WIN WIN LTD v. MTQ AMIZERO LTD N ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00021/2020/CA (Ngagi, P.J.,) 17 Ukuboza 2021]

Amategeko agenga amasosiyete – Sosiyete – Uburyoze bw umunyamigabane wa sosiyete – Kugira ngo umunyamugabane wa sosiyete y'ubucuruzi aryozwe inshingano za sosiyete, ni ngombwa ko aba yarakoresheje nabi imiterere yayo agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete nkaho ari uw umuntu ku giti cye.

Incamake y ikibazo: sosiyete WIN WIN Ltd ihagarariwe na Gahenda Bienvenu Alexis na Ngalula Danny, yagiranye amasezerano na sosiyete MTQ AMIZERO Ltd ihagarariwe na Mudaheranwa Théogène na NyiranzeyimanA Valérie yo gukorera hamwe hagamijwe kuzahuriza hamwe izo sosiyete zombi muri sosiyete imwe ku buryo bwemewe n'amategeko. WIN WIN Ltd ivuga ko yashoye muri ubwo bufatanye inguzanyo ya banki yari yarisabiye ku giti cyayo. Nyuma y'igihe cy'amezi atatu (3) iza kubona ko amasezerano y'ubufatanye atubahirizwa, bituma impande zombi zikorana inama, zifata umwanzuro zasinyiye imbere ya Noteri, aho muri uwo mwanzuro abayobozi ba MTQ AMIZERO Ltd bemeye umwenda babereyemo abayobozi ba WIN WIN Ltd ungana na 127.092.349Frw.

WIN WIN Ltd yareze MTQ AMIZERO Ltd mu Rukiko rw'Ubucuruzi, isaba gusesa amasezerano y'ubufatanye bakoranye, isaba no kwishyurwa umwenda remezo n inyungu zitandukanye kugeza igihe uwo mwenda uzaba wishyuwe wose.

Sosiyete MTQ AMIZERO Ltd hamwe n abayobozi bayo Mudaheranwa Théogène na Nyiranezyimana Valérie batanze inzitizi bavuga ko uwatanze ikirego ari Gahenda Bienvenu Alexis kandi atari umuyobozi wa WIN WIN Ltd ku buryo yayihagararira mu rwego rw'amategeko, bityo ko ikirego cyayo kidakwiye kwakirwa.

Urukiko rw'Ubucuruzi rwemeje ko ikirego cyakiriwe kuko cyatanzwe na WIN WIN Ltd aho kuba Gahenda Bienvenu Alexis, bityo ko amasezerano impande zombi zagiranye asheshwe nk'uko impande zombi zibyemeranwaho, rutegeka MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranzeyimana Valérie kwishyura umwenda ungana na 127.092.349 Frw n'inyungu zingana na 56. 593. 828 Frw.

MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranzeyimana Valérie bajuririye mu Rukiko Rukuru rw'Ubucuruzi bavuga ko Urukiko rw'Ubucuruzi rwirengagije ko mbere yo gusesa amasezerano hari kubanza kugaragazwa umutungo ukomoka ku bikorwa by'ubucuruzi ababuranyi bari bafatanyije ugomba kugabanwa.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, rwemeza ko ubujurire bwa MTQ AMIZERO, Mudaheranwa Théogène na Nyiranzeyimana Valérie bufite ishingiro kuri bimwe, bityo ko batagomba gukurikiranwa muri urwo rubanza, ko ubwishyu bwose bwari bwagenewe WIN WIN Ltd ku rwego rwa mbere bugumyeho ariko ikabuhabwa gusa na MTQ AMIZERO Ltd. Rutegeka WIN WIN Ltd guha Mudaheranwa Théogène na Nyiranzeyimana indishyi zo gushorwa mu manza.

Abahagarariye WIN WIN Ltd bajuririye mu rukiko rw ubujurire bavuga ko Mudaheranwa Théogène na Nyiranzeyimana Valérie bagombaga kuregwa kubera ko bafite uruhare mu gihombo

WIN WIN Ltd yagize kuko bakoze igikorwa cyo kunyereza amafaranga ya sosiyeti bakayashyira kuri konti zabo bwite aho kuyashyira kuri konti bumvikanyeho mu masezerano.

Abahagarariye sosiyete MTQ AMIZERO Ltd, biregura bavuga ko ingingo y'ubujurire nta shingiro yahabwa kubera ko mu rubanza rujuririrwa Urukiko rwasanze abahagarariye sosiyete WIN WIN aribo Mudaheranwa n'umugore we bari bahagarariye sosiyete zifite uburyozwe bugarukira ku imari shingiro (capital) yayo (responsabilités limitées), bityo, ko nta kosa rwakoze mu kwemeza ko batagombaga kuregwa.

Incamake y' icyemezo: Kugira ngo umunyamugabane wa sosiyete y'ubucuruzi aryozwe inshingano za sosiyete, ni ngombwa ko uwo munyamugabane aba yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete.

Ubujurire bufite ishingiro.
Amagarama ahwanye n ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko N°17/2018 ryo ku wa 13/04/2018 ryagengaga amasosiyete y'ubucuruzi mu igihe ikirego cyatangwaga, ingingo ya 95.

Nta manza zifashishijwe.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Ku wa 09/03/2018, sosiyete WIN WIN Ltd, ihagarariwe na Gahenda Bienvenu Alexis na Ngalula Danny, yagiranye amasezerano na sosiyete MTQ AMIZERO Ltd ihagarariwe na Mudaheranwa Théogène na NyiranzeyimanA Valérie yo gukorera hamwe hagamijwe kuzahuriza hamwe izo sosiyete zombi muri sosiyete imwe ku buryo bwemewe n'amategeko. WIN WIN Ltd ivuga ko yashoye muri ubwo bufatanye inguzanyo ya banki yari yarisabiye ku giti cyayo. Nyuma y'igihe cy'amezi atatu (3) iza kubona ko amasezerano y'ubufatanye atubahirizwa, bituma impande zombi zikorana inama, zifata umwanzuro zasinyiye imbere ya Noteri ku wa 07/06/2018, aho muri uwo mwanzuro abayobozi ba MTQ AMIZERO Ltd bemeye umwenda babereyemo abayobozi ba WIN WIN Ltd ungana na 127.092.349 Frw.

[2] WIN WIN Ltd yareze MTQ AMIZERO Ltd mu Rukiko rw'Ubucuruzi, isaba gusesa amasezerano y'ubufatanye yo ku wa 09/03/2018, kwishyurwa umwenda remezo wa 127.092.349 Frw, inyungu zingana na 45.000.000 Frw, n'inyungu z'ubukererwe zingana na 10 % zizabarwa guhera ku wa 07/08/2018 kugeza igihe uwo mwenda uzaba wishyuwe wose.

[3] MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranezyimana Valérie batanze inzitizi bavuga ko uwatanze ikirego ari Gahenda Bienvenu Alexis kandi atari umuyobozi wa WIN WIN Ltd ku buryo yayihagararira mu rwego rw'amategeko, ko ikirego cya WIN WIN Ltd

kidakwiye kwakirwa. Bavuga kandi ko Gahenda Bienvenu Alexis ari we wari ushinzwe ubutegetsi n'imari ariko ko atigeze atanga raporo, basaba ko hakorwa igenzura mutungo (*audit).*

[4] Mu rubanza RCOM 02482/2018/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 15/02/2019, urwo Rukiko rwemeje ko ikirego cyakiriwe kuko cyatanzwe na WIN WIN Ltd aho kuba Gahenda Bienvenu Alexis, ko amasezerano impande zombi zagiranye ku wa 09/03/2018 asheshwe nk'uko impande zombi zibyemeranwaho, ko kandi Gahenda Bienvenu Alexis atategekwa kwishyura agaciro k'imashini yatwaye batabyumvikanye kuko ntakibigaragaza. Rutegeka MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranzeyimana Valérie kwishyura WIN WIN Ltd umwenda bemeye ungana na 127.092.349 Frw n'inyungu zingana na 56. 593. 828 Frw, ko *audit* yasabwe atari ngombwa, ko ibisabwa na WIN WIN Ltd ko MTQ AMIZERO Ltd, MUDAHERANWA Théogène na Nyiranzeyimana Valérie bategekwa kwishyura umusoro nta shingiro bifite, ko kandi nta rangizarubanza ry'agateganyo ritanzwe, rutegeka kandi abaregwa kwishyura 600.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza, yose hamwe angana na 184.386.177 Frw, bakanayisubiza 20.000 Frw y'igarama.

[5] MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranzeyimana Valérie bajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi bavuga ko Urukiko rw'Ubucuruzi rwirengagije ko mbere yo gusesa amasezerano hari kubanza kugaragazwa umutungo ukomoka ku bikorwa by'ubucuruzi ababuranyi bari bafatanyije ugomba kugabanwa, ko Urukiko rwirengagije ko Mudaheranwa Théogène na Nyiranzeyimana Valérie batagombaga kuregwa mu rubanza RCOM 02482/2018/TC, basaba ko icyo cyemezo cyahindurwa, bagahabwa n'indishyi zitandukanye. WIN WIN Ltd yiregura ivuga ko ubujurire bwabo nta shingiro bufite.

[6] Ku wa 04/10/2019, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00240/2019/HCC, rwemeza ko ubujurire bwa MTQ AMIZERO, Mudaheranwa Théogène na Nyiranzeyimana Valérie bufite ishingiro kuri bimwe, ko Mudaheranwa Théogène na Nyiranzeyimana Valérie batagomba gukurikiranwa muri urwo rubanza, ko ubwishyu bwose bwari bwagenewe WIN WIN Ltd ku rwego rwa mbere bugumyeho ariko ikabuhabwa gusa na MTQ AMIZERO Ltd. Rutegeka WIN WIN Ltd guha Mudaheranwa Théogène na Nyiranzeyimana 2.000.000 Frw y'indishyi zo gushorwa mu manza, ko amafaranga y'igarama yatanzwe n'uwajuriye aguma mu Isanduku ya Leta.

[7] WIN WIN Ltd yajuririye uru Rukiko, ubujurire bwayo bwandikwa kuri RCOMAA 00021/2020/CA.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 01/12/2021, WIN WIN Ltd ihagarariwe na Me Mutembe Protais na Me Kabasenga Berthilde, MTQ AMIZERO Ltd na Nyiranzeyimana Valérie bahagarariwe na Me munyandamutsa Jean Pierre akanunganira Mudaheranwa Théogène.

IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA WIN WIN Ltd

1.Kumenya niba Mudaheranwa Théogène na Nyiranzeyimana Valérie bagomba gufatanya na MTQ AMIZERO Ltd kwishyura amafaranga yategetswe mu rubanza rujuririrwa

[9] Abahagarariye WIN WIN Ltd bavuga ko Mudaheranwa Théogène na Nyiranzeyimana Valérie bagombaga kuregwa kubera ko bafite uruhare mu gihombo WIN WIN Ltd yagize kuko bakoze igikorwa cyo kunyereza amafaranga ya sosiyeti bakayajyana muri Congo aho bagurishirizaga ibigori amafaranga avuyemo bakashyira kuri konti zabo bwite aho kuyashyira kuri konti bumvikanyeho mu masezerano.

[10] Bavuga kandi ko mu nyandiko yo ku wa 07/06/2018, Mudaheranwa Théogène na Nyiranzeyimana Valérie bemeye ko bazishyura amafaranga baregwa bakoresheje umutungo wabo, ko rero bagomba gufatanya na MTQ AMIZERO Ltd kwishyura. Bavuga ko ibyo babishingira kubiteganywa mu ngingo ya 64, iya 136 n'iya 137 z'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.

[11] Basobanura ko mu nama yo ku wa 28/04/2018 abanyamuryango bavuze ku byiswe "utuntu n'utundi", harimo "kutavugana ukuri", "kutaba inyangamugayo", no "kudahana amakuru nyayo", ngo kuko byagaragaraga neza ko Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie batabaye inyangamugayo, ko kandi batakoreraga mu mucyo, kuko amafaranga yavaga mu icuruza ry'ifu y'ibigori atashyirwaga kuri za konti zari zarumvikanyweho zarimo konti n° 139-0196591-90 yagombaga kubitswaho amafaranga y'amanyarwanda na konti n° 139-0196598-97 yo muri COGEBANQUE Ltd y'amadorari.

[12] Bavuga kandi ko kuri konti yumvikanyweho hashyizweho amafaranga make cyane, ko nayo yaje kuvanwaho ajyanwa kugura ibigori, ariko ko atasubijweho. Bityo ko ibyo byose byerekana ko Mudaheranwa Théogène na Nyiranzeyimana Valérie hari ibyo bagomba kuryozwa ku giti cyabo *(responsabilité personnelle)*. Bavuga ko ibyo Mudaheranwa Théogène na Nyiranzeyimana Valérie bavuga ko ntaho bari bahuriye n'amafaranga atari ukuri kuko Nyiranzeyimana Valérie wacururizaga muri Congo, inshuro imwe gusa ari bwo yashyize amafaranga kuri konti bari barumvikanyeho mu masezerano, izindi nshuro zose ayashyira kuri konti zabo kandi atari byo bumvikanye mu masezerano, ko ibyo bavuga ko uburyozwe bugarukira ku kumigabane yabo, atari byo kuko bemeye ko bazishyura uwo mwenda bakoresheje imitungo yabo. Basaba ko basaba Urukiko rw'Ubujurire kwemeza ko Mudaheranwa Théogène na Nyiranzeyimana Valérie bagomba gufatanya na MTQ AMIZERO Ltd kwishyura amafaranga yategetswe mu rubanza rujuririrwa.

[13] MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranzeyimana Valérie biregura kuri iyi ngingo y'ubujurire bavuga ko nta shingiro yahabwa kubera ko mu rubanza rujuririrwa Urukiko rwasanze Mudaheranwa n'umugore we bari bahagarariye sosiyete zifite uburyozwe bugarukira ku imari shingiro (*capital)* yayo (*responsabilités limitées*), bityo, ko nta kosa rwakoze mu kwemeza ko batagombaga kuregwa.

[14] Bavuga kandi ko muri iyo sosiyete buri wese yari afite ibyo ashinzwe, ko ntaho

Mudaheranwa Théogène na Nyiranzeyimana Valérie bahuriraga n'amafaranga, ko nta nshingano bari bafite zitandukanye n'iz'abandi bari muri sosiyete, ko kandi bari bafite n'ibindi bakora, ko rero bidakwiye gufatwa ko amafaranga yose baba barabonye yavuye muri WIN WIN Ltd, ko kugira ngo abanyamigabane bagire ibyo baryozwa, ari uko bagomba kuba barahombeje sosiyete nk'uko biteganywa n'ingingo ya 95 y'Itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi ryakoreshwaga igihe ikirego cyatangwaga, ko kandi Mudaheranwa Théogène na Nyiranzeyimana Valérie nta gihombo ubwabo bigeze bateza WIN WIN Ltd.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 64 y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "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".

[16] Ingingo ya 95, igika cya gatanu, y'Itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi, ryakoreshwaga igihe ikirego cyatangwaga, mu gika cyayo cya nyuma, iteganya ibikurikira: "*Urukiko rushobora kurenga uburyozwe bushingiye ku migabane kugira ngo umunyamugabane aryozwe inshingano za sosiyete, iyo rusanze uwo munyamugabane yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cya*bo".

[17] Ingingo ya 3 y'Itegeko N°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. Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite.

[18] Dosiye igaragaza amasezerano y'ubufatanye bw'imirimo y'ubucuruzi yabaye ku wa 09/03/2018, hagati ya WIN WIN DEALS Ltd na MTQ AMIZERO Ltd, yashyizweho umukono na Mudaheranwa Théogène na Nyiranzeyimana Valérie ku ruhande rwa MTQ AMIZERO Ltd hamwe na Gahenda Bienvenu Alexis na Ngalula Danny ku ruhande rwa WIN WIN Ltd. Muri ayo masezerano impande zombi zemeranyijwe ko WIN WIN DEALS Ltd iguze imigabane ya MTQ AMIZERO Ltd ingana na 50 % ifite agaciro ka 30.000.000 Frw, igizwe n'Uruganda rwa Kawunga rukorera i Kabuye mu Karere ka Gasabo rufite agaciro ka 40.000.000 Frw, igishoro cya *matières premières* cya 20.000.000 Frw, imirimo yo kugura no gusya ibinyampeke yose yakorwaga n'urwo ruganda igiye kujya ikorwa mu mazina ya WIN WIN DEALS Ltd hakiyongeraho n'indi mirimo yose izumvikanwaho n'abanyamigabane mu nyungu za sosiyete. Bumvikanye kandi ko inyungu izajya iboneka izajya igabanwa abanyamigabane bose mu buryo bungana.

[19] Dosiye igaragaza kandi imyanzuro y'inama yabaye hagati ya Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie hamwe na Gahenda Bienvenue Alexis n'umugore we Danny Ngalula yashyizweho umukono na Noteri ku wa 07/06/2018. Iyo myanzuro igaragaza ko nyuma yo kuganira ku mibare y'amafaranga, basanze Gahenda Bienvenu Alexis n'umugore we Danny Ngalula bishyuza Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie 127.092.349 Frw, ko kandi bemeye ko bagomba kuyishyura yose uko angana. Ikindi bumvikanye muri iyo nama ni uko ayo 127.092.349 Frw haziyongeraho inyungu za

29.000.000 Frw zibarwa uhereye ku wa 10/03/2018 kuri 10% ku mwaka n'iza 98.092.349 Frw zibarwa uhereye ku wa 23/04/2018 kuri 10% ku mwaka, ariko ubwishyu bwaramuka bubonetse mu mezi abiri gusa hakishyurwa inyungu zingana na 45.000.000 Frw gusa. Bumvikanye na none ko ifu 1000 ziri muri *stock* zizagurishwa amafaranga avuyemo agaherwaho hishyurwa amafaranga yavuzwe haruguru.

[20] Hasesenguwe ibikubiye mu ngingo ya 95 y'Itegeko N°17/2018 ryo ku wa 13/04/2018 ryagengaga amasosiyete y'ubucuruzi mu igihe ikirego cyatangwaga, Urukiko rurasanga kugira ngo umunyamugabane wa sosiyete y'ubucuruzi aryozwe inshingano za sosiyete, ari ngombwa ko uwo munyamugabane aba yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete, ku buryo awufata nk'aho ari umutungo w'abantu ku giti cyabo.

[21] Urukiko rurasanga 127.092.349 Frw hamwe n'inyungu zayo, Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie bemeye kwishyura Gahenda Bienvenue Alexis n'umugore we Danny Ngalula nk'uko bikubiye mu myanzuro y'inama bakoranye yashyizweho umukono na Noteri ku wa 07/06/2018, akomoka ku masezerano y'ubufatanye bw'imirimo y'ubucuruzi yabaye ku wa 09/03/2018, hagati ya WIN WIN DEALS Ltd na MTQ AMIZERO Ltd kandi n'ababuranyi muri uru rubanza ntabwo babihakana. Bityo rero birumvikana ko mu nama bakoranye, Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie bari bahagarariye MTQ AMIZERO Ltd naho Gahenda Bienvenue Alexis n'umugore we Danny Ngalula bahagarariye WIN WIN Ltd.

[22] Urukiko rurasanga mu masezerano y'ubufatanye bw'imirimo y'ubucuruzi yabaye hagati ya WIN WIN Ltd na MTQ AMIZERO Ltd, Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie barasinye mu izina rya MTQ AMIZERO Ltd. Kuba rero abahagarariye WIN WIN Ltd batagaragaza ikimenyetso cyerekana ko Mudaheranwa Théogène na Nyiranzeyimana Valérie bakoresheje nabi imiterere y'iyo sosiyete bagamije uburiganya cyangwa kwica amategeko, kuba kandi batagaragaza ikindi kintu ubwishyu bwa 127.092.349 Frw bemeranyijweho mu nama bushingiyeho kitari amasezerano y'ubufatanye bw'imirimo y'ubucuruzi yabaye hagati ya WIN WIN Ltd na MTQ AMIZERO Ltd, birumvikana ko ibyo Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie bemeye mu nama bakoranye na Gahenda Bienvenu Alexis n'umugore we Danny Ngalula babikoze mu izina rya MTQ AMIZERO Ltd, bityo rero nta mpamvu ihari ituma bafatanya na MTQ AMAZERO Ltd kwishyura WIN WIN Ltd.

[23] Urukiko rurasanga ibyo abahagarariye WIN WIN Ltd bavuga ko Mudaheranwa Théogène na Nyiranzeyimana Valérie bagombaga kuregwa kubera ko bafite uruhare mu gihombo WIN WIN Ltd yagize kuko hari amafaranga bashyize kuri konti zabo aho kuyashyira kuri konti bumvikanyeho mu masezerano, nta shingiro bifite, kuko usibye ko batagaragaza ibimenyetso byerekana aho impande zombi zumvikanye kuri konti zigombaga gushyirwaho amafaranga n'abagombaga kuyashyiraho, nta nubwo muri uru rubanza haburanwa igihombo WIN WIN Ltd yagize.

[24] Ku birebana n'ingingo ya 136[1] n'iya 137[2] z'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, abahagarariye WIN WIN Ltd bashingiraho basaba ko Mudaheranwa Théogène na Nyiranzeyimana Valérie bafatanya na MTQ AMIZERO Ltd kwishyura umwenda babereyemo WIN WIN Ltd, Urukiko rurasanga izi ngingo z'amategeko ntaho ziteganya ko Abayobozi ba sosiyete cyangwa abanyamigabane bayo bafatanya nayo kwishyura umwenda, ahubwo zivuga ibijyanye n'indishyi zishobora gutegekwa n'inkiko mu rwego rwo kurengera inyungu n'indishyi zemewe. Bityo ibyo abahagarariye WIN WIN Ltd bavuga nta shingiro bigomba guhabwa.

[25] Ku byerekeye ibyo abahagarariye WIN WIN Ltd bavuga ko Mudaheranwa Théogène na Nyiranzeyimana Valérie bagomba gufatanya na MTQ AMIZERO Ltd kwishyura amafaranga baregwa kuko mu nyandiko yo ku wa 07/06/2018, bemeye ko bazishyura bakoresheje umutungo wabo, Urukiko rurasanga nta shingiro bigomba guhabwa, kuko, usibye ko no muri iyo myanzuro y'inama ntahagaragara ko bemeye kwishyura bakoresheje imitungo yabo, ahubwo ivuga ko abari mu nama bashakiye hamwe uburyo ubwo bwishyu bwaboneka bigatuma biyambaza umu *consultant* watanze inzira ibyiri zatuma ubwishyu buboka harimo kubashakira inguzanyo cyangwa kubashakira umukiriya wabagurira inzu kandi akaba ari nta nzira n'imwe yemejwe muri iyo nama, nta mpamvu ihari iteganywa n'ingingo ya 95 y'Itegeko N°17/2018 ryibukijwe haruguru yatuma Mudaheranwa Théogène na Nyiranzeyimana Valérie bafatanya na MTQ AMIZERO Ltd kwishyura umwenda ibereyemo WIN WIN Ltd cyane ko no muri iyo nama bigaragara ko bari bahagarariye MTQ AMIZERO Ltd.

[26] Hashingiwe ku bisobanuro byatanzwe haruguru, uru Rukiko rurasanga nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo rwemeza ko Mudaheranwa Théogène na Nyiranzeyimana Valérie batagombaga gukurikiranwa muri uru rubanza.

2. Kumenya niba WIN WIN Ltd yaragombaga gucibwa indishyi zo gushora Mudaheranwa Théogène na Nyiranzeyimana Valérie mu rubanza.

[27] Abahagarariye WIN WIN Ltd bavuga ko WIN WIN Ltd yahombejwe na Mudaheranwa Théogène na Nyiranzeyimana Valérie, ko nta ndishyi bari bakwiye, ko indishyi bagenewe mu rubanza rujuririrwa basaba ko zikurwaho. Basobanura ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko MTQ AMIZERO Ltd igomba kwishyura WIN WIN Ltd umwenda ungana na 127.092.349 Frw na 56.593.828 Frw n'inyungu zawo ariko runaca WIN WIN Ltd indishyi zo gushora Mudaheranwa Théogène n'umugore we mu rubanza nta mpamvu, basaba Urukiko rw'Ubujurire guhindura icyo cyemezo ku byerekeranye n'indishyi, kubera ko Mudaheranwa Théogène n'umugore we bari bakwiriye kuregwa hamwe na MTQ AMIZERO Ltd kugira ngo baryozwe uruhare bagize mu gihombo WIN WIN Ltd yagize.

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[1] Indishyi zishobora gutegekwa n'inkiko mu rwego rwo kurengera inyungu zirimo ibi bikurikira: 1° gutanga umubare w‟amafaranga ateganywa mu masezerano cyangwa indishyi; 2° gutegeka cyangwa kubuza gukora igikorwa runaka; 3° gutegeka gusubiza ikintu runaka kugira ngo hatabaho ukwikungahaza mu buryo budakwiye; 4° gutegeka gutanga umubare w‟amafaranga mu kwirinda ko habaho ukwikungahaza mu buryo budakwiye; 5° kugaragaza uburenganzira bw‟abagiranye amasezerano; 6° gushyira mu bikorwa icyemezo cy‟ubukemurampaka".

[2] Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n‟urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyaravuyeho.

[28] Abaregwa biregura kuri iyi mpamvu y'ubujurire bavuga ko nta mpamvu yari gutuma WIN WIN Ltd idategekwa gutanga amafaranga y'ibyakoreshejwe mu rubanza kuko yari yatsinzwe urubanza kandi uwatsinzwe mu rubanza aryozwa ibyo uwamutsinze yatakaje mu gukurikirana urubanza hashingiwe kubiteganywa n'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, ko rero nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rutegeka WIN WIN Ltd kwishyura amafaranga yo kuba yarashoye Mudaheranwa Théogène na Nyiranzeyimana Valérie mu manza z'amaherere.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 12, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru iteganya ibikurikira: "*Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda*".

[30] Nk'uko bigaragara mu gika cya 12 kugeza mu gika cya 14 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye impamvu Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie batagombaga gukurikiranwa hamwe na sosiyete MTQ AMIZERO Ltd bahagariye, kuba rero rwarabageneye amafaranga yo gushorwa mu manza, Urukiko rurasanga nta kosa rwakoze; bityo ibivugwa n'abahagarariye WIN WIN Ltd ko nta ndishyi bari bakwiye, nta shingiro bifite kuko uwatsinze urubanza aba agomba guhabwa ibyo yatakaje muri urwo rubanza.

[31] Urukiko rurasanga, nk'uko byagaragajwe haruguru, nta mpamvu ihari ituma Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie bafatanya na MTQ AMIZERO Ltd kwishyura umwenda ibereyemo WIN WIN Ltd, bityo amafaranga yo gushorwa mu manza bagenewe n'Urukiko Rukuru rw'Ubucuruzi, agumyeho.

B. UBUJURIRE BWURIRIYE KU BUNDI

1. Gusuzuma niba mbere yo gusesa amasezerano impande zombi zagiranye hari kubanza gukorwa igenzura (*audit*)

[32] Abaregwa bashingira ku ngingo ya 152 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, iteganya ko **"**Uregwa mu rukiko rujuririrwa ashobora na we kugira ibyo asaba yiregura. Ubujurire bwuririye ku bundi bukorwa n'uwarezwe mu bujurire bwerekeye ku wajuriye cyangwa ku bandi barezwe mu bujurire… ». Bavuga ko mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi, MTQ AMIZERO Ltd yasabye ko mbere yo gusesa amasezerano y'imikoranire yo ku wa 09/03/2021, yagiranye na WIN WIN Ltd, akagezwa imbere ya Noteri ku wa 01/06/2021, hagombaga kubanza gukorwa audit kugira ngo hamenyekane ko koko ibivugwa n'impande zombi ari ukuri, ko amafaranga WIN WIN Ltd ivuga ko yinjije ari yo, hamenyekane ibijyanye n'imisoro muri icyo gihe ndetse hanamenyekane mu buryo bw'imibare ya kinyamwuga amafaranga yinjiye ashobora kugabanwa n'impande zombi, n'igihombo bagabana ndetse n'uwagiteje, ko kandi byagombaga kwemezwa n'umuhanga wagombaga gukora audit, ariko izo nkiko zombi ntizabiha ishingiro.

[33] Bakomeza bavuga ko rupapuro rwa 5 rw'urubanza rwaciwe n'Urukiko rw'Ubucuruzi, Urukiko rwemeje ko *audit* itari ngombwa ngo kuko impande zombi zahuye zikemeza uburyo bwo gukemura ikibazo mu bwumvikane, ko ibyo byaje no gushimangirwa n'urubanza RCOMA 00240/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, mu gika cya 8 n'icya 9, ko kuba izo nkiko zombi zaremeje ko *audit* itari ngombwa, zishingiye ku nyandiko yakozwe n'impande zombi ku wa 07/06/2018, bikwiye gukosorwa n'Urukiko rw'Ubujurire kubera ko gusesa amasezerano y'imikoranire ya za sosiyete z'ubucuruzi bidashobora gukorwa hatabanje gukorwa *audit* igaragaza ibyakozwe.

[34] Abahagarariye WIN WIN Ltd biregura bavuga ko ikibazo kijyanye na *audit* cyagiweho impaka zihagije mu nkiko zombi zabanjirije uru, ko inkiko zombi zemeje ko *audit* atari ngombwa, ko rero nta kindi barenza ku byemejwe n'izo nkiko zombi kuko zashingiye ku mategeko.

UKO URUKIKO RUBIBONA

[35] Nk'uko ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryibukijwe haruguru ibiteganya amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye.

[36] Urukiko rurasanga impande zombi zihagarariwe n'abayobozi bazo zarakoranye inama zemeranywa ku mubare w'amafaranga MTQ AMIZERO Ltd igomba kwishyura WIN WIN Ltd ndetse n'inyungu zayo, babikorera inyandikomvugo yashyizweho umukono na Noteri ku wa 07/06/2018. Birumvikana rero ko nta mpamvu yari ihari yo gukora igenzura *(audit)* kuko icyo iryo genzura ryari kugaragaza cyumvikanyweho n'impande zombi mu nama zagiranye, bityo nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo kwemeza ko igenzura ritari ngombwa, cyane cyane ko ntaho ryari riteganijwe.

2.Gusuzuma niba Urukiko rwatesha agaciro ibikubiye mu nyandiko yo ku wa 07/06/2018.

[37] Abaregwa bashingiye ku ngingo ya 47 y'itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko "Iyo ukwibeshya k'uruhande rumwe mu gihe cy'ikorwa ry'amasezerano ku byerekeye icyo amasezerano yagombye kuba ashingiyeho cy'ingenzi mu gihe yakorwaga, bifite inkurikizi zimubangamiye, ku bijyanye n"ishyirwa mu bikorwa ry"ibyumvikanweho, uruhande rubangamiwe rushobora gusaba gutesha agaciro amasezerano iyo: 1° inkurikizi zo kwibeshya zituma gushyira mu bikorwa amasezerano byamubera umutwaro uremereye; 2° urundi ruhande bagiranye amasezerano rufite uruhare mu gutuma habaho kwibeshya.", bavuga ko basaba Urukiko gutesha agaciro amasezerano yo ku wa 07/06/2018 kuko habayemo kwibeshya.

[38] Bavuga kandi ko basaba Urukiko rw'Ubujurire gutesha agaciro ayo amasezerano kuko Gahenda Bienvenu n'umugore we Ngalula Danny bihereranye Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie bakabasinyisha inyandiko izagorana gushyirwa mu bikorwa, kuko babashyizeho inyungu z'umurengera ku buryo kuzishyura batazabishobora, ko bitumvikana uburyo mu mezi atagera kuri atatu (3) gusa bakoranye, basabwa kwishyura inyungu zingana na 45.000.000 Frw ziyongeraho na 10%.

[39] Bavuga kandi ko basaba Urukiko guhuza ibikubiye mu masezerano n'imyanzuro y'inama, ko bibaza ukuntu hakwinjira 127.092.349 Frw ariko ntagaragare aho yinjiriye kandi nyuma y'amezi 3 gusa bakavuga ayo mafaranga yose yahombye kandi nta kigaragaza ko yinjiye, ko

bitumvikana ukuntu mu mezi 3 gusa bakoranye bategekwa kwishyura 127.092.349 Frw kandi agategekwa uruhande rumwe, bikagera naho Gahenda Bienvenu avuga ko azashaka umu *consultant* wo kugurisha imitungo bwite ya Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie, ko ari yo mpamvu basaba ko iyo nyandiko iteshwa agaciro.

[40] Basoza bavuga ko ibivugwa n'abahagarariye WIN WIN Ltd ko iki ari ikirego gishya nta shingiro bigomba guhabwa kuko amasezerano yo ku wa 07/06/2018 yagiye avugwaho kenshi mu manza zabanje, akaba atari ikirego gishya, ko kandi ukwikiranura kuvugwa kugaragaramo uburiganya bwinshi, kukaba kutagomba guhabwa agaciro.

[41] Abahagarariye WIN WIN Ltd bashingiye ku ngingo ya 154 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, bavuga ko ibijyanye no kumenya niba amasezerano yo ku wa 07/06/2018 yateshwa agaciro bidakwiye gusuzumwa n'uru Rukiko, kubera ko ari ikirego gishya gitanzwe ku rwego rw'ubujurire.

[42] Bavuga kandi ko abaregwa bavugisha ingingo ya 47 y'itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ibyo itavuga, ko itavuga ko uwasinye amasezerano asinyira ibyo bumvikanyeho nta gahato, yemerewe kwisubiraho avuga ko yabitewe no kwibeshya. Ko ukwibeshya kuvugwa muri iyo ngingo ya 47 ari ukwibeshya ku kintu cy'ingenzi cyatumye haba amasezerano, kandi uwayasinye akaba atarashoboraga na gato kumenya ukuri kuri icyo kintu hakoreshejwe ubushishozi rusange, ko kandi nta kintu na kimwe mu by'ingenzi (*erreur substantielle*) cyasinyiwe na MTQ Ltd n'abayobozi bayo kubera ku cyibeshyaho ku buryo budasubirwaho (*erreur invincible*), kuko Mudaheranwa Théogène n'umugore we bari abacuruzi basobanukiwe ibyo bakoraga.

UKO URUKIKO RUBIBONA

[43] Ingingo ya 154 y'itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, iteganya ibikurikira : "Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire".

[44] Urukiko rurasanga mu myiregurire ya Mudaheranwa Théogène n'umugore we Nyiranzeyimana Valérie na MTQ AMIZERO Ltd mu nkiko zabanje batarigeze basaba ko inyandiko yo ku wa 07/06/2018 iteshwa agaciro, bivuze ko ikirego kijyanye no gusaba uru Rukiko gutesha agaciro ibikubiye mu nyandiko yo ku wa 07/06/2018 gitanzwe bwa mbere mu Rukiko rw'Ubujurire. Hashingiwe ku ngingo ya 154 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, iteganya ko mu rwego rw'ubujurire hadashobora gutangwa ikirego gishya, rurasanga ikirego gisaba gutesha agaciro inyandiko yo ku wa 07/06/2018 kitagomba kwakirwa kuko gitanzwe bwa mbere ku rwego rw'ubujurire.

3. Kumenya niba amafaranga y'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro

[45] Abaregwa bashingiye ku ngingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, basaba Urukiko rw'Ubujurire kugenera Mudaheranwa Théogène, MTQ

AMIZERO Ltd na Nyiranzeyimana Valérie 3.000.000 Frw y'igihembo cya Avoka kuko buri wese yiyishyuriye 1.000.000 Frw.

[46] Abahagarariye WIN WIN Ltd biregura kuri aya mafaranga y'igihembo cya Avoka bavuga ko nta shingiro afite ngo kuko iyo abaregwa bishyura nta manza zari kubaho.

UKO URUKIKO RUBIBONA

[47] Ingingo ya 111 y'Itegeko N° 22/2016 ryo ku wa 28/04/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, 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".*

[48] Urukiko rurasanga amafaranga y'igihembo cya Avoka MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranzeyimana Valérie basaba bakwiye kuyahabwa, kuko byabaye ngombwa ko bashaka Avoka wo kubaburanira, ariko ayo basaba ni menshi kandi nta bimenyetso bayatangira, bityo mu bushishozi bw'Urukiko rubageneye bose hamwe 500.000 Frw y'igehembo cya Avoka, agomba gutangwa na WIN WIN Ltd.

III. ICYEMEZO CY'URUKIKO

[49] Rwemeje ko ubujurire bwa WIN WIN Ltd nta shingiro bufite;

[50] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na MTQ AMIZERO Ltd, Mudaheranwa Théogène na Nyiranzeyimana Valérie bufite ishingiro kubijyanye n'amafaranga y'igembo cya Avoka gusa;

[51] Rwemeje ko imikirize y'urubanza RCOMA 00240/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 04/10/2019, idahindutse.

[52] Rutegetse WIN WIN Ltd kwishyura MTQ AMIZERO Ltd, Mudaheranwa

[53] Théogène na Nyiranzeyimana Valérie bose hamwe 500.000 Frw y'igihembo cya Avoka, kuri uru rwego

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