririrwa bwa kabiri kuko aba ari ikirego cyigenga kidashamikiye ku kindi kirego cy'iremezo ariko kikajuririrwa mu gihe giteganywa n'amategeko ku birego byihutirwa.

Incamake y'ikibazo: CAYRIER yagiranye amasezerano y'inguzanyo na LETSHEGO RWANDA Ltd, ahabwa inguzanyo ya 37.500.000 Frw, nawe atanga ingwate y'amazu abiri. CAYRIER ntiyubahirije ayo masezerano, bituma LETSHEGO RWANDA Ltd isaba Umwanditsi Mukuru ko imitungo yatanzweho iragihabwa maze yegukanwa na BEMERIKI.

CAYRIER yatanze ikirego mu Rukiko rw'Ubucuruzi arega LETSHEGO RWANDA Ltd, MUNYANEZA Valérien washinzwe kugurisha ingwate hamwe na RDB, asaba ko cyamunara yabaye ku wa 05/09/2017 yateshwa agaciro kuko yagaragayemo uburiganya no kutubahiriza amategeko, kuko iyo byitabwaho umutungo we washoboraga kugurwa ku mafaranga ari hejuru y'ayo Bemeriki yishyuye, Umwanditsi Mukuru nawe abirengaho yemeza iyo cyamunara. BEMERIKI Emmanuel yagobotse ku bushake muri urwo rubanza.

Urukiko rw'Ubucurizi rwemeje ko CAYRIER nta shingiro gifite, ko cyamunara yakozwe mu buryo bukurikije amategeko.

CAYRIER yajuririye Urukiko Rukuru rw'Ubucuruzi, avuga ko Urukiko rw'Ubucuruzi rwirengagije uburiganya yarugaragarije bwabaye muri cyamunara; maze urwo Rukiko narwo rwemeza ko ubujurire bwe nta shingiro bufite.

CAYRIER yongeye kujurira mu Rukiko rw'Ubujurire ariko uwaburaniraga RDB n'abaregwa bose batanga inzitizi yo kutakira ubwo bujurire bwe kubera ko bwakozwe nyuma y'iminsi itatu iteganywa n'itegeko.

Incamake y'icyemezo: Ibirego bigamije gutesha agaciro cyamunara bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa, nubwo bwose biba ari ibirego byihagije, ni ukuvuga bidafite ibindi birego bishamikiyeho. Kuba imanza z'ibirego bisaba gutesha agaciro cyamunara bishobora kujuririrwa kabiri, ubwabyo bidahindura kamere y'ibyo birego.

Ubujurire ntibwakiriwe.
Amagarama y'urubanza ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi

Imanza zifashishijwe:

Urubanza N° RCOMAA 00012/2019/CA rwaciwe ku wa 09/12/2019 haburana NZITONDA Kiyengo, COGEBANQUE Ltd, HIGIRO Martin, Umwanditsi Mukuru muri RDB na GASHEMA Félicien.

Urubanza No RCOMAA 00072/2019/CA rwaciwe ku wa 24/01/2020 haburana M LINE PETRO STATION Ltd, BIMENYIMANA Eric, UMWANDITSI MUKURU na CYUBAHIRO NGARAMBE Christophe.

Urubanza no RCOMAA 00089/2019/CA rwaciwe ku wa 17/02/2020 haburana KAYIGEMA Anicet, UWARUDAHUNGA Joséphine, COGEBANQUE Ltd na RDB.

Urubanza

I. IMITERERE Y’URUBANZA

[1] CAYRIER Clément Jean-Marie yagiranye amasezerano y’inguzanyo na LETSHEGO RWANDA Ltd, ahabwa inguzanyo ya 37.500.000 Frw, nawe atanga ingwate y’amazu abiri ari mu kibanza kibaruye kuri UPI: 1/03/03/02/605. CAYRIER Clément Jean-Marie ntiyubahirije ayo masezerano, bituma LETSHEGO RWANDA Ltd isaba Umwanditsi Mukuru icyemezo cyo kugurisha iyo ngwate, iragihabwa, igurishwa muri cyamunara yo ku wa 5/9/2017, yegukanwa na BEMERIKI Emmanuel.

[2] CAYRIER Clément Jean-Marie yatanze ikirego mu Rukiko rw’Ubucuruzi arega LETSHEGO RWANDA Ltd, MUNYANEZA Valérien washinzwe kugurisha ingwate hamwe na RDB, asaba ko cyamunara yabaye ku wa 05/09/2017 yateshwa agaciro kuko yagaragayemo uburiganya no kutubahiriza amategeko, avuga ko MUNYANEZA Valérien wari ushinzwe kugurisha ingwate afatanyije na BEMERIKI Emmanuel waguze uwo mutungo ndetse n’abakomisiyoneri batandukanye, bakumiriye abashakaga kugura uwo mutungo muri cyamunara kandi barashoboraga kwishyura amafaranga ari hejuru y’ayo BEMERIKI Emmanuel yishyuye, Umwanditsi Mukuru nawe abirengaho yemeza iyo cyamunara. BEMERIKI Emmanuel yagobotse ku bushake muri urwo rubanza.

[3] Urukiko rw’Ubucurizi rwaciye urubanza no RCOM 01321/2018/TC ku wa 27/7/2018, rwemeza ko ikirego cya CAYRIER Clément Jean-Marie nta shingiro gifite, ko cyamunara ku mutungo utimukanwa ugizwe n’amazu abiri ari mu kibanza UPI: 1/03/03/02/605 mu Mudugudu wa Kanserege, Umurenge wa Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali, yakozwe mu buryo bukurikije amategeko ikaba igomba kugumana agaciro kayo. Rwategetse CAYRIER Clément Jean-Marie guha LETSHEGO Rwanda Ltd na MUNYANEZA Valérien 100.000 Frw y’ikurikiranarubanza n’igihembo cya Avoka kingana na 500.000 Frw kuri buri wese, runamutegeka guha BEMERIKI Emmanuel indishyi z’akababaro zingana na 1.000.000 Frw, 100.000 Frw y’ikurikiranarubanza na 500.000 Frw y’igihembo cya Avoka.

[4] CAYRIER Clément Jean-Marie yajuririye Urukiko Rukuru rw’Ubucuruzi, avuga ko Urukiko rw’Ubucuruzi rwirengagije uburiganya yarugaragarije bwababaye muri cyamunara. Mu rubanza N° RCOMA 00585/2018/CHC/HCC rwaciwe ku wa 21/12/2018, urwo Rukiko rwemeje ko ubujurire bwe nta shingiro bufite, ko ubujurire bwuririye ku bundi bwa MUNYANEZA Valérien, ubwa BEMERIKI Emmanuel n’ubwa LETSHEGO Rwanda Ltd bufite ishingiro. Rwategetse CAYRIER Clément Jean-Marie guha MUNYANEZA Valérien indishyi za 300.000

Frw, agaha LETSHEGO Rwanda Ltd indishyi zingana na 300.000 Frw na 1.000.000 Frw y'igihembo cya Avoka, agaha kandi BEMERIKI Emmanuel indishyi zingana na 1.000.000 Frw, igihembo cya Avoka kingana na 1.000.000 Frw na 200.000 Frw y'ikurikiranarubanza.

[5] CAYRIER Clément Jean-Marie yajuriye mu Rukiko rw'Ubujurire ku wa 19/01/2019, ariko uburanira RDB atanga inzitizi yo kutakira ubwo bujurire kubera ko bwakozwe nyuma y'iminsi itatu iteganywa n'itegeko.

[6] Nyuma yo gusubika iburanisha ryo ku wa 04/02/2020 kugira ngo abandi baburanyi bategure imyanzuro kuri iyo nzitizi, urubanza rwaburanishijwe mu ruhame ku wa 13/02/2020, CAYRIER Clément Jean-Marie ahagarariwe na Me BARAHIRA Eric, LETSHEGO Rwanda Ltd ihagarariwe na Me RWAGITARE Fred, MUNYANEZA Valérien aburanirwa na Me KWIZERA Bernard, Me NKUSI Fred ahagarariye RDB naho BEMERIKI Emmanuel aburanirwa na Me MUKAMUKIGA Espérance, aburanwa ku nzitizi yo kutakira ubujurire bwa CAYRIER Clément Jean-Marie ishingiye ku bihe byo kujurira, no ku ndishyi zasabwe n'abaregwa mu bujurire.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ubujurire bwa CAYRIER Clément Jean-Marie butarubahirije ibihe byo kujurira bukaba butagomba kwakirwa.

[7] Uburanira RDB avuga ko ubujurire bwa CAYRIER Clément Jean-Marie butagomba kwakirwa kuko butubahirije ibihe byo kujurira biteganywa n'ingingo ya 260 n'iya 188 z'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kuko ubujurire bwagombaga gutangwa mu gihe cy'iminsi itatu (3), mu gihe nyamara urubanza rujuririrwa rwasomwe ku wa 21/12/2018, CAYRIER Clément Jean-Marie akajurira ku wa 19/01/2019, ko hari n'izindi manza zaciwe n'uru Rukiko zemeje ko igihe cyo kujurira ku manza zisaba gutesha agaciro cyamunara ari iminsi itatu (3), harimo urubanza no RCOMAA 00012/2019/CA na no RCOMA 00072/2019/CA.

[8] Uburanira LETSHEGO Rwanda Ltd avuga ko yemeranya n'ibyo uburanira RBD avuga kuko hashingiwe ku biteganya n'ingingo ya 260, igika cya kane, y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ikirego cyatanzwe na CAYRIER Clément Jean-Marie kiburanishwa mu buryo no mu bihe by'ibirego byihutirwa, bityo kikaba kigomba gukurikiza amategeko agenga ibirego byihutirwa, ko hashingiwe ku ngingo ya 188 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe, iteganya ubujurire bw'ibirego byihutirwa, bigaragara ko uwajuriye atubahirije ibihe biteganywa n'iyo ngingo kuko yakoze ubujurire arengeje iminsi itatu iteganyijwe.

[9] Uburanira MUNYANEZA Valérien nawe avuga ko ubujurire bwa CAYRIER Clément Jean-Marie butagomba kwakirwa kuko bwatanzwe mu gihe kinyuranyije n'amategeko; ko hashingiwe ku biteganywa n'ingingo ya 260, igika cya kane, n'ingingo ya 188 z'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, hamwe no ku ngingo za 275 na 276 z'iryo tegeko zivuga uburyo ibihe bibarwa, asanga iminsi itatu yo kujurira yaragombaga kubarwa guhera ku wa 24/12/2018 ikarangira ku wa 28/12/2018, ko rero ubujurire bwatanzwe butagomba kwakirwa.

[10] Uburanira BEMERIKI Emmanuel nawe ashingiye ku ngingo za 260, igika cya kane, no ku ngingo ya 188 z'Itegeko no 22/2018 ryo ku wa 29/04/2018, ndetse no ku ngingo za 275 na 276 z'iryo tegeko, asanga umunsi wa nyuma wo kujurira wari ku wa 28/12/2018, ko rero kuba ubujurire bwaratanzwe ku wa 19/01/2019 butagomba kwakirwa kuko bwatanzwe bukererewe.

[11] Uburanira CAYRIER Clément Jean-Marie avuga ko ingingo ya 260 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru atari yo yagenga ubujurire bwa kabiri bwakozwe ku birebana no gutesha agaciro cyamunara, kubera icyo iyo ngingo ivuga ari uko ibirego bivugwamo bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa, ariko ibyo bikaba bitabigira ibirego byihutirwa kuko ibirego byihutirwa bigira icyo bisaba kugira ngo byakirwe, kibitandukanya n'ubwoko bw'ibi birego, ari nayo mpamvu bishobora kujuririrwa kabiri, mu gihe ibirego byihutirwa bijuririrwa rimwe nk'uko ingingo ya 188 z'Itegeko no 22/2018 ryo ku wa 29/04/2018 ibiteganya, bityo kuba ibyo birego byihutirwa bidashobora kujuririrwa bwa kabiri, bivuze ko n'ibihe by'ubujurire bwa mbere bitakurikizwa ku bujurire bwa kabiri kuko butareba ibirego byihutirwa. Asanga rero nta bindi bihe byakurikizwa kuri ubwo bujurire bwa kabiri usibye ibisanzwe amategeko yateganyije, kandi uwo aburanira akaba yarabyubahirije.

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[12] Ingingo ya 260 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 ibyo guhagarika no gutesha agaciro cyamunara, ku birebana na cyamunara yategetswe n'Umwanditsi Mukuru, iyo ngingo iteganya mu gika cya gatanu ko '' Guhagarika no gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru, bisabwa Umwanditsi Mukuru. Umwanditsi Mukuru atanga igisubizo mu gihe kitarenze iminsi itatu (3) y'akazi. Iyo hari utishimiye igisubizo cy'Umwanditsi Mukuru cyangwa udahawe igisubizo mu gihe giteganywa muri iki gika, abitangira ikirego mu rukiko rw'ubucuruzi hakurikijwe ibivugwa muri iyi ngingo mu gihe kitarenze iminsi itanu (5) y'akazi uhereye igihe yamenyeye icyo gisubizo''. Mu gika cya kane, iyo ngingo iteganya ko ''Ibirego bivugwa muri iyi ngingo bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa''.

[13] Ku birebana n'ubujurire bw'ibirego byihutirwa, ingingo ya 188, igika cya kabiri, y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko ''Igihe cyo kujuririra icyemezo ni iminsi itarenze itatu (3) y'akazi uhereye ku munsi icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho''. Naho ingingo ya 280 y'Itegeko rimaze kuvugwa, iteganya ko ''Imanza zikiburanishwa mu nkiko igihe iri tegeko ritangiye gukurikizwa, ziburanishwa mu buryo bukurikije iri tegeko, ariko ntacyo rihinduye ku mihango y'iburanisha yakozwe mbere y'uko ritangwazwa''.

[14] Nk'uko ikiburanwa kibigaragaza, ikirego CAYRIER Clément Jean-Marie yatanze mu Rukiko rw'Ubucuruzi ku wa 06/02/2018, kigamije gutesha agaciro cyamunara yakorewe ku mutungo we ku wa 05/09/2017, kuko habayemo uburiganya.

[15] Urukiko rurasanga n'ubwo icyo kirego kitari mu rwego rw'ibirego byihutirwa bivugwa mu mutwe wa kabiri w'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru mu ngingo za 185-188), kuko bene ibyo birego biba bishamikiye ku kirego cy'iremezo, bigatangwa kugira ngo hagire ibyemezwa by'agateganyo mu buryo bwihuse, ingingo ya 260 yumvikanisha ko

Umushingamategeko yashatse ko ibirego bigamije gutesha agaciro cyamunara bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa, nubwo bwose biba ari ibirego byihagije, ni ukuvuga bidafite ibindi birego bishamikiyeho.

[16] Urukiko rurasanga hashingiwe ku biteganywa n'ingingo za 260 na 280 zavuzwe haruguru, ubujurire bwa CAYRIER Clément Jean-Marie bugomba kubahiriza ibihe byateganyije ku birego byihutirwa, ni ukuvuga igihe giteganywa n'ingingo ya 188 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ivuga ko ubujurire bugomba gukorwa mu minsi itarenze itatu (3) y'akazi uhereye ku munsi icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho.

[17] Ku bivugwa n'uburanira CAYRIER Clément Jean-Marie ko icyo gihe cyakurikizwa gusa ku bujurire bwa mbere ngo kuko ubujurire bwa kabiri butemewe ku birego byihutirwa, Urukiko rurasanga nta shingiro bifite, kuko kuba imanza z'ibirego bisaba gutesha agaciro cyamunara zishobora kujuririrwa kabiri, ubwabyo bidahindura kamere y'ibyo birego ngo bihinduke ibirego byihutirwa bivugwa mu ngingo za 185-188 z'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, bityo ibihe by'ubujurire bwa kabiri bikaba bitahinduka ibisanzwe kuko byaba binyuranyije n'ingingo ya 260 yavuzwe haruguru.

[18] Iby'uko ubujurire ku birego byo gutesha agaciro cyamunara bugomba kubahiriza igihe giteganywa n'ingingo ya 188, igika cya 2, y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, byanemejwe no mu zindi manza zaciwe n'uru Rukiko, nk'urubanza N° RCOMAA 00012/2019/CA rwaciwe ku wa 09/12/2019 haburana NZITONDA Kiyengo, COGEBANQUE Ltd, HIGIRO Martin, Umwanditsi Mukuru muri RDB na GASHEMA Félicien, urubanza No RCOMAA 00072/2019/CA rwaciwe ku wa 24/01/2020 haburana M LINE PETRO STATION Ltd, BIMENYIMANA Eric, UMWANDITSI MUKURU na CYUBAHIRO NGARAMBE Christophe, n'urubanza no RCOMAA 00089/2019/CA rwaciwe ku wa 17/02/2020 haburana KAYIGEMA Anicet, UWARUDAHUNGA Joséphine, COGEBANQUE Ltd na RDB.

[19] Urukiko rurasanga rero, kuba urubanza rujuririrwa rwaraciwe ku wa 21/12/2018, CAYRIER Clément Jean-Marie akajurira ku wa 19/01/2019, byumvikana ko igihe cy'iminsi itatu y'akazi giteganywa n'ingigo ya 188 yavuzwe haruguru cyari cyararenze, bityo ubujurire bwe bukaba butagomba kwakirwa ngo busuzumwe.

2. Ku byerekeye amafaranga asabwa n'abaregwa mu bujurire

[20] MUNYANEZA Valérien asaba Urukiko gutegeka uwajuriye kumusubiza 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza kuri uru rwego, yiyongera kuyakoreshejwe mu nkiko zibanza.

[21] Uburanira LETSHEGO RWANDA ltd avuga ko CAYRIER Clément Jean-Marie yahereye mu Rukiko rw'Ubucuruzi ayishora mu manza z'amaherere kandi abizi neza, ko uretse no kuba Bank idakora cyamunara, nta n'ikosa ryakozwe mu kugurisha umutungo we, bityo ko isaba indishyi zo gushorwa mu manza ku maherere zingana na 5.000.000 Frw, igihembo cya Avoka kingana na 1.500.000 Frw kuri uru rwego na 200.000 Frw y'ikurikiranarubanza.

[22] BEMERIKI Emmanuel nawe asaba Urukiko gutegeka uwajuriye kumuha amafaranga y'ikurikiranarubanza angana na 1.000.000 Frw n'igihembo cya Avoka kingana na

[23] Uburanira CAYRIER Clément Jean-Marie avuga ko mu gihe urubanza rwahagararira ku nzitizi yo kutakira ubujurire, Urukiko rwatanga amafaranga macye ashoboka, igihembo cya Avoka ntikirenge 500.000 Frw kuri buri wese wayasabye, n'ay'ikurikiranarubanza akaba akubiyemo kuko urubanza ruba rwakurikiranywe na Avoka.

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[24] Ingingo ya 111, igika cya kabiri, 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 ko ''Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe''.

[25] Urukiko rurasanga, nubwo urubanza rudakomeje mu mizi, hari ibyo ababuranyi barutanzeho, bityo CAYRIER Clément Jean-Marie akaba agomba guha MUNYANEZA Valérien, LETSHEGO RWANDA ltd na BEMERIKI Emmanuel, buri wese 500.000 Frw akubiyemo igihembo cya Avoka n'ikurikiranarubanza kuri uru rwego, kuko ayo basaba ari menshi kandi urubanza rukaba rugarukiye ku nzitizi.

[26] Ku birebana n'amafaranga yo gushorwa mu manza ku maherere asabwa na LETSHEGO RWANDA ltd, Urukiko rurasanga itayagenerwa kuko usibye kuba CAYRIER Clément Jean-Marie yarakoresheje uburenganzira bwo kujurira Itegeko rimwemerera, nta kindi LETSHEGO RWANDA ltd ishingiraho ivuga ko yayishoye mu manza ku maherere. 500.000 Frw

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ubujurire bwa CAYRIER Clément Jean-Marie butakiriwe kuko bwatanzwe igihe cyo kujurira cyararenze;

[28] Rutegetse CAYRIER Clément Jean-Marie guha LETSHEGO RWANDA ltd, MUNYANEZA Valérien na BEMERIKI Emmanuel, buri wese 500.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri uru rwego;

[29] Rutegetse ko ingwate y'amagarama yatanzwe ihwanye n'ibyakozwe ku rubanza.