# UMUHUMUZA v ENGIN LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00008/2022/CA (Gakwaya, PJ.) 30 Ukuboza 2022]

*Amategeko agenga ububasha bw'inkiko – Umuyobozi wanze kurangiza urubanza rwaciwe mu bibazo by'ubucuruzi – Ububasha bw'inkiko z'ubucuruzi mu guhatira umuyobozi w'ikigo cya Leta kurangiza urubanza – Umuyobozi wanze kubahiriza ibyategetswe mu rubanza rwaciwe n'urukiko rw'ubucuruzi ashobora guhamagazwa nurwo rukiko kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, iyo bisabwe n'umuburanyi ubifitemo inyungu.*

*Amategeko agenga imanza z'ubucuruzi – Ikigo cya Leta – Isosiyete idahamagarira rubanda kuyiguramo imigabane –* Isosiyete *ya Leta ikora ubucuruzi, kandi ifite umunyamigabane rukumbi ari yo Leta y'u Rwanda, iguma ifite kamere y'ikigo cya Leta – Ibi bituma Umuyobozi wayo afatwa nk'Umuyobozi mu butegetsi bwa Leta (autorité administrative-administrative authority) akaba ashobora guhamagazwa n'urukiko kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza icyemezo cy'urukiko.*

**Incamake y'ikibazo:** ENGIN Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi, irusaba gutegeka Umuyobozi wa WASAC Ltd, UMUHUMUZA Gisèle, wanze gushyira mu bikorwa ibyategetswe mu rubanza no RCOMA 00646/2020/HCC, yatsinzemo WASAC Ltd, rwari rwamaze kuba itegeko, kubimutegeka. Urukiko rwaciye urubanza rwemeza ko ikirego cya ENGIN Ltd kigomba kwakirwa, ko UMUHUMUZA Gisèle nta gihano kimuhatira kurangiza urubanza agomba gucibwa.

UMUHUMUZA Gisèle ntiyishimiye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi, ajuririra Urukiko rw'Ubujurire, atanga inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi rwaburanishije uru rubanza ku rwego rwa mbere kuko icyemezo cyafashwe mu rubanza n° RCOMA 00646/2020/HCC atari icyemezo cyafashwe mu rubanza rw'ubutegetsi ndetse WASAC Ltd atari ikigo cya Leta ku buryo Umuyobozi wayo yaregwa muri urubanza nk'Umuyobozi mu rwego rwa Leta (autorité administrative). Asobanura ko hashingiwe ku ngingo ya 181 n'iya 184 z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ibyemezo bivugwamo ari ibyemezo byaciwe gusa n'Inkiko mu manza z'ubutegetsi, bitareba ibyafashwe mu manza z'ubucuruzi kuko izi ngingo zigaragara mu mutwe urebana n'imiburanishirize y'imanza z'ubutegetsi, ko rero kuba urubanza rwabaye hagati ya ENGIN Ltd na WASAC Ltd ari urubanza rw'ubucuruzi, Urukiko Rukuru rw'Ubucuruzi rutari gusuzuma ikirego cya ENGIN Ltd gisaba ko Umuyobozi wa WASAC Ltd acibwa igihano gimuhatira kubahiriza icyemezo cyaciwe n'Urukiko Rukuru rw'Ubucuruzi. ENGIN Ltd ivuga ko inzitizi yatanzwe na UMUHUMUZA Gisèle nta shingiro ikwiye guhabwa.

**Incamake y'icyemezo:** 1. N'ubwo ibivugwa mu ngingo ya 183 n'iya 184, igika cya gatatu (3), z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru zigaragara mu nteruro ya V irebana n'imiburanishirize yihariye, mu mutwe urebana n'imiburanishirize y'imanza z'ubutegetsi, mu cyiciro cya kabiri (2) kirebana n'igihano gihatira ubuyobozi kubahiriza icyemezo cy'urukiko,

Umushingamategeko yumvikanisha ko igihano gihatira umuyobozi ubwe kubahiriza urubanza rwabaye Itegeko gitangwa n'Urukiko mu manza zose Leta, izindi nzego z'Ubutegetsi cyangwa urundi rwego rwa Leta zabayemo ababuranyi, kandi zategetswe kuriha amafaranga rwagennye, kikaba gitangwa mu gihe Umuyobozi atagaragaza impamvu zifite ishingiro zatumye atubahiriza urwo rubanza rwabaye Itegeko cyangwa mu gihe atubahirije igihe ntarengwa yahawe cyo kurwubahiriza nyuma yo kugaragaza impamvu zifite ishingiro zatumye atarubahiriza mu mezi atandatu (6) uhereye ku munsi w'imenyeshwa ry'urubanza.

2. Igihano cyo kubahiriza urubanza kivugwa mu ngingo ya 181 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru kigenwa mu manza z'ubutegetsi mu gihe kimwe n'ibindi byategetswe n'Urukiko, kandi gitangwa n'Ubuyobozi (Ubutegetsi), ni ukuvuga Leta, inzego zayo cyangwa urundi rwego rwa Leta, mu gihe urubanza rwaciwe ruzaba rutubahirijwe guhera igihe yagenwe n'Urukiko.

WASAC Ltd n'ubwo yashyizweho hashingiwe ku mategeko agenga amasosiyete y'ubucuruzi, bitavuze ko atari ikigo cya Leta, ahubwo ku bushake bw'Umushingamategeko, ni isosiyete ya Leta ikora ubucuruzi, kandi ifite umunyamigabane rukumbi ari yo Leta y'u Rwanda, bivuze ko iguma ifite kamere y'ikigo cya Leta, ibi bituma Umuyobozi wayo afatwa nk'Umuyobozi mu butegetsi bwa Leta (autorité administrative-administrative authority).

**Inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi bwo kuburanisha uru rubanza ku rwego rwa mbere, nta shingiro ifite.**
**Inzitizi yatanzwe yo kutakira ubujurire ifite ishingiro.**

**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 111, 181, 183 na 184.
Itegeko Ngenga n° 001/2020.OL ryo ku wa 8/6/2020 rishyiraho amategeko rusange agenga ibigo bya Leta, ingingo ya 2, 4, na 7.

## Urubanza

# I. IMITERERE Y'URUBANZA

[1] Ku wa 7/7/2022, ENGIN Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi, irusaba gutegeka Umuyobozi wa WASAC Ltd, UMUHUMUZA Gisèle, wanze gushyira mu bikorwa ibyategetswe mu rubanza no RCOMA 00646/2020/HCC rwaciwe ku wa 30/7/2021, ENGIN Ltd yatsinzemo WASAC Ltd, isobanura ko urwo rubanza rwari rwamaze kuba itegeko, ndetse ko mu bihe byagenwe n'itegeko, ku wa 27/11/2021, yashyizeho Umuhesha w'inkiko w'umwuga ngo ayishyurize, na nyuma yaho yongera kwibutsa inshuro zigera kuri ebyiri, ariko WASAC Ltd ntiyishyura.

[2] UMUHUMUZA Gisèle yatanze inzitizi yo kutakira icyo kirego cya ENGIN Ltd, gisaba Urukiko kumutegeka gushyira mu bikorwa urubanza, avuga ko ENGIN Ltd yareze, amezi atandatu (6) ateganywa n'ingingo ya 183 y'Itegeko no 22/2018 ryo ku wa 29/4/2018 ryerekeye

imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, (icyo gihe) cyo kuba WASAC Ltd yarangije kubahiriza ibyo yategetswe kwishyura mu rubanza rwavuzwe haruguru, atararangira, ko ndetse nta nyungu ENGIN Ltd ifite, kuko amafaranga yishyuza yamaze kuyishyurwa ku wa 14/7/2022.

[3] Mu rubanza no RCOM 00032/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 17/8/2022, rwemeje ko ikirego cya ENGIN Ltd kigomba kwakirwa, ko UMUHUMUZA Gisèle nta gihano kimuhatira kurangiza urubanza agomba gucibwa, rutegeka UMUHUMUZA Gisèle kwishyura ENGIN Ltd amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka, n'amafaranga ibihumbi ijana (100.000 Frw) y'ikurikiranarubanza, akayisubiza n'amafaranga ibihumbi mirongo ine (40.000 Frw) y'ingwate y'amagarama yatanze irega, ko nta ndishyi UMUHUMUZA Gisèle agomba guhabwa.

[4] UMUHUMUZA Gisèle ntiyishimiye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi, ajuririra Urukiko rw'Ubujurire ku wa 14/9/2022, avuga ko Urukiko Rukuru rw'Ubucuruzi rutari kwanga kwakira inzitizi yatanze yo kutakira ikirego cya ENGIN Ltd, mu gihe kitatanzwe mu buryo no mu gihe giteganywa n'amategeko, ko atagombaga gucibwa igihembo cya Avoka n'amafaranga y'ikurikiranarubanza, ndetse Urukiko rutari rukwiye kwanga kumugenera indishyi z'akababaro kandi yarashowe mu manza nta mpamvu. ENGIN Ltd yatanze inzitizi yo kutakira ubujurire bwa UMUHUMUZA Gisèle kuko bwatanzwe impitagihe.

[5] Ku wa 8/12/2022, UMUHUMUZA Gisèle yatanze inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi rwaburanishije uru rubanza ku rwego rwa mbere.

[6] Urubanza rwaburanishijwe ku wa 9/12/2022 no ku wa 22/12/2022 ku birebana n'inzitizi zatanzwe n'ababuranyi, UMUHUMUZA Gisèle ahagarariwe na Me NYANGEZI Bonane, ENGIN Ltd ihagarariwe na Me KABAREGA NGABO Robert.

## II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURWA RYABYO

### a. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere

[7] Me NYANGEZI Bonane avuga ko Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo kuburanisha uru rubanza kuko icyemezo cyafashwe mu rubanza n° RCOMA 00646/2020/HCC ku wa 30/7/2021 atari icyemezo cyafashwe mu rubanza rw'ubutegetsi, ndetse WASAC Ltd atari ikigo cya Leta ku buryo Umuyobozi wayo yaregwa muri urubanza nk'Umuyobozi mu rwego rwa Leta (autorité administrative).

[8] Me NYANGEZI Bonane asobanura ko hashingiwe ku ngingo ya 181 n'iya 184 z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ibyemezo bivugwamo ari ibyemezo byaciwe gusa n'Inkiko mu manza z'ubutegetsi, bitareba ibyafashwe mu manza z'ubucuruzi kuko izi ngingo zigaragara mu mutwe urebana n'imiburanishirize y'imanza z'ubutegetsi, ko rero kuba urubanza rwabaye hagati ya ENGIN Ltd na WASAC Ltd ari urubanza rw'ubucuruzi, Urukiko Rukuru rw'Ubucuruzi rutari gusuzuma ikirego cya ENGIN Ltd gisaba ko Umuyobozi wa WASAC Ltd

acibwa igihano gimuhatira kubahiriza icyemezo cyaciwe n'Urukiko Rukuru rw'Ubucuruzi. Asoza avuga ko ari nako byemejwe mu rubanza n° RCOMA 00100/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 4/5/2022 aho rwemeje ko ikirego cya BEREXINVEST Ltd kitari mu bubasha bwarwo.

[9] Me NYANGEZI Bonane asobanura kandi ko hashingiwe kuri ''Full registration information of domestic company'' yo ku wa 8/12/2016 yakozwe na Rwanda Development Board (RDB), WASAC Ltd yanditswe nk'isosiyete idahamagarira rubanda kuyiguramo imigabane (private company-société privée) ku buryo idafatwa nk'ikigo ya Leta, ndetse Umuyobozi wayo adafatwa nk'Umuyobozi mu butegetsi. Akomeza asobanura ko WASAC Ltd atari ikigo cya Leta, ko ahubwo ari sosiyete y'ubucuruzi igengwa n'Itegeko n° 97/2013 ryo ku wa 30/1/2013 ryerekeye ubucuruzi, ku buryo urubanza n° RCOMA 00646/2020/HCC rwagombaga kurangizwa n'Umuhesha w'inkiko, hashingiwe ku ngingo ya 49, agace ka mbere (1) n'aka kabiri (2), y'Itegeko rigenga Abahesha b'inkiko n'ingingo ya 245 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[10] Me KABAREGA NGABO Robert avuga ko inzitizi yatanzwe na UMUHUMUZA Gisèle nta shingiro ikwiye guhabwa kuko WASAC Ltd ari ikigo cya Leta, hashingiwe ku ngingo ya kabiri (2) n'iya gatatu (3) z'Itegeko Ngenga n° 001/2020/OL ryo ku wa 8/6/2020 rishyiraho amategeko rusange agenga ibigo bya Leta. Asobanura ko *certificate* ya WASAC Ltd igaragaza ko Leta ariyo munyamigabane rukumbi, bivuze ko WASAC Ltd iri mu masosiyete y'ubucuruzi ya Leta.

## UKO URUKIKO RUBIBONA

### i. Ku birebana n'imyumvire y'ingingo ya 184 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi

[11] Ingingo ya 181 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ''Iyo urukiko rufashe icyemezo mu manza z'ubutegetsi, rushobora gutegeka ubuyobozi gukora icyo rwemeje cyangwa kudakora icyo rubujije kandi rugateganya igihano cyubahirizwa guhera ku itariki rugena mu gihe icyo rwemeje cyaba kidakurikijwe''.

[12] Ingingo ya 183, igika cya mbere, y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru iteganya ko ''Iyo urubanza rwabaye itegeko rutegeka Leta, Umujyi wa Kigali, ubuyobozi bw'Akarere cyangwa urundi rwego rwa Leta kuriha amafaranga rwagennye, ayo mafaranga agomba kwishyurwa mu mezi atandatu (6) uhereye ku munsi w'imenyeshwa ry'urubanza''.

[13] Ingingo ya 184, igika cya mbere (1), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itegenya ko "Umuyobozi wanze kubahiriza ibyategetswe mu rubanza ashobora guhamagarwa mu rukiko rwafashe icyemezo kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, bisabwe n'umuburanyi ubifitemo nyungu''. Igika cya gatatu (3) cy'iyo ngingo giteganya ko '' Iyo impamvu zatumye atabyubahiriza nta shingiro zifite cyangwa se iyo gihe cyavuzwe mu gika cya 2 cy'iyi ngingo kitubahirijwe, urukiko rugena igihano gihatira umuyobozi ubwe kubahiriza urubanza mu gihe cyose ruzaba rutararangizwa".

[14] Ikibazo kigomba gusuzumwa ni ukumenya niba ibivugwa mu ngingo ya 184 yavuzwe haruguru birebana gusa n'imanza z'ubutegetsi zabaye itegeko zitubahirijwe n'Umuyobozi, bitareba imanza z'ubucuruzi aho umujyi wa Kigali, Ubuyobozi bw'Akarere cyangwa urundi rwego Leta rwabaye umuburanyi.

[15] Ingingo ya 181 yavuzwe haruguru yumvikanisha ko Urukiko ruburanisha imanza z'ubutegetsi, uretse gukuraho icyemezo cy'umuyobozi kidakurikije amategeko cyangwa gutegeka Ubuyobozi guha umuturage indishyi z'igihembo yatewe n'icyemezo cya bwo, rushobora gutegeka Ubuyobozi gukora icyo rwemeje, by'umwihariko kudakora icyo rubujije, ndetse no kubuha igihano mu gihe butazabahiriza icyo rwemeje.

[16] Urukiko rw'Ubujurire rurasanga ingingo ya 183 n'iya 184 z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru zigomba gusomerwa hamwe kandi zumvikanisha ko umuburanyi runaka ashobora gutanga ikirego asaba Urukiko rwaciye urubanza rwabaye ndakuka, aho Leta, Umujyi wa Kigali, Akarere cyangwa urundi rwego rwa Leta zategetswe kuriha amafaranga, guhamagaza Umuyobozi wanze kuriha mu mezi atandatu (6) uhereye ku munsi w'imenyeshwa ry'urubanza, kugira ngo yisobanure ku mpamvu zamubujije kubahiriza icyemezo cyarwo.

[17] Urukiko rw'Ubujurire rurasanga n'ubwo ibivugwa mu ngingo ya 183 n'iya 184, igika cya gatatu (3), z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru zigaragara mu nteruro ya V irebana n'imiburanishirize yihariye, mu mutwe urebana n'imiburanishirize y'imanza z'ubutegetsi, mu cyiciro cya kabiri (2) kirebana n'igihano gihatira ubuyobozi kubahiriza icyemezo cy'urukiko, Umushingamategeko yumvikanisha ko igihano gihatira umuyobozi ubwe kubahiriza urubanza rwabaye Itegeko gitangwa n'Urukiko mu manza zose Leta, izindi nzego z'Ubutegetsi cyangwa urundi rwego rwa Leta zabayemo ababuranyi, kandi zategetswe kuriha amafaranga rwagennye, kikaba gitangwa mu gihe Umuyobozi atagaragaza impamvu zifite ishingiro zatumye atubahiriza urwo rubanza rwabaye Itegeko cyangwa mu gihe atubahirije igihe ntarengwa yahawe cyo kurwubahiriza nyuma yo kugaragaza impamvu zifite ishingiro zatumye atarubahiriza mu mezi atandatu (6) uhereye ku munsi w'imenyeshwa ry'urubanza.

[18] Urukiko rw'Ubujurire rurasanga Umushingamategeko yumvikanisha kandi ko icyo gihano kigenwa n'Urukiko rwaburanishije urubanza rwabaye Itegeko rutabahirijwe.

[19] Uretse n'ibyo, Urukiko rw'Ubujurire rurasanga igihano cyo kubahiriza urubanza kivugwa mu ngingo ya 181 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru kigenwa mu manza z'ubutegetsi mu gihe kimwe n'ibindi byategetswe n'Urukiko, kandi gitangwa n'Ubuyobozi (Ubutegetsi), ni ukuvuga Leta, inzego zayo cyangwa urundi rwego rwa Leta, mu gihe urubanza rwaciwe ruzaba rutubahirijwe guhera igihe yagenwe n'Urukiko.

[20] Ku birebana n'urubanza n° RCOMA 00100/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 4/5/2022, hagati ya BEREXINVEST Ltd na MINICOM n'abandi, Urukiko rw'Ubujurire rurasanga rutashingirwaho kuko nta sano rufitanye n'ikiburanwa muri uru rubanza, kuko icyaburanweho muri urwo rubanza ari ukumenya ubwoko bw'amasezerano BEREXINVEST Ltd na MINICOM bagiranye kugira ngo Urukiko Rukuru rw'Ubucuruzi rumenye niba Urukiko rw'Ubucuruzi rwari rufite ububasha bwo kuburanisha urwo rubanza ku rwego rwa mbere.

[21] Hashingiwe ku byagaragajwe haruguru, Urukiko rw'Ubujurire rurasanga ibivugwa na UMUHUMUZA Gisèle ko ibiteganywa mu ngingo ya 184 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru birebana gusa n'imanza z'ubutegetsi, nta shingiro bifite, bityo nta mpamvu yo gusubiza ku bindi bisobanuro byatanzwe n'ababuranyi.

**ii. Ku birebana no kuba WASAC Ltd ari isosiyete idahamagarira rubanda kuyiguramo imigabane (private company-société privée) ku buryo Umuyobozi wayo atafatwa nk'Umuyobozi mu butegetsi**

[22] Ingingo ya 2, agace ka mbere (1°), y'Itegeko Ngenga n° 001/2020.OL ryo ku wa 8/6/2020 rishyiraho amategeko rusange agenga ibigo bya Leta ivuga ko ikigo cya Leta ari ikigo gikora imirimo itari iy'ubucuruzi cyangwa isosiyete y'ubucuruzi ya Leta bishyirwaho hakurikijwe ibiteganywa n'iri tegeko ngenga. Agace kayo ka gatatu (3) kavuga ko isosoyete y'ubucuruzi ya Leta ari yo munyamigabane rukumbi.

[23] Ingingo ya kane (4), igika cya gatatu (3) n'icya kane (4), y'Itegeko Ngenga n° 001/2020.OL ryo ku wa 8/6/2020 ryavuzwe haruguru iteganya ko '' Isosiyete y'ubucuruzi ya Leta ishyirwaho kandi ikavanwaho hakurikijwe amategeko agenga amasosiyete y'ubucuruzi. Iteka rya Perezida rigena iby'ibanze bisabwa kugira ngo hashyirweho isosiyete y'ubucuruzi ya Leta n'amategeko y'inyongera yerekeye imicungire yayo''.

[24] Ingingo ya 7, igika cya kabiri (2), y'Itegeko Ngenga n° 001/2020.OL ryo ku wa 8/6/2020 ryavuzwe haruguru iteganya ko ''Iteka rya Minisitiri w'Intebe rigena urwego rurebera isosiyete y'ubucuruzi ya Leta''.

[25] Urukiko rw'Ubujurire rurasanga nk'uko bigaragara muri '' Full registration information of domestic company'', *Water and Sanitation Corporation* (WASAC Ltd) ari isosiyete idahamagarira rubanda kuyiguramo imigabane (private company-société privée), ifite uburyozwe bugarukira ku migabane (Ltd)[1]. Rurasanga hagaragaramo kandi ko *government of Rwanda* ari yo munyamigabane rukumbi (Unique actionnaire-Sole shareholder).

[26] Urukiko rw'Ubujurire rurasanga hashingiwe ku nyandiko yiswe "Summary Structure" ya WASAC Ltd yemejwe ku wa 10/2/2017, yashyizeho umukono na *Chief Executif Officer* ya WASAC Ltd na *Board Chairperson* yayo, Minisiteri w'Ibikorwa Remezo ariyo Urwego rureberera WASAC Ltd (Autorité de tutelle- Supervising authority).

[27] Hashingiwe ku ngingo z'amategeko zavuzwe haruguru no ku byagaragajwe, Urukiko rw'Ubujurire rurasanga n'ubwo WASAC Ltd yashyizweho hashingiwe ku mategeko agenga amasosiyete y'ubucuruzi, bitavuze ko atari ikigo cya Leta, ahubwo ku bushake

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[1] Ingingo ya 6, igika cya mbere (1), y'Itegeko n° 27/2017 ryo ku wa 31/5/2017 rigena amasosiyete y'ubucuruzi iteganya ko '' Isosiyete idahamagarira rubanda kuyiguramo imigabane irangwa n'ibi bikurikira: 1° Kugabanya uburenganzira bwo guhererekanya imigabane cyangwa imigabane nguzanyo; 2° Kutarenza abanyamigabane ijana (100), ariko hatabariwemo abantu bayikorera cyangwa abigeze kuyikorera; 3° Kubuza mu buryo ubwo bwose guhamagira abantu kuyiguramo imigabane cyangwa imigabane nguzanyo yayo''. Nyamara, ingingo ya 8 y'iryo Tegeko iteganya ko '' Isosiyete ifatwa nk'ihamagarira rubanda kuyiguramo imigabane iyo: 1° Inyandiko z'ishingwa ryayo zemerera abayigize uburenganzira bwo guha undi imigabane muri sosiyete; 2° inyandiko z'ishingwa ryayo zitabuza guhamagarira abantu kuyiguramo imigabane cyangwa imigabane nguzanyo yayo; 3o icyemezo cy'ishingwa cyerekana ko isosiyete ifatwa nk'ihamagarira rubanda kuyiguramo imigabane.

bw'Umushingamategeko, ni isosiyete ya Leta ikora ubucuruzi, kandi ifite umunyamigabane rukumbi ari yo Leta y'u Rwanda, bivuze ko iguma ifite kamere y'ikigo cya Leta, ibi bituma Umuyobozi wayo afatwa nk'Umuyobozi mu butegetsi bwa Leta (autorité administrative-administrative authority).

[28] Kubera izo mpamvu zose, Urukiko rw'Ubuyjurire rurasanga inzitizi yatanzwe na UMUHUMUZA Gisèle avuga ko Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo kuburanishsa uru rubanza ku rwego rwa mbere, nta shingiro ifite.

**II. Kumenya niba ubujurire bwatanzwe na UMUHUMUZA Gisèle butagomba kwakirwa kubera ko yabutanze impitagihe**

[29] ENGIN Ltd ivuga ko hashingiwe ku ngingo ya 192 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, uru Rukiko rudakwiye kwakira ubujurire bwa UMUHUMUZA Gisèle kuko yabutanze atinze. Isobanura ko UMUHUMUZA Gisèle yarengeje iminsi itanu (5) iteganywa n'iyo ngingo ku birebana n'ubujurire ku birego by'inyandiko nsobanurakirego kuko yajuriye ku wa 14/9/2022, mu gihe urubanza rujuririrwa rwaraciwe ku wa 17/8/2022

[30] UMUHUMUZA Gisèle avuga ko iyi nzitizi ya ENGIN Ltd nta shingiro ikwiye guhabwa kuko ingingo ya 192 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru ikoreshwa, yerekeye kujuririra ku kirego cyatanzwe mu buryo bw'inyandiko nsobanurakirego gitanzwe n'umuburanyi umwe, nyamara ENGIN Ltd itanga ikirego ku rwego rwa mbere, sibwo buryo yakoresheje kuko yamureze mu buryo busanzwe, ni ukuvuga ko yamureze agatumizwa mu buryo busanzwe, mu gihe Urukiko arirwo ruhamagaza ababuranyi rusanze ari ngombwa, bityo iyo ngingo ikaba itagomba gushingirwaho.

## UKO URUKIKO RUBIBONA

[31] Ingingo ya 184, igika cya mbere, y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itegenya ko ''Umuyobozi wanze kubahiriza ibyategetswe mu rubanza ashobora guhamagarwa mu rukiko rwafashe icyemezo kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, bisabwe n'umuburanyi ubifitemo nyungu''. Igika cya kane (4) cy'iyo ngingo giteganya ko '' Ikirego kireba umuyobozi wanze kubahiriza ibyategetse mu rubanza, gitangwa mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe''.

[32] Ingingo ya 190 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru iteganya ko ''Inyandiko nsobanurakirego itanzwe n'umuburanyi umwe itangwa hakurikijwe uburyo busanzwe bwo gutangamo ibirego. Umucamanza washyikirijwe ikirego, aragisuzuma, yasanga ari ngombwa ko ahamagaza uwagitanze n'abandi bose abona ko bashobora kuza muri icyo kibazo akabahamagaza. Agomba kubumva mu gihe kitarenze iminsi ibiri (2) ikirego gitanzwe. Guhamagaza abagomba kugira icyo bavuga muri icyo kibazo bikorwa n'umwanditsi w'urukiko hakurikijwe uburyo busanzwe bw'ihamagara ry'ababuranyi''.

[33] Ingingo ya 192 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru iteganya ko ''Kujuririra icyemezo cy'umucamanza bikorwa mu gihe kitarenze iminsi itanu (5) uhereye igihe ababuranyi bakimenyeyeho kandi kijuririrwa incuro imwe gusa''.

[34] Nk'uko bigaragara muri dosiye y'urubanza, ENGIN Ltd yatanze ikirego cye ku wa 7/7/2022 gishingiye ku biteganywa n'ingingo ya 184, igika cya mbere (1), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru. Dosiye y'urubanza igaragaza kandi ko harimo inyandiko ihamagara umuburanyi mu rubanza yo ku wa 20/7/2022 yakozwe n'Ubwanditsi bw'Urukiko Rukuru rw'Ubucuruzi, imenyesha UMUHUMUZA Gisèle ko agomba kwitaba Urukiko ku wa 2/8/2022 saa 8h30 kugira ngo aburane urubanza n° RCOM 00032/2022/HCC aho ikiregerwa ari ugusaba gutegeka Umuyobozi wanze gushyira mu bikorwa ibyategetswe mu rubanza n° RCOMA 00546/2020/HCC rwaciwe ku wa 30/7/2021.

[35] Ibivugwa mu gika cya mbere (1) n'icya kane (4) by'ingingo ya 184 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, byumvikanisha nta shiti ko ibirego bireba umuyobozi wanze kubahiriza ibyategetswe mu rubanza bitangwa mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, bitangwa n'umuburanyi ubifitemo inyungu, asaba ko Umuyobozi mu butegetsi bwa Leta (autorité administrative-administrative authority) utubahirije ibyategetswe atumizwa mu Rukiko rwafashe icyemezo kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, bivuze ko n'ubwo ari inyandiko nsobanurakiregó, ibivugwa mu gika cya kabiri (2) cy'ingingo ya 190 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, cyane cyane ku birebana no guhamagara ababuranyi bikorwa n'Umucamanza washyikirijwe ikirego, bidakurikizwa kuko mu bushake bw'Umushingamategeko, ni by'umwihariko umuburanyi watanze ikirego mu buryo bw'inyandiko nsobanurakiregó ku bireba umuyobozi wanze kubahiriza ibyategetswe mu rubanza agomba kugaragaza Umuyobozi arega kandi asaba ko ahamagazwa.

[36] Kuba Urukiko Rukuru rw'Ubucuruzi rutaraburanishije icyo kirego mu gihe kitarenze iminsi ibiri (2) ikirego gitanzwe ntacyo bikwiye kwangiriza urega, ngo byemezwe ko ikirego cyaburanishijwe mu buryo busanzwe, kuko atari amakosa ye, kandi nk'uko bigaragara mu rubanza rwajuririwe, Urukiko rwaciwe urubanza rushingiye ku biteganywa n'ingingo ya 183 n'iya 184 z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru[2].

[37] Hashingiwe ku byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga ikirego cyatanzwe na ENGIN Ltd ari ikirego cy'inyandiko nsobanurakiregó ku buryo urubanza rwaciwe ku rwego rwa mbere n'Urukiko Rukuru rw'Ubucuruzi rwagombaga kujuririrwa mu gihe kitarenze iminsi itanu (5) uhereye igihe ababuranyi bakimenyeyeho.

[38] Urukiko rw'Ubujurire rurasanga nk'uko bigaragara mu nyandiko y'iburanisha ryo ku wa 2/8/2022, Urukiko Rukuru rw'Ubucuruzi rwamenyesheje ababuranyi ko ruzasoma urubanza ku wa 12/8/2022 saa munani za manwa (14h00), ariko kuri iyo tariki isomwa ryarwo ryimuriwe ku wa 17/8/2022 saa tanu (11h00) kubera ko Umucamanza yari yagize akazi kenshi, ari nako byagenze.

[2] Reba agace ka cumi na kumwe (11) k'urubanza rujuririrwa.

[39] Urukiko rw'Ubujurire rurasanga kuba UMUHUMUZA Gisèle yarajuririye urwo rubanza ku wa 14/9/2022, hashingiwe ku biteganywa n'ingigo ya 192 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, ubujurire bwe butagomba kwakirwa kuko bwatanzwe impitagihe.

[40] Kubera izo mpamvu, Urukiko rw'Ubujurire rurasanga inzitizi yatanzwe na ENGIN Ltd yo kutakira ubujurire bwa UMUHUMUZA Gisèle ifite ishingiro.

**III. Kumenya niba ENGIN Ltd ikwiye amafaranga isaba**

[41] ENGIN Ltd ivuga ko yashowe mu manza z'amaherere, bityo ko ishingiye ku ngingo ya 34 y'amabwiriza no 01/2014 agena ibihembo mbonera by'Abavoka, isaba Urukiko rwajuririwe gutegeka uwaziyishoyemo kuyisubiza amafaranga miliyoni imwe (1.000.000 Frw) n'amafaranga y'ikurikiranarubanza angana n'ibihumbi magana atatu (300.000 Frw), ishingiye ku ngingo 111 y'Itegeko no 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru.

[42] UMUHUMUZA Gisèle avuga ko aya mafaranga ENGIN Ltd isaba idakwiye kuyahabwa kuko ubwayo yishoye mu manza iregera Urukiko ruburanisha imanza z'ubucuruzi ibirebana n'urubanza rw'Ubutegetsi, kandi ntiyanubahiriza inzira zisabwa n'amategeko kugira ngo urubanza rwabo rwabaye itegeko, rurangizwe.

## UKO URUKIKO RUBIBONA

[43] Ingingo ya 111, igika cya mbere, y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirie y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: *''Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Kiburanishirizwa rimwe n'ikirego cy'iremezo''*.

[44] Igika cya kabiri (2) cy'ingingo ya 111 yavuzwe haruguru giteganya ko ''Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe''.

[45] Urukiko rw'Ubujurire rurasanga kuba byagaragajwe haruguru ko ubujurire bwa UMUHUMUZA Gisèle butakiriwe, ENGIN Ltd ikwiye guhabwa amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza isaba, kuko byabaye ngombwa ko ishaka Avoka wo kuyiburanira, inagira ibyo itanga ikurikirana urubanza. Rurasanga ariko amafaranga miliyoni imwe n'ibihumbi magana atatu (1.300.000 Frw) isaba ari menshi, ahubwo harebwe ingano isanzwe itangwa muri uru Rukiko, yagenerwa amafaranga ibihumbi magana inane (800.000 Frw) akubiyemo igihembo cya Avoka n'ikurikiranarubanza.

## III. ICYEMEZO CY'URUKIKO

[46] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi bwo kuburanisha uru rubanza ku rwego rwa mbere yatanzwe na UMUHUMUZA Gisèle, nta shingiro ifite.

[47] Rwemeje ko inzitizi yatanzwe na ENGIN Ltd yo kutakira ubujurire bwa UMUHUMUZA Gisèle ifite ishingiro.

[48] Rwemeje ko ubujurire bwatanzwe na UMUHUMUZA Gisèle butakiriwe.

[49] Rutegetse UMUHUMUZA Gisèle kwishyura ENGIN Ltd amafaranga ibihumbi magana inane (800.000 Frw) y’igihembo cya Avoka n’ikurikiranarubanza.

[50] Rwemeje ko amafaranga y’ingwate y’amagarama yatanzwe n’urega mu bujurire ahwanye n’ibyakozwe mu rubanza.