AUTO CLINIC MERCEDES SPECIALIST LTD v AUTO TRANSPORT COMPANY RWANDA (ATC) LTD

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00288/2021/HCC (Mutajiri, PJ) 17 Gicurasi 2022]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Urubanza rwajuririwe – Gukosora urubanza rwajuririwe – Kuba mu kurega hararegewe umwenda, mu kuburana bikaza kugaragara ko habayeho kwibeshya ku ngano y'umwenda waba wariyongereye cyangwa waragabanutse bene iryo kosa riba rigomba gukosorwa hakishyurwa umwenda wagaragajwe nyuma y'ubusobanuro bwa buri ruhande cyane ko iyo ridakosowe haba kwikungahaza bitari ngombwa (enrichissement sans cause).

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'ubucuruzi, ATC Rwanda Ltd irega Auto Clinic Mercedes Specialis Ltd na Auto Clinic Mercedes Specialist Ltd ivuga ko Auto Clinic Mercedes Specialist Ltd yayigurishije "*pièce de rechange*" zifite agaciro ka 7,124,421Frw ariko ntizishyurwa, igurisha kandi kuri iyo sosiyete imodoka ifite agaciro ka 11,800,000FRW yishyura gusa "*avance*" ingana na 3,000,000FRW hasigara 8,800,000FRW, ikodesha n'indi modoka kuri iyo sosiyete ku giciro cya 2,124,000FRW ariko nayo Auto Clinic Mercedes ntiyayishyura.

ATC Rwanda Ltd yahaye integuza Auto Clinic Mercedes iyisaba kuyishyura umwenda iyifitiye ariko iyo sosiyete ntiyayishyura, bityo ATC iregera Urukiko irusaba gutegeka Auto Clinic Mercedes Specialist Ltd kuyishyura indishyi zose hamwe zihwanye na 21,629,531FRW y'umwenda, inyungu n'indishyi zinyuranye.

Auto Clinic Mercedes Specialist Ltd yatanze inzitizi ko mu rwego rw'amategeko itabaho nk'uko byemejwe mu rubanza RCOM 01067/2020/TC rutakiriwe, ndetse ATC ikaba yararetse ikirego RCOM 01739/2020/TC yayiregaga, bityo ko idakwiye kongera kuyirega. ATC RWANDA Ltd ivuga ko yaretse ikirego kuri Garage Auto Clinic Mercedes Specialist Ltd kuko Urukiko rwemeje ko iyo Garaje itabaho. Urukiko rumaze gusuzuma iyo nzitizi, mbere y'uko urubanza ruburanishwa mu mizi, rwemeje ko Garage Auto Clinic Mercedes Specialis Ltd iva mu rubanza, hagasigara haburana ATC RWANDA Ltd na Auto Clinic Mercedes Specialist Ltd. Auto Clinic Mercedes Specialist Ltd ivuga ko kuri "*piece de rechange*" hamwe n'imodoka yaguze ko nta mwenda isigayemo ATC kuko yayishyuye amafaranga yose nk'uko bigaragazwa na "*facture*" za EBM yamenyekanishije, naho ku modoka ivugwa ko yakodesheje ikavuga ko ntayo yigeze ikodesha, bityo ko ikirego cya ATC nta shingiro gifite.

Mu guca urubanza, rushingiye ku kuba rwarasanze Auto Clinic Mercedes Specialist Ltd itarishyuye umwenda wose ukomoka ku bugure bw'imodoka na *pièces de réchange*, ndetse yaranakodesheje imodoka, ntiyishyure, Urukiko rw'ubucuruzi rwemeje ko Auto Clinic Mercedes Specialist Ltd kwishyura ATC Rwanda Ltd amafaranga miriyoni cumi n'enye n'ibihumbi magana arindwi mirongo inani na bitandatu, magana ane na makumyabiri (14,786,420Frw) y'umwenda iyibereyemo, bityo rutegeka Auto Clinic Mercedes Specialist Ltd kwishyura Auto Transport Company Rwanda Ltd amafaranga miriyoni imwe n'ibihumbi magana atandatu mirongo itatu na bine, magana atanu makumyabiri n'arindwi (1,634,527Frw) y'inyungu z'umwenda.

Auto Clinic Mercedes Specialist Ltd yajuririye mu Rukiko Rukuru rw’Ubucuruzi ivuga ko hasuzumwa inzitizi ikuraho urubanza bari batanze umucamanza akayima agaciro nyamara ntanayishyire mu ncarubanza, gusuzuma koko niba hari umwenda w'ubugure bw'Imodoka Auto Clinic Mercedes Specialist Ltd ibereyemo ATC Rwanda Ltd, gusuzuma bundi bushya ibyo bita ubukode bw'imodoka RAB 094B bungana na 2,124,000Frw niba byarabayeho naho bakura ariya mafaranga nicyo Urukiko rubanza rwashingiyeho ruyemeza, gusuzuma ikiswe inyungu za 1,634,527Frw badutegetse kwishyura nyamara nta mwenda babafitiye bikaba bikwiye gusubirwamo ngo barenganurwe, gusuzuma no gukuraho indishyi z'ikurikiranarubanza n'igihembo cya avoka n'igarama byaciwe Auto clinic Mercedes specialist Ltd ku maherere no kongera gusuzuma ishingiro ry'indishyi bari basabye mu kirego kiregera kwiregura ntizisuzumwe.

Uregwa mu kugira icyo avuga ku mpamvu z’ubujurire, avuga ko nta shingiro zifite kubera ibyo kuvuga ko iyo nzitizi yari ifite ishingiro, ataribyo kuko ikirego cya mbere ATC Rwanda Ltd yari yareze mu rubanza, yaregagamo Garage Auto Clinic Mercedes Specialist Ltd, naho mu rubanza rwajuririwe ikaba yararegaga Auto Clinic Mercedes Specialist Ltd, bigaragara ko ababuranyi atari bamwe muri izo manza zombi, usibye ko nibyaburanwaga atari bimwe, kandi ko Auto Clinic Mercedes Specialist Ltd Ltd idakwiye guhakana ko hari umwenda ibereyemo Sosiyete ATC Rwanda Ltd werekeranye n’ imodoka baguze ikishyura igice gusa, ko uwo mwenda ugaragazwa n’ibimenyetso binyuranye ndetse ko idakwiye no guhakana umwenda wo gukodesha imodoka ya ATC Rwanda Ltd mu gihe hari ibimenyetso biwugaragaza. Asoza asaba indishyi z’ikurikiranarubanza n’iz’igihembo cya avoka.

Muri uru rubanza hasuzumwe ikibazo cyo kumenya niba Auto Transport Company Rwanda Ltd yararetse urubanza RCOM 01739/2020/TC ku buryo nta bubasha bwo kongera kurega ifite, niba hari umwenda w'ubugure bw'imodoka Auto Clinic Mercedes Specialist Ltd ibereyemo ATC Rwanda Ltd, gusuzuma niba hari amakosa Urukiko rwakoze rutegeka Auto Clinic Mercedes Specialist Ltd kwishyura ATC Rwanda Ltd amafaranga y’ubukode bw'imodoka, gusuzuma niba hari indishyi z’inyungu Auto Clinic Mercedes Specialist Ltd yagombaga gutegekwa kwishyura ATC Rwanda Ltd, gusuzuma niba indishyi z’ikurikiranarubanza n'igihembo cya avoka zatanzwe zigomba gukurwaho, gusuzuma niba indishyi zasabwaga na Auto Clinic Mercedes Specialist Ltd mu kirego kiregera kwiregura zari zifite ishingiro no gusuzuma niba indishyi z’ikurikiranarubanza n’igihembo cya avoka zisabwa na buri ruhande mu bujurire zifite ishingiro.

Incamake y’Icyemezo: Kuba mu kurega hararegewe umwenda, mu kuburana bikaza kugaragara ko habayeho kwibeshya ku ngano y’umwenda waba wariyongereye cyangwa waragabanutse bene iryo kosa riba rigomba gukosorwa hakishyurwa umwenda wagaragajwe nyuma y’ubusobanuro bwa buri ruhande cyane ko iyo ridakosowe haba kwikungahaza bitari ngombwa. Bityo, gukosora ikosa ryo guteranya ryabaye aho kwandika ko umwenda wose AUTO CLINIC MERCEDES SPECIALIST Ltd ibereyemo ATC RWANDA Ltd ungana na 15.731.228FRW, bakandika bibeshye 14.786.420 FRW bifite ishingiro.

Ubujurire nta shingiro bufite.
Imikirize y’urubanza rwaciwe n’Urukiko rw’ubucuruzi ihindutse kuri bimwe.
Amagarama aherera ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 2,3, 4, 5, 6, 12, 72, 90, 83, 111, 122, 124, 125, 129, 150 na 152.

Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, Ingingo ya 144.

Itegeko N° 15/2004 ryo kuwa 19/07/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3, 43,42, 64,65,75,137.

Iteka rya Minisitiri Nº 002/13/10/TC ryo kuwa 31/07/2013 rigena imikoreshereze y'imashini y'ikoranabuhanga, ingingo ya 2 n'iya 7.

Imanza zifashishijwe:

SORAS Ltd v. ITEX Sarl, RCOMA 0148/11/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 23/05/2014.

Banque Populaire du Rwanda Plc v Nsengumuremyi, RCOMAA 00006/2020/CA, rwaciwe n'Urukiko rw'Ubujurire kuwa 4/09/2020.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu rukiko rw'ubucuruzi, ATC RWANDA Ltd irega Auto Clinic Mercedes Specialis Ltd na Auto Clinic Mercedes Specialist Ltd, ATC RWANDA Ltd irega ivuga ko Auto Clinic Mercedes Specialist Ltd yayigurishije "*pièce de rechange*" zifite agaciro ka 7,124,421Frw ariko ntizishyurwa, igurisha kandi kuri iyo sosiyete imodoka ifite agaciro ka 11,800,000FRW yishyura gusa "*avance*" ingana na 3,000,000FRW hasigara 8,800,000FRW, ikodesha n'indi modoka kuri iyo sosiyete ku giciro cya 2,124,000FRW ariko nayo Auto Clinic Mercedes ntiyayishyura. ATC Rwanda Ltd yahaye integuza Auto Clinic Mercedes iyisaba kuyishyura umwenda iyifitiye ariko iyo sosiyete ntiyayishyura, bityo ATC iregera urukiko irusaba gutegeka Auto Clinic Mercedes Specialist Ltd kuyishyura indishyi zose hamwe zihwanye na 21,629,531FRW y'umwenda, inyungu n'indishyi zinyuranye.

[2] Auto Clinic Mercedes Specialist Ltd yatanze inzitizi ko mu rwego rw'amategeko itabaho nk'uko byemejwe mu rubanza RCOM 01067/2020/TC rutakiriwe, ndetse ATC ikaba yararetse ikirego RCOM 01739/2020/TC yayiregaga, bityo ko idakwiye kongera kuyirega. ATC RWANDA Ltd ivuga ko yaretse ikirego kuri Garage Auto Clinic Mercedes Specialist Ltd kuko Urukiko rwemeje ko iyo Garaje itabaho. Urukiko rumaze gusuzuma iyo nzitizi, mbere y'uko urubanza ruburanishwa mu mizi, rwemeje ko Garage Auto Clinic Mercedes Specialis Ltd iva mu rubanza, hagasigara haburana ATC RWANDA Ltd na Auto Clinic Mercedes Specialist Ltd. Auto Clinic Mercedes Specialist Ltd ivuga ko kuri "*piece de rechange*" hamwe n'imodoka yaguze ko nta mwenda isigayemo ATC kuko yayishyuye amafaranga yose nk'uko bigaragazwa na "*facture*" za EBM yamenyekanishije, naho ku modoka ivugwa ko yakodesheje ikavuga ko ntayo yigeze ikodesha, bityo ko ikirego cya ATC nta shingiro gifite.

[3] Urukiko mu guca urubanza, rushingiye ku kuba rwarasanze Auto Clinic Mercedes Specialist Ltd itarishyuye umwenda wose ukomoka ku bugure bw'imodoka na "*pièces de réchange"*, ndetse yaranakodesheje imodoka, ntiyishyure, Urukiko rw'Ubucuruzi rwemeje ko

Auto Clinic Mercedes Specialist Ltd kwishyura ATC Rwanda Ltd amafaranga miriyoni cumi n'enye n'ibihumbi magana arindwi mirongo inani na bitandatu, magana ane na makumyabiri (14,786,420Frw) y'umwenda iyibereyemo, bityo rutegeka ko bityo ko Auto Clinic Mercedes Specialist Ltd kwishyura Auto Transport Company Rwanda Ltd amafaranga miliyoni imwe n'ibihumbi magana atandatu mirongo itatu na bine, magana atanu makumyabiri n'arindwi (1,634,527Frw) y'inyungu z'umwenda.

[4] Auto Clinic Mercedes Specialist Ltd ntiyishimiye imikirize y'urubanza, maze Me Manirafasha Jean Paul mu mwanya wayo ajurira avuga ko hasuzumwa inzitizi ikuraho urubanza bari batanze umucamanza akayima agaciro nyamara ntanayishyire mu ncarubanza, gusuzuma koko niba hari umwenda w'ubugure bw'imodoka RAC 762B Auto Clinic Mercedes Specialist Ltd ibereyemo ATC Rwanda Ltd, gusuzuma bundi bushya ibyo bita ubukode bw'imodoka RAB 094B ngo angana na 2,124,000FRW niba byarabayeho naho bakura ariya mafaranga nicyo urukiko rubanza rwashingiyeho ruyemeza, gusuzuma ikiswe inyungu za 1,634,527FRW badutegetse kwishyura nyamara nta mwenda babafitiye bikaba bikwiye gusubirwamo ngo barenganurwe, gusuzuma no gukuraho indishyi z'ikurikiranarubanza n'igihembo cya avoka n'igarama byaciwe Auto clinic Mercedes specialist Ltd ku maherere no kongera gusuzuma ishingiro ry'indishyi bari basabye mu kirego kiregera kwiregura ntizisuzumwe.

[5] Uregwa mu kugira icyo avuga ku mpamvu z'ubujurire, Me Kayitare Jean Pierre mu mwanya we, avuga ko nta shingiro zifite kubera ibyo kuvuga ko iyo nzitizi yari ifite ishingiro, ataribyo kuko ikirego cya mbere ATC RWANDA Ltd yari yareze mu rubanza RCOM 01067/2020/TC, yaregagamo Garage AUTO CLINIC MERCEDES SPECIALIST Ltd, naho mu rubanza rwajuririwe ikaba yararegaga AUTO CLINIC MERCEDES SPECIALIST Ltd, bigaragara ko ababuranyi atari bamwe muri izo manza zombi, usibye ko nibyaburanwaga atari bimwe, kandi ko AUTO CLINIC MERCEDES SPECIALIST Ltd idakwiye guhakana ko hari umwenda ibereyemo Sosiyete ATC RWANDA LTD werekeranye n'imodoka baguze ikishyura igice gusa cya Miliyoni 3.000.000 FRW, ko uwo mwenda ugaragazwa n'ibimenyetso binyuranye ndetse ko idakwiye no guhakana umwenda wo gukodesha imodoka ya ATC RWANDA Ltd RAB094B, mu gihe hari ibimenyetso biwugaragaza. Asoza asaba indishyi z'ikurikiranarubanza n'iz'igihembo cya avoka.

[6] Muri uru rubanza hakaba hagomba gusuzumwa niba Auto Transport Company Rwanda Ltd yararetse urubanza RCOM 01739/2020/TC kuburyo nta bubasha bwo kongera kurega ifite, gusuzuma niba hari Umwenda w'ubugure bw'imodoka RAC 762B Auto Clinic Mercedes Specialist Ltd ibereyemo ATC Rwanda Ltd, gusuzuma niba hari amakosa Urukiko rwakoze rutegeka Auto Clinic Mercedes Specialist Ltd kwishyura ATC Rwanda Ltd amafaranga y'ubukode bw'imodoka RAB094B, gusuzuma hari indishyi z'inyungu Auto Clinic Mercedes Specialist Ltd yagombaga gutegekwa kwishyura ATC Rwanda Ltd, gusuzuma niba indishyi z'ikurikiranarubanza n'igihembo cya avoka zatanzwe zigomba gukurwaho, gusuzuma niba indishyi zasabwaga na Auto Clinic Mercedes Specialist Ltd mu kirego kiregera kwiregura zari zifite ishingiro no gusuzuma niba indishyi z'ikurikiranarubanza n'igihembo cya avoka zisabwa na buri ruhande mu bujurire zifite ishingiro.

II. ISESENGURA RY'IBIBAZO

1. **Ku birebana no gusuzuma niba Auto Transport Company Rwanda Ltd yararetse urubanza RCOM01739/2020/TC ku buryo nta bubasha bwo kongera kurega ifite**

[7] Me Komezusenge Deogratias akoreshe umwanzuro wa Me Manirafasha Jean Paul avuga ko nkuko byagaragajwe mu mwanzuro wo kwiregura bagaragaje ko Urega adafite Ububasha bwo kongera kuregera ibintu yareze murubanza RCOM 01739/2020/TC maze we giti cye nyuma yo kubona ko nta nyungu akibifiteho afata icyemezo cyo kureka ikirego cye kandi kureka ikirego bishimangira ko yiyambuye uburenganzira n'inyungu byo gukomeza kurega ibyo yari arimo aregera kandi ikirego kigaragazwa n'ibisabwa na buri muburanyi nk’uko biteganywa n'ingingo ya 6 ya CPCCSA, ikirego kikaba atari ababuranyi nk’uko urukiko rushaka kubivuga kuko kandi ukuri kw'amategeko aruko iyo umuntu asanze yareze nabi urukiko rwakira ikirego ariko rukemeza ko yareze utari we nkuko byagaragajwe murubanza RCOM 01067/2020/TC rwaciwe kuwa 30/09/2020, ibi kandi bishobora no gutuma uwareze asanze yareze nabi cyangwa yareze utari we kuko ikibazo kiba kitari kukiregerwa (ikirego) icyo bita objet du litige cyangwa objet de la demande, yemererwa kureka Urwo rubanza yari yareze akongera kurega ikirego cye neza kandi bushya ariko iyo yibeshye akareka ikirego kandi kigizwe n'ibyo shingiraho arega kinagaragaza inyungu n'impamvu yahisemo kurega uwo arega aba yiyambuye uburenganzira n'ububasha bwo kuzongera kuregera ibyo yaregeraga.

[8] Akomeza asobanura ko ibi wabisanga ingingo za 122 na 125 (igika cya 3) za CPCCSA bityo kuba ikirego gishingiye kuri pièces de rechange, kumodoka yagurishijwe RAC 762B ndetse n'imodoka bavuga ko bakodesheje RAC 094B byari byararezwe murubanza RCOM 01739/2020/TC maze ibyo birego byose nkuko bigaragara bikarekwa nuwari warareze ibyo birego bivuze ko yiyambuye ububasha bwo kongera kubiburana no kongera kubiregera, bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego cyaretswe bityo nkuko byakozwe na ATC kuwa 27/11/2020 kandi byemejwe mucyemezo cya perezida cyo kuwa 02/12/2020 bikaba bigomba kongera gusuzumwa ngo hakurikizwe ibiteganywa n'amategeko twagaragaje kuko ikirego kiba gitandukanye n'ukirega iyo uretse ikirego uba wivanyeho uburenganzira bwo kuzongera kukirega igihe icyo aricyo cyose nuwo ari we wese bityo iki kirego cya ATC ntabwo cyagombaga kuburanishwa kuko cyaretswe kandi bagaragaza ko n'impamvu bavuga ko bareze utari we kuburanishwa kuko cyaretswe kandi turagaragaza ko n'impamvu bavuga ko bareze utari we cyangwa utabaho atari ikirego ubwacyo ahubwo ari uregwa akaba atandukanye n'ibyo aregwa aribyo byitwa ikirego kimwe mumategeko kitwa ababuranyi naho ikingi kikitwa ikiregerwa ntaho rero byakwitiranywa na cyane ko ikirego ubwacyo ari nacyo cyerekana Urukiko rufite ububasha n'agaciro k'ikiregerwa akaba atari ababuranyi.

[9] Asoza avuga kandi ko yanagaragaje ko hari ibyakozwe n'urukiko bitari bikwiye kuko nubundi ATC Rwanda Ltd irega yareze GARAGE AUTO CLINIC MERCEDES SPECIALIS Ltd hanyuma urukiko kuko rutanafite uburenganzira bwo kwerekana ababuranyi cyangwa kubahindura bituma nyuma y'igihe tugiye mu nama ntegurarubanza umwanditsi mukuru w'urukiko yongeramo undi muburanyi nyamara we atabyemerewe binarangira umucamanza nawe abifashe atyo kandi izo si inshingano z'urukiko kuko ntirwemerewe guhindura Ababuranyi nkuko n'ababuranyi ntanumwe wemerewe kubahindura bikaba byarabnakomeje bityo muri copy de jugement kuko bitavanwamo nuwo ariwe wese ariko hafatirwa ibyemezo uwashyizwemo n'urukiko kumunsi w'Inama ntegurarubanza kuko iyo tumaze gusevinga kuri *General information* ntawe uba yemerewe kongera kugira ibyo ahinduramo uretse ubwanditsi ari nabwo bwakoze ariya makosa bityo byose bikwiye gusubirwamo hagakurikizwa ibyo amategeko ateganya.Ibi kandi

bituma Uwaregaga ntabubasha n'inyungu agira byo kurega ibirego byari mukirego yaretse kubushake bwe bikanafatwaho icyemezo n'urukiko. Urukiko ruzadukiranure cyane cyane kukitwa urubanza, ababuranyi n'Ikiregerwa (ikirego).

[10] Amategeko ashingiraho akaba ari ingingo za 2 (igika cya 1) agace ka 2 na 5,4,5,6,122 na 124 (igika cya 3) za CPCCSA, ingingo za 83 na 129 za CPCCSA.

[11] Me Kayitare Serge, akoreshe imyanzuro ya Me Kayitare Jean Pierre yiregura ko asanga impamvu ya mbere y'ubujurire ya AUTO CLINIC MERCEDES SPECIALIST Ltd nta shingiro ifite kuko inzitizi yayo yatanze mu rwego rwa mbere isaba kutakira ikirego cya ATC RWANDA Ltd, urukiko rwayisuzumye mu iburanisha ryo kwa 12/01/2021, ruyifataho icyemezo muri iryo buranisha "*prononcé sur les bancs*" ku buryo rero kuba icyo cyemezo kitarashyizwe mu rubanza bitari ngombwa mu gihe cyari cyararangije kumenyeshwa ababuranyi.

[12] Asoza avuga ko ibyo kuvuga ko iyo nzitizi yari ifite ishingiro, ataribyo kuko ikirego cya mbere ATC RWANDA Ltd yari yareze mu rubanza RCOM 01067/2020/TC, yaregagamo Garage AUTO CLINIC MERCEDES SPECIALIST Ltd, naho mu rubanza rwajuririwe ikaba yararegaga AUTO CLINIC MERCEDES SPECIALIST Ltd, bigaragara ko ababuranyi atari bamwe muri izo manza zombi, usibye ko nibyaburanwaga atari bimwe. Avuga ko igihe baregega uwaregwaga yavuze ko harezwe GARAGE AUTO CLINIC MERCEDES SPECIALITS Ltd kandi ko iyo sosiyete itabaho, urwo rubanza rukaba rwarangiye, ko nyuma yaho noneho harezwe AUTO CLINIC MERCEDES SPECIALITS Ltd, ko ariko buri gihe uko batangaga ikirego hagarukagamo GARAGE, biba ngombwa ko ibyo bisabwa mu Rukiko rw'Ikirenga ko ibyo byakurwamo, ko arinabwo bavuze ko baretse ikirego kuri iyo GARAGE AUTO CLINIC MERCEDES SPECIALITS Ltd kuko iyo sosiyete itabaho. Avuga ko muri point ya kabiri y'urubanza hagaragara ko umucamanza yemeje ko GARAGE ivamo hagakomeza AUTO CLINIC MERCEDES.

UKO URUKIKO RUBIBONA

[13] Urukiko rusanga ibivugwa na Me Komezusenge Déogratias ko Urukiko Rubanza rutasuzumye inzitizi yo kutakira ikirego kuko Urega yiyambuye ububasha n'uburenganzira bwo kongera kurega, ko kandi mu kurega hari harezwe utari we nkuko byagaragajwe mu rubanza RCOM 01067/2020/TC, ko ibi kandi bishobora no gutuma uwareze asanze yareze nabi cyangwa yareze utari we kuko ikibazo kiba kitari kukiregerwa cyangwa ikirego (*objet du litige* cyangwa objet de la demande), yemererwa kureka urwo rubanza yari yareze akongera kurega ikirego cye neza kandi bushya ariko iyo yibeshye akareka ikirego kandi kigizwe n'ibyo ashingiraho arega kinagaragaza inyungu n'impamvu yahisemo kurega uwo arega aba yiyambuye uburenganzira n'ububasha bwo kuzongera kuregera ibyo yaregeraga, ko ibyo biteganywa n'ingingo za 122 na 125 (igika cya 3) za CPCCSA, ko rero kuba ikirego gishingiye kuri pièces de rechange, ku modoka yagurishijwe RAC 762B ndetse n'imodoka bavuga ko bakodesheje RAC 094B byari byararezwe murubanza RCOM 01739/2020/TC maze ibyo birego byose nkuko bigaragara bikarekwa nuwari warareze, bivuze ko yiyambuye ububasha bwo kongera kubiburana no kongera kubiregera, bitahabwa ishingiro kuko kuba urukiko rubanza mw'iburanisha ryo kwa 12/01/2021, ruyifataho icyemezo muri iryo buranisha "*prononcé sur les bancs*" aho rwasobanuye ko rurasanga ari urubanza RCOM01067/2020/TC ari n'urubanza RCOM01739/2020/TC muri izo manza zose umuburanyi wazirezwemo ari Garage Auto Clinic Mercedeces Specials Ltd nk'uko bigaragazwa

na iecms ndetse mu rubanza 1067, Urukiko rwemeje ko ikirego cya ATC kuko yareze uwo itagombaga kurega, ko rurasanga nta kirego Auto Clinic Mercedeces Specials Ltd yigeze iregwamo cyaretswe cg se cyaba cyaraburanishijwe mu mizi yacyo kuburyo byaba inzitizi yo kutongera kukiburanisha, ko uwitwa Garage Auto Clinic Mercedeces Specials Ltd akomeza kuva mu rubanza hakaba hagomba kugumya kuburanishwa Auto Clinic Mercedeces Specials Ltd, bityo rwemeza ko urubanza Rcom 01894/2020/TC rwakiriwe rukaba rugomba kugumya kuburanishwa mu mizi yarwo nk’uko bigaragazwa n’inyandiko mvugo y'iburansha mu ruhame ry'urubanza RCOM 01894/2020/TC ryo ku wa 12/01/2021.

[14] Rusanga kuba icyo cyemezo kitarashyizwe mu rubanza bitari ngombwa mu gihe cyari cyararangije kumenyeshwa ababuranyi, kuba mu kurega hararezwe Garage AUTO CLINIC MERCEDES SPECIALIST Ltd, naho mu rubanza rwajuririwe ikaba yararegaga AUTO CLINIC MERCEDES SPECIALIST Ltd, bigaragara ko ababuranyi atari bamwe muri izo manza zombi.

[15] Urukiko rusanga kandi na none iyo habayeho kureka ikirego kubera uwaregaga yasanze yaribeshye kuwo arega, bitamwambura uburenganzira bwo kurega uwo agomba kurega wanyawe utandukanye n’uwa mbere, kuko icyo aba yiyambuye n’uburenganzira bwo kutongera kurega wawundi yari yareze noneho akaza kureka ikirego kuri we nk’uko bisobanurwa mu ngingo ya 122 y’itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, kuba rero mu kurega Auto Transport Company Rwanda Ltd yari yareze Garage Auto Clinic Mercedes Specialis Ltd, ikaza gusanga iyo sosiyete itabaho ahubwo igomba kurega na Auto Clinic Mercedes Specialist Ltd, kuba yararetse ikirego yaregagamwo Garage Auto Clinic Mercedes Specialis Ltd bikaba bitagomba kuyambura burundu uburenganzira bwo kurega Auto Clinic Mercedes Specialis Ltd kuko uregwa atandukanye n’uwaregwaga.

[16] Urukiko rusanga na none uwajuriye ntacyo agaragaza anenga icyemezo cy’Urukiko ku nzitizi rwasobanuye k nta shingiro ifite, nk’uko byagaragajwe mu bika bibanziriza iki, kuba mu gutanga iyi nzitizi mu bujurire, uwajuriye agaruka kubyo yaburanishije ku rwego rwa mbere, mu kujurira akaba yaragombaga kubahiriza ibiteganywa n’ingingo ya 150 mu gace ka 5° n’aka 6° y’itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, isobanura mu buryo butaziguye ibigomba kuba bikubiye mu mwanzuro w’ubujurire aho isobanura ko ubujurire bukorwa mu buryo bw’umwanzuro utanga ikirego, mu gace ka 5° ikavuga ko hagaragzwa urutonde rw’inenge z’urubanza zisabirwa gukosorwa n’ibindi bibazo bigomba gusuzumwa naho aka 6° ikavuga ko hatangwa ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n’uburyo agomba gukosorwa, kuba rero nta nenge uwajuriye agaragaza kuri iyo ngingo n’uburyo izo nenge zakosorwamo nk’uko biteganwa n’ingingo imaze kuvugwa, bityo kuba atagaragaza inenge ziri mu rubanza n’uburyo zakosorwamo, iyi ngingo y’ubujurire ikaba nta shingiro yahabwa kuko urukiko ntacyo rwagaragarijwe rwakosora.

2. **Ku birebana no gusuzuma niba hari Umwenda w'ubugure bw'imodoka RAC 762B Auto Clinic Mercedes Specialist Ltd ibereyemo ATC Rwanda Ltd**

[17] Me Komezusenge Deogratias na mugenzi we bavuga ko ingingo ya 12 ya CPCCSA, ivuga ko urega agaragaza ibimenyetso by'ibyo aregera kandi iyo abibuze urega aramutsinda none kubijyanye n'imodoka RAC 762B baregera nubwo mu zindi manza bagiye bagaragaza itari yo, bavuga igihe bayibagurishirije, ko banditse ibaruwa idasinye kuwa 30/08/2018 icyo bise “*contrat de cession d'un vehicule*” nyamara ibivugwa bitari byo ndetse itaranasinywe (reba ikiswe *“contrat*

de cession d'un vehicule" yo kuwa 30/08/2019 nyamara aha bavuzemo imodoka RAC 763B ikaba atari RAC 762B barega) hashingiwe kuyahe mazeserano (bagomba kugaragaza amasezerano y'ubugure bw'iyi modoka kandi nibo bafite izo nshingano), banibaza ikigaragaza ko batishyuwe niba koko barayibagurishije (ibimenyetso bagaragaza byerekana ko bishyuwe ndetse bifite na *receipt number* zabyo kandi ntibyaboneka ntayo bakiriye), kuko mubika bya 16 cy'Urubanza rujuririrwa umucamanza nawe ubwe yemeje ko *facture* za EBM ari inyemezabwishyu yarangiza akivuguruza avuga ko zatanzwe kuri *credit* kandi ubwazo zitwa inyemeza bwishyu (ikimenyetso cyuko hishyuwe amafaranga runaka) maze akavuga ngo ntakimenyetso kigaragaza ko zishyuwe kandi zitangwa ari uko habayeho kwishyura bityo n'ingingo yakoresheje ya 7 agace ka 11 y'iteka rya minisitiri.

[18] Bakomeza bavuga kandi ko aho yavuze ngo igaragaza uburyo bwo kwishyura ntabwo ibi bisobanuye ko iriya nyemezabwishyu itangwa hatabayeho kwishyurwa kuko ntabwo ari invoice yishyuza ahubwo ari ikimenyetso cyo kwishyurwa kigaragaza uburyo bukoreshwa mukwishyura buba buvuzwe n'umukiriya bityo ntaho bihuriye no kuvuga ko azishyura ahubwo bivuze uburyo aribwishyuremo kandi ntawe uhabwa iriya nyemezabwishyu atishyuye bityo ibyo bavuga aha si ukuri. Ikindi bakibaza impamvu ki baba barategereje igihe kingana gutya kandi imodoka ikora akazi, bakibaza impamvu ki batabandikiye nibura muri 2018, 2019, ibishyuza ko aribwo RRA isubiza bonus uwishyuye byinshi.

[19] Bavuga ko nta handi bigeze bavuga ko batabishyuye uretse ibi umwavoka wabo yanditse ejo bundi arimo gutegura ikirego, ko ariwe ugomba kugaragaza ibi umwavoka wabo yanditse, ko kandi ariwe ugomba kugaragaza ibimenyetso byuko atishyuwe ko kandi ibyo agaragaza bihamya ko yishyuye, ikindi ntabwo yari gutegereza igihe kingana kuriya iyo aba atarishyuwe kuko mubucuruzi ntabwo watwara ikintu kinahenze gitya utishyuye cyangwa nta masezerano abaye iyo ugitwaye ku ideni kandi ntayo bagaragaza ko bayiduhereye ku ideni n'igihe bikorewe ndetse n'igihe azabishyurira amafaranga asigaye ko bavuga ngo babishyuye avansi gusa bityo kuko ntabyo bagaragaza nibo bakwiye gutsindwa kuko nanubu ahubwo banze kudukorera mutation bashakaga kubarega kuko bemeranije kujyayo ngo ikorwe buzuza ibisabwa bo barabura none bateguraga kubeshya bingana bitya.

[20] Basoza bavuga ko ibi wabireba ku nyandiko yo kuwa 26/06/2019 yashyikirijwe RRA urwego rushinzwe ibi bikorwa tukababura), yibaza impamvu ki kuba carte jaunne ikibanditseho niba batarishyuwe batayifatishije, ahubwo banze kubahindurira bo bakomeza kwizera imikoranire ko ntakibazo kandi tuyikoresha none barashaka kubeshya, ibi ntibikwiye guhabwa ishingiro kuko barabishyuye barigaragariza n'inyemezabwishyu ko bakiriye ariya mafaranga. Amategeko bashingiraho ari ingingo ya 12 ya CPCCSA, ingingo za 75, 90 z'itegeko rigenga amasezerano. Avuga ko hazarebwa fagitire za EBM nimero 5854; 5856 na 5858 kuri *pieces de rechange*, ku modoka *facture* nimero 5882 izo akaba ari inyemezabwishyu, hazarebwa na *tableau* igaragaza uko bihyuye. Bavuga ko fagitire ya EBM ari inyemeza bwishyu, ko nubwo iteka rya minisitiri ryayise inyandiko igaragaza idandazwa, ko ariko ataribyo kuko yemeza ubwishyu bwakozwe.

[21] Me Kayitare Jean Pierre yiregura ko asanga impamvu ya kabiri y'ubujurire ya AUTO CLINIC MERCEDES SPECIALIST Ltd nta shingiro ifite kuko ntacyo agaragaza anenga icyemezo cya mbere. Avuga ko kuba nayo kuko AUTO CLINIC MERCEDES SPECIALIST Ltd idakwiye guhakana ko hari umwenda ibereyemo ATC RWANDA LTD werekeranye n' imodoka baguze ikishyura igice gusa cya miliyoni 3.000.000 FRW. Uwo mwenda ukaba ugaragazwa n'

ibimenyetso bikurikira: -ibaruwa y'integuza AUTO CLINIC MERCEDES SPECIALIST Ltd yandikiwe kuwa 24/12/2019 na ATC RWANDA Ltd iyishyuza umwenda iyibereyemo ungana na 15.651.227 FRW habariwemo n'umwenda w'iyo modoka, iyo Sosiyete ikicecekera, ntiyawuhakana, uko guceceka bikaba bigaragazaza ko iwemera kuko adage ivuga ngo "*qui ne dit mot, consent*" ikoreshwa no mu bucuruzi (*matiere commerciale*); *cheques* 2 zifite nimero 45,806,366 ya 2,000,000FRW yo muri B.K n'iya EQUITY ifite nimero 00103 ya miliyoni 1,000,000FRW, za avansi AUTO CLINIC MERCEDES SPECIALIST Ltd yishyuye igura iyo modoka, bigaragara ko amafaranga yishyuye kugeza ubu ari ayo gusa ya *avance*. Niba ivuga ko hari andi yishyuye, nibitangire ibimenyetso nkuko biteganywa n'ingingo ya 12 CPCCSA, mu gika cyayo cya 2, bagaragaze uburyo bishyuyemo, niba ari mu ntoki, hakoreshejwe sheki, cyangwa se mu buryo bwa *transfer*t kuri konti.

[22] Asoza avuga ko aribo bagomba kubitangira ikimenyetso cy'uko bishyuye, facture EBM nimero 5882 yo kuwa 5/08/2019 iri kumugereka igaragaza ingano y'umwenda wose wa 11.800.000FRW, ivugwamo ko ari igiciro cy'imodoka RAC 762 B. Naho ibyo kuvuga ko iyi *facture* EBM igaragaza umwenda wishyuwe, sibyo kuko nkuko ingingo ya 2 y'Iteka rya Minisitiri N° 002/13/10/TC ryo kuwa 31/07/2013 rigena imikoreshereze y'imashini y'ikoranabuhanga, *facture* EBM ari inyandiko igaragaza ko habayeho kudandaza, kuranguza ibicuruzwa, cyangwa ko hatanzwe *service* ku muguzi, aho kuba inyandiko yemeza ubwishyu bw'ibyaguzwe, kuba AUTO CLINIC MERCEDES SPECIALIST Ltd ubwayo yaradeclaye uwo mwenda muri Rwanda Revenue mu mwaka wa 2019 nkuko nabo ubwabo babyiyemereye mu iburanisha ryo kuwa 12/01/2021, ari gihamya ko uwo mwenda uhari kandi bawemera. Avuga kandi ko kuba imodoka yagurishijwe AUTO CLINIC MERCEDES SPECIALIST Ltd icyanditse kuri carte jaune ya Sosiyete ATC bigaragaza ko batahinduje kuko AUTO CLINIC itarishyura amafaranga yose y'ubugure, kuko iyo iza kuba yarishyuye yose, yari kubiregera mu Rukiko irusaba guhatira AUTO TRANSPORT guhinduza.

[23] Avuga ko EBM bavuga ko arizo zigaragaza ubwishyu, ataribyo kuko izo EBM ari izatanzwe na ATC RWANDA Ltd, ko kandi Urukiko rwabisobanuye neza ko ari fagitire bahawe ngo bishyure ayo amafaranga, bakaba ntacyo banenga kuri icyo kimenyetso cyashingiwe n'Urukiko.

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[24] Urukiko rusanga ibivugwa n'ababuranira uwajuriye ko mu bika bya 16 cy'Urubanza rujuririrwa umucamanza nawe ubwe yemeje ko *facture* za EBM ari inyemezabwishyu yarangiza akivuguruza avuga ko zatanzwe kuri credit kandi ubwazo zitwa inyemeza bwishyu (ikimenyetso cyuko hishyuwe amafaranga runaka) maze akavuga ngo ntakimenyetso kigaragaza ko zishyuwe kandi zitangwa ari uko habayeho kwishyura bityo n'ingingo yakoresheje ya 7 agace ka 11 y'iteka rya minisitiri, bitahabwa ishingiro kuko nk'uko bigaragarazwa muri icyo gika, isesengura ryakozwe n'Urukiko aruko rwasanze nta kigaragaza uburyo inyemezabwishyu (*facture*) ifite nimero 5854 ifite agaciro ka 7,124,421Frw yishyuwe, naho izindi "*factures*" za EBM ziregerwa izifite nimero 5856 (ifite agaciro ka 95,532Frw) na nimero 5858 (ifite agaciro ka 6,272,166Frw) zikaba zigaragara ko zatanzwe ku mwenda (*credit*), mu gihe izindi "*factures*" zifite nimero 5882 (y'agaciro 11,800,000Frw) na nimero 5887 (y'agaciro ka 2,124,000Frw) zigaragazwa ko zari kwishyurwa hakoreshejwe uburyo bwa za "*cheques*", aha rero kaba nta kwivuguruza k'Urukiko

kwabayeho nk'uko bivugwa n'ababuranira uwajuriye kuko icyo rwasobanuye aruko hari fagitire zatanzwe ari inguzanyo:gukopa (*credit*) hakaba na fagitire zari kwishyurwa hakoreshejwe uburyo bwa za sheki, bivuga ko izi nzira zombi zashobokaga, ari uguhabwa umwenda ukazishyura nyuma no kwishyura ukoresheje sheki.

[25] Urukiko rusanga Urukiko rubanza rwarasobanuye mu buryo burambuye kuva mu gika cya 12 kugeza ku cya 21 by'urubanza rujuririrwa kandi twemeranya narwo inkomoko n'ingano y'umwenda yaba uw'ubugure n'ubukode bw'imodoka ndetse na *pieces de rechange*, uwajuriye agomba kwishyura, aho rwagendeye ku bimenyetso binyuranye n'amategeko ndetse no ku miburanire y'ababuranyi, kuba uwajuriye ntacyo agaragaza anenga icyemezo cy'Urukiko ahubwo agaruka kubyo yaburanishije ku rwego rwa mbere, mu kujurira akaba yaragombaga kubahiriza ibiteganywa n'ingingo ya 150 mu gace ka 5° n'aka 6° y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, isobanura mu buryo butaziguye ibigomba kuba bikubiye mu mwanzuro w'ubujurire aho isobanura ko ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, mu gace ka 5° ikavuga ko hagaragzwa urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa naho aka 6° ikavuga ko hatangwa ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa, kuba rero nta nenge uwajuriye agaragaza kuri iyo ngingo n'uburyo izo nenge zakosorwamo nk'uko biteganwa n'ingingo imaze kuvugwa, bityo kuba atagaragaza inenge ziri mu rubanza n'uburyo zakosorwamo, iyi ngingo y'ubujurire ikaba nta shingiro yahabwa kuko urukiko ntacyo rwagaragarijwe rwakosora.

[26] Urukiko rusanga kandi ibivugwa ko kuba AUTO CLINIC MERCEDES SPECIALIST Ltd yarahawe fagitire ya EBM ari ikimenyetso cy'uko yishyuye, ataribyo kuko nkuko ingingo ya 2 y'Iteka rya Minisitiri Nº 002/13/10/TC ryo kuwa 31/07/2013 rigena imikoreshereze y'imashini y'ikoranabuhanga, isobanura ko *facture* EBM ari inyandiko igaragaza ko habayeho kudandaza, kuranguza ibicuruzwa, cyangwa ko hatanzwe *service* ku muguzi, iyo fagitire ikaba itafatwa nk'ikimenyetso cyemeza ubwishyu bw'ibyaguzwe kuko iyo fagitire igaragaza ingano y'ibigurishijwe n'amafaranga bigomba kwishyurwa, bivuga rero ko uwaguze iyo yishyuye agomba kugaragaza ikimenyetso cy'ubwishyu kuba rero AUTO CLINIC MERCEDES SPECIALIST Ltd itagaragaza ukuri n'ibimenyetso by'ubwishyu bw'imyenda yishyuzwa, urubanza rukaba ruyitsinda nk'uko biteganywa n'ingingo ya 3 y'Itegeko N° 15/2004 ryo kuwa 19/07/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo n'ingingo ya 12 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

3. Ku birebana no gusuzuma niba hari amakosa Urukiko rwakoze rutegeka AUTO CLINIC MERCEDES SPECIALIST Ltd yagombaga kwishyura ATC RWANDA Ltd amafaranga y'ubukode bw'imodoka RAB 094B

[27] Me Manirafasha Jean Paul na mugenzi we, avuga ko mu gika cya 13 cy'urubanza rujuririrwa, umucamanza yavuze ngo ko Urukiko rusanga AUTO CLINIC MERCEDES SPECIALIST Ltd ngo yarashyikirijwe fagitire nimero 5887 ngo yo kuwa 13/09/2019 ngo ijyanye niyo modoka kandi agaragaza ko koko bahakanye ko ntawigeze abakodesha iriya modoka bavuga RAB094B ngo atagaragaza ikindi iyo fagitire yatangiwe nkaho kuba umuntu yakoze fagitire bivuze ko koko yabakodesheje imodoka kandi ari ibikorwa byakozwe n'uruhande ruvuga ko rwadukodesheje ntahagaragara aho babahereye iyo modoka, nta masezerano y'ubukode

bagaragaza ntanubwo bagaragaza ko ahari aho babishyuye nibura igihe kimwe, yibaza niba barayikodesheje igihe kingana iki, nicyo bari bagiye kuyikoresha n'uwabyemeye.

[28] Akomeza avuga ko kuko n'ahandi yabyirengagije nkana afata ibyemezo yafashe ngo mu gihe batagaragaza ko iyo modoka bayiguze kandi ntaniyiba iwabo ntaniyo bigeze batunga, naho mu gika cya 21 yemeza ko bagomba kwishyura ariya mafaranga yagennye ashingiye gusa ku mvugo z'uwareze zidafite aho bo baba barakiye byaba ibikoresho, yaba amasezerano yo kugura imodoka byaba n'amasezerano yo gukodesha imodoka ategeka gusa avuga ngo kubera *facture* bagaragaje kandi zose zigaragaza ko ari *receipt* bivuze ko amafaranga abivugwamo yakiriwe, ariko hakaniyongeraho ko bo biriya bavuga ntabyo bemera kandi nta bimenyetso bagaragaza ko koko babahaye biriya bintu bavuga uretse imodoka baguze nayo bagaragaza ko bayibishyuye kandi bikemezwa n'umukozi wabo wakoraga inyemezabwishyu, umucamanza akaba yaravuze ko ngo badandaje gusa.

[29] Asoza avuga ko ibi ari ukubogama gukabije bikaba bikwiye guhinduka kandi bakagaragaza ibimenyetso byibyo bavuga banerekana aho babyakiririye bemera ko babijyanye ngo bibone kwitwa umwenda bakwishyuzwa naho gushingira kubintu bikoreye ubwabo ntaho babisinyiriye atari ubutabera ariyo mpamvu basaba kurenganurwa kuko ibi byose baregera mu rwego rw'ubucuruzi bigomba kugaragazwa n'Amasezerano yanditse kandi asinywe n'impande zombi nkuko babisaba ngo babigaragaze kandi iyo babibuze nibo batsindwa. Amategeko bashingiraho akaba ari ingingo ya 12 ya CPCCSA, Ingingo ya 3 y'Itegeko ryerekeye Ibimenyetso mu manza n'itangwa ryabyo. Ingingo za 43,42 (4) 64,65,75 z'Itegeko rigenga amasezerano. Fagitire ivugwa ngo ikaba iatarigeze ishyikirizwa AUTO CLINIC, ko kandi bakabaye bagaragaza ibimenyetso by'uko yakodeshejwe koko. Ko kandi kuvuga ko byemejwe mu gika 13 cy'urubanza, ataribyo kuko ariyo mpamvu bajuriye, kuko umucamanza ntacyo yazishingiyeho.

[30] Me Kayitare yiregura ko asanga iyi mpamvu nta shingiro ifite kuko idakwiye guhakana uwo mwenda wo gukodesha imodoka ya ATC RWANDA Ltd RAB094B , mu gihe hari ibimenyetso biwugaragaza bigizwe na: ibaruwa y'integuza AUTO CLINIC MERCEDES SPECIALIST Ltd yandikiwe kuwa 24/12/2019 n'iyo ATC RWANDA LTD iyishyuza umwenda iwubereyemo ungana na 15,651,227 Frw, habariwemo na miliyoni 2,124,000 Frw y'ubukode bw'iyo modoka, AUTO CLINIC ikicecekera, uko guceceka kwayo bikaba bigaragazaza ko iwemera; *facture* EBM nimero 5887 yo kuwa 13/09/2019 igaragaza ingano y'uwo mwenda; AUTO CLINIC MERCEDES SPECIALIST Ltd ikaba itagaragaza ikindi iyo fagitire inayanditseho yaba yarayiherewe. Naho ibyo kuvuga ko iyi *facture* EBM igaragaza umwenda wishyuwe, sibyo kuko nkuko ingingo ya 2 y'Iteka rya Minisitiri Nº 002/13/10/TC ryo kuwa 31/07/2013 rigena imikoreshereze y'imashini y'ikoranabuhanga, facture EBM ni inyandiko igaragaza ko habayeho kudandaza, kuranguza ibicuruzwa, cyangwa ko hatanzwe service ku muguzi, aho kuba inyandiko yemeza ubwishyu bw'ibyaguzwe. Kuba AUTO CLINIC MERCEDES SPECIALIST Ltd yaradeclaye uwo mwenda muri Rwanda Revenue mu mwaka wa 2019 nkuko nabo ubwabo babyiyemereye mu iburanisha ryo kuwa 12/01/2021, ni gihamya ko uwo mwenda uhari kandi bawemera. Avuga ko iyo fagitire bayishyikirijwe nk'uko byasobanuwe n'urukiko mu gika cya 13 cy'urubanza rujuririrwa 13/09/2019.

UKO URUKIKO RUBIBONA

[31] Urukiko rusanga ibivugwa n'ababuranira uwajuriye ko nta kimenyetso cy'ubukode bw'imodoka RAB 094B ko ndetse mu gika cya 13 cy'urubanza rujuririrwa, umucamanza yavuze ngo ko Urukiko rusanga AUTO CLINIC MERCEDES SPECIALIST Ltd ngo yarashyikirijwe Fagitire nimero 5887 ngo yo kuwa 13/09/2019 ngo ijyanye niyo modoka kandi agaragaza ko koko bahakanye ko ntawigeze abakodesha iriya modoka bavuga ngo atagaragaza ikindi iyo fagitire yatangiwe nkaho kuba umuntu yakoze fagitire bivuze ko koko yabakodesheje imodoka kandi ari ibikorwa byakozwe n'uruhande ruvuga ko rwadukodesheje ntahagaragara aho babahereye iyo modoka, bitahabwa ishingiro kuko nk'uko byasobanuwe n'Urukiko rubanza mu gika cya 13 cy'urubanza rujuririrwa kandi twemeranya narwo ko ku bijyanye n'amafaranga y'ubukode bw'imodoka yo mu bwoko bwa Nissan Hardbody ifite purake RAB094B angana na 2,124,000Frw, rusanga AUTO CLINIC MERCEDES SPECIALIST Ltd yarashyikirijwe fagitire nimero 5887 yo kuwa 13/09/2019 ijyanye n'iyo modoka (NISS HB LOC CHASSIS) , ko nubwo iyo sosiyete ihakana ko itigeze iyikodesha, ikaba itagaragaza ikindi iyo fagitire inayanditseho yaba yarayiherewe uretse ubukode bw'iyo modoka, mu gihe itayiguze.

[32] Rusanga kandi igishimangira ko uwajuriye azi inkomoko y'uwo mwenda aruko ubwo yaburanaga ku rwego rwa mbere mu gusubiza ku kibazo cya mbere cyo kumenya niba hari umwenda wa 14,786,420 Frw AUTO CLINIC MERCEDES SPECIALIST Ltd ibereyemo Sosiyete AUTO TRANSPORT COMPANY Ltd, ku mugereka w'icyo kibazo mu kwerekana hari fagitire za EBM zigaragaza ubwishyu yakoze harimo n'iyo fagitire Urukiko rwashingiyeho rwemeza uwo mwenda nubwo yo ivuga ko iyo fagitire yishyuwe (reba *attachement* ku kibazo cya mbere cy'urubanza rujuririrwa munsi yaho yireguriye aho fagitire y'imodoka NISS HB LOC CHASSIS igaragara), bityo kutagaragaza ukuri n'ibimenyetso by'ubwishyu bw'uyu mwenda urubanza rukaba ruyitsinda nk'uko biteganywa n'ingingo ya 3 y'Itegeko N° 15/2004 ryo kuwa 19/07/2004 ryavuzwe haruguru n'ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

4. **Ku birebana no gusuzuma hari indishyi z'inyungu AUTO CLINIC MERCEDES SPECIALIST Ltd yagombaga gutegekwa kwishyura ATC Rwanda Ltd, gusuzuma niba indishyi z'ikurikiranarubanza n'igihembo cya avoka zatanzwe zigomba gukurwaho**

[33] Me Manirafasha na mugenzi we bavuga ko mu bika bya 25,26 na 27 z'Urubanza rujuririrwa umucamanza yabaze kandi yemeza indishyi za 14,786,420Frw nyamara nta masezerano yishe zishingiyeho yagaragarijwe cyangwa ikindi kimenyetso twasinyeho twemera Umwenda nabyo bikaba bigize akarengane asaba ko bisubirwamo hanyuma zikavanwaho kuko bo nta mwenda bafitiye ATC Ltd ahubwo ariyo iwubafitiye nubwo bo batarabarega.

[34] Asoza avuga ko amategeko ashingiraho ari ingingo ya 12 ya CPCCSA, Ingingo ya 3 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Ingingo za 43,42 (4) 64,65,75,137 z'Itegeko rigenga amasezerano.

[35] Me Kayitare yiregura ko asanga iyo mpamvu nta shingiro ifite kuko mu gihe umucamanza wa mbere yari asanze AUTO CLINIC MERCEDES SPECIALIST Ltd hari umwenda ibereyemo AUTO TRANSPORT COMPANY, ikica amasezerano bari baragiranye, ingingo ya 144 y'Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano yamwemereraga gutanga izo nyungu.

UKO URUKIKO RUBIBONA

[36] Urukiko rusanga kuba mu gutanga indishyi Urukiko rwarashingiye kukuba uwazisabye yaratsindiye urubanza ndetse anagaragaza igihombo yatewe no kutishyurwa, kuba na none mu bujurire Urukiko rwasanze ubujurire nta shingiro bufite, utarubahirije inshingano ze ngo yishyure umwenda, akaba koko yaragombaga gucibwa indishyi cyangwa inyungu z'umwenda atishyuye nk'uko biteganywa n'ingingo ya 144 y'Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano.

5. Ku birebana no gusuzuma niba indishyi zasabwaga na AUTO CLINIC MERCEDES SPECIALIST Ltd mu kirego kiregera kwiregura zari zifite ishingiro

[37] Me Manirafasha asobanura ko mu bika bya 31,35 na 36 by'urubanza rujuririrwa, Umucamanza yaciye AUTO CLINIC MERCEDES SPECIALIST Ltd amafaranga yiswe ikurikiranarubanza 50,000Frw, 700,000 Frw y'Igihembo cya avoka na 20,000Frw y'igarama nyamara bitari bikwiye kuko nta masezerano twebwe twagiranye naba twishe kandi nta mwenda babarimo banze kubishyura ariko ategeka ko bacibwa ibi byose bakaba basaba ko bivanwaho kandi bakatugenera izo basabye mukirego kiregera kwiregura bari batanze.

[38] Asoza avuga ko amategeko ashingiraho ari ingingo ya 12 ya CPCCSA, ingingo ya 3 y'Itegeko ryerekeye Ibimenyetso mu manza n'itangwa ryabyo. Ingingo za 43,42(4)64,65,75 z'Itegeko rigenga amasezerano.

[39] Me Kayitare yiregura ko asanga iyi mpamvu ya gatanu y'ubujurire ya AUTO CLINIC MERCEDES SPECIALIST Ltd nta shingiro ifite kuko mu gihe umucamanza wa mbere yari asanze hari umwenda ibereyemo Sosiyete ATC RWANDA Ltd, ingingo ya 111 y'Itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yaramwemereraga gusubiza ATC RWANDA Ltd amafaranga ahwanye n'ibyakoreshejwe mu rubanza.

UKO URUKIKO RUBIBONA

[40] Urukiko rusanga kuba urukiko rubanza rutaratanze indishyi zasabwaga na AUTO CLINIC MERCEDES SPECIALIST Ltd mu kirego kiregera kwiregura nta makossa rwakoze kuko kuba urubanza rwarayitsindaga ndetse no mu bujurire ruyitsinda, ikaba itagomba kubiherwa indishyi.

6. Ku birebana no gusuzuma niba indishyi z'ikurikiranarubanza n'igihembo cya avoka zisabwa n'uwajuriye zifite ishingiro

[41] Me Manirafasha na mugenzi we bavuga ko nkuko bigaragara mu myanzuro yabo yo kwiregura, ko ashingiye kubiteganywa n'amategeko bari basabye amafaranga y'ikurikiranarubanza angana n'ibihumbi magana atatu ndetse n'igihembo cya avocat cya 1,000,000Frw yose hamwe akaba 1,300,000Frw nyamara kubera kubogama umucamanza wo ku rwego rwa mbere ntacyo yigeze azivugaho cyangwa ngo agaragaze ko nibura hari izo twatse kimwe nuko n'izabo yavuze ngo ntacyo twazivuzeho nyamara bigaragara muri *system* ko twazivuzeko noneho ntanubwo yagaragaje impamvu atigeze aziha ishingiro ibi bikaba binagaragaza ukubogama kwe wagirango yaburanishaga uruhande rumwe arirwo aburanisha kandi agomba guha ubutabera gusa ibi

ntibikwiye mu butabera bw'urwanda kuko turibaza niba twaraburanaga n'Umucamanza cyangwa na ATC LTd.

[42] Me Kayitare avuga ko isanga iyi mpamvu ya gatandatu y'ubujurire ya AUTO CLINIC MERCEDES SPECIALIST Ltd nta shingiro ifite nayo kuko mu gihe umucamanza wa mbere yari asanze AUTO CLINIC MERCEDES SPECIALIST Ltd hari umwenda ibereyemo ATC RWANDA Ltd, ntiyari guhindukira ngo agire indishyi ayigenera kuko ntawakwitwaza amakosa ye ngo agire indishyi abisabira. Nibyo adage "*Nul ne peut se prévaloir de sa propre turpitude*" isobanura.

UKO URUKIKO RUBIBONA

[43] Urukiko rusanga indishyi zisabwa n'uwajuriye zitagomba gutangwa kuko ubujurire bwe zari zishingiyeho nta shingiro bufite.

7. Ku birebana no gusuzuma niba ubujurire bwuririye ku bundi bwatanzwe n'uregwa bufite ishingiro

[44] Me Kayitare asobanura ko ashingiye ku ngingo ya 141 na 152 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi bakoze ubujurire bwuririye ku bwa AUTO CLINIC MERCEDES SPECIALIST Ltd asaba gukosora ikosa ryo guteranya ryabaye aho kwandika ko umwenda wose AUTO CLINIC MERCEDES SPECIALIST Ltd ibereyemo ATC RWANDA Ltd ungana na 15.731.228FRW, bakandika bibeshye 14.786.420 Frw ; inyungu zibazwe kugeza uru rubanza ruciwe mu bujurire, ni ukuvuga 15.731.228Frw x 7.803% = 1.227.507Frw, kugabanya na 12 kugirango babone inyungu za buri kwezi zingana na =102.292Frw buri kwezi x n'amezi asigaye urubanza ruzasomerwaho; indishyi za 1.000.000FRW y'igihembo cy'avoka; indishyi z'ikurikiranarubanza za 500.000Frw.

[45] Ababuranira uwajuriye biregura ko ntashingiro bufite.

UKO URUKIKO RUBIBONA

[46] Urukiko rusanga ibivugwa na Me Kayitare ko asaba gukosora ikosa ryo guteranya ryabaye aho kwandika ko umwenda wose AUTO CLINIC MERCEDES SPECIALIST Ltd ibereyemo ATC RWANDA Ltd ungana na 15.731.228Frw, bakandika bibeshye 14.786.420 Frw, bifite ishingiro kuko kuba mu gika cya 21 cy'urubanza rujuririrwa, Urukiko rubanza rwarasobanuye ko umwenda wose hamwe ari 18,128,421Frw, akuwemo 2,397,193Frw ATC yemera ko ifitiye iyo sosiyete, hagasigara 15,731,228Frw (18,128,421Frw-2,397,193Frw) ko ariyo ATC yari ikwiye kwishyurwa, ko ariko kubera isaba kwishyurwa na AUTO CLINIC MERCEDES SPECIALIST Ltd amafaranga miriyoni cumi n'enye n'ibihumbi magana arindwi mirongo inani na bitandatu, magana ane na makumyabiri (14,786,420Frw), hashingiwe ku ngingo ya 10 y'Itegeko rimaze kuvugwa haruguru,[1] ayo akaba ariyo iyo sosiyete itegetswe kwishyura ATC RWANDA Ltd, iri kosa rigomba gukosorwa kuko kuba mu kurega hararegewe koko 14,786,420Frw, ariko mu kuburana bikaza kugaragara ko habayeho kwibeshya ku ngano y'umwenda waba wariyongereye

[1] Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine.

cyangwa waragabanutse bene iryo kosa rigomba gukosorwa hakishyurwa umwenda wagaragajwe nyuma y'ubusobanuro bwa buri ruhande na cyane ko irikosa ridakosowe yikungahaje bitari ngombwa (*enrichissement sans cause*) ku kigero cy'amafaranga 944,808, bityo hashingiwe ku ngingo ya 141 y'Itegeko N°22/2018 ryo kuwa 29/04/2018 ryavuzwe haruguru, yemerera Urukiko rwajuririwe gusuzumira hamwe n'izindi ngingo z'ubujurire ikibazo gukosora amakosa rwagaragarijwe ari mu rubanza rwa mbere, bityo umwenda akaba ari 15,731,228Frw aho kuba 14,786,420Frw.

[47] Urukiko rusanga ku birebana n'inyungu zisabwa mu bujurire bwuririye k'ubundi zifite ishingiro kuko nk'uko byasobanuwe n'Urukiko rubanza mu bika bya 24 n'icya 25 by'urubanza rujuririwa kandi twemeranya narwo, ko rurasanga kwica amasezerano birebana no kutishyura umwenda AUTO CLINIC MERCEDES SPECIALIST Ltd iberewemo na AUTO TRANSPORT COMPANY Ltd, ko hashingiwe ku ngingo ya 144 y'Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko 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, ko bityo inyungu zuwo mwenda zikwiye gutangwa guhera igihe igisabwa (kwishyura) cyagombaga gukorwa kuwa 13/09/2019 (igihe fagitire ya nyuma muzavuzwe haruguru yasohokeye), kugeza urubanza ruciwe mu bujurire ni ukuvuga kugeza kuwa 17/05/2022 bivuze ko ari iminsi 934, kuba kandi umwenda uregerwa udakomoka ku nguzanyo, igipimo cy'inyungu zayo kikaba gikwiye gushingira ku gipimo cy'ibitsa (*Deposite rate*) nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza RCOMA 0148/11/CS rwaciwe kuwa 23 Gicurasi 2014 ndetse n'urubanza RCOMAA 00006/2020/CA narwo rwaciwe n'Urukiko rw'Ubujurire kuwa 4/09/2020, bityo rushingiye kubimaze kuvugwa, rusanga igipimo cy'ibitsa kuwa 17/05/2022 ari 7.822[2], bityo inyungu zikaba ari 15,731,228 x 934 x 7.822/100 x 360 = 3,192,455 Frw.

[48] Urukiko rusanga kandi indishyi z'ikurikirararubanza n'igihembo cy'avoka zisabwa AUTO TRANSPORT COMPANY Ltd zifite ishingiro kubwo kuba AUTO CLINIC MERCEDES SPECIALIST Ltd yarayishoye mu manza z'amaherere, kuba mu kuburana haribyo yatakaje nko gushaka uyiburanira, ibyo yatakaje byose ikurikirana urubanza bikaba bigomba gusubizwa nayo hashingiwe ku ngingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi isobanura ko ikirego cy'amafaranga y'ikurikiranarubanza kiba ikirego gishamikira ku kirego cy'iremezo ko kandi kigamije kwishyuza ibyakoreshejwe mu rubanza, ko ndetse icyo kirego kiburanishirizwa rimwe n'ikirego cy'iremezo ko kandi gishobora kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe, kuko ariwe nyirabayazana w'igihombo bagize, kubw'izo mpamvu akaba agomba kwishyura buri umwe indishyi z'ikurikiranarubanza n'igihembo cya avoka zingana n'amafaranga 1,000,000 zigenywe mu bushishozi bw'Urukiko kuko ayasabwa ari umurengera.

III. ICYEMEZO CY'URUKIKO

[2] file:///C:/Users/DELL/Downloads/Interest_rate_structure_up_to_April_2022.pdf

[49] Rwemeje ko ubujurire bwa AUTO CLINIC MERCEDES SPECIALIST Ltd nta shingiro bufite.

[50] Rwemeje ko urubanza RCOM 01894/2020/TC ruhindutse ku ngano y’umwenda n’inyungu gusa. Rutegetse AUTO CLINIC MERCEDES SPECIALIST Ltd kwishyura AUTO TRANSPORT COMPANY Ltd amafaranga 15,731,228 y’umwenda iyibereyemo, kuyishyura amafaranga 3,192,455 y’inyungu z’umwenda, kuyishyura

[51] Rutegetse AUTO CLINIC MERCEDES SPECIALIST Ltd kwishyura AUTO TRANSPORT COMPANY RWANDA Ltd amafaranga ibihumbi magana arindwi na mirongo itanu (750,000Frw) y’indishyi z’ikurikiranarubanza n’igihembo cya avoka no kuyishyura amafaranga ibihumbi makumyabiri (20,000Frw) y’amagarama y’urubanza yategetswe ku rwego rwa mbere.

[52] Rutegetse ko AUTO CLINIC MERCEDES SPECIALIST Ltd kwishyura AUTO TRANSPORT COMPANY RWANDA Ltd amafaranga 1,000,00 y’indishyi z’ikurikiranarubanza n’igihembo cya avoka mu bujurire.

[53] Rutegetse ko amafaranga 40,000 y’amagarama AUTO CLINIC MERCEDES SPECIALIST Ltd yishyuye ijurira aherera ku isanduku ya Leta.