ROKO CONSTRUCTION LTD v. I&M BANK LTD

[Rwanda URUKIKO RW UBUJURIRE – RCOMA 00066/2022/CA (Rukundakuvuga, P.J., Ngagi na Nyirandabaruta, J.) 14 Gashyantare 2023]

Amategeko agenga ububasha bw inkiko – Gutsindwa ku mpamvu zimwe – Mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (raisonnement juridique) – Harebwa kandi niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe.

Incamake y ikibazo: I&M BANK RWANDA Plc ivuga ko yagiye iha ROKO CONSTRUCTION RWANDA Ltd inguzanyo zitandukanye, impande zombi zasinyanye amasezerano y'umwenda warishingiwe na ROKO CONSTRUCTION Ltd Uganda, ifite icyicaro muri Uganda mu nyandiko yiswe *Corporate Guarantee and Indemnity* yakorewe imbere ya Ambassade y'u Rwanda i Kampala.

Uwo mwenda kandi wavuguruwe, ariko ko ROKO CONSTRUCTION RWANDA Ltd yaje kunanirwa kuwishyura ntiyubahiriza ibyo impande zombi zari zarumvikanye mu masezerano zagiranye.

I&M BANK (RWANDA) Plc yaje gusesa amasezerano (*Denonciation of your loans facilities*), yibutsa ROKO CONSTRUCTION RWANDA Ltd ko umwenda ugeze kuri 3.529.512.731 Frw.

Nyuma yaho, I&M BANK yareze ROKO CONSTRUCTION Ltd mu Rukiko rw'Ubucuruzi, irusaba kuyitegeka kwishyura umwenda remezo n'inyungu bihwanye na 3.529.512.731 Frw, isaba ko inyungu zisanzwe n'iz'ubukererwe zikomeza kubarwa kugeza igihe urubanza ruciriwe, inasaba amafaranga y'ibyagiye ku rubanza ahwanye na 10% y'ikiregerwa.

ROKO CONSTRUCTION (RWANDA) Ltd nayo irega banki mu Rukiko rw'Ubucuruzi, isaba gukurwaho umwenda wa 2.450.000.000 Frw washyizwe kuri konti ya ROKO CONSTRUCTION RWANDA Ltd mu buryo butemewe.

ROKO CONSTRUCTION (UGANDA)Ltd yatanze inzitizi ivuga ko ari isosiyete y'inyamahanga, bityo ko Urukiko rw'Ubucuruzi rwo mu Rwanda rudafite ububasha bwo kuyiburanisha, kandi ko nta nama ntegurarubanza yabayeho. Mu rubanza rubanziriza urundi, urwo Rukiko rwemeje ko inkiko zo mu Rwanda zifite ububasha.

Urubanza mu mizi rwemeje ko Urukiko rw'Ubucuruzi rwemeza ko ikirego cya I&M BANK (RWANDA) Plc gifite ishingiro, ko irangizarubanza ry'agateganyo ryasabwe ritemewe, bityo ko ROKO CONSTRUCTION Ltd igomba kwishyura umwenda wose.

ROKO CONSTRUCTION Ltd na ROKO CONSTRUCTION (RWANDA) Ltd ntizishimiye iyo mikirize y'urubanza ziyijuririra mu Rukiko Rukuru rw'Ubucuruzi, ROKO CONSTRUCTION Ltd irusaba gusuzuma niba urubanza RCOM 00236/2021/TC rwari mu bubasha bw'Urukiko rw'Ubucuruzi rwo mu Rwanda, niba rutaraburanishijwe mu buryo bunyuranye n'amategeko, niba ROKO CONSTRUCTION Ltd yaragombaga gutegekwa kwishyura umwenda w'uwo yishingiye utarabanza kwemezwa.

ROKO CONSTRUCTION (RWANDA) Ltd isaba gusuzuma niba Urukiko rwategeka ko ikirego yarezemo I&M BANK RWANDA Plc mu rubanza RCOM 00417/2021/TC kibanza kuburanishwa no gufatirwa icyemezo mu Rukiko rw'Ubucuruzi.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza maze rwemeza ko ubujurire bwa ROKO CONSTRUCTION Ltd nta shingiro bufite, ko ubujurire bwa ROKO CONSTRUCTION RWANDA Ltd bufite ishingiro kuri bimwe.

ROKO CONSTRUCTION Ltd(UGANDA) ntiyishimiye iyo mikirize y'urubanza iyijuririra mu Rukiko rw Ubujurirre inenga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego I&M BANK RWANDA Plc yarezemo ROKO CONSTRUCTION Ltd kiri mu bubasha bw'Urukiko rw'Ubucuruzi rwo mu Rwanda kandi atari byo amategeko ateganya, ko nta bubasha inkiko z'ubucuruzi zo mu Rwanda zari zifite bwo kuyiburanisha nka sosiyete y'inyamahanga. I&M BANK (RWANDA) Plc mbere yo kwiregura mu mizi y'urubanza yatanze inzitizi yo kutakira ubujurire bwa ROKO CONSTRUCTION Ltd kuko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

I&M BANK RWANDA Plc ivuga ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, bityo ko ubujurire bwatanzwe na ROKO CONTRUCTION Ltd budakwiye kwakirwa kuko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

Incamake y icyemezo: 1. Mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (raisonnement juridique).

2. Harebwa kandi niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe.

Inzitizi y iburabubasha ifite ishingiro.
Amagarama y urubanza ahwanye n ibyarukozwemo.

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko mu Rwanda, ingingo ya 14, 18.

Imanza zifashishijwe:

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

Urubanza RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS; Bank of Kigali Ltd v MULISA KANA Martin rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017.

Urubanza RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019; KOPERATIVE DUKUNDUMURIMO (KOADU) v KING CONSTRUCTION AND SERVICE COMPANY (KICOSECA).

Urubanza RS/INJUST/RCOM 00003/2020/SC haburana SANLAM AG Plc v UR. rwaciwe n'Urukiko rw'Ikirenga ku wa 27/11/2020.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi, I&M BANK RWANDA Plc ivuga ko yagiye iha ROKO CONSTRUCTION RWANDA Ltd inguzanyo zitandukanye ; aho ku wa 05/02/2020, impande zombi zasinyanye amasezerano y'umwenda ugeze kuri 2.783.577.787 Frw na 177,063.78 USD. Uwo mwenda wa 2.950.100.000 Frw hamwe n'inyungu zawo ndetse n'ibindi bijyanye na wo (*charges, fees and other valuable consideration*) ukaba warishingiwe na ROKO CONSTRUCTION Ltd, ifite icyicaro muri Uganda mu nyandiko yiswe *Corporate Guarantee and Indemnity* yakorewe imbere ya Ambassade y'u Rwanda i Kampala. Uwo mwenda kandi wavuguruwe ku matariki ya 28/02/2020 na 24/07/2020, ariko ko ROKO CONSTRUCTION RWANDA Ltd yaje kunanirwa kuwishyura ntiyubahiriza ibyo impande zombi zari zarumvikanye mu masezerano zagiranye.

[2] Ku wa 10/11/2020, I&M BANK (RWANDA) Plc yaje gusesa amasezerano (*Denonciation of your loans facilities*), yibutsa ROKO CONSTRUCTION RWANDA Ltd ko umwenda ugeze kuri 3.529.512.731 Frw; kuri iyo tariki, I&M BANK (RWANDA) Plc inamenyesha ROKO CONSRUCTION Ltd ibijyanye n'uwo mwenda, iyisaba guhita iwishyura hashingiwe kuri *corporate guarantee* iyo sosiyeti yasinyiye, inayimenyesha ko nidahita yishyura izatanga ikirego kugira ngo hubahirizwe ibyo yiyemeje.

[3] Ku wa 03/03/2021, I&M BANK (RWANDA) Plc yareze ROKO CONSTRUCTION Ltd mu Rukiko rw'Ubucuruzi, irusaba kuyitegeka kwishyura umwenda remezo n'inyungu bihwanye na 3.529.512.731 Frw, isaba ko inyungu zisanzwe n'iz'ubukerererwe zikomeza kubarwa kugeza igihe urubanza ruciriwe, inasaba amafaranga y'ibyagiye ku rubanza ahwanye na 10% y'ikiregerwa, ikirego cyayo cyandikwa kuri Nº RCOM 00236/2021/TC. Ku wa 12/04/2021, ROKO CONSTRUCTION (RWANDA) Ltd yareze I&M BANK (RWANDA) Plc mu Rukiko rw'Ubucuruzi, isaba gukurwaho umwenda wa 2.450.000.000 Frw washyizwe kuri konti Nº 25047856003 ya ROKO CONSTRUCTION RWANDA Ltd mu buryo butemewe, ikirego cyayo gihabwa Nº RCOM 00417/2021/TC.

[4] ROKO CONSTRUCTION Ltd yatanze inzitizi ivuga ko ari isosiyete y'inyamahanga, ko Urukiko rw'Ubucuruzi rwo mu Rwanda rudafite ububasha bwo kuyiburanisha, kandi ko nta nama ntegurarubanza yabayeho. Mu rubanza rubanziriza urundi mu rubanza N° RCOM 0236/2021/TC-RCOM 00417/2021/TC, urwo Rukiko rwemeje ko rufite ububasha rushingiye ku biteganywa mu ngingo ya 14 n'iya 18 z'Itegeko rigena ububasha bw'inkiko, no ku masezerano impande zombi zagiranye. Rwemeje kandi ko urubanza rutasubizwa mu nama ntegurarubanza kuko yakozwe ikarangira, kandi ko mu gihe ROKO CONSTRUCTION Ltd yaba yifuza ko hari ikibazo cyabanza gusuzumwa mbere yuko urubanza rukomeza, yagisaba inteko iburanisha urubanza mu mizi ikagifataho icyemezo.

[5] Urubanza mu mizi rwaciwe ku wa 15/11/2021, Urukiko rw'Ubucuruzi rushingiye ku ngingo za 64, 70 na 80 z'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, no kuba ROKO CONSTRUCTION Ltd ntaho yahera ihakana kuyishyura kuko ari yo yabaye umwishingizi wa ROKO CONSTRUCTION RWANDA Ltd ikaba yaragiranye amasezerano y'ubwishingizi na

I&M BANK RWANDA Plc rwemeza ko ikirego cya I&M BANK (RWANDA) Plc gifite ishingiro, ko irangizarubanza ry'agateganyo ryasabwe ritemewe. Rutegeka ROKO CONSTRUCTION Ltd kwishyura umwenda wose ibereyemo I&M BANK (RWANDA) Plc ugizwe n'umwenda remezo, inyungu zawo n'indishyi z'ibyakozwe ku rubanza, byose bihwanye na 3.660.644.013 Frw.

[6] ROKO CONSTRUCTION Ltd na ROKO CONSTRUCTION (RWANDA) Ltd ntizishimiye iyo mikirize y'urubanza ziyijuririra mu Rukiko Rukuru rw'Ubucuruzi, ubujurire bwazo buhabwa N° RCOMA 00816/2021/HCC. ROKO CONSTRUCTION Ltd irusaba gusuzuma niba urubanza RCOM 00236/2021/TC rwari mu bubasha bw'Urukiko rw'Ubucuruzi rwo mu Rwanda, niba rutaraburanishijwe mu buryo bunyuranye n'amategeko, niba ROKO CONSTRUCTION Ltd yaragombaga gutegekwa kwishyura umwenda w'uwo yishingiye utarabanza kwemezwa. ROKO CONSTRUCTION (RWANDA) Ltd isaba gusuzuma niba Urukiko rwategeka ko ikirego yarezemo I&M BANK RWANDA Plc mu rubanza RCOM 00417/2021/TC kibanza kuburanishwa no gufatirwa icyemezo mu Rukiko rw'Ubucuruzi, inasaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[7] Ku wa 14/04/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00816/2021/HCC rwemeza ko ubujurire bwa ROKO CONSTRUCTION Ltd nta shingiro bufite, ko ubujurire bwa ROKO CONSTRUCTION RWANDA Ltd bufite ishingiro kuri bimwe, ko urubanza RCOM 0236/2021/TC & RCOM 00417/2021/TC ruhindutse kuri bimwe. Rwemeza kandi rutegeka ko urubanza N° RCOM 00417/2021/TC rusubizwa mu Rukiko rw'Ubucuruzi kugira ruburanishwe mu mizi. Rwemeza ko ibyemejwe mu rubanza N° RCOM 0236/2021/TC & RCOM 00417/2021/TC, bishyirwa mu bikorwa ari byo ko ROKO CONSTRUCTION Ltd igomba kwishyura umwenda wose ibereyemo I&M BANK (RWANDA) Plc ugizwe n'umwenda remezo, inyungu zawo n'indishyi z'ibyakozwe k'urubanza, byose bihwanye na 3.660.644.013 Frw. Rutegeka ROKO CONSTRUCTION Ltd kwishyura I&M BANK (RWANDA) Ltd 9,000 USD no kuyishyura *apound sterling* 24,476 (24,476 GBP), 187.935.200 Frw y'inyungu z'umwenda remezo (*arears capital*), 65.574.473 Frw inyungu z'ibirarane ku nyungu (*arears interests*), 37.349.865 Frw y'inyungu z'ubukererwe (*penal interests*) na *overdraft* ya 3.504.623.743 Frw nk'uko zigaragazwa na *customer accounts* yo ku wa 16/03/2022, yose hamwe akaba 3.795.483.281 Frw. Rutegeka kandi ROKO CONSTRUCTION Ltd kwishyura I&M BANK (RWANDA) Plc 1.200.000 Frw y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka; runategeka ko nta rangizarubanza ry'agategenyo rigomba gukorwa kuri urwo rubanza, kandi ko 40.000 Frw y'amagarama, ROKO CONSTRUCTION Ltd yishyuye ijurira aherera ku Isanduku ya Leta.

[8] Urukiko Rukuru rw'Ubucuruzi rwemeje ko ROKO CONSTRUCTION Ltd yishura rushingiye ku kuba ROKO CONSTRUCTION Ltd yarishingiye kwishyura umwenda wa 2.950.100.000,00 Frw inyungu zawo n'indishyi bizacibwa uwagurijwe, no kuba yaragiranye amasezerano y'ubwishingizi na I&M BANK RWANDA Plc. Ku bijyanye n'ububasha bw'Urukiko rw'Ubucuruzi, urwo Rukiko rwagaragaje ko rwemeranywa n'impamvu zashingiweho n'Urukiko rw'Ubucuruzi rwemeza ko rufite ububasha. Ku bijyanye no kuba nta nama ntegurarubanza yabaye, rushingira ku kuba inama ntegurarubanza yarakozwe, akaba nta mpamvu yatuma yongera gukorwa, no kuba ROKO CONSTRUCTION Ltd yarahawe uburenganzira bwo kuba yageza ku nteko iburanisha ikibazo yaba yifuza ko cyabanza gusuzumwa mbere yuko urubanza rukomeza mu mizi.

[9] ROKO CONSTRUCTION Ltd ntiyishimiye iyo mikirize y'urubanza iyijuririra muri uru Rukiko inenga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego I&M BANK RWANDA Plc yarezemo ROKO CONSTRUCTION Ltd kiri mu bubasha bw'Urukiko rw'Ubucuruzi rwo mu Rwanda kandi atari byo amategeko ateganya, ko nta bubasha inkiko z'ubucuruzi zo mu Rwanda zari zifite bwo kuyiburanisha nka sosiyete y'inyamahanga, ko urwo Rukiko rwaburanishije urubanza rujuririrwa mu buryo bunyuranyije n'amategeko kuko ku rwego rwa mbere nta nama ntegurarubanza yabayeho, inanenga kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ROKO CONSTRUCTION Ltd yishyura umwenda itishingiye, inasaba amafaranga y'ibyagiye ku rubanza, maze ubujurire bwayo bwandikwa Nº RCOMAA 00066/2022/CA. I&M BANK (RWANDA) Plc mbere yo kwiregura mu mizi y'urubanza yatanze inzitizi yo kutakira ubujurire bwa ROKO CONSTRUCTION Ltd kuko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[10] Urubanza rwaburanishijwe mu ruhame ku wa 06/02/2023, ROKO CONSTRUCTION Ltd ihagarariwe na Me NDAHIMANA Jean Bosco, naho I&M BANK (RWANDA) Plc ihagarariwe na Me RUSANGANWA Jean Bosco afatanije na Me RUBASHA Herbert; habanza gusuzumwa ikibazo cyo kumenya niba harajuriye ROKO CONSTRUCTION RWANDA Ltd cyangwa ROKO CONSTRUCTION Ltd, ariko biza kugaragara ko ari ROKO CONSTRUCTION Ltd yajuriye; nyuma hasuzumwa inzitizi y'iburabubasha bw'uru Rukiko yatanzwe na I&M BANK (RWANDA) Plc ivuga ko ubujuririre bwa ROKO CONSTRUCTION Ltd budakwiye kwakirwa kuko yatsinzwe mu nkiko zombi za banje hashingiwe ku mpamvu zimwe.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1.Kumenya niba ubujurire bwa ROKO CONSTRUCTION Ltd butari mu bubasha w'Urukiko rw'Ubujurire kubera ko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe

[11] **Abahagarariye I&M BANK RWANDA Plc** bashingiye ku ngingo ya 52, igika cya 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, avuga ko ubujurire bwatanzwe na ROKO CONTRUCTION Ltd budakwiye kwakirwa, kuko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[12] Basobanura ko **ku kibazo kijyanye n'ububasha bw'Urukiko rw'Ubucuruzi,** ko mu cyemezo cy'Urukiko rw'Ubucuruzi ku nzitizi mu rubanza N° RCOM 00236/2021 n'urubanza N° RCOM 00417/2021/TC cyo ku wa 06/10/2021, mu gika cya 4 kugeza ku cya 11, ndetse n'urubanza RCOMA 00816/2021/HCC, igika cya 24 kugeza ku gika cya 31, inkiko zombi zashingiye ku ngingo z'amategeko zimwe ndetse no ku bimenyetso bimwe. Ni ukuvuga ingingo ya 14, 1° na 5° y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko abanyamahanga bashobora kuregwa mu nkiko z'u Rwanda mu gihe biyemeje kuzaburanira mu Rwanda, ingingo ya 18 y'iryo Tegeko ivuga ahantu hatoranyijwe ko harangirizwa amasezerano impande zombi zakoranye, mu gace k'amasezerano impande zombi zagiranye kiswe *Dispute Resolution and Governing Law* ndetse n'amaseserano y'ubwishingire avuga ko "*This guarantee shall be governaded by the laws of Rwanda*".

[13] Basobanura kandi ko ku kibazo kijyanye no kuba nta nama ntegurarubanza yabaye ku ruhande rwa ROKO CONSTRUCTION Ltd, ko Urukiko rw'Ubucuruzi, mu rubanza N° RCOM

00236/2021/TC na RCOM 00417/2021/TC, mu gufata icyemezo ku nzitizi ku wa 15/06/2021, urwo Rukiko rwemeje ko urubanza rutasubizwa mu nama ntegurarubanza rushingiye ku kuba yarakozwe ikarangira ikaba itasubirwamo, kandi ko mu gihe ROKO CONSTRUCTION Ltd yaba yifuza ko hari ikibazo cyabanza gusuzumwa mbere y'uko urubanza rukomeza, yagisaba inteko iburanisha urubanza mu mizi ikagifataho icyemezo. Ko ibyo ari nabyo Urukiko Rukuru rw'Ubucuruzi rwashingiyeho, mu gika cya 36 n'icya 37 by'urubanza RCOMA 00816/2021/HCC, aho mu gika cya 37 cy'urubanza RCOMA 00816/2021/HCC rwavuze ko rusanga kuba umucamanza ku rwego rwa mbere yaravuze ko mu gihe ROKO CONSTRUCTION Ltd yaba yifuza ko hari ikibazo cyabanza gusuzumwa mbere y'uko urubanza rukomeza, yagisaba inteko iburanisha urubanza mu mizi ikagifataho icyemezo; rusanga Urukiko rwarayihaye uburenganzira ku byo yagombaga gutanga cyangwa kuvuga mu nama ntegurarubanza harimo nko gutanga ibimenyetso by'ibyo izaburanisha no gutanga inzitizi, kandi ibyo ikaba yarabikoze kuko ari bwo yatanze inzitizi y'iburabubasha rw'urukiko. Bityo ko no kuri iyi ngingo ROKO CONTRUCTION Ltd yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[14] Bakomeza basobanura ko ku kibazo kijyanye no kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ROKO CONTRUCTION Ltd yishyura umwenda itishingiye, ko mu Rukiko rw'Ubucuruzi mu rubanza RCOM 00236/2021/TC na RCOM 00417/2021/TC ku kibazo kijyanye n'umwishingizi, urwo Rukiko rwagisobanuye mu gika cya 17 n'icya 18, aho rwasanze ROKO CONSTRUCTION Ltd (umwishingizi) ntaho yahera cyangwa yashingira ivuga ko itemera umwenda wa I&M BANK (RWANDA) Plc, kandi ushingiye ku masezerano watangiweho impande zombi zikayashyiraho imikono yazo hagati ya ROKO CONSTRUCTION RWANDA na I&M RWANDA Plc, ku wa 05/02/2020 ungana na 2.783.577.787 Frw n'amadolari angana na 177,063,78 USD. Uwo mwenda wose mu mafaranga y'u Rwanda ukaba waranganaga na 2.950.100.000 Frw ndetse runagaragaza uburyo umwenda wagiye uvugururwa, ku wa 28/02/2020 no ku wa 24/07/2020, maze umwenda n'inyungu zawo ukangana na 3.529.512.731 Frw, ariko ROKO CONSTRUCTION RWANDA ikananirwa kwishyura.

[15] Basobanura na none ko ibyerekeye umwenda byanagarutsweho mu gika cya 23, icya 26 n'icya 27 by'urubanza RCOM 00236/2021/TC na RCOM 00417/2021/TC, aho Urukiko rw'Ubucuruzi rwagaragaje ko kuva I&M BANK (RWANDA) Plc yatangira kwishyuza umwenda ROKO CONSTRUCTION Ltd itigeze iwuhakana, ko ahubwo ku wa 13/03/2020, abayobozi bayo bakoze inama basaba kongererwa umwenda ungana na 534.987.492 Frw wiyongera ku wo bari basanganwe, maze umwenda wose ungana na 2.953.577.782 Frw, ukomeza kwiyongera kubera inyungu zo kutishyura ku gihe. Ko ROKO CONSTRUCTION Ltd yatsinzwe no kunanirwa kugaragaza impamvu n'ibimenyetso byayikuyeho kwishyura umwenda yaregwaga, ukomoka ku masezerano yashyizweho umukono ku wa 30/01/2020 muri Ambasade y'u Rwanda i Kampala, ubwo yasabwaga kwishyura iyo ngwate yemera kuzishyura mu gihe ROKO CONSTRUCTION (RWANDA) Ltd izaba yananiwe imirimo, ariko ROKO CONSTRUCTION Ltd yinangiye ikanga kwishyura ku gihe maze inyungu z'ubukererwe zikomeza kwiyongera, kugeza ubu umwenda wose n'inyungu zawo ukaba ungana na 3.560.644.013 Frw nk'uko wagaragajwe na *Bank statement* ya nyuma yashyikirijwe Urukiko yo ku wa 18/10/2021.

[16] Bavuga ko mu gika cya 52 kugeza ku cya 59 by'urubanza RCOMA 00816/2021/HCC, ku bijyanye n'ubwishingire bwa ROKO CONSTRUCTION Ltd Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko ROKO CONSTRUCTION Ltd yemeye ko izishyura umwenda wavuzwe haruguru icyandikirwa bwa mbere, kandi nta yandi mananiza cyangwa urwitwazo urwo ari rwo

rwose ishyizeho, ko kandi ROKO CONSTRUCTION Ltd yavuze ko ubwishingizi bwayo bufite agaciro igihe cyose umwenda utarishyurwa wose, ko mu gika cya 56 n'icya 57 cy'urwo rubanza, urwo Rukiko rwavuze kandi ko rusanga amasezerano yiswe *Corporate Guarantee and Indemnity* yabaye hagati ya I&M BANK (RWANDA) Plc na ROKO CONSTRUCTION Ltd ku wa 30/01/2020 yarakozwe bikurikije amategeko, ko kandi agomba kubahirizwa nta bundi buryarya nk'uko biteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ko kandi atagomba kwitiranywa n'amasezerano y'inguzanyo yabaye hagati ya I&M BANK (RWANDA) Plc na ROKO CONSTRUCTION RWANDA Ltd kuko buri amwe yihariye (*contrat indépendant*), anafite inshingano zinyuranye ndetse n'abayagiranye batandukanye.

[17] Bavuga na none ko mu gika cya 59, urwo Rukiko rwasanze kuba hari amasezerano yiswe *Corporate Guarantee and Indemnity* yabaye hagati ya I&M BANK (RWANDA) Plc na ROKO CONSTRUCTION Ltd atandukanye n'amasezerano y'inguzanyo yabaye hagati ya I&M BANK (RWANDA) Plc na ROKO CONSTRUCTION RWANDA Ltd, nk'uko kandi biteganywa n'ingingo ya 113 y'itegeko Nº45/2011 ryo kuwa 25/11/2011 ryavuzwe haruguru, ivuga ko amasezerano agira inkurikizi ku bayagiranye, ROKO CONSTRUCTION Ltd ikaba itagomba kwivanga mu masezerano y'inguzanyo yabaye hagati ya I& M BANK (RWANDA) Plc na ROKO CONSTRUCTION RWANDA Ltd, ngo isabe ko habanza kugaragazwa umwenda kandi yaragiye imenyeshwa na Banki iby'uwo mwenda yishingiye, ari yo mpamvu ubwishyu bw'ingwate butagomba guhagarikwa. Ko niba hari kibazo kiri hagati ya ROKO CONSTRUCTION Ltd na ROKO CONSTRUCTION RWANDA Ltd kirebana n'amasezerano bagiranye yazagikurikirana mu rubanza rundi niba ibishaka. Bityo ko hashingiwe kuri ibi bisobanuro, bigaragara ko ROKO CONSTRUCTION Ltd yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, ubujurire bwayo bukaba butagomba kwakirwa.

[18] **Uhagarariye ROKO CONSTRUCTION Ltd** yiregura kuri iyi nzitizi avuga ko nta shingiro ifite, kuko ku ngingo ya mbere, inkiko zombi zitabisesenguye kimwe, ko ku rwego rubanza Urukiko rw'Ubucuruzi mu kwemeza ko rwari rufite ububasha bwo kuburanisha urwo rubanza rwashingiye ku ngingo ya 13 no ku ya 14, ruvuga ko kuba amasezerano I&M BANK (RWANDA) Plc ishingiraho irega yarakorewe mu Rwanda, yaraharangirijwe cyangwa se agomba kuharangirizwa, biruha ububasha bwo kwakira kandi rukaburanisha icyo kirego. Naho Urukiko Rukuru rw'Ubucuruzi mu gufata icyemezo rwashingiye ku ngingo ya 14, agace ka 8, y'Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, rugaragaza ko urega yari afite ububasha bwo guhitamo Urukiko aregamo mu nkiko z'u Rwanda. Avuga ko mu bika bya 28 na 29 by'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi hari ibitekerezo bishya byongerewemo.

[19] Ku bijyanye no kuba Urukiko rwaraburanishije urubanza hatabayeho inama ntegurarubanza, avuga ko inkiko zombi mu gufata icyemezo cy'uko urubanza rutasubizwa mu nama ntegurarubanza zitashingiye ku mpamvu zimwe, kuko Urukiko rw'Ubucuruzi mu kwemeza ko urubanza rudasubizwa mu nama ntegurarubanza rwashingiye ku kuba rwarasanze inama ntegurarubanza yarakozwe ikarangira, ko niba hari ikitarasuzumwe cyasabwa inteko iburanisha urubanza mu mizi ikagifataho icyemezo, naho Urukiko Rukuru rw'Ubucuruzi mu rubanza rujuririrwa rusanga ROKO CONSTRUCTION Ltd yarahamagajwe mu buryo bukurikije amategeko, bityo ko inama ntegurarubanza itasubirwamo.

[20] Ku bijyanye n'ugomba kwishyura umwenda, avuga ko ku rwego rubanza Urukiko rw'Ubucuruzi rwemeje ko ROKO CONSTRUCTION Ltd yishyura umwenda wa ROKO

CONSTRUCTION RWANDA Ltd rushingiye ku kuba impande zombi zarashyize umukono ku masezerano yo ku wa 30/01/2020, ariko ko Urukiko Rukuru rw'Ubucuruzi mu kwemeza ko ROKO CONSTRUCTION Ltd yishyura umwenda wa ROKO CONSTRUCTION RWANDA Ltd rwashingiye ku kuba amasezerano yo ku wa 30/01/2020 y'ubwishingizi ari amasezerano yigenga, bityo ko agomba kubahirizwa.

[21] Avuga kandi ko ikindi kigaragaza ko ROKO CONSTRUCTION Ltd itatsinzwe hashingiwe ku mpamvu zimwe mu nkiko zombi ari uko Urukiko rw'Ubucuruzi rwemeje ko abanyamategeko ba DENTOS bo muri UK batishyurwa, ariko Urukiko Rukuru rw'Ubucuruzi rwemeza ko ayo mafaranga yishyurwa. Bityo ko impamvu zashingiweho n'inkiko zombi mu gufata icyemezo atari zimwe.

UKO URUKIKO RUBIBONA

[22] Impaka kuri iyi ngingo zishingiye ku kumenya niba ROKO CONSTRUCTION Ltd yaratsinzwe ku mpamvu zimwe mu nkiko zombi ku bijyanye n'ububasha bw'Urukiko rw'Ubucuruzi rwo mu Rwanda, ku bijyanye no kuba urubanza rwaraburanishijwe mu buryo budakurikije amategeko kuko nta nama ntegurarubanza yabaye, no ku bijyanye no kumenya niba ROKO CONSTRUCTION Ltd igombaga kwishyura umwenda iregwa.

[23] Mu manza zitandukanye, zirimo urubanza RS/INJUST/RCOM 00002/2020/SC, Nº RS/INJUST/RCOM 00003/2020/SC na RCOMAA 0048/16/CS Urukiko rw'Ikirenga n'uru Rukiko zasobanuye ingingo ya 52, igika cya 3, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, aho zasobanuye ko mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (*raisonnement juridique*) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe [1]. Ibi kandi byumvikanisha ko impamvu zimwe zisuzumirwa mu mbago z'ibyajuririwe hashingiwe ku ihame risanzwe mu micire y'imanza rivuga ko umucamanza wo mu rwego rwa mbere yita ku igenzura ry'ibimenyetso n'amategeko ugereranyije n'ikiburanwa, naho umucamanza wo mu rwego rw'ubujurire akibanda cyane cyane ku kugenzura niba amategeko ku rwego rwa mbere yarubahirijwe uko bikwiye hakurikijwe ibisobanuro n'ibimenyetso byari byatanzwe muri urwo rubanza, byaba ngombwa agakosora aho bikenewe[2].

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[1] Reba urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24, Urubanza RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS hagati ya Bank of Kigali Ltd na MULISA KANA Martin rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017, igika cya 21. Reba kandi igika cya 12 cy'urubanza rubanziriza urundi mu rubanza RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019, haburana KOPERATIVE DUKUNDUMURIMO (KOADU) na KING CONSTRUCTION AND SERVICE COMPANY (KICOSECA).

[2] Reba urubanza RS/INJUST/RCOM 00003/2020/SC rwaciwe ku wa 27/11/2020, haburana SANLAM AG Plc na UR.

[24] Na none mu rubanza RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd[3], urwo Rukiko rwasobanuye ko mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa.

[25] Dosiye y'urubanza igaragaza ko mu rubanza RCOM 00246/2021/TC no mu rubanza N° RCOM 00417/2021/TC, Urukiko rw'Ubucuruzi rwasuzumye ibibazo bikurikira: kumenya niba Urukiko rw'Ubucuruzi rudafite ububasha bwo kuburanisha urubanza; kumenya niba urubanza rwasubizwa mu nama nteguraruabanza; kumenya niba uregwa yategekwa kwishyura umwenda ungana na 3.529.512.731 Frw ubazwe kugeza ku wa 10/11/2020 (*principal et intérêts*) kandi inyungu (zisanzwe n'iz'ubukererwe) zigakomeza kubarwa kugeza igihe urubanza ruciriwe; kumenya niba irangizarubanza ry'agateganyo risabwa ryakwemezwa muri uru rubanza; icyerekeye indishyi z'ikurikiranarubanza, igihembo cya Avoka bihwanye na 10% y'umwenda wishyuzwa hamwe n'icyo kumenya niba uregwa yakwishyuzwa amafaranga yishyuwe abanyamategeko ba DENTOS bo muri UK bunganiye I&M BANK (RWANDA) Plc aho yarezwe.

[26] Mu rubanza RCOMA 00816/2021 rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 04/04/2022, urwo Rukiko rwasuzumye ingingo zikurikira: kumenya niba urubanza RCOM 00236/2021/TC rutari mu bubasha bw'urukiko rw'ubucuruzi, kumenya niba urubanza rutaraburanishijwe mu buryo bunyuranyije n'amategeko, kuko ngo rutakorewe inama nteguraruabanza, kumenya niba Urukiko rutategeka ko ikirego ROKO CONSTRUCTION RWANDA Ltd yarezemo I&M BANK RWANDA Plc mu rubanza RCOM 00417/2021/TC cyari cyahujwe n'urundi kibanza kuburanishwa no gufatirwa icyemezo mu Rukiko rw'Ubucuruzi, kumenya niba ROKO CONSTRUCTION Ltd yaragombaga gutegekwa kwishyura umwenda w'uwo yishyingiye utarabanza kwemezwa, no kumenya niba ingingo z'ubujurire bwuririye k'ubundi zakabaye zarajuririwe ukwazo zigatangwa ibihe by'ubujurire byararenze zigomba kwakirwa n'ikijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[27] Mu rwego rwo kumenya niba ROKO CONSTRUCTION Ltd yaratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, haritabwa ku bibazo by'ingenzi inkiko zombi zasuzumye. Ibyo bibazo akaba ari icyo kumenya niba Urukiko rw'Ubucuruzi rwo mu Rwanda rwari rufite ububasha, kumenya niba urubanza rwaraburanishijwe mu buryo budakurikije amategeko kuko ngo rutakorewe inama nteguraruabanza, no kumenya niba ROKO CONSTRUCTION Ltd yategekwa kwishyura umwenda iregwa. Ikibazo kijyanye no kwishyura abanyamategeko ba DENTOS bo muri UK, nubwo inkiko zombi zakivuzeho ariko ntabwo cyajya mu igereranya kuko kitari mu bibazo byatsinze ROKO CONSTRUCTION Ltd itakijuririye mu Rukiko Rukuru rw'Ubucuruzi, ndetse no muri uru Rukiko.

a. Ku kibazo kijyanye no kumenya niba Urukiko rw'Ubucuruzi rwo mu Rwanda rwari rufite ububasha

[28] Ku kibazo kijyanye n'ububasha bw'Urukiko rw'Ubucuruzi, mu cyemezo cy'Urukiko rw'Ubucuruzi ku nzitizi mu rubanza N° RCOM 00236/2021 n'urubanza N° RCOM

[3] Reba igika cya 18 cy'urwo rubanza.

00417/2021/TC cyo ku wa 06/10/2021, Urukiko rushingiye ku ngingo ya 5, iya 14 n'iya 18, z'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rwasanze ingingo z'iri tegeko ziteganya ko amasezerano yakorewe hanze y'u Rwanda ashobora kurangirizwa mu Rwanda iyo yujuje ibiteganywa mu ngingo z'iri tegeko; ko abanyamahanga bashobora kuregwa mu nkiko z'u Rwanda iyo amasezerano ikirego gishingiyeho yakorewe mu Rwanda yaraharangirijwe cyangwa agomba kuharangirizwa; no kuba ikirego cya I&M BANK RWANDA Plc gifitanye isano n'ikirego cya ROKO CONSTRUCTION Ltd nayo yaregeye mu Rwanda ko mu masezerano ROKO CONSTRUCTION Ltd yakoranye na I&M BANK (RWANDA) Plc ku wa 30/01/2020 bumvikanye ko ayo masezerano azarangirizwa mu Rwanda, ko ndetse n'amasezerano y'ubwishingizi azagengwa n'amategeko y' u Rwanda, ko kandi ingwate iregerwa yatangiwe mu Rwanda ndetse n'imirimo itararangiye yakorerwaga mu Rwanda.

[29] Kuri iki kibazo, Urukiko Rukuru rw'Ubucuruzi guhere ku gika cya 24 kugeza ku cya 30 by'urubanza rujuririrwa, narwo rwasanze nk'uko Urukiko rw'Ubucuruzi rwabibonye kandi rukaba rwemeranya narwo, ibyo ROKO CONSTRUCTION Ltd ivuga ko inkiko z'u Rwanda nta bubasha zifite bwo kuburanisha urubanza iburana na I&M BANK (RWANDA) Plc bitahabwa ishingiro kuko nubwo amasezerano yakorewe mu gihugu cya Uganda, ariko ibikorwa ayo masezerano yari ashingiyeho byaberaga mu Rwanda; kandi muri ayo masezerano hakavugwamo ko azarangirizwa mu Rwanda; ko Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko mu Rwanda mu ngingo yaryo ya 14, agace ka 2° n'aka 5°, n'ingingo ya 18 riteganya ko abanyamahanga bashobora kuregwa mu nkiko z'u Rwanda ku mpamvu zikurikira: iyo amasezerano ikirego gishingiyeho yakorewe mu Rwanda, yaharangirijwe cyangwa se agomba kuharangirizwa; iyo ari ikirego gifitanye isano n'urubanza rwatangiye kuburanishwa mu rukiko rwo mu Rwanda; iyo hari ahantu hatoranyijwe ko harangirizwa amasezerano.

[30] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga kuri iki kibazo, ROKO CONSTRUCTION Ltd yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe zuko Itegeko rigena ububasha bw'inkiko riteganya ko abanyamahanga bashobora kuburanishwa n'inkiko z'u Rwanda iyo hujujwe ibisabwa n'iryo tegeko ; indi mpamvu inkiko zombi zashingiyeho nuko amasezerano impande zombi zagiranye ateganya ko inkiko z'u Rwanda zifite ububasha bwo kuburanisha impaka zavuka hagati yazo.

b. Ku kibazo kijyanye no kumenya niba nta nama ntegurarubanza yabaye mu Rukiko rw'Ubucuruzi

[31] Ku kibazo cyo kumenya niba Urukiko rwaraburanishije urubanza hatabayeho inama ntegurarubanza, rukaba rugomba gusubizwa mu nama ntegurarubanza, Urukiko rw'Ubucuruzi, mu rubanza N° RCOM 00236/2021/TC na N° RCOM 00417/2021/TC, rwemeje ko urubanza rutasubizwa mu nama ntegurarubanza kuko yakozwe ikarangira ikaba itasubirwamo, kandi ko mu gihe ROKO CONSTRUCTION Ltd yaba yifuza ko hari ikibazo cyabanza gusuzumwa mbere yuko urubanza rukomeza, yagisaba inteko iburanisha urubanza mu mizi ikagifataho icyemezo.

[32] Kuri iki kibazo, Urukiko Rukuru rw'Ubucuruzi, nyuma yo gusesengura ibimenyetso bitandukanye, mu gika cya 36 n'icya 37 by'urubanza rujuririrwa, narwo rwasanze inama ntegurarubanza yarakozwe, akaba nta mpamvu yatuma yongera gukorwa, ko kandi ROKO CONSTRUCTION Ltd yahawe uburenganzira bwo kuba yageza ku nteko iburanisha ikibazo yaba yifuza cyabanza gusuzumwa mbere yuko urubanza rukomeza mu mizi ikagifataho icyemezo.

[33] Kuri iki kibanzo, Urukiko rurasanga inkiko zombi zarashingiye ku mpamvu zimwe zo kuba inama ntegurarubanza yarakozwe ikaba itasubirwamo, no kuba ROKO CONSTRUCTION Ltd ifite uburenganzira bwo kuba yageza ku rukiko ibibazo yifuza ko byasumwa n'inteko iburanisha mbere yuko urubanza rukomeza mu mizi yarwo.

c. Ku kibazo cyo kumenya niba ROKO CONSTRUCTION Ltd yategekwa kwishyura iregwa

[34] Ku kibazo cyo kumenya niba uregwa yategekwa kwishyura umwenda ungana na 3.529.512.731 Frw ubazwe kugeza ku wa 10/11/2020 (*principal et intérêts*) kandi inyungu (zisanzwe n'iz'ubukererwe) zigakomeza kubarwa kugeza igihe urubanza ruciriwe, Urukiko rw'Ubucuruzi rushingiye ku ngingo za 64, 70 na 80 z'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, rwasanze ntaho ROKO CONSTRUCTION Ltd yahera ihakana amafaranga y'ubwishingizi bw'isoko yagiye yishyurirwa na I&M BANK (RWANDA) Plc mu mwanya wa ROKO CONSTRUCTION RWANDA Ltd yananiwe kwishyura, hiyongereyeho n'inyungu, kuko ari yo yabaye umwishingizi wayo kandi ikaba yaragiranye amasezerano y'ubwishingizi na I&M BANK (RWANDA) Plc.

[35] Kuri iki kibazo, Urukiko Rukuru rw'Ubucuruzi narwo rwasanze kuba ROKO CONSTRUCTION Ltd yari yemeje ku buryo budasubirwaho kandi nta yindi mpamvu itanze kwishyura umwenda wa 2.950.100.000,00 Frw inyungu zawo n'izindi ndishyi n'ibindi byose bizacibwa uwagurijwe (ari we ROKO CONSTRUCTION RWANDA Ltd), igomba kuwishyura kuko nta bimenyetso igaragaza ko yawishyuye. Urukiko rwasanze kandi amasezerano yiswe *Corporate Guarantee and Indemnity* yabaye hagati ya I&M BANK (RWANDA) Plc na ROKO CONSTRUCTION Ltd ku wa 30/01/2020 yarakozwe mu buryo bukurikije amategeko hagati yazo, akaba agomba kubahirizwa nta bundi buryarya nk'uko biteganywa n'ingingo ya 64 y'Itegeko N° 45/2011 ryo kuwa 25/11/2011rigenga amasezerano.

[36] Kuri iki kibazo, Urukiko rurasanga, ROKO CONSTRUCTION Ltd yaratsinzwe mu nkiko zombi no kuba yaremeye ku buryo budasubirwaho kandi nta yindi mpamvu itanze kwishyura umwenda wa 2.950.100.000,00 Frw inyungu zawo n'izindi ndishyi n'ibindi byose bizacibwa uwagurijwe, no kuba yaragiranye amasezerano y'ubwishingizi na I&M BANK (RWANDA) Plc, ikaba igomba kuyubahiriza nk'uko biteganywa n'Itegeko rigenga amasezerano.

[37] Urukiko rurasanga ibyo uburanira ROCO CONSTRUCTION Ltd avuga ko kuri iki kibazo itatsinzwe hashingiwe ku mpamvu zimwe kubera ko Urukiko Rukuru rw'Ubucuruzi rwasanze amasezerano yiswe *Corporate Guarantee and Indemnity* atagomba kwitiranywa n'amasezerano y'inguzanyo yabaye hagati ya I&M BANK (RWANDA) Plc na ROKO CONSTRUCTION RWANDA Ltd kuko buri amwe yihariye (*contrat indépendant*), anafite inshingano zinyuranye ndetse n'abayagiranye batandukanye, ariko ibyo bikaba bitarashingiweho n'Urukiko rw'Ubucuruzi, ntacyo byayimarira kuko atari impamvu yihariye ivuguruza cyangwa itandukanye n'izo Urukiko rw'Ubucuruzi rwashingiyeho, ahubwo n'ibisobanuro birushaho kumvikanisha igisubizo ku kibazo rwashyikirijwe cyo kumenya niba ROKO CONSTRUCTION Ltd yategekwa kwishyura umwenda ROKO CONSTRUCTION RWANDA Ltd ibereyemo I&M BANK RWANDA Plc.

[38] Mu kwanzura kuri iki kibazo cyo kumenya niba ROKO CONSTRUCTION Ltd yaratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, Urukiko rurasanga ku ngingo

zasuzumwe n'Urukiko rw'Ubucuruzi zikajuririrwa mu Rukiko Rukuru rw'Ubucuruzi nk'uko zagaragajwe haruguru, inkiko zombi zarashingiye ku mpamvu zimwe nubwo hari aho Urukiko Rukuru rw'Ubucuruzi rwagiye rutanga ibisobanuro birambuye kugira ngo rurusheho kumvikanisha ibisubizo rwatanze ku bibazo rwagejejweho. Rurasanga na none ibyo uhagarariye ROKO CONSTRUCTION Ltd avuga ko itatsinzwe hashingiwe ku mpamvu zimwe kuko hari ibibazo byasuzumwe bitavuzwe mu Rukiko rw'Ubucuruzi bigaragaza ko ROKO CONSTRUCTION Ltd itatsinzwe hashingiwe ku mpamvu zimwe, ntacyo byayimarira kuko nk'uko byibukijwe haruguru, harebwa ibibazo byasuzumwe ku rwego rwa mbere akaba ari nabyo bigaruka ku rwego rw'ubujurire. Urukiko rurasanga kandi ibyo ROKO CONSTRUCTION Ltd ivuga ko itatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe kuko ku kibazo cyo kwishyura abanyamategeko ba DENTOS bo muri UK, inkiko zombi zitagishubije kimwe, ntacyo byayimarira kuko nk'uko byavuzwe haruguru, iki kibazo kitari mu byatsinze ROKO CONSTRUCTION Ltd ku rwego rwa mbere, kandi bika byumvikana ko itakijuririye.

2. Kumenya niba indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro

[39] Uhagarariye ROKO CONSTRUCTION Ltd ashingiye ku biteganywa n'ingingo ya 111 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asaba Urukiko rw'Ubujurire gutegeka I&M BANK (RWANDA) Plc kwishyura ROKO CONSTRUCTION Ltd 5.900.000 Frw yatakaje ikurikirana urubanza, 90.000 Frw y'amagarama y'urubanza, ay'igihembo cya Avoka wayiburaniye ku nzego zose imaze kuburaniramo ndetse n'ayo kuri uru rwego.

[40] Abahagarariye I&M BANK (RWANDA) Plc biregura ku mafaranga ROKO CONSTRUCTION Ltd isaba bavuga ko ntayo yahabwa, kubera ko ubujurire bwayo nta shingiro bufite.

[41] Bavuga kandi ko bashingiye ku ngingo ya 9 n'iya 111 z'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, no ku ngingo ya 34 y'Amabwiriza n° 01/2014 agenga ibihembo mbonera by'Abavoka, basaba Urukiko rw'Ubujurire gutegeka ROKO CONTRUCTION Ltd kwishyura I&M BANK (RWANDA) Plc 10.000.000 Frw y'indishyi zo gukomeza gushorwa mu manza nta mpamvu, hiyongereyeho 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego.

[42] Uhagarariye ROKO CONSTRUCTION Ltd yiregura ku ndishyi I&M BANK (RWANDA) Plc isaba avuga ko ntazo yahabwa, kuko nta shingiro zifite, no kuba ari yo yareze ROKO CONSTRUCTION Ltd mu nkiko zidafite ububasha.

UKO URUKIKO RUBIBONA

[43] Ingingo ya 111 y'Itegeko n°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 kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".*

[44] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ikurikiranarubanza I&M BANK (RWANDA) Plc isaba afite ishingiro, kuko hari ibyo yatakaje ikurikirana inaburana uru rubanza, ariko kuba urubanza rugarukiye ku nzitizi, mu bushishozi bwarwo ruyigeneye 500.000 Frw y'igihembo cya Avoka na

[45] 200.000 Frw y'ikurikiranarubanza, agomba gutangwa na ROKO CONSTRUCTION Ltd. Rurasanga indishyi zo gushorwa mu manza I&M BANK RWANDA Plc isaba zitagomba gusuzumwa kuko urubanza rutaburanishijwe mu mizi.

[46] Urukiko rurasanga amafaranga y'ibyakoreshejwe mu rubanza ROKO CONSTRUCTION Ltd isaba nta shingiro afite kuko ubujurire bwayo butakiriwe.

III. ICYEMEZO CY'URUKIKO

[47] Rwemeje ko inzitizi y'iburabubasha bw'uru Rukiko yatanzwe na I&M BANK (RWANDA) Plc ifite ishingiro.

[48] Rwemeje ko ubujurire bwa ROKO CONSTRUCTION Ltd butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

[49] Rutegetse ROKO CONSTRUCTION Ltd kwishyura I&M BANK (RWANDA) Plc

[50] 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza kuri uru rwego.

[51] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.