ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd

[Rwanda URUKIKO RW'IKIRENGA – RCOMA0041/13/CS (Mukanyundo, P.J., Rugabirwa na Ngagi, J.) 3 Werurwe 2016]

Amategeko agenga amasezerano – Amasezerano y'ubucuruzi – Ibimenyetso mu manza z'ubucuruzi – Imikoranire mu bucuruzi ntiyita gusa ku bimenyetso byanditse cyangwa imihango runaka kuko imitangire y'ibimenyetso ikurikiza uburyo bwose bwemewe n'amategeko.

Indishyi – Kwica amasezerano – Ntawagenerwa indishyi mu gihe bigaragara ko ari we wishe amasezerano – Itegeko Nº45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 137.

Incamake y'ikibazo: IMPACT DISTRIBUTORS EAST AFRICA Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko ROCK GLOBAL CONSULTING Ltd yayishyura amadorari 98.673.69 USD n'indishyi ziwukomokaho. Urukiko rwategetse ROCK GLOBAL CONSULTING Ltd kwishyura ayo madorari hiyongereyeho 1.000.000Frw y'indishyi.

ROCK GLOBAL CONSULTING Ltd yajuririye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rwirengagije ibimenyetso bigaragaza ko ibyo bikoresho itabihawe kandi rukaba rwaragaragaje ukwivuguruza.

IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko urukiko rutirengagije imiburanire ye kuko yanayifasheho umwanzuro.

Incamake y'icyemezo: 1. ROCK GLOBAL CONSULTING Ltd ntiyahakana umwenda ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd yitwaje ko nta *bon de livraison* igaragaza, cyane cyane ko, mu busanzwe abacuruzi bagirirana icyizere bagakomeza gukorana batitaye ku mihango *(formalités)* runaka yakagombye kubahirizwa, byongeye kandi nta n'ikigaragaza ko impande zombi zasezeranye ko byanze bikunze hagomba kubaho *bon de livraison*. Bityo ROCK GLOBAL CONSULTING Ltd ikaba igomba kwishyura umwenda wose ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd.

2. Ntawahabwa indishyi mu gihe bigaragara ko ariwe wishe amasezerano. Bityo, IMPACT DISTRIBUTORS EAST AFRICA Ltd igenewe indishyi mu bushishozi bw'urukiko.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro.
Amagarama y'urubanza aherereye kuwajuriye.

Amategeko yashingiweho:
Itegeko Nº45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 137.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko yakoranye ibikorwa by'ubucuruzi na ROCK GLOBAL CONSULTING Ltd, iyigurisha ibikoresho by'ikoranabuhanga bifite agaciro kangana na 98.673.69USD, hanyuma itegereza kwishyurwa ku neza ntibyashoboka, bityo iregera Urukiko Rukuru rw'Ubucuruzi isaba ko ROCK GLOBAL CONSULTING Ltd itegekwa kwishyura umwenda n'indishyi byavuzwe haruguru mu kiburanwa.

[2] Mu rubanza N° RCOM0163/12/HCC rwaciwe ku wa 08/02/2013, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ROCK GLOBAL CONSULTING Ltd igomba kwishyura IMPACT DISTRIBUTORS EAST AFRICA Ltd umwenda iyibereyemo ungana na 98.673.69 USD hiyongereyeho indishyi zingana na 1.000.000Frw.

[3] ROCK GLOBAL CONSULTING Ltd ntiyishimiye urwo rubanza, irujuririra mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso yatanze byagaragaza ko itayihaye ibikoresho kandi ko Urukiko rwagaragaje ukwivuguruza.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 03/05/2016, ROCK GLOBAL CONSULTING Ltd idahari kandi itunganiwe ariko bigaragara ko yahamagajwe mu buryo bukurikije amategeko, naho IMPACT DISTRIBUTORS EAST AFRICA Ltd iburanirwa na Me Nizeyimana Boniface.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A. Ubujurire bwa ROCK GLOBAL CONSULTING Ltd

A.1. Kumenya niba hari ibimenyetso bigaragaza ko ROCK GLOBAL CONSULTING Ltd ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd umwenda.

[5] Mu mwanzuro utanga ubujirire, ROCK GLOBAL CONSULTING Ltd ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije imiburanire yayo, aho yasabye ko IMPACT DISTRIBUTORS EAST AFRICA Ltd itanga ibimenyetso bigaragaza koko ko yayihaye ibikoresho bivugwa, ko niba hari *bon de commande*, hagombye no kubaho "*bon de livraison*".

[6] Ivuga ko, mu gika cya 12 cy'urubanza, Urukiko rwemera ko IMPACT DISTRIBUTORS EAST AFRICA Ltd itashoboye kugaragaza ikimenyetso simusiga cy'uko ibikoresho bivugwa yabiyishyikirije, bityo ikaba igomba kwishyura ikiguzi cyabyo, ariko rukabirengaho rugendeye ku migendekere y'ubucuruzi isanzwe rutasobanuye no kuri "E-mails" zitagaragaza ko ibyo bikoresho byayishyikijwe, bityo ko urwo Rukiko rwagaragaje ukwivuguruza.

[7] Me Nizeyimana Boniface, uburanira IMPACT DISTRIBUTORS EAST AFRICA Ltd, avuga ko imiburanire ya ROCK GLOBAL CONSULTING Ltd itirengagijwe kuko ibisobanuro yatanze, Urukiko rwabyakiriye, rukanabifataho umwanzuro ku rupapuro rwa kane, agace ka 15, rw'urubanza rujuririrwa; naho ibijyanye n'ibimenyetso nabyo umucamanza akaba yarabisuzumye mu gace kavuzwe haruguru, ko inyandiko zose zanyuze

kuri "E-mail" zagendaga zigaragaza umwenda kandi na ROCK GLOBAL CONSULTING Ltd ikaba yarazisubizaga, bityo akaba ari ntaho yahera ivuga ko nta mwenda iyifitiye.

UKO URUKIKO RUBIBONA

[8] Ku byerekeranye no kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarirengagije ibimenyetso byatanzwe na ROCK GLOBAL CONSULTING Ltd, Urukiko rurasanga mu gika cya 11 cy'urubanza rwajuririwe, urwo Rukiko rwarerekanye ko ROCK GLOBAL CONSULTING Ltd ubwayo yiyemereye ko yakoze *purchase order* Nº PO 027-IS-05-10 igaragaraho ibikoresho IMPACT DISTRIBUTORS EAST AFRICA Ltd iyishyuza, ariko nyuma mu iburanisha mu mizi igashaka guhakana ko itigeze yakira ibyo bikoresho, nyamara, mbere y'aho mu iburanisha ry'ibanze, Me Niyomugabo Christophe, wayiburaniraga, yarabanje guhakana ko atazi IMPACT DISTRIBUTORS AFRICA Ltd, ibyo Urukiko rukaba rwarabifashe nk'aho ROCK GLOBAL CONSULTING Ltd yashatse guteza urujijo, bisa no guhunga uruhare rwayo, igamije kutishyura umwenda ikurikiranweho.

[9] Urukiko rurasanga na none, n'ubwo Urukiko Rukuru rw'Ubucuruzi rwarasobanuye ko n'ubwo nta bimenyetso simusiga bihari, byerekana ko IMPACT DISTRIBUTORS EAST AFRICA Ltd yashyikirije ROCK GLOBAL CONSULTING Ltd ibikoresho bivugwa mu rubanza, ariko ko hashingiwe kuri *Purchase Order* yavuzwe haruguru yakozwe na ROCK GLOBAL CONSULTING Ltd itarigeze iteshwa agaciro n'uwayikoze, kuri za "E-mails" zinyuranye zaherekanywe hagati y'izi sosiyete zombi ndetse no ku buryo abacuruzi basanzwe bakorana, aho ukoze *Purchase Order* mu gihe abona nta gaciro akiyiha, abanza akabimenyesha uwo yayiyahe, ko kuba rero bitarakozwe ibyo bivuga ko imikoranire y'impande zombi yakomeje kugenda neza, ikibazo kivuka mu kwishyura nk'uko biboneka muri "E-mails" zavuzwe haruguru.

[10] Urukiko rurasanga, nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye, nta bimenyetso ROCK GLOBAL CONSULTING Ltd yatanze byerekana ko nta mwenda ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd noneho ngo bibe byarirengangijwe nk'uko ibivuga, usibye kuvuga gusa ko uwo baburana aterekanye "*bon de livraison*", nkaho aricyo kimenyetso simusiga cyagombaga gutangwa na IMPACT DISTRIBUTORS EAST AFRICA Ltd.

[11] Urukiko rurasanga kuba *bon de livraison* itagaragara, ibyo bitatesha agaciro ibindi bimenyetso byerekana nta shiti ko ROCK GLOBAL CONSULTING Ltd ibereyemo umwenda IMPACT DISTRIBUTORS EAST AFRICA Ltd. Muri ibyo bimenyetso harimo "E-mails" hagati y'abayobozi b'izi sosiyete zombi cyane cyane hagati ya KABAGEMA Patrick wa ROCK GLOBAL CONSULTING Ltd na Glen MATSWETU wa IMPACT DISTRIBUTORS EAST AFRICA Ltd, aho imwe muri izo "E-mails" igaragaza ko nyuma yo kureregwa inshuro nyinshi, Glen MATSWETU yandikiye KABAGEMA Patrick kuwa 11/10/2010, amumenyesha ko umwenda ROCK GLOBAL CONSULTING Ltd ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd ugeze kuri 87.142.79 USD hakubiyemo umwenda-remezo n'inyungu zawo *(Please note that the amount due plus interest now stands at 87.142.79 USD)*. Ikigaragara, harebwe ibisubizo ROCK GLOBAL CONSULTING Ltd yagiye itanga, nta na hamwe ihakana umwenda, ahubwo ivuga ko batangiye kugirirwa icyizere gike, ko ariko barimo kugerageza kureba uburyo baza kwishyura n'ubwo badashobora guhamya umunsi nyawo. Na none hashingiwe kuri "e-mails" impande zombi zagiye zikomeza kwandikirana, bigaragara ko kuwa 18/04/2011 uyu mwenda wari ugeze kuri 96.673.69 USD, kandi ntaho bigaragara ko ROCK GLOBAL CONSULTING Ltd iwuhakana.

[12] Urukiko rurasanga rero ko, nyuma y'izi nyandiko n'izindi zakurikiyeho, ntaho ROCK GLOBAL CONSULTING Ltd yahera ihakana umwenda ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd yitwaje ko nta *bon de livraison* igaragaza, cyane cyane ko, ukurikije ko mu busanzwe abacuruzi bagirirana icyizere ku buryo bakomeza gukorana batitaye ku mihango *(formalités)* runaka yakagombye kubahirizwa, byongeye kandi hakaba ari nta kigaragaza ko impande zombi zasezeranye ko byanze bikunze hagomba kubaho *bon de livraison*; bityo ROCK GLOBAL CONSULTING Ltd ikaba igomba kwishyura umwenda wose ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd, ungana na 98.673.69 USD, nk'uko yawutegetswe n' Urukiko Rukuru rw'Ubucuruzi.

A.2. Kumenya niba ROCK GLOBAL CONSULTING Ltd itaragombaga gucibwa indishyi ku rwego rwa mbere.

[13] ROCK GLOBAL CONSULTING Ltd ivuga ko indishyi IMPACT DISTRIBUTORS EAST AFRICA Ltd yagenewe zingana na 1.000.000Frw nta shingiro zifite kuko itagaragaza ko yashyikirije ROCK GLOBAL CONSULTING Ltd ibicuruzwa iyishyuza.

[14] IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko kuba ROCK GLOBAL CONSULTING Ltd yaratsinzwe, yagombaga gutanga indishyi.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 137 y'Itegeko Nº45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko: "Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n'urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyaravuyeho".

[16] Ku byerekeranye n'ubujurire bwa ROCK GLOBAL CONSULTING Ltd ku ndishyi yaciwe, Urukiko rurasanga nta shingiro bufite kuko niba byaragaragaye ko ari yo itarubahirije amasezerano, bityo uruhande rwarenganyijwe rukaba rwaragombaga kubona indishyi nk'uko biteganywa n'ingingo ya 137 yavuzwe mu gika kibanziriza iki.

B. Ubujurire bwuririye ku bundi bwa IMPACT DISTRIBUTORS EAST AFRICA Ltd

Kumenya niba ubujurire bwuririye ku bundi bwa IMPACT DISTRIBUTORS EAST AFRICA Ltd bufite ishingiro.

[17] IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko, nk'ubujurire bwuririye ku bundi bushingiye ku ngingo ya 167 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igomba guhabwa indishyi zingana na 10.000.000Frw kubera ko ROCK GLOBAL CONSULTING Ltd yajuriye igamije kutishyura umwenda mu rwego rwo kutarangiza urubanza.

UKO URUKIKO RUBIBONA

[18] Urukiko rurasanga indishyi IMPACT DISTIBUTORS EAST AFRICA Ltd isaba zifite ishingiro kubera ko yarenganyijwe na ROCK GLOBAL CONSULTING Ltd, ariko umubare w'izo isaba ukaba ari ikirenga ndetse ikaba itagaragaza icyo ushingiyeho, bityo mu

bushishozi bwarwo rukaba ruyigeneye 800.000Frw yiyongera kuyo yagenewe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba ari 1.800.000Frw.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko ubujurire bwa ROCK GLOBAL CONSULTING Ltd nta shingiro bufite.

[20] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na IMPACT DISTIBUTORS EAST AFRICA Ltd bufite ishingiro.

[21] Rwemeje ko imikirize y'urubanza Nº RCOM 0163/12/HCC rwaciwe ku wa 08/02/2012 n'Urukiko Rukuru rw'Ubucuruzi idahindutse, uretse gusa ku bijyanye n'indishyi zigomba kwiyongera.

[22] Rutegetse ROCK GLOBAL CONSULTING Ltd kwishyura IMPACT DISTIBUTORS EAST AFRICA Ltd indishyi zingana na 800.000Frw ziyongera ku zategetswe n'Urukiko Rukuru rw'Ubucuruzi zingana na 1.000.000Frw, zose hamwe zikaba 1.800.000Frw.

[23] Rutegetse ROCK GLOBAL CONSULTING Ltd gutanga amagarama ya 100.000Frw.