BENEDETTA GROUP LTD v RAB

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00015/2022/CA (Munyangeri, PJ.) 20 Mutarama 2023]

Amategeko agenga imanza z'ubucuruzi – Sosiyete zishyize hamwe – Ububasha bwo gutanga ikirego - Uwahawe ububasha bwo guhagararira sosiyete zishyize hamwe (JV) mu masezerano mu gukurikirana ishyirwa mu bikorwa ry'amasezerano buba butandukanye n'ububasha bwo kuregera Inkiko kuko kuregera Inkiko biba mu gihe havutse impaka mu ishyirwa mu bikorwa ry'ayo masezerano, bikaba bitandukanye no gushyira mu bikorwa amasezerano impande zombi zagiranye.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bwo gutanga ikirego – Gutangira undi ikirego - Uwahawe ububasha bwo gutangira undi ikirego ntaza mu Rukiko yifashe nk'uwasimbuye uwamutumye, ahubwo agomba kugaragaza ko uwamuhaye ububasha bwo kumutangira ikirego ari we ugomba kugaragara nk'umuburanyi mu rubanza.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Sosiyete zibumbiye hamwe – Uburenganzira bwo gutanga ikirego - Sosiyete imwe mu zibumbiye hamwe (JV) iba ifite uburenganzira bwo kurega mu izina ryayo gusa igihe ikurikirana uruhare rwayo rwonyine ku burenganzira, ariko ikaba nta bubasha iba ifite bwo kuregera uburenganzira bwose bwa sosiyete zishyize hamwe mu izina ryayo.

Incamake y'ikibazo: Benedetta Group Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi ivuga ko yagiranye amasezerano na Rwanda Agriculture Board (RAB) yo gukora inyigo ku buso bungana na hegitari 16.000, ifatanije na A.I Engineering muri Benedetta Group & A.I Engineering (JV), aho yishyuje icyiciro cya nyuma kingana na 40% by'isoko gihwanye na 335.163.425 Frw, RAB yanga kucyishyura, bituma itanga ikirego isaba Urukiko kuyitegeka kwishyura uwo mwenda.

Urukiko rw'Ubucuruzi rwafashe icyemezo ku nzitizi yo kutakira ikirego yatanzwe na RAB kubera iburabubasha ry'urega, rusanga n'ubwo amasezerano yakozwe na Joint Venture Benedetta Group & A.I Engineering, ububasha bwo gukurikirana ibijyanye n'ayo masezerano bwarahawe Benedetta Group, rwemeza ko inzitizi yatanzwe nta shingiro ifite. Rufata n'icyemezo ku rubanza mu mizi, rwemeza ko ikirego cyatanzwe na Benedetta Group Ltd gifite ishingiro, rutegeka RAB kuyishyura umwenda ungana na 335.163.425 Frw, n'inyungu zitandukanye. RAB yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi, isaba gusuzuma niba ikirego cyatanzwe na Benedetta Group Ltd cyaragombaga kwakirwa. Rwemeza ko ubujurire bufite ishingiro, ko ikirego cyatanzwe na Benedetta Group Ltd kitagombaga kwakirwa.

Benedetta Group Ltd ijuririra icyo cyemezo mu Rukiko rw'Ubujurire, inenga kuba Urukiko Rukuru rw'Ubucuruzi rwaravuze ko ikirego cyayo kitagombaga kwakirwa, bigatuma rudaha agaciro umwenda iregera n'inyungu ziwukomokaho kandi Benedetta Group Ltd yari yarahawe ububasha na Joint Venture Benedetta Group & A.I Engineering, ko Benedetta Group Ltd ari yo yashyize umukono ku masezerano, no kuba ari yo yishyurwaga, bihagije kugira ngo hemezwe ko yari ifite ububasha n'ubushobozi byo kurega no gukurikirana inyungu zose zishingiye kuri ayo masezerano, ko mu gutanga ikirego, itasimbuye Joint Venture, ko ahubwo ihagarariye inyungu za Joint Venture nk'uko yayihagarariye mu bindi byose byabanje.

RAB isobanura ko yagiranye amasezerano na Joint Venture, ko kuba Joint Venture nta buzimagatozi ifite, byumvikanisha ko iyo bagiye kurega, buri sosiyete mu zishyize hamwe irega ku giti cyayo. Bityo ko Benedetta Group Ltd itaza kuregera umwenda wose wa Joint Venture, akaba asanga iyo Benedetta Group Ltd ibikora neza nk'uko amasezerano abiteganya, yari kuba yaratanze ikirego mu izina rya Joint Venture ihagarariwe na Benedetta Group Ltd.

Incamake y'icyemezo: 1. Guhabwa ububasha bwo guhagararira sosiyete zishyize hamwe (JV) mu masezerano biteganywa n'itegeko, ndetse ububasha bwo gukurikirana ishyirwa mu bikorwa ry'amasezerano bukaba butandukanye n'ububasha bwo kuregera Inkiko kuko kuregera Inkiko biba mu gihe havutse impaka mu ishyirwa mu bikorwa ry'ayo masezerano, bikaba byumvikanisha ko kwiyambaza Inkiko bitandukanye no gushyira mu bikorwa amasezerano impande zombi zagiranye.

2. Kugira ngo umuntu agire ububasha bwo gutanga ikirego mu Rukiko, agomba kuba afite ikirego. Mu kirego cyatanzwe na Benedetta Group Ltd, iyi sosiyete ifite igice cy'uburenganzira ku mwenda Rwanda Agriculture Board yaba ifitiye sosiyete zishyize hamwe (JV), ikindi gice cyabwo kikaba gifitwe na A.I Engineering Ltd. Bityo, kuba sosiyete ya kabiri mu zigize JV nta ho igaragara mu barega kandi Benedetta Group Ltd ikaba ivuga ko iregera umwenda wose sosiyete zishyize hamwe ziberewemo, akaba nta bubasha yari ibifitiye, kandi n'iyo yabuhabwa ntiyaza mu Rukiko yifashe nk'iyasimbuye uwayitumye, ahubwo igomba kugaragaza ko uwayihaye ububasha bwo kuyitangira ikirego ari we ugomba kugaragara nk'umuburanyi mu rubanza.

3. Benedetta Group Ltd yari ifite ububasha bwo kuregera Urukiko mu izina ryayo mu gihe yari kuba ikurikirana uruhare rwayo rwonyine ku mwenda uburanwa, ariko ikaba nta bubasha yari ifite bwo kuregera umwenda wose wa sosiyete zishyize hamwe mu izina ryayo.

Ubujurire bwatanzwe na Benedetta Group Ltd, nta shingiro bufite.
Urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ntiruhindutse.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3, 33 na 111.
Itegeko n˚ 62/2018 ryo ku wa 25/08/2018 rigenga amasoko ya Leta, ingingo ya 84.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 08/08/2016, Rwanda Agriculture Board (RAB) yagiranye amasezerano (contract 1. 11/1242/016/BL/H. Q) na Benedetta Group & A.I Engineering (JV), yo gukora inyigo ku buso bungana na hegitari 16.000, ziherereye ku nkengero z'umusozi no mu gishanga mu gice cya Gashora, mu Karere ka Bugesera, amasezerano yiswe "FEASIBILITY STUDY AND DETAILED DESIGN OF A PROPOSED HA 16.000 GROSS AREA HILLSIDE AND MARSHALAND AND IRRIGATION (Lots 2: GASHORA AREA)". Izo hegitari zari zigabanyijemo ibice bine (4), Benedetta Group & A.I Engineering (JV) ihabwa gukora agace ka Rweru kangana na hegitari

4.797, igomba kwishyurwa 887.908.560 Frw, impande zombi zumvikana uburyo akazi kazakorwa n'uburyo ubwishyu buzatangwa mu byiciro.

[2] Benedetta Group Ltd ivuga ko yishyuje icyiciro cya nyuma kingana na 40% by'isoko gihwanye na 335.163.425 Frw, Rwanda Agriculture Board (RAB) yanga kucyishyura, bituma itanga ikirego mu Rukiko rw'Ubucuruzi, irusaba gutegeka RAB kwishyura uwo mwenda ungana na 335.163.425 Frw ukomoka ku gusesa amasezerano mu buryo bunyuranyije n'amategeko no gutanga inyungu zibariwe kuri 8% zingana na 15.640.959 Frw.

[3] Rwanda Agriculture Board (RAB) ivuga ko ikirego cyatanzwe na Benedetta Group Ltd kitakwakirwa, kuko nta masezerano yigeze igirana na yo, ko ahubwo yayagiranye na Joint Venture Benedetta Group & A.I Engineering. Isobanura ko igice cyagombaga gukorwa cyaje kugabanuka, kiva kuri 4.797 Ha, kigera kuri 3.525 Ha, ko yari yifuje ko impande zombi zakumvikana ku giciro cy'ahagomba gukorwa, ariko ko Joint Venture Benedetta Group & A.I Engineering zititabiriye imishyikirano, kandi ko kuvuga ko yakoze ku buso bwose atari byo, ndetse ko nta kigaragaza ko ibyo yagombaga gukora byakozwe ikabishima, akaba nta n'igitabo cya DAO Benedetta Group Ltd yatanze, bityo ko n'inyungu isaba itazihabwa, kuko Rwanda Agriculture Board atari ikigo cy'ubucuruzi kigamije inyungu.

[4] Ku wa 24/12/2018, Urukiko rw'Ubucuruzi rwafashe icyemezo ku nzitizi yo kutakira ikirego kubera iburabubasha ry'urega mu rubanza n˚ RCOM 01604/2018/TC, aho Rwanda Agriculture Board yavugaga ko nta masezerano yagiranye na Benedetta Group Ltd, ahubwo yayagiranye na Joint Venture Benedetta Group & A.I Engineering. Mu gusesengura ibimenyetso n'imvugo z'ababuranyi, Urukiko rw'Ubucuruzi rusanga n'ubwo amasezerano yakozwe na Joint Venture Benedetta Group & A.I Engineering, ububasha bwo gukurikirana ibijyanye n'ayo masezerano bwahawe Benedetta Group, rwemeza ko inzitizi yatanzwe na Rwanda Agriculture Board, nta shingiro ifite.

[5] Ku wa 28/01/2019, Urukiko rw'Ubucuruzi rwafashe icyemezo ku rubanza mu mizi, rwemeza ko ikirego cyatanzwe na Benedetta Group Ltd gifite ishingiro, rutegeka Rwanda Agriculture Board kuyishyura umwenda ungana na 335.163.425 Frw, inyungu z'ubukererwe zingana na 12.065.883 Frw, igihembo cya Avoka kingana na 500.000 Frw, amafaranga y'ikurikiranarubanza angana na 40.000 Frw no gusubiza ingwate y'amagarama ingana na 20.000 Frw.

[6] Rwanda Agriculture Board (RAB) yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi, isaba gusuzuma niba ikirego cyatanzwe na Benedetta Group Ltd cyaragombaga kwakirwa, niba mu kuyitegeka kwishyura, Urukiko rwarakurikije amasezerano, niba umucamanza yari kuguma mu rubanza kandi hari icyemezo yarufashemo, no gusuzuma niba ikiguzi cya serivisi RAB yahawe gihwanye n'ubuso bwakoreweho inyigo irambuye.

[7] Mu rubanza n˚ RCOMA 00188/2019/HCC rwaciwe ku wa 12/11/2021, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Rwanda Agriculture Board bufite ishingiro, ko ikirego cyatanzwe na Benedetta Group Ltd kitagombaga kwakirwa, icyemezo cyafashwe n'Urukiko rw'Ubucuruzi mu rubanza n˚ RCOM 01604/2018/TC kivanwaho.

[8] Ku wa 11/12/2021, Benedetta Group Ltd yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwandikwa kuri n˚ RCOMAA 00015/2022/CA, inenga kuba Urukiko Rukuru rw'Ubucuruzi rwaravuze ko ikirego cyayo kitagombaga kwakirwa, bigatuma rudaha agaciro umwenda iregera n'inyungu ziwukomokaho.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 04/01/2023, Benedetta Group Ltd ihagarariwe na Me UWIZEYIMANA Jean Baptiste, Rwanda Agriculture Board ihagarariwe na Me KABIBI Spéciose afatanyije na Me NTARUGERA Nicholas, isomwa ryarwo rishyirwa ku wa 13/01/2023, uwo munsi ntirwasomwa kubera ko iyandikwa ryarwo ryari ritararangira, ryimurirwa ku wa 20/01/2023.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Benedetta Group Ltd yari ifite ububasha bwo gutanga ikirego

[10] Me MUTABAZI Célestin wari uhagarariye Benedetta Group Ltd mu nama ntegurarubanza yabaye ku wa 06/10/2022, avuga ko ku wa 06/09/2015, sosiyete A.I. Engineering Ltd yahaye Benedetta Group Ltd ububasha bwo gukurikirana ibikorwa byose bijyanye n'ipiganwa ry'isoko ku nyigo yagombaga gukorwa kuri 4.797 Ha, ko Benedetta Group Ltd yaje gutsindira iryo soko, ku wa 08/08/2016 igirana amasezerano na RAB, ndetse iyashyira mu bikorwa nk'uko impande zombi zari zarabyumvikanyeho.

[11] Akomeza avuga ko kuba Rwanda Agriculture Board ivuga ko Benedetta Group Ltd itari ifite ububasha bwo kuregera amasezerano yabaye hagati yayo na Joint Venture Benedetta Group & A.I Engineering n'Urukiko Rukuru rw'Ubucuruzi rukabyemeza atari byo, kubera ko ingingo ya 1.8 y'ayo masezerano, igaragaza neza ko Benedetta Group Ltd ifite TIN 103336551, ari yo yagombaga kwishyurwa, ubwishyu bugashyirwa kuri konti yayo nº 1002100103539001 iri muri Access Bank Rwanda Plc, kandi ko iyi konti ari na yo Rwanda Agriculture Board yishyuriyeho mu byiciro byabanje, ko kuba rero ari Benedetta Group Ltd yagombaga kwishyurwa, ari uko hari ibyo yabaga yakoze kandi ikabikora nk'uko byari bikubiye mu masezerano, bikanayiha ububasha bwo gukurikirana uburenganzira bwayo bwose bushingiye ku masezerano yari hagati yayo na Rwanda Agriculture Board.

[12] Avuga kandi ko ibaruwa yo ku wa 29/06/2018 yanditswe na Rwanda Agriculture Board isubiza umunyamategeko wa Benedetta Group Ltd, igaragaza ko yemera ko Benedetta Group Ltd yakoze "feasibility study", ndetse ikanavuga ko yifuza ubwumvikane bitabaye ngombwa ko urubanza rukomeza mu Rukiko, kandi ko no mu iburanisha ryo ku wa 05/11/2018, Rwanda Agriculture Board yivugiye ko hari komite irimo gukurikirana icyo kibazo ngo gikemuke binyuze mu nzira y'ubwumvikane, ikaba itarigeze ivuga ko Benedetta Group Ltd idafite ububasha bwo kurega, bityo ko ibi byose bigaragaza ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso ndetse n'amasezerano yo ku wa 08/08/2016 Benedetta Group Ltd yagiranye na RAB, biyiha ububasha n'inyungu byo kuyirega.

[13] Asoza ashimangira ko kuba Benedetta Group Ltd yari yarahawe ububasha na Joint Venture Benedetta Group & A.I Engineering, kuba Benedetta Group Ltd ari yo yashyize umukono ku masezerano yo ku wa 08/08/2016, no kuba ari yo yishyurwaga, bihagije kugira ngo hemezwe ko

yari ifite ububasha n'ubushobozi byo kurega no gukurikirana inyungu zose zishingiye kuri ayo masezerano.

[14] Me UWIZEYIMANA Jean Baptiste wahagarariye Benedetta Group Ltd mu iburanisha ryo ku wa 04/01/2023, avuga ko atemera isesengura ryakozwe n'Urukiko Rukuru rw'Ubucuruzi kuri iki kibazo, kubera ko kuba mu masezerano yabaye hagati ya Rwanda Agriculture Board na Joint Venture Benedetta Group & A.I Engineering harimo konti ya Benedetta Group Ltd izajya inyuzwaho ubwishyu, itabura kuregera igice gisigaye mu gihe ubundi bwishyu bwatanzwe bwanyujijwe kuri konti yayo.

[15] Akomeza avuga ko mu gihe Benedetta Group Ltd yasabaga ubwishyu Rwanda Agriculture Board na yo isaba ko ikibazo kirangizwa binyuze mu bwumvikane, Benedetta Group Ltd ari yo yahamagarwaga, hashingiwe ku kuba konti yayo ari yo yanyuzwagaho ubwishyu bwa Joint Venture Benedetta Group & A.I Engineering, akaba yibaza niba Benedetta Group Ltd yambuwe ububasha bwo guhagararira sosiyete zishyize hamwe kubera ko havutse urubanza kandi mbere hose yarazihagarariye.

[16] Asoza avuga ko ku giti cye, asanga mu gutanga ikirego, Benedetta Group Ltd itarasimbuye Joint Venture Benedetta Group Ltd & A.I Engineering Ltd, ko ahubwo ihagarariye inyungu za Joint Venture Benedetta Group Ltd & A.I Engineering Ltd nk'uko yayihagarariye mu bindi byose byabanje.

[17] Me KABIBI Spéciose asobanura ko Rwanda Agriculture Board yagiranye amasezerano na Joint Venture igizwe na Benedetta Group Ltd na A.I Engineering Ltd, ko kuba Joint Venture nta buzimagatozi ifite, byumvikanisha ko iyo bagiye kurega, buri sosiyete mu zishyize hamwe irega ku giti cyayo. Bityo ko Benedetta Group Ltd itaza kuregera umwenda wose wa Joint Venture, akaba asanga iyo Benedetta Group Ltd ibikora neza nk'uko amasezerano abiteganya, yari kuba yaratanze ikirego mu izina rya Joint Venture ihagarariwe na Benedetta Group Ltd.

[18] Akomeza avuga ko inyandiko yo ku wa 06/09/2015 Benedetta Group Ltd ivuga ko ari yo iyiha ububasha bwo guhagararira sosiyete zombi, iyo nyandiko ubwayo ivuga guhagararira (representation), guhagararira sosiyete bikaba bidasobanuye kuyisimbura mu nshingano zayo nk'uko byasobanuwe mu gika cya 20 cy'urubanza rujuririrwa, ahubwo ko yagombaga gukora mu mwanya wayo nk'uko no gushyira umukono ku masezerano yabikoze mu mwanya wayo.

[19] Ku birebana n'aho uhagarariye Benedetta Group Ltd avuga ko sosiyete ahagarariye ifite ububasha bwo kuregera umwenda wasigaye, bushingiye ku kuba ubundi bwishyu bwatanzwe bwaranyuzwaga kuri konti yayo, Me KABIBI Spéciose avuga ko n'ubwo ubwishyu bwaba bunyuzwa kuri konti ya Benedetta Group Ltd, fagitire zitaba zatanzwe mu izina rya Benedetta Group Ltd, ko ahubwo zigomba kuba zasohowe mu izina rya Joint Venture Benedetta Group Ltd & A.I Engireering Ltd.

[20] Kuri iyi ngingo, yanzura avuga ko Benedetta Group Ltd itari ifte ububasha bwo gutanga ikirego ishingiye ku masezerano yari hagati ya Joint Venture Benedetta Group & A.I Engineering, ko ahubwo byari gushoboka iyo iza kuba iregera inyungu zayo yonyine, ko mu bisobanuro itanga igenda yitiranya ububasha n'ubushobozi.

[21] Me NTARUGERA Nicholas avuga ko Urukiko Rukuru rw'Ubucuruzi rwasanze kuba Benedetta Group Ltd yari yarahawe ububasha bwo gukurikirana inyungu za Joint Venture Benedetta Group Ltd & A.I Engineering Ltd, kuba ari yo yashyize umukono ku masezerano, kuba ubwishyu bwaranyuzwaga kuri konti yayo, ibyo bitayiha ububasha bwo gitanga ikirego mu izina ryayo yonyine, kuko nk'uko bigaragara muri ayo masezerano, Benedetta Group Ltd yayashyizeho umukono mu izina rya sosiyete zombi, kandi ko kuba konti yayo ari yo yanyuzwagaho ubwishyu, byatewe n'uko ari yo abishyize hamwe bari batanze mu masezerano babyumvikanyeho, akaba atari uko ari Benedetta Group Ltd yagombaga kwishyurwa yonyine, bityo ko itari ifite n'ububasha bwo kurega ishingiye ku masezerano atari ayayo.

[22] Kuri iyi ngingo, asoza avuga ko hashingiwe ku biteganywa n'ingingo ya 3 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asanga Benedetta Group Ltd itari ifite ububasha bwo kurega.

UKO URUKIKO RUBIBONA

[23] Ingingo ya 3 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 ko"*Ikirego cyakirwa mu Rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, keretse igihe itegeko ribiteganya ukundi. Ku mashyirahamwe, imiryango n'ibigo bidafite ubuzimagatozi, harega kandi hakaregwa abayobozi babyo mu izina ry'ababigize".*

[24] Ingingo ya 33, igika cya mbere y'itegeko rimaze kuvugwa iteganya ko "[...] *Icyakora abasangiye inyungu mu rubanza batanga ibirego byabo mu mwanzuro umwe, bagatanga ingwate y'amagarama imwe*".

[25] Ingingo ya 84, 4˚ y'itegeko n˚ 62/2018 ryo ku wa 25/08/2018 rigenga amasoko ya Leta, iteganya ko "*Mu kwishyira hamwe, amasosiyete yishyize hamwe agomba kugirana amasezerano akorewe imbere ya Noteri, agaragaza sosiyete iyoboye abishyize hamwe ari na yo ibahagarariye mu bikorwa byose bijyanye n'isoko n'imbibi z'ububasha ihawe. Aya masezerano agomba kuba mu bigize inyandiko yatanzwe mu nyandiko y'ipiganwa y'abishyize hamwe*".

[26] Mu gufata icyemezo cyo kwemeza ko Urukiko rw'Ubucuruzi rutagombaga kwakira ikirego cya Benedetta Group Ltd, Urukiko Rukuru rw'Ubucuruzi rwashingiye ku kuba mu gihe cyo gutanga ikirego, Benedetta Group Ltd yaritwaye nk'aho umwenda iregera ari uwayo yonyine, cyangwa nk'aho ari yo yakoze amasezerano yonyine hari uwo ihagarariye, nyamara amasezerano iburanisha atari ayayo, ahubwo ari aya Joint Venture, ikaba itanasobanura niba iregera umugabane wayo gusa, kandi nta bubasha ifite (qualité) bwo kuregera ibya Joint Venture Benedetta Group Ltd & A.I Engineering Ltd, kuko itigeze yegurirwa ububasha bwose kuri iryo soko, ahubwo yaremerewe gusa guhagararira ayo masosiyete yishyize hamwe na yo irimo.

[27] Dosiye y'urubanza igaragaza inyandiko yo ku wa 06/09/2015, aho sosiyete A.I engineering ihagarariwe na Paolo SORBA na Benedetta Group ihagarariwe na Dr Edward KAMUGISHA ziyemeje kwishyira hamwe by'igihe gito (Temporary Grouping-Joint Venture), Benedetta Group ihabwa uburenganzira bwo gukurikirana ishyirwa mu bikorwa ry'ayo masezerano.

[28] Hari amasezerano yo ku wa 08/08/2016 hagati ya Rwanda Agriculture Board na Benedetta Group & A.I Engineering (JV), aho bigaragara ko mu gushyira umukono kuri ayo masezerano, uwitwa Dr KAMUGISHA Edward ari we washyizeho umukono ahagarariye sosiyete zishyize hamwe, hanatangwa konti ya Benedetta Group iri muri Access Bank kugira ngo abe ari yo izajya inyuzwaho ubwishyu bukomoka kuri ayo masezerano.

[29] Urukiko rw'Ubujurire rurasanga Benedetta Group Ltd yarahawe ububasha bwo guhagararira JV Benedetta Group & A.I Engineering mu gukurikirana ishyirwa mu bikorwa ry'amasezerano izi sosiyete zombi zishyize hamwe zagiranye na Rwanda Agriculture Board.

[30] Urukiko rw'Ubujurire rurasanga Benedetta Group yarahawe ubwo bubasha bwo guhagararira sosiyete zishyize hamwe (JV) mu masezerano kubera ko biteganywa n'itegeko, ndetse ububasha bwo gukurikirana ishyirwa mu bikorwa ry'amasezerano bukaba butandukanye n'ububasha bwo kuregera Inkiko kuko kuregera Inkiko biba mu gihe havutse impaka mu ishyirwa mu bikorwa ry'ayo masezerano, bikaba byumvikanisha ko kwiyambaza Inkiko bitandukanye no gushyira mu bikorwa amasezerano impande zombi zagiranye.

[31] Urukiko rurasanga kandi nk'uko abahanga mu mategeko babisobanura, kugira ngo umuntu agire ububasha bwo gutanga ikirego mu Rukiko, agomba kuba afite ikirego (La qualité pour agir nécessite de posséder un titre ou un droit particulier pour pouvoir intenter l'action)[1].

[32] Mu kirego cyatanzwe na Benedetta Group Ltd, iyi sosiyete ifite igice cy'uburenganzira ku mwenda Rwanda Agriculture Board yaba ifitiye sosiyete zishyize hamwe (JV), ikindi gice cyabwo kikaba gifitwe na A.I Engineering Ltd, kuba rero sosiyete ya kabiri mu zigize JV nta ho igaragara mu barega kandi Benedetta Group Ltd ikaba ivuga ko iregera umwenda wose sosiyete zishyize hamwe ziberewemo, akaba nta bubasha yari ibifitiye nk'uko byasobanuwe, kandi ko n'iyo yabuhabwa itaza mu Rukiko yifashe nk'iyasimbuye uwayitumye, ahubwo igomba kugaragaza ko uwayihaye ububasha bwo kuyitangira ikirego ari we ugomba kugaragara nk'umuburanyi mu rubanza.

[33] Urukiko rurasanga nk'uko Urukiko Rukuru rwabibonye, Benedetta Group Ltd yari ifite ububasha bwo kuregera Urukiko mu izina ryayo mu gihe yari kuba ikurikirana uruhare rwayo rwonyine ku mwenda uburanwa, ariko ikaba nta bubasha yari ifite bwo kuregera umwenda wose wa sosiyete zishyize hamwe mu izina ryayo, cyane ko mu gihe cy'ishyirwa mu bikorwa ry'ibyemezo byafashwe n'Inkiko harebwa ababuranyi bagaragara muri kopi y'urubanza, hatarebwa amasezerano sosiyete zishyize hamwe zagiranye kandi niba itanga ikirego mu izina ryayo iregera umwenda wa sosiyete zishyize hamwe, kuba yandikishije izina ryayo ryonyine, bikaba bitumvikanisha ko sosiyete isigaye na yo ari umuburanyi mu rubanza rwafunguwe na Benedetta Group Ltd.

[34] Urukiko rurasanga rero guhabwa ububasha bwo gukurikirana ishyirwa mu bikorwa ry'amasezerano, guhagararira imwe muri sosiyete zishyize hamwe mu gihe cyo gushyira umukono ku masezerano hagati ya Rwanda Agriculture Board na Benedetta Group Ltd & A.I Engineering Ltd, kuba ubwishyu bugenewe sosiyete zishyize hamwe bwaranyujijwe kuri konti ya Benedetta Group, nta na kimwe muri ibi biyiha ububasha bwo gutanga ikirego mu izina ryayo yonyine,

[1] Anthony BEM, "*Le droit, l'intérêt et la qualité ā agir comme conditions de recevabilité des demandes en justice", Article publié le 22/04/2015.*

iregera umwenda wose sosiyete zishyize hamwe zifiteho uburenganzira. Bityo, iyi mpamvu y'ubujurire yatanzwe na Benedetta Group Ltd ikaba nta shingiro ifite.

2. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga kugenera Rwanda Agiculture Board amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yari yasabye (Ubujurire bwuririye ku bundi bwatanzwe na RAB)

[35] Me KABIBI Spéciose asaba Urukiko rw'Ubujurire kugenera RAB indishyi zingana na 5.000.000 Frw yari yasabye mu rubanza n˚ RCOMA 00188/2019/HCC ariko Urukiko Rukuru rw'Ubucuruzi ntiruziyigenere, rwirengagije ihame ry'ikiguzi cyo gukurikirana imanza (principle of costs follow by event).

[36] Me MUTABAZI Célestin wari uhagarariye Benedetta Group Ltd mu nama ntegurarubanza, avuga ko indishyi Rwanda Agriculture Board yasabye mu Rukiko Rukuru rw'Ubucuruzi nta shingiro zikwiye guhabwa, kuko uwo ahagarariye nta makosa yakoze, ko ahubwo Rwanda Agriculture Board ari yo yakoze amakosa, yanga kwishyura ibyo isabwa, bigatuma havuka imanza.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 111 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 ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.*"

[38] Ingingo ya 75, igika cya mbere y'itegeko rimaze kuvugwa iteganya ko "*Muri rusange nta nyandiko, imyanzuro y'urubanza cyangwa inyandiko ikubiyemo ingingo ziburanishwa bishobora kohererezwa Urukiko nyuma y'inama ntegurarubanza*".

[39] Bigaragara ko mu nama ntegurarubanza y'urubanza n˚ RCOMA 00188/2019/HCC yabaye ku wa 29/04/2019, ababuranyi bagiye impaka ku bibazo bikurikira:

-Kumenya niba Urukiko rwaragombaga kwakira ikirego cyatanzwe na Benedetta Group Ltd mu izina ryayo, rukanaburanishwa iburana mu izina ryayo;

-Kumenya niba Urukiko rwarakurikije amasezerano yabaye hagati ya RAB na Joint Venture Benedetta Group & A.I Engineering rufata icyemezo ku birebana no kwishyura;

-Kumenya niba umucamanza yaragombaga kuguma mu rubanza mu gihe ku ikubitiro yafashe ″position" nyamara abona ko ari imiburanire ya RAB mu mizi y'urubanza;

-Kumenya niba ikiguzi cya serivisi yahawe RAB gihwanye n'ubuso bwakoreweho inyigo irambuye;

-Kumenya niba ubujurire bwuririye ku bundi bufite ishingiro.

[40] Urukiko Rukuru rw'Ubucuruzi rumaze gusuzuma ingingo ya mbere y'ubujurire ya RAB ivuga ko ikirego cyatanzwe na Benedetta Group Ltd kitagombaga kwakirwa, rugasanga koko kitaragombaga kwakirwa, rukavanaho urubanza rwaciwe n'Urukiko rw'Ubucuruzi, rwasanze bitakiri ngombwa gusuzuma izindi ngingo z'ubujurire mu gihe hagaragajwe ko ikirego kitagombaga kwakirwa ku rwego rwa mbere.

[41] Urukiko rw'Ubujurire rurasanga kuba Urukiko Rukuru rw'Ubucuruzi rutarageneye Rwanda Agriculture Board amafaranga y'ikurikiranarubanza n'igihembo cya Avoka nta kosa rwakoze, kubera ko ikibazo cy'amafaranga ahwanye n'ibyagiye ku rubanza, kitigeze kigibwaho impaka mu gihe cy'inama ntegurarubanza ndetse no mu gihe cy'iburanisha ry'urubanza ryo ku wa 14/10/2020 nk'uko bigaragara mu nyandikomvugo yaryo.

3. Kumenya ishingiro ry'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na Benedetta Group Ltd

[42] Me MUTABAZI Célestin wari uhagarariye Benedetta Group Ltd mu nama ntegurarubanza, asaba Urukiko rw'Ubujurire gutegeka Rwanda Agriculture Board kwishyura uwo ahagarariye amafaranga y'ikurikirarubanza n'igihembo cya Avoka angana na 2.000.000 Frw, kubera gusiragizwa mu manza nta mpamvu.

[43] Me NTARUGERA Nicholas avuga ko amafaranga asabwa na Benedetta Group Ltd nta shingiro Urukiko rukwiye kuyaha, kubera ko Rwanda Agriculture Board itigeze iyishora mu manza, na cyane ko ari na yo yatangije uru rubanza ubwo yangaga kwitabira imishyikirano yo gusuzuma imirimo yakozwe, ubuso yakoreweho, ndetse n'igihembo gikwiye.

UKO URUKIKO RUBIBONA

[44] Ingingo ya 111 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 ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.*"

[45] Urukiko rurasanga kuba ubujurire bwatanzwe na Benedetta Group Ltd nta shingiro buhawe, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka isaba, itagomba kuyahabwa.

III. ICYEMEZO CY'URUKIKO

[46] Rwemeje ko ubujurire bwatanzwe na Benedetta Group Ltd, nta shingiro bufite.

[47] Rwemeje ko urubanza n° RCOMA 00188/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 12/11/2020, rudahindutse.

[48] Rutegetse ko amafaranga y'ingwate y'amagarama yatanzwe na Benedetta Group Ltd ijurira, ahwanye n'ibyakozwe mu rubanza.