ZJ CONSTRUCTION COMPANY Ltd v. WORKERS AFFORDABLE PROPERTIES (WAP) LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00083/2022/CA (Nyirandabaruta, P.J., Gakwaya na Munyangeri, J.) 19 Nzeri 2023]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Itangizwa ry'ikurikirana ry'igihombo – Ingaruka z'itangizwa ry'ikurikirana ry'igihombo – Itangizwa ry'ikurikirana ry'igihombo risubika ibirego by'umuntu ubwe cyangwa uburyo bw'ikurikirana bureba ibintu by'ubereyemo abandi imyenda, uretse ku myenda ifite ingwate.

Incamake y'ikibazo: ZJ CONSTRUCTION COMPANY Ltd yagiranye na WORKERS AFFORDABLE PROPERTIES (WAP) Ltd amasezerano yo kuyubakira imisingi (fondations) y'inzu zitandukanye kuri site iri i Gahanga mu Karere ka Kicukiro ku giciro cya 832.933.887 Frw n'andi y'inyongera yo kuzana umuriro w'amashanyarazi kuri iyo site ku kiguzi cya 14.156.254 Frw, ayo masezerano yaje guseswa, ZJ CONSTRUCTION COMPANY Ltd itanga ikirego mu Rukiko rw'Ubucuruzi isaba gutegeka WAP Ltd kwishyura igiteranyo cy'amafaranga angana na 697.159.528 Frw akomoka ku masezerano ZJ CONSTRUCTION Ltd yagiranye na WAP Ltd ikayasesa mu buryo bunyuranyije n'amategeko.

Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya ZJ CONSTRUCTION COMPANY Ltd gifite ishingiro kuri bimwe, rwemeza ko umwenda usigaye iberewemo ungana na 86.315.339 Frw), wiyongereyeho inyungu zawo zingana na 2.994.097 Frw ndetse n'umusoro wa VAT ungana 57.236.325 Frw, ndetse rwemeza ko ZJ CONSTRUCTION Ltd yishyura abagobotse imyenda ibabereyemo.

ZJ CONSTRUCTION COMPANY Ltd yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi, WAP Ltd Ltd nayo irajurira, Imanza zihurizwa zamwe, Urukiko Rukuru rw'Ubucuruzi ruca urubanza rwemeza ko ubujurire bw'izo mpande zombi nta shingiro bufite.

ZJ CONSTRUCTION Ltd yajuririye mu Rukiko rw'Ubujurire, mbere yo kwinjira mu mizi y'urubanza, WAP Ltd isaba Urukiko ko iburanisha ryaba rihagaze kubera ko yatangije inzira yo gusaba itangizwa ry'ikurikirana ry'igihombo, ikaba ifite urubanza RCOMA 00092/2023/HCC mu Rukiko Rukuru rw'Ubucuruzi rutaracibwa, ndetse ivugako mu mu gihe iburanisha ryaba rikomeje byabangamira imigendekere y'izahura mu gihe igihombo cyaba cyemejwe. Ivuga kandi ko inzira y'ikurikirana ry'igihombo yatangiye ku itariki WAP Ltd yatangiyeho ikirego mu Rukiko rw'Ubucuruzi isaba gutangiza inzira y'ikurikiranwa ry'igihombo kandi ko umwenda iregwa udafite ingwate.

ZJ CONSTRUCTION Ltd yiregura ku nzitizi yatanzwe na WAP Ltd ivuga ko iburanisha rigomba gukomeza, kubera ko gutangiza ikurikirana ry'igihombo bitavuze ko ibikorwa by'itangizwa ry'ikurikirana ry'igihombo byatangiye, ko ahubwo bitangira ari uko Urukiko rubyemeje, hagashyirwaho umucungamutungo kandi aha hakaba nta cyemezo cy'Urukiko cyafashwe cyemeza itangizwa ry'ikurikirana ry'igihombo, nta n'umucungamutungo washyizweho. Ikavuga ko kuba urubanza ruri mu Rukiko rw'Ubujurire rurebana no kwemeza umwenda, rutaza nyuma y'urwemeza ko sosiyete yahombye.

Incamake y'icyemezo: Gutangiza cyangwa gukomeza ibirego by'umuntu ubwe cyangwa uburyo bw'ikurikirana bureba ibintu by'ubereyemo abandi imyenda biba bisubitswe, uretse ku myenda ifite ingwate cyangwa mu gihe uberewemo umwenda yasaba gukurirwaho isubikwa akabyemererwa.

Inzitizi ifite ishingiro.

Amategeko yashingiweho:
Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo, ingingo ya 11 n'iya 12.

Nta manza zifashishijwe

Urubanza

[1] ZJ CONSTRUCTION COMPANY Ltd yagiranye na WORKERS AFFORDABLE PROPERTIES (WAP) Ltd amasezerano yo kuyubakira imisingi (fondations) mirongo ine n'umwe (41) y'inzu zitandukanye kuri *site* iri i Gahanga mu Karere ka Kicukiro ku giciro cy'amafaranga miliyoni magana inani na mirongo itatu n'ebyiri, ibihumbi magana acyenda na mirongo itatu na bitatu na magana inani na mirongo inani n'arindwi (832.933.887 Frw) n'andi y'inyongera yo kuzana umuriro w'amashanyarazi kuri iyo *site* ku kiguzi cy'amafaranga miliyoni cumi n'enye, ibihumbi ijana na mirongo itanu na bitandatu na magana abiri na mirongo itanu n'ane (14.156.254 Frw). WAP Ltd yaje gusesa ayo masezerano ivuga ko ZJ CONSTRUCTION COMPANY Ltd itayubahirije.

[2] ZJ CONSTRUCTION COMPANY Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi, irusaba gutegeka WAP Ltd kuyishyura amafaranga miliyoni magana atandatu na mirongo icyenda n'indwi, ibihumbi ijana na mirongo itanu n'icyenda na magana atanu na makumyabiri n'umunani (697.159.528 Frw) akomoka ku masezerano yo ku wa 31/05/219 yasheshe mu buryo bunyuranyije n'amategeko, indishyi mbonezamusaruro, iz'akababaro, ikurikiranarubanza n'igihembo cya Avoka.

[3] WAP Ltd yireguye ivuga ko ZJ CONSTRUCTION COMPANY Ltd yishyuza imirimo yakoze n'ibitarateganyijwe mu masezerano, ko ayo masezerano yaseshwe mu buryo bukurikije amategeko, ikirego cyatanzwe na ZJ CONSTRUCTION COMPANY Ltd kikaba nta shingiro gifite, isaba guhabwa indishyi z'ibyangiritse kubera kutubahiriza amasezerano, izo gufunga *site* n'igihombo yatewe, iz'ikurikiranarubanza n'igihembo cya Avoka.

[4] Rukundo Iddy Radjabu, Ntibitura Yusufu, MUSAMA Ltd, Nsengiyumva Claude, Nsengiyumva Amon, Muhire Viateur na MEGANEWTON Ltd bagobotse ku bushake muri urwo rubanza, basaba Urukiko gutegeka ZJ CONSTRUCTION COMPANY Ltd kubishyura imyenda ibafitiye ikomoka ku bikoresho bayigemuriye n'imirimo bayikoreye kuri *site* ya Gahanga. Abagobotse kandi uretse MEGANEWTON Ltd, basaba guhabwa inyungu z'umwenda buri wese aberewemo, indishyi z'akababaro, iz'ikurikiranarubanza n'igihembo cya Avoka, banasaba irangizarubanza ry'agateganyo.

[5] Mu rubanza RCOM 00893/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 16/02/2021, urwo Rukiko rushingiye ku masezerano atandukanye ababuranyi bagiranye, ku ngingo zinyuranye z'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iz'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo n'iz'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rwemeje ko :

- Ikirego cya ZJ CONSTRUCTION COMPANY Ltd gifite ishingiro kuri bimwe ;
- Umwenda usigaye WAP Ltd ibereyemo ZJ CONSTRUCTION COMPANY Ltd ungana n'amafaranga miliyoni mirongo inani n'esheshatu, ibihumbi magana atatu na cumi na bitanu na magana atatu na mirongo itatu n'icyenda (86.315.339 Frw), wiyongereyeho inyungu zawo zingana n'amafaranga miliyoni ebyiri, ibihumbi magana acyenda na mirongo icyenda na bine na mirongo icyenda n'arindwi (2.994.097 Frw) kuri *invoice* n°002/WAP/2019 ndetse n'umusoro wa VAT ungana n'amafaranga ibihumbi mirongo itanu na birindwi, ibihumbi magana abiri na mirongo itatu na bitandatu na magana atatu na makumyabiri n'atanu (57.236.325 Frw) kuri *invoice* n° 001/WAP/2019;
- ZJ CONSTRUCTION COMPANY Ltd ibereyemo MUSAMA Ltd umwenda ungana n'amafaranga miliyoni mirongo itatu n'esheshatu, ibihumbi mirongo itandatu n'umunani na magana inani (36.068.800 Frw) ;
- ZJ CONSTRUCTION COMPANY Ltd ibereyemo Rukundo Iddy Radjabu umwenda ungana n'amafaranga miliyoni cumi n'umunani, ibihumbi magana ane na mirongo ine n'umunani na magana inani (18.480.800 Frw) ;
- ZJ CONSTRUCTION COMPANY Ltd ibereyemo Ntibitura Yusufu umwenda ungana n'amafaranga miliyoni cumi n'eshatu n'ibihumbi magana ane na mirongo irindwi (13.470.000 Frw) ;
- ZJ CONSTRUCTION COMPANY Ltd ibereyemo Nsengiyumva Claude amafaranga miliyoni cumi n'eshanu n'ibihumbi magana abiri na mirongo itanu (15.250.000 Frw) ;
- ZJ CONSTRUCTION COMPANY Ltd ibereyemo Nsengiyumva Amon amafaranga miliyoni cumi n'eshatu n'ibihumbi magana acyenda na mirongo itandatu (13.960.000 Frw) ;
- ZJ CONSTRUCTION COMPANY Ltd ibereyemo Muhire Viateur amafaranga miliyoni eshatu n'ibihumbi magana acyenda na mirongo itandatu na bitanu (3.965.000 Frw) ;
- ZJ CONSTRUTION OMPANY Ltd ibereyemo MEGANEWTON amafaranga miliyoni mirongo itatu n'eshanu n'ibihumbi magana arindwi na makumyabiri (35.720.000 Frw) ;

[6] Urukiko rw'Ubucuruzi rwategetse kandi ko :

- WAP Ltd yishyura ZJ CONSTRUCTION COMPANY Ltd amafaranga ibihumbi ijana (100.000 Frw) y'indishyi z'ikurikiranarubanza, amafaranga miliyoni ebyiri

(2.000.000 Frw) y'igihembo cya Avoka n'ibihumbi makumyabiri (20.000 Frw) y'amagarama y'urubanza ;

- ZJ CONSTRUCTION COMPANY Ltd yishyura Rukundo Iddy Radjabu, Ntibitura Yusufu, MUSAMA Ltd, Nsengiyumva Claude, Nsengiyumva Amon, Muhire Viateur na MEGANEWTON Ltd amafaranga ibihumbi mirongo itanu (50.000 Frw) y'indishyi z'ikurikiranarubanza kuri buri wese no gusubiza buri wese amafaranga ibihumbi makumyabiri (20.00 Frw) y'amagarama y'urubanza ;

- ZJ CONSTRUCTION COMPANY Ltd kwishyura Rukundo Iddy Radjabu, Ntibitura Yusufu, MUSAMA Ltd, Nsengiyumva Claude, Nsengiyumva Amon na MEGANEWTON Ltd amafaranga ibihumbi magana atandatu (600.000 Frw) kuri buri wese y'igihembo cya Avoka.

[7] ZJ CONSTRUCTION COMPANY Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ikirego cyandikwa kuri RCOMA 00209/2021/HCC itanga impamvu zikurikira :

- Kuba Urukiko rw'Ubucuruzi rwarirengagije ibimenyetso bigaragaza ko WAP Ltd igomba kwishyura fagitire ya kabiri, kwishyura amafaranga miliyoni magana abiri na makumyabiri n'enye, ibihumbi ijana na mirongo itanu na bine na magana atanu na makumyabiri n'umunani (224.154.528 Frw) agaragara kuri fagitire ya gatatu (3) n'amafaranga miliyoni magana ane na mirongo itanu n'umunani, ibihumbi ijana na makumyabiri na bitanu na magana atatu na mirongo itatu n'umunani (458.125.338 Frw) agaragara kuri fagitire ya mbere (1);

- Kuba nta cyo Urukiko rw'Ubucuruzi rwavuze ku mirimo ZJ CONSTRUCTION COMPANY Ltd yakoze ifite agaciro kangana n'amafaranga miliyoni mirongo itatu, ibihumbi magana acyenda na makumyabiri na bine na magana inani na mirongo irindwi (30.924.870 Frw) ;

- Kuba Urukiko rw'Ubucuruzi rwarirengagije ibimenyetso byerekana ibikoresho byasigaye muri *site* bitishyuwe igihe ZJ CONSTRUCTION COMPANY Ltd yasohokaga.

[8] Rukundo Iddy Radjabu, Ntibitura Yusufu, Nsengiyumva Amon na MUSAMA Ltd na bo bajuririye urwo rubanza, ubujurire bwabo bwandikwa kuri CMB RCOMA 00211/2021/HCC, bavuga ko Urukiko rw'Ubucuruzi rwanze kubagenera inyungu n'indishyi ku mpamvu zidahuye n'amategeko.

[9] WAP Ltd na yo yajuririye urwo rubanza, ubujurire bwayo bwandikwa kuri RCOMA00212/2021/HCC itanga impamvu zikurikira :

- Kuba itaragombaga kwishyuzwa *fondations* ebyiri yubatse zitari ziri mu masezerano kandi atari ZJ CONSTRUCTION COMPANY Ltd yazubatse ;

- Kuba umusoro wa TVA warabazwe mu buryo bunyuranyije n'amategeko ;

- Kuba ZJ CONSTRUCTION COMPANY Ltd yaragombaga gutegekwa kwishyura ibikoresho byaburiye kuri *site* ;

- Kuba itaragombaga gucibwa indishyi, ko ahubwo yari kugenerwa izo kutubahiriza amasezerano. Yasoje isaba guhabwa indishyi z'ibyagiye ku rubanza.

[10] Izi manza zose zahurijwe hamwe, ziburanishirizwa kuri RCOMA 00209/2021/HCC CMB RCOMA 00211/2021/HCC CMB RCOMA 00212/2021/HCC.

[11] Ku bujurire bwatanzwe na ZJ CONSTRUCTION COMPANY Ltd, WAP Ltd yireguye ivuga ko ku birebana n'ibimenyetso byirengagijwe, idasobanura icyo inenga ibisobanuro byatanzwe n'Urukiko rw'Ubucuruzi kuri fagitire n˚1, na ho ko kuri fagitire n˚2, Urukiko rwigereye ku kiburanwa rwibonera ukuri. Ku ngingo y'ubujurire irebana n'amafaranga miliyoni mirongo itatu, ibihumbi magana acyenda na makumyabiri na bine na magana inani na mirongo irindwi (30.924.870 Frw), ZJ CONSTRUCTION COMPANY Ltd yavuze ko itishyuwe, WAP Ltd yireguye ivuga ko ayo mafaranga atigeze agibwaho impaka mu rwego rwa mbere, ku birebana n'ibikoresho byasigaye kuri *site*, WAP Ltd yireguye ivuga ko nta bikoresho bya ZJ CONSTRUCTION COMPANY Ltd byasigaye kuri *site*, ko ahubwo isaba ko ZJ CONSTRUTION COMPANY Ltd yayiriha ibikoresho byayo (bya WAP Ltd) byaburiye kuri *site*. Ku birebana n'indishyi za ZJ CONSTRUTION COMPANY Ltd zitabazwe neza, WAP Ltd yireguye ivuga ko nta n'izo ikwiye kubera ko itarangije amasezerano, isaba ahubwo ko izo yaciwe zavanwaho.

[12] Ku byerekeye ubujurire bwatanzwe na Rukundo Iddy Radjabu, Ntibitura Yusufu, Nsengiyumva Amon na MUSAMA Ltd bavuga ko batagenewe indishyi n'inyungu, ZJ CONSTRUCTION COMPANY Ltd yireguye ivuga ko yemera ko ibereyemo umwenda abayihaye ibikoresho, ko ariko yagombaga kubishyura ari uko na yo yishyuwe.

[13] Mu rubanza RCOMA 00209/2021/HCC CMB RCOMA 00211/2021/HCC CMB RCOMA 00212/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 09/06/2022, urwo Rukiko rushingiye ku ngingo zinyuranye z'Itegeko N˚ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku ngingo zinyuranye z'Itegeko N˚45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, rwemeje ko :

- Ubujurire bwa ZJ CONSTRUCTION COMPANY Ltd n'ubwa WORKERS AFFORDABLE PROPERTIES Ltd, nta shingiro bufite ;

- Ubujurire bwa MUSAMA Ltd, Rukundo Iddy Radjabu, Ntibitura Yusufu, na Nsengiyumva Amon bufite ishingiro kuri bimwe ;

- ZJ CONSTRUCTION COMPANY Ltd igomba guha MUSAMA Ltd, Rukundo Iddy Radjabu, Ntibitura Yusufu, na Nsengiyumva Amon inyungu z'umwenda wemejwe ku rwego rubanza kandi ko zingana n'amafaranga miliyoni icyenda, ibihumbi magana atatu na mirongo itandatu n'umunani na magana inani (9.368.800 Frw) kuri MUSAMA Ltd, amafaranga miliyoni ebyiri, ibihumbi magana atandatu na makumyabiri na magana arindwi na rimwe (2.620.701 Frw) kuri Rukundo Iddy Radjabu, amafaranga miliyoni imwe, ibihumbi magana acyenda na cumi n'ijana na mirongo itatu n'atandatu (1.910.136 Frw) kuri Ntibitura Yusufu n'amafaranga miliyoni imwe, ibihumbi magana acyenda na mirongo irindwi na magana atandatu na makumyabiri na rimwe (1.970.621 Frw) kuri Nsengiyumva Amon;

- ZJ CONSTRUCTION COMPANY Ltd igomba guha MEGANEWTON Ltd indishyi z'ibyo yatakaje mu rubanza ku rwego rw'ubujurire zingana n'amafaranga ibihumbi magana atanu (500.000 Frw) ;

- Hagumyeho imikirize y'urubanza RCOM 00893/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 16/02/2021 uretse inyungu n'indishyi bimaze kuvugwa haruguru byiyongereyeho ;

- Amafaranga ibihumbi mirongo ine (40.000 Frw) ZJ CONSTRUCTION COMPANY Ltd na WORKERS AFFORDABLE PROPERTIES Ltd buri wese yatanzeho ingwate y'amagarama ajurira, ahwanye n'ibyakozwe mu rubanza ;

- ZJ CONSTRUCTION COMPANY Ltd gusubiza MUSAMA Ltd, Rukundo Iddy Radjabu, Ntibitura Yusufu na Nsengiyumva Amon, amafaranga ibihumbi mirongo ine (40.000 Frw) batanzeho ingwate y'amagarama bajurira.

[14] ZJ CONSTRUCTION COMPANY Ltd yajuririye urwo rubanza muri uru Rukiko, ubujurire bwayo bwandikwa kuri RCOMAA 00083/2022/CA. Urubanza rwaburanishijwe mu ruhame ku wa 06/09/2023, ZJ CONSTRUCTION COMPANY Ltd ihagarariwe na Me Bayingana Janvier, WAP Ltd ihagarariwe na Me Cyiza Clément, MEGANEWTON Ltd ihagarariwe na Me Ndahimana Jean Bosco, Nsengiyumva Claude, Muhire Viateur, Nsengiyumva Amon, Ntibitura Yusufu, Rukundo Iddy Radjabu na MUSAMA Ltd bahagarariwe na Me Niyomugabo Christophe.

[15] Mbere yo kwinjira mu mizi y'urubanza, uhagarariye WAP Ltd yasabye ko iburanisha ry'uru rubanza ryaba rihagaze kubera ko sosiyete ahagarariye yatangije inzira yo gusaba itangizwa ry'ikurikirana ry'igihombo, ikaba ifite urubanza RCOMA 00092/2023/HCC mu Rukiko Rukuru rw'Ubucuruzi rutaracibwa.

[16] Uhagarariye ZJ CONSTRUCTION COMPANY Ltd n'uhagarariye MEGANEWTON Ltd bavuga ko gutangiza inzira y'ikurikiranwa ry'igihombo bidahagarika iburanisha ry'izindi manza sosiyete ifite, naho uhagarariye Nsengiyumva Claude, Muhire Viateur, Nsengiyumva Amon, Ntibitura Yusufu, Rukundo Iddy Radjabu na MUSAMA Ltd avuga ko asanga iburanisha ryahagarara.

[17] Hakurikijwe imiburanire y'ababuranyi, Urukiko rw'Ubujurire rurasuzuma ikibazo cyo kumenya niba iburanisha ry'uru rubanza ryahagarikwa kugeza ubwo urubanza ku kirego gisaba itangizwa ry'ikurikiranwa ry'igihombo cyatanzwe na WAP Ltd ruciriwe burundu.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba iburanisha ry'uru rubanza ryahagarikwa kugeza ubwo urubanza ku ikirego gisaba itangizwa ry'ikurikiranwa ry'igihombo cyatanzwe na WAP Ltd ruciriwe burundu

[18] Mu myanzuro no mu miburanire, uhagarariye WAP Ltd avuga ko hashingiwe ku ngingo ya 83, igika cya gatatu, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku ngingo ya 8 n'iya 11 z'Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo, sosiyete ahagarariye yatanze

ikirego isaba gutangiza ikurikiranwa ry'igihombo, urwo rubanza rukaba rugeze mu Rukiko Rukuru rw'Ubucuruzi kuri RCOMA 00092/2023/HCC, akaba asaba ko iburanisha ry'uru rubanza riba rihagaze kugira ngo Urukiko Rukuru rw'Ubucuruzi rubanze rufate umwanzuro ku kibazo rwashyikirijwe kuko rikomeje byabangamira imigendekere y'izahura mu gihe igihombo cyaba cyemejwe. Avuga kandi ko inzira y'ikurikirana ry'igihombo yatangiye ku itariki WAP Ltd yatangiyeho ikirego mu Rukiko rw'Ubucuruzi isaba gutangiza inzira y'ikurikiranwa ry'igihombo kandi ko umwenda iregwa udafite ingwate.

[19] Uhagarariye ZJ CONSTRUCTION COMPANY Ltd avuga ko kuba WAP Ltd yaratanze ikirego gisaba gutangiza ikurikirana ry'igihombo bitavuze ko ibikorwa by'itangizwa ry'ikurikirana ry'igihombo byatangiye, ko ahubwo bizatangira ari uko Urukiko rubyemeje, hagashyirwaho umucungamutungo. Avuga ko kuba urubanza ruri muri uru Rukiko rurebana no kwemeza umwenda, rutaza nyuma y'urwemeza ko sosiyete yahombye, kandi ko ingingo ya 8 y'Itegeko ryerekeye igihombo ivuga ku rubanza rwamaze gucibwa naho iya 11 y'iryo Tegeko ikavuga ku ngaruka z'itangizwa ry'ikurikirana ry'igihombo. Ashingiye ku kuba nta cyemezo cy'Urukiko cyemeza itangizwa ry'ikurikirana ry'igihombo, no kuba nta mucungamutungo washyizweho, asanga iburanisha ry'uru rubanza rigomba gukomeza.

[20] Uhagarariye MEGANEWTON Ltd avuga ko mu rwego rw'amategeko, ibyo WAP Ltd isaba nta shingiro bifite kubera ko ishingira ku ngingo ya 11, igika cya mbere y'Itegeko ryerekeye igihombo ryavuzwe haruguru, ikirengagiza ibikubiye mu gika cya kabiri cy'iyo ngingo y'Itegeko kandi ko ingingo ya 3, 12° y'iryo Tegeko, isobanura ko ubereyemo abandi imyenda, ari isosiyete y'ubucuruzi, ubufatanye mu bucuruzi cyangwa umuntu ku giti cye bahombye. Akomeza avuga ko kuba WAP Ltd yaba yarahombye, ibyo bitabuza abo ibereyemo imyenda uburenganzira bwo gukurikirana imyenda yabo. Akurikije kandi inshingano z'umucungamutungo nk'uko ziteganywa n'ingingo ya 93 y'Itegeko ryerekeye igihombo, asanga iburanisha ry'uru rubanza rikomeje, ntacyo byabangamira ku migendekere y'izahura kandi ko uru rubanza ruramutse ruciwe harashyizweho umucungamutungo, ari byo byafasha ababerewemo imyenda kuko bamushyikiriza kopi yarwo na bo bagashyirwa ku rutonde rw'abo agomba kureberera inyungu. Avuga kandi ko ibihe biteganywa n'ingingo ya 12, igika cya gatatu, y'Itegeko ryerekeye igihombo byarenze, ko umwenda uburanwa udafite ingwate, kandi ko ibiteganywa n'ingingo ya 12 y'Itegeko ryerekeye igihombo bitareba gusa abafitiwe umwenda ufite ingwate, ahubwo ibyo iteganya bireba ababerewemo umwenda muri rusange.

[21] Uhagarariye Nsengiyumva Claude, Muhire Viateur, Nsengiyumva Amon, Ntibitura Yusufu, Rukundo Iddy Radjabu na MUSAMA Ltd avuga ko iyo hatanzwe ikirego gisaba gutangiza ikurikirana ry'igihombo, inzira (procédure) yo gutangiza igihombo iba itangiye kandi ko ingingo ya 8 n'iya 11 z'Itegeko ryerekeye igihombo zuzuzanya, zikaba ziteganya ko iburanisha ry'imanza riba rihagaze kugeza igihe urubanza rwemeza igihombo cyangwa rugihakana ruciriwe, hakemezwa igihombo umucungamutungo washyizweho akaba ari we uzahagararira WAP Ltd mu iburanisha ry'uru rubanza, igihombo kitakwemezwa igahagararirwa bisanzwe kandi ko igika cya kabiri cy'ingingo ya 11 kidahindura ibiteganywa n'igika cyayo cya mbere. Asobanura ko akurikije ubunararibonye (expérience) yakuye ku rubanza yarimo aburana mu Rukiko Rukuru rw'Ubucuruzi, umuburanyi umwe akagaragaza ko yatangije inzira y'ikurikirana ry'igihombo Urukiko rugafata icyemezo cyo guhagarika iburanisha ryarwo, na we yemeranya na WAP Ltd ko iyo hatangijwe inzira y'ikurikiranwa ry'igihombo, imanza zitaracibwa zihagarikirwa iburanisha.

Uko Urukiko rubibona

[22] Impaka kuri iki kibazo zigaragaza ko igikwiye gusuzumwa ari ukumenya niba urubanza RCOMA 00092/2023/HCC rurebana n'ikirego cyatanzwe na WAP Ltd cyo gusaba itangizwa ry'ikurikiranwa ry'igihombo cyayo rwatuma iburanisha ry'uru rubanza rihagarikwa kugeza igihe ikirego cyerekeranye n'igihombo cyayo kirangiriye.

[23] Ingingo ya 8, igika cya mbere, y'Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo ivuga ko "Gusaba itangizwa ry'ikurikirana ry'igihombo bikorwa mu kirego gishyikirizwa urukiko rubifitiye ububasha".

[24] Ingingo ya 11, igika cya mbere, y'Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryavuzwe haruguru ivuga ko uhereye ku itariki y'itangizwa ry'ikurikirana ry'igihombo "gutangiza cyangwa gukomeza ibirego by'umuntu ubwe cyangwa uburyo bw'ikurikirana bureba ibintu by'ubereyemo abandi imyenda hamwe n'uburenganzira, inshingano cyangwa uburyozwe by'ubereyemo abandi imyenda biba bisubitswe".

[25] Ingingo ya 12, igika cya mbere, y'itegeko N˚ 075/2021 ryo ku wa 06/12/2021 rimaze kuvugwa iteganya ko "Uburenganzira bw'ababerewemo imyenda bishingiwe kimwe n'abafite uburenganzira bw'ifatira ntibusubikwa n'itangiza ry'urubanza rw'ikurikirana n'irangiza ry'imanza ziturutse ku gihombo." Mu gika cyayo cya kabiri igira iti "Ariko iyo urimo umwenda agaragaje ko afite ubushake bwo gutanga gahunda y'izahura hamwe n'ikirego cye, imyenda yose harimo n'imyenda ifite ingwate hamwe n'uburenganzira bw'ifatira birasubikwa uhereye ku munsi w'ubusabe".

[26] Isesengura ry'ingingo zimaze kuvugwa, zumvikanisha ko gusaba itangizwa ry'ikurikirana ry'igihombo bikorwa mu kirego gishyikirizwa Urukiko rubifitiye ububasha kandi ko uhereye ku itariki icyo kirego gitangiweho, gutangiza cyangwa gukomeza ibirego by'umuntu ubwe cyangwa uburyo bw'ikurikirana bureba ibintu by'ubereyemo abandi imyenda biba bisubitswe, uretse ku myenda ifite ingwate cyangwa mu gihe uberewemo umwenda yasaba gukurirwaho isubikwa akabyemererwa.

[27] Dosiye igaragaza ko WAP Ltd yatanze ikirego gisaba itangizwa ry'ikurikirana ry'igihombo, kandi umwenda uburanwa muri uru rubanza atari umwenda wishingiwe, ndetse ababerewemo imyenda iburanwa muri uru rubanza badafite uburenganzira bw'ifatira. Uretse n'ibyo, n'ubwo nta mwenda wishingiwe, nta n'uburenganzira bw'ifatira, kuko dosiye igaragaza ko WAP Ltd yatanze gahunda y'izahura ku wa 17/10/2022.

[28] Urukiko rurasanga impamvu y'isubika ari ukugira ngo sosiyete isaba itangizwa ry'ikurikirana ry'igihombo cyayo, ntikomeze gukururwa mu manza n'abo ifitiye imyenda kuko kuziburana biba bishobora kuyizahaza kurushaho, umutungo mucye wayo iba isigaranye ikawukoresha muri izo manza, aho gukoreshwa mu nzira yo kuyizahura mu gihe yaba ibyemerewe n'Urukiko mu rubanza rusaba itangizwa ry'ikurikirana ry'igihombo.

[29] Urukiko rurasanga ibyo uhagarariye ZJ CONSTRUCTION COMPANY Ltd n'uhagarariye MEGANEWTON Ltd bavuga ko iburanisha ry'urubanza RCOMAA 00083/2022/CA ridakwiye gusubikwa nta shingiro bifite, kubera impamvu zikurikira :

1) Kuba gutanga ikirego gisaba gutangiza ikurikirana ry'igihombo ubwabyo bihagije kugira ngo imanza zo gukurikirana umwenda sosiyete isaba kuzahurwa ifitiye abandi bantu zibe zihagaze ;

2) Kuba umwenda uburanwa udafite ingwate ;

3) Kuba mu nyandiko yo ku wa 17/10/2022, WAP Ltd yaratanze gahunda y'izahura ;

[30] Kubera izo mpamvu zose, uru Rukiko rurasanga iburanisha ry'urubanza RCOMAA00083/2022/CA rigomba guhagarara kugeza igihe urubanza n° RCOMA 00092/2023/HCC ruri mu Rukiko Rukuru rw'Ubucuruzi ruteganyijwe kuburanishwa ku wa 19/12/2023, WAP Ltd isabamo gutangiza ikurikirana ry'igihombo, ruciriwe burundu.

III. ICYEMEZO CY'URUKIKO

[31] Rwemeje ko inzitizi yatanzwe na WORKERS AFFORDABLE PROPERTIES (WAP) Ltd, ifite ishingiro.

[32] Rwemeje ko iburanisha ry'urubanza RCOMAA 00083/2022/CA risubitswe, kugeza igihe urubanza RCOMA 00092/2023/HCC ku itangizwa ry'ikurikirana ry'igihombo cya WAP Ltd ruciriwe cyangwa igihe ZJ CONSTRUCTION COMPANY Ltd ikuriweho isubika ryo gukurikirana umwenda iberewemo n'iyo sosiyete.

[33] Rwemeje ko igihe iburanisha ry'uru rubanza rizasubukurwa, kizamenyeshwa ababuranyi hifashishijwe system ya *IECMS*.

[34] Ruvuze ko amagarama y'urubanza abaye asubitswe.