CELA COMPANY LTD v PHILIPP COTTON

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOM 00014/2019/HCC – (Kibuka, P.J.,) 10 Mata 2019]

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 imiburanishirize y'imanza z'ubucuruzi – Uburyo bw'ukuregera ikirego kirebana n'ugusaba guhatira umuyobozi kubahiriza icyemezo cy'Urukiko. – Ikirego kireba umuyobozi wanze kubahiriza ibyategetswe mu rubanza, gitangwa mu buryo bw'inyandiko nsobanurakiregо itanzwe n'umuburanyi umwe.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Guhatira umuyobozi kubahiriza icyemezo cy'urukiko – Igihano gihatira umuyobozi kurangiza urubanza – Icyemezo cy'urukiko kiba kigomba kubahirizwa n'abo bireba bose harimo n'abayobozi b'inzego za Leta – Iyo batabyubahirije, urukiko rubategeka kwishyura ibitarashyizwe mu bikorwa kandi rukaba rwagena n'igihano cyo kutarangiza urwo rubanza.

Incamake y'ikibazo: CELA Company Ltd yagiranye imanza na University of Rwanda iza no kuyitsinda ariko University of Rwanda ntiyubahiriza ibyari bikubiye mu manza baburanye zarangiriye mu Rukiko Rukuru rw'Ubucuruzi.

CELA Company Ltd yaje gutanga ikirego mu buryo bw'inyandiko nsobanurakiregо isaba gutegeka Phipp Cotton, Umuyobozi wa University of Rwanda kwishyura amafaranga yari isigaje kuyishyura ndetse no kumugenera igihano gihatira kwishyura kubera kudashyira mu bikorwa ibyategetswe n'urukiko.

Philipp Cotton yagobokeshejwe mu rubanza atangira atanga inzitizi ebyiri (2) zituma ikirego cya cya CELA Company Ltd kitakwakirwa. Inzitizi ya mbere yabanje gusobanura ko Urukiko Rukuru rw'Ubucuruzi rudafite kuburanisha ikirego cyatanzwe mu rwego rwa mbere kuko ngo mu bubasha bwarwo umushingamategeko atabivuze, ko ahubwo yakagombye kuregwa mu manza z'ubutegetsi kuko ingingo uwareze ashingiraho ya 184 y'Itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iherereye mu bice birebana n'imanza z'ubutegetsi. Yatanze indi nzitizi ya kabiri avuga ko ikirego cy'uwareze yagitanze nabi kuko kitagomba gutangwa mu buryo bw'inyandiko nsobanurakiregо itanzwe n'umuburanyi umwe kuko nta bwihutire burimo, ko hagomba kuba hatarimo impaka kandi akaba abona zirimo ndetse ko atari uwareze atariwe wari gusaba ko agobokeshwa mu rubanza. Kuri izi nzitizi, kuya mbere uwareze yireguye avuga ko inzitizi yatanzwe na Phipp Cotton nta shingiro ifite kuko amategeko yateganyije ko ikirego yatanze cyo guhatira umuyobozi kurangiza urubanza gitangwa mu rukiko rwaruciye bwa mbere; bityo ko Urukiko Rukuru rw'Ubucuruzi arirwo rufite ububasha.

Ku cyijyanye n'inzitizi ya kabiri, uwareze yireguye avuga ko nayo nta shingiro ifite bitewe n'uko hari ubwihutire kuko ifitiye amadeni banki kandi ikaba iri ku gitutu cyayo; ko kandi uburyo yanzemo ikirego abona bukurikije amategeko.

Kubirebana n'urubanza mu mizi, CELA Company Ltd isobanura ko mu rubanza RCOMA 00748/2016/HC/HCC, Universty of Rwandayaratsinzwe maze itegekwa Urukiko ruyitegeka kuyishura amafaranga y'imirimo yakoze ariko yishuyeho amafarnga macye ikaba kandi yanditse n'ibaruwa ivuga ko itazongera kwishyura ibyo yategetswe n'Urukiko, bityo niyo mpamvu yaregeye uru Rukiko kugira ngo ibashe kurenganurwa

Philip Cotton Umuyobozi wa University of Rwanda, yisobanura kuri iyi mpamvu y'ikirego cya CELA Company Ltd, avuga ko urega yitiranyije icyemezo cy'Urukiko, kuko icyo Urukiko Rukuru rw'Ubucuruzi rwategetse, atari indishyi mbumbe zigomba kwishyurwa na Kaminuza y'u Rwanda, ahubwo byari facture igomba gukorwa ikishyurwa mu buryo amasezerano yateganyaga hagati ya kaminuza na rwiyemezamirimo kandi Kaminuza ikaba ayo mafaranga yarayishyuye, bityo akaba asanga ko ntacyo yarakwiye gutegekwa gukora cyangwa guhatira kurangiza urubanza, kuko ibyo University of Rwanda yategetswe, atari Bwana Philip Cotton wabitegetswe, ariko nyamara kandi University of Rwanda yarabirangije..

Incamake y'icyemezo: I. Umuyobozi wanze kubahiriza ibyategetswe mu rubanza ashobora guhamagarwa mu rukiko rwafashe icyemezo kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, bisabwe n'umuburanyi ubifitemo inyungu. Bityo, inzitizi yatanzwe n'uwagobokeshejwe mu rubanza nta shingiro ifite kuko Urukiko Rukuru rw'Ubucuruzi arirwo rufite ubusha bwo kumuburanisha kuko arirwo rwaciye urubanza rwarezwemo urwego rwa Leta ruhagarariwe n'uwagobokeshejwe.

2. Ikirego kireba umuyobozi wanze kubahiriza ibyategetswe mu rubanza, gitangwa mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe ku buryo umuyobozi watumijwe mu rubanza adashobora kubyuririraho asaba ko kitakwakira kuko cyatanzwe nabi kandi ariko umushingamategeko yabiteganyije.

3. Umuyobozi w'Urwego rwa Leta wanze kurangiza ibikubiye mu rubanza ategekwa kubahiriza ibiruvugwamo ku buryo bitabuza n'urukiko kumugenera igihano cyo kutarangiza urwo rubanza mu gihe atabyubahirije.

Inzitizi y'iburabusha yatanzwe n'uwagobokeshejwe nta shingiro zifite.
Ubujurire bufite ishingiro.
Irangiza rubanza ry'agateganyo rigumyeho.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 184.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] CELA Company, Ltd isobanura ko mu rubanza yaburanye na Real Construction and Supply Services Ltd na University od Rwanda (Rukara College of Education) rwo kuwa 29/06/2017, uru Rukiko rwategetse University of Rwanda kuyishyura amafranga yaregeye akomoka ku mirimo yari yarakozwe ku nyubako ya *Laboratoire* yo muri University of Rwanda, Ishamyi rya Rukara. CELA Company Ltd ivuga ko University of Rwanda, LTD yanze gushyira mu bikorwa icyo cyemezo, ikayishyura amafaranga make gusa muyo yategetswe.

[2] CELA Company, LTD yahisemo rero kuregera uru Rukiko kuba Bwana Philip COTTON, umuyobozi wa Universty of Rwanda adashaka gushira mu bikorwa ibyemejwe n'Urukiko, bityo uru Rukiko rutegeke Umuyobozi ubwe uregwa kwishyura, mu gihe atabikora ku itariki yategetswe, agatanga igihano gihatira kurangiza urubanza nk'uko biteganywa n'amategeko.

[3] Philip Cotton wagobokeshejwe muri uru rubanza, yabanje gutanga inzitizi ebyiri zo kutakira iki kirego ku mpamvu z'uko kitari mu bubasha bw'uru Rukiko, no ku mpamvu z'uko urega yatanze ikirego mu buryo budakurikije amategeko; nyuma y'izi nzitizi nubwo yireguye ku mpamvu ikirego gishingiyeho, nayo agasobanura ko idafite ishingiro.

[4] Ikigiye gusuzumwa no gufatwaho umwanzuro muri iki kirego ni (1) Kumenya niba ikirego kiri mu bubasha bw'uru Rukiko. (2) Kumenya niba ikirego cyatanzwe mu buryo bwubahirije amategeko. Mu gihe rwasanga izi nzitizi zifite ishingiro, nibwo rusuzuma ingingo ya gatatu, (3) Kumenya niba Philip COTTON, Umuyobozi wa Universty of Rwanda yategekwa kwishyura CELA Company, Ltd, Rwf 54.915 000.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

A) Gusuzuma niba uru Rukiko rufite ububasha bwo kuburanisha iki kirego.

[5] Philip Cotton yatanze inzitizi y'iburabubasha bw'Urukiko Rukuru rw'Ubucuruzi, ashingiye kuba ingingo ya 82, igika cya 1, icya 3, n'icya 4, y'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, igaragaza ububasha bw'Urukiko Rukuru ku rwego rwa mbere; aho iteganya mu gika cya 1, ko Urukiko Rukuru rw'Ubucuruzi ruburanisha ku rwego rwa mbere ibirego bisaba kurangiriza mu Rwanda ibyemezo n'imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro byafashwe n'Inkiko zo mu mahanga. Mu gika cya 2, ko Urukiko Rukuru rw'Ubucuruzi rufite kandi ububasha bwo kuburanisha ibirego bisaba kurangiriza mu Rwanda inyandikompamo zifite ikigaragaza ko zanditswe n'abategetsi bo mu mahanga, iyo zujuje ibyangombwa bikurikira: a) iyo impamvu bazisabira irangizwantaho zinyuranyije n'amategeko rusange ndemyagihugu, kimwe n'amahame ashingiweho n'amategeko y'u Rwanda; b) iyo hakurikijwe amategeko y'Igihugu zandikiwemo, zujuje ibyangombwa byose bigaragaza ko ari imvaho. Mi gika cya 3, ko Urukiko Rukuru rw'Ubucuruzi ruburanisha kandi imanza zigamije gusuzuma niba ibyemezo byafashwe n'abakemurampaka byubahirije amategeko.

[6] Philip Cotton asobanura asobanura ko uko bigaragara muri ibi bika bitatu by'iyi ngingo, ntaho Urukiko Rukuru rw'Ubucuruzi rukura ububasha bwo kuburanisha ku rwego rwa mbere

Umuyobozi wanze kubahiriza ibyategetswe mu rubanza urwo arirwo rwose, rwaba n'urwo yaciye. Ko ibiteganywa n'ingingo ya 184 y'itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, CELA Company, Ltd Ishingiraho, bireba inkiko zifite ububasha bwo kuburanisha imanza z'ubutegetsi, nk'uko n'umutwe zibarizwamo ibigaragaza, ko ari imiburanishirize y'imanza z'ubutegetsi. Bityo rero, Urukiko Rukuru rw'Ubucuruzi rukaba ntaho ruhuriye n'ibibazo by'ubutegetsi. Ko kuba ibisabwa bishingiye ku miburanishirize y'imanza z'ubutegetsi, uru Rukiko rukwiye kuvuga ko rudafite ububasha bwo kuburanisha uru rubanza, rushingiye ku miburanishirize y'imanza zitari mu bubasha bwarwo.

[7] CELA Company, Ltd yiregura kuri iyi nzitizi, ivuga ko iregera uru Rukiko ubwishyu bukomoka ku mikirize y'urubanza rwaciwe n'uru Rukiko mu mwaka wa 2016. Ko rero kuba hari Umuyobozi w'umukozi wa Leta wanze kwishyura ubwishyu bwategetswe n'Urukiko, yitwaje «budget» n'ibindi, ariyo mpamvu CELA Company, Ltd yatanze ikirego ishingiye ku biteganwa mu ngingo ya 184, igika cya kane, kivuga ko icyo kirego gishyikirizwa Urukiko rwaciye urubanza. Ko rero iki kirego cyayo kirega umuyobozi wanze kubahiriza ibyo Urukiko rwategetse. Hakaba kandi mu kirego harimo ubwihutire kuko urega afite imyenda ya Banki arimo kwishyuzwa. Ko rero iyi nzitizi ya Philip Cotton idafite ishingiro, kuko Itegeko ryemera kuregera uru Rukiko umuyobozi wanze kurangiza urubanza rwaciwe n'uru Rukiko.

UKO URUKIKO RUBIBONA

[8] Rushingiye ku bisobanuro bitangwa n'ababuranyi bombi kuri iyi nzitizi y'iburabubasha bw'uru Rukiko; rushingiye kuba CELA Company, Ltd yaregeye uru Rukiko Rukuru rw'Ubucuruzi, Bwana Philip Cotton nk'Umuyobozi wa University of Rwanda, gutegekwa kwishyura CELA Company, Ltd amafaranga (asigaye mu) yategetswe n'uru Rukiko mu rubanza rwaciye RCOMA 00748/2016/CHC/HCC rwaciwe kuwa 29/06/2017; rushingiye kandi kuba, nubwo ingingo za 183 na 184 z'Itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, zashinzwe n'Umushingamategeko (Lawmaker) mu Mutwe w' "IMIBURANISHIRIZE Y'IMANZA Z'UBUTEGETSI"; bigaragara ariko muri uyu mutwe ko ugizwe n'Ibyiciro bibiri, aribyo icya mbere "IKIREGO GISABA GUKURAHO IBYEMEZO BY'UBUTEGETS N'IBURANISHA RY'URUBANZA MU MIZI YARWO", iki cyiciro kikagira nacyo utwiciro tubiri, aritwo; aka mbere "IKIREGO GISABA GUKURAHO IBYEMEZO BY'UBUTEGETSI" N'aka kabiri, "IKIREGO CYEREKEYE IBURANISHA RY'URUBANZA RW'UBUTEGETSI MU MIZI YARWO". Mu gihe ariko Icyiciro cya kabiri cy'uru Mutwe, cyiswe "IGIHANO GIHATIRA KUBAHIRIZA ICYEMEZO CY'URUKIKO".

[9] Isesengura ry'ibyo Umushingamategeko yateganije muri uyu Mutwe w'Itegeko, na cyane cyane ibyo yateganije mu byiciro bibiri byayo, yerekana ko koko uyu mutwe ugena uburyo Imanza zo mu rwego rw'ubutegetsi ziregerwa n'uko ziburanishwa. Ikigaragara na none, n'uko mu cyiciro cya mbere hagaragazwa ahanini uko haregwa hakanaburanishwa imanza (z'ubutegetsi, bivuga) ziregwamo ibyemezo byafashwe n'Inzego z'Ubutegetsi. Mu gihe mu cyiciro cya kabiri, "IGIHANO GIHATIRA KUBAHIRIZA ICYEMEZO CY'URUKIKO", bigaragara ko kinagena uko bigenda mu manza zose (zitari gusa izaciwe mu rwego rw'ubutegetsi mu mizi) iyo habaye umuyobozi (cyangwa umukozi weze wo mu rwego rw'Ubutegetsi/Administratif) utubahiriza

(udashyira mu bikorwa) icyemezo (cyose) cy'Urukiko. Hakaba aribwo ibi bigenwa n'uyu mutwe kuko hajemo uruhare rw'uwo muyobozi.

[10] Rushingiye kuri ibi bisobanuro, binashimangirwa n'uko igika cya mbere cy'ingingo ya 183 y'Itegeko rivuzwe hejuru, kigena 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." No mu zindi ndimi zikoreshwa muri iri Tegeko, havugwa "When a judicial decision." (mu Cyongereza), kandi "Lorsqu'une décision juridictionnelle." (mu Gifaransa); bisobanura neza ko izi ngingo zitagena gusa imanza zaciwe mu rwego rw'Ubutegetsi, ahubwo ikaba ari imanza zose zaciwe n'Inkiko, zabaye Itegeko, zikaba haribyo zategetsemo Leta, izindi nzego z'Ubutegetsi cyangwa urundi rwego rwa Leta, kugira ibyo zikora. Kuko izi nzego zitaburana gusa imanza z'ubutegetsi; ziburana n'izindi manza, harimo n'iz'ubucuruzi.

[11] Rushingiye kuri ibi rubonye, no kuba ingingo ya 184 y'Itegeko rimaze kuvugwa, igena mu gika cyayo cya mbere, ko "Umuyobozi wanze kubahiriza ibyategetswe mu rubanza ashobora guhamagarwa mu rukiko rwafashe icyemezo kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza, bisabwe n'umuburanyi ubifitemo inyungu (…)" Rusanga kuba urubanza RCOMA 00748/2016/CHC/HCC rwaciwe n'uru Rukiko, nirwo rero rufite ububasha bwo kuburanisha iki kirego cya CELA Company, Ltd. Rusanga rero iyi nzitizi yatanzwe na Philip COTTON idafite ishingiro.

B) Gusuzuma niba ikirego cya CELA Company, Ltd cyatanzwe mu buryo bwubahirije amategeko.

[12] Philip Cotton asobanura iyi nzitizi ye ya kabiri, avuga ko asanga CELA Company, Ltd yaratanze ikirego mu buryo bw'inyandiko nsobanurakirego itanzwe n'ababuranyi, kandi nyamara isaba ko Urukiko rumutegeka kwishyura amafaranga 78,887,854 Frw; ubu buryo bukaba bwashingirwaho kutakira iki kirego. Kuko hifashishije itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu ngingo yaryo ya 189, igika cya mbere, isobanura neza ko « Inyandiko nsobanurakirego itanzwe n'umuburanyi umwe ni uburyo budasanzwe bwo kuregera umucamanza umusaba kugira ibyo aramira mu buryo bwihuse. Ibikubiye muri iyo nyandiko bigomba kandi kuba ari ibibazo bigaragara ko nta mpaka biteye ku buryo byaba ngombwa ko undi muburanyi ahamagarwa. » Philip Cotton asanga muri iyi ngingo y'itegeko, harimo ibintu bitatu, a) Kuba hari ibigomba kuramirwa, b) kuba nta mpaka ibyo bibazo biteye, c) kuba urega atari we ufata iya mbere mu guhamagaza cyangwa gusaba kugobokesha undi muburanyi.

[13] Philip Cotton asanga rero, nk'uko bimaze gusobanurwa mu gika kibanziriza iki, nta bibazo urega agaragaza byihutirwa ku buryo ikirego cye cyagombaga kuba mu bwoko bw'ikirego gitanzwe n'umuburanyi umwe ku buryo umucamanza agomba kugifataho icyo cyemezo kugira ngo agire ibyo aramira mu buryo bwihuse. Ko ibi aribyo byanemejwe n'Urukiko rw'Ubucuruzi rwa Huye mu Urubanza RCOM 00003/2016/TC/Hye aho sosiyite yitwa Mount Meru Petroleum (Rwanda) Ltd yari yarareze isaba ko HASHI yimurwa muri sitasiyo; umucamanza ategeka ko, kugira ngo hatangwe ikirego cy'inyandiko y'ikibazo kitanzwe n'umuburanyi umwe, ni ngombwa ko icyemezo cyifuzwa kigomba gufatwa kiba ari icyemezo cy'ifatira ry'agateganyo, gisabwa umucamanza kugira ibyo aramira mu buryo bwihuse cyane, ku buryo kigomba kuramirwa kitarangirika. Philip Cotton akaba avuga rero ko ikirego cya CELA Company Ltd kitihutirwa

cyane ko CELA Company Ltd yishyuwe igice cya nyuma cy’amafaranga, hari kuwa 19/11/2018, ikaba yaraje gutanga ikirego kuwa 08/03/2019, bigaragaza ko nta bwihutirwe bwari burimo.

[14] Philip Cotton asobanura na none ko ibyo imaze kwerekana aribyo umucamanza yagarutseho mu rubanza rwifashishijwe avuga ko Mount Meru Petroleum (R) Ltd nayo yaratanze ikirego hashize amezi hafi ane yose, ko ari ikigaragaza ko yabonaga ko ikirego cyayo nta bwihutirwe gifite kuko nta byakwangirika ku buryo budasubirwaho, ngo ibe yarihutiye gusaba Umucamanza kubiramira. Ikindi ngo kikaba uko ingingo zaregewe na CELA Company Ltd zitagaragaza ko nta mpaka kuko uregwa ari we Bwana Philip Cotton hari ibyo asabwa/ategekwa, bityo akaba yaragombaga kuba ari umuburanyi muri uru rubanza kugira ngo agire icyo asobanura kubyo asabwa. Ibi bikaba bivuze ko iki kirego cyari gutangwa mu buryo busanzwe, ibirego mu manza z’ubucuruzi bitangwamo ku rwego rwa mbere. Ko kuba uwatanze ikirego we ubwe anasaba ko hategekwa igihano gihatira kwishyura, ubwabyo bigaragaza impaka ku buryo iki kirego kitagakwiye gutangwa nk’inyandiko nsobanurakirego itanzwe n’umuburanyi umwe.

[15] Philip Cotton na none avuga ko mu ngingo urega yasabye ko zisuzumwa, harimo isaba kumugobokesha nk’Umuyobozi wa Universty of Rwanda mu rubanza. Kandi mu birego bitanzwe mu buryo bw’inyandiko nsobanurakirego, ntabwo uwatanze ikirego ari we usaba ko hagira urundi ruhande ruhamagazwa, ahubwo Urukiko nirwo rubitegeka mu gihe rusanze ari ngombwa. Ibi bikaba bigaragaza ko hari impaka muri uru rubanza zagakwiye gusuzumwa mu buryo bw’ibirego bisanzwe, hakaregerwa Urukiko rw’ubucuruzi. Ko hashingiwe ku Itegeko ryavuzwe haruguru mu ngingo yaryo ya 83 mu gika cyayo cya kane, igira iti « *Impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy’umuburanyi (…) iyo hari imihango itarubahirijwe iteganywa n’Itegeko.* » Ko rero asanga hari imihango itubahirijwe n’urega iteganywa n’itegeko, kuko uburyo yatanzemo ikirego butaribwo. Akabishingiraho asaba uru Rukiko kutakira ikirego cya CELA Company Ltd.

[16] CELA Company Ltd yireguye mu iburanisha kuri iyi nzitizi, ivuga ko idafite ishingiro kuko irega umuyobozi wanze kubahiriza ibyo Urukiko rwategetse, kandi ikaregera Urukiko rwaciye urubanza. Kandi ko hari ibyo kuramira byatewe n’uwo muyobozi; hakaba harimo n’ubwihutire buterwa n’imyenda urega afite mu ma Banki. Ko rero byose biteganijwe mu ngingo ya 190 y’Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi.

UKO URUKIKO RUBIBONA

[17] Rushingiye kuri iyi nzitizi yatanzwe na Philip COTTON, no ku myiregurire ya CELA Company Ltd; rushingiye kuyo rwabonye mu isesengura ry’inzitizi ya mbere, no kuba ingingo ya 184 y’Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya mu gika cyayo cya kane, ko “Ikirego kireba umuyobozi wanze kubahiriza ibyategetswe mu rubanza, gitangwa mu buryo bw’inyandiko nsobanurakirego itanzwe n’umuburanyi umwe.” Rusanga CELA Company Ltd yatanze iki kirego cyayo mu buryo bukurikije amategeko, igitanga hashingiwe kuri iyi ngingo imaze kuvugwa, hamwe n’ingingo zigenga inyandiko nsobanurakirego itanzwe n’umuburanyi umwe, mu ngingo ya 189 n’izikurikira z’iri Tegeko. Rusanga rero iyi nzitizi nayo idafite ishingiro; bityo rukaba rwasuzuma impamvu iki kirego cyashingiweho.

C) Gusuzuma niba Philip Cotton, Umuyobozi wa Universty of Rwanda yategekwa kwishyura CELA Company Ltd, 54.915 000 frw.

[18] CELA Company Ltd isobanura ikirego cyayo, ivuga ko mu rubanza RCOMA 00748/2016/HC/HCC yarezemo Real Construction and Supply Services na Universty of Rwanda (Rukara College of Education) kuyishyura Rwf 150,041,244 akomoka ku mirimo yari yarakozwe ku nyubako ya *Laboratoire* yo muri Universty of Rwanda ishamyi rya Rukara. Ko nubwo icyemezo cy'Urukiko kigomba kubahirizwa, Universty of Rwanda yatsinzwe mu rubanza, si uko ibyumva kuko idashira mu bikorwa ibyo yategetswe n'Urukiko. CELA Company Ltd ivuga ko usibye ko kuba yarakomeje gusiragizwa nta mpamvu, University of Rwanda yishyuye amafaranga make kuyo yategetswe, kuwa 22/01/2018 yishuye 41.111.695 frw, kuwa 27/02/2018 yishyura 30.051.695 frw, kuwa 21/11/2018 yongera kwishyura amafranga make angana na 23.946.659 frw. Ko ari muri uru rwego yaregeye uru Rukiko kugira ngo ibashe kurenganurwa.

[19] CELA Company Ltd isobanura kandi ko nyuma y'aho University of Rwanda yanditse ko itazongera kwishyura ibyo yategetswe n'Urukiko, ndetse inagaragaza mu ibaruwa yayo yo kuwa 27/07/2018 impamvu ishingiraho, zidafite ishingiro, ko umwenda wemejwe n'Urukiko usigaye kwishyurwa izawishyurwa aruko ngo ikemuye ibibazo ngo yaba ifitanye n'abaturage (nta nyandiko y'Umuhesha w'Inkiko ifatira cyangwa se ngo hagaragazwe urubanza CELA Company Ltd yaba yaraburanye ngo irutsindwemo). Bityo ikaba yaregeye Urukiko gutegeka Umuyobozi wa University of Rwanda, Bwana Philip Cotton kwishyura. Ko igitangaje, ari uko University of Rwanda yaremeye ko igiye kwishyura, maze nyuma iza kwongera kunaniza.

[20] CELA Company Ltd isanga uru Rukiko rwagendera ku bimenyetso byagaragajwe, no ku biteganwa mu ngingo ya 151 al 4 y'Itegeko Nshinga rya Repubukika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015, ritegenya ko ibyemezo by'umucamanza bigomba gukurikizwa nabo bireba bose, zaba inzego z'ubutegetsi za Leta cyangwa abantu ku giti cyabo. Ko ntibishobora kuvuguruzwa cyeretse binyuze mu nzira no mu buryo biteganywa n'amategeko (…). Ko mu gihe hatubahirijwe itariki yo kwishyura yemejwe n'Urukiko, ishingiro rw'ubusabe bwa CELA company Ltd bwo gutegeka bwana Philip Cotton Umuyobozi wa University of Rwanda kwishyura CELA Company Ltd, Rwf 500.000 ku munsi y'igihano gihatira kurangiza urubanza (astreinte) mu gihe hatubahirijwe italiki yo kwishyura yemejwe n'Urukiko, nk'uko biteganijwe mu ngingo ya 182 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibirebana n'igihano gihatira kurangiza urubanza. Ko rero uru Rukiko rwaregewe ruzabone ko uregwa akwiye igihano kimuhatira kwishyura gisabwe n'urega.

[21] Philip Cotton Umuyobozi wa University of Rwanda, yisobanura kuri iyi mpamvu y'ikirego cya CELA Company Ltd, avuga ko nk'uko yabisobanuye haruguru, asanga CELA Company Ltd yitiranyije icyemezo cy'Urukiko, kuko icyo Urukiko Rukuru rw'Ubucuruzi rwategetse, atari indishyi mbumbe zigomba kwishyurwa na Kaminuza y'u Rwanda, ahubwo byari *facture* igomba gukorwa ikishyurwa mu buryo amasezerano yateganyaga hagati ya kaminuza na rwiyemezamirimo. Ko nubwo amasezerano yo kuwa 25/04/2012, n0 008/04/EWL/RCoE/2012 hagati ya kaminuza y'u Rwanda hamwe na Real Constructions & Supply services, ntacyo yateganyaga ku buryo umusoro ku nyongeragaciro wa 18% (VAT) uzishyurwa, ariko ashingiye ku nyandiko ya Kaminuza y'u Rwanda yo kuwa 14/12/2011 imenyesha Real Constructions and Supply services ko inyandiko y'ipiganwa yayo yemewe, bisobanuye ko yatsindiye isoko; igaragaza

neza ko umusoro ku nyongeragaciro wa 18% uzaba ukubiye mu bwishyu bwose yari kuzahembwa. Ko rero, ashingiye ku Itegeko n°45/2011 ryo Kuwa 25/11/2011 rigenga amasezerano, cyane cyane mu ngingo yaryo ya 64 aho iteganya ko amasezerano yakozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye, kandi ko mu gihe atasheshwe nabo cyangwa kubw'impamvu zemewe n'amategeko, agomba kubahirizwa nta buriganya.

[22] Philip Cotton na none, avuga ko ashingiye ku nyandiko yavuze haruguru, University of Rwanda yagombaga kwishyura ikiguzi CELA Company Ltd, ikuyemo umusoro ku nyongeragaciro wa 18% (VAT) ungana n'amafaranga million 22,887,648 Frw, kuko aribyo University of Rwanda yari yaremeranyije na rwiyemezamirimo mu gihe yatsindiraga iryo soko. Kandi ko hashingiwe ku itegeko nº 24/2010 ryo kuwa 28/05/2010 rihindura kandi ryuzuza itegeko n° 16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro, mu ngingo yaryo ya 9 igika cya 3, aho igena ko « Umusoro ufatirwa wa gatatu ku ijana (3%) ku mafaranga y'impamyabuguzi hatarimo umusoro ku nyongeragaciro, ukatwa mu iyishyura ry'ababonye amasoko ya Leta. » Bityo University of Rwanda nk'ikigo cya Leta ikaba yagombaga gukata 3% y'amafaranga y'impamubuguzi hatarimo umusoro ku nyongeragaciro kuri CELA Company Ltd nk'aho ariyo yatsindiye isoko rya Leta mu mwanya wa Real Contractors and Supply Service, kuko yari sub-contractor wayo; ariyo mafaranga angana na 8,903,547 Frw kaminuza yakase.

[23] Philip Cotton asobanura kandi ko hashingiwe nanone ku Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu ngingo yaryo ya 227 igika cyambere, igena ko «Umuhesha w'inkiko yemerewe gufatira ibintu byimukanwa by'ugomba kwishyura biri mu maboko y'undi muntu, amaze kumugaragariza urubanza ruriho inyandikompuruza cyangwa indi nyandikompesha.» Ko ibi bishimangirwa n'ingingo ya 113 y'itegeko rigenga amasezerano mu gika cyayo cya kabiri, igena ko «Icyakora, ugenewe inshingano ashobora gukoresha uburenganzira n'ububasha ugomba kumwishyura afite ku bandi bantu kugira ngo ashobore kwishyurwa keretse iyo ubwo burenganzira bushingiye gusa ku muntu ubwe. » Bityo ko, kuba CELA Company Ltd yari yaratsinzwe mu rubanza RCOM 1351/15/TC/NYGE aho yaregagwa na Kavamahanga Alexandre, kandi ikaba itararangije urwo rubanza ku neza, bityo Kavamahanga Alexandre agahitamo gufatira ku ngufu umutungo wayo wimukanwa wari mu maboko ya University of Rwanda. University of Rwanda ikaba nta yandi mahitamo yari ifite keretse kwishyura umwenda ungana na 11,050,000 Frw ukubiyemo igihembo cy'umuhesha w'inkiko. Philip Cotton avuga ko asanga rero ufashe amafaranga milion 107,200,049 Frw University of Rwanda. University of Rwanda yishyuye, ugateranyaho *avance* ya 12,100,000 frw, ugateranyaho imisoro ingana na 31,791,231 frw, ugateranyaho 11,050,00frw yishyuwe Kavamahanga Alexandre yose hamwe angana na Rwf 150,041,280 ari yo kaminuza yari yarategetswe kwishyura. Bityo ko ibyo CELA Company Ltd isaba nta shingiro bifite, kuko byarakozwe. Ko rero ntacyo yarakwiye gutegekwa gukora cyangwa guhatira kurangiza urubanza, kuko ibyo University of Rwanda yategetswe, atari Bwana Philip Cotton wabitegetswe, ariko nyamara k a n d i University of Rwanda yarabirangije.

UKO URUKIKO RUBIBONA

[24] Rushingiye kuri iyi mpamvu y'ikirego cya CELA Company Ltd, no ku myiregurire ya Philip Cotton; rushingiye kuba aba baburanyi bombi bemeranya ko UNIVERSITY OF RWANDA yatsindiwe na CELA Company Ltd mu rubanza RCOMA 00748/2016/CHC/HCC, kuyishyura

facture ihwanye na Rwf 150,041,244, izishyurirwa kuri konti ya CELA Company Ltd izagaragazwa kuri iyo facture. Urwo rubanza rukaba rwaraciwe kuwa 29/06/2017;

[25] Rushingiye kuba hagaragajwe muri iyi dosiye y'urubanza, kandi ntihagire uyinyomoza, fagitire yakozwe na Real Contractors and Supply Services Ltd na CELA Company Ltd, zisaba University of Rwanda kwishyura kuri konti ya CELA Company Ltd, Rwf 150,041,244, hasyirwa mu bikorwa icyo cyemezo cy'Urukiko; ko iyi fagitire yakozwe kuwa 04/09/2017; kandi urwo rubanza rwari rushingiye nyine ku ukutishyurwa kwa fagitire zakorewe University of Rwanda, za muri 2013, iya Rwf 101,996,860 (yo kuwa 14/05/2013) n'iya Rwf 48,044,384 (yo kuwa 03/06/2013);

[26] Runashingiye kandi kuba ababuranyi bombi bemera ko muri ayo mafaranga yaciwe University of Rwanda Ltd, hari ayo yamaze kwishyura nubwo batayemeranywaho; runashingiye kuba hagaragaye inyandiko zitandukanye aba baburanyi bagiye bandikirana; cyane cyane ibaruwa University of Rwanda yandikiye Umuhesha w'Inkiko Muvunyi Serge kuwa 22/09/2017, aho yemeraga mu gika cyayo cya kabiri ko yiteguye gushyira mu bikorwa icyemezo cy'Urukiko, aho izabonera facture; ibaruwa uyu Muhesha w'Inkiko yandikiye University of Rwanda, kuwa 11/10/2017 ayishyikiriza fagitire, kandi ayisaba kwishyura amafaranga ariho mu gushyira mu bikorwa icyemezo cy'Urukiko; n'ibaruwa University of Rwanda yandikiye Me Rukarishya kuwa 27/07/2018 yemeza kandi ko itigeze yanga kwishyura CELA Company Ltd (bigaragara neza koko kohari amafaranga yigeze yishyura, ariko ntiyishyure yose), ko izishyura aruko CELA Company Ltd ibanje kwishyura abaturage yakoresheje; ibaruwa Akarere ka Kayonza kandikiye University of Rwanda kuwa 24/08/2018; n'inyandiko-mvugo y'inama yabaye hagati ya CELA Company Ltd na University of Rwanda kuwa 25/10/2018, aho bemeranije ko University of Rwanda izishyura amafaranga yose asigaye mbere yo ku itariki ya 16/11/2018 kugira ngo CELA Company Ltd ireka gukomeza kwiyambaza Inkiko, bagakemura ikibazo (cyo kurangiza urubanza) mu bwumvikane, ndetse banemeranya ko bazaganira ku misoro;

[27] Rushingiye kuri ibi byose rubonye, no kuba ingingo ya 151.4 y'Itegeko Nshinga rya Repubukika y'u Rwanda uko ryavuguruwe kugeza ubu, iteganya ko "Ibyemezo by'ubucamanza bigomba gukurikizwa n'abo bireba bose, zaba inzego z'ubutegetsi bwa Leta cyangwa abantu ku giti cyabo. Ntibishobora kuvuguruzwa keretse binyuze mu nzira no mu buryo buteganywa n'amategeko." Hamwe n'ibyemejwe n'Urukiko rw'Ikirenga mu rubanza RSOC 00001/2016/CS rwaciye kuwa 20/01/2017 (reba mu bice byarwo bya [13] na [14]); rusanga ntabwo University of Rwanda yakwitwaza amasezerano yagiranye na Real Constructions & Supply services na CELA Company Ltd, cyangwa yitwaze amategeko agenga imisoro, cyangwa kandi ngo ibibazo by'abaturage bakoreshejwe na CELA Company Ltd kugira ngo itishyura amafaranga yategetswe n'Urukiko, uko yakabaye; mu gihe ibyo yitwaza itigeze ibiburanisha muri urwo rubanza rurangizwa, cyangwa ibiregere ubundi mu buryo bukurikije amategeko. Ibyo, ikaba yari kubigenderaho iyo yari kwishyura fagitire hubahirizwa amasezerano, hatabayeho icyemezo cy'urukiko kirangizwa.

[28] Rusanga rero, amafaranga yose University of Rwanda isigayemo CELA Company Ltd hashingiwe ku cyemezo cy'Urukiko; yagombaga guhita iyishyura uko biteganwa n'amategeko agenga irangizwa ry'imanza. Kuba itarabikoze, hakaba hashize kandi hafi imyaka ibiri urubanza rwaraciwe; kuba hari ariko amafaranga yagiye yishyura nubwo itayishyuye yose uko byakagombye;

[29] Rushingiye kubyo rwabonye biteganijwe mu ngingo ya 184 yavuzwe hejuru; rusanga Umuyobozi wa University of Rwanda, Bwana Philip Cotton akwiye gutegekwa nk'umuyobozi gukora ku buryo University of Rwanda CELA Company amafaranga Rwf 54,915,000 asigaye kuyo UNIVERSITY OF RWANDA yamaze kwishyura mu yategetswe mu rubanza RCOMA 00748/2016/CHC/HC rwo kuwa 29/06/2017; aya mafaranga akishyurwa bitarenze kuwa 10/06/2019. Iyi tariki igeze bitarakorwa, uyu muyobozi Bwana Philip Cotton akajya yishyura CELA Company Ltd, igihano gihatira umuyobozi kurangiza urubanza, cya Rwf 250,000 buri munsi, kugeza urubanza rwose rurangijwe.

III. ICYEMEZO CY'URUKIKO:

[30] Urukiko Rukuru rw'Ubucuruzi :

- Rwemeye kwakira inzitizi zatanzwe na Philip Cotton, Umuyobozi wa University of Rwanda, kuko zatanzwe mu buryo bwubahirije amategeko, ruzisuzumye, rusanze nta shingirozifite.
- Rwemeye kwakira ikirego cya CELA Company Ltd, kuko cyatanzwe mu buryo bwubahirije amategeko, rugisuzumye, rusanze gifite ishingiro.
- Rukijije ko Philip Cotton, Umuyobozi wa University of Rwanda, agomba gukora ku buryo University of Rwanda iba yarishyuye CELA Company Ltd amafaranga Rwf 54,915,000 asigaye kuyo University of Rwanda yamaze kwishyura mu yategetswe mu rubanza RCOMA 00748/2016/CHC/HC rwo kuwa 29/06/2017 ; aya mafaranga akishyurwa bitarenze kuwa 10/06/2019.
- Rukijije ko Philip Cotton, Umuyobozi wa University of Rwanda, ni adakora ku buryo University of Rwanda iba yarishyuye CELA Company Ltd aya mafaranga Rwf 54,915,000, bitarenze kuwa 10/06/2019 ; azajya acibwa igihano gihatira umuyobozi kurangiza urubanza, cya Rwf 250,000 buri munsi, kugeza urubanza rwose rurangijwe.
- Rutegetse Philip Cotton, Umuyobozi wa University of Rwanda, gukora ku buryo University of Rwanda iba yarishyuye CELA Company Ltd aya mafaranga Rwf 54,915,000, bitarenze kuwa 10/06/2019. Atabikoze azajya acibwa igihano gihatira umuyobozi kurangiza urubanza, cya Rwf 250,000 buri munsi, kugeza urubanza rwose rurangijwe.