ARPEQ v. SEGATABAZI

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0025/13/CS (Kayitesi Z., P.J., Kayitesi R. na Rugabirwa, J.) 10 Mata 2015]

Amategeko agenga ububasha bw'Inkiko – Ubujurire – Inzitizi yo kutakira ubujurire – Ububasha bw'Urukiko rw'Ikirenga bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe mu rwego rwa kabiri n'Urukiko Rukuru – Mu gihe impamvu zashingiweho ku rwego rwa mbere zitandukanye n'izashingiweho n'urukiko mu rwego rw'ubujurire, umuburanyi yemerewe kujurira mu Rukiko rw'Ikirenga – Itegeko-Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28(5).

Incamake y'ikibazo: Segatabazi ashingiye ku nyandiko ya ARPEQ yo kuwa 22/11/2011 n'iyo kuwa 06/12/2011, aho ARPEQ yiyemereramo ko imurimo umwenda ungana na 150.000.000Frw; yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba ko yawumwishyura.Uwo mwenda ugizwe n'inguzanyo, imisanzu yatanze hamwe n'ishimwe yamwemereye hiyongereyeho inyungu z'ayo mafaranga yose zibariwe kuri 18% kugeza igihe azishyurirwa. Asabakandi ko yahabwa indishyi z'ikurikiranarubanza hamwe n'igihembo cy'Avoka.

Urukiko rwemeje ko ikirego cye gifite ishingiro kuri bimwe maze rutegeka ARPEQ kwishyura umwenda yagurijwe hamwe n'ishimwe yemeye bihwanye na 105.648.178Frw.

Impande zombi zajuririye iki cyemezo mu Rukiko Rukuru maze rwemeza ko Segatabazi atsindiye 150.000.000Frw runategeka irangizarubanza ry'agateganyo kubyerekeye 48.693.484Frw hamwe no kumwishyura amafaranga y'ikurikiranarubanza kandi ARPEQ ikanatanga amagarama y'urubanza.

ARPEQ yajuririye iki cyemezo mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rutahaye urubanza uburemere rukwiriye kandi ko Umucamanza yitiranyije ARPEQ n'ibigo biharanira inyungu kandi ari umushinga udaharanira inyungu.

Iburanisha ry'ubujurire bwa ARPEQ rigitangira, Segatabazi yabyukije inzitizi yo kutakira ikirego cyayo avuga ko yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

Mu kwiregura kuri iyo nzitizi, ARPEQ ivuga ko Urukiko Rwisumbuye rwasanze Segatabazi adakwiye gusubizwa amafaranga y'imisanzu naho Urukiko Rukuru rwo rukemeza ko ayahabwa; bisobanuye ko ARPEQ yatsindiye iyi ngingo hanyuma ikazakuyitsindirwa bwa mbere mu Rukiko Rukuru. Ibi rero bikaba bivuga ko ari ubwa mbere ARPEQ yayijuririraga bigaragaza ko abo baburana bumva nabi ingingo ingingo ya 28, igika cya 5 y'Itegeko-Ngenga N°03/2012/OL ryo kuwa 13/06/2012, bityo akaba asaba Urukiko rw'Ikirenga kutakira inzitizi yatanzwe na Segatabazi.

Incamake y'icyemezo:Urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ntirushobora kujuririrwa mu Rukiko rw'Ikirenga ariko mu gihe impamvu zashingiwehoku rwego rwa mbere zitandukanye n'izashingiweho ku rwego rwa kabiri, yemerewe kujurira mu rukiko rw'Ikirenga.

Inzitizi nta shingiro ifite;
Amagarama arasubitswe.

Amategeko yashingiweho:
Itegeko-Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28(5).

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo Segatabazi Protais arega ARPEQ umwenda ungana na 150.000.000Frw (ugizwe na 48.693.694Frw yagurije ARPEQ, 44.352.822Frw y'imisanzu yatanze muri ARPEQ na 56.953.484Frw y'ishimwe yemerewe na ARPEQ) hiyongereyeho inyungu zayo mafaranga yose zibariwe kuri 18% kugeza yishyuwe, indishyi z'ikurikiranarubanza zingana na 5.000.000Frw n'igihembo cya Avoka kingana na 7.500.000 Frw. Urukiko rwasanze ikirego cya Segatabazi gifite ishingiro kuri bimwe, rutegeka ARPEQ kumwishyura 48.693.694Frw yayigurije na 56.953.484Frw y'ishimwe yamwemereye yose hamwe akaba 105.648.178Frw.

[2] Impande zombi zajuririye iki cyemezo mu Rukiko Rukuru. Mu rubanza RCA041/13/HC/KIG na RCA 0550/13/HC/KIG rwo kuwa 08/11/2013, urwo Rukiko rwemeje ko Segatabazi atsindiye 150.000.000Frw, rutegeka irangizarubanza ry'agateganyo ku mafaranga angana na 48.693.484Frw, rutegeka kandi ARPEQ kwishyura Segatabazi amafaranga y'ikurikirana rubanza angana na 1.000.000Frw no gutanga amagarama y'urubanza.

[3] ARPEQ yajuririye iki cyemezo mu Rukiko rw'Ikirenga ivuga ko urubanza rutahawe uburemere rukwiriye mu Rukiko Rukuru kandi ko Umucamanza yitiranyije ARPEQ n'ibigo biharanira inyungu kandi ari umushinga udaharanira inyungu. Ikirego cyanditswe kuri N° RCAA 0025/13/CS.

[4] Mu gihe urubanza rutaraburanishwa mu Rukiko rw'Ikirenga, ARPEQ yatanze ikirego cyihutirwa gishamikiye ku rubanza N° RCA 0025/13/CS isaba ko irangizarubanza ry'agateganyo ryategetswe n'Urukiko Rukuru riba rihagaze, ariko Urukiko rw'Ikirenga mu rubanza ku birego byihutirwa N° RC 0004/13/CS rwaciwe kuwa 10/01/2014, rwemeza ko ikirego cyayo nta shingiro gifite.

[5] Iburanisha ry'urubanza N° RCA 0025/13/CS mu ruhame ryabaye kuwa 24/03/2015, ARPEQ ihagarariwe na Me Bikotwa Bruce, naho Segatabazi Protais ahagarariwe na Me Niyomugabo Christophe.

[6] Iburanisha rigitangira, Me Niyomugabo Christophe yabyukije inzitizi yo kutakira ikirego cya ARPEQ avuga ko yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ko rero hashingiwe ku ngingo ya 28, igika cya 5 y'Itegeko-Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kugeza ubu, ubujurire bwa ARPEQ budakwiye kwakirwa.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ARPEQ yaratsinzwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru ku mpamvu zimwe, ubujurire bwayo bukaba butagomba kwakirwa.

[7] Me Niyomugabo uburanira Segatabazi avuga ko uwo yunganira yareze ashingiye ku nyandiko ya ARPEQ yo kuwa 22/11/2011 n'iyo kuwa 06/12/2011, aho ARPEQ yiyemerera ko irimo Segatabazi umwenda ungana na 150.000.000Frw, ko izo nyandiko arizo zashingiweho n'Urukiko Rwisumbuye rwa Gasabo, ndetse n'Urukiko Rukuru, mu Rukiko Rwisumbuye Segatabazi agatsindira 105.648.178Frw naho mu Rukiko Rukuru agatsindira 150.000.000Frw, ko nta yindi mpamvu yatumye ARPEQ itsindwa muri izo nkiko uretse kwiyemerera umwenda mu nyandiko, bityo akaba asaba uru Rukiko gushingira ku ngingo ya 28, igika cya 5 y'Itegeko-Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga rukemeza ko ubujurire bwa ARPEQ butakiriwe.

[8] Me Bikotwa Bruce uburanira ARPEQ avuga ko mu Rukiko Rwisumbuye Segatabazi yaregeye 150.000.000Frw akubiyemo 48.693.694Frw Segatabazi yagurije ARPEQ, 44.352.822Frw y'imisanzu yatanze muri ARPEQ na 56.953.484Frw y'ishimwe yemerewe na ARPEQ, ko mu rubanza RC 0280/12/TGI/GSBO rwaciwe kuwa 19/09/2012 Urukiko rwasanze Segatabazi adakwiye gusubizwa 44.352.822Frw y'imisanzu, bisobanuye ko ARPEQ yatsindiye iyi ngingo, ikayitsindirwa bwa mbere mu Rukiko Rukuru, bivuga ko ari ubwa mbere ARPEQ yayijuririra bigaragaza ko abo baburana bumva nabi ingingo ya 28, igika cya 5 y'Itegeko-Ngenga N°03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru kuko ivuga umuburanyi watsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, bityo akaba asaba Urukiko rw'Ikirenga kwemeza ko inzitizi yatanzwe na Me Niyomugabo uburanira Segatabazi nta shingiro ifite.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 28, igika cya 5 y'Itegeko-Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kugeza ubu igira iti: "urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ntirushobora kujuririrwa mu Rukiko rw'Ikirenga".

[10] Urukiko rurasanga mu kirego cya Segatabazi mu Rukiko Rwisumbuye rwa Gasabo harimo gutegeka ARPEQ kumwishyura umwenda ungana na 150.000.000Frw (cote 5), avuga ko ARPEQ yiyemerera mu nyandiko yitwa "Gukemura burundu ikibazo cya Protais" yo kuwa 22/11/2011, n'iyitwa "Inyandiko mvugo yo gukemura burundu ikibazo cya Segatabazi Protais imugenewe" yo kuwa 06/12/2011, izi nyandiko zikaba zishimangira ko uwo mwenda ugizwe na 56.953.484Frw y'ishimwe ARPEQ yemereye Segatabazi hamwe n'amafaranga y'ideni angana na 93.046.516Frw akubiyemo 48.693.694Frw Segatabazi yagurije ARPEQ na 44.352.822Frw y'imisanzu yatanze muri ARPEQ (cotes 9-10 na 58-60).

[11] Urukiko rurasanga Urukiko Rwisumbuye rwaratandukanyije kandi rusuzuma buri gice kigize umwenda waregewe, Segatabazi agatsindira kwishyurwa 48.693.694 Frw yagurije ARPEQ na 56.953.484Frw y'ishimwe ARPEQ yamwereye hashingiwe ku nyandiko zayo zavuzwe haruguru (igika cya 4 n'icya 8 by'urubanza RC 0280/12/TGI/GSBO rwaciwe kuwa 19/09/2012); naho ku byerekeye imisanzu ingana na 44.352.822Frw ya Segatabazi Protais muri ARPEQ, Urukiko rwemeza ko atayahabwa hashingiwe ku ngingo ya 21 n'iya 23 y'amategeko shingiro ya ARPEQ no ku ngingo ya 30 y'Itegeko Nº 20/2000 ryo kuwa

26/07/2000 ryerekeye imiryango idaharanira inyungu, muri rusange Segatabazi atsindira gusa 105.648.178Frw, aho kuba 150.000.000Frw yari yaregeye.

[12] Urukiko rurasanga mu Rukiko Rukuru, ARPEQ yarajuririye ishingiro ry'ishimwe rya 56.953.484 Frw n'uburyo bwo kwishyura amafaranga yagurijwe, Urukiko rusanga ubujurire ku ishimwe nta shingiro bufite hashingiwe ku nyandiko yayo yo kuwa 06/12/2011 yemera iryo shimwe (igika cya 12 cy'urubanza RCA 0421/13/HC/KIG; RCA 0550/13/HC/KIG rwaciwe kuwa 08/11/2013).

[13] Urukiko rurasanga mu Rukiko Rukuru Segatabazi yari yajuriye asaba guhabwa imisanzu ingana na 44.352.822Frw afite muri ARPEQ, yari yatsindiwe ku rwego rwa mbere hashingiwe ku ngingo ya 21 n'iya 23 y'amatageko shingiro ya ARPEQ no ku ngingo ya 30 y'Itegeko Nº 20/2000 ryo kuwa 26/07/2000 ryerekeyeimiryango idaharanira inyungu, Urukiko Rukuru rwo rwemeza ko ayihabwa hashingiwe ku nyandiko ya ARPEQ yo kuwa 06/12/2011 yemera kuyimusubiza, no ku ngingo ya 28 y'Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko inyandikobwite yiyemerera umwenda itsindisha nyirayo.

[14] Urukiko rurasanga rero ibyo uburanira Segatabazi avuga ko ARPEQ yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe z'uko inkiko zashingiye ku nyandiko ARPEQ yiyemereyemo ko igomba Segatabazi amafaranga angana na 150.000.000Frw atari ukuri, kuko ku rwego rwa mbere yatsindiye gusa 105.648.178Frw, naho ku rwa kabiri atsindira 150.000.000Frw, kubera ko hari amafaranga angana na 44.352.822Frw y'imisanzu Segatabazi yari yatsindiwe mu Rukiko Rwisumbuye ayatsindira ku rwego rwa kabiri mu Rukiko Rukuru, kuko Urukiko Rukuru rwashingiye ku nyandiko ya ARPEQ.

[15] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga impamvu zashingiweho ku rwego rwa mbere n'urwa kabiri urubanza rucibwa zitandukanye, bityo ubujurire bwa ARPEQ bukaba bukwiye kwakirwa kuko butanyuranije n'ibiteganywa n'ingingo ya 28, igika cya 5 y'Itegeko-Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kugeza ubu.

III. ICYEMEZO CY'URUKIKO

[16] Rwemeye kwakira inzitizi yo kutakira ubujurire bwa ARPEQ yatanzwe na Segatabazi Protais kuko yatanzwe mu buryo bukurikije amategeko;

[17] Rwemeje ko iyo nzitizi nta shingiro ifite;

[18] Rwemeje ko urubanza ruzakomeza kuburanishwa mu mizi kuwa 02/06/2015;

[19] Ruvuze ko amagarama y'urubanza asubitswe.