BYUMA v BH TRADERS LTD N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM00001/2022/SC (Ntezilyayo, P.J., Hitiyaremye, Cyanzayire, Muhumuza, Kalihangabo, J.) 23 Gashyantare 2024]

Amategeko agenga ubutaka – Ihererekanya ry'umutungo utimukanwa – Kugirango umutungo utimukanwa uve ku wo wari uriho ujye ku wundi, hagomba kubaho amasezerano akorewe imbere ya Noteri w'ubutaka akaba ariyo akomokaho icyemezo cy'iyandikisha cyemeza nyir'umutungo.

Incamake y'ikibazo: Byuma Jean Claude yeguriwe na Sosiyete SOPROCOGI Ltd yari abereye Visi Perezida wayo, umutungo wayo urimo ahari hateganyirijwe ububiko bwayo *(stock)* hafite ikirango cya "O" ndetse na ¼ cy'inzu yitwa ingarigari ya sosiyete ifite ikirango cya "I" bigizwemo uruhare n'abanyamigabane bateraniye mu nama, ariko ¼ cy'inzu yitwa ingarigari ya sosiyete ifite ikirango cya "I" cyiza kugurishwa na Rudasingwa Jean-Baptiste (Perezida w'iyo sosiyete) na Mungwarareba Jean Bosco (Umubitsi wayo) bagurishije BH TRADERS Ltd, ibyo bituma Byuma atanga ikirego mu Rukiko rw'Ubucuruzi asaba ko ayo masezerano y'ubugure aseswa kuko yakozwe ku buryo bunyuranyije n'amategeko, ahubwo we akandikwaho iyo mitungo yahawe.

Urukiko rw'Ubucuruzi rwemeje ko imitungo igizwe n'inzu ifite inyito "O" na ¼ cy'inzu yitwa ingarigari ya sosiyete ifite ikirango cya "I" ari iya Byuma ndetse rutegeka ko imwandikwaho ndetse imwishyura amafaranga y'ubukode bwazo.

SOPROCOGI Ltd, Rudasingwa Jean-Baptiste, Mungwarareba Jean Bosco na BH TRADERS Ltd bajuririye Urukiko Rukuru rw'Ubucuruzi bavuga ko amasezerano y'ubugure adakwiye guseswa kuko yakozwe mu buryo bukurikije amategeko, kandi ko kugirango Byuma yamburwe ibyo yari yarahawe bitasabaga icyemezo cy'Urukiko.

Urukiko Rukuru rw'Ubucuruzi mu rubanza CMB RCOMA 00316/2017/CHC/HCC rwemeje ko ibimenyetso bidahagije mu kwemeza ko SOPROCOGI Ltd yari ifite ububasha busesuye bwo kugurisha umutungo wari waramaze kwegurirwa Byuma, rutegeka kandi ko umutungo Byuma yagurishije Koperative Icyerekezo cy'Iterambere ariyo igomba kuwandikwaho.

BH TRADERS Ltd yajuririye Urukiko rw'Ikirenga, ariko kubera ivugururwa ry'Urwego rw'Ubucamanza, urubanza rwoherezwa mu Rukiko rw'Ubujurire, ruhabwa nomero RCOMAA 00046/2018/CA, muri urwo rubanza kandi Technical Investment Group, Manirarora Evariste, Rubayita Charles na Mugwaneza Joram bagobotse ku bushake bavuga ko bagamije kurengera inyungu zabo nk'abanyamigabane ba SOPROCOGI Ltd kuko idahagarariwe mu rubanza.

Urukiko rw'Ubujurire rwemeje ko amasezerano y'ubugure yabaye hagati ya BH TRADERS Ltd na SOPROCOGI Ltd yubahirije amategeko, rutegeka ko urubanza rwajuririwe ruhindutse uretse gusa ku byo Koperative Icyerekezo cy'Iterambere yatsindiye Byuma.

Byuma yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCOMAA 00046/2018/CA rwaciwe n'Urukiko rw'Ubujurire rusubirwamo ku mpamvu z'akarengane.

Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe, yemeje ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

Mu iburanisha mu mizi ry'urubanza rwasabiwe gusubirishwamo ku mpamvu z'Akarengane, hasuzumwa ikibazo cyo Kumenya uwari nyir'umutungo uburanwa (¼ cy'inzu ifite Inyito ya "I" mbere y'uko ugurishwa), Byuma avugako uwo mutungo yari yarawuhawe nk'uko n'abandi banyamigabane bahawe, ko asanga SOPROCOGI Ltd yaramugurishirije umutungo bitabanje kwemezwa n'Inama Rusange kandi ariyo yari ifite ububasha bwo kuwumwambura. Avugako kuba nta cyemezo cy'ubutaka cy'aho yahawe atari ikosa rye kuko n'abandi banyamuryango ba SOPROCOGI Ltd bari baratomboye amazu nta n'umwe wari ufite icyangombwa cyihariye cy'aho yatomboye, ko bari bafite icyangombwa kimwe bahuriyeho bose cyanditse kuri SOPROCOGI Ltd, ko iyo itari ikwiye kuba impamvu imutsindisha.

Ku ruhande rw'abaregwa bavugako umutungo wagurishijwe wari uwa SOPROCOGI Ltd kuko wari uyanditseho kandi ko n'igihe wagurishwaga iyo sosiyete yari ihagarariwe n'ubifitiye ububasha kandi ko Byuma atagaragaza ko uwo mutungo wari uwe afitiye ibyangombwa by'ubutaka ku buryo yavuga ko yavogerewe.

Incamake y'icyemezo: Kugira ngo umutungo utimukanwa uve ku wo wari uriho ujye ku wundi, hagomba kubaho amasezerano akorewe imbere ya Noteri w'ubutaka, ayo akaba ariyo umubitsi w'impapuro mpamo z'ubutaka ashingiraho atanga icyemezo cy'iyandikisha ry'ubutaka ari nacyo cyemeza nyir'ubutaka.

Ikirego kigamije gusubirishamo ku mpamvu z'akarengane nta shingiro gifite.

Amategeko yifashishijwe:

Itegeko Nº 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka, Ingingo ya 2 agace ka 19, n'iya 18 igika cya 1

Iteka rya Minisitiri Nº 002/2008 ryo ku wa 01/04/2008 rigenga iyandikisha ry'ubutaka n'uburyo rikorwa, ingingo ya 4, igika 1.

Imanza zifashishijwe:

Urubanza RS/INJUST/RC 00003/2020/SC; CIFTCI Inanc vs Sebutinde n'undi rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 30/09/2021.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] SOPROCOGI Ltd yashinzwe ku wa 04/08/2011. Byuma Jean Claude akaba ari Visi Perezida wayo. Mu mitungo yayo harimo n'inzu iherereye mu Murenge wa Gisozi yitwa "Umukindo House". Ku wa 01/04/2014, abanyamigabane bakoze inama bemeza ko ahari hateganyirijwe ububiko *(stock)* hafite ikirango cya "O" ndetse na ¼ cy'inzu yitwa ingarigari ya sosiyete ifite ikirango cya "I" byegurirwa Byuma Jean Claude. Uyu avuga ko nyuma yaje kumenya ko ku wa 21/07/2016, SOPROCOGI Ltd, ihagarariwe na Rudasingwa Jean-

Baptiste (Perezida) na Mungwarareba Jean Bosco (Umubitsi) bagurishije BH TRADERS Ltd ¼ cy'inzu yitwa ingarigari ya sosiyete ifite ikirango cya "I" bikorwa mu buryo bunyuranyije n'amategeko ndetse n'abanyamigabane batabyemeje. Byuma Jean Claude yaregeye Urukiko rw'Ubucuruzi arusaba gusesa amasezerano y'ubugure yabaye hagati ya SOPROCOGI Ltd, Rudasingwa Jean-Baptiste, Mungwarareba Jean Bosco na BH TRADERS Ltd no kwandikwaho imitungo yahawe na SOPROCOGI Ltd nk'umunyamigabane wayo.

[2] Mu rubanza RCOM 01715/2016/TC/NYGE rwaciwe ku wa 27/04/2017, Urukiko rw'Ubucuruzi rwasanze :

i) Inama yo ku wa 01/04/2014 ndetse n'iyo ku wa 24/08/2014 zaremeje ko Byuma Jean Claude ahawe inzu ifite ikirango "O" ndetse na ¼ cy'inzu ifite ikirango cya "I", kandi ko nta n'icyemezo cy'Urukiko cyigeze kimwambura uwo mutungo ; na cyane ko ingingo ya 29 y'Itegeko Nshinga[1] ivuga ko umutungo w'umuntu ari ntavogerwa, kandi ko n'igurisha ry'ikintu cy'undi ari imfabusa, ko rishobora gutangirwa indishyi iyo umuguzi atigeze amenya ko icyo kintu ari icy'undi, hakiyongeraho no kuba nta nama rusange ya SOPROCOGI Ltd yateranye ngo yemeze ko umutungo w'iyo sosiyete ugurishwa nk'uko biteganywa n'ingingo ya 18 y'amategeko shingiro y'iyo sosiyete;

ii) Amasezerano yo ku wa 21/07/2016 yabaye hagati ya SOPROCOGI Ltd na BH TRADERS Ltd, yarakozwe mu buryo bunyuranyije n'amategeko shingiro ya SOPROCOGI Ltd kuko nta ¾ by'abanyamuryango bateranye ngo bemeze ko umutungo wayo ugurishwa ;

iii) Inyandiko yo ku wa 28/08/2016 itagaragaza ko habaye Inama Rusange yemeje ko umutungo wa SOPROCOGI Ltd ugurishwa, ahubwo ko iyo nama yarebaga gukata ibibanza no guha Perezida wa SOPROCOGI Ltd ububasha bwo guhererekanya ubutaka *(mutation).*

[3] Urukiko rwanzuye ko ikirego cya Byuma Jean Claude gifite ishingiro, rwemeza ko amasezerano yo ku wa 21/07/2016 ateshejwe agaciro, ko inzu ifite inyito "O" na ¼ cy'inzu ifite inyito "I" ari imitungo ya Byuma Jean Claude nk'uko byemejwe n'Inama Rusange ya SOPROCOGI Ltd yo ku wa 01/04/2014, n'inama yo ku wa 24/08/2014, rutegeka ko izo nzu zandikwa kuri Byuma Jean Claude kandi BH TRADERS Ltd ikamwishyura 2.000.000 Frw yavuye mu bukode bwazo, rutegeka Rudasingwa Jean Baptiste na Mungwarareba Jean Bosco kwishyura Byuma Jean Claude 3.000.000 Frw akubiyemo indishyi zo gushorwa mu manza, igihembo cya Avoka n'ingwate y'igarama.

[1] Ryari Itegeko Nshinga ryo mu mwaka wa 2003 ritaravugururwa.

[4] SOPROCOGI Ltd, Rudasingwa Jean-Baptiste, Mungwarareba Jean Bosco na BH TRADERS Ltd bajuririye Urukiko Rukuru rw'Ubucuruzi bavuga ko amasezerano y'ubugure avugwa muri uru rubanza adakwiye guseswa kuko yakozwe mu buryo bukurikije amategeko, kandi ko kugira ngo SOPROCOGI Ltd yisubize ¼ cy'inzu ifite inyito "I" cyari cyahawe Byuma Jean Claude bitasabaga icyemezo cy'Urukiko, ndetse ko indishyi n'ibindi byategetswe n'Urukiko nta shingiro bifite.

[5] BH TRADERS Ltd yasabye Urukiko gusuzuma igihe amasezerano atakariza agaciro ku batarayagiranye n'ingaruka zayo ku bayagiranye, igihe inama z'abanyamigabane muri sosiyete zigira agaciro ku bandi batazibayemo, niba uwaguze umutungo nta buryarya ashobora kuvutswa uburenganzira bwe, kandi niba Urukiko rwaragombaga kwishyuriza Byuma Jean Claude ubukode bw'amezi ane butaregewe.

[6] Koperative Icyerekezo cy'Iterambere yagobotse muri urwo rubanza isaba ko inyubako ifite inyito "0" itahabwa Byuma Jean Claude kuko bayiguze.

[7] Urukiko Rukuru rw'Ubucuruzi rwahurije hamwe ubwo bujurire, mu rubanza CMB RCOMA 00316/2017/CHC/HCC rwaciwe ku wa 11/01/2018, rusanga :

i) Inyandiko-mvugo yo ku wa 28/08/2016, idahagije mu kwemeza ko SOPROCOGI Ltd yari ifite ububasha busesuye bwo kugurisha umutungo wari waramaze kwegurirwa Byuma Jean Claude kandi ko nta na hamwe abashyize umukono kuri iyo nyandiko-mvugo bemeje ko uwo mutungo ugomba kugurishwa BH TRADERS Ltd, ahubwo ko ibyari ku murongo w'ibyigwa ari *morcellement* y'ikibanza cya SOPROCOGI Ltd gifite UPI 1/02/04/01/5289 no guha ububasha busesuye Perezida wa SOPROCOGI Ltd bwo gukora ihererekanya ry'ibibanza ;

ii) SOPROCOGI Ltd ihagarariwe na Rudasingwa Jean-Baptiste na Mungwarareba Jean Bosco nta bubasha yigeze ihabwa bwo kugurisha umutungo wari weguriwe Byuma Jean Claude ;

iii) Nyuma y'aho Byuma Jean Claude amaze kwishyurira imigabane ye yose, Inama Rusange y'abanyamuryango yateranye ku wa 24/08/2014, yamweguriye umutungo uburanwa muri uru rubanza, bityo ko kuba ku wa 21/07/2016, SOPROCOGI Ltd yaragurishije uwo mutungo, yagurishije ibitari ibyayo.

[8] Urukiko rwanzuye ko ubujurire bwa SOPROCOGI Ltd, Rudasingwa Jean Baptiste, Mungwarareba Jean Bosco na BH TRADERS Ltd nta shingiro bufite, ruha ishingiro ukugoboka ku bushake kwa Koperative Icyerekezo cy'Iterambere, rutegeka ko umutungo Byuma Jean Claude yagurishije Koperative Icyerekezo cy'Iterambere ariyo igomba kuwandikwaho; runamutegeka kuyiha 600.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, rutegeka SOPROCOGI Ltd, Rudasingwa Jean-Baptiste, Mungwarareba Jean Bosco

na BH TRADERS Ltd guha Byuma Jean Claude 600.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire, rutegeka ko ku bitavuzwe byose hagumaho imikirize y'urubanza rwajuririwe.

[9] BH TRADERS Ltd yajuririye Urukiko rw'Ikirenga, urubanza rwandikwa kuri RCOMAA 00025/2018/SC, ariko kubera ivugururwa ry'Urwego rw'Ubucamanza, urubanza rwoherezwa mu Rukiko rw'Ubujurire, ruhabwa RCOMAA 00046/2018/CA.

[10] BH TRADERS Ltd yajuriye isaba Urukiko gusuzuma :

i) Niba umutungo SOPROCOGI Ltd yagurishije BH TRADERS Ltd ari uwa Byuma Jean Claude ku buryo amasezerano y'ubugure akwiye guseswa ;

ii) Niba ingingo z'amategeko shingiro ya SOPROCOGI Ltd n'ibyemezo byayo bigira ingaruka ku bandi bantu batari abanyamigabane bayo bagiranye amasezerano n'abayihagarariye mu buryo bukurikije amategeko ;

iii) Niba nta kimenyetso cyagaragajwe cyerekana ko abanyamigabane ba SOPROCOGI Ltd bateranye bakemeza ko igurisha umutungo wayo kugira ngo yishyure imyenda ;

iv) Ko mu gihe hakwemezwa iseswa ry'amasezerano y'ubugure, hakwiye no gufatwa icyemezo ku iherezo ry'amafaranga BH TRADERS Ltd yishyuye SOPROCOGI Ltd nayo ikayishyura umwenda wa Banki yafashe yubaka inyubako yayo harimo n'igice cyatombowe na Byuma Jean Claude ;

v) Niba indishyi BH TRADERS Ltd yaciwe zifite ishingiro.

[11] Technical Investment Group, Manirarora Evariste, Rubayita Charles na Mugwaneza Joram bagobotse ku bushake muri urwo rubanza bavuga ko bagamije kurengera inyungu zabo nk'abanyamigabane ba SOPROCOGI Ltd kuko idahagarariwe mu rubanza.

[12] Mu rubanza RCOMAA 00046/2018/CA rwaciwe ku wa 18/06/2021, Urukiko rw'Ubujurire rwasanze :

i) Inzu yose ifite inyito "I" yaguzwe na BH TRADERS Ltd mu masezerano yo ku wa 21/07/2016, yari ikiri iya SOPROCOGI Ltd mu buryo bukurikije amategeko hashingiwe ku ngingo z'amategeko agenga iby'ubutaka n'iyandikisha ryabwo, bityo ko mu gihe cy'ubwo bugure iyo nyubako cyangwa igice cyayo bitashoboraga kuba ibya Byuma Jean Claude kuko SOPROCOGI Ltd cyangwa se abanyamigabane bayo batashoboraga kugira undi bayihaho Uburenganzira mu gihe cyose yari ikiri mu bugwate ;

ii) ibivugwa na Byuma Jean Claude n'abandi banyamigabane ko icyemezo cyo kugurisha inzu ifite ikirango "I" cyafashwe

n’inteko itujuje ibisabwa n’amategeko shingiro ya sosiyete nta shingiro bifite kuko n’ubwo inyandikomvugo y’inama idasanzwe yo ku wa 19/08/2016 yashyizweho umukono n’abatageze kuri ¾ by’abanyamigabane biteganywa n’ingingo ya 18 y’amategeko shingiro, abatari bahari babyemeje mu Nama Rusange idasanzwe yabaye ku wa 28/08/2016 ubwo bemezaga ko hakorwa ihererekanyamutungo hagati ya BH TRADERS Ltd na SOPROCOGI Ltd ihagarariwe na Perezida wayo Rudasingwa Jean-Baptiste, bakaba batari kwemeza ihererekanyamutungo ku bugure batemera;

iii) Ihererekanyamutungo ku butaka bufite UPI 1/02/04/01/5323 buva kuri SOPROCOGI Ltd bujya kuri BH TRADERS Ltd ryemewe n’Umubitsi w’Impapurompamo z’Ubutaka nyuma y'aho aboneye icyemezo gihamya ububasha bw’uhagarariye SOPROCOGI Ltd bwo kwegurira undi umutungo wayo kandi amaze kumenya neza ko nta mbogamizi iri mu mwirondoro n'ubushobozi bw'abagiranye amasezerano ;

iv) Technical Investment Group, Manirarora Evariste, Rubayita Charles na Mugwaneza Joram bagobotse muri uru rubanza batagaragaza icyo amasezerano y’ubugure ababangamiyeho muri rusange cyangwa mu buryo bw’umwihariko, cyane cyane ko ayo masezerano yakozwe hagamijwe kwishyura umwenda SOPROCOGI Ltd bahuriyemo bose nk’abanyamigabane yari ifitiye banki, ku buryo iyo hatabaho ubwo bugure ngo haboneke ubwishyu bw’umwenda, n’igabana ry’inyubako ya sosiyete bahuriyemo bari batangiye ritari gushoboka.

[13] Urukiko rwanzuye ko ubujurire bwa BH TRADERS Ltd bufite ishingiro, naho ubwuririye ku bundi bwa Byuma Jean Claude nta shingiro bufite, rwakira ukugoboka ku bushake kwa Technical Investment Group, Manirarora Evariste, Rubayita Charles na Mugwaneza Joram, ariko rusuzumye ibyo basaba rusanga nta shingiro bifite. Urukiko rwemeje ko amasezerano y’ubugure yabaye hagati ya BH TRADERS Ltd na SOPROCOGI Ltd ku wa 21/07/2016 yubahirije amategeko, rutegeka ko urubanza rwajuririwe ruhindutse uretse gusa ku byo Koperative Icyerekezo cy’Iterambere yatsindiye Byuma Jean Claude.

[14] Ku wa 17/07/2021, Byuma Jean Claude yandikiye Perezida w’Urukiko rw’Ikirenga asaba ko urubanza RCOMAA 00046/2018/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 18/06/2021 rusubirwamo ku mpamvu z’akarengane. Perezida w’Urukiko rw’Ikirenga amaze gusuzuma ubwo busabe, ku wa 13/01/2022 yemeje ko rwoherezwa mu Bwanditsi bw’Urukiko rw’Ikirenga kugira ngo ruzongere ruburanishwe.

[15] Urubanza rwaburanishijwe mu ruhame ku wa 17/01/2023, ababuranyi bahagarariwe cyangwa bunganiwe mu buryo bukurikira :

i) Byuma Jean Claude yunganiwe na Me Niyomugabo Christophe afatanyije na Me Munyankindi Kayiranga Innocent ;

ii) BH Traders Ltd ihagarariwe na Hitarurema Bernard yunganiwe na Me Nsabimana Jean-Baptiste ;

iii) Rudasingwa Jean-Baptiste yunganiwe na Me Twagirayezu Joseph ;

iv) Mungwarareba Jean Bosco yunganiwe na Me Munyentwari Charles ;

v) SOPROCOGI Ltd iburanirwa na Me Uwase Sabine ;

vi) Koperative Icyerekezo cy'Iterambere ihagarariwe na Me Uwanyirigira Delphine ;

vii) Technical Investment Group ihagarariwe na Ndayambaje JeanDamascène yunganiwe na Me Musoni Charles, uyu kandi akaba ari na we wari uhagarariye Manirarora Evariste.

Mugwaneza Joram na Rubayita Charles bari bagobotse ku bushake mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, ntibitabye kandi barahamagajwe mu buryo bwemewe n'amategeko, hemezwa ko urubanza ruburanishwa badahari.

[16] Iburanisha ryatangiye hasuzumwa ubusabe bwa Mugwaneza Joram na Rubayita Charles bwo kwivana mu rubanza kuko nta nyungu bakirufitemo. Mu cyemezo Urukiko rwafatiye mu ntebe, rwasanze umurongo watanzwe n'uru Rukiko mu manza zitandukanye,[2] ubwo rwasesenguraga ingingo ya 63[3] y'Itegeko N<u>O</u> 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ari uko abari ababuranyi mu rubanza rusubirwamo ku mpamvu z'akarengane bakomeza kurubamo ababuranyi no mu gihe cyo kurusubirishamo ku mpamvu z'akarengane, bityo kuba Mugwaneza Joram na Rubayita Charles barabaye ababuranyi mu rubanza RCOMAA 00046/2018/CA rusabirwa gusubirwamo, bombi bakaba bagomba gukomeza no kuba ababuranyi muri uru rubanza;

[17] Iburanisha ryakomereje ku kibazo cyo kumenya niba SOPROCOGI Ltd ihagarariwe mu rubanza mu buryo bukurikije amategeko kuko icyo kibazo ababuranyi batacyumvikanagaho. Ku itariki ya 17/02/2023, mu rubanza rubanziriza urundi, Urukiko

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[2] Reba urubanza no RS/INJUST/RP 00004/2018/SC, Ubushinjacyaha bwaregagamo MBARUSHIMANA Jean de Dieu na RUTAYISIRE RUHINDA Sabbat, rwaciwe n'Urukiko rw'Ikirenga, ku wa 28/02/2019, igika cya 63.

[3] Iyo ngingo iteganya ko *"iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe."*

rwemeje ko icyemezo cy'Inama Rusange idasanzwe ya SOPROCOGI Ltd cyo ku wa 28/09/2022 gishyiraho Me Uwase Sabine ngo azayiburanire muri uru Rukiko cyafashwe mu buryo bunyuranyije n'amategeko.

[18] Iburanisha ry'urubanza ryashyizwe ku wa 19/07/2023, uwo munsi Urukiko rusuzuma ikibazo cyo kumenya niba Rudasingwa Jean Baptiste akwiriye guhagararira SOPROCOGI Ltd no kumenya niba afite ububasha bwo gushyiraho Avoka uyiburanira muri uru rubanza, rwemeza ko SOPROCOGI Ltd ihagarariwe na Rudasingwa Jean Baptiste, kandi ko nk'umuyobozi wa sosiyete nta kimubuza kuba yashyiraho Avoka uyiburanira ngo arengere inyungu zayo. Iburanisha ryarasubitwe kugira ngo SOPROCOGI Ltd na Rudasingwa Jean Baptiste uyihagarariye babashe gutegura imyanzuro no kuyishyikiriza Urukiko.

[19] Iburanisha ry'urubanza mu mizi ryabaye ku wa 09/01/2024, hasuzumwa ibibazo bikurikira :

i) Kumenya uwari nyir'umutungo uburanwa (¼) cy'inzu ifite inyito "I" mbere y'uko ugurishwa);

ii) Kumenya niba amasezerano yabaye hagati ya BH TRADERS Ltd na SOPROCOGI Ltd yarakurikije amategeko;

iii) Kumenya niba hari indishyi mbonezamusaruro Byuma Jean Claude agomba guhabwa;

iv) Ishingiro ry'indishyi z'ikurikiranarubanza n'igihembo cya Avoka zisabwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

i) Kumenya uwari nyir'umutungo uburanwa (¼ cy'inzu ifite Inyito ya "I" mbere y'uko ugurishwa).

[20] Byuma Jean Claude n'abamwunganira bavuga ko Urukiko rw'Ubujurire rwirengagije ko SOPROCOGI Ltd yagurishije umutungo we ayikomoraho nk'umunyamigabane wayo, ugurwa na BH TRADERS Ltd, nyamara uwo mutungo yari yarawuhawe nk'uko n'abandi banyamigabane bahawe, ko asanga SOPROCOGI Ltd yaramugurishirije umutungo bitabanje kwemezwa n'Inama Rusange kandi ariyo yari ifite ububasha bwo kuwumwambura. Avuga ko asanga uburenganzira bwe buteganywa n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda[4] ivuga ko umutungo w'umuntu ari ntavogerwa butarubahirijwe.

[21] Bavuga ko Inama Rusange yo ku wa 01/04/2014 yemeje ko hagabanywa ibipande bigize inzu yose, ko Byuma Jean Claude nk'umunyamigabane ahawe ahari harateganyijwe nk'ububiko *(stock)* hafite ikirango cya "O", bakamwongereraho ¼ cy'inzu bita ingarigari ya Sosiyete ifite ikirango cya "I", byongera kwemezwa n'Inama Rusange yo ku wa 24/08/2014. Asobanura ko nyuma y'aho Urukiko rw'Ubucuruzi rusheshe amasezerano y'ubugure, ku wa

[4] Ubu ni ingingo ya 34 mu Itegeko Nshinga ririho ubu

21/06/2017 hateranye indi Nama Rusange nayo yemeza ko buri munyamigabane agumana inzu yatomboye n'ubutaka inzu yubatseho *(page 4 point 1&7)* nk'uko byemejwe n'Inama Rusange yo ku wa 24/08/2014 ari nayo Urukiko rw'Ubucuruzi rwashingiyeho rufata icyemezo. Avuga ko asanga ibi bimenyetso ari byo byirengagijwe n'Urukiko rw'Ubujurire nyamara bigaragaza ko umutungo uburanwa wari uwe.

[22] Banavuga ko kuba nta cyemezo cy'ubutaka cy'aho yahawe atari ikosa rye kuko n'abandi banyamuryango ba SOPROCOGI Ltd bari baratomboye amazu nta n'umwe wari ufite icyangombwa cyihariye cy'aho yatomboye, ko bari bafite icyangombwa kimwe bahuriyeho bose cyanditse kuri SOPROCOGI Ltd, ko iyo itari ikwiye kuba impamvu imutsindisha.

[23] Bongeraho ko Technical Investment Group, Manirarora Evariste, Rubayita Charles na Mugwaneza Joram nk'abanyamigabane ba SOPROCOGI Ltd baje mu rubanza bagobotse ku bushake, bagaragariza Urukiko rw'Ubujurire uburyo igabana ry'umutungo ryagenze, n'uko umutungo wahawe Byuma Jean Claude wagurishijwe BH TRADERS Ltd batabizi, basobanura ko Rudasingwa Jean Baptiste na Mungwarareba Jean Bosco nta bubasha bari bahawe n'Inama Rusange bwo kugurisha uwo mutungo, ariko Urukiko rw'Ubujurire ntirwabiha agaciro.

[24] Byuma Jean Claude n'abamwunganira bavuga ko basanga ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano yarishwe.[5] Basobanura ko bagarutse ku ngingo ya 18 y'Amategeko Shingiro ya SOPROCOGI Ltd bakayihuza n'amasezerano y'ubugure aburanwa yabaye hagati ya SOPROCOGI Ltd na BH TRADERS Ltd mu ngingo yayo ya 5 ivuga ko BH TRADERS Ltd yiyemeje gukurikiza Amategeko Shingiro ya SOPROCOGI Ltd, basanga byumvikana ko igomba kwirengera ibyo yakoze byose kuko yabikoze ibizi kandi yabiteguye. Bavuga ko ikigaragaza ko BH TRADERS Ltd yaguze uwo mutungo mu buryarya *(de mauvaise foi)* ari uko yari izi neza ko abagurishije nta bubasha bari bafite kuko nta burenganzira Inama Rusange yabahaye.

[25] Basoza kuri iyi ngingo bavuga ko basaba Urukiko ko mu gihe ruzaba rufata icyemezo, rwazita ku kuba umutungo uburanwa Byuma Jean Claude yarawuhawe n'Inama Rusange za SOPROCOGI Ltd zateranye inshuro ebyiri, agahabwa ¼ cy'inyubako ifite ikirango cya "I" hamwe n'inyubako ifite ikirango cya "O", Inama Rusange ya nyuma yabyemeje ikaba yarabaye ku wa 24/08/2014. Banavuga kandi ko basanga umucamanza w'Urukiko rw'Ubujurire yarashingiye ku nama yo ku wa 28/08/2016 yemeza ko habayeho *mutation* hagati ya BH TRADERS Ltd na SOPROCOGI Ltd, akanashingira ku nama yo ku wa 19/08/2016, nyamara iyo nama yari yayigarutseho avuga ko yateranye mu buryo butemewe n'amategeko.

[26] Me Nsabimana Jean Baptiste uhagarariye BH TRADERS Ltd avuga ko nta mategeko cyangwa ibimenyetso byirengagijwe kuko Urukiko rw'Ubujurire rwagaragaje ingingo

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[5] Iyi ngingo iteganya ko Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya.

z’amategeko ndetse n’amateka rwashingiyeho rufata icyemezo, Byuma Jean Claude akaba atarashoboye kuyavuguruza ngo yerekane ibimenyetso Urukiko rwirengagije rufata icyemezo, uretse kuvuga gusa ko yarenganyijwe.

[27] Avuga ko umutungo BH TRADERS Ltd yaguze wari uwa SOPROCOGI Ltd, kandi ko yawuguze imaze kugaragarizwa ibimenyetso bidashidikanywaho bihamya ko ari uwayo bwite ntaho uhuriye n’uwa Byuma Jean Claude, ibyo bimenyetso bikaba ari :

i) *Certificat d’enregistrement* yo ku wa 04/08/2011 yavuguruwe ku wa 19/01/2021, RDB yahaye SOPROCOGI Ltd ihagarariwe na Rudasingwa Jean Baptiste ifite abanyamigabane 11 ariko babarwa ko ari 12 kubera Mungwarareba Jean Bosco ufitemo imigabane 2 ;

ii) Inyandiko mvugo y’Inama Rusange yo ku wa 24/08/2014, agace ka VIII, igaragaza abanyamigabane ba SOPROCOGI Ltd bayitabiriye na Byuma Jean Claude arimo, bemeje ko ibice by’inzu ifite inyito “I”, bitari ibyo ku igorofa bitahawe uwatomboye, ari umutungo wa SOPROCOGI Ltd kandi ko ibyo bice aribyo BH TRADERS Ltd yaguze; iii) Incamake y’uko tombola yo ku wa 24/08/2014 y’amazu agize inyubako ya SOPROCOGI Ltd yagenze igaragaza Byuma Jean Claude kuri numero ya 11 kuri urwo rutonde rw’abatomboye, ko yatomboye inzu ifite inyito “O” kandi ko atariyo BH TRADERS Ltd yaguze.

[28] Avuga ko amasezerano y’ubukode burambye yo ku wa 16/01/2017 agaragaza ko SOPROCOGI Ltd yagurishije BH TRADERS Ltd inyubako iri mu kibanza gifite UP:1/02/04/01/5323, n’ikirango cya «I» cyanditse kuri SOPROCOGI Ltd kandi ko cyabonetse gikaswe ku butaka bw’ikibanza cyari gifite UPI: 1/02/04/01/5289 nacyo cyari cyanditse kuri SOPROCOGI Ltd ari yo nyir’umutungo 100%, bikozwe na Perezida Rudasingwa Jean Baptiste nk’uko byemejwe n’Inama Rusange idasanzwe ya SOPROCOGI Ltd yateranye ku wa 28/08/2016 yitabiriwe n’abanyamigabane 9 kuri 12 bayigize.

[29] Avuga kandi ko amasezerano yabaye hagati ya Byuma Jean Claude na Sosiyete Icyerekezo cy’Iterambere ku itariki 21/04/2016, agaragaza ko Byuma Jean Claude yagurishije umugabane we wose yari afite muri SOPROCOGI Ltd ungana n’inzu yose ya “Block O” ku kiguzi cya 200.000.000 Frw kandi iyi nyubako ikaba iri mu kibanza gifite UPI: 1/02/04/01/5284 nk’uko Byuma Jean Claude, Rudasingwa Jean Baptiste na Sosiyete Icyerekezo cy’Iterambere babigaragaje mu masezerano y’ubugure bagiranye na Havugimana Emile ku wa 18/06/2021, byerekana ko gitandukanye n’ikibanza gifite UP:1/02/04/01/5323, BH TRADERS Ltd yaguze.

[30] Akomeza avuga ko Byuma Jean Claude atagaragaza ko afite icyangombwa cy’ubutaka bw’inzu avuga ko yagabanye cyanditse ku mazina ye, ko ari nacyo SOPROCOGI Ltd yahererekanyije na BH TRADERS Ltd igihe cy’igurisha. Avuga kandi ko kugeza ubu Byuma Jean Claude atagaragaza ko umwenda SOPROCOGI Ltd yari yarafashe muri Banki,

ikawukoresha yubaka inyubako "Umukindo House", wari warishyuwe wose mbere y'amasezerano y'ubugure bwa BH TRADERS Ltd, akaba atanagaragaza ko iyo nyubako yari yaravanywe mu bugwate.

[31] Asaba Urukiko kuzashingira ku ngingo ya 20 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 ryagengaga ubutaka igihe amasezerano y'ubugure yakorwaga, ingingo ya 23 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena iyandikisha ry'ubutaka n'uburyo rikorwa, ingingo ya 15, iya 19, iya 20, iya 21, iya 22 , iya 26 n'iya 27 z'Itegeko N° 15/2010 ryo ku wa 07/05/2010 rigena kandi rishyiraho imiterere y'isangiramutungo ku nyubako n'imihango ijyanye n'uburyo iyandikisha ryayo rikorwa, maze ruzabone ko kugira ngo uvuge ko ufite uburenganzira ku butaka ari uko buba bukwanditseho, hanyuma ruzemeze ko umutungo BH TRADERS Ltd yaguze wari uwa SOPROCOGI Ltd kuko ari yo wari wanditsweho igihe cy'igurisha.

[32] Anavuga ko ikibazo cyo kuba BH TRADERS Ltd yaraguze izi neza ko umutungo iguze atari uwa SOPROCOGI Ltd cyasobanuwe neza kuva ku gika cya 50 kugeza ku cya 56 by'urubanza rusabirwa gusubirwamo, Urukiko rugasanga nta makosa BH TRADERS Ltd yakoze kuko yaguze imaze kwerekwa amasezerano y'ubukode burambye agaragaza ko umutungo ari uwa SOPROCOGI Ltd ihagarariwe na Rudasingwa Jean Baptiste ugaragara mu cyemezo cya RDB nk'Umuyobozi Mukuru (Managing Director) n'Umuyobozi w'Inama y'Ubutegetsi ya SOPROCOGI Ltd.

[33] Me Twagirayezu Joseph wunganira Rudasingwa Jean Baptiste akanahagararira SOPROCOGI Ltd, avuga ko asanga ibivugwa na Byuma Jean Claude ko hishwe amategeko n'ibimenyetso bigaragarira buri wese, bitahabwa agaciro kuko amategeko yubahirijwe mu kugurisha umutungo uburanwa. Avuga ko Urukiko rw'Ubujurire rwabisobanuye neza mu gika cya 52[6], kandi ko na Byuma Jean Claude ubwe yagiye abihamya ubwo yabazwaga niba aho yita ahe hari ibyangombwa by'ubutaka bya burundu ahafitiye, akavuga ko bicyanditse kuri SOPROCOGI Ltd.

[34] Akomeza avuga ko mu ngingo ya 3 y'inyandikomvugo y'Inama Rusange idasanzwe ya SOPROCOGI Ltd yo ku wa 20/07/2016, abagize SOPROCOGI Ltd bemeje ko abanyamigabane bakoresha ibyumba biri mu nyubako ya SOPROCOGI Ltd ifite ikirango "I", bose babirekura bikagurishwa, hagamijwe kwishyura GT Bank Plc, kandi ko no ku wa 28/08/2016 habaye inama idasanzwe yemeza ko BH TRADERS Ltd ikorerwa ihererekanyamutungo *(mutation)* ku kibanza cyose yaguze kiriho imiryango 11.

[35] Avuga ko uwo mutungo wa SOPROCOGI Ltd wagurishijwe mu nyungu z'abanyamigabane bayo bose, bityo ko bose bagomba gufatanya kwirengera ingaruka zabyo,

[6] Muri icyo gika Urukiko rwagize ruti : "Urukiko rurasanga rero inzu yose ifite inyito "I" yaguzwe na BH TRADERS Ltd mu masezerano yo ku wa 21/07/2016, yari ikiri iya SOPROCOGI Ltd mu buryo bukurikije amategeko hashingiwe ku ngingo z'amategeko agenga iby'ubutaka n'iyandikisha ryabwo yibukijwe haruguru, mu gihe cy'ubwo bugure iyo nyubako cyangwa se igice cyayo bikaba bitarashoboraga kuba ibya Byuma Jean Claude kuko SOPROCOGI Ltd cyangwa se abanyamigabane bayo batashoboraga kugira undi bayihaho uburenganzira ku mutungo mu gihe cyose yari ikiri mu bugwate."

kuko nta nyungu yihariye Rudasingwa Jean Baptiste yari abifitemo ku buryo ari we waryozwa ibyakozwe ku nyungu z'abanyamigabane bose ba SOPROCOGI Ltd.

[36] Akomeza avuga ko umutungo uburanwa utari wakabaye uwa Byuma Jean Claude kubera ko nta cyangombwa yigeze ahabwa, ko kuba SOPROCOGI Ltd yaba yaragurishije ingarigari yayo, ikabikora mu nyungu rusange z'abanyamigabane asanga ibyakozwe nta kosa ririmo.

[37] Asoza avuga ko ibivugwa na Byuma Jean Claude ko amasezerano yo ku wa 21/07/2016 yakozwe mu buryo budakurikije amategeko atari byo kuko Urukiko rw'Ubujurire rwabisuzumye mu gika cya 41 na 42 by'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, bikagaragara ko SOPROCOGI Ltd yagurishije ingarigari yayo igizwe na Bloc I ifite imiryango 11, bikozwe n'umuyobozi wayo Rudasingwa Jean Baptiste wakoze ihererekanyabubasha na BH TRADERS Ltd kuko yari abifitiye uburenganzira ahabwa na RDB.

[38] Me Munyentwari Charles wunganira Mungwarareba Jean Bosco avuga ko umutungo wagurishijwe wari uwa SOPROCOGI Ltd kuko wari uyanditseho kandi ko n'igihe wagurishwaga iyo sosiyete yari ihagarariwe n'ubifitiye ububasha. Asobanura ko Byuma Jean Claude atagaragaza ko uwo mutungo wari uwe afitiye ibyangombwa by'ubutaka ku buryo yavuga ko yavogerewe. Akomeza avuga ko uretse n'ibyo uwo mutungo wagurishijwe mu nyungu z'abagize SOPROCOGI Ltd bose na Byuma Jean Claude ubwe arimo, ko no mu Nama Rusange idasanzwe yo ku wa 28/08/2016 abagize iyo sosiyete bemeje ko hakorwa ihererekanyamutungo hagati yayo na BH TRADERS Ltd yaguze.

[39] Avuga kandi ko, nk'uko uhagarariye SOPROCOGI Ltd yabigarutseho haruguru, Inama Rusange idasanzwe ya SOPROCOGI Ltd yo ku wa 20/07/2016 yemeje ko abanyamigabane bakoreshaga ibyumba biri mu nyubako ya SOPROCOGI Ltd ifite ikirango "I" bose, harimo na Byuma Jean Claude, babirekura bikagurishwa kugira ngo hishyurwe GT Bank Plc ; ibi bikaba byarakozwe mu nyungu z'abagize sosiyete birinda ko inzu bahuriyeho yatezwa cyamunara. Hashingiwe ku bubasha bwongeye gutangwa mu Nama Rusange idasanzwe yo ku wa 28/08/2016 abagize sosiyete SOPROCOGI Ltd bemeje ko hakorwa ihererekanyamutungo hagati yayo na BH TRADERS Ltd, bityo Byuma Jean Claude akaba adakwiye kuvuga ko hagurishijwe umutungo we bwite cyangwa ko hari amategeko yishwe.

[40] Asoza avuga ko Amategeko Shingiro n'ibyemezo bya SOPROCOGI Ltd bidakwiye kugira ingaruka kuri BH TRADERS Ltd kuko atari umunyamigabane wa SOPROCOGI Ltd, ko ahubwo yari umuguzi wubahirije amategeko, BH TRADERS Ltd igahabwa uburenganzira bwayo ku mutungo yaguze.

[41] Me Musoni Charles uhagarariye Technical Investment Group na Manirarora Evariste bagobotse ku bushake mu rubanza, bavuga ko batangazwa n'uburyo BH TRADERS Ltd yiyemerera mu masezerano ko izakurikiza Amategeko Shingiro ya SOPROCOGI Ltd, ariko yasabwa kuyubahiriza ikabigira ikibazo. Asobanura ko Amategeko Shingiro ya SOPROCOGI Ltd avuga ko Inama y'Ubutegetsi ndetse n'Inama Rusange arizo ziyobora sosiyeti, ariko BH TRADERS Ltd mu kugura ikaba igaragaza ko yumvikanye n'abantu babiri gusa kandi izi ko atari bo bagize sosiyete bonyine. Anavuga ko inama zivugwa ko

arizo zafatiwemo icyemezo cyo kwambura Byuma Jean Claude ¼ cya I, asanga zarakozwe mu buryo bunyuranyije n'amategeko kuko atigeze azitumirwamo.

[42] Me Uwanyirigira Delphine uhagarariye Icyerekezo cy'Iterambere avuga ko sosiyete ahagarariye yaguze inyubako yiswe Bloc "O", kandi ikibazo cyayo cyakemuriwe mu rwego rw'ubujurire ; asoza avuga ko ikibazo kiburanwa muri uru rubanza kitagomba kugira ingaruka ku wo ahagarariye kuko inzu yaguze nta kibazo zifite muri uru rubanza.

UKO URUKIKO RUBIBONA

[43] Impaka ziri mu rubanza kuri iyi ngingo, ni ukumenya uwari ufite uburenganzira kuri 1/4 cy'inzu yiswe "I" yagurishijwe na sosiyete SOPROCOGI Ltd. Byuma Jean Claude avuga ko uwo mutungo ari uwe kuko yawuhawe n'Inama Rusange ya sosiyete, ibyo bigashimangirwa na Manirarora Evariste na Ndayambaje Jean Damascène uhagarariye Technical Investment Group, bose baburanirwa na Me Musoni Charles, ariko SOPROCOGI Ltd yo kimwe na Rudasingwa Jean Baptiste, Mungwarareba Jean Bosco na BH TRADERS Ltd bakavuga ko umutungo wari uwa sosiyete kuko ari yo wari wanditseho.

[44] Ingingo ya 2, agace ka 19°, y'Itegeko Nº 43/2013 ryo ku wa 16/06/2013 ryagengaga ubutaka ubwo hakorwaga amasezerano y'ubugure yo ku wa 21/07/2016, igaragaza ko mu rwego rw'amategeko, ubutaka ari umutungo utimukanwa hamwe n'uburenganzira kuri wo.[7]

[45] Ingingo ya 18, igika cya mbere, y'Itegeko Nº 43/2013 rimaze kuvugwa, iteganya ko kwemeza ko ubutaka bwatanzwe cyangwa bukodeshejwe bigaragazwa n'icyemezo cy'iyandikisha ry'ubutaka gitangwa n'Umubitsi w'Impampurompampo z'ubutaka ; ingingo yaryo ya 20 ikavuga ko kwandikisha ubutaka ku muntu wese ubutunze ari Itegeko.

[46] Ibivugwa mu ngingo zimaze kuvugwa kandi bishimangirwa n'ingingo ya 4, igika cya mbere, y'Iteka rya Minisitiri Nº 002/2008 ryo ku wa 01/04/2008 rigenga iyandikisha ry'ubutaka n'uburyo rikorwa, iteganya ko umutungo bwite w'ubutaka n'ubukode burambye bw'ubutaka bigaragazwa ku buryo bwemewe n'amategeko n'icyemezo cy'iyandikisha ry'uburenganzira ku butaka gishingiye ku rupapuro rwemewe cyangwa rwatanzwe na Leta. Bishimangirwa nanone n'ingingo ya 5, igika cya mbere n'icya kabiri, iteganya ko ihererekanya ry'umutungo utimukanwa, haba hagati y'abakiriho, byaba se bitewe n'izungura, riba gusa hakoreshejwe icyemezo cy'iyandikisha ; ko uretse ibikorerwa ku butaka kandi haseguriwe uburenganzira ku butaka bwa ba gakondo, nta burenganzira bushobora kugirwa ku mutungo utimukanwa iyo butanditse ku cyemezo cy'iyandikisha.

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[7] Iyi ngingo isobanura ko ubutaka ari ubuso buherereye ahantu hazwi kandi hafite imbago, hakubiyemo ikirere kiri hejuru yabwo, ibiri mu kuzimu kwabwo ndetse n'ibinyabuzima n'ibitari ibinyabuzima, **ibyabwubatsweho n'ibyabushyizweho**. **Mu rwego rw'amategeko ni umutungo utimukanwa ujyana n'uburenganzira** ku buso bw'isi kuva munda y'isi kugera mu kirere.

[47] Na none kandi, ingingo ya 34 y'iryo Teka, iteganya ko ihererekanya rishingiye ku masezerano yo kwegurira undi ibintu ridashobora gukorwa iyo amasezerano rishingiyeho atakozwe ku buryo bw'inyandiko mvaho.

[48] Dosiye y'urubanza igaragaza ko ku itariki ya 01/04/2014 abanyamigabane ba SOPROCOGI Ltd bakoze Inama Rusange bemeza ko mu nyubako bubakaga, ahari hateganyirijwe ububiko *(stock)* hafite ikirango cya "O" ndetse na ¼ cy'inzu yitwa ingarigari ya sosiyete ifite ikirango cya "I" byegurirwa Byuma Jean Claude. Ibi kandi byagarutsweho mu Nama Rusange ya SOPROCOGI Ltd ku wa 24/08/2014 yemeje uko tombola y'amazu ya SOPROCOGI Ltd yagenze, aho bigaragara ko Byuma Jean Claude yahawe inzu ifite inyito ya "O".

[49] Dosiye igaragaza kandi ko ku wa 16/08/2016 habaye Inama Rusange ya SOPROCOGI Ltd, mu byari ku murongo w'ibyigwa hakaba harimo no kugaruza ¼ cy'inzu ifite ikirango cya "I" kikagaruka mu mutungo wa SOPROCOGI Ltd, kugira ngo kibe kimwe mu bivamo ubwishyu bw'umwenda SOPROCOGI Ltd yari ifitiye GT Bank Plc.

[50] Na none inyandiko zigize dosiye zigaragaza ko ku wa 21/07/2016, SOPROCOGI Ltd yagurishije BH TRADERS Ltd inzu ifite ikirango cya "I" yari ingarigari yayo ifite UPI : 1/02/04/01/5323 ; mu Nama Rusange yo ku wa 28/08/2016 hemezwa ko uwaguze yakorerwa ihererekanyamutungo, inama iha ububasha Rudasingwa Jean Baptitse nka Perezida wa SOPROCOGI Ltd kuba ariwe urikora.

[51] Byuma Jean Claude kimwe n'abamushyigikiye, mu kwemeza ko umutungo uburanwa SOPROCOGI Ltd yawugurishije kandi wari uwe, babishingira ku cyemezo cyafatiwe mu Nama y'abanyamigabane ba SOPROCOGI Ltd yateranye ku itariki ya 01/04/2014 no ku ya 24/08/2014. Urukiko rurasanga ibyo byemezo bitarigeze bishyirwa mu bikorwa, kubera ko hakurikijwe ingingo z'amategeko zagaragajwe hejuru, hatigeze haba ihererekanyamutungo hagati ya SOPROCOGI Ltd na Byuma Jean Claude kugira ngo umutungo ube uwe mu buryo bwemewe n'amategeko, ari nabyo byatumye SOPROCOGI Ltd ishobora kuwugurisha BH TRADERS Ltd kuko wari ukiri uwayo, hagakorwa ihererekanyamutungo.

[52] Nk'uko byemejwe n'uru Rukiko, kugira ngo umutungo utimukanwa uve ku wo wari uriho ujye ku wundi, hagomba kubaho amasezerano akorewe imbere ya Noteri w'ubutaka, ayo akaba ariyo umubitsi w'impapuro mpamo z'ubutaka ashingiraho atanga icyemezo cy'iyandikisha ry'ubutaka ari nacyo cyemeza nyir'ubutaka. Ibi byemerejwe mu rubanza rwa CIFTCI Inanc na Sebutinde n'undi[8], aho urukiko rwasobanuye ko kugira ngo byemezwe ko umutungo utimukanwa watanzwe, hagomba kubaho icyemezo cy'iyandikisha ry'ubutaka gitangwa n'umwanditsi w'impapuro mpamo z'ubutaka, kandi kugira ngo uwo mwanditsi atange icyo cyemezo, akaba agomba gushingira gusa ku masezerano yo kwegurira undi uwo mutungo (ubutaka) yakozwe mu buryo bw'inyandiko mpamo.

[53] Urukiko rurasanga ibivugwa na Byuma Jean Claude ko SOPROCOGI Ltd yagurishije umutungo we, bityo ko ibyakozwe binyuranyije n'ibyateganywanga n'ingingo ya 276

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[8] Urubanza RS/INJUST/RC 00003/2020/SC rwaciwe ku itariki ya 30/09/2021, igika cya 24.

y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyakoreshwaga icyo gihe, nta shingiro bifite kuko nk'uko byasobanuwe haruguru, byagaragaye ko umutungo wagurishijwe utari wakabaye uwa Byuma Jean Claude, ko ahubwo mu rwego rw'amategeko wari ukiri uwa SOPROCOGI Ltd.

[54] Hashingiwe ku ngingo z'amategeko no ku bisobanuro byatanzwe haruguru, Urukiko rurasanga umutungo wagurishijwe BH TRADERS Ltd wari uwa SOPROCOGI Ltd.

[55] Nyuma yo gusanga umutungo uburanwa atari uwa Byuma Jean Claude**,** Urukiko rurasanga bitakiri ngombwa gusuzuma ibibazo byerekeranye no kumenya niba amasezerano yabaye hagati ya BH TRADERS Ltd na SOPROCOGI Ltd yarakurikije amategeko hamwe no kumenya niba hari indishyi mbonezamusaruro Byuma Jean Claude agomba guhabwa.

ii) Kumenya ishingiro ry'indishyi z'ikurikiranarubanza n'igihembo cya Avoka zisabwa muri uru rubanza.

[56] Me Niyomugabo Christophe uhagarariye Byuma Jean Claude avuga ko ashingiye ku biteganywa n'ingingo ya 111 y'Itegeko N^{O} 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asanga BH TRADERS Ltd ikomeje kumushora mu manza ibizi neza ko umutungo uburanwa ari uwe, ko byatumye ashaka abavoka babiri bamuburanira mu Rukiko rw'Ubujurire ndetse nawe akurikirana urubanza mu bihe bitandukanye ava muri Leta Zunze Ubumwe z'Amerika nk'uko yagiye abigaragariza amatike y'indege zagiye zimuzana, asaba guhabwa 34.000.000 Frw abazwe mu buryo bukurikira:

i) 5.000.000 Frw y'ikurikiranarubanza na 18.000.000 Frw y'igihembo cy'Abavoka bamuburaniye mu Rukiko rw'Ubucuruzi, mu Rukiko Rukuru rw'Ubucuruzi no mu Rukiko rw'Ubujurire ; ii. 5.000.000 Frw y'ikurikiranarubanza na 6.000.000 Frw y'igihembo cy'Abavoka bamuburanira mu Rukiko rw'Ikirenga.

[57] Me Nsabimana Jean Baptiste uhagarariye BH TRADERS Ltd avuga ko hashingiwe ku ngingo ya 111 y'Itegeko ryavuzwe haruguru asanga nta ndishyi Byuma Jean Claude agomba guhabwa kuko bigaragara ko ari we wabaye nyirabayazana w'uru rubanza, ko yatangije urubanza rw'amahugu agamije kuyihuguza umutungo yaguze mu buryo bukurikije amategeko uri mu kibanza gifite UPI: 1/02/04/01/5323 yirengagije ko uwo yagabanye yawubonye akawugurisha Icyerekezo cy'Iterambere nayo ikawugurisha Havugimana Emile ku kiguzi cya 550.000.000 Frw.

[58] Avuga ko ahubwo Byuma Jean Claude yategekwa kwishyura BH TRADERS Ltd 30.000.000 Frw y'indishyi zo kuyishora mu manza ku maherere, 10.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, kuko Byuma Jean Claude yashoye uru rubanza afatanyije n'abandi banyamigabane bashaka kwisubiza umutungo wagurishijwe BH TRADERS Ltd bitwaje ko yari ingagari yabo.

[59] Me Twagirayezu Joseph uhagarariye Rudasingwa Jean Baptiste avuga ko Byuma Jean Claude akwiye gutegekwa kwishyura 5.000.000 Frw y'indishyi zo kumushora mu

manza ku maherere kandi azi neza ko ibyakozwe byose byakozwe mu nyungu z'abanyamuryango bose ba SOPROCOGI Ltd, hamwe na 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. Nk'uhagarariye SOPROCOGI Ltd kandi, avuga ko ashingiye ku ngingo ya 110 n'iya 111 z'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asaba Urukiko rw'Ikirenga gutegeka BYUMA Jean Claude guha SOPROCOGI Ltd 3,000,000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuko yashowe mu manza ku bw'amaherere.

[60] Me Munyentwari Charles wunganira Mungwarareba Jean Bosco avuga ko ashingiye ku ngingo ya 110 n'iya 111 z'Itegeko N^{O} 22/2018 ryavuzwe haruguru, asaba ko Byuma Jean Claude yacibwa 500.000 Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cya Avoka kubera gukomeza kumushora mu manza bigatuma akomeza gutakaza umwanya wo kugira ibindi akora akurikirana urubanza ndetse anashaka Avoka wo kumuburanira.

UKO URUKIKO RUBIBONA

[61] Ingingo 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, iteganya ibikurikira : "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[62] Ku byerekeye indishyi zisabwa na Byuma Jean Claude, Urukiko rurasanga ntazo agomba guhabwa kuko ariwe utsinzwe n'urubanza.

[63] Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka BH TRADERS Ltd, Rudasingwa Jean Baptitse, SOPROCOGI Ltd na Mungwarareba Jean Bosco basaba Byuma Jean Claude, Urukiko rurasanga bagomba kuyahabwa kubera ko aribo batsinze urubanza kandi bikaba bigaragara ko byabaye ngombwa gushaka Abavoka bababuranira. Ariko kubera ko ayo basaba akabije kuba menshi kandi batagaragaza ko ariyo bakoresheje, mu bushishozi bwarwo Urukiko rubageneye 500.000 Frw y'igihembo cya Avoka hamwe na 300.000 Frw y'ikurikiranarubanza buri wese kuri uru rwego.

[64] Ku birebana n'abasaba indishyi zo gushorwa mu manza, Urukiko rurasanga ntazo bahabwa kubera ko Byuma Jean Claude agana Urukiko yari akurikiranye ibyo yabonaga ko ari uburenganzira bwe, abamusaba indishyi bakaba batagaragaza ko yabareze agamije kubasiragiza mu nkiko.

III. ICYEMEZO CY'URUKIKO

[65] Rwemeje ko ikirego cyatanzwe na Byuma Jean Claude kigamije gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00046/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/06/2021, nta shingiro gifite ;

[66] Rwemeje ko nta karengane kari muri urwo rubanza ;

[67] Rwemeje ko imikirize y'urubanza RCOMAA 00046/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 18/06/2021 idahindutse, uretse indishyi z'ikurikiranarubanza n'igihembo cya Avoka byiyongereyeho kuri uru rwego.

[68] Rutegetse Byuma Jean Claude guha BH TRADERS Ltd, Rudasingwa Jean Baptitse, SOPROCOGI Ltd na Mungwarareba Jean Bosco buri wese 800.000 Frw akubiyemo ay'ikurikiranarubanza n'ay'igihembo cya Avoka.