AYALA CO LTD v. APROTEC ASBL N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00007/2020/SC, (Ntezilyayo, P.J., Cyanzayire na Karimunda, J.) 24 Nzeri 2021]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kujuririra urubanza rwaciwe habaye itambama – Uburenganzira bwo kujurira ni kimwe mu bigize uburenganzira ku butabera buboneye – Urubanza rutambamira urundi rushobora kujuririrwa rimwe gusa, hatitawe ku kureba ko urwatambamiwe rwaciwe ku rwego rwa mbere cyangwa ku rwego rw'ubujurire.

Amategeko agenga amasosiyete y'ubucuruzi – Sosiyete – Uburyozwe bw'abanyamigabane ba sosiyete y'ubucuruzi ku nshingano ifitiye abandi – Umunyamigabane ntaryozwa inshingano za sosiyete bitewe n'uko ari umunyamigabane gusa, keretse igihe ari isosiyete ifite uburyozwe butagarukira ku migabane.

Incamake y'ikibazo: Sosiyete APROETEC ASBL hamwe na sosiyete EPTC Ltd bagiranye amasezerano ajyanye n'imikoreshereze n'imicungire y'umutungo wimukanwa n'utimukanwa.

Muri ayo masezerano, APROETEC yiyemeje gutiza EPTC Ltd umutungo wayo ugizwe n'ubutaka, inyubako, mu gihe itarishyura ikiguzi cyumvikanyweho, ikaba ishobora no kuwutangaho ingwate kugirango isabe inguzanyo.

Bemeranyijwe ko igihe EPTC Ltd izaba yamaze kwishyura ikiguzi cyumvikanyweho kingana na 1.200.000.000 Frw hatarimo ayo EPTC Ltd izaba yakoresheje isana ikigo cy'amashuri, izabona kwegukana uwo mutungo wose ugizwe n'ikigo cy'amashuri.

Amasezerano anateganya ko mu gihe EPTC Ltd itubahirije inshingano zayo cyangwa yananiwe kwishyura ikiguzi mu gihe cyagenwe kiri hagati y'amezi 6 n'umwaka umwe uhereye igihe yakorewe, APROETEC izasubirana umutungo wose uko wakabaye hatitawe ku iyongeragaciro ryagizwemo uruhare na EPTC Ltd.

Igihe amasezerano yagombaga kumara kirangiye, APROETEC ASBL yasubiranye umutungo, ivuga ko EPTC Ltd itashyize mu bikorwa ibyemeranyijweho byose, harimo kutishyura ikiguzi, bituma EPTC Ltd iregera Urukiko rw'Ubucuruzi rwa Nyarugenge isaba ko ayo masezerano yaseswa. Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego kidafite ishingiro, bityo ko amasezerano yabaye hagati ya APROETEC ASBL na EPTC Ltd atagomba guseswa.

EPTC Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, Urukiko rwemeza ko ubujurire bwayo budafite ishingiro.

Sosiyete AYALA CO Ltd yatambamiye imikirize y'urwo rubanza, ivuga ko irufitemo inyungu kuko yari yaragiranye na EPTC Ltd amasezerano yo kuyubakira ibyumba 12 by'amashuri, ariko ntiyishyurwa imirimo yakoze, bituma irega mu Rukiko Rwisumbuye rwa Gasabo, urwo Rukiko rwategetse EPTC Ltd kuyishyura.

Sosiyete AYALA yongeye kujurira mu Rukiko rw'Ubujurire, Urukiko rwemeje ko ubwo bujurire butari mu bubasha bwarwo, rushingiye ku kuba urubanza yatambamiye rwari ku rwego rw'ubujurire, kandi ubujurire bwayo bukaba butujuje ibiteganywa n'Itegeko rigena ububasha bw'inkiko, kugirango rube rwajuririrwa bwa kabiri.

AYALA CO Ltd yandikiye Perezida w'Urukiko rw'Ikirenga isaba gusubirishamo urubanza RCOMA 00083/2019/CA ku mpamvu z'akarengane, ivuga ko urukiko rw'ubujurire rwanze kwakira ubujurire bwayo kandi bwaragombaga kwakirwa kuko bwari ubwa mbere ijuriye, kandi itegeko rikaba ryaratanze amahirwe yo kujurira inshuro imwe.

APROETEC ASBL yo ivuga ko urubanza AYALA CO Ltd yajuririye rukomoka ku kirego yatanze itambamira urubanza rwaciwe mu rwego rw'ubujurire n'Urukiko Rukuru rw'Ubucuruzi, bityo kuvuga ko cyari ikirego gishya cyatangiriye mu Rukiko Rukuru rw'Ubucuruzi bidafite ishingiro, kuko cyafashe kamere y'urubanza rwatambamiwe.

EPTC Ltd yo yiregura ivuga ko n'ubwo AYALA CO Ltd yatambamiye urubanza rugeze ku rwego rw'ubujurire, ku biyireba rwaburanishijwe ku nshuro ya mbere, bivuze ko yari ifite uburenganzira bwo kujurira, ivuga kandi ko kuba icyaburanwaga ari ugusesa amasezerano afite agaciro ka 1.200.000.000Frw byari bihagije kugira ngo ubujurire bwayo bwakirwe.

AYALA CO Ltd ivuga ko yaburanye na EPTC Ltd mu Rukiko Rwisumbuye rwa Gasabo, igategekwa kwishyura 39.848.500Frw akomoka ku masezerano bagiranye yo kubaka ibyumba 12 by'amashuri ubu bifitwe na APROETEC ASBL, AYALA CO Ltd ivuga ko igiye kwishyuza ayo mafaranga aribwo yamenye urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, EPTC Ltd yaburanye na APROETEC ASBL igatsindwa, bituma ihita yihutira gutanga ikirego cyo kurutambamira kubera ko itigeze irubamo umuburanyi.

AYALA ivuga kandi ko ntaho yakura ubwishyu yishyuzwa, isaba APROETEC ASBL kwishyura kuko ariyo yegukanye umutungo yari yaratije EPTC Ltd.

Incamake y'icyemezo: 1. Urubanza rutambamira urundi rushobora kujuririrwa rimwe gusa, hatitawe ku kureba ko urwatambamiwe rwaciwe ku rwego rwa mbere cyangwa ku rwego rw'ubujurire.

2. Umunyamigabane ntaryozwa inshingano za sosiyete bitewe n'uko ari umunyamigabane gusa, keretse igihe ari isosiyete ifite uburyozwe butagarukira ku migabane

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe.

Amategeko yashingiweho:

Itegeko N° 007/2021 ryo ku wa 05/02/2021 rigenga amasosiyete y'ubucuruzi, ingingo ya 92

Itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi giteganya, ingingo ya 168.

Imanza zifashishijwe:

Urubanza Re Kabasinga, RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 4/12/2019

Urubanza Prime Insurance Ltd v Kansiime, RS/INJUST/RCOM 00005/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 12/06/2020.

Urubanza Road Solutions Pavement Products v MAILCO Ltd, RS/INJUST/RCOM 00002/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020.

Urubanza

I. IMITERERE Y'URUBANZA

[1] *Association pour la Promotion de l'Enseignement Technique* (APROETEC ASBL) ihagarariwe na Maboyi Sadi, na *Education and Professional Trainning Centre* (EPTC Ltd) ihagarariwe na Gakwandi Alfred, bagiranye amasezerano ku wa 09/10/2014 ajyanye n'imikoreshereze n'imicungire y'umutungo wimukanwa n'utimukanwa ndetse n'imyishyuranire ku bugure bw'umutungo wa APROETEC ASBL wari ufitwe na ETM II, ugomba guhinduka uwa EPTC Ltd ari uko iyi imaze gutanga ikiguzi cyose kingana na 1.200.000.000Frw.

[2] Muri ayo masezerano, APROETEC ASBL yiyemeje gutiza EPTC Ltd umutungo wayo ugizwe n'ubutaka, inyubako n'ibindi byose biburiho byahoze bikoreshwa na ETM II, mu gihe itarishyura ikiguzi cyumvikanyweho, ikaba ishobora no kuwutangaho ingwate kugirango isabe inguzanyo. Bemeranyijwe ko igihe EPTC Ltd izaba yamaze kwishyura ikiguzi cyumvikanyweho kingana na 1.200.000.000 Frw hatarimo ayo EPTC Ltd izaba yakoresheje isana ikigo cy'amashuri, izabona kwegukana uwo mutungo wose ugizwe n'ikigo cy'amashuri n'undi mutungo wari uwa ETM II. Amasezerano anateganya ko mu gihe EPTC Ltd itubahirije inshingano zayo cyangwa yananiwe kwishyura ikiguzi mu gihe cyagenwe kiri hagati y'amezi 6 n'umwaka umwe uhereye igihe yakorewe, APROETEC ASBL izasubirana umutungo wose uko wakabaye hatitawe ku iyongeragaciro ryagizwemo uruhare na EPTC Ltd.

[3] Igihe amasezerano yagombaga kumara kirangiye, APROETEC ASBL yasubiranye umutungo, ivuga ko EPTC Ltd itashyize mu bikorwa ibyemeranyijweho byose, harimo kutishyura ikiguzi. Byatumye EPTC Ltd iregera Urukiko rw'Ubucuruzi rwa Nyarugenge isaba ko ayo masezerano yaseswa, APROETEC ASBL igasubiza ibyapa bya EPTC Ltd aho byahoze, EPTC Ltd igakomeza gukora mu izina ryayo kandi ikandikwaho umutungo wahoze ari uwa APROETEC ASBL - ETM II. 1

[4] Ku wa 27/01/2017, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 01337/2016/TC/NYGE, rwemeza ko ikirego cya EPTC Ltd kidafite ishingiro, ko amasezerano yo ku wa 09/10/2014 yabaye hagati ya APROETEC ASBL na EPTC Ltd atagomba guseswa kuko impamvu EPTC Ltd ishingiraho isaba ko aseswa idafite ishingiro. Rwemeje kandi ko ibyo EPTC Ltd isaba byo kwandikwaho umutungo wahoze ari uwa APROETEC ASBL- ETM II, gusubiza ibyapa byayo aho byahoze kandi igakora mu izina ryayo, itabihawe, kuko uwo mutungo atari uwayo. EPTC Ltd yategetswe guha APROETEC ASBL indishyi zingana na 500.000 Frw yo gushorwa mu manza.

[5] EPTC Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ruhabwa No RCOMA 00128/2017/CHC/HCC, rucibwa ku wa 21/09/2017, Urukiko rwemeza ko ubujurire bwayo budafite ishingiro.

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1 Hari urundi rubanza RCOMA 00459/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi mu rwego rw'ubujurire ku wa 23/02/2017, EPTC Ltd yarezemo APROETEC ASBL ibijyanye no gusesa amasezerano yo ku wa 09/10/2014 mu buryo bunyuranyije n'amategeko, EPTC Ltd itsindwa no kuba amasezerano atarasheshwe, ahubwo yararangijwe n'igihe ntarengwa cy'amezi 12 yagombaga kumara.

[6] [6] AYALA CO Ltd yatambamiye imikirize y'urwo rubanza, ivuga ko irufitemo inyungu kuko yari yaragiranye na EPTC Ltd amasezerano ku wa 02/03/2015 yo kuyubakira ibyumba 12 by'amashuri, ariko ntiyishyurwa imirimo yakoze, bituma irega mu Rukiko Rwisumbuye rwa Gasabo. Mu rubanza RC 0303/2015/TGI/GSBO rwaciwe ku wa 16/06/2017, urwo Rukiko rwategetse EPTC Ltd kwishyura AYALA CO Ltd 39.848.500 Frw. AYALA CO Ltd yasobanuye ko igihe yateganyaga kurangirisha urwo rubanza ngo yishyurwe, aribwo yamenye ko umutungo wose wabaye uwa APROETEC ASBL kubera urubanza RCOMA 00128/2017/CHC/HCC, ariyo mpamvu yahise irutambamira kugirango mu mutungo wahawe APROETEC ASBL habanze haveho 39.848.500 Frw. Urubanza rutambamira rwahawe RCOMA 00684/2017/CHC/HCC.

[7] [7] Ku wa 30/04/2019, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cyatanzwe na AYALA CO Ltd cyo gutambamira urubanza RCOMA 00128/2017/CHC/HCC kidafite ishingiro. Rwabishingiye ku kuba mu masezerano yo ku wa 02/03/2015 AYALA CO Ltd yagiranye na EPTC Ltd, ibyumba by'amashuri byagombaga kubakwa byari ibya EPTC Ltd, APROETEC ASBL ikaba ntaho igaragara muri ayo amasezerano ; kandi no mu rubanza rwatambamiwe, Urukiko rukaba rwaravuze ko ntaho rwahera rwegurira EPTC Ltd umutungo wa APROETEC ASBL, mu gihe nayo itagaragaza ko yishyuye ikiguzi cyasabwaga.

[8] [8] AYALA CO Ltd yajuririye urwo rubanza mu Rukiko rw'Ubujurire, urubanza ruhabwa RCOMAA 00083/2019/CA, rucibwa ku wa 03/07/2020. Urukiko rwemeje ko ubwo bujurire butari mu bubasha bwarwo, rushingiye ku kuba urubanza AYALA CO Ltd yatambamiye rwari ku rwego rw'ubujurire, kandi ubujurire bwayo bukaba butujuje ibiteganywa n'ingingo ya 52 igika cya 2 y'Itegeko rigena ububasha bw'inkiko, kugirango rube rwajuririrwa bwa kabiri.

[9] [9] AYALA CO Ltd yandikiye Perezida w'Urukiko rw'Ikirenga isaba gusubirishamo urubanza RCOMA 00083/2019/CA ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga, mu cyemezo cyo ku wa 29/07/2020, yohereje urubanza mu Bwanditsi bw'Urukiko kugirango ruzongere ruburanishwe. Rwanditswe kuri RS/INJUST/RCOM 00007/2020/SC.

[10] [10] Iburanisha ry'urubanza ryabereye mu ruhame ku wa 07/09/2021, EPTC Ltd ihagarariwe na Me Katushabe Mary, APROETEC ASBL ihagarariwe n'umuyobozi wayo Maboyi Sadi, yunganiwe na Me Nshuti Salim; naho AYALA CO Ltd ihagarariwe na Me Gasengayire Alice afatanyije na Me Mbaragazurukundo Albert.

[11] Ibibazo nyamukuru byagiweho impaka n'ababuranyi ari nabyo byasuzumwe muri uru rubanza, ni ukumenya niba ubujurire bwa AYALA CO Ltd bwari mu bubasha bw'Urukiko rw'Ubujurire ku buryo ikirego cyayo cyagombaga kwakirwa; byagaragara ko cyagombaga kwakirwa, hagasuzumwa ugomba kwishyura 39.848.500Frw AYALA CO Ltd yatsindiye mu rubanza RC 0303/2015/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, akomoka ku masezerano yagiranye na EPTC Ltd.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba ubujurire bwa AYALA CO Ltd bwaragombaga kwakirwa mu Rukiko rw'Ubujurire

[12] Me Gasengayire Alice na Me Mbaragazurukundo Albert bahagarariye AYALA CO Ltd bavuga ko yajuriye ishingiye ku ngingo ya 161 n'iya 168 z'Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ndetse no ku ngingo ya 52 igika cya mbere y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ubujurire bwayo bukaba bwaragombaga kwakirwa kuko bwari ubwa mbere ijuriye kandi itegeko rikaba ryaratanze amahirwe yo kujurira inshuro imwe. Bavuga ko ku bireba AYALA CO Ltd, urubanza rwaciwe ku rwego rwa mbere ari RCOMA 00684/2017/CHC/HCC, rwajuririwe bwa mbere mu Rukiko rw'Ubujurire, kuko mu zindi manza zabanje AYALA CO Ltd ntaho igaragara nk'umuburanyi. Basaba Urukiko kuzashingira ku rubanza RS/INJUST/RAD 00004/2020/SC rwaciwe n'Urukiko rw'Ikirenga mu gika cyarwo cya 24.

[13] Me Nshuti Salim wunganira APROETEC ASBL asobanura ko urubanza AYALA CO Ltd yajuririye rukomoka ku kirego yatanze itambamira urubanza RCOMA 00128/2017/CHC/HCC, rwaciwe mu rwego rw'ubujurire n'Urukiko Rukuru rw'Ubucuruzi ku wa 21/7/2017, ko rero ibivugwa na AYALA CO Ltd ko cyari ikirego gishya cyatangiriye mu Rukiko Rukuru rw'Ubucuruzi bidafite ishingiro, kuko cyafashe kamere y'urubanza rwatambamiwe. Ibi bikaba ari nako byemejwe mu rubanza RCAA 00018/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 27/9/2019, haburana Kamugisha Marie Médiatrice na Kabananiye Eustache.

[14] Avuga kandi ko kuba 39.848.500Frw AYALA CO Ltd yaregeraga ari nayo yatsindiye, bivuze ko ubujurire bwayo butari kwakirwa mu Rukiko rw'Ubujurire, kuko agaciro ka 1.200.000.000Frw kavugwa mu masezerano yabaye hagati ya APROETEC ASBL na EPTC Ltd katarebaga AYALA CO Ltd, akaba ari nabyo Urukiko rw'Ubujurire rwemeje

[15] Me Katushabe Mary uhagarariye EPTC Ltd avuga ko n'ubwo AYALA CO Ltd yatambamiye urubanza rugeze ku rwego rw'ubujurire, ku biyireba rwaburanishijwe ku nshuro ya mbere, bivuze ko yari ifite uburenganzira bwo kujurira. Avuga kandi ko kuba icyaburanwaga ari ugusesa amasezerano afite agaciro ka 1.200.000.000Frw byari bihagije kugira ngo ubujurire bwayo bwakirwe.

UKO URUKIKO RUBIBONA

[16] Igika cya mbere cy'ingingo ya 168 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi giteganya ko urubanza ruciwe n'urukiko habaye itambamirarubanza rushobora kujuririrwa hakoreshejwe inzira zimwe nk'izikoreshwa mu kujuririra izindi manza. Igika cya kabiri cy'iyo ngingo kigateganya ko urubanza rutambamira urundi rushobora kujuririrwa rimwe gusa.

[17] Icyumvikana muri iyi ngingo, ni uko urubanza rwaciwe habaye itambama rushobora kujuririrwa, ibi bikaba bidateje impaka. Igiteje impaka muri uru rubanza, ni ukumenya niba mu gihe urubanza rwatambamiwe rwaciwe ku rwego rw'ubujurire bwa mbere, ururutambamira rushobora kujuririwa hatarebwe ko rwujuje ibisabwa mu ngingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko birebana n'iyakirwa ry'ubujurire bwa kabiri.

[18] Mu isesengura ryakozwe n'Urukiko rw'Ubujuririre, rwagaragaje ko urubanza rwatambamiwe rwaciwe n'Urukiko Rukuru rw'Ubucuruzi mu rwego rw'ubujurire, bityo

n'ururutambamira rukaba rugomba guhita rufata iyo kamere. Rwasobanuye ko mu gihe urubanza rwaciwe habaye itambama rufashwe nk'urwaciwe ku rwego rw'ubujurire, ubujurire bwarwo ari ubujurire bwa kabiri bugomba kuba bwujuje ibiteganywa n'ingingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 2/6/2018 rimaze kuvugwa kugirango bwakirwe.

[19] Uru Rukiko rusanga umushingamategeko yarateganyije ko urubanza rutambamira urundi rushobora kujuririrwa rimwe gusa, hatitawe ku kureba ko urwatambamiwe rwaciwe ku rwego rwa mbere cyangwa ku rwego rw'ubujurire. Ibyo bikaba byarakozwe mu rwego rwo guha by'umwihariko uwatambamiye urubanza utanyuzwe n'icyemezo cyafashwe, uburenganzira bwo kugira urundi rwego rusuzuma ikibazo cye, cyane ko we aba ari ubwa mbere arujemo n'ubwo ruba ruri ku rwego rw'ubujurire. Ikibazo gisa n'iki cyasuzumwe mu rubanza RS/INJUST/RAD 00001/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 16/10/2020, Whitefield Investment Company Ltd yaregagamo Thomas et Piron Grands Lacs, hemezwa ko kujurira inshuro imwe ari uburenganzira bwahawe umuburanyi utaranyuzwe n'umwanzuro wafashwe mu rubanza rwatambamiwe. [2]

[20] Uburenganzira bwo kujurira ni kimwe mu bigize uburenganzira ku butabera buboneye (droit à un procès équitable) nk'uko bigaragara mu ngingo ya 2.j y'Amabwiriza n'Amahame ku burenganzira ku butabera buboneye no kunganirwa mu nkiko muri Afrika (Directives et principes sur le droit à un procès équitable et à l'assistance judiciaire en Afrique) yemejwe na Komisiyo Nyafurika ku burenganzira bwa muntu n'ubw'abaturage mu 2003,[3] mu rwego rwo gushyira mu bikorwa inshingano ihabwa n'ingingo ya 45 y'Amasezerano Nyafurika yerekeye uburenganzira bwa muntu n'ubw'abaturage(Charte Africaine des Droits de l'Homme et des Peuples).[4] Kuba uburenganzira bwo kujurira ari kimwe mu bigize uburenganzira ku butabera buboneye, binagaragara mu ngingo ya 46(h) y'ibisobanuro by'amahame ya Bangalore arebana n'imyitwarire mu rwego rw'ubucamanza(Commentary on Bangalore principes of judicial conduct).[5]

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2 Reba igika cya 27 cy'urwo rubanza.

3 Iyo ngingo igira iti: *Le droit à être entendu équitablement repose sur les éléments essentiels suivants : ……………………*

j. Le droit de faire appel des décisions devant une instance juridictionnelle supérieure ; Commission Africaine des Droits de l'Homme et des Peuples, Directives et principes sur le droit à un procès équitable et à l'assistance judiciaire en Afrique 2003, 29 Mai 2003 (https://www.achpr.org/fr_home#:~:text=05%2005-6%20%7C-,au-banjul%40africa-union.org,-Commission%20africaine%20des),

4 ingingo ya 45 igira iti : *La Commission a pour mission de:*

1. Promouvoir les droits de l'homme et des peuples et notamment:

i. ………………….

ii. Formuler et élaborer, en vue de servir de base à l'adoption de textes législatifs par les gouvernements africains, des principes et règles qui permettent de résoudre les problèmes juridiques relatifs à la jouissance des droits de l'homme et des peuples et des libertés fondamentales;

iii. ……………….. »; Charte Africaine des droits de l'homme et des peuples, juin 1981(ratifiée par le Rwanda par la loi No 10/1983 du 17 Mai 1983).

5 Minimum requirements for a fair trial

This high standard of judicial conduct requires the observance of the minimum guarantees for a fair trial. For example, a judge must recognize that a party has the right to:

(a) ………………………………

(h*) appeal, or seek leave to appeal, decisions to a higher judicial tribunal, except in the case of the final appellate court;* United Nations Office on Drugs and Crime, Commentary on The Bangalore Principles of Judicial Conduct, September 2007.

[21] Urukiko rusanga ibyakozwe n'umushingamategeko ateganya mu gika cya 2 cy'ingingo ya 168 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ko urubanza rutambamira urundi rushobora kujuririrwa rimwe gusa, bishingiye ku ihame ry'uko uburenganzira bwo kujurira ari kimwe mu bigize uburenganzira ku butabera buboneye, nk'uko bigaragara mu mabwiriza n'amahame amaze kuvugwa. Byubahirije kandi ibiteganywa n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda (Itegeko Nshinga) ivuga ibigize uburenganzira ku butabera buboneye, ariko ntibirondore byose 6 kuko ikoresha ijambo « burimo » (includes/comprenant). Urukiko rusanga rero, uburenganzira bwo kujurira buteganywa mu ngingo ya 168 imaze kuvugwa, ari uburenganzira bushingiye ku mahame ateganywa n'Itegeko Nshinga, umushingamategeko yasanze ari ngombwa guteganyiriza umuburanyi utaranyuzwe n'umwanzuro wafashwe mu rubanza rwatambamiwe.

[22] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ubujurire bwakozwe na AYALA CO Ltd bwaragombabaga kwakirwa mu Rukiko rw'Ubujurire.

b. Kumenya ugomba kwishyura 39.848.500 Frw AYALA CO Ltd yatsindiye mu rubanza RC 0303/2015/TGI/GSBO akomoka ku masezerano yagiranye na EPTC Ltd

[23] Me Gasengayire Alice na Me Mbaragazurukundo Albert bahagarariye AYALA CO Ltd bavuga ko uwo bahagarariye yaburanye na EPTC Ltd mu Rukiko Rwisumbuye rwa Gasabo mu rubanza RC 0303/2015/TGI/GSBO rwaciwe ku wa 16/06/2017, EPTC Ltd igategekwa kwishyura 39.848.500 Frw akomoka ku masezerano bagiranye ku wa 02/03/2015 yo kubaka ibyumba 12 by'amashuri ubu bifitwe na APROETEC ASBL. Basobanura ko AYALA CO Ltd igiye kwishyuza ayo mafaranga aribwo yamenye urubanza RCOMA 00128/2017/CHC/HCC rwaciwe ku wa 21/09/2017 n'Urukiko Rukuru rw'Ubucuruzi, EPTC Ltd yaburanye na APROETEC ASBL igatsindwa, bituma ihita yihutira gutanga ikirego cyo kurutambamira kubera ko itigeze irubamo umuburanyi, cyahawe RCOMA 00684/2017/CHC/HCC.

[24] Bavuga ko mu gihe EPTC Ltd nta mutungo igifite, ntaho AYALA CO Ltd yakura ubwishyu yishyuza, APROETEC ASBL ikaba ariyo igomba kwishyura kuko ariyo yegukanye umutungo yari yaratije EPTC Ltd, izi ko hari inyubako zashyizweho kandi zatanzweho ingwate, hatabanje kuvanwamo 39.848.500 Frw.

[25] Basobanura kandi ko mu gace ka 16 k'urubanza RCOMA 00684/2017/CHC/HCC, Urukiko rwashingiye ku ngingo ya 113, igika cya 1, y'Itegeko No 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ivuga ko amasezerano agira inkurikizi ku bayagiranye gusa, rwirengagiza igika cya 2 cy'iyo ngingo kigira kiti: 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. Ibyo byatumye rugumishaho urubanza RCOMA 00128/2017/CHC/HCC rwatambamiwe.

[26] Me Katushabe Mary uhagarariye EPTC Ltd avuga ko mu masezerano yo ku wa 9/10/2014, mu ngingo yayo ya 3, APROETEC ASBL yemereye EPTC Ltd gutanga ingwate ku mutungo utimukanwa wagombaga kuvamo ubwishyu. Asobanura ko hashingiwe kuri iyi ngingo, EPTC Ltd yari yemerewe gutanga ingwate ku mutungo wayeguriwe haba muri banki cyangwa ahandi

6 Reba igika cya 12 cy'urubanza RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 4/12/2019, harega KABASINGA Florida.

kugirango ibone uko ikora imirimo yo gusana uwo mutungo. Ibi EPTC Ltd yabishingiyeho igirana amasezerano na AYALA CO Ltd yo gusana umutungo iwuhabwaho ingwate. Avuga ko kuba APROETEC ASBL yari yaremeye ko uyu umutungo utangwaho ingwate, no kuba AYALA CO Ltd yarawusannye iwuhaweho ingwate, ikaba yarakoze ntiyishyurwe, ubwishyu bukwiye gukurwa muri uwo mutungo waje gutwarwa na APROETEC ASBL hatitawe ku waba yarishe amasezerano.

[27] EPTC LTD yongeraho ko kuba mu rubanza RCOMA 00459/2016/CHC/HCC, APROETEC ASBL yariyemereye ko hari inyubako zubakishijwe na EPTC Ltd kandi ikaba ariyo yazegukanye, ari nayo igomba kwishyura AYALA CO Ltd. Avuga kandi ko abanyamigabane ba APROETEC ASBL ari nabo banyamigabane ba EPTC Ltd, bakaba rero batakwikuraho inshingano zo kwishyura, kandi ubereyemo undi umwenda imitungo ye aba ari ingwate z'uwo abereyemo umwenda.

[28] Maboyi Sadi uhagarariye APROETEC ASBL na Me NSHUTI Salim umwunganira bavuga ko urubanza RC 0303/15/TGI/GSBO rwategetse ko AYALA CO Ltd yishyurwa rutabitegetse APROETEC ASBL, ko ahubwo uwarutsinzwe wagombye kwishyuzwa ari EPTC Ltd. Basobanura ko Urukiko rutasubije umutungo APROETEC ASBL kuko wari usanzwe ari uwayo, ko icyaburanywe mu manza zose hagati ya EPTC Ltd na APROETEC ASBL ari ukumenya utarubahirije amasezerano yiswe ay'imikoranire yo ku wa 09/10/2014. Basanga ibyo AYALA CO Ltd isaba bitahabwa ishingiro kuko nta masezerano bafitanye.

[29] Ku byerekeranye n'inyubako zongewe ku mutungo wa APROETEC ASBL, bavuga ko mu masezerano yagiranye na EPTC Ltd bumvikanye ko mu gihe izaba itabashije kubahiriza inshingano zayo, ibikorwa izaba yashyizeho itazabisubizwa. Hashingiwe ku ngingo ya 64 y'Itegeko rigenga amasezerano, basanga ibi bumvikanye byarabaye itegeko hagati yabo. Bavuga kandi ko icyo APROETEC ASBL yemereye EPTC Ltd ari ukuyitiza ingwate ngo ishake amafaranga muri Banki, atari ukuyifatiraho imyenda mu bandi bantu.

[30] Bongeraho ko APROETEC ASBL atari umunyamigabane wa EPTC Ltd, umutungo wayo ukaba udashobora kuba ingwate ya AYALA CO Ltd ; ndetse ko n'abanyamigabane ba EPTC Ltd badashobora kuyishyurira ibyo yategetswe kuko ari sosiyete y'ubucuruzi (personne morale) itandukanye n'abanyamigabane, ko n'ibyo EPTC Ltd ivuga ko APROETEC ASBL igomba kuyishyurira kuko nta bushobozi ifite, basanga ntaho bishingiye mu mategeko.

UKO URUKIKO RUBIBONA

[31] AYALA CO Ltd na EPTC Ltd bahuriza ku kuvuga ko APROETEC ASBL ariyo igomba kwishyura 39.848.500 Frw AYALA CO Ltd yatsindiye mu rubanza RC 0303/2015/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 16/06/2017, babishingiye ku mpamvu z'ingenzi zikurikira:

a. Kuba APROETEC ASBL ariyo yegukanye umutungo yari yaratije EPTC Ltd hamwe n'ibikorwa byawongeweho, kandi EPTC Ltd yari yarawuhaye AYALA CO Ltd ho ingwate igomba kuvanwamo ubwishyu;

b. Kuba abanyamigabane ba APROETEC ASBL ari nabo banyamigabane ba EPTC Ltd, bakaba bafite inshingano zo kwishyura.

[32] Ku bijyanye n'impamvu ya mbere, Urukiko rusanga kuba APROETEC ASBL yarasubiranye umutungo yari yaratije EPTC Ltd hamwe n'ibikorwa byawongeweho bitaba impamvu ituma APROETEC ASBL ariyo yishyura amafaranga EPTC Ltd ibereyemo AYALA CO Ltd, rubishingiye ku mpamvu zikurikira:

a. Mu ngingo ya 6 y'amasezerano yerekeye imirimo yo kubaka ibyumba 12 by'amashuri, yabaye ku wa 02/03/2015 hagati ya EPTC Ltd na AYALA CO Ltd, bigaragara ko icyo EPTC Ltd yatanzeho ingwate atari umutungo yatijwe na APROETEC ASBL, ahubwo ari ibyumba by'amashuri AYALA CO Ltd yagombaga kubaka;

b. Kuba ibikorwa bijyanye no kubaka ibyumba by'amashuri AYALA CO Ltd yari imaze gukorera EPTC Ltd nabyo byaregukanywe na APROETEC ASBL ubwo yasubiranaga umutungo wayo, byubahirije ibyari biteganyijwe mu ngingo ya 3 y'amasezerano APROETEC ASBL yagiranye na EPTC Ltd ku wa 09/10/2014. Agace ka 8 k'iyo ngingo kavuga ko APROETEC ASBL yiyemeje inshingano yo gusubirana umutungo wayo wose uko wakabaye hatitawe ku iyongeragaciro EPTC Ltd yaba yaragizemo uruhare, nta n'indishyi urwo ruhare rutangiwe, mu gihe EPTC Ltd itubahirije inshingano zayo cyangwa yananiwe kwishyura ibyo yiyemeje mu gihe cyagenwe;

c. Kuba EPTC Ltd itarubahirije inshingano zayo ntibashe no kwishyura ikiguzi yiyemeje mu gihe kitarenze umwaka umwe kivugwa mu ngingo ya 5 n'iya 7 z'amasezerano yo ku wa 09/10/2014,[7] bikanatuma amasezerano sosiyete zombi zari zagiranye arangira ku wa 09/10/2015, byemejwe mu manza zabaye itegeko hagati ya APROETEC ASBL na EPTC Ltd; [8] bivuga ko nta kosa APROETEC ASBL yakoze mu gusubirana umutungo wayo n'iyongeragaciro wakorewe.

[33] Ku bijyanye no kuba APROETEC ASBL yagira inshingano zo kwishyura AYALA CO Ltd bitewe n'uko abanyamigabane bayo ari nabo banyamigabane ba EPTC Ltd, Urukiko rusanga EPTC Ltd ibivuga itagaragaza aho ibishingira mu rwego rw'amategeko. APROETEC ASBL iregwa muri uru rubanza si umunyamigabane wa EPTC Ltd. Kuba abanyamigabane bayo ari nabo banyamigabane ba EPTC Ltd, ntibishobora kuyishyiraho inshingano cyangwa uburyozwe ku byakozwe na EPTC Ltd, cyane ko n'abanyamigabane b'iyi sosiyete ubwabo nta buryozwe bafite ku nshingano ifitiye abandi hashingiwe ku biteganywa n'ingingo ya 92 y'Itegeko No 007/2021 ryo ku wa 05/02/2021 rigenga amasosiyete y'ubucuruzi. Iyo ngingo isobanura mu gika cyayo cya mbere ko uretse igihe ari isosiyete ifite uburyozwe butagarukira ku migabane, umunyamigabane ataryozwa inshingano za sosiyete bitewe n'uko ari umunyamigabane gusa.

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7 Igika cya nyuma cy'ingingo ya 5 kigira kiti: icyo gihe cyo kwishyura no kwishyurwa amafaranga ya nyuma giteganyijwe nyuma y'amezi 6, ikigo kimaze kuvugururwa no gukoreshwa, ariko icyo gihe kikaba kitagomba kurenga umwaka w'amezi 12.
Ingingo ya 7 igira iti: Aya masezerano ateganyijwe mu gihe kiri hagati y'amezi 6 n'umwaka umwe. Icyo gihe gishobora kuvugururwa mu gihe byaba byemeranyijweho n'impande zombi, icyo gihe iryo vugururwa ryakorerwa amasezerano y'umugereka.

8Urubanza RCOMA 00459/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 23/02/2017, hamwe n'urubanza RCOMA 00128/2017/CHC/HCC rwaciwe n'urwo Rukiko ku wa 21/09/2017, ari narwo AYALA CO LTD yatambamiye.

[34] Urukiko rusanga kandi, ibyo AYALA CO Ltd ivuga ko ntaho yakura amafaranga yishyuza EPTC Ltd kuko nta mutungo igifite, bitaba impamvu yo kwishyuza APROETEC ASBL badafitanye amasezerano. Uwo bagiranye amasezerano ufite n'inshingano zo kwishyura ni EPTC Ltd, kandi no mu rubanza RC 0303/15/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 16/06/2017,[9] uwari uhagarariye EPTC Ltd yemeraga inshingano yo kwishyura AYALA CO Ltd amafaranga iyisigayemo, akavuga ko ikibazo gihari gusa ari uko igihe cyo kwishyura kitaragera, ko bategereza igihe kikagera.

[35] Ku bijyanye n'ingingo ya 113 igika cya 2 y'Itegeko No 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano,[10] AYALA CO Ltd ishingiraho ivuga ko umwenda ifitiwe na EPTC Ltd ugomba kwishyurwa na APROETEC ASBL, Urukiko rusanga idashobora gushingirwaho kuko nta mwenda EPTC Ltd iberewemo na APROETEC ASBL, ikaba rero nta n'uburenganzira n'ububasha (droits et actions) bivugwa muri iyo ngingo iyifiteho. Iyi ngingo yakoreshwa ari uko hari umwenda APROETEC ASBL ibereyemo EPTC Ltd kandi nta bushake ifite bwo kuwishyuza, AYALA CO Ltd igashobora gukoresha uburenganzira n'ububasha bwa EPTC Ltd bwo kurega yishyuza APROETEC ASBL, kugirango ibashe kubona ubwishyu bw'umwenda EPTC Ltd iyibereyemo (Action oblique).

[36] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga EPTC Ltd ariyo igomba kwishyura 39.848.500 Frw yategetswe mu rubanza RC 0303/2015/TGI/GSBO AYALA CO Ltd yayitsinzemo, akomoka ku masezerano sosiyete zombi zagiranye.

c. Kumenya niba indishyi ababuranyi basaba muri uru rubanza bakwiye kuzihabwa

[37] Me Gasengayire Alice uhagarariye AYALA CO Ltd avuga ko isaba indishyi zo gushorwa mu manza zingana na miliyoni ebyiri (2.000.000 Frw), amafaranga y'ikurikiranarubanza angana na 900.000 Frw, n'igihembo cya Avoka kingana na 2.000.000 Frw. Avuga ko izo ndishyi zatangwa na APROETEC ASBL kuko ariyo nyirabayazana yo kutishyurwa kwa AYALA CO Ltd, ikaba ari nayo ifite inyubako uwo ahagarariye yubatse.

[38] Maboyi Sadi uhagarariye APROETEC ASBL n'umwunganira bavuga ko amafaranga AYALA CO Ltd isaba ntaho iyashingira haba mu mategeko ndetse no mu masezerano, kuko ivuga ko yashowe mu manza kandi ariyo yazitangije igatsindwa. APROETEC ASBL isaba ko ahubwo Urukiko rwayigenera amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka kuri uru rwego angana na miliyoni ebyiri (2. 000. 000 Frw).

[39] Mu kirego kiregera kwiregura, EPTC LTD isaba Urukiko gutegeka APROETEC ASBL kuyiha indishyi mbonezamusaruro zingana na 30.000.000 Frw yateganyaga kujya yunguka buri mwaka uhereye 2016, yose hamwe akaba angana na 600.000.000 Frw, zigakomeza kubarwa kugeza urubanza ruciwe. Irasaba kandi indishyi z'ikurikiranarubanza zingana na 500.000 Frw, n'igihembo cya Avoka kingana na 1.000.000 Frw.

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9 Reba igika cya 14 cy'urubanza RC 0303/15/TGI/GSBO Mwiseneza Gildas yarezemo EPTC LTD, APROETEC SARL ikagobokeshwa ku ngufu, AYALA CO LTD ikarugobokamo ku bushake.

10 Igika cya 2 cy'ingingo ya 113 kigira kiti: 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.

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga indishyi z'ikurikiranarubanza n'igihembo cya Avoka AYALA CO Ltd isaba kimwe n'izo EPTC Ltd isaba batazihabwa kuko ntacyo batsindiye muri uru rubanza. Ku bijyanye n'indishyi mbonezamusaruro EPTC Ltd isaba mu kirego kiregera kwiregura, Urukiko rurasanga icyo kirego kitasuzumwa kuko itigeze igitanga mu rwego rw'akarengane ibinyujije mu nzira ziteganywa n'amategeko, [11] uwo murongo ukaba ariwo watanzwe mu zindi manza zaciwe n'uru Rukiko[12]

[41] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka APROETEC ASBL isaba yayahabwa kuko byabaye ngombwa ko ikurikirana urubanza yarezwemo, igashyiraho na Avoka uyunganira, ariko kuko ayo isaba ari menshi kandi ikaba itarayatangiye ibimenyetso, ikaba igenewe mu bushishozi bw'Urukiko 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka, yose hamwe akaba 800.000 Frw agomba kwishyurwa na AYALA CO Ltd.

III. ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ikirego cya AYALA CO Ltd gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00083/2019/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 03/07/2020, gifite ishingiro kuri bimwe ;

[43] Rwemeje ko ubujurire bwa AYALA CO Ltd bwagombaga kwakirwa mu Rukiko rw'Ubujurire ;

[44] Rwemeje ko urubanza RCOMAA 00083/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/07/2020 ruvuyeho ;

[45] Rwemeje ko EPTC Ltd ariyo igomba kwishyura AYALA CO Ltd 39.848.500 Frw yategetswe mu rubanza RC 0303/2015/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 16/06/2017 ;

[46] Rwemeje ko urubanza RCOMA 00684/2017/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 30/04/2019 rugumanye agaciro karwo ;

[47] Rutegetse AYALA CO Ltd guha APROETEC ASBL 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

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11 Ingingo ya 58 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko iyo umuburanyi abonye hari akarengane kagaragara mu rubanza rwe, yandikira Perezida w'Urukiko rukuriye urwaciye urubanza ku rwego rwa nyuma, akaba ariwe usuzuma ako karengane.

12 Urubanza RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, haburana PRIME Insurance Ltd na Kansiime James.

Urubanza RS/INJUST/RCOM 00002/2020/SC rwaciwe ku wa 25/09/2020, haburana Road Solutions Pavement Products na MAILCO Ltd.