JIN JOSEPH v. KANYANDEKWE

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00045/2019/CA (Nyirandabaruta, P.J., Mukanyundo na Ngagi, J.) 30 Nyakanga 2020]

Amategeko agenga imanza z'ubucuruzi – Sosiyete – Imikorere ya sosiyete z'ubucuruzi – Ubwishyu bwishyuwe sosiyete – Gutanga uburenganzira kw'inama y'ubutegetsi ya sosoiyete – Umuyobozi mukuru w'isosiyete nta shobora gushingira ko ari umuyobozi cyangwa kwitwaza ko ari umunyamigabane wa sosoiyete abereye umuyobozi ngo ashyire amafaranga y'ubwishyu kuri konti ye aho kuba iya sosoiyete mu gihe atabiherewe uburenganzira n'inama y'ubutegetsi.

Amategeko agenga imanza z'ubucuruzi – Sosiyete – Igikorwa kitakozwe mu nyungu za sosiyete – Mu gihe umuyobozi mukuru w'isosiyete atagaragaje ikimenyetso cy'uburyo yakoresheje amafaranga ya sosiyete mu nyungu zayo kandi akayakoresha adafite uburenganzira ahabwa n'inzego za sosiyete zibifitiye ububasha, ategekwa kuyasubiza.

Incamake y'ikibazo: Kanyandekwe yareze JIN Joseph mu Rukiko rw'Ubucuruzi asaba ko yasubiza kuri konti Mutara E&C Ltd 565.000 USD, sosiyete bombi babereye abanyamigabane. Kanyandekwe avuga ko aho kugira ngo JIN Joseph yishyuze amadolari yavuzwe haruguru ashyirwe kuri konti ya sosiyete yaciye ruhinga asaba sosiyete bakoreraga imirimo yo kuhira ko iyishyura kuri konti bwite ya JIN Joseph.

Urukiko rw'ubucuruzi rwemeje kandi rutegeka ko JIN Joseph asubiza 490.750 USD kuri konti ya MUTARA E&C Ltd.

JIN Joseph yajuririye Urukiko Rukur rw'Ubucuruzi avuga ko ikirego cya Kanyandekwe cyitari kwakirwa kuko ari inshinjabyaha, kandi ko nta bubasha yari afite bwo kurega kuko yatanze ikirego ku giti cye kandi yari kugitanga ahagararaiye sosiyete. Yongeye avuga kandi ko mu gushyira amadolari kuri konti ye bwite yari abifitiye uburenganzira kandi ko kuva aho ashyiriwe kuri konti hari ayo yagiye akoresha ibikorwa bya sosiyete.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa JIN Joseph nta shingiro, ko kandi nta gihindutse ku rubanza rwaciwe n'Urukiko rw'Ubucuruzi uretse ingano y'amadolari yagombaga kwishyura kuri konti ya Mutara E&C Ltd angana na 499.750 USD.

JIN Joseph yarongeye ajuririra Urukiko rw'Ubujurire avuga ko Urukiko Rukuru rw'Ubucuruzi rutitaye ku mategeko agenga imikorere y'amasosiyete, ko kandi amadorali rwategetse gusubiza atari kuri konti ye kuko hari ayakoreshejwe mu nyungu za sosiyete, asaba ko yasubizaho 245.000 USD asigaye.

Kanyandekwe yireguye avuga ko ubujurire bwa JIN Joseph nta shingiro bufite kuko ibyo yakoze ashyira ubwishyu bwa sosiyete kuri konti ye bwite itigeze ibimuhera ububasha.

Kubijyanye n'amafaranga JIN Joseph yavuze yakoresheje mu nyungu za sosiyete nabyo bavuze ko nta shingiro bifite kuko nta gikorwa gikwiriye kwitirirwa ko cyakozwe mu nyungu za sosiyeti, mu gihe itigeze ikibona nk'igikenewe ngo ikigenere ingengo y'imari (*budget).*

Kanyandekwe yabyuririyeho atanga ubujurire bwuririye ku bundi asaba guhabwa amafaranga y'ikurikirana rubanza n'igihembo cya Avocat. Kuri iyi ngingo, JIN Joseph yireguye avuga ko amafaranga Kanyandekwe asaba nta shingiro ryayo kuko ariwe nyirabayazana w'uru rubanza.

Incamake y'icyemezo: 1. Nta burenganzira umuyobozi wa sosiyete ari afite bwo gushyira ubwishyu bwa sosiyete kuri konti ye n'ubwo yaba ari umunyamigabane kuko umunyamigabane atandukanye na sosiyete, ku buryo umutungo we bwite utagomba kuvangwa n'umutungo wa sosiyete nubwo yaba ayibereye umuyobozi. Bityo, ubujurire bwa JIN Joseph nta shingiro bufite kuko nta mategeko agenga imikorere y'amasosiyete abimuhera uburenganzira.

2. Mu gihe bigaragaye ko nta kimenyetso na kimwe umuyobozi mukuru w'isosiyete agaragaje ko amafaranga cyangwa amadolari yayakoresheje afite uburenganzira ahabwa n'inzego za sosiyete zibifitiye ububasha, ategekwa kuyasubiza. Bityo, JIN Joseph akaba agomba gusubiza kuri konti ya *MUTARA E&C Ltd* 499.750 USD yishyuwe na *OM METALS INFRAPROJECTS Ltd*.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro.
Imikirize y'urubanza Nº RCOMA 00648/2018/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/03/2019 igumyeho.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12.
Itegeko Nº 27/2017 ryo ku wa 31/05/2017 rigenga amasosiyete y'ubucuruzi, inging ya 23 n'iya 144.
Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3, igika cya mbere.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Kanyandekwe Pascal asaba urwo Rukiko gutegeka JIN Joseph gusubiza kuri konti ya MUTARA E&C Ltd 565.000 USD y'iyo sosiyete bombi babereye abanyamigabane, no kwishyura 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[2] Mu gusobanura ikirego cye, Kanyandekwe Pascal yavuze ko we na JIN Joseph bashinze sosiyeti y'ubucuruzi MUTARA E&C Ltd, maze tariki ya 12/10/2016, bagirana amasezerano ya *Consultancy* na sosiyeti yitwa *OM METALS INFRA PROJECTS Ltd* mu rwego rwo gukurikirana no kubahagararira mu mushinga wo kuhira (*Irrigation and Water Shed Development Mpanga Sector,Tender Nº RAB/ WAP/EPC-IRR&WS/Mpanga/2016 RAB)* banumvikana ko bazishyurwa binyujijwe kuri konti ya sosiyete *MUTARA E&C Ltd* iri muri Banki ya Kigali Ltd, ariko ko igihe cyo kwishyura, JIN Joseph yayobeje ubwishyu bungana na 565.000 USD abushyira kuri konti ye bwite iri muri ACCESS Bank Ltd.

[3] JIN Joseph yireguye avuga ko ubwishyu bwanyujijwe kuri konti ye bwite ari ubwa 490.750 USD ko kandi yari yarabyemeranyijweho na Kanyandekwe Pascal basangiye sosiyete nk'uko bigaragara mu masezerano bagiranye ku wa 21/04/2017 bahaye izina rya *Mutara E&C Operation and Management Agreement*, atanga n'inzitizi yo kutakira ikirego cya KANYANDEKWE Pascal, kuko cyatanzwe mu buryo bunyuranyije n'amategeko.

[4] Mu rubanza Nº RCOM 00977/2018/TC/NYGE rwaciwe ku wa 07/09/2018, Urukiko rw'Ubucuruzi rwasanze inzitizi yo kutakira ikirego yari yatanzwe na JIN Joseph avuga ko Kanyandekwe Pascal nk'umunyamigabane wa sosiyete ya *MUTARA E&C Ltd* atagombaga gutanga ikirego atabanje kubisabira uruhushya Urukiko rubifitiye ububasha nta shingiro ifite, kuko kuba ari umunyamigabane n'umuyobozi w'iyo sosiyete, afite ububasha bwo gutanga ikirego mu Rukiko ku giti cye kugira ngo ashobore kurengera inyungu za sosiyete. Urukiko rw'Ubucuruzi rwasanze kandi inzitizi y'iburabubasha bw'Urukiko rw'Ubucuruzi nayo yazamuwe na JIN Joseph avuga ko ikirego ari inshinjabyaha nayo nta shingiro ifite, kuko uwakorewe icyaha kikamwangiriza afite uburenganzira bwo kuregera urukiko ruburanisha imanza z'inshinjabyaha cyangwa se akaregera urukiko ruburanisha imanza mbonezamubano (z'ubucuruzi) agamije gusaba gusubizwa ibyo yangirijwe bitewe n'icyaha, atagamije gusaba ibihano.

[5] Ku byerekeye imizi y'urubanza, Urukiko rw'Ubucuruzi rwasanze nk'uko bigaragara mu masezerano ya *Consultancy* yo ku wa 12/10/2016, sosiyete *MUTARA E&C Ltd*, JIN Joseph ahuriyeho na Kanyandekwe Pascal yagiranye na OM *METALS INFRAPROJECTS Ltd*, ubwishyu mu madolari bwaragombaga kunyuzwa kuri konti ya *MUTARA E&C Ltd* iri muri Banki ya Kigali Ltd, rutegeka JIN Joseph gusubiza 490.750 USD kuri iyo konti ifite n˚ 000950771574105 kandi akishyura Kanyandekwe Pascal, 800.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[6] JIN Joseph ntiyishimiye imikirize y'urwo rubanza arujuririra mu Rukiko Rukuru rw'Ubucuruzi avuga ko ikirego cya Kanyandekwe Pascal kitagombaga kwakirwa kuko ari inshinjabyaha kandi akaba yaragitanze ku giti cye aho kugitanga ahagarariye sosiyete. Mu bujurire bwe kandi JIN Joseph yavuze ko Urukiko rw'Ubucuruzi rwirengagije inyandiko yo ku wa 21/04/2017, imuha uburenganzira bwo gushyira amadolari yaregewe kuri konti ye bwite nk'umuyobozi wa sosiyete, runirengagiza ko mu gihe rwategeka ko ayo madolari asubizwa kuri konti ya *MUTARA E&C Ltd*, hagomba kubanza kuvanwamo ayo yakoresheje mu bikorwa no mu nyungu za sosiyete, asaba ko Kanyandekwe Pascal amuha indishyi z'akababaro zo gushorwa mu manza no kumwanduriza izina, amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka, akamusubiza n'ingwate y'igarama yatanze ajurira.

[7] Mu rubanza Nº RCOMA 00648/2018/HCC rwaciwe ku wa 06/03/2019, Urukiko Rukuru rw'Ubucuruzi rwasanze ubujurire bwa JIN Joseph nta shingiro bufite, ruvuga ko nta gihindutse ku mikirize y'urubanza rwajuririwe uretse ku bijyanye n'umubare w'amadolari agomba gushyirwa kuri konti ya *MUTARA E&C Ltd* No 000950771574105 iri muri Banki ya Kigali Ltd, rutegeka JIN Joseph gusubiza kuri iyo konti 499.750 USD no kwishyura Kanyandekwe Pascal 500.000 Frw y'igihemo cya Avoka ku rwego rw'ubujurire.

[8] JIN Joseph yajuririye Urukiko rw'Ubujurire avuga ko mu gufata icyemezo, Urukiko Rukuru rw'Ubucuruzi rwirengagije nkana imikorere ya sosiyete z'ubucuruzi, ko kandi amadolari urwo Rukiko rwategetse JIN Joseph gusubiza kuri konti ya *MUTARA E&C Ltd* nta yari kuri konti ye, kuko yaje gukurwaho hakorwa imirimo ifitiye inyungu sosiyete, asaba ko Urukiko

rw'Ubujurire rwemeza ko 245.000 USD yasigaye kuri konti ye ari yo yashyirwa kuri konti ya *MUTARA E&C Ltd* ifunguye muri Banki ya Kigali Ltd, asaba indishyi zo gushorwa mu manza n'igihembo cya Avoka.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 22/07/2019, JIN Joseph ahagarariwe na Me MURAGIJIMANA Emmanuel, naho Kanyandekwe Pascal ahagarariwe na Me Taremwa Danitar Daniel, habanza gusuzumwa inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire ishingiye ku gaciro k'ikiburanwa, Urukiko rufatira icyemezo mu ntebe, rwemeza ko iyo nzitizi nta shingiro ifite, rushingiye ku ngingo ya 52 y'Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ruvuga ko iburanisha rizakomeza ku wa 09/10/2019 kugira ngo uregwa abanze yiregure ku mpamvu z'ubujurire, ariko rumutegeka gutanga ihazabu mbonezamubano ya 200.000 Frw kuko rwasanze kutiregura ari impamvu yo gutinza urubanza.

[10] Kuva kuri iyo tariki yo ku wa 09/10/2019, iburanisha ryagiye risubikwa ku mpamvu zitandukanye, ndetse inteko iburanisha iza guhinduka kuko umucamanza waburanishaga urubanza yimuriwe mu rundi rukiko.

[11] Urubanza rwongeye kuburanishwa mu ruhame ku wa 13/01/2020, JIN Joseph ahagarariwe nka mbere, naho Kanyandekwe Pascal ahagarariwe na Me Uwizeyimana Jean Baptiste, kuko yigaritse Me Taremwa Danitar Daniel. Kuri iyo tariki, Urukiko rwasuzumye inzitizi y'iburabubasha bwarwo yatanzwe na Me Uwizeyimana Jean Baptiste, ashingiye ku kuba JIN Joseph yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, maze ku wa 14/02/2020, mu rubanza rubanziriza urundi, Urukiko rwemeza ko iyo nzitizi nta shingiro ifite.

[12] Urubanza rwongeye kuburanishwa mu ruhame ku wa 15/07/2020, JIN Joseph ahagarariwe nka mbere, naho Kanyandekwe Pascal ahagarariwe na Me Uwizeyimana Jean Baptiste afatanyije na Me Turatsinze Emmanuel, uwo munsi Urukiko rwumva impamvu z'ubujurire za JIN Joseph n'imyiregurire ya Kanyandekwe Pascal.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA JIN Joseph

1. Kumenya niba Urukiko rwarirengangije nkana imikorere ya sosiyete z'ubucuruzi

[13] Me Muragijimana Emmanuel, uhagarariye JIN Joseph, avuga ko impamvu yajuriye ari uko Urukiko rwirengagije nkana imikorere ya sosiyete z'ubucuruzi, ko JIN Joseph nk'Umuyobozi Mukuru wa *MUTARA E&C Ltd* ari we washyize umukono ku masezerano *MUTARA E&C Ltd* yagiranye na *OM METALS INFRAPROJECTS Ltd* (Rwanda), ko mu gihe uwo basinyana atari ahari (ngo yari yarabuze) we nk'Umuyobozi Mukuru yasabye *OM METALS INFRAPROJECTS Ltd* guhindura konti bari kwishyuriraho kugira ngo ashobore kubaha serivisi zari zikenewe muri icyo gihe, kandi ko ibyo yabikoze ashingiye ku masezerano yiswe *MUTARA E&C Ltd Operation and Management Agreement*, ko rero ibyo yakoze byari mu bubasha bwe, cyane cyane ko Kanyandekwe yari amaze igihe kirekire ataboneka kandi akagenda atabimubwiye.

[14] Akomeza avuga ko JIN Joseph nk'umukozi wa sosiyete yagombaga guhembwa kandi agomba kubaho ndetse akagira n'ibindi bikorwa akora bikeneye amafaranga, ibi akaba ari byo byatumye agaragaza indi konti yashoboraga kubikuzaho amadolari bitabaye ngombwa ko akenera umukono wa Kanyandekwe Pascal.

[15] Abahagarariye Kanyandekwe Pascal biregura bavuga ko ibyo JIN Joseph avuga bikubiye mu nyandiko yiswe "*MUTARA E&C Operation and Management Agreement*" yo ku wa 21/04/2017, ntaho bihuriye no kuyobya ubwishyu sosiyeti yari igenewe kubw' amasezerano hagati yayo na *OM METALS INFRAPROJECTS Ltd* akayashyira kuri konti ye bwite, ko muri iyo nyandiko abanyamigabane bemeranije ko amafaranga ya *office operation and management budget* azajya abanza kwemezwa na *Steering Committee* kugira ngo hamenyekane amafaranga akenewe mu bikorwa byo mu biro *(office operations)*, ndetse n'ajyanye n' ibikorwa by'imisoro *(taxation budget)* n' ibindi bitandukanye, ariko ko igitangaje ari uko JIN Joseph ashaka gukoresha iyo nyandiko yumvikanisha ko imuha uburenganzira bwo gushyira amafaranga kuri konti ye bwite kandi atari byo, bakavuga ko uko kuyobya ubwishyu, usibye kuba binyuranije n' amasezerano mu ngingo yayo ya 3 hagati ya *MUTARA E&C Ltd* na *OM METALS INFRAPROJECTS Ltd*, binanyuranije ahubwo ubwabyo n'ibivugwa mu nyandiko yitirira ko imuha ububasha, ko iyo nyandiko ivuga amafaranga ajyanye na *"expenses"* ariko nabyo bikabanza kugaragazwa no kwemezwa na komite ibifite mu nshingano.

[16] Bakomeza bavuga ko hashingiwe ku ngingo ya 149 y'Itegeko no 27/2017 ryo ku wa 31/05/2017 rigenga amasosiyeti y'ubucuruzi ryakurikizwaga mu gihe hakorwaga inyandiko igibwaho impaka yo ku wa 21/04/2017, iteganya ko "*ugize Inama y'Ubutegetsi, mu gihe akoresha ububasha bwe nk'ugize Inama y'Ubutegetsi, akorana ubwitonzi, ubushishozi n'ubumenyi bushobora gukoreshwa n'undi ugize Inama y'Ubutegetsi wakora mu bihe nk'ibyo, ko kandi ugize Inama y'Ubutegetsi kandi akoresha ububasha bwe hari ikigamijwe kigaragara*", ko basanga iryo tegeko ryarashyizweho hirindwa uwakoresha ububasha ubwo ari bwo bwose akora ibikorwa sosiyeti itamutumye, ibyo JIN Joseph yakoze bikaba binyuranyije n'itegeko. Basoza bavuga ko ibyo JIN Joseph yakoze bishobora kugira ingaruka zikomeye kuri sosiyete haba mu bijyanye n'ibaruramari *(comptabilité)* ryayo cyangwa igenzura ry'umutungo *(audit)*, bakaba basanga nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rwemeza ko nta burenganzira JIN Joseph yari afite bwo kuyobya ubwishyu bwari bugenewe *MUTARA E&C Ltd*.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 23 y'Itegeko Nº 27/2017 ryo ku wa 31/05/2017 rigenga amasosiyete y'ubucuruzi ryubahirizwaga ubwo JIN Joseph yashyiraga amafaranga yari agenewe ubwishyu bwa sosiyete kuri konti ye bwite, iteganya ko "*Iyo inyandiko z'ishingwa ry'isosiyete zanditswe, isosiyete iba ishinzwe hakurikije iri tegeko nk'isosiyete ifite ubuzimagatozi bwite butandukanye n'ubw'abanyamigabane bayo*[1]*"*. Ingingo ya 144 y'iryo Tegeko iteganya ko "*Haseguriwe ibibujijwe n'inyandiko z'ishingwa ry'isosiyete, Inama y'Ubutegetsi ishobora guha ububasha*

[1] Iyi ngingo ihwanye n'ingingo ya 23 y'Itegeko Nº 17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete rikoreshwa ubu.

bwayo ubwo ari bwo bwose (...); 2º umuyobozi mukuru cyangwa umuyobozi nshingwabikorwa umwe cyangwa barenze umwe bashyirwaho nabo[2]*"*.

[18] Dosiye igaragaramo amasezerano ya "*Consultancy*" yo ku wa 12/10/2016, sosiyete MUTARA E&C Ltd (JIN Joseph na Kanyandekwe Pascal babereye abanyamigabane) yagiranye na *OM METALS INFRAPROJECTS Ltd " Consultancy Agreement*", aho ingingo yayo ya 3 a. (iii) iteganya ko ku birebana no kwishyura, impande zombi zemeranyije ko ubwishyu mu madolari buzanyuzwa kuri konti 000950771574105 ya MUTARA E&C Ltd iri muri Banki ya Kigali Ltd[3].

[19] Dosiye igaragaramo kandi *Bank transfer* yo ku wa 31/01/2018 y'ubwishyu bwa 490.750 USD, *OM METALS INFRAPROJECTS Ltd* yashyize kuri konti ya JIN Joseph iri muri ACCESS Bank Ltd.

[20] Urukiko rurasanga nk'uko biteganyijwe mu ngingo ya 3 y'amasezerano ya *Consultancy* yibukijwe haruguru, JIN Joseph yari afite inshingano zo gushyira ubwishyu bwa *OM METALS INFRAPROJECTS* bungana na 490.750 USD kuri konti ya *MUTARA E&C Ltd* iri muri Banki ya Kigali Ltd, aho kuyashyira kuri konti ye bwite, kuko nk'uko biteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 du 25/11/2011 ryerekeye amasezerano[4], ubwo bwishyu bwagombaga gushyirwa kuri konti impande zombi zumvikanyeho.

[21] Urukiko rurasanga nta burenganzira JIN Joseph yari afite bwo gushyira ubwishyu bwa sosiyete kuri konti ye nk'uko byibukijwe mu ngingo ya 23 y'Itegeko rigena amasosiye y'ubucuruzi, kuko umunyamigabane atandukanye na sosiyete, ku buryo umutungo we bwite utagomba kuvangwa n'umutungo wa sosiyete nubwo yaba ayibereye umuyobozi.

[22] Urukiko rurasanga kandi nk'uko biteganyijwe n'ingingo ya 144 y'Itegeko rigenga amasosiyete, JIN Joseph nk'Umuyobozi Mukuru wa *MUTARA E&C Ltd* yaragombaga guhabwa uburenganzira n'Inama y'Ubutegetsi kugira ngo abashe gushyira ubwishyu bwa sosiyete ahandi hantu. Urukiko rurasanga ibyo uburanira JIN Joseph avuga ko impamvu yashyize ubwishyu bugenewe MUTARA E&C Ltd kuri konti ye, ari uko Kanyandekwe Pascal yari yarabuze nta shingiro bifite, kuko usibye kubivuga gusa ntaho agaragaza ko yigeze amushaka ngo koko bigaragare ko yabuze, cyane ko nawe yemereye Urukiko ko nta ngingo y'Itegeko azi yemererega JIN Joseph gushyira ubwishyu bugenewe sosiyete kuri konti ye bwite, mu gihe uwo bafatanyije gucunga konyi ya sosiyete adahari.

[23] Urukiko rurasanga na none ibyo uburanira JIN Joseph avuga ko uwo ahagarariye yashyize ubwishyu bwa sosiyete kuri konti ye bwite ashingiye ku nyandiko yiswe *MUTARA E&C Ltd Operation and Management Agreement* nta nshingiro byahabwa kuko ibivugwa muri iyo nyandiko ari uko amafaranga ya *Operation and management and budget* yemejwe na *Steering Committee ajyanye na office operation project management consultancies* n'ibindi ari yo yagombaga gushyirwa kuri konti yihariye agacungwa n'Umuyobozi Mukuru wa Sosiyete mu bushishozi bwe nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye. Kuba rero JIN Joseph atagaragaza ko

[2] Iyi ngingo ihwanye n'ingingo ya 144 y'Itegeko Nº 17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete rikoreshwa ubu.

[3] The Bank which the above agreed payment deposit will be as follows: Bank name: the Bank of Kigali, Account Holder: Mutara E&C Limited; Account Nº: 00095 07715741 05(USD).

[4] Iyo ngingo iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. (…)".

amadolari yagiye kuri konti ye yemejwe na *Steering Committee* ko kandi yari agenewe *Operation and management budget*, ibyo avuga nta shingiro byahabwa.

[24] Hashingiwe ku ngingo z'amategeko no ku bisobanuro bimaze gutangwa, Urukiko rurasanga ibyo JIN Joseph avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije nkana imikorere ya sosiyete z'ubucuruzi atarashoboye kubigaragaza, bityo ubujurire bwe kuri iyi ngingo, bukaba nta shingiro bufite.

2. Kumenya niba Urukiko rwarategetse JIN Joseph kohereza amafaranga kuri konti ya MUTARA E&C Ltd kandi ntayo afite kuri konti ye bwite.

[25] Me Muragijimana Emmanuel avuga ko Urukiko Rukuru rw'Ubucuruzi rwategetse JIN Joseph gusubiza USD 499.750 kuri konti 000950771574105 iri muri Banki ya Kigali Ltd ya *MUTARA E&C Ltd* akavanwa kuri konti yafunguye muri ACCESS Bank Ltd, kandi ayo madolari Urukiko ruvuga, ntayo ariho, kuko havuyeho ayagombaga kwishyura imishahara y'Umuyobozi Mukuru, imirimo yakozwe n'ibikoresho byaguzwe kimwe n'ingendo zitandukanye zakozwe mu rwego rwo kubona iriya *Consultancy*, asigaye kuri iyo konti ari 245.000 USD, aya akaba ari yo akwiye koherezwa kuri konti ya *MUTARA E&C Ltd* ifunguye muri Banki ya Kigali Ltd, kuko umuntu atatanga ibyo adafite.

[26] Akomeza avuga ko mu madolari yakoreshejwe, harimo ay'amezi cumi n'abiri (12) JIN Joseph yihembye abazwe kuri 11.000 USD buri kwezi, ay'ingendo agera kuri 46.000 USD, n'ayo yakoresheje ubwo yakoraga imishyikirano yo gushaka isoko, akaba asanga nta handi amadolari yakoreshejwe *(dépenses)* yari kuva hatari muri ubwo bwishyu.

[27] Abahagarariye Kanyandekwe Pascal bavuga ko nta gikorwa gikwiriye kwitirirwa ko cyakozwe mu nyungu za sosiyeti, mu gihe itigeze ikibona nk'igikenewe ngo ikigenere ingengo y'imari (*budget)* nk'uko biteganywa mu nyandiko yo ku wa 21/04/2017, ko rero ibyo JIN Joseph avuga ko ibyo yakoze byahabwa agaciro, kuko yabikoze mu nyungu za sosiyete maze bigakurwa mu madolari agomba gusubiza, nta shingiro bifite, kuko nta kimenyetso yatanze cyashingirwaho agaragaza igikorwa runaka yakoze cyagombaga kwishyurwa, ko mu bindi avuga ko sosiyete yari imubereyemo ibirarane by'imishahara y'amezi 20 aho kumwe yagombaga guhembwa 11.000 USD, ko Urukiko rukwiriye kumubaza niba kuva sosiyete yashingwa atarigeze ahembwa na rimwe, hakibazwa inkomoko y'umushahara mu gihe nta masezerano cyangwa inyandiko iyo ariyo yose igena umushahara agaragaza ku buryo ibyo avuga byafatwa nk'ukuri.

[28] Bakomeza bavuga ko JIN Joseph yasabye 46.130 USD ajyanye n'ingendo, mu gihe ibikorwa byose byagombaga kugenerwa *budget* nyuma yo kwemezwa na *Steering Committee* nawe ubwe arimo, bakaba batabona aho izo ngendo yakoze zihurira na *MUTARA E&C Ltd*, ko kandi amaze kubona ko yakoresheje amafaranga mu bikorwa bye bwite bihabanye n'inyungu za sosiyete agamije guhombya no kuriganya, yahimbye inyandiko yo ku wa 18/05/2017 igaragara ko iva kuri sosiyete yitwa KOREA CONSTRUCTION RWANDA COMPANY Ltd yiswe *"Service Quotation*" ifite umutwe ugira uti: "*Mpanga Irrigation Technical Proposal and Civil Estimation Service*". Bakomeza bavuga ko muri serivisi zatangirwaga ibiciro byazo, harimo kuba mu gihe bahawe iryo soko bari gukora icyiswe *General Bid Proposal Preparations* na *Due Diligence for Technical Proposal Services* (kwiga ibijyanye n' itegurwa ry' inyandiko z' ipigana), ko rero iyo urebye iyo *quotation* ubundi iba iri mu mwanya wa *Proforma invoice* kuko iba itanga ibiciro bya serivisi batanga mu gihe hari uwaba azifuje, ukareba imirimo ivugwa ko bagombaga gukora kandi

JIN Joseph akaba we yemeza ko bayikoze bakanishyurwa, bigaragara ko ari ikinyoma hashingiwe ku ibaruwa RAB yandikiye *OM METALS INFRAPROJECTS* Ltd ku wa 27/01/2017 ifite umutwe ugira uti *"Letter of Intent for Works related to Development of Irrigation and Watershed Development in Mpanga Sector (Lot 1)*", aho bavugamo ko *Financial Bid ya OM METALS INFRA PROJECTS* yoherejwe kuwa 11/10/2016 banasabwa kwitabira inama muri RAB ku wa 03/02/2017 kugira ngo barangize ibijyanye n'isinywa ry' amasezerano, ko aha umuntu yakwibaza uburyo noneho KCRC Ltd yakoze imirimo yo kwiga no gutegura amasoko y'isoko kandi ryaramaze gutangwa, dore ko ibaruwa itanga isoko burundu yiswe *"Final Notification Letter of Award*" ari iyo ku wa 15/03/2017, amezi abiri mbere yuko uwo JIN Joseph yishyurije gutegura amasoko n'ibitabo by'ipiganwa.

UKO URUKIKO RUBONA

[29] Ingingo ya 3, igika cya mbere, y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko: "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana". Naho ingingo ya 12 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 ko: "Urega agomba kugaragaza ibmenyetso by'ibyo aregera. Iyo abibuze uwarezwe aratsinda.

[30] Dosiye igaragaramo inyandiko yo ku wa 24/04/2017 yiswe MUTARA E&C *Operation and Management Agreement* igaragaza ko impande zombi zemeranyije ko amadolari ya *office operations and management budget* azajya abanza kwemezwa na *Steering Committee* kugira ngo hamenyekane ayakenewe mu bikorwa byo mu biro, ajyanye n'imisoro n'ibindi bitandukanye[5].

[31] Urukiko rurasanga ibyo JIN Joseph avuga ko MUTARA E&C *Operation and Management Agreement* yamuhaga uburenganzi bwo gukoresha ariya madolari, kuko ayo yakoresheje yari mu nyungu za sosiyete nta shingiro bifite, kuko nk'uko byavuzwe haruguru kandi akaba ari nako Urukiko Rukuru rw'Ubucuruzi rwabibonye, ibivugwa muri iriya nyandiko bidahuye n'ibyo avuga, kuko inyandiko ivuga ko ibikorwa yemerewe bigomba kubanza kwemezwa na *Steering Committee,* kuba rero nta bimenyetso atanga bigaragaza ko yari yemerewe ku yakoresha bitemewe na *Steering Committee* cyangwa se ko *Steering Committee* yaba yarabimuhereye uburenganzira, ntaho Urukiko rwahera rwemeza ko JIN Joseph yari afite uburenganzira bwo gukoresha amadolari ya Sosiyete yakoresheje.

[32] Ku byerekeranye na 220.000 USD, JIN Joseph yihembye, Urukiko rurasanga nta kimenyetso ayatangira, yaba amasezerano cyangwa se ikindi cyemezo runaka gifashwe n'inzego za sosiyete zibifitiye ububasha kigaragaza ko yari ayemerewe. Ku bijyanye na 46.000 USD, JIN Joseph avuga ko yakoresheje mu ngendo z'indege mu nyungu za sosiyete, ndetse n'andi avuga ko yakoresheje mu mishyikirano yo gushaka isoko, Urukiko rurasanga nayo nta bimenyetso ayatangira.

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[5] All banking transaction is on basis co signing of both shareholders, however, regarding operation and management which is already agreed from steering committee (office operation, project management consulting, project marketing and taxation budget operation) is managed by Managing Director using different banking account at his discretion until the project completion).

[33] Urukiko rurasanga, mu gihe bigaragaye ko nta kimenyetso na kimwe JIN Joseph agaragaje ko amadolari yavuzwe haruguru yayakoresheje afite uburenganzira ahabwa n'inzego za sosiyete zibifitiye ububasha, nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rumutegeka gusubiza kuri konti ya *MUTARA E&C Ltd* 499.750 USD yishyuwe na *OM METALS INFRAPROJECTS Ltd*, bityo ubujurire bwe kuri iyi ngingo nabwo bukaba nta shingiro bufite.

[34] Hashingiwe ku bisobanuro bimaze gutangwa no ku ngingo z'amategeko zagaragajwe, Urukiko rurasanga ubujurire bwa JIN Joseph nta shingiro bufite, bityo icyemezo cy'Urukiko Rukuru kuri iyi ngingo kikaba kigumyeho.

B. UBUJURIRE BWURIRIYE KU BUNDI

[35] Abahagarariye Kanyandekwe Pascal bavuga ko kubera igihombo gikomeye yatewe no kuba ubwishyu sosiyete abereye umunyamigabane yari itegereje kubona itarabubonye ahubwo bukikoresherezwa mu nyungu za JIN Joseph ndetse no kutava ku izima ahubwo agakomeza kumushora mu manza, ko asaba Urukiko gutegeka JIN Joseph kumwishyura indishyi zingana na 4.000.000 Frw zigizwe na 3.000.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza.

[36] Me Muragijimana Emmanuel uhagarariye JIN Joseph avuga ko y'igihembo cya Avoka n'ay'ikurikiranarubanza Kanyandekwe Pascal asaba nta shingiro zifite kuko ari we nyirabayazana w'urubanza.

UKO URUKIKO RUBIBONA

[37] 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 ko: "*Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".*

[38] Ku byerekeranye amafaranga y'igihembo cya Avoka n'ikurikiranarubanza Kanyandekwe Pascal asaba, Urukiko rurasanga ayakwiye kuko byabaye ngombwa ko ashaka Avoka wo kumuburanira, ariko rurasanga ayo 4.000.000 Frw asaba ari menshi kandi nta n'ibimenyetso ayatangira, rukaba rumugeneye mu bushishozi bwarwo 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza, kuri uru rwego, hakurikijwe igihe uru rubanza rumaze muri uru Rukiko.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ubujurire bwatanzwe na JIN Joseph nta shingiro bufite;

[40] Rwemeje ko ubujurire bwuririye ku bundi bwatanze na Kanyandekwe Pascal bufite ishingiro;

[41] Rwemeje ko imikirize y'urubanza Nº RCOMA 00648/2018/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/03/2019 igumyeho;

[42] Rutegetse JIN Joseph guha Kanyandekwe Pascal 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza kuri uru rwego, yose hamwe akaba 1.500.000 Frw;

[43] Ruvuze ko amagarama y'urubanza yatanzwe na JIN Joseph ahwanye n'ibyakozwe mu rubanza.