NEXTGEN DEVELOPERS LTD v. NFCS LTD N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00001/2024/CA (Kamere, P.J.) 21 Kamena 2024]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Irangizarubanza – Irangizarubanza rifitiwe ibimenyetso byuko ryatangiye gukorwa hubahirizwa ibyategetswe n'Urukiko, ntabwo rihagarikwa.

Incamake y'ikibazo: NFCS Ltd yagiranye amasezerano na NEXTGEN DEVELOPERS Ltd yo kuyisiziriza ibibanza bibiri bibaruwe kuri UPI: 1/02/06/1772 na UPI: 1/03/01/06/1763 bizubakwaho amazu, ayo masezerano ntiyubahirizwa bituma NFCS Ltd itanga ikirego, urubanza ruburanishwa kugera mu Rukiko rw'Ubujurire, ndetse hanagobokamo uwitwa Gasirikare Evariste.

Urukiko rw'Ubujurire rwaciye urubanza rwemeza ko NEXTGEN DEVELOPERS Ltd igomba kwishyura NFCS Ltd amafaranga angana na 43.920.563 Frw, ikanishyura Gasirikare Evariste angana na 91.920.563 Frw. Urwo rubanza rutangira inzira yo kurangizwa.

NEXTGEN DEVELOPERS Ltd yatanze ikirego mu Rukiko rw'Ubujurire isaba gusubirishamo urubanza ingingo nshya, ndetse itanga ikirego cyihutirwa isaba ko irangizarubanza ryaba rihagaze kugeza igihe urubanza rwasubirishijwemo ingingo nshya ruzaba rumaze gucibwa.

NFCS Ltd na Gasirikare bombi mu myiregurire yabo bahuriza ku kuba urubanza rwaratangiye kurangizwa ndetse ku mafaranga NEXTGEN DEVELOPERS Ltd yategetswe kwishyura hari ayo yishyuye, bakavuga ko ikirego kidakwiye guhabwa ishingiro.

Incamake y'icyemezo: Irangizarubanza rifitiwe ibimenyetso byuko ryatangiye gukorwa hubahirizwa ibyategetswe n'Urukiko, ntabwo rihagarikwa.

Ikirego nta shingiro gifite.

Nta mategeko yashingiweho

Imanza zifashishijwe:
Urubanza RCOM 00004/2021/CA; Musabyimana Célestin, Somayire Rubona Fredy vs ECOBANK RWANDA Ltd rwaciwe n'Urukiko rw'Ubujurire ku wa 10/11/2021.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rushingiye ku masezerano NFCS Ltd yagiranye na NEXTGEN DEVELOPERS Ltd ku wa 28/06/2019 yo kuyisiziriza ibibanza bibiri bibaruwe kuri UPI : 1/02/06/1772 na UPI :

1/03/01/06/1763 bizubakwaho amazu. Gasirikare Evariste yagobotse mu rubanza rugeze ku rwego rw'ubujurire mu Rukiko Rukuru rw'Ubucuruzi.

[2] Urubanza rwavuzwe haruguru rwarakomeje kugera mu Rukiko rw'Ubujurire rwandikwa kuri RCOMAA 00114/2022/CA, aho rwaciwe ku wa 29/09/2023, Urukiko rw'Ubujurire rwemeza ko ubujurire bwa NFCS Ltd bufite ishingiro kuri byose naho ubujurire bwa Gasirikare Evariste bubwuririyeho bukagira ishingiro kuri bimwe; Rwemeza ko nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza rwajuririwe amafaranga NEXTGEN DEVELOPERS Ltd igomba kwishyura angana na 135.841.125 Frw, ko mu mafaranga amaze kuvugwa 43.920.563 Frw ari yo NEXTGEN DEVELOPERS Ltd igomba kwishyura NFCS Ltd naho 91.920.563 Frw ikayishyura Gasirikare Evariste. Rutegeka NEXTGEN DEVELOPERS Ltd kwishyura NFCS Ltd 43.920.563 Frw; Rutegeka NEXTGEN DEVELOPERS Ltd kwishyura Gasirikare Evariste 91.920.563 Frw; Rwibutsa NEXTGEN DEVELOPERS Ltd kwishyura NFCS Ltd 1.220.000 Frw y'ikurikiranarubanza, ibihembo bya Avoka n'igarama ry'urubanza ku nzego zabanje yategetswe n'Urukiko mu rubanza rwajuririwe; kandi ruvuga ko amagarama y'urubanza yatanzwe na NFCS Ltd kuri urwo rwego ahwanye n'ibyarukozwemo.

[3] NEXTGEN DEVELOPERS Ltd ivuga ko nyuma y'uko urubanza RCOMAA 0114/2022/CA yaburanagamo na Gasirikare Evariste na NFCS Ltd rupfundikiwe, haje kugaragara ibimenyetso bituma urubanza rusubirishamo ingingo nshya, bityo ku wa 15/12/2023, NEXTGEN DEVELOPERS Ltd itanga mu Rukiko rw'Ubujurire ikirego cyo gusubirishamo urubanza ingingo nshya, cyandikwa kuri RCOMAA 00054/2023/CA.

[4] Ku wa 03/01/2024, NEXTGEN DEVELOPERS Ltd yatanze kandi muri uru Rukiko ikirego cyihutirwa cyandikwa kuri RCOM 00001/2024/CA. Iburanisha ry'urubanza ryashyizwe ku wa 04/03/2024, rurasubikwa kugira ngo Abavoka babiri bagonganiye muri uru rubanza ku guhagararira NFCS Ltd bashyikirize Urukiko procurations bahawe n'ababatumye, rwongera gusubikwa ku mpamvu z'ababuranyi ndetse no ku bw'umunsi w'ikiruhuko watanzwe ku wa 08/04/2024, kugeza rushyizwe ku wa 05/06/2024 aho rwaburanwe NEXTGEN DEVELOPERS Ltd ihagarariwe na Me Ankunda Edgar na Me Bugumya Jackson, NFCS Ltd ihagarariwe na Me Mberabagabo Balinda Richard agahagararira na Gasirikare Evariste, urubanza rurapfundikirwa, isomwa ryarwo rishyirwa ku wa 21/06/2024.

[5] Uhagarariye NEXTGEN DEVELOPERS Ltd avuga ko kuba kurangiza urubanza rusubirishwamo ingingo nshya byaratangiye kandi nyamara urubanza rusubirishamo ingingo nshya ruzagira ingaruka ku rubanza rwose, asaba Urukiko gutegeka ko kurangiza urubanza RCOMAA 0114/2022/CA biba bihagaze kugeza igihe urubanza rurusubirishamo ingingo nshya ruciriwe rukazaba itegeko. Ashingira ku biteganywa n'ingingo ya 173 n'iya 185 z'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[6] Uburanira NFCS na Gasirikare Evariste anenga ko nta mpamvu zihutirwa zigaragazwa na NEXTGEN DEVELOPERS Ltd zishingirwaho hatangwa ikirego cyihutirwa gihagarika irangizwa ry'urubanza RCOMAA 00054/2023/CA nk'uko biteganywa n'ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Asobanura kandi ko NEXTGEN DEVELOPERS Ltd itagaragaza ibyihutirwa bituma urubanza RCOMAA 00054/2023/CA rutarangizwa, ndetse

n'ibimenyetso ishingiraho, bityo ko ikirego cyayo kitagomba guhabwa ishingiro nk'uko biteganywa n'ingingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru igira iti: "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda (...) ".

[7] Hashingiwe kuri izi mpaka hagati y'ababuranyi, harasuzumwa ikibazo cyo kumenya niba hari ibimenyetso urega agaragaza by'uko hari ubwihutire bwatuma irangizwa ry'urubanza RCOMAA 00114/2022/CA ryatangiye rihagarikwa.

II. ISUZUMWA RY'IKIBAZO KIGIZE IMPAKA MU RUBANZA

- **Kumenya niba hari ibimenyetso urega agaragaza by'uko hari ubwihutire bwatuma irangizwa ry'urubanza RCOMAA 00114/2022/CA ryatangiye rihagarikwa**

[8] NEFCS Ltd na Gasirikare Evariste bavuga ko nta nyungu NEXTGEN DEVELOPERS Ltd igifite ku rubanza, kuko iregera gusaba guhagarika irangizwa ry'urubanza RCOMAA 00114/2022/CA mu gihe urubanza RCOMAA 00054/2023/CA rutaracibwa, kandi nyamara urwo rubanza rwararangijwe n'Umuhesha w'Inkiko Rukiriza Karega Eugène ubu wamaze gufatira umutungo w'amafaranga wa NEXTGEN DEVELOPERS Ltd, ikishyura gutyo Gasirikare Evariste 92.070.563 Fw. Babigaragarisha ikimenyetso cya bordereau ya Banki yo ku wa 22/02/2024 kiri muri dosiye ku mugereka nº 002.

[9] Abahagarariye NEXTGEN DEVELOPERS Ltd bavuga ko ibivuzwe atari byo, ko bategetswe kwishyura yose hamwe 135.841.125 Frw, ko hishyuwe gusa Gasirikari Evariste agera kuri 91.920.563 Frw, naho angana na 43.920.563 Frw ya NFCS Ltd ataratangwa kubera ibibazo biri muri NFCS Ltd, bityo ko ari yo bifuza ko yaba ahagaritswe ntakorweho irangizarubanza ku gahato ngo ayo mafaranga ahabwe NFCS Ltd.

[10] Me Mberabagabo Balinda Richard uyihagarariye NFCS Ltd avuga ko ikiregerwa gitangwa n'uregwa, kigashimangirwa n'uwiregura, ko NEXTGEN DEVELOPERS Ltd yaregeye ihagarikwa ryo kurangiza urubanza ku gufatira amafaranga yose yatsindiwe kwishyura, ko nyuma y'uko hagaragajwe ko hari igice cyarangiye kurangizwaho urubanza itemerewe guhindura icyo yari yaregeye ngo noneho iregere 43.920.563 Frw asigaye kuko atari cyo kirego yatanze. Ashingiye ku ngingo ya 6 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (CPCSSA) aho iteganya ko Urukiko ruca urubanza ku cyaregewe kandi kuri icyo cyonyine, avuga ko kwemerera NEXTGEN DEVELOPERS Ltd ibyo isaba kwaba ari uguhindura ikirego bitemewe n'amategeko, kandi ko hashingiwe ku ngingo ya 110 y'Itegeko ry'ibimenyetso iteganya ko ukwiyemerera k'umuburanyi mu rubanza kumutsindisha, NEXTGEN DEVELOPERS Ltd itsindwa no kuba nayo ubwayo yemera ko urubanza isabira guhagarikirwa irangizwa rwamaze kurangizwa.

[11] Ku birebana n'ubwihutirwe nyir'izina bwo guhagarika irangizwa ry'urubanza, abahagarariye NEXTGEN DEVELOPERS Ltd mu iburanisha basobanura ko ubwihutirwe bwo guhagarika irangiza ry'urubanza bushingiye ku kuba amafaranga uwo bahagarariye ashaka kuramira ari aya Leta, ko NEXTGEN DEVELOPERS Ltd ikora imishinga mu nyungu za Leta

yubaka amazu aciriritse ku nkunga ya World Bank, ko NFCS Ltd iramutse iyatwaye Leta yaba iguye mu kaga, ari yo mpamvu basabye ko iryo rangizarubanza rihagarara. Bavuga kandi ko urubanza ruramutse rurangijwe rwose byagira ingaruka ku kirego cy'iremezo batanze, cyane ko ngo habayeho uburiganya (fraude) muri NFCS Ltd, ko nta muyobozi wayo uhari kuko Niyongere Zacharie yatorotse ubutabera, ku buryo ayo mafaranga aaramutse ahawe NFCS Ltd, NEXTGEN DEVELOPERS Ltd itazabona uko iyagaruza mu gihe yazaba itsinze urubanza rw'iremezo.

[12] Me Mberabagabo Balinda Richard uburanira NFCS Ltd avuga ko ibyo ababuranira NEXTGEN DEVELOPERS Ltd bavuga nta bimenyetso babigaragariza, kandi ko n'iyo yaba ari amafaranga ya Leta igamije kuramira atari bo bayiburanira, ko nta n'ikigaragaza ko Leta yagwa mu kaga. Avuga kandi ko uwo aburanira atatorotse ubutabera, ko nta bwihurirwe buri mu byo basaba, ko iki kirego nta shingiro gifite.

UKO URUKIKO RUBIBONA

[13] Urukiko rw'Ubujurire rubona ko ikibazo ababuranyi bafitanye gishingiye ku kumenya niba irangizwa ry'urubanza RCOMAA 00114/2022/CA ryahagarikwa mu gihe hari ibimenyetso bigaragaza ko rwatangiye kurangizwa, Gasirikare Evariste akabona ibyategetswe muri urwo rubanza naho kuri NFCS Ltd yo ikaba itarabona 43.920.563 Frw yatsindiye muri urwo rubanza. Ababuranyi bafitanye kandi impaka ku kumenya niba haba harimo ubwihutirwe bwatuma irangizarubanza rihagarara. Isuzumwa ry'izi mpaka zikaba rikaba rigomba gushingira ku guhuza ibiteganyijwe mu mategeko n'imanza zaciwe n'inkiko nkuru kuri bene izi mpaka.

[14] Urukiko rw'Ubujurire rubona ko ikirego cyatanzwe muri uru rubanza nk'uko bigarara mu myanzuro ya NEXTEGEN DEVELOPERS Ltd ari ugusaba Urukiko rwaregewe gutegeka ko kurangiza urubanza RCOMAA 00114/2022/CA biba bihagaze kugeza igihe urubanza rusubirishamo ingingo nshya rubaye itegeko. Abisaba urega agaragaza ko yashingiye ku biteganywa n'ingingo ya 173 n'iya 185 z'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu.

[15] Urukiko rurasanga, nk'uko bigaragazwa na "bordereau de transfert" yo ku wa 22/02/2024, amafaranga 91.920.563 Frw yarageze kuri Gasirikari Evariste yari agenewe mu rwego rwo kurangiza urubanza RCOMAA 00114/2022/CA, bityo icyo baregeye kikaba kidashoboka kubera ko Urukiko rutabuza ko ayo mafaranga ava mu maboko ya NEXTGEN DEVELOPERS Ltd kandi yaramaze kwishyurwa uwayagenewe mu rwego rwo kurangiza urubanza ubu rusabirwa guhagarikirwa irangizwa. Ibyo ni na ko uru Rukiko rwabibonye mu rubanza RCOM 00004/2021/CA rwaciwe ku wa 10/11/2021 hagati ya Musabyimana Célestin, Somayire Rubona Fredy na ECOBANK RWANDA Ltd ku kirego cyihutirwa cyo gusaba kudashyira amafaranga ya cyamunara kuri konti ya ECOBANK RWANDA Plc mu gihe urubanza 00001/2021/CA rutaraburanishwa, maze Urukiko ntirwabiha ishingiro kuko rwasanze transfert y'ayo mafaranga yaramaze gukorwa akagera kuri compte ya ECOBANK RWANDA Ltd ku buryo rutategeka ko agarurwa kandi yaramaze kuhagera[1].

[1] Reba igika cya 11 cy'urwo rubanza.

[16] Urukiko rw'Ubujurire rwifashije uwo murongo umaze kuvugwa, rurasanga urubanza RCOMAA 00114/2022/CA rwatangiye kurangizwa, aho Gasirikari Evariste yabonye ubwishyu bwe bungana na 91.920.563 Frw yari agenewe buvuye kuri NEXTGEN DEVELOPERS Ltd, irangiza ry'urubanza risigaye kuri NFCS Ltd rya 43.920.563 Frw naryo ridashobora gutandukana n'icyaregewe muri rusange nk'uko bisabwa na NEXTGEN DEVELOPERS Ltd. Ibyo kandi ni byo bihura n'ibiteganywa n'ingingo ya 6 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[2], Urukiko rukaba rutategeka ko urwo rubanza ruhagarikirwa irangizwa ku gice cyasigaye kitarangijwe cya NFCS Ltd. Uretse no kuba atari cyo cyaregewe, nyamara kandi urega ntashobora kwerekana ko NEXTGEN DEVELOPERS Ltd iramutse iyatsindiye mu rubanza rw'iremezo NFCS Ltd yabura ubwishyu, kuba umuyobozi wa sosiyeti ifite ubuzima gatozi yaba atari mu Rwanda bikaba ubwabyo bitaba impamvu yashingirwaho hemezwa ko iyo sosiyeti idafite umutungo wavamo ubwishyu by'ibyo yatsindirwa, kuko umutungo wa sosiyeti ifite ubuzima gatozi utandukanye n'umuntu ku giti cye uyibereye umuyobozi.

[17] Ku kibazo cyo kumenya niba haba harimo ubwihutirwe bwatuma irangizarubanza rihagarara nk'uko biteganywa n'ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu[3], Urukiko rurasanga isesengura ry'iyi ngingo ryakozwe mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga nko mu rubanza RC 00002/2016/CS -RC 0003/16/CS rwaciwe ku wa 14/10/2016 hagati ya Kayitsinga Aléxis, Kanyamibwa Immaculée na Nsangineza Céléstin, ryarerekanye ko kugira ngo bihabwe ishingiro ibirego byihutirwa bigomba kuba byujuje ibintu bitatu by'ingenzi aribyo: 1) ubwihutirwe kugira ngo bigire icyo biramira, ku buryo bitinze haba igihombo kitagira igaruriro, 2) kuba icyemezo ari icy'agateganyo, no 3) kuba kitagomba kubangamira urubanza mu mizi[4].

[18] Urukiko rw'Ubujurire, rushingiye ku biteganywa n'iyi ngingo ya 185 ndetse n'uwo murongo wafashwe n'Urukiko rw'Ikirenga, rurasanga nta bwihutirwe bwo guhagarikisha irangiza ry'urubanza RCOMAA 00114/2022/CA NEXTGEN DEVELOPERS Ltd yashoboye kugaragariza Urukiko mu buryo buhuje n'umurongo uriho ugomba gusuzumirwamo ishingiro ry'ibirego byihutirwa ; bityo ikirego cyihutirwa cya NEXTGEN DEVELOPERS Ltd kikaba nta shingiro gifite.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko ikirego cyihutirwa cyatanzwe na NEXTGEN DEVELOPERS Ltd isaba guhagarika irangizwa ry'urubanza RCOMAA 0114/2022/CA mu gihe hataracibwa urubanza RCOMAA 00054/2023/CA, nta shingiro gifite ;

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[2] Iyo ngingo ya 6 iteganya ibi bikurikirira: "*Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza ku manza iteganyijwemo. Mu iburanisha, umuburanyi ntashobora guhindura ikiburanwa ababuranyi bose batabyemeye. Ikiburanwa ntigishobora guhindurwa mu rukiko rwajuririwe*".

[3] Iyo ngingo iteganya ko "*Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe Urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w`aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara".*

[4] Reba igika cya 17 cy'urwo rubanza.

[20] Ruvuze ko amafaranga y’amagarama y’uru rubanza yatazwe na NEXTGEN DEVELOPERS Ltd ahwanye n’ibyarukozwemo.