GENERAL CONTRACTORS AND CIVIL ENGINEERING LTD v. NPD LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00025/2023/CA- CMB RCOMAA 00026/2023/CA (Kamere, P.J.) 22 Ukuboza 2023]

Amasezerano – Kudakora cyangwa gutinda gukora inshingano zo kwishyura – Indishyi – Inyungu – Indishyi zishingiye ku bwishyu bw'amafaranga zibarwa mu buryo bw'inyungu ayo mafaranga yakabaye yarungutse, zibarirwa ku kigereranyo cy'inyungu ku nguzanyo (taux moyen de prêt/average lending rate) gitangazwa na Banki Nkuru y'u Rwanda.

Incamake y'ikibazo: General Contractors and Civil Engineering (GCC Engineering) Ltd na NPD Ltd bagiranye amasezerano y'ubwubatsi ndetse bagirana n'andi masezerano yo gukorana mu mishinga itandukanye. NPD Ltd yishyuwe n'abayihaye amasoko ariko yo ntiyishyura General Contractors and Civil Engineering (GCC Engineering) Ltd amafaranga yose bituma irega NPD mu Rukiko rw'Ubucuruzi irusaba kuyitegeka kuyishyura umwenda iyibereyemo, n'indishyi z'igihombo yayiteje.

Urukiko rw'ubucuruzi rwaciye urubanza rwemeza ko NPD Ltd yishyura GCC Engineering Ltd umwenda iyisigayemo nk'uko bisabwa, inyungu n'indishyi ku ngano igenwe mu bushishozi bw'urukiko.

NPD Ltd itishimiye imikirize y'urubanza yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivugako mu gufata icyemezo cyuko ibereyemo umwenda GCC Engineering Ltd hirengagijwe amategeko n'ibimenyetso, urwo Rukiko mu icibwa ry'urubanza mu bujurire rwemeza ko umwenda NPD LTD irimo GCC ENGINEERING LTD n'indishyi yategetswe mu rubanza rwajuririwe bigomba guhinduka.

GCC Engineering Ltd yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ku rundi ruhande NPD Ltd nayo irajurira, mu miburanire y'impande zombi, NPD yiregura ivugako nta mwenda ibereyemo GCC Engineering Ltd Ltd ahubwo ariyo iyiwubereyemo, ndetse ku bijyanye n'inyungu ikavugako zidakwiye kwakirwa ngo zisuzumwe ngo kuko ibijyanye n'ingano y'inyungu zategetswe mu rubanza rujuririrwa bitajuririwe ndetse ikavugako nta mise en demeure yatanzwe ngo ibe ariyo ishingirwaho habarwa inyungu zigomba kwishyurwa.

GCC Engineering Ltd ivugako nta mwenda ibereyemo NPD Ltd ahubwo ariyo iyiwubereyemo, ivuga kandi ko inyungu yagenewe mu rubanza rujuririrwa ari nke, ahubwo ikwiye guhabwa izibariye ku gipimo cya 10% ku mwaka, mu gihe cy'imyaka ibiri ishize yagombaga kuba yarishyuye.

Incamake y'icyemezo: Indishyi zishingiye ku bwishyu bw'amafaranga zibarwa mu buryo bw'inyungu ayo mafaranga yakabaye yarungutse, zibarirwa ku kigereranyo cy'inyungu ku nguzanyo (taux moyen de prêt/average lending rate) gitangazwa na Banki Nkuru y'u Rwanda.

Ubujurire bufite ishingiro.

Amategeko yifashishijwe:
Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo y'144.

Imanza zifashishijwe:
Urubanza RS/INJUST/RCOM 00014/2022/SC; Mugwaneza Carine Sandrine vs Bank of Kigali Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 31/03/2023.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 30 Kanama 2019, General Contractors and Civil Engineering (GCC Engineering) Ltd yagiranye na NPD Ltd amasezerano yo kubaka ruhurura ya Rukatsa–Kanserege-Ravine, afite agaciro ka miliyoni magana atatu na mirongo itanu n'enye n'ibihumbi magana ane na birindwi na magana abiri na cumi n'umunani (354.407.218 Frw). Ku wa 01 Mata 2020, izo Companies zongera kugira andi maserano yo gukorana mu mishinga itandukanye yayo, ari na ho hakomotse amasezerano yo gukora *drainage* na ruhurura mu mushinga wiswe KagaramaMuyange Asphalt Road. General Contractors and Civil Engineering (GCC Engineering Ltd) ivuga ko ayo masoko yombi yakozwe neza akarangira nk'uko byari biteganyijwe muri ayo masezerano, imirimo ikakirwa na NPD Ltd ndetse na mission de controle ikemeza ko imirimo y'isoko rya Rukatsa-Kanserege-Ravine irangiye kandi yakozwe neza, ko NPD Ltd yishyuwe n'abayihaye isoko, ariko iyisabye kuyishyura miliyoni mirongo inani na zirindwi n'ibihumbi magana cyenda n'umunani na makumyabiri n'icyenda (87.908.029 Frw) y'imirimo yakozwe ikabyanga, kugeza ubu ikaba itarayishyura. Ko kandi hari n'amafaranga angana na miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inani n'umunani na magana inani na makumyabiri n'atandatu (41.188.826 Frw) yasigaye ku mushinga wa Kagarama-Muyange Asphalt Road yanze kuyishyura, bityo ko umwenda wose hamwe NPD Ltd iyibereyemo ungana na miliyoni ijana na makumyabiri n'icyenda n'ibihumbi mirongo cyenda na bitandatu na magana inani na mirongo itanu n 'atanu (129.096.855 Frw).

[2] GENERAL CONTRACTORS AND CIVIL ENGINERING Ltd (GCC Engineering Ltd) yareze NPD Ltd mu Rukiko rw'Ubucuruzi, irusaba gutegeka NPD Ltd kwishyura umwenda iyibereye ungana na miliyoni ijana na makumyabiri n'icyenda n'ibihumbi mirongo cyenda na bitandatu na magana inani na mirongo itanu n'atanu (129.096.855 Frw), ndetse n'indishyi zinyuranye kubera igihombo NPD Ltd yayiteje.

[3] NPD Ltd yireguye yemera ko kuwa 30/08/2019 yagiranye amasezerano na GCC Engineering Ltd, yo kubaka ruhurura ya Rukatsa-Kanserege, mu mushinga wo kubaka umuhanda wa Kagarama-Muyange, ivuga ko ayo masezerano yagombaga kumara amezi atanu (5), ku wa 01/02/2020 ayo masezerano agahindurwa (amendement) akongerwaho igihe cy'amezi atanu (5), ku wa 01/04/2020 impande zombi zikaza kugirana andi masezerano y'uko GCC Engineering Ltd igomba kuzajya ikora imirimo ku mishinga yayo itandukanye, ikayishyuza ari uko yakozwe, ibazwe hakurikijwe igiciro cya buri gikorwa (unit price) cyashyizweho n'impande zombi, igenda itanga fagitire (invoices) z'agateganyo (interim invoices), zikishyurwa kugira ngo imirimo ikomeze. Ko nyuma y'aho yayisabye ko zikorana décompte final ikanga, yabarura ibikorwa

byakozwe igasanga yarayishyuye amafaranga arenga ayo yayigombaga, kuko hari imirimo yari itarakoze neza, bituma isaba kuyasubizwa. Naho ku birebana n'indishyi iyisaba, ivuga ko nta gaciro zikwiye guhabwa, ngo kuko amakosa yayo ari yo yatumye kugeza ubu zitararangizanya, ko yasabwe kenshi ko iza zikabarana ikabyanga, ahubwo igahitamo kwishyuza ibidahwanye n'ibyakozwe, bityo ko idakwiye kwitwaza amakosa yayo ngo ibisabire indishyi.

[4] Ku wa 12/10/2022, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 00673/2022/TC rwemeza ko :

a. Ikirego cya GCC Engineering Ltd gifite ishingiro ;

b. GCC Engineering Ltd yasoje imirimo ya ruhurura ya Rukatsa–Kanserege-Ravine ku muhanda wa Kagarama-Muyange yahawe na NPD Ltd ;

c. NPD Ltd yishyura GCC Engineering Ltd umwenda iyisigayemo nk'uko bisabwa, inyungu n'indishyi ku ngano igenwe mu bushishozi bw'urukiko, ko ibyo yo isaba itabihabwa ;

d. NPD Ltd yishyura GCC Engineering Ltd amafaranga angana na miliyoni ijana na mirongo itatu n'enye n'ibihumbi magana inani na magana arindwi na makumyabiri n'icyenda (134.800.729 Frw), agizwe na :

- Miliyoni mirongo inani na zirindwi n'ibihumbi magana cyenda n'umunani na makumyabiri n'icyenda (87.908.029 Frw) y'umwenda w'amasezerano ya mbere iyisigayemo,
- Miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inani n'umunani na magana inani na makumyabiri n'atandatu (41.188.826 Frw) y'umwenda w'amasezerano ya nyuma iyisigayemo,
- Miliyoni eshanu n'ibihumbi ijana na mirongo itandatu na bitatu na magana inani na mirongo irindwi n'ane (5.163.874 Frw) y'inyungu/indishyi z'ubukererwe cyangwa mbonezamusaruro,
- Amafaranga ibihumbi magana atanu na mirongo ine (540.000 Frw) y'indishyi z'ikurikiranarubanza n'igihembo cy'Avoka.

e. NPD Ltd isubiza GCC Engineering Ltd amafaranga ibihumbi makumyabiri (20.000 Frw) y 'ingwate y'amagarama yatanze irega.

[5] NPD Ltd ntiyishimiye iyo mikirize y'urubanza, iyijuririra mu Rukiko Rukuru rw'Ubucuruzi, inenga ko :

a) Urukiko rw'Ubucuruzi rwaciye urubanza rwirengagije ibimenyetso yatanze n'amategeko bigatuma rwemeza ko igomba kwishyura GCC ENGINEERING LTD amafaranga akurikira :

- Miliyoni mirongo inani na zirindwi n'ibihumbi magana cyenda n'umunani na makumyabiri n'icyenda (87.908.029 Frw) y'umwenda ukomoka ku masezerano ya mbere yayisigayemo,
- Miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inani n'umunane na magana inane na makumyabiri n'atandatu (41.188.826 Frw) y'umwenda ukomoka ku masezerano ya nyuma yayisigayemo,
- Miliyoni eshanu n'ibihumbi ijana na mirongo itandatu na bitatu na magana inane na mirongo irindwi n'ane (5.163.874 Frw) y'inyungu/indishyi z'ubukererwe cyangwa mbonezamusaruro.

b) rwirengagije ibimenyetso n'amategeko bigatuma rudategeka GCC ENGINEERING LTD kuyishyura amafaranga angana miliyoni mirongo irindwi n'esheshatu n'ibihumbi magana inani na mirongo ine na bitandatu na magana atanu na mirongo itanu n'ane (76.846.554 Frw) yishyuje ataragombaga kwishyuzwa kubera ko ngo adahwanye n'imirimo yakozwe,

c) rwayitegetse kwishyura GCC ENGINEERING LTD amafaranga ibihumbi magana atanu na mirongo ine (540.000 Frw) y'indishyi z'ikurikiranarubanza n'igihembo cy'Avoka no kuyisubiza amafaranga y'igarama yatanze irega. Mu gusoza isaba amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. GCC ENGINEERING LTD nayo yatanze ubujurire bwuririye ku bundi isaba amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka.

[6] GCC ENGINEERING LTD mu kwiregura ku ngingo ijyanye no kumenya niba Urukiko rw'Ubucuruzi rwarirengagije ibimenyetso n'amategeko bigatuma rutegeka NPD Ltd kuyishyura amafaranga angana na 87.908.029 Frw y'umwenda ukomoka ku masezerano ya mbere, ivuga ko iyi ngingo y'ubujurire nta shingiro ifite, kuko umwenda yishyuzwa ukomoka ku masezerano impande zombi zagiranye ku wa 30/08/2019 yiswe "subcontract agreement for the construction of Rukatsa-Kanserege Ravine", yo kubaka ruhurura, mu mushinga wo kubaka umuhanda wa Kagarama-Muyange yagombaga kumara amezi atanu (5), yavuguruwe ku wa 01/02/2020 hakongerwaho andi mezi atanu (5), kandi imirimo yari iteganyijwe muri ayo masezerano yagombaga gukora ikaba yarayirangije, nk'uko byemezwa na NPD Ltd n'ushinzwe kugenzura imirimo, ndetse bikaba binagaragazwa n'inyandikomvugo y'inama yiga ku ibarurisha rya nyuma ku mirimo yakozwe hubakwa ruhurura ya Kanserege yo ku wa 28/12/2021, igaragaza ko imirimo yari iteganyijwe yakozwe, ndetse n'Akarere ka Kicukiro nka nyir'iyo mirimo kakaba katarayinenze. Ko rero kuba yari yarangije gukora mirimo ya ruhurura ya Kanserege, icyari gisigaye ari uko NPD Ltd na yo yagombaga kubahiriza inshingano yayo yo kwishyura ikiguzi cy'iyo mirimo cyari gisigaye kuri ayo masezerano ya subcontract, kingana na 87.908.029 Frw asabwa nk'uko zabisezeranye maze bikayibera Itegeko. Ivuga kandi ko kuba ibarura rya nyuma ku mirimo yakozwe ryararangiye, NPD Ltd itagombaga kwanga kwishyura imirimo yakozwe, ko uko kwanga kuyishyura ari byo byatumye iyirega isaba ko yishyura uwo mwenda.

[7] Ku birebana n'umwenda ungana na 41.188.826 Frw NPD Ltd yishyuzwa, GCC ENGINEERING LTD ivuga ko ayo mafaranga akomoka ku mwenda ukomoka ku masezerano ya nyuma NPD LTD yasigayemo ku mushinga wa Kagarama-Muyange Asphalt Road, aho habazwe

imirimo yakozwe guhera mu ntangiro nk’uko bigaragazwa na "measurement sheet", bikaza kugaragara ko hagomba kwishyurwa amafaranga angana na 243.373.930 Frw, ariko ikaba yari yarishyuwemo amafaranga angana na 202.185.104 Frw, hagasigara 41.188.826 Frw, NPD Ltd yanze kwishyura kandi yarakiriye imirimo yakozwe. Kandi ko NPD Ltd yemeye kwishyura, ikayisaba gutanga inyemezabwishyu muri office ya finance (facture EBM), ku wa 30/11/2021 ikayitanga ariko ko kugeza ubwo yatangaga ikirego mu Rukiko rw'Ubucuruzi yari itarishyurwa, hashize amezi arenga atanu (5) yaranze kuyishyura kandi itabuze amafaranga yo kwishyura. Ko Urukiko rw’ubucurizi rwashingiye icyemezo cyarwo ku bimenyetso byose rwashyikirijwe, birimo n’amasezerano impande zombi zagiranye. Bityo isaba Urukiko kudaha ishingiro ubujurire bwa NPD Ltd hashingiwe ku Itegeko rigenga amasezerano no ku ryerekeye ibimenyetso mu manza n’itangwa ryabyo.

[8] Ku birebana n’umwenda wa 76.846.554 Frw NPD Ltd yishyuza, GCC ENGINEERING LTD mu kuyireguraho ivuga ko nta shingiro yahabwa, kubera ko ari yo itarubahirije amasezerano yo kwishyura umwenda.

[9] Ku birebana n’amafaranga 5.163.874 Frw y’inyungu/indishyi z’ubukererwe cyangwa mbonezamusaruro NPD Ltd yategetswe kwishyura, GCC ENGINEERING LTD ivuga ko NPD Ltd yagombaga gutegekwa kuyishyura kubera amakosa yayo yo kutubahiriza inshingano yayo yo kuyishyura nk’uko impande zombi zabisezeranye, bityo kuba ubwo bukererwe bwo kuyishyura umwenda yakagombye kuba yarabyaje umusaruro bwarayiteje igihombo yagombaga kubicirirwa indishyi.

[10] Ku birebana n’amafaranga y’indishyi z’ikurikiranarubanza n’igihembo cy’Avoka zingana na 540.000 Frw NPD Ltd yategetswe kwishyura, GCC ENGINEERING LTD ivuga ko zari zikwiye ngo kuko ari yo yatumye habaho urubanza, yanga kubahiriza amasezerano impande zombi zagiranye.

[11] Naho ku birebana n’indishyi z’ikurikiranarubanza n’iz’igihembo cya Avoka NPD Ltd isaba, GCC ENGINEERING LTD izireguraho ivuga ko nta shingiro zifite, ngo kuko ari yo itarubahirije amasezerano zagiranye, ko ahubwo ari yo ikwiye kuziyiha.

[12] Ku wa 05/04/2023. Urukiko Rukuru rw’Ubucuruzi rwaciye urubanza RCOMA 00673/2022/HCC rwewmeza ko :

a. Ubujurire bwa NPD LTD nta shingiro bufite ;
b. Umwenda NPD LTD irimo GCC ENGINEERING LTD n’indishyi yategetswe mu rubanza rwajuririwe bigomba guhinduka ;
c. Amafaranga NPD LTD yishyuza GCC ENGINEERING LTD angana na miliyoni mirongo irindwi n’esheshatu n’ibihumbi magana inane na mirongo ine na bitandatu na magana atanu na mirongo itanu n’ane (76.846.554Frw) ntayo igomba kwishyurwa ;
d. Nta mafaranga GCC ENGINEERING LTD igomba gusubiza NPD LTD ;
e. Umwenda ukomoka ku masezerano ya “Subcontract agreement for the construction of RUKATSA-KANSEREGE RAVINE” ari miliyoni makumyabiri n’enye n’ibihumbi magana atandatu na cumi na bitanu na magana atandatu na mirongo inane n’atanu (24.615.685Frw), naho

ukomoka ku masezerano ya « Framework contract for labor supply and works subcontracting » ari miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inane n'umunani na magana inani na makumyabiri n'atandatu (41.188.826Frw). Yose hamwe akaba miliyoni mirongo itandatu n'eshanu n'ibihumbi magana inane na bine na magana atanu na cumi na rimwe (65.804.511Frw);

f. NPD LTD yishyura GCC ENGINEERING LTD amafaranga y'u Rwanda angana na miliyoni mirongo itandatu n'eshanu n'ibihumbi magana inani na bine, na magana atanu na cumi na rimwe (65.804.511Frw) ;

g. NPD LTD yishyura GCC ENGINEERING LTD amafaranga y'u Rwanda angana na miliyoni ebyiri n'ibihumbi magana atandatu na mirongo itatu n'ebyiri, n'ijana na mirongo inani (2.632.180Frw) y'inyungu z'uko yatinze kwishyura ;

h. NPD LTD yishyura GCC ENGINEERING LTD amafaranga y'u Rwanda ibihumbi magana atandatu (600.000Frw) y'ikurikiranarubanza n'igihembo cy'Avoka ;

i. Amafaranga y'igihembo cy'Avoka, ikurikiranarubanza n'igarama NPD LTD yategetswe gusubiza GCC ENGINEERING LTD mu rubanza rwajuririwe afite ishingiro ;

j. Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka NPD LTD yasabye muri uru rubanza nta shingiro afite ;

k. Ingwate y'amagarama NPD LTD yatanze irega ihwanye n'ibyakozwe mu rubanza.

[13] Kuwa 03/05/2023, GENERAL CONTRACTORS AND CIVIL ENGINERING (GCC Engineering Ltd) yajuririye urubanza RCOMA 00673/2022/HCC mu Rukiko rw'Ubujurire, ubujurire bwayo bwandikwa kuri RCOMAA 00025/2023/CA, ku mpamvu zikurikira :

a. Kumenya niba hari umwenda ibereyemo NPD Ltd ;

b. Kumenya niba NPD LTD ikwiye kuyishyura umwenda ungana na miliyoni mirongo inani na zirindwi, ibihumbi magana cyenda n'umunani na makumyabiri n'icyenda (87.908.029 Frw) ;

c. Kumenya niba NPD LTD ikwiye kuyishyura umwenda ungana na miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inani n'umunani na magana inani na mukamyabiri n'atandatu (41.188.826 Frw) ;

d. Kumenya niba yari ikwiye kugenerwa indishyi zitandukanye.

Inasaba izo kuri uru rwego rw'Ubujurire.

[14] NPD Ltd na yo yarajuriye, ubujurire bwayo bwandikwa kuri RCOMAA 00026/2023/CA, ku mpamvu zikurikira :

a. Kuba Urukiko Rukuru rw'Ubucuruzi rwarirengagije ibimenyetso n'amategeko maze rukayitegeka kwishyura GCC ENGINEERING LTD amafaranga angana na miliyoni mirongo inane na zirindwi n'ibihumbi magana cyenda n'umunani na makumyabiri n'icyenda (87.908.029 Frw) y'umwenda ukomoka ku masezerano ya mbere yayisigayemo ;
b. Kuba rwarayitegetse kwishyura GCC ENGINEERING LTD miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inani n'umunani na magana inani na mukamyabiri n'atandatu (41.188.826 Frw), yo mu masezerano ya kabiri (Framework Agreement) ;
c. Kuba rwaranze gutegeka GCC ENGINEERING LTD kuyishyura umwenda ungana na miliyoni mirongo irindwi n'esheshatu n'ibihumbi magana inane na mirongo ine na bitandatu na magana atanu na mirongo itanu n'ane (76.846.554 Frw) ;
d. Kuba rwarayitegetse kwishyura GCC ENGINEERING LTD miliyoni ebyiri n'ibihumbi magana atandatu na mirongo itatu na bibiri n'ijana na mirongo inane (2.632.180 Frw) y'inyungu z'ubukererwe/mbonezamusaruro ;
e. Kuba rwarayitegetse kwishyura GCC ENGINEERING LTD igihembo cya Avoka n'Ikurikiranarubanza angana n'ibihumbi magana atanu na mirongo ine (540.000 Frw) yo ku rwego rwa mbere, n'amafaranga ibihumbi magana atandatu (600.000 Frw) yo ku rwego rwa kabiri ; Isoza isaba Urukiko gutegeka GCC ENGINEERING LTD kuyiha indishyi zingana na miliyoni enye (4.000.000Frw) zikubiyemo amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka.

[15] Iburanisha ry'urubanza ryashyizwe ku wa 04/12/2023, ruburanishwa ababuranyi bombi bitabye, GCC Engineering Ltd ihagarariwe na Me Intwazayamugabo Armand na Me Ntagengwa Vital, naho NPD Ltd ihagarariwe na Me Uwamahoro Marie Grâce na Me Mugaga Itete Emmanuel. Isomwa ry'urubanza rishyirwa ku wa 22/12/2023.

[16] Muri rusange mu myanzuro no mu miburanire yayo, NPD Ltd yiregura ku bujurire bwa GCC ENGINEERING Ltd ivuga ko nta mwenda iyibereyemo, ko ahubwo ari yo iyibereyemo amafaranga angana na 76.846.554 Frw yarenze ku yo yayishyuye, hagendewe ku ngano y'imirimo yakozwe nk'uko bigaragazwa na Final account yakozwe na NPD Ltd, aho yasanze yarishyuye 406.653.150 Frw, mu gihe imirimo yakozwe yari ifite agaciro kangana na 219.727.270 Frw, bityo hakaba harimo ikinyuranyo kingana na 186.917.880 Frw, aya wakuramo 68.882.500 Frw GCC Engineering Ltd yayishyuye, hiyongereyeho 41.188.826 Frw yafatiriye, akaba 76.846.554 Frw, bityo ikaba igomba kuyasubiza kuko yayakiriye bitari ngombwa.

[17] Ku birebana n’inyungu GCC ENGINEERING Ltd isaba, izireguraho ivuga ko uretse no kuba nta shingiro zifite, zidakwiye kwakirwa ngo zisuzumwe ngo kuko itigeze ijuririra ibijyanye n’ingano y’inyungu zategetswe mu rubanza rujuririrwa.

[18] Ku birebana n’indishyi GCC ENGINEERING Ltd ivuga ko itagenewe n’Urukiko Rukuru rw’Ubucuruzi, ivuga ko nta shingiro zifite, ngo kuko ingingo zitagaragajwe mu rubanza rujuririrwa zidakwiye kwakirwa ngo zisuzumwe n’uru Rukiko mu bujurire bwa kabiri, cyane ko nta nenge igaragaza zaba ziri mu rubanza rujuririrwa. Kandi ko n’izo isaba kuri uru rwego nta shingiro zahabwa, ngo kuko ubujurire bwayo bufite ishingiro, no kuba GCC ENGINEERING LTD ari yo yanze kuyishyura nta mpamvu.

[19] Muri rusange mu myanzuro no mu miburanire yayo, General Contractors and Civil Enginering Ltd yiregura ku bujurire bwa NPD Ltd ivuga ko nta shingiro bufite ngo kuko nta mwenda ibereyemo NPD Ltd, ko ahubwo ari yo iwuyibereyemo ungana na 129.096.855Frw nk’uko yawugaragaje mu bujurire bwayo, kandi ko kuvuga ko itari gutegekwa kuyiha inyungu nta gaciro byahabwa, ko ahubwo izo yagenewe zingana na 2.632.180 Frw ari nke, ko ikwiye guhabwa izingana na miliyoni makumyabiri n’eshanu n’ibihumbi magana inani na cumi n’icyenda na magana atatu na mirongo irindwi (25.819.370 Frw) zibariye ku gipimo cya 10% ku mwaka, mu gihe cy’imyaka ibiri ishize yagombaga kuba yarishyuye.

[20] Ku birebana n’indishyi NPD Ltd isaba, General Contractors and Civil Enginering Ltd ivuga ko nta shingiro zifite, ngo kuko ari yo yakuruye imanza ikora amakosa yo kwanga kwishyura ubwishyu bugejeje igihe.

[21] Impaka zavuzwe haruguru ziri muri uru rubanza zigaragaza ko ibibazo Urukiko rugomba gusuzuma ari ibi bikurikira :

1) Kumenya ubereyemo undi umwenda hagati ya General Contractors and Civil Engineering Ltd na NPD Ltd n’ingano yawo ;
2) Gusuzuma niba hari igihombo NPD Ltd yateye General Contractors and Civil Enginering Ltd ku buryo yabiryozwa ;
3) Gusuzuma ishingiro ry’indishyi n’ibigenda ku rubanza bisabwa n’ababuranyi.

II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA

Kumenya ubereyemo undi umwenda hagati ya General Contractors and Civil Engineering Ltd na NPD Ltd n’ingano yawo

[22] Abahagarariye GENERAL CONTRACTORS AND CIVIL ENGINEERING (GCC Engineering Ltd) bavuga ko imirimo yo kubaka ruhurura mu mushinga RUKATSA-KANSEREGE yakozwe na GCC Engineering Ltd, ari na yo Company yonyine yakoze kuri iyo projet, yakiriwe na NPD LTD ndetse na mission de controle (Bureau d’Etude KIADY Ltd) yemeza ko imirimo y’isoko rya RUKATSA-KANSEREGE-RAVINE yarangiye kandi yakozwe neza, nk’uko bigaragazwa n’inyandikomvugo y’inama yigaga ku ibarurisha rya nyuma (final account/decompte final). Bavuga ko NPD Ltd yishyuje uwayihaye isoko, irishyurwa, ariko GCC

Enginering LTD yo iyishyuje iranga. Bityo basaba Urukiko gutegeka NPD Ltd kuyishyura amafaranga anagana na miliyoni mirongo inani na zirindwi n'ibihumbi magana cyenda n'umunani na makumyabiri n'icyenda (87.908.029 Frw) akomoka kuri Contract (RUKATSA-KANSEREGE-RAVINE) yari ifite agaciro ka miliyoni magana atatu na mirongo itanu n'enye n'ibihumbi magana ane na birindwi na magana abiri na cumi n'umunani (354.407.218Frw), akazi kose kakozwe (Cumulative) kakaba gafite agaciro ka miliyoni magana atatu na makumyabiri n'esheshatu n'ibihumbi magana ane na mirongo ine na kimwe na magana abiri na mirongo inani n'umunani (326.441.288 Frw), ayishyuwe (Previous) akaba miliyoni magana abiri na mirongo itatu n'umunani na magana atanu na mirongo itatu na bitatu na magana abiri na mirongo itanu n'icyenda (238.533.259Frw), asigaye kwishyurwa (Present) akaba miliyoni mirongo inani na zirindwi n'ibihumbi magana cyenda n'umunani na makumyabiri n'icyenda (87.908.029 Frw), nk'uko byemejwe n'Urukiko rw'Ubucuruzi mu rubanza RCOM 00673/2022/TC.

[23] Bavuga ko icyo banenga mu cyemezo cyafashwe n'Urukiko mu rubanza RCOMA 00673/2022/HCC rujuririrwa, ari uko rwagishingiye ku ibaruwa yo kuwa 16/12/2021 ruvuga ko GCC Engineering Ltd yemera umwenda wa 68.882.500 Frw, bityo ko agomba gukurwa mu yo NPD Ltd iyifitiye, nk'uko bigaragara mu gika cya 48 cy'urwo rubanza, kandi atari ukuri, ngo kuko GCC Engineering Ltd yari yariyishyuye ayo mafaranga kuri factures zabanje ku wa 31/10/2021, nk'uko byashimangiwe n'Umuyobozi Mukuru wa NPD Ltd mu nyandiko yo kuwa 20/05/2023. Bavuga ko ibi babishingira ku ngingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011, rigenga amasezerano[1], no ku bimenyetso bikurikira:

- Ibaruwa ya NPD yo kuwa 05/10/2021 yemera ko yasubizwa 68M kandi koko nk'uko bigaragara biyishyuye kuwa 31/10/2021.
- Memo yatangiwe akazi ko kubaka PAVEMENT DU FOND DE FOSSE DU BETON ARME DOSE A 400/M3.
- Contract Kanserege Ravine
- Kanserege Contract Addendum
- Kanserege Final Account
- Final Account Kanserege Recapitulatif igaragaza amafaranga yishyuzwa n'aho akomoka muri make.

[24] Abahagarariye GENERAL CONTRACTORS AND CIVIL ENGINEERING (GCC Engineering Ltd) bavuga kandi ko hari undi mwenda ungana na miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inani n'umunani na magana inani na mukamyabiri n'atandatu (41.188.826 Frw) NPD Ltd ibereyemo GCC Engineering Ltd, ukomoka ku masezerano ya kabiri yiswe framework contract utagibwaho impaka yafatiriye isaba ko yaherwaho mu guhwanya imyenda. Bavuga ko nyuma yo kubara imirimo yakozwe basanze ifite agaciro kangana na miliyoni magana abiri na mirongo ine n'eshatu na magana atatu na mirongo irindwi n'eshatu na magana cyenda na mirongo itatu (243.373.930 Frw) nk'uko bigaragazwa na MEASUREMENT

[1] *Iyo ngingo igira iti: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".*

SHEET, ariko ko GCC Engineering LTD yishyuwemo gusa miliyoni magana abiri n'ebyiri n'ibihumbi ijana na mirongo inani na bitanu n'ijana n'ane (202.185.104 Frw) hagasigara miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inani n'umunani na magana inani na makumyabiri n'atandatu (41.188.826 Frw) NPD Ltd ikayafatira, nk'uko bigaragazwa na facture yo kuwa 30/11/2021.Bityo bagasaba Urukiko gutegeka NPD Ltd kuyishyura ngo kuko atagibwaho impaka, kandi GCC Engineering Ltd ikaba nta mwenda iyifitiye ku buryo zahwanya imyenda. Ibi nabyo bavuga ko babisaba bashingiye ku ngingo ya 64 y'Itegeko rigenga amasezerano yavuzwe haruguru.

[25] Abahagarariye NPD Ltd mu kwiregura bavuga ko nta mwenda NPD Ltd ibereyemo GCC Engineering Ltd, ko ahubwo ari yo iyibereyemo umwenda ungana na miliyoni mirongo irindwi n'esheshatu n'ibihumbi magana inani na mirongo ine na bitandatu na magana atanu na mirongo itanu n'ane (76.846.554 Frw), yarenze ku yo yayishyuye hagendewe ku ngano y'imirimo yakozwe nk'uko bigaragazwa na Final account yakozwe na NPD Ltd, bityo ikaba igomba kuyasubiza.

[26] Basobanura ko kuwa 12/04/2022 NPD Ltd yasabye GCC Engineering Ltd ko bahura bakabarira hamwe imirimo yakozwe n'agaciro kayo ariko ikabyanga, ibyo bigatuma NPD Ltd ubwayo yibarira agaciro k'iyo mirimo igendeye ku byumvikanyweho, yifashishije aba techniciens bayo n'ibigaragara kuri terrain ku mushinga wa RUKATSA- KANSEREGE , maze igasanga yarishyuye amafaranga menshi ugereranyije n'imirimo yakozwe, aho yasanze yarishyuye miliyoni magana ane n'esheshatu n'ibihumbi magana atandatu na mirongo itanu na bitatu n'ijana na mirongo itanu (406.653.150Frw), mu gihe imirimo yakozwe yari ifite agaciro ka miliyoni magana abiri na cumi n'icyenda n'ibihumbi magana arindwi na makumyabiri na birindwi na magana abiri na mirongo irindwi (219.727.270 Frw), bityo hakaba harimo ikinyuranyo cy'amafaranga angana na miliyoni ijana na mirongo inani n'esheshatu n'ibihumbi magana cyenda na cumi na birindwi na magana inani na mirongo inani (186.917.880 Frw) GCC Engineering Ltd yishyuwe itari iyakwiriye.Ko iyo ufashe ayo mafaranga ugakuramo amafaranga GCC Engineering Ltd yishyuye angana na 68.882.500 Frw, ukongera ugakuramo amafaranga yayo yafatiriwe angana na 41.188.826 Frw, hasigara amafaranga 76.846.554 Frw, ko ari wo mwenda NPD Ltd iyishyuza, kandi ko ari na yo yajuririye.

[27] Bavuga ariko ko NPD Ltd yabisobanuriye Urukiko Rukuru rw'Ubucuruzi rukabyirengagiza, kandi ngo ubusanzwe mu mirimo y'ubwubatsi hagomba kubaho decompte final, kugira ngo ibikorwa byose byakozwe mu mushinga bishobore kubarwa, ngo kuko raporo ziba zaragiye zitangwa mbere ndetse n'ubwishyu bwatangwaga byari iby'agateganyo (interim payments na interim reports). Bityo ko iyo rutabyirengagiza rwari kubona ko NPD Ltd yishyuye amafaranga meshi ugereranyije n'imirimo yakozwe, ku buryo nta mwenda ibereyemo GCC Engineering Ltd, ko ahubwo ari yo iwuyibereyemo, Urukiko rukaba rugomba kuyitegeka kuwishyura nk'uko wasobanuwe haruguru, hashingiwe kuri raporo yo kuwa 15/4/2021 igaragaza ko GCC Engineering Ltd yishyuwe amafaranga menshi ku mirimo yakoze, ayo mafaranga agasubizwa haherewe kuri miliyoni mirongo ine n'imwe n'ibihumbi ijana na mirongo inane n'umunane na magana inane na makumyabiri n'atandatu (41.188.826 Frw) nk'uko biteganywa n'ingingo ya 136 y'Itegeko rigenga amasezerano, igira iti: "Indishyi zishobora gutegekwa n'inkiko mu rwego rwo kurengera inyungu zirimo ibi bikurikira: 1° gutanga umubare w'amafaranga ateganywa mu masezerano cyangwa indishyi; 2° gutegeka cyangwa kubuza gukora igikorwa runaka; 3° gutegeka gusubiza ikintu runaka kugira ngo hatabaho ukwikungahaza mu buryo budakwiye; 4° gutegeka gutanga umubare w'amafaranga mu kwirinda ko habaho ukwikungahaza

mu buryo budakwiye; 5° kugaragaza uburenganzira bw'abagiranye amasezerano; 6° gushyira mu bikorwa icyemezo cy'ubukemurampaka". Bavuga kandi koi bi babishingira ku bimenyetso bikurikira :

- Final Account yo ku wa 28/12/2021 ;
- Framework Contract ;
- Contract Kanserege ;
- Contract Addendum Kanserege ;
- GCC Engineering Ltd Proposed Final Account by NPD received on 11/05/2022

  Mu rwego rw'amategeko bavuga ko bashingira kandi ku ngingo za 64, 70, 74 na 75 z'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.

[28] Abahagarariye General Contractors and Civil Enginering Ltd bavuga ko amafaranga yose NPD Ltd isaba nta shingiro akwiye guhabwa, ngo kuko nta bimenyetso iyatangira, no kubera ko inkiko zombi zabanje zasesenguye neza ibirebana na yo zigasanga nta shingiro afite.

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[29] Ikibazo kuri iyi ngingo gishingiye ku gusuzuma uko impande zombi ziburana zishyuranye ku mirimo yakozwe hubakwa ruhurura ya Kanserege hashingiwe ku masezerano anyuranye zagiranye, agaciro kayo gahuzwa na fagitire zakozwe, n'ubwishyu bwabaye kugira ngo hamenyekane niba hari amafaranga yasigaye atarishyurwa cyangwa se niba hari ayarenzeho kuri ako gaciro kayo.

[30] Ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011, rigenga amasezerano iteganya ibi bikurikira : " Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".

[31] Dosiye y'urubanza igaragaza ko ku wa 30/08/2019 GCC Enginering Ltd na NPD Ltd bagiranye amasezerano yo kubaka Ruhurura ya RUKATSA-KANSEREGE-RAVINE, ku gaciro kazwi neza ka 354.407.218 Frw, aza kuvugururwa n'impande zombi, agomba kurangira ku wa 30/06/2020. Ku wa 14/09/2021 NPD Ltd ihagarika imikoranire na GCC Engineering Ltd. Ku wa 16/12/2021 GCC Engineering Ltd yandikira NPD Ltd iyibutsa umwenda iyibereyemo ukomoka ku mishinga bakoranye harimo uwo kubaka Ruhurura ya RUKATSAKANSEREGE-RAVINE wari umaze umwaka urangiye (mise en demeure). Ku wa 28/11/2021, impande zirebwa n'uwo mushinga zikorana inama yiga ku ibarurisha rya nyuma ku mirimo yakozwe, ibi bikaba ari byo byashingiweho mu Rukiko rw'Ubucuruzi mu rwemeza ko GCC Engineering Ltd yasoje neza iyo mirimo rukemeza, ko amafaranga yasigaye igomba kwishyurwa ari 87.908.029 Frw y'umwenda ushingiye ku masezerano, ko NPD Ltd yo itashoboye kurugaragariza ibimenyetso byemeza ko na yo iberewemo agera kuri 76.846.554 Frw ngo yarengeje ku yo yagombaga kwishyura kandi ni nako Urukiko Rukuru rw'Ubucuruzi rwakomeje kubibona kuri iyo ngingo.

[32] Uru Rukiko rurasanga, uretse gusa gusubira mu bisobanuro n'ubundi NPD Ltd yatanze ku nzego zombi zabanje birebana n'uko umwenda yategetswe kwishyura wabazwe, mu by'ukuri

ntigaragaza icyo inenga ku isesengura ryakozwe n'Urukiko rwaciye urubanza rujuririrwa, idashobora kuvuguruza no kuri uru rwego ibyemejwe n'urwo Rukiko. Bityo ibyo NPD Ltd ivuga ko mu kubara yasanze yarishyuye 406.653.150 Frw, mu gihe imirimo yakozwe yari ifite agaciro kangana na 219.727.270 Frw bikaba bidashobora guhabwa ishingiro kuko NPD Ltd ibishingira kuri document yakoze yonyine ngo yifashishije aba techniciens bayo, iyo nyandiko ikaba idashobora kuvanaho ibyasezeranwe ku gaciro k'amasezerano, ari nako kagombaga guherwaho hakurwamo ayishyuwe kugira ngo hagaragazwe ayasigaye atishyuwe, aho kubara bundi bushya agaciro k'imirimo yakozwe nk'aho iyo mirimo itari yarahawe agaciro mbere yo gukora amasezerano ku kiguzi cyayo GCC Engineering Ltd igomba guhembwa iyirangije.

[33] Urukiko rw'Ubujurire, rushingiye ku biteganywa n'ingingo ya 64 yavuzwe haruguru n'ibisobanuro bimaze gutangwa, rurasanga NPD Ltd igomba kwishyura GCC Enginering Ltd 87.908.029 Frw y'umwenda w'amasezerano ya mbere iyisigayemo mu kubaka Ruhurura ya RUKATSA-KANSEREGE RAVINE nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye mu rubanza rwajuririwe.

[34] Ku kibazo cyerekeranye n'umwenda ungana na 41.188.826 Frw, y'umushinga KagaramaMuyange Asphalt Road yari yarafatiriwe, ababuranyi bombi bavuga ko bayumvikanaho ko GCC Engineering Ltd igomba kuyishyurwa kuko Urukiko rwategetse ko yongera kuvanwa ku mwenda kubera kwibeshya, Urukiko rukaba rugomba kwemeza ko GCC Engineering Ltd iyishyurwa kuko, nk'uko bimaze gusobanurwa haruguru, nta mafaranga arenga NPD Ltd yigeze yishyura GCC ENGINEERING Ltd ngo abe ari yo yakurwamo aya 41.188.826 Frw NPD Ltd yafatiriye.

[35] Nyuma y'ibimaze gusobanurwa, Urukiko rurasanga ku kibazo cy'ubereyemo undi umwenda n'ingano yawo, NPD Ltd ari yo igomba kwishyura GCC Engineering Ltd 87.908.029 Frw, kongeraho 41.188.826 Frw, bityo NPD Ltd ikaba igomba kwishyura GCC Engineering Ltd amafaranga y'umwenda yayisigayemo angana na miliyoni ijana na makumyabiri n'icyenda n'ibihumbi mirongo cyenda na bitandatu na magana inani na mirongo itanu n'atanu (129.096.855 Frw).

- **Gusuzuma niba hari igihombo NPD Ltd yateye General Contractors and Civil Engineering Ltd ku buryo yabiryozwa**

[36] Abahagarariye General Contractors and Civil Engineering Ltd basaba Urukiko rw'Ubujurire gutegeka NPD Ltd kuyishyura indishyi zishingiye ku gihombo cy'ubukungu (préjudice économique) GCC Engineering Ltd yatewe na NPD Ltd, zishingiye ku mafaranga yagombaga kunguka (lucrum cessans/manque à gagner) iyo yishyurirwa ku gihe, yabarwa kuri taux de placement de la BNR.

[37] Basobanura ko inyungu bemera ari 10% kuva aho GCC yarangirije imirimo ikagaragaza *facture final*e, ko bagombaga kutarenza ku wa 30/09/2021 nk'uko bigaragara mu ibaruwa yo ku wa 14/09/2021 bisabwe n'umuyobozi wa NPD Ltd ko barangizanya, zikabarwa mu gihe cy'imyaka ibiri n'amezi atatu. Ni ukuvuga amafaranga 129.096.855 Frw X 10% X imyaka 2, bihwanye na 12.909.685,5 Frw X 2 =25.819.371 Frw. Bavuga kandi ko ayo Urukiko rwaciye urubanza rujuririrwa rwabaze yabahaye make bitewe n'uko kuyo rwabariyeho rwari rwabanje gukuramo 68.882.500 Frw rutari rwahaye agaciro nk'umwenda na wo wagombaga kwishyurwa.

[38] Abahagarariye General Contractors and Civil Engineering Ltd basaba kandi Urukiko rw'Ubujurire gutegeka NPD Ltd kuyishyura indishyi mbonezamusaruro (préjudice materiel) zishingiye ku gihombo GCC Engeneering Ltd yatewe na NPD Ltd, ngo cyatumye GCC Engeneering Ltd iguza amafaranga yagombaga kwishyura abo ibereyemo umwenda (créanciers), byatumye inacibwa inyungu z'ubukererwe muri Banki yafashemo umwenda. Ku bw'ibyo, barasaba indishyi zingana na 8.000.000 Frw. Banasobanura ko izi ndishyi bazisabye bwa mbere kuri uru rwego bitewe n'uko zavutse nyuma y'icibwa ry'urubanza mu Rukiko Rukuru rw'Ubucuruzi.

[39] Basaba kandi indishyi z'akababaro (préjudice moral) zingana na 5.000.000 Frw, GCC Engineering Ltd yatewe na NPD Ltd, bakavuga ko na zo zisabwe bwa mbere kuri uru rwego, ngo kubera imihangayiko itari ngombwa abagize GCC Engineering Ltd batewe n'abo yari ibereyemo imyenda. Bakanasaba kandi Urukiko gutegeka NPD Ltd gutanga icyemezo cyo kurangiza isoko neza (attestation de bonne fin).

[40] Abahagarariye NPD Ltd biregura ku bimaze kuvugwa bisabwa na GCC Enginering Ltd bavuga ko nta shingiro bifite, ko n'indishyi yagenewe mbere ntazo yagombaga kugenerwa ku nzego zose zabanje, kubera ko uretse kuba nta kosa NPD Ltd yayikoreye, itanagaragaza aho izishingira, ikaba itazigenerwa kubera uburiganya yakoze yanga kubahiriza ibikubiye mu masezerano impande zombi zagiranye, ahubwo ikishyuza amafaranga aruta kure imirimo yakoze, ikanyuranya n'ibiteganywa n'ingingo ya 140 y'Itegeko rigenga amasezerano[2], ndetse n'ingingo za 64 na 70 z'iryo tegeko, yishyuza amafaranga aruta kure imirimo yakoze.

[41] Bavuga kandi ko ibyo GCC ENGINEERING Ltd isaba kuri iyi ngingo bitagaragajwe mu rubanza rujuririrwa bidakwiye kwakirwa ngo bisuzumwe n'uru Rukiko mu bujurire bwa kabiri, kuko nta nenge zo mu rubanza rujuririrwa zabibonekaho. Ngo byongeye kandi kuba NPD Ltd nta mwenda iyifitiye, Urukiko rukwiye kwemeza ko n'indishyi yagenewe mu rubanza rujuririrwa zingana na 2.632.180 Frw zivanwaho kandi ko n'izindi ndishyi isaba nta shingiro zahabwa, ngo kuko ubujurire bwa NPD Ltd ari bwo bufite ishingiro.

[42] Ku kibazo cy'inyungu ku gutinda kwishyurwa zisabwa na GCC Engineering Ltd, ababuranira NPD Ltd bavuga ko Urukiko rubonye ko hari umwenda NPD Ltd igomba kuyishyura, rutawubariraho inyungu, kuko byaba byaratewe na yo yatumye hatabaho decompte final, ko nta na mise en demeure yabayeho yari gushingirwaho hatangira kubarwa inyungu kuri taux de placement yariho muri icyo gihe.

[43] Kuri iyo ngingo, abahagarariye GCC Enginering Ltd basobanura ko kuvuga ngo nta mise en demeure yabayeho atari ukuri kuko iya nyuma ari iyo ku wa 11/04/2021, kandi ko n'Umuyobozi wa NPD Ltd yari yaratanze itariki ntarengwa yo gutanga factures za nyuma, bisobanura kwishyurwa.

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[2] Iyo ngingo igira iti: "*Nta ndishyi zishobora gutangwa mu gihe uwatewe igihombo yashoboraga kucyirinda nta zindi ngaruka, mutwaro cyangwa igisebo bimuteye".*

[44] Nyuma y'uko ku munsi w'iburanisha ababuranira GCC ENGINEERING Ltd bavuze ko mu byo baregeraga bakuyemo ibirebana no gusaba indishyi z'akababaro ndetse n'icyemezo cyo kurangiza neza akazi, Urukiko rurasanga ikibazo rusigaje gusuzuma aha ari ikijyanye no kumenya niba kuba NPD Ltd yarakererewe kwishyura GCC ENGINEERING Ltd amafaranga yamaze kwemezwa mu bika byo hejuru ko angana na 129.096.855 Frw nta ndishyi/inyungu zirebana n'ubwo bukererwe igomba kitangira, ndetse n'ingano yazo.

[45] Ingingo ya 144 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira : "Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi cyangwa ashobora kumenyekana, inyungu zibarwa uhereye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira".

[46] Ingingo y'itegeko imaze kuvugwa haruguru isobanuye ko iyo ubwishyu bugomba cyangwa se bushobora gukorwa mu mafaranga ariko hakabaho kutabikora cyangwa se gutinda kubikora, uruhande rwishe iyo nshingano yo kwishyura rushobora kubicirirwa inyungu zibariwe ku mafaranga rwagombaga kwishyura aho kuba indishyi, zikiyongera ku gutegekwa kwishyura ayo mafaranga.

[47] Urukiko rurasanga igihombo GCC ENGINEERING Ltd yatewe no kutishyurwa umwenda ungana na 129.096.855 Frw wemejwe haruguru igomba kugiherwa indishyi ariko kuko indishyi zishingiye ku bwishyu bw'amafaranga nk'uko byasobanuwe haruguru zibarwa mu buryo bw'inyungu ayo mafaranga yakabaye yarungutse, akaba rero arizo igomba guhabwa na NPD Ltd. Ikibazo gisigaye kikaba ari ukumenya uko zigomba kubarwa : igihe n'igipimo zigomba kubarirwamo.

[48] Ku birebana n'igihe inyungu z'ubukererwe zigomba gutangira kubarirwaho, Urukiko rurasanga rugomba gushingira ku kimenyetso cy'ibaruwa yo ku wa 11/04/2022 GCC ENGINEERING Ltd yandikiye NPD Ltd ikayiha integuza y'iminsi itanu (5) yo kuba yarangije kuyishyura umwenda ungana na 129.096.855 Frw. Ibi bishingiye ku kuba iyo NPD Ltd yishyura GCC ENGINEERING Ltd uwo mwenda bitarenze ku wa 16/04/2022, yari kumwishyura gusa amafaranga atarenze uwo mwenda wagaragajwe muri iyo baruwa, nta zindi nyungu cyangwa se indishyi z'ubukerererwe isabwe kongeraho. Ariko kuko NPD Ltd itabikoze ku neza muri icyo gihe kugeza ku wa 22/12/2023 igombye kubitegekwa n'Urukiko muri uru rubanza, Urukiko rurasanga igihe cy'ubukererwe kigomba kubarirwaho inyungu kingana n'umwaka umwe n'amezi umunani kibazwe kuva ku wa 16/04/2023 kugeza ku wa 22/12/2023.

[49] Ku birebana n'igipimo inyungu z'ubukererwe NPD Ltd igomba kwishyura GCC ENGINEERING Ltd zigomba kubarirwaho, Urukiko rurasanga Urukiko rw'Ikirenga rwaratanze umurongo kuri iki kibazo mu rubanza RS/INJUST/RCOM 00014/2022/SC rwa MUGWANEZA Carine Sandrine aburana na Bank of Kigali Plc rwaciwe ku wa 31/03/2023. Umurongo watanzwe muri urwo rubanza ukaba ari uko inyungu z'ubukererwe zibarirwa ku kigereranyo cy'inyungu ku nguzanyo (taux moyen de prêt/average lending rate) gitangazwa na Banki Nkuru y'u Rwanda[3]; kuri ubu icyo kigereranyo kikaba, nk'uko kigaragagara mu nyandiko yitwa *Interest Rate Structure*

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[3] Reba uduce twa 70 na 71 mu rubanza N° RS/INJUST/RCOM 00014/2022/SC, uduce twa 54 na 55 mu rubanza N° RS/INJUST/00027/2022/CA n'uduce twa 70-73 mu rubanza N° RPAA/00603/2022/CA – CMB RPAA/00047/2023/CA [4] Byasomwe ku wa 21/12/2023.

yatangajwe na Banki Nkuru y'u Rwanda ku rubuga rwayo www.bnr.rw/browse-in/financial-market/money-market-interest-rates/monthlyinterest-rates[4], kirenze 10% GCC ENGINEERING Ltd yisabiye ko ari cyo cyabarirwaho, Urukiko rukaba rugomba kuba ari cyo rwubahiriza, kuko rutaha umuburanyi ibirenze ibyo yarusabye.

[50] Hashingiwe kuri icyo gipimo no ku gihe cy'ubukerererwe bwo kwishyura kingana n'umwaka umwe n'amezi umunani (8) cyasobanuwe haruguru, Urukiko rusanga inyungu z'ubukererwe NPD Ltd igomba kwishyura GCC ENGINEERING Ltd zingana na 129.096.855 Frw x 10/100 x 20/12 = 21.516.142 Frw.

[51] Muri rusange rero, Urukiko rurasanga NPD Ltd igomba kwishyura GCC ENGINEERING Ltd umwenda iyibereyemo ungana na 129.096.855 Frw y'igihembo cy'imirimo y'ubwubatsi yayikoreye n'inyungu z'ubukererwe zimaze kugaragazwa haruguru zingana n'amafaranga miliyoni makumyabiri n'imwe n'ibihumbi magana atanu na cumi na bitandatu n'ijana na mirongo ine n'abiri (21.516.142 Frw), asimbura ayari yarategetswe mbere mu rubanza rwajuririwe.

- **Gusuzuma ishingiro ry'indishyi n'ibigenda ku rubanza bisabwa n'ababuranyi**

[52] Abahagarariye GCC Engineering Ltd basaba Urukiko rw'Ubujurire gutegeka NPD Ltd kuyishyura 5.000.000 Frw, akubiyemo 3.000.000 Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cya Avoka, no gusubizwa amafaranga 50.000 Frw y'igarama.

[53] Abahagarariye NPD Ltd biregura kuri izi ndishyi GCC Engineering Ltd isaba bavuga ko nta shingiro zifite, ahubwo, basaba Urukiko rw'Ubujurire kuyitegeka kwishyura NPD Ltd amafaranga y'ikurikiranarubanza angana na 1.000.000 Frw, na 4.000.000 Frw y'igihembo cy'Abavoka yo ku nzego zose hashingiwe ku ngingo ya 26 y'Amabwiriza nº 01/2014 agena ibihembo mbonera by'Abavoka, kubera kuyishora mu manza zidafite impamvu, ariko mu nkiko zabanje ikaba itarayagenewe, no kuyisubiza 50.000 Frw y'amagarama y'urubanza.

[54] Abahagarariye GCC Enginering Ltd biregura kuri izi ndishyi NPD Ltd isaba bavuga ko nta shingiro zifite, kuko ari yo yakuruye imanza ikora amakosa yo kwanga kwishyura ubwishyu bugejeje igihe. Bavuga ko bashingira ku ngingo za 110 na 112 z'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza, iz'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

UKO URUKIKO RUBIBONA

[55] Ingingo ya 111 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko : "Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza ko ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[56] Urukiko rurasanga GCC Engineering Ltd ari yo ikwiye kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko itsinda urubanza naho NPD Ltd irutsindwa ikaba ntayo yagenerwa, ariko akaba agomba kugenwa mu bushishozi bw'Urukiko, kuko ayo isaba

ari umurengera. Bityo NPD Ltd ikaba igomba gutegekwa kwishyura GCC Engineering Ltd amafaranga ibihumbi magana arindwi (700.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego, yiyongera ku mafaranga ibihumbi magana atandatu (600.000 Frw) yagenwe n'Urukiko Rukuru rw'Ubucuruzi n'amafaranga ibihumbi magana atanu na mirongo ine (540.000 Frw) yagenwe n'Urukiko rw'Ubucuruzi, no kuyisubiza 50.000 Frw y'igarama yatanze ijurira muri uru Rukiko n'amafaranga ibihumbi makumyabiri (20.000 Frw) yatanzeho ingwate y'igarama mu Rukiko rw'Ubucuruzi.

III. ICYEMEZO CY'URUKIKO

[57] Rwemeje ko ubujurire bwatanzwe na GENERAL CONTRACTORS AND CIVIL ENGINEERING Ltd (GCC Engineering Ltd) mu rubanza RCOMAA 00025/2023/CA bufite ishingiro ;

[58] Rwemeje ko ubujurire bwatanzwe na NPD Ltd mu rubanza RCOMAA 00026/2023/CA nta shingiro bufite ;

[59] Rwemeje ko imikirize y'urubanza RCOMA 00673/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 05/04/2023 ivanyweho mu ngingo zarwo zose ;

[60] Rutegetse NPD Ltd kwishyura GCC Engineering Ltd amafaranga miliyoni ijana na makumyabiri n'icyenda n'ibihumbi mirongo cyenda na bitandatu na magana inani na mirongo itanu n'atanu (129.096.855 Frw) y'umwenda iyisigayemo ukomoka ku mirimo y'ubwubatsi yayikoreye ;

[61] Rutegetse NPD Ltd kwishyura GCC Engineering Ltd amafaranga miliyoni makumyabiri n'imwe n'ibihumbi magana atanu na cumi na bitandatu n'ijana na mirongo ine n'abiri (21.516.142 Frw) y'inyungu z'uko yatinze kwishyura ;

[62] Rutegetse NPD Ltd kwishyura GCC Engineering Ltd amafaranga ibihumbi magana arindwi (700.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego, yiyongera ku mafaranga ibihumbi magana atandatu (600.000 Frw) yagenwe n'Urukiko Rukuru rw'Ubucuruzi n'amafaranga ibihumbi magana atanu na mirongo ine (540.000 Frw) yagenwe n'Urukiko rw'Ubucuruzi ;

[63] Rutegetse NPD Ltd kwishyura GCC Engineering Ltd amafaranga ibihumbi mirongo itanu (50.000 Frw) yatanzeho ingwate y'igarama muri uru Rukiko n'amafaranga ibihumbi makumyabiri (20.000 Frw) yatanzeho ingwate y'igarama mu Rukiko rw'Ubucuruzi**.**