ECO POWER GLOBAL PRIVATE LTD v. IKIGO CY'IMISORO N'AMAHÔRO (RRA)

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00055/2018/CA (Karimunda, P.J,) 14 Mutarama 2019]

Amategeko agenga imanza z'ubucuruzi – Ihame rusange rigenga amategeko y'imisoro mu Rwanda – Umusoro ushyirwaho, uhindurwa kandi ukurwaho n'Itegeko, ndetse ukaba utasonerwa cyangwa ngo ugabanywe bidakozwe mu buryo buteganywa n'Itegeko – Umusoro ushyirwaho n'urwego rubifitiye ububasha kandi umusoreshwa agomba kumenya hakiri kare imisoro agomba kwishyura – Amasezerano ntabwo asimbura cyangwa ngo arutishwe amategeko aha buri musoreshwa inshingano zo gutanga umusoro.

Amategeko agenga imanza z'ubucuruzi – Urwego rufite ububasha n'ubushobozi ku bijyanye n'imisoro n'amahôro – Ikigo cy'Imisoro n'Amahôro – Ikigo cy'Imisoro n'Amahôro nicyo gifite ububasha n'ubushobozi, mu bwigenge bwacyo, bwo kugira icyo kivuga cyangwa gikora muri urwo rwego ariko nacyo kikaba kitemerewe kubikora uko cyishakiye kuko mu gushyira ububasha, ubushobozi n'ubwigenge bwacyo mu bikorwa kigomba kuguma mu mbibi zashyizweho n'amategeko cyangwa amabwiriza ashyira ayo mategeko mu bikorwa – Ntabwo buri rwego rwa Leta rufite ububasha n'ubushobozi bwo gukora amasezerano avanaho, agabanya cyangwa yongera umusoro, ahindura uburyo uwo musoro utangwa cyangwa ahindura ubwoko bw'umusoro.

Amategeko agenga imanza z'ubucuruzi – Umusoro – Umusoro ku nyongeragaciro – inyemezabwishyu – Iyo umusoresha atanze inyemezabwishyu zitariho umusoro ku nyongeragaciro kandi itawusonewe bifatwa nk'amakosa yo kudatanga inyemezamusoro.

Amategeko agenga umusoro – Avansi yo gutangiza imirimo ("avance de démarrage") – Avansi yo gutangiza imirimo ("avance de démarrage") ni amafaranga ahabwa uwatsindiye isoko kugira ngo abashe gutangira gushyira mu bikorwa isoko yatsindiye, akaba nta gice cy'umurimo runaka aba yishyuriwe ku buryo yafatwa nk'ubwishyu, ahubwo uko uwatsindiye isoko agenda yishyuza agaciro k'imirimo yakoze, agenda avanamo (déduction) ingano runaka ya avansi yose nk'uko byumvikanyweho n'impande zagiranye amasezerano, akazarangira kwishyurwa imirimo yakoze yose na ya avansi yose isubijwe uwamuhaye isoko.

Amategeko agenga imanza z'ubucuruzi – Umusoro – Umusoreshwa niwe ufite inshingano yo kumenyakanisha umusoro, zo gutunga no kubika inyandiko zose zirebana n'ubucuruzi bwe – Igenzura ry'umusoro risuzuma gusa niba imenyekanisha ryarakozwe mu mucyo hashingiwe ku mahame n'amategeko agenga imisoro, yaba atanyuzwe Itegeko rikamuha amahariwe yo gukosoza imenyekanisha, gutanga ibisonaburo n'ibimenyetso by'ibyo atemera ku igenzura ryakozwe no gutakambira Komiseri Mukuru aho abona yarenganyijwe n'abagenzuzi b'umusoro.

Amategeko agenga imanza z'ubucuruzi – Imanza z'imisoro – Ingingo z'isuzumwa ku rwego rw'ubujurire – Ingingo cyangwa ikibazo kitasuzumwe mu rubanza rwajuririwe ku mpamvu y'uko kitigeze kigezwa kwa Komiseri Mukuru w'Imisoro, kidakwiye gusuzumwa mu rwego rw'ubujurire kuko ababuranyi baba batarakigiyeho impaka.

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Amasezerano agira inkurikizi gusa hagati y'abayakoranye, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro.

Amategeko agenga imanza z'ubucuruzi – Indishyi – Igihembo cya Avoka kigenerwa intumwa ya Leta – Kuburana imanza kabone nubwo byakorwa n'aba Avoka babihemberwa buri kwezi, bituma ba nyir'urubanza hari ibyo atakaza ku rubanza, kudasubizwa agaciro kabyo kandi Urukiko rumaze kugaragaza ko ikirego cye gifite ishingiro byatera igihombo kidafite ubundi buryo kizishyurwa.

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Amasezerano agira inkurikizi gusa hagati y'abayakoranye, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro.

Imikorere y'inkiko – Imanza zaciwe ku bibazo bisa – Ihame ry'ukubahiriza umurongo wafashwe (stare decisis) – Imanza zidashingiye ku bintu bimwe ntizagereranywa mu rwego rwo gushakisha urwaha urundi umurongo.

Incamake y'ikibazo: ECO POWER GLOBAL PRIVATE Ltd yakorewe igenzura, icibwa umusoro ku nyungu, umusoro ku nyongeragaciro n'umusoro ku bihembo ku myaka ya 2008, 2009, 2010 na 2011, ijuririra kwa Komiseri Mukuru, uyu yemeza ko yishyura. ECO POWER GLOBAL PRIVATE Ltd ntiyanyuzwe n'icyo cyemezo, iregera Urukiko rw'Ubucuruzi rwa Nyarugenge isaba gukurirwaho uwo musoro wose no guhabwa indishyi. Uru Rukiko rwasanze ikirego cya ECO POWER GLOBAL PRIVATE Ltd gifite ishingiro kuri bimwe, rwemeza ko itagomba kwishyura umusoro wose hamwe ungana na 568.580.088Frw.

Ikigo cy'Imisoro n'Amahôro nticyanyuzwe n'icyo cyemezo, kijuririra mu Rukiko Rukuru rw'Ubucuruzi kivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rutashishoje neza, rukuraho mu buryo budakwiye umusoro ufatirwa n'umusoro ku nyongeragaciro. ECO POWER GLOBAL PRIVATE Ltd nayo yatanze ubujurire bwuririye ku bundi inenga umusoro ku nyungu yaciwe ku mwaka wa 2008.

Eco Power Global Private Ltd yajuririye mu Rukiko rw'Ikirenga, nyuma y'ivugururwa ry'Ubucamanza, urubanza rwoherezwa mu Rukiko rw'Ubujurire, ivuga ko yagiranye amasezerano na Leta y'u Rwanda yo kubaka urugomero rw'amashanyarazi rufite inyungu rusange, ayo masezerano akaba agaragaza ko Leta y'u Rwanda yirengereye kwishyura umusoro wose ku nyongeragaciro hagamijwe kugabanya ikiguzi cy'umuriro ku muturage.

Ikigo cy'Imisoro n'Amahôro cyiregura kivuga ko umusoresha atabazwa inkurikizi z'amasezerano yakozwe hagati ya Leta y'u Rwanda na Eco Power Global Private Ltd kandi atarayagizemo uruhare.

Eco Power Global Private Ltd ivuga ko itari ifite ubushobozi bwo gukora ibikoresho bikenerwa mu kubaka urugomero, ariyo mpamvu yabanzaga kumenya aho bikorerwa, ibiciro byabyo n'urutonde rwabyo, byose ikabishyikiriza Leta y'u Rwanda kugirango ibitumize mu izina ryayo, ariyo yishyuraga abatanze ibikoresho, bityo ko itari gufatira umusoro kandi atariyo yishyuye kandi ko itari gufatira umusoro ku bagemuraga ibikoresho mu gihugu kuko ntabyo amategeko yasabaga icyo gihe.

Ikigo cy'Imisoro n'Amahôro kivuga ko imiterere y'amasezerano Eco Power Global Private Ltd yakoranye na Leta y'u Rwanda igaragaza ko hazamo umuntu wa gatatu ukora serivisi, Eco Power

Glogal Private Ltd ikaba ariyo yahabwaga iyo serivisi, bityo ikaba itavuga ko nta mafaranga yari ifite kandi ariyo yishyura, bityo ko ibyo Eco Power Global Private Ltd yitwaza ko nta tegeko ryariho isoreshwa bikaba nta shingiro bifite.

Eco Power Global Private Ltd ivuga ko « *avance* » yahawe yo gutangira imirimo, itaragombaga gucibwa umusoro ku nyongeragaciro kuko atari ubwishyu. Ikigo cy'Imisoro n'Amahôro kivuga atari umusoro ku nyongeragaciro ahubwo ari mu musoro wa 15% ufatirwa waciwe ku mwaka wa 2009, Eco Power Global Private Ltd ikaba yaravugaga ko itawishyura kuko nta tegeko ryayisabaga kuwufatira muri uwo mwaka.

Eco Power Gloabl Private Ltd ivuga ko bari basabye ko umusoro wa 2008 batawishyura kuko isanga igihombo bagize mu mwaka wa 2011 gikwiye gukorwamo inyungu bagize mu 2008. Ikigo cy'Imisoro n'Amahôro kivuga ko kuba Eco Power Global Private Ltd itagaragarije ingingo ijyanye n'igihombo bisobanuye ko nta gihombo yari ifite ahubwo ko ari ingingo nshya izanywe bwa mbere ku rwego rw'ubujurire bwa kabiri nyamara bibujijwe, bityo ko umusoro wa 2008 nuwa 2011 yombi yaciwe mu buryo bwemewe n'amategeko.

Ikigo cy'Imisoro n'Amahôro kivuga ko kisaba indishyi zibazwe kuva urubanza rugitangira kugeza kuri uru rwego. Eco Power Global Private Ltd ivuga ko indishyi Ikigo cy'Imisoro n'Amahôro gisaba nta kimenyetso kizitangira, ikaba abihariye ubushishozi bw'urukiko.

Incamake y'icyemezo: 1. Ihame rusange rigenga amategeko y'imisoro mu Rwanda n'uko umusoro ushyirwaho, uhindurwa kandi ukurwaho n'Itegeko, ndetse ukaba utasonerwa cyangwa ngo ugabanywe bidakozwe mu buryo buteganywa n'Itegeko

2. Umusoro ushyirwaho n'urwego rubifitiye ububasha kandi umusoreshwa agomba kumenya hakiri kare imisoro agomba kwishyura.

3. Amasezerano ntabwo asimbura cyangwa ngo arutishwe amategeko aha buri musoreshwa inshingano zo gutanga umusoro.

4. Ikigo cy'Imisoro n'Amahôro nicyo gifite ububasha n'ubushobozi, mu bwigenge bwacyo, bwo kugira icyo kivuga cyangwa gikora muri urwo rwego ariko nacyo kikaba kitemerewe kubikora uko cyishakiye kuko mu gushyira ububasha, ubushobozi n'ubwigenge bwacyo mu bikorwa kigomba kuguma mu mbibi zashyizweho n'amategeko cyangwa amabwiriza ashyira ayo mategeko mu bikorwa.

5. Ntabwo buri rwego rwa Leta rufite ububasha n'ubushobozi bwo gukora amasezerano avanaho, agabanya cyangwa yongera umusoro, ahindura uburyo uwo musoro utangwa cyangwa ahindura ubwoko bw'umusoro.

6. Iyo umusoresha atanze inyemezabwishyu zitariho umusoro ku nyongeragaciro kandi itawusonewe bifatwa nk'amakosa yo kudatanga inyemezamusoro.

7. Avansi yo gutangiza imirimo ("avance de démarrage") ni amafaranga ahabwa uwatsindiye isoko kugira ngo abashe gutangira gushyira mu bikorwa isoko yatsindiye, akaba nta gice cy'umurimo runaka aba yishyuriwe ku buryo yafatwa nk'ubwishyu, ahubwo uko uwatsindiye isoko agenda yishyuza agaciro k'imirimo yakoze, agenda avanamo (déduction) ingano runaka ya avansi yose nk'uko byumvikanyweho n'impande zagiranye amasezerano, akazarangira kwishyurwa imirimo yakoze yose na ya avansi yose isubijwe uwamuhaye isoko.

8. Umusoreshwa niwe ufite inshingano yo kumenyakanisha umusoro, zo gutunga no kubika inyandiko zose zirebana n'ubucuruzi bwe, naho igenzura ry'umusoro risuzuma gusa niba imenyekanisha ryarakozwe mu mucyo hashingiwe ku mahame n'amategeko agenga imisoro, yaba atanyuzwe Itegeko rikamuha amahariwe yo gukosoza imenyekanisha, gutanga ibisonaburo n'ibimenyetso by'ibyo atemera ku igenzura ryakozwe no gutakambira Komiseri Mukuru aho abona yarenganyijwe n'abagenzuzi b'umusoro.

9. Ingingo cyangwa ikibazo kitasuzumwe mu rubanza rwajuririwe ku mpamvu y'uko kitigeze kigezwa kwa Komiseri Mukuru w'Imisoro, kidakwiye gusuzumwa mu rwego rw'ubujurire kuko ababuranyi baba batarakigiyeho impaka.

10. Amasezerano agira inkurikizi gusa hagati y'abayakoranye, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro.

11. Kuburana imanza kabone nubwo byakorwa n'aba Avoka babihemberwa buri kwezi, bituma ba nyir'urubanza hari ibyo atakaza ku rubanza, kudasubizwa agaciro kabyo kandi Urukiko rumaze kugaragaza ko ikirego cye gifite ishingiro byatera igihombo kidafite ubundi buryo kizishyurwa.

12. Amasezerano agira inkurikizi gusa hagati y'abayakoranye, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro.

13. Imanza zidashingiye ku bintu bimwe ntizagereranywa mu rwego rwo gushakisha urwaha urundi umurongo.

Ubujurire bufite ishingiro.
Ingwate y'amagaramaihwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 164

Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 168

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 51

Itegeko N° 16/2005 ryo ku wa 18/08/2005, rigena imisoro itaziguye ku musaruro, ingingo ya 64

Itegeko N° 25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 63

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3

Itegeko N° 06/2001 ryo ku wa 20/01/2001 rishyiraho umusoro ku nyongeragaciro, ingingo ya 2

Imanza zifashishijwe:

East African Court of Justice, Inspector General of Government (Uganda) v Geoffrey Magezi, 27/03/2017, para 44-46

Urubanza no RCOMAA 00055/2016/SC hagati y' Ikigo cy'Imisoro n'Amahôro na Forest Company Volcanoes Gorillas (FCVG), Icyegeranyo cy'Ibyemezo by'Inkiko, V.4-2018, p.71.

Urubanza no RCOMA 0074/11/CS hagati y'Ikigo cy'Imisoro n'Amahôro na Misigaro Louis, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/04/2014, ibika bya 18-20.

Urubanza no RCOMA 0149/12/CS/CS hagati y'Ikigo cy'Imisoro n'Amahôro na Rubare Josias, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/03/2016, ibika bya 15-16.
Urubanza RCOMA0028/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 06/11/2015, igika cya 25.

Inyandiko z'abahanga:
Jacques Grosclaude et Phippe Marchessou, Droit fiscal général, Paris : Dalloz, 2007, p.221.
9. Serge Guinchard et alii [sous la dir], Droit et Pratique de la Procédure Civile, Paris: Dalloz, 2014, pp1513.

Urubanza

I. IMITERERE Y'URUBANZA

[redacted] ECO POWER GLOBAL PRIVATE Ltd yakorewe igenzura ku musoro ku nyungu, umusoro ku nyongeragaciro n'umusoro ku bihembo ku myaka ya 2008, 2009, 2010 na 2011, icibwa umusoro ungana na 776.399.155Frw, ijuririra kwa Komiseri Mukuru, amaze gusuzuma ubujurire bwayo, yemeza ko yishyura imisoro ingana na 769.841.596Frw. ECO POWER GLOBAL PRIVATE Ltd ntiyanyuzwe n'icyo cyemezo, iregera Urukiko rw'Ubucuruzi rwa Nyarugenge isaba gukurirwaho uwo musoro wose no guhabwa indishyi.

[redacted] Mu rubanza RCOM 1146/13/TC/NYGE rwaciwe ku wa 11/06/2014, Urukiko rw'Ubucuruzi rwa Nyarugenge rwasanze ikirego cya ECO POWER GLOBAL PRIVATE Ltd gifite ishingiro kuri bimwe, rwemeza ko itagomba kwishyura umusoro wose hamwe ungana na 568.580.088 Frw.

[redacted]Ikigo cy'Imisoro n'Amahôro nticyanyuzwe n'icyo cyemezo, kijuririra mu Rukiko Rukuru rw'Ubucuruzi kivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rutashishoje neza, rukuraho mu buryo budakwiye umusoro ufatirwa n'umusoro ku nyongeragaciro. ECO POWER GLOBAL PRIVATE Ltd nayo yatanze ubujurire bwuririye ku bundi inenga umusoro ku nyungu yaciwe ku mwaka wa 2008.

[redacted] Mu rubanza RCOMA 0100/15/HCC rwaciwe ku wa 17/04/2015, Urukiko Rukuru rw'Ubucuruzi rwasanze umusoro ufatirwa ungana na 4.615.087 Frw utaragombaga gukurwaho kuko wari ushingiye ku ngingo ya 54, agace ka 4 y'Itegeko no 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, naho umusoro ku nyongeragaciro wa 54.475.492 Frw, n'umusoro ufatirwa wa 69.069.037 Frw n'uwa 38.475.000 Frw, rusanga nubwo amasezerano yateganyaga ko hari imisoro izishyurwa na Leta y'u Rwanda nta makosa umusoresha yakoze aca iyo misoro kuko yabikoze ashingiye ku mategeko, kandi akaba ariyo akwiye kurutishwa amasezerano ECO POWER GLOBAL PRIVATE LTD yagiranye na Leta y'u Rwanda. Urukiko rwasanze kandi ku bijyanye n'ivanwaho ry'umusoro wa 111.828.111 Frw, 17.100.000 Frw na 47.367.392 Frw, Eco Power Global Private Ltd idahakana ko uwo musoro ukomoka kuri serivisi yakorewe, bityo ikaba ariyo ifite inshingano zo kubahiriza ibyo isabwa n'amategeko, bivuze ko uwo musoro nawo wavanweho bidakwiye.

[redacted] Urukiko rwakomereje ku bujurire bwuririye ku bundi, aho Eco Power Global Private Ltd yasabaga ko igihombo kingana na 1.396.034.615 Frw yagize mu mwaka wa 2011 cyasimbuzwa

inyungu za 973.792.000 zagenwe n'umusoresha muri 2008, aho gucibwa umusoro ku nyungu bigafatwa ko yahombye 422.242.615 Frw, ndetse ko hari n'ibyatunze umwuga yifuzaga ko umusoresha yitaho mu kumusoresha, rusanga iyo mpamvu y'ubujuurire itari mu ngingo zasuzumwe na Komiseri Mukuru cyangwa Urukiko ku rwego rwa mbere, rwanzura ko ntaho rwahera rusuzuma ibijyanye n'igihombo cyangwa rwemeza ko hari ibyatunze umwuga byirengegijwe n'umusoresha. Urukiko rwemeje ko imikirize y'urubanza RCOM 1146/13/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 11/06/2014 ihindutse mu ngingo zarwo zose, rutegeka Eco Power Global Private Ltd kwishyura umusoro wose yaregeye mu Rukiko rw'Ubucuruzi rwa Nyarugenge.

[redacted] Eco Power Global Private Ltd yajuririye icyo cyemezo mu Rukiko rw'Ikirenga, ubujurire bwayo bwandikwa kuri RCOMAA 00052/2017/SC, nyuma y'ivugururwa ry'Ubucamanza, urubanza rwoherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko no 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ikirego gihabwa no RCOMAA 00055/2018/CA.

[redacted] Urubanza rwaburanishijwe mu ruhame ku wa 18/12/2018, Eco Power Global Private Ltd iburanirwa na Me NSENGIYUMVA Abel na Me ZAWADI Stephen, Ikigo cy'Imisoro n'Amahôro kiburanirwa na Me BYIRINGIRO Bajeni.

[redacted] Urukiko rwabanje gusuzuma inzitizi yatanzwe na Me BYIRINGIRO Bajeni y'uko ubujurire bwa Eco Power Global Private Ltd budakwiye kwakirwa kuko urubanza rujuririrwa rwaciwe ku wa 17/04/2015, ubujurire butangwa ku wa 23/07/2017, bikaba birenze kure igihe cy'ukwezi giteganywa n'amategeko. Eco Power Global Private Ltd yavuze ko uburyo bwa *Electronic Filing System* (EFS) bugaragaza ko bajuriye ku wa 15/05/2015, ko Umwanditsi Mukuru w'Urukiko rw'Ikirenga atari kwakira ubujurire kandi bwarakererewe kandi ko babyeretse uwari uhagarariye Ikigo cy'Imisoro n'Amahôro mu nama ntegurarubanza akemera ko iyo nzitizi ayiretse.

[redacted] Urukiko rwasanze muri dosiye inyandiko ya EFS igaragaza ko ubujurire bwatanzwe ku wa 15/05/2015, ikaba yari yometsweho urwandiko rwa Me NSENGIYUMVA Abel wavugaga ko ajuriye atarabona kopi y'urubanza, rusanga kandi hari icyemezo cy'Umwanditsi Mukuru cyakira ikirego kuko cyatanzwe mu bihe biteganywa n'amategeko, rusanga kandi Me TWAHIRWA Jean-Baptiste wari uhagarariye Ikigo cy'Imisoro n'Amahôro mu nama ntegurarubanza yaremeye ko ubujurire bwaziye igihe, rufatiye icyemezo mu ntebe, rwemeza ko hashingiwe ku biteganywa n'ingingo ya 148 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ubujurire bwa Eco Power Global Private Ltd bwaziye igihe kuko urubanza rujuririrwa rwaciwe ku wa 17/04/2015 ikajurira ku wa 15/05/2015, bityo ko inzitizi nta shingiro ifite, rutegeka ko iburanisha rikomeza.

[redacted] Urubanza rwakomereje ku mpamvu z'ubujurire za ECO POWER GLOBAL PRIVATE LTD zo kumenya niba igomba kwishyura umusoro ku nyongeragaciro Urukiko Rukuru rw'Ubucuruzi rwagumishijeho, kumenya niba yari ifite inshingano zo gufatira umusoro ku bantu batiyandikishije mu musoro muri 2009, kumenya niba « avance» ku bwishyu ifatirwaho umusoro no kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarirengagije amategeko rwanga kugira icyo ruvuga ku isoreshwa ry'inyungu zikomoka ku masezerano y'igihe kirekire.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba Eco Power Global Private Ltd ariyo igomba kwishyura umusoro ku nyongeragaciro n'ubwoko bw'igihano ikwiriye mu gihe yaba itabikoze

[redacted] Me NSENGIYUMVA Abel na Me ZAWADI Stephen, baburanira Eco Power Global Private Ltd, bavuga ko uwo baburanira yagiranye amasezerano na Leta y'u Rwanda yo kubaka urugomero rw'amashanyarazi rufite inyungu rusange, ingingo ya 14, agace ka 1 n'aka 2 y'ayo masezerano ikaba igaragaza ko Leta y'u Rwanda yirengereye kwishyura umusoro wose ku nyongeragaciro hagamijwe kugabanya ikiguzi cy'umuriro ku muturage, biza gushimangirwa n'urwandiko rwa Minisitiri w'Ibikorwa Remezo rwo ku wa 05/06/2009 rwibutsaga Komiseri Mukuru w'Ikigo cy'Imisoro n'Amahôro ayo masezerano. Bavuga ko nubwo mbere basabaga gukurirwaho umusoro ku nyongeragaciro ufite agaciro ka 54.475.492 Frw, 111.828.111 Frw, 17.100.000 Frw, 273.017.250 Frw babiretse, ahubwo basaba gukurirwaho 11.137.810 Frw ku mwaka wa 2009, 6.557.559Frw ku mwaka wa 2010, 78.628.969 Frw ku mwaka wa 2011, yose hamwe akaba 96.324.338 Frw kandi ko iyi mibare ya nyuma ariyo y'ukuri kuko igaragara mu rwandiko rwa Komiseri Mukuru. Basoza bavuga ko igihano cyo kuba Eco Power Global Private Ltd itaraciye umusoro ku nyongeragaciro abakiliya bayo kitakagombye kuba icy'uwatubije umusoro ahubwo ko ari ihazabu y'ubutegetsi (amende administrative) nk'uko biteganywa n'amategeko.

[redacted] Me BYIRINGIRO Bajeni, uburanira Ikigo cy'Imisoro n'Amahôro, avuga ko Eco Power Global Private Ltd yaregeye ingano y'umusoro wishyuzwa, ko mu gihe iretse imibare yaburanishaga mu Rukiko Rukuru rw'Ubucuruzi bisobanuye ko ibyo yari yajuririye ibiretse. Asobanura ko Urukiko rubibonye ukundi, rwakwemeza ko Eco Power Global Private Ltd, nk'umusoreshwa wanditswe mu basora umusoro ku nyongeragaciro, ifite inshingano zo gukora inyemezabuguzi zanditseho uwo musoro, kuba itaraciye uwo musoro kandi itawusonewe akaba ari ukwica itegeko bihanishwa ihazabu iteganyijwe mu ngingo ya 63 y'Itegeko no 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha. Asobanura ko umusoresha atabazwa inkurikizi z'amasezerano yakozwe hagati ya Leta y'u Rwanda na Eco Power Global Private Ltd kandi atarayagizemo uruhare.

UKO URUKIKO RUBIBONA

[redacted]Ingingo ya 164 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 iteganya ko "Umusoro ushyirwaho, uhindurwa cyangwa ukurwaho n'itegeko. Nta sonerwa cyangwa igabanya ry'umusoro rishobora gukorwa mu gihe bidateganywa n'itegeko".

[redacted] Ingingo ya 63, igika cya 2, y'Itegeko no 25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko:"*igihe umusoreshwa yakoze inyemezamusoro ikosheje agambiriye kugabanya umusoro ku nyongeragaciro wishyurwa cyangwa agamije kongera umusoro ku nyongeragaciro uvanwamo cyangwa ataratanze inyemezamusoro, acibwa ijana ku ijana (100%) by'umusoro ku nyongeragaciro w'iyo nyemezamusoro cyangwa kuri icyo gikorwa gisoreshwa*".

[redacted] Naho ingingo ya 2, agace ka a) y'Itegeko No 06/2001 ryo ku wa 20/01/2001 rishyiraho umusoro ku nyongeragaciro ryakoreshwaga Eco Power Global Private Ltd isoreshwa iteganya ko

uwo musoro: " *wakwa ku bintu n'imirimo (serivisi) ikorerwa mu Rwanda no ku bintu, ibikoresho n'imirimo bitumizwa hanze y'Igihugu*", naho ingingo ya 11 n'iya 12 z'iryo tegeko zigateganya ko ibisoreshwa ari ibintu n'imirimo bidasonewe bikorerwa mu Rwanda, bitumizwa cyabwa byoherezwa mu mahanga hagamijwe ikiguzi byaba bikorwa n'usoreshwa wiyandikishije ubwe, uwo bafatanyije cyangwa umukozi we.

[redacted] Ingingo ya 64 y'Itegeko no 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko: *"amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye, agomba gukurikizwa nta buriganya",* naho ingingo ya 113 y'iryo tegeko mu gika cyayo cya mbere igateganya ko :"*Amasezerano agira inkurikizi ku bayagiranye gusa, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro*".

[redacted]Dosiye y'urubanza irimo amasezerano yiswe"Contract Agreement" yabaye hagati ya Leta y'u Rwanda ihagarariwe na Minisiteri y'Ibikorwa Remezo (Employer) na ECO POWER GLOBAL PRIVATE Ltd, mu ngingo yayo ya 14 agace ka 1 hakaba hateganijwe ko: "*The Empoloyer shall directly pay all Value Added Taxed (VAT), custom's dues and handling fees payable on equipment, material and other items imported into Rwanda by the Contractor for the purposes of meeting the Contractor's obligations under the Contract, since the Employer is the ultimate consumer of all of these items. The said payments shall be made promptly by the Employer to the relevant authorities so that the Contractor can clear the items through Custom's without any delays*".

[redacted] Naho mu ngingo ya 14, agace ka 2, k'ayo masezerano hakaba hateganijwe ko : "The Employer warrants that the Contractor is not liable to pay VAT on the payments received by the Contractor from the Employer under the Contract and the Rwanda Revenue Authority (the Authority) will refund to the Contractor all VAT paid by the Contractor to civil contractors hired by the Contractor for the purposes of the Contractor within a period of xx weeks as stipulated in Rwandan Law".

[redacted] Urukiko rurasanga ihame rusange rigenga amategeko y'imisoro mu Rwanda kandi ryibukijwe n'Urukiko rw'Ikirenga mu rubanza Forest Company Volcanoes Gorillas (FCVG) Ltd yaburana n'Ikigo cy'Imisoro n'Amahôro,[1] ari uko umusoro ushyirwaho, uhindurwa kandi ukurwaho n'Itegeko, ndetse ukaba utasonerwa cyangwa ngo ugabanywe bidakozwe mu buryo buteganywa n'Itegeko, Itegeko Nshinga rikaba rishimangira iri hame kugirango umusoro ujye ushyirwaho n'urwego rubifitiye ububasha kandi umusoreshwa amenye hakiri kare imisoro agomba kwishyura, iri hame rikaba ryumvikanisha ko amasezerano hagati ya Eco Power Global Private Ltd na Leta y'u Rwanda atasimbura cyangwa ngo arutishwe amategeko aha buri musoreshwa inshingano zo gutanga umusoro ku nyongeragaciro kuri serivisi yakorewe cyangwa ngo avanireho Eco Power Global Private Ltd inshingano zo guca uwo musoro ku nyemezabuguzi yishyuza abakiliya bayo.

[redacted]Urukiko rurasanga kandi hashingiwe ku biteganywa n'ingingo ya 64 n'iya 111 z'Itegeko no 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, amasezerano agira inkurikizi gusa hagati y'abayakoranye, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro, izi ngingo zikaba zumvikanisha ko amasezerano Eco Power

Reba urubanza no RCOMAA 00055/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 29/09/2017, igika cya 20.

Global Private Ltd yagiranye na Miniteri y'Ibikorwa Remezo umusoresha atabizi, nta n'uruhare yabigizemo atakwiyambazwa nk'inzira izitira umusoresha gukurikirana inshingano ahabwa n'amategeko. Kuba Ikigo cy'Imisoro n'Amahôro ari icya Leta ntibisobanuye ko buri rwego rwa Leta rufite ububasha n'ubushobozi bwo gukora amasezerano avanaho, agabanya cyangwa yongera umusoro, ahindura uburyo uwo musoro utangwa cyangwa ahindura ubwoko bw'umusoro kuko ariyo mpamvu ibijyanye n'imisoro n'amahôro byose byeguriwe icyo kigo, akaba aricyo gifite ububasha n'ubushobozi, mu bwigenge bwacyo, bwo kugira icyo kivuga cyangwa gikora muri urwo rwego ariko nacyo kikaba kitemerewe kubikora uko cyishakiye kuko, nk'uko byibukijwe haruguru, mu gushyira ububasha, ubushobozi n'ubwigenge bwacyo mu bikorwa kigomba kuguma mu mbibi zashyizweho n'amategeko cyangwa amabwiriza ashyira ayo mategeko mu bikorwa.

[redacted]Urukiko rurasanga ingingo z'amasezerano Eco Power Global Private Ltd yagiranye na Leta y'u Rwanda arizo ishingiraho ivuga ko itagombaga kwishyura umusoro ku nyongeragaciro, kuko Leta y'u Rwanda yiyemeje kwishyura uwo musoro, kandi umusoresha, nk'ikigo cya Leta, akaba atakwirengagiza inshingano Leta y'u Rwanda yiyemeje muri ayo masezerano, nyamara ikigaragara muri ayo masezerano ni uko Eco Power Global Private Ltd yari ifite inshingano zo kugaragaza ku nyemezabuguzi zayo ingano y'umusoro ku nyongeragaciro, amahoro ya gasutamo, n'igiciro cyo gupakira no gupakurura, Leta y'u Rwanda ikabona kwirengera ikiguzi cyabyo, ayo masezerano akaba aha Leta y'u Rwanda inshingano zo guhita ibyishyura vuba bishoboka kandi nk'uko amategeko abiteganya kugirango Eco Power Global Private Ltd ivane ibikoresho byayo muri gasutamo idatinze.

[redacted] Urukiko rurasanga na none ingingo ya 14, igika cya 2, y'amasezerano Eco Power Global Private Ltd yakoranye na Leta y'u Rwanda yumvikanisha ko Eco Power Global Private Ltd itazishyura umusoro ku nyongeragaciro ku mafaranga izishyurwa na Leta kandi ko ayo izaba yarishyuye abakozi izayasubizwa, ikigaragara akaba atari uko iryo soko ryari risonewe umusoro ku nyongeragaciro, ahubwo umusoro wose ku nyongeragaciro ku nyemezabuguzi Eco Power Global Private Ltd yakoreye Leta y'u Rwanda wari kwirengerwa na Leta y'u Rwanda, haba n'izindi nyemezabuguzi Eco Power Global Private Ltd yakorewe n'abakiliya bayo bakayica umusoro ku nyongeragaciro ikawusubizwa, byumvikanisha ko uko byari kugenda kwose, inyemeza buguzi yose yaba ikozwe na cyangwa ikorewe Eco Power Global Private Ltd yagombaga kugaragaza umusoro ku nyongeragaciro, noneho uburyo ikiguzi cy'uwo musoro kizishyurwa cyangwa kizasubizwa bikagengwa n'ibiteganywa n'ingingo ya 14, igika cya 2, y'amasezerano.

[redacted] Urukiko rurasanga kuba Eco Power Global Private Ltd yaratanze inyemezabwishyu zitariho umusoro ku nyongeragaciro kandi itawusonewe ari amakosa yo kudatanga inyemezamusoro ahanishwa ihazabu y'ijana ku ijana (100%) by'umusoro ku nyongeragaciro w'iyo nyemezamusoro cyangwa kuri icyo gikorwa gisoreshwa nk'uko biteganywa n'ingingo ya 63, igika cya 2, y'Itegeko no 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha.

II.2. Kumenya niba Eco Power Global Private Ltd yari ifite inshingano yo gufatira umusoro ku bantu batiyandikishije mu misoro muri 2009.

[redacted] Me NSENGIYUMVA Abel na Me ZAWADI Stephen, baburanira Eco Power Global Private Ltd, bavuga ko itari ifite ubushobozi bwo gukora ibikoresho bikenerwa mu kubaka urugomero, ariyo mpamvu yabanzaga kumenya aho bikorerwa, ibiciro byabyo n'urutonde rwabyo, byose ikabishyikiriza Leta y'u Rwanda kugirango ibitumize mu izina ryayo. Basobanura ko Leta y'u Rwanda ariyo yishyuraga abatanze ibikoresho baba hanze y'igihugu ibinyujije muri Banki

Nkuru y'u Rwanda, Eco Power Global Private Ltd ikaba itari gufatira umusoro kandi atariyo yishyuye ko ahubwo byari gukorwa na Leta y'u Rwanda yari ifite amafaranga. Bavuga ko Eco Power Global Private Ltd itari gufatira umusoro ku bagemuraga ibikoresho mu gihugu kuko ntabyo amategeko yasabaga, ko Itegeko ryabivuze bwa mbere ryasohotse mu 2010.

[redacted] Me BYIRINGIRO Bajeni, uburanira Ikigo cy'Imisoro n'Amahôro, avuga ko imiterere y'amasezerano Eco Power Global Private Ltd yakoranye na Leta y'u Rwanda igaragaza ko hazamo umuntu wa gatatu ukora serivisi, Eco Power Glogal Private Ltd ikaba ariyo yahabwaga iyo serivisi, bityo ikaba itavuga ko nta mafaranga yari ifite kandi ariyo yishyura, ko yari kuzajya imenyesha Leta y'u Rwanda ingano y'umusoro wa 15% ufatirwa kuri buri nyemezabwishyu nk'uko biteganywa n'ingingo ya 51, igika cya mbere, y'Itegeko no 16/2005 ryo ku wa 18/08/2005, rigena imisoro itaziguye ku musaruro, ari naryo ryariho isoreshwa, bityo ibyo Eco Power Global Private Ltd yitwaza ko nta tegeko ryariho isoreshwa bikaba nta shingiro bifite.

UKO URUKIKO RUBIBONA

[redacted] Ingingo ya 51 y'Itegeko no 16/2005 ryo ku wa 18/08/2005, rigena imisoro itaziguye ku musaruro ryakurikizwaga mu gihe imisoro iburanwa yacibwaga, iteganya ko : "*Umusoro ufatirwa wa cumi na gatanu ku ijana (15%), uvanwa ku mafaranga yishyurwa akurikira atangwa n'abantu ku giti cyabo batuye mu Gihugu cyangwa ibigo bikorera imbere mu Gihugu harimo n'ibitishyura imisoro : 1° inyungu ku migabane, uretse igengwa n'ingingo ya 45 y'iri tegeko ; 2° inyungu irihwa ku mafaranga yabikijwe ; 3° ibihembo by'ubuhanzi ; 4° amafaranga yishyurwa kuri za serivisi harimo n'amafaranga ya serivisi z'imicungire n'iza tekiniki ; 5° amafaranga y'akazi yishyurwa umunyabugeni, umuririmbyi, cyangwa umukinnyi nta gutandukanya niba yishyuwe ako kanya cyangwa anyujijwe ku kigo kidakorera mu Rwanda ; 6° imikino ya tombola ndetse n'indi mikino y'amafaranga. Umuntu wishyuza imisoro ifatirwa asabwa gukora imenyeshamusoro mu buryo bwashyizweho n'Umuyobozi Mukuru w'Ikigo cy'Imisoro n'Amahoro no koherereza Ubuyobozi bw'imisoro yafatiriwe hakurikijwe igika cya mbere mu gihe cy'iminsi cumi n'itanu (15) y'akazi nyuma yo kuyifatira. Igika cya mbere n'icya 2 by'iyi ngingo bireba kandi na none abantu ku giti cyabo badatuye mu gihugu hamwe n'ibigo bidakorera imbere mu gihugu ku mafaranga yishyuwe na kimwe mu bigo bihoraho by'uwo muntu cyangwa by'icyo kigo mu Rwanda*."

[redacted] Dosiye y'urubanza igaragaza ko mu gika cya 30 cy'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, urwo Rukiko rwasobanuye ko mu guca umusoro ufatirwa wa 15%, Komiseri Mukuru yashingiye ku ngingo ya 51 y' itegeko no 16 /2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro, ariko iyo ngingo ikaba yarahinduwe ndetse inuzuzwa n'itegeko no24/2010 ryo ku wa 28/05/2010, bityo ko kuba yarashingiye ku itegeko ryagiyeho nyuma yuko ibikorwa bisoreshwa bikorwa, uwo musoro waciwe mu buryo bunyuranyije n'amategeko kuko itegeko ritagombaga gusubira inyuma ngo rice imisoro ku bintu byakozwe mbere yuko rishyirwaho.

[redacted] Dosiye y'urubanza igaragaza ko mu gika cya 9 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasanze impamvu y'ubujurire y'umusoresha ifite ishingiro kuko umusoro waciwe hashingiwe ku ngingo ya 51.4o y' Itegeko no 16 /2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro, iryo tegeko akaba ariryo ryariho igikorwa gisoreshwa gikorwa, runasobanura ko mu ibaruwa ya Komiseri Mukuru yo ku wa 26/09/2013, Eco Power Global Private Ltd yibukijwe ko itasoreshejwe umusoro hashingiwe ku kuba yarishyuye abantu

batiyandikishije, ahubwo ko ari umusoro ku bwishyu ubwo aribwo bwose yakoze, yaba ku bantu biyandikishije cyangwa batiyandikishije.

[redacted] Urukiko rurasanga inyandiko y'isoresha yo ku wa 10/07/2013 igaragaza ko hasoreshejwe ubwishyu kuri serivisi Eco Power Global Private Ltd yari yahawe (*payments done by ECO POWER to local civil contractors not registered*) aho kuba ibicuruzwa bivugwa mu ngingo ya 8, agace ka 7, y'Itegeko no 24/2010 ryo ku wa 28/05/2010, izo serivisi akaba arizo ziteganywa mu gace ka 4 k'ingingo ya 51, igika cya mbere, y'Itegeko no 16/2005 ryo ku wa 18/08/2005 ryavuzwe haruguru, igika cya mbere cy'iyi ngingo kikaba kandi kivuga ko umusoro ufatirwa wa 15% uvanwa ku mafaranga yishyurwa akurikira atangwa n'abantu ku giti cyabo batuye mu gihugu cyangwa ibigo bikorera imbere mu gihugu «harimo n'ibitishyura imisoro», bityo kuba mu ngingo ya 8, agace ka 7, y'Itegeko no 24/2010 ryo ku wa 28/05/2010 haje kuvugwamo «abantu cyangwa ama sosiyete batiyandikishije mu buyobozi bw'imisoro» sibyo bisobanuye ko iryo tegeko ryakoreshejwe risubira inyuma mu gihe n'ubundi kutiyandikisha mu bishyura imisoro ari imwe mu mpamvu zo kutawishyura.

[redacted]Urukiko rurasanga Eco Power Global Private Ltd yivugira ko ariyo yahabwaga serivisi, imaze kurambagiza ahakorerwa ibikoresho ikeneye, ikabimenyesha Minisiteri y'Ibikorwa Remezo kugirango byishyurwe, ikaba itahindukira ngo ivuge ko ibiteganywa n'ingingo ya 51 y'Itegeko no 16/2005 ryo ku wa 18/08/2005 rigenga imisoro itaziguye ku musaruro bitayirebaga yitwaje ko Leta y'u Rwanda ariyo yishyuraga, ngo ibihereho itwerera Leta y'u Rwanda inshingano yahabwaga n'Itegeko zo gufatira umusoro wa 15% ku nyemezabwishyu yayishyikirizaga, yakagombye ahubwo kugaragaza ko inyemezabwishyu yatanze zigaragaza ko uwo musoro wafatiriwe noneho Leta y'u Rwanda yishyuraga ikaba itarubahirije ibiteganywa n'amategeko, byose bigaragaza ko ubujurire kuri iyi ngingo nta shingiro bufite.

II.3. Kumenya niba « avance » yishyurwa ikwiye gufatirwaho umusoro.

[redacted] Me NSENGIYUMVA Abel na Me ZAWADI Steven, baburanira Eco Power Global Private Ltd, bavuga ko hari 38.475.000Frw uwo baburanira yahawe agiye gutangira imirimo, akaba ataragombaga gucibwa umusoro ku nyongeragaciro kuko atari ubwishyu.

[redacted] Me BYIRINGIRO Bajeni, uburanira Ikigo cy'Imisoro n'Amahôro, avuga ko 38.475.000 Frw Eco Power Global Private Ltd ivuga atari umusoro ku nyongeragaciro ahubwo ari mu musoro wa 15% ufatirwa ungana na 69.069.037 Frw waciwe ku mwaka wa 2009, Eco Power Global Private Ltd ikaba yaravugaga ko itawishyura kuko nta tegeko ryayisabaga kuwufatira muri uwo mwaka.

UKO URUKIKO RUBIBONA

[redacted] Ingingo ya 3 y'Itegeko no 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko « Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. »

[redacted] Dosiye y'urubanza igaragaza ko mu nyandiko itakambira Komiseri Mukuru yo ku wa 03/08/2013, Eco Power Global Private Ltd yavugaga ko 38.475.000 Frw atagomba gucibwaho umusoro ufatirwa wa 15% kuko ari amafaranga yatanzwe nka avansi ku nyemezabwishyu y'ibintu byari kuva mu Bushinwa, uku ni nako kandi Komiseri Mukuru yasuzumye ikibazo aho yavuze ko

ibyo Eco Power Global Private Ltd ivuga ko 38.475.000 Frw atagomba gucibwaho umusoro ufatirwa wa 15% kuko ari avansi y'ubwishyu bw'ibikoresho byari kuva mu Bushinwa nta shingiro bifite. Eco Power Global Private Ltd yongeye kuvuga ko ayo mafaranga ari avansi y'ubwishyu bw'ibikoresho byaguzwe mu Bushinwa ku rupapuro rwa 9 rw'imyanzuro yatangiyeho ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge.

[redacted] Urukiko rurasanga ibyo Eco Power Global Private Ltd ivuga ko avansi yishyuwe ibikoresho mu Bushinwa ari iyo gutangira imirimo bityo ko idasoreshwa nta shingiro bikwiye guhabwa kuko, nk'uko byasobanuwe n'Urukiko rw'Ikirenga mu rubanza Forest Company Volcanoes Gorillas (FCVG) yaburanaga n'Ikigo cy'Imisoro n'Amahôro[2], mu rubanza Ikigo cy'Imisoro n'amahôro cyaburanaga na Misigaro Louis[3], no mu rubanza icyo Kigo cyaburanga na Rubare Josias[4], avansi yo gutangiza imirimo ("avance de démarrage") ni amafaranga ahabwa uwatsindiye isoko kugira ngo abashe gutangira gushyira mu bikorwa isoko yatsindiye, akaba nta gice cy'umurimo runaka aba yishyuriwe ku buryo yafatwa nk'ubwishyu, ahubwo uko uwatsindiye isoko agenda yishyuza agaciro k'imirimo yakoze, agenda avanamo (déduction) ingano runaka ya avansi yose nk'uko byumvikanyweho n'impande zagiranye amasezerano, akazarangira kwishyurwa imirimo yakoze yose na ya avansi yose isubijwe uwamuhaye isoko.

[redacted]Urukiko rurasanga Eco Power Global Private Ltd itagaragaza ko 38.475.000Frw ari amafaranga yahawe na Leta y'u Rwanda kugirango itangire imirimo, ahubwo nayo iyo sosiyete yishyuye ibikoresho yari yaguze mu Bushinwa nk'uko ibyivugira, kuba yarishyuye igice cy'inyemezabwishyu yose akaba ataribyo byagira iyo avansi iyo gutangira imirimo, byose bigaragaza ko ibyo Eco Power Global Private Ltd ivuga kuri iyi ngingo nta shingiro bifite.

II.4. Kumenya niba ingingo ijyanye n'igihombo cya Eco Power Global Private Ltd yaratanzwe bwa mbere mu bujurire ku buryo itagombaga kwakirwa.

[redacted] Me NSENGIYUMVA Abel na Me ZAWADI Stephen, baburanira Eco Power Gloabl Private Ltd, bavuga ko bari basabye ko umusoro wa 2008 batawishyura kuko bungutse gusa 973.792.000 Frw, naho ibyatunze umwuga ari 1.572.658.847 Frw, bityo ko hashingiwe ku biteganywa n'ingingo ya 20 y'Itegeko no 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro basanga igihombo bagize mu mwaka wa 2011 gikwiye gukorwamo inyungu bagize mu 2008. Basobanura ko Urukiko Rukuru rw'Ubucuruzi rwanze kubisuzuma rwitwaje ko ari ikirego gishya, rwirengagiza ko nubwo bitatakambiwe kwa Komiseri Mukuru cyangwa ngo biregerwe mu Rukiko rw'Ubucuruzi rwa Nyarugenge, ingingo ya 168 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itabuza ko, mu bujurire, hatangwa ingingo cyangwa ibimenyetso bishya.

[redacted] Basobanura ko niyo Urukiko rusanga ari ingingo nshya, nta cyari kubuza ko byakirwa kuko ari ndemyagihugu bitewe n'uko umusoro ushyirwaho n'Itegeko, bikaba bikwiye ko umusoresha yita ku byatunze umwuga mbere yo kubara umusoro.

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2 Reba urubanza no RCOMAA 00055/2016/SC hagati y' Ikigo cy'Imisoro n'Amahôro na Forest Company Volcanoes Gorillas (FCVG), Icyegeranyo cy'Ibyemezo by'Inkiko, V.4-2018, p.71.

3 Reba urubanza no RCOMA 0074/11/CS hagati y'Ikigo cy'Imisoro n'Amahôro na Misigaro Louis, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/04/2014, ibika bya 18-20.

4 Reba urubanza no RCOMA 0149/12/CS/CS hagati y'Ikigo cy'Imisoro n'Amahôro na Rubare Josias, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/03/2016, ibika bya 15-16.

[redacted] Me BYIRINGIRO Bajeni, uburanira Ikigo cy'Imisoro n'Amahôro, avuga ko mu gihe Eco Power Global Private Ltd itagaragarije Komiseri Mukuru cyangwa Urukiko rw'Ubucuruzi ingingo ijyanye n'igihombo, bisobanuye ko icyo gihe nta gihombo yari ifite, ahubwo ko ari ingingo nshya izanywe bwa mbere ku rwego rw'ubujurire bwa kabiri nyamara bibujijwe n'ingingo ya 168 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Asobanura ko haba umusoro wa 2008 cyangwa uwa 2011, yombi yaciwe mu buryo bwemewe n'amategeko akaba asanga ntaho abo baburana bashingira bavuga ko iyo ngingo ari ndemyagihugu.

UKO URUKIKO RUBIBONA

[redacted] Ingingo ya 168 y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ari naryo ryakoreshwaga igihe Eco Power Global Private Ltd yajuriraga, iteganya ko: *"Ku rwego rw'ubujurire ntihashobora kuregerwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire. Icyakora, ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukodeshe n'ibindi bintu by'inyongera byabonetse kuva aho urubanza rwaciriwe, n'indishyi z'akababaro z'igihombo umuburanyi yagize kuva urubanza ruciwe. Ntibibujijwe ariko mu rwego rw'ubujurire gutanga ingingo nshya zo kuburana cyangwa ibimenyetso bishya bitaburanishijwe mu rwego rwa mbere."* [5]

[redacted]Dosiye y'urubanza igaragaza ko mu Rukiko Rukuru rw'Ubucuruzi, Eco Power Globla Private Ltd yatanze ubujurire bwuririye kubw'Ikigo cy'Imisoro n'Amahoro isaba ko igihombo yagize mu mwaka wa 2011 kingana na 1.396.034.615Frw cyasimbuzwa inyungu zo mu 2008 zingana na 973.792.000 Frw, Urukiko Rukuru rw'Ubucuruzi rwanzura ko iyo mpamvu idakwiye gusuzumirwa bwa mbere mu bujurire kuko Eco Power Global Private Ltd yakagombye kuba yarayitakambiye kwa Komiseri Mukuru, atayiha ishingiro ikaregerwa bwa mbere mu Rukiko rw'Ubucuruzi rwa Nyarugenge.

[redacted] Dosiye y'urubanza igaragaza ko mu nyandiko ya Eco Power Global Private Ltd itakambira Komiseri Mukuru ntaho mu mwaka wa 2011 igaragaza ko yagize igihombo cya 1.396.034.615 Frw, naho mu mwanzuro watanzwe mu Rukiko rw'Ubucuruzi rwa Nyarugenge hasabwaga gusa ko havanwaho umusoro ungana na 769.841.596 Frw, na none muri uwo mwaka ntaho Eco Power Global Private Ltd igaragaza ko yaba yaragize igihombo cyavuzwe haruguru.

[redacted] Urukiko rurasanga mu miburanire yayo, Eco Power Global Private Ltd yemera ko iby'igihombo cyo mu 2011 kitari mubyo yatakambiye kwa Komiseri Mukuru, cyangwa yaregeye mu Rukiko rw'Ubucuruzi rwa Nyarugenge rwaburanishije urubanza ku rwego rwa mbere, hakaba kandi ntaho bigaragara ko iyo ngingo yari yaregewe, byumvikanisha ko iyo ngingo yazamuwe bwa mbere imbere y'Urukiko Rukuru rw'Ubucuruzi, nyamara ingingo ya 168 y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga ubujurire butangwa ikaba yarabuzaga ko ku rwego rw'ubujurire haregerwa ibitarasuzumwe ku rwego rwa mbere, bityo hakaba nta makosa

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5 Iyi ngingo niyo yabaye iya 154 ya y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

Uruko Rukuru rw'Ubucuruzi rwakoze rwemeza ko iyo ngingo itakiriwe kuko itanzwe bwa mbere mu bujurire.

[redacted] Urukiko rurasanga ibyo Eco Power Global Private Ltd ivuga ko ibyo iburanisha ari ibisobanuro n'ibimenyetso bishya nta shingiro bifite, kuko icyo igamije ari ukugirango Urukiko rwemeze ko yahombye 1.396.034.615 Frw mu mwaka wa 2011, noneho muri icyo gihombo havanwemo urwunguko yabonye mu 2008, isorere asigaye, ibyo bikaba bifite ingaruka ku rubanza rwose yatangije mu Rukiko rw'Ubucuruzi rwa Nyarugenge, kandi icyo gihe ikaba itaragaragaje ko iyo ngingo iri mu byaregewe, ibi kandi akaba aribyo itegeko ribuza, ibyemewe akaba ari gusa gutanga ibisobanuro cyangwa ibimenyetso bishya bigumisha ikirego mu mbibi cyatanzwemo. Uku kandi niko abahanga mu mategeko babisobanura, aho bavuga ko uwajuriye atemerewe guhindura ikirego ubwacyo, ashobora guhindura ingingo aburanisha yisobanura kubyo yajuririye hagamijwe gushimangira no kumvikanisha kurushaho ikirego cyatanzwe.[6]

[redacted]Urukiko rurasanga uyu murongo uhura kandi n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza Kalinda Sekwekwe yaburanaga n'Ikigo cy'Imisoro n'Amahôro aho rwavuze ko ikibazo kitasuzumwe mu rubanza rwajuririwe ku mpamvu y'uko kitigeze kigezwa kwa Komiseri Mukuru w'Imisoro, kidakwiye gusuzumwa mu rwego rw'ubujurire kuko ababuranyi baba batarakigiyeho impaka,[7] naho mu rubanza Akagera Business Group Ltd yaburanaga n'Ikigo cy'Imisori n'Amahôro, Urukiko rw'Ikirenga rusanga umusoreshwa ari we ufite inshingano yo kumenyakanisha umusoro,[8] izo gutunga no kubika inyandiko zose zirebana n'ubucuruzi bwe, igenzura ry'umusoro rikaza rije gusuzuma gusa niba imenyekanisha ryarakozwe mu mucyo hashingiwe ku mahame n'amategeko agenga imisoro, yaba atanyuzwe Itegeko rikamuha amahariwe yo gukosoza imenyekanisha, gutanga ibisonaburo n'ibimenyetso by'ibyo atemera ku igenzura ryakozwe no gutakambira Komiseri Mukuru aho abona yarenganyijwe n'abagenzuzi b'umusoro, iyo aho hose adatanze ibimenyetso yari afite, yaherewe umwanya wo kugaragariza umusoresha ndetse yagera n'imbere y'Urukiko ntagaragaze impamvu zifatika zatumye atabikora, bituma ingingo nshya atanga zitakirwa kuko atariwe wahindukira ngo yungukire mu kuba atarubahirije ibyo yahabwaga cyangwa yasabwaga n'Itegeko,[9] nabyo bishimangira ko nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze rwanga kwakira iyi ngingo y'ubujurire.

[redacted]Urukiko rurasanga icyakora mu gika cya 31 cy'urubanza rujuririrwa Urukiko Rukuru rw'Ubucuruzi rwaravuze ko « ntaho rwahera rwemeza ko amafaranga « dépenses » yose ECO POWER GLOBAL PRIVATE Ltd iregera, uko iyasobanura mu myanzuro wayo yarakoreshejwe

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[6] Dans la mesure où la demande elle-même n'est pas modifiée, l'appelant peut présenter une argumentation et des moyens totalement nouveaux, même si ceux-ci changent le débat… Le moyen est le fondement juridique, le développement d'une argumentation de droit propre à conduire au succès d'une prétention. Il est aussi l'ensemble des raisonnements conduits sur les faits de l'espèce. Argumentation de fait et moyens de droit ont un seul et même objet: le succès d'une demande. La demande est intangible et fixée définitivement, sauf exceptions légales. Le reste n'est que moyens et peut évoluer", Reba Serge Guinchard et alii [sous la dir], Droit et Pratique de la Procédure Civile, Paris: Dalloz, 2014, pp1513.

7 Reba urubanza RCOMA0028/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 06/11/2015, igika cya 25. Reba Urubanza Akagera Business Group Ltd. Reba urubanza rwa Muhire [Confere email Olivier]

8 "[L'obligation déclarative] pèse sur le contribuable… parce que l'ensemble du processus fiscal est déclenché par le dépôt de sa déclaration." Jacques Grosclaude et Phippe Marchessou, *Droit fiscal général*, Paris : Dalloz, 2007, p.221.

9 Reba urubanza no RCOM A 0009/13/CS (RCOM 0239/11/HCC) rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2017, ibika bya 24 kugeza kuri 27.

mu mwuga, kugirango igabanyirizwe imisoro yaciwe, kuko iterekana ibimenyetso bishimangira iyi mvugo yayo. Rusanga rero iyi mpamvu y'ubujurire idakwiye guhabwa ishingiro », Urukiko Rukuru rw'Ubucuruzi rukaba rwarakoze amakosa yo kumara kwemeza ko iyi ngingo itakiriwe, rugakomeza ruyisuzuma, rugasanga nta bimenyetso yatangiwe rukanzura ko nta shingiro ifite, kuko nyuma yo kwemeza ko iyo ngingo itakiriwe ntacyo Urukiko rwari kongera kuyikoraho. Icyakora niyo rubisuzuma rutabanje kwemeza ko itakiriwe sibyo byari gutuma isuzumwa n'uru Rukiko kuko byari kuba byakozwe mu buryo no mu nzira binyuranyije n'amategeko.

II.5. Kumenya niba indishyi zisabwa zifite ishingiro.

[redacted] Me BYIRINGIRO Bajeni, uburanira Ikigo cy'Imisoro n'Amahôro, avuga ko asaba 5.000.000 Frw akubiyemo ibigenda ku rubanza bingana na 2.000.000 Frw, abazwe kuva urubanza rugitangira kugeza kuri uru rwego, na 3.000.000 Frw y'igihembo cya Avoka kuko uwo aburanira yiyambaza ba Avoka mu manza.

[redacted] Me NSENGIYUMVA Abel, uburanira Eco Power Global Private Ltd, avuga ko indishyi Ikigo cy'Imisoro n'Amahôro gisaba nta kimenyetso kizitangira, akaba abihariye ubushishozi bw'urukiko, naho Me ZAWADI Steven avuga ko mu kugena igihembo cya Avoka mu manza ziburanwa n'aba Avoka baburanira Leta hakwiye gushingirwa ku murongo mu rubanza hagati ya Inspector General of Government (Uganda) na Godfrey Magezi rwaciwe n'Urukiko rw'Afurika y'Iburasirazuba, aho Urukiko rwasuzumaga ikibazo cyo kumenya niba intumwa ziburana mu izina ry'Intumwa Nkuru ya Leta zikwiye igihembo cya Avoka kandi ziba zuzuza inshingano zazo ziteganywa n'Itegeko Nshinga, rusanga koko Intumwa za Leta ziba zuzuza inshangano zazo mu nyungu rusange bityo ko nta gihembo cya Avoka bakwiye. [10]

UKO URUKIKO RUBIBONA

[redacted] Urukiko rurasanga icyatumye Intumwa ya Leta ya Uganda itemererwa igihembo cya Avoka mu rubanza Inspector General of Governement (Uganda) yaburanaga na Geoffrey Magezi ari uko uwaburaniraga Leta ya Uganda yavuze ko kudahabwa icyo gihembo bibangamira ihame ry'uburinganire bw'ababuranyi,11 akaba ataragaragaje ko kuburana imanza kabone nubwo byakorwa n'aba Avoka babihemberwa buri kwezi, bituma nyir'urubanza hari ibyo atakaza ku rubanza, kudasubizwa agaciro kabyo kandi Urukiko rumaze kugaragaza ko ikirego cye gifite ishingiro nabyo bikaba byatera igihombo kidafite ubundi buryo kizishyurwa.

[redacted] Urukiko rurasanga uru rubanza rutagereranywa n'urwo Inspector General of Governement (Uganda) yaburanye na Geoffrey Magezi kuko nubwo ababuranira Ikigo cy'Imisoro n'Amahôro babihemberwa buri kwezi, icyo kigo hari ibyo gitakaza cyohereza abanyamategeko bacyo mu nkiko, indi mirimo bari gukora igahagarara, bagatura bategura imanza nk'uko bisabwa buri Avoka wese, abahagarariye Eco Power Global Private Ltd bakaba batagaragaza ko ari n'uko bimeze ku Ntumwa za Leta muri Uganda, ariko nubwo byamera bityo, ntibyabuza ko uwagize ibyo atakaza nta mpamvu abisubizwa, ariyo mpamvu nta cyabuza ko Ikigo cy'Imisoro n'Amahôro kigenerwa ikiguzi cy'ibyo cyatakaje ku manza harimo n'igihembo cya Avoka.

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[10] East African Court of Justice, Inspector General of Government (Uganda) v Geoffrey Magezi, 27/03/2017.
[11] East African Court of Justice, Inspector General of Government (Uganda) v Geoffrey Magezi, 27/03/2017, para 44-46.

[redacted]Urukiko rurasanga icyakora nubwo hari ibyo Ikigo cy'Imisoro n'Amahôro cyatakaje kugirango kiburane uru rubanza, ukiburanira ntagaragaza ko amafaranga asaba ariyo koko yagiye kuri uru rubanza, bityo, mu bushishozi bw'Urukiko, kikaba kigenewe 1.000.000 Frw y'ibyagiye ku rubanza kuva rwatangira na 2.000.000 Frw y'igihembo cya Avoka ku nzego zose.

III. ICYEMEZO CY'URUKIKO

[redacted] Rwemeje ko ubujurire bwa Eco Power Global Private Ltd nta shingiro bufite.

[redacted]Rwemeje ko urubanza RCOMA 0100/15/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ku wa 17/04/2015, ruhindutse gusa ku bijyanye n'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka.

[redacted] Rutegetse Eco Power Global Private Ltd guha Ikigo cy'Imisoro n'Amahôro 1.000.000 Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cya Avoka ku nzego zose, yose hamwe akaba 3.000.000 Frw.

[redacted] Rutegetse ko ingwate y'amagarama yatanzwe ihuye n'ibyakozwe muri uru rubanza.