

NYIRANJANGWE v. BPR Ltd N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA0019/15/CS (Hatangimbabazi, P.J., Gakwaya na Mukamulisa, J.) 13 Mata 2018]

Ingwate – Gutesha agaciro cyamunara – Kuba Umuhesha w'Inkiko yarateje cyamunara ingwate ashingiyeye ku igenagaciro ryateshejwe agaciro n'Urwego rw'abagenagaciro, ni impamvu ituma cyamunara yakozwe iteshwa agaciro – Itegeko N°17/2010 ryo ku wa 12/5/2010 rishyiraho kandi rikagena imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa mu Rwanda, ingingo ya 36

Incamake y'ikibazo: Nyiranjagwe yagiranye amasezerano y'inguzanyo na Banki y'abaturage y'u Rwanda (BPR Ltd) maze bemeranya ko natubahiriza amasezerano hazabaho kugurisha inzu yatanzeho ingwate nta manza zibayeho. Nyiranjagwe ntiyubahirije ayo masezerano maze Umwanditsi Mukuru muri RDB atanga icyemezo cyo kugurisha iyo ngwate.

Nyiranjagwe yatanze ikirego cyatanzwe n'umuburanyi umwe mu Rukiko rw'Ubucuruzi rwa Huye asaba guhagarika cyamunara y'inzu ye kuko igenagaciro iyi cyamunara ishingiyeho inyuranyije n'amahame asanzwe akurikizwa mu igenagaciro ku mutungo utimukanwa, urwo Rukiko rwemeza ko ikirego cyo nta shingiro gifite.

Nyiranjagwe yongeye atanga ikirego muri urwo rukiko arega Umuhesha w'Inkiko w'umwuga hamwe na BPR Ltd, avuga ko cyamunara yakozwe mu buryo bunyuranyije n'amategeko kuko inzu yatejwe cyamunara ku gaciro kari muni y'agaciro nyako, akaba asaba urukiko ko rwasesa iyo cyamunara, urukiko rwaciye urubanza rwemeza ko iyo cyamunara isheshwe ndetse ko n'amasezerano yose ayishingiyeho asheshwe.

Umuhesha w'inkikow'umwuga na BPR Ltd ntibishimiye icyemezo cy'Urukiko bajuririra Urukiko Rukuru rw'Ubucuruzi ndetse B.E.S &Supply Ltd yagobotse ku bushake nk'uwaguze iyo inzu maze uru Rukiko rwemeza ko iyo cyamunara igumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko.

Nyiranjagwe yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rw'Ubucuruzi rudasuzumye impamvu nyamukuru yashingiweho asaba iseswa ry'amasezerano, muri urwo rukiko. Umuhesha w'inkiko, BPR Ltd na B.E.S&Supply Ltd batanze inzitizi yo kutakira ubujurire hashingiwe ku gaciro k'ikiburanwa bavuga ko katangana na 50.000.000Frw ateganywa n'itegeko; urukiko rwanzuye ko mbere yo gufata icyemezo hagomba kubanza gushyirwaho umugenagaciro kugirango agene agaciro k'iyo nzu, uru Rukiko rwemeza ko iyo nzitizi nta shingiro ifite BPR Ltd yaongeye itanga indi nzitizi ivuga ko ubujurire bwa Nyiranjagwe budakwiye kwakirwa kuko ibyo aburanisha byaburanishijwe mu rundi rubanza rwabaye itegeko, nanone Urukiko rwemeza ko iyo nzitizi nta shingiro ifite.

Nyiranjagwe asobanura ko Urukiko Rukuru rw'Ubucuruzi rwanze gusuzuma mpamvu nyamukuru yashingiweho yuko cyamunara yakozwe ku nzu ye yashingiyeye ku igenagaciro (expertise) ryari ryateshejwe agaciro n'urwego rw'abagenagaciro maze ibyo bikaba byaratumye inzu ye igurishwa ku giciro gito cyane ugereranije n'agaciro yari ifite, kubwiyo akaba asaba ko cyamunara iseswa, akomeza asaba indishyi zitandukanye.

Umuhesha w'inkiko, BPR Ltd na B.E.S & Supply Ltd bo bireguye bavuga iyi mpamvu y'ubujurire bwa Nyiranjagwe nta shingiro yahabwa kuko mu rubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwagiye rubisobanura ndetse ko n'indishyi asaba atazihabwa kuko atagaragaza uwo azisaba n'impamvu yazo ahubwo nibo bazigenerwa.

Incamake y'icyemezo: 1. Kuba Umuhesha w'Inkiko yarateje cyamunara ingwate ashingiye ku igenagaciro ryateshejwe agaciro n'Urwego rw'abagenagaciro, ni impamvu ituma cyamunara yakozwe iteshwa agaciro kuko iba yakozwe mu buryo bunyuranije n'amategeko.

2. Indishyi, z'akababaro, amafaranga y'ikurikiranarubanza n'ay'igihembo cya avoka agenwe mu bushishozi bw'urukiko kuko uwayasabye atagaragaje uko yabazwe.

**Ubujurire bufite ishingiro.
Amagarama y'urubanza aherereye kubarezwe.**

Amategeko yashingiweho:

Itegeko N°21/2012 ryo ku wa 14/6/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 208 n'iya 267
Itegeko N°17/2010 ryo ku wa 12/5/2010 rishyiraho kandi rikagena imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa mu Rwanda, ingingo ya 36
Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 19 n'iya 24
Itegeko-Teka ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyiranjagwe Zura yagiranye na Banki y'Abaturage y'u Rwanda (BPR Ltd) amasezerano y'inguzanyo, atanga ingwate y'inzu, bemeranya ko natubahiriza amasezerano ingwate izagurishwa hatabayeho imanza. Nyiranjagwe Zura ntabwo yubahirije ayo masezerano, maze ku wa 27/1/2014, Umwanditsi Mukuru muri Rwanda Development Board (RDB) atanga icyemezo cyo kugurisha mu cyamunara inzu ya Nyiranjagwe Zura iherereye mu Ntara y'Amajyepfo, Akarere ka Nyanza, Umurenge wa Busasamana, Akagari ka Gahondo, yemeza ko uzagurisha iyo ngwate ari Ruganda Cryspin, kandi ko imirimo ye ijyanye no kuyigurisha izarangira ku wa 24/4/2014.

[2] Ku wa 5/3/2014, Nyiranjagwe Zura yaregeye Urukiko rw'Ubucuruzi rwa Huye, atanze ikibazo gitanzwe n'umuburanyi umwe asaba guhagarika cyamunara y'inzu ye kuko amabwiriza y'iyi cyamunara anyuranyije n'icyemezo cya Rwanda Development Board (RDB) kiyishyiraho. Ku wa 7/3/2014, urwo Rukiko rwaciye urubanza RCOM0084/14/TC/HYE, rwemeza ko icyo kirego nta shingiro gifite.

[3] Nyiranjangwe Zura yatanze ikindi kirego mu Rukiko rw'Ubucuruzi rwa Huye, arega Umuhesha w'Inkiko w'Umwuga Ruganda Cryspin hamwe na BPR Ltd avuga ko bateje cyamunara ingwate yahaye iyi Banki mu buryo butubahirije amategeko kuko bayihaye kandi bayigurisha ku gaciro kari muni y'agaciro nyako, asaba ko iyo cyamunara iseswa. Ku wa 7/11/2014, urwo Rukiko rwaciye urubanza RCOM0166/14/TC/HYE, rwemeza ko cyamunara y'inzu ya Nyiranjangwe Zura yabaye ku wa 24/3/2014 isheshwe, runemeza ko amasezerano yose ashingiye kuri iyo cyamunara asheshwe.

[4] Ruganda Cryspin na BPR Ltd ntibanyuzwe n'icyo cyemezo cy'Urukiko rw'Ubucuruzi rwa Huye, bajuririra mu Rukiko Rukuru rw'Ubucuruzi. B.E.S. & Supply Ltd yagobotse ku bushake nk'uwaguze ingwate ivugwa muri uru rubanza. Ku wa 13/2/2015, urwo Rukiko rwaciye urubanza RCOMA0606/14/HCC – RCOMA0608/14/HCC, rwemeza ko igurishwa ry'ingwate ivugwa muri uru rubanza ryakozwe mu buryo bukurikije amategeko, ko rihamana agaciro karyo.

[5] Nyiranjangwe Zura ntiyishimiye imikirize y'urwo rubanza, ajuririra mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rw'Ubucuruzi rutasuzumye impamvu nyamukuru yashingiyeho asaba iseswa ry'amasezerano ya cyamunara y'inzu ye yabaye ku wa 24/3/2014.

[6] Me Ntwali Justin, aburanira BPR Ltd, Me Murutasibe Joseph, aburanira B.E.S. & Supply Ltd na Me Nkundabatware Bigimba Félix, aburanira Ruganda Cryspin, batanze inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga hashingiwe ku ngingo ya 28, igika cya 4 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko kugirango ubujurire bwa kabiri bwakirwe, ikiburanwa kigomba kuba gifite agaciro kangana nibura na 50.000.000Frw, ariko muri uru rubanza inzu yatejwe cyamunara ikaba idafite agaciro kangana nibura na 50.000.000Frw. Basobanura ko iyo nzu yahawe agaciro ka 42.000.000Frw nk'uko bigaragara kuri *expertise* yakoreshejwe hatezwa cyamunara, ari nayo yemewe na RDB, bityo kuba agaciro k'ikiburanwa katangana nibura na 50.000.000Frw, ubujurire bwa Nyiranjangwe Zura bukaba butari mu bubasha bw'Urukiko rw'Ikirenga.

[7] Ku wa 24/2/2017, uru Rukiko rwasanze mbere yo gufata icyemezo kuri iyo nzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yatanze na BPR Ltd, ari ngombwa ko hashyirwaho umugenagaciro kugira ngo agene agaciro inzu iburanwa muri uru rubanza ifite ubu, ruvuga ko iburanisha risubitswe, rikazafungurwa ku wa 15/3/2017 kugira ngo ababuranyi Nyiranjangwe Zura, BPR Ltd na B.E.S. & Supply Ltd bamenyeshe Urukiko umugenagaciro bazaba bemeranyijweho, mu gihe batamwumvikanaho akazashyirwaho n'Urukiko.

[8] Ku wa 15/3/2017, urubanza ntirwaburanishijwe kuko umwe mu bacamanza bagize inteko yari mu butumwa bw'akazi hanze y'igihugu, rwimurirwa ku wa 16/5/2017. Ku wa 20/4/2017, Urukiko rw'Ikirenga rwandikiye ababuranyi, rubamenyesha ko urubanza rwabo ruzaburanishwa ku wa 2/5/2017 aho kuba ku wa 16/5/2017.

[9] Ku wa 2/5/2017, Urukiko rw'Ikirenga rwemeje Ir. Nkabije Alphonse Marie nk'umugenagaciro muri uru rubanza, rumusaba gutanga raporo ye bitarenze ku wa 22/5/2017, runasaba ababuranyi bafite icyo kuyivugaho kubikora bitarenze ku wa 30/5/2017, iburanisha rikazasubukurwa ku wa 27/6/2017. Kuri uwo muni urubanza ntirwaburanishijwe kubera ko umwe mu bacamanza bagize inteko yari mu butumwa bw'akazi hanze y'igihugu, rwimurirwa ku wa 18/7/2017, ariko ku wa 29/6/2017, Urukiko rw'Ikirenga rumenyesha ababuranyi ko urubanza

ruzaburanishwa ku wa 25/7/2017 aho kuba ku wa 18/7/2017 nk'uko byari byemejwe mu iburanisha ryo ku wa 27/6/2017.

[10] Urubanza rwaburanishijwe mu ruhamwe ku wa 25/7/2017, Nyiranjangwe Zura yunganirwa na Me Kabasenga Berthilde na Me Mugabo Pio, BPR Ltd ihagarariwe na Me Ntwali Justin, Ruganda Crispin ahagarariwe na Me Nkundabatware Bigimba Félix, naho B.E.S. & Supply Ltd ihagarariwe na Me Kiloha Olivier. Kuri iyo tariki, Urukiko rwumvise icyo ababuranyi bavuga kuri raporo y'umugenagaciro Ir. Nkabije Alphonse Marie, igaragaza ko agaciro k'inzu iburanwa kangana na 79.250.670Frw.

[11] Ku wa 22/9/2017, Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko inzitizi yatanze na BPR Ltd y'iburabubasha ry'Urukiko rw'Ikirenga rishingiye ku kuba ikiburanwa kitagejeje ku gaciro ka 50.000.000Frw, nta shingiro ifite, ko ubujurire bwa Nyiranjangwe Zura buri mu bubasha bw'Urukiko rw'Ikirenga.

[12] Nyuma y'icyo cyemezo, Me Ntwali Justin, uburanira BPR Ltd, yatanze indi nzitizi yo kutakira ubujurire bwa Nyiranjangwe Zura, avuga ko iyo nzitizi ishingiyeye ku ngingo ya 142 y'Itegeko N°21/2012 ryo ku wa 14/6/2012, ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ngo kubera ko impamvu ye y'ubujurire irebana n'igena gaciro k'inzu ye, kandi hari urundi rubanza rufite RCOM 0084/14/TC/HYE, rwasuzumye ibijyanye n'iryo genagaciro (expertise) riregerwa, rukaba rwarabaye itegeko.

[13] Ku wa 29/12/2017, Urukiko rw'Ikirenga rwaciye urubanza rubanziriza urundi, rwemeza ko inzitizi yatanze na BPR Ltd yo kutakira ubujurire bwa Nyiranjangwe Zura kuko ibyo ajuririra byaburanishijwe mu rundi rubanza rwabaye itegeko, nta shingiro ifite, ko ubujurire bwe bwakiriwe kandi ko iburanisha ry'urubanza rizakomeza ku wa 20/2/2018.

[14] Kuri iyo tariki, urubanza rwaburanishijwe mu ruhamwe mu mizi, Nyiranjangwe Zura yunganirwa na Me Kabasenga Berthilde na Me Mugabo Pio, BPR Ltd ihagarariwe na Me Ntwali Justin, Ruganda Crispin ahagarariwe na Me Ndagijimana Ignace, naho B.E.S. & Supply Ltd ihagarariwe na Me Busogi Emmanuel.

II. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA

a. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwanze gusuzuma impamvu nyamukuru y'ubujurire bwa Nyiranjangwe Zura yo gutesha agaciro cyamunara yabaye ku inzu ye

[15] Nyiranjangwe Zura avuga ko Urukiko Rukuru rw'Ubucuruzi rwanze gusuzuma impamvu nyamukuru yashingiyeho asaba ko cyamunara yaseswa ngo kandi iyo mpamvu ari nayo Urukiko rw'Ubucuruzi rwa Huye rwahereyeho rwemeza ko ikirego cyeye gifite ishingiro maze bigatuma cyamunara iseswa.

[16] Nyiranjangwe Zura asobanura ko yasabye ko cyamunara yateshwa agaciro kuko yashingiye kuri *expertise* yateshejwe agaciro, bituma inzu ye igurwa ku giciro gito. Akomeza asobanura ko iyi mpamvu nta na hamwe igaragara mu rubanza rwajuririwe. Asobanura kandi ko

kuba Urukiko Rukuru rw'Ubucuruzi rwaranze kuyisuzuma kandi ari yo ngingo aburanisha byafatwa nka *absence de motivation* muri uru rubanza, akaba rero asanga urubanza rujuririrwa rukwiye kuvanwaho, hakagumaho imikirize y'urubanza RCOM0166/14/TC/HYE rwaciwe n'Urukiko rw'Ubucuruzi rwa Huye ku wa 18/6/2014.

[17] Nyiranjangwe Zura avuga kandi ko ingingo ya 8 y'Amabwiriza y'Umwanditsi Mukuru N°03/2010/ORG yo ku wa 16/11/2010 agenga ibyerekeye gukodesha, kugurisha muri cyamunara ndetse no kwegukana ingwate, Urukiko Rukuru rw'Ubucuruzi rwashingiyeho, itemera ko hashingirwa ku igenagaciro ryateshejwe agaciro, ko ibikubiye muri iyo ngingo bireba igenagaciro rifite.

[18] Me Kabasenga Berthilde na Me Mugabo Pio bavuga ko ingingo nyamukuru uwo bunganira Nyiranjangwe Zura yari yaburanishije ku rwego rwa mbere ari uko yari yasabye gusesa cyamunara kubera ko inzu ye yari yagurishijwe ku gaciro gato cyane, kuko bayihaye agaciro ka miliyoni mirongo itandatu n'umunani (68) ariko igurishwa ku giciro kingana na miliyoni cumi n'umunani (18) gusa, uwayiguze nawe ahita ayishyira ku isoko ayigurisha miliyoni mirongo itatu n'esheshatu (36), bikaba bigaragaza uburyo Umuhesha w'Inkiko yayigurishije ku giciro gito bikabije. Bavuga kandi ko ingingo ya 36 y'Itegeko N° 17/05/2010 ryo ku wa 12/5/2010 ryavuzwe haruguru, abo baburana bayivuga igice kuko ikomeza ivuga ko iyo hatabayeho kumvikana, baregera urwego rubifitiye ububasha, ariyo mpamvu bavuga ko Umuhesha w'Inkiko adapfa kugurisha uko yishakiye. Bavuga ko ikindi kigaragaza ko Umuhesha w'Inkiko yari agambiriye gutesha agaciro inzu ya Nyiranjangwe Zura ari uko yayigurishije avuga ko inzu yubatswe mu matafari ya rukarakara kandi yubakishije amatafari ahiye, ibyo yakoze bikaba byerekana ko atabikoze mu rwego rw'umwuga.

[19] Me Ntwali Justin, uhagarariye BPR Ltd, avuga ko iyi mpamvu y'ubujurire nta shingiro ifite kuko Urukiko Rukuru rw'Ubucuruzi rwasuzumye impamvu z'ubujurire bwa BPR Ltd na Ruganda Crispin, ko Urukiko rutari gusuzuma impamvu ze, mu gihe atajuriye. Akomeza asobanura ko kuvuga ko hari *absence de motivation* atari ko biri kuko kuva ku gace ka kane kugeza ku ka karindwi k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwabisobanuye, hanasuzumwa ukugoboka ku bushake kwa B.E.S Supply Ltd.

[20] Me Nkundabatware Bigimba Félix, uhagarariye Ruganda Crispin, avuga ko iyi mpamvu y'ubujurire nta shingiro ifite kuko Urukiko Rukuru rw'Ubucuruzi rwasobanuye neza impamvu yafashe icyemezo cye.

[21] Mu myanzuro ye, Me Murutasibe Joseph, uhagarariye B.E.S & Supply Ltd, avuga nawe ko iyi mpamvu y'ubujurire nta shingiro ifite kuko ku gace ka kane kugeza ku ka karindwi k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwabisobanuye neza, runagaragaza n'ingingo z'amategeko rwashingiyeho.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 36 y'Itegeko N°17/2010 ryo ku wa 12/5/2010 rishyiraho kandi rikagena imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa mu Rwanda iteganya ko "Mu gihe habaye kutemeranya ku igenagaciro ry'umutungo utimukanwa, ukeka ko yarenganye ashyikiriza ikirego cye Urwego. icyo gihe Urwego rushyiraho abandi bagenagaciro bemewe bagakoresha

uburyo bushya bw'igenagaciro. Iyo impaka zidakemutse, ikirego gishyikirizwa urukiko rubifitiye ububasha”.

[23] Ingingo ya 19, igika cya mbere y'Itegeko N°10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko “ Ucuanga ingwate afite inshingano yo kugurisha ingwate ku giciro gikwiye kiri ku isoko, amaze kubimenyesha impande zombi”.

[24] Ingingo ya 267, igika cya mbere, y'Itegeko N° 21/2012 ryo ku wa 14/6/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko “ Iyo bigaragaye ko ibintu byafatiriwe biramutse bigurishijwe byahabwa igiciro gikabije kuba muni y'agaciro nyakuri, Umuhesha w'Inkiko, abisabwe n'uwafatiriye cyangwa urimo umwenda, ashobora gusaba ko cyamunara ishyingirwa ku wundi muni”. Naho igika cya kabiri cy'iyi ngingo giteganya ko “ Muri icyo gihe, Umukozi ushinze guteza cyamunara agena undi muni bizagurishirizwaho, udashobora kurenga iminsi cumi n'itanu (15) kandi agakora ibyangombwa byose kugira ngo hatagira umuburanyi urengana”.

[25] Nk'uko bigaragara mu bice bya 7, 8, 9 na 10 by'urubanza RCOM0166/14/TC/HYE rwaciye mu rwego rwa mbere n'Urukiko rw'Ubucuruzi rwa Huye ku wa 18/6/2014, Nyiranjangwe Zura yatanze ikirego, asaba ko cyamunara yabaye ku nzu ye ku wa 24/3/2014 yaseswa kuko yakozwe hashingiwe ku igenagaciro ryo ku wa 29/9/2013 ryateshejwe agaciro n'Urugaga rw'abagenagaciro, bikamenyeshwa RDB, BPR Ltd n'Umuhesha w'inkiko, Ruganda Crispin, nk'uko bishimangirwa n'ibaruwa y'Umuyobozi w'Urugaga rw'abagenagaciro yo ku wa 20/3/2014. Urwo Rukiko rwemeje ko cyamunara y'inzu ya Nyiranjangwe Zura yabaye ku wa 24/3/2014 isheshwe, rusobanura ko, nk'uko bigaragara ku gace ka 28 k'urubanza rwarwo, kuba Umuhesha w'Inkiko yaramenyeshwe ko igenagaciro ashaka gushingiraho ateza cyamunara ryateshejwe agaciro n'urwego rubifitiye ububasha, akarenga akayishingiraho, ayo masezerano ya cyamunara yakorewe ku cyemezo cyangwa inyandiko byateshejwe agaciro nta shingiro afite kuko yakozwe mu buryo butemewe.

[26] Nk'uko bigaragara mu myanzuro, B.P.R. Ltd yajuriye mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rw'Ubucuruzi rutahaye agaciro inzitizi yo kutakira ikirego cya Nyiranjangwe Zura kuko ikiburanwa muri uru rubanza cyaburanywe no mu rubanza RCOM0084/14/TC/HYE rwabaye ndakuka, ko rwemeje ko nyuma ya cyamunara aribwo Nyiranjangwe Zura yamenye *expertise* ya kabiri yemeza ko inzu ye ifite agaciro ka 42.000.000Frw, kandi iyo *expertise* yaraburanywe mu rubanza RCOM0084/14/TC/HYE, ko hashingiwe ku ngingo ya 19, igika cya kabiri, y'Itegeko N°10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa no ku ngingo ya 208 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, rutari kwemeza ko Nyiranjangwe Zura yari afite uburenganzira bwo kuregera urukiko, asaba gutesha agaciro cyamunara kuko nubwo yari afite ubwo burenganzira, bidakuraho ko cyamunara yakozwe mu buryo bukurikije amategeko kandi impaka zivugwa mu ngingo ya 208 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, ntaho zihuriye n'ikibazo cy'igenagaciro. B.P.R. Ltd yajuriye kandi ivuga ko Urukiko rw'Ubucuruzi rwageneye Nyiranjangwe Zura indishyi, kandi atarazigaragarije ibimenyetso.

[27] Dosiye y'urubanza igaragaza ko Ruganda Cryspin nawe yajuririye urubanza RCOM0166/14/TC/HYE, avuga ko Urukiko rw'Ubucuruzi rutagombaga kwemeza ko inzitizi yo kutakira ikirego cya Nyiranjangwe Zura nta shingiro ifite kuko atariwe wagombaga kuregwa, ko Urukiko rw'Ubucuruzi rwirengagije amategeko, rukitirira ingingo z'amategeko icyo zidateganya, ndetse ko rwivugurujye ku birebana no kumenya niba amabwiriza yarubahirijwe.

[28] Mu rubanza rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo bitatu birebana no kumenya niba inzitizi yatanzwe na Ruganda Cryspin yo kutakira ikirego cya Nyiranjangwe Zura kuko atariwe wagombaga kuregwa, kumenya niba Ruganda Cryspin yaba yaratesheje agaciro inzu ya Nyiranjangwe Zura mu gihe cya cyamunara no kumenya niba ikirego cya Nyiranjangwe Zura kitaragombaga kwakirwa kuko cyari cyaburanwe mu rubanza RCOM0084/14/TC/HYE.

[29] Nk'uko bigaragara mu bice bya 4, 5, 6 na 7 by'urubanza rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko hashingiwe ku ngingo ya 8, 11 na 12 z'amabwiriza N°03/2010/ORG yo ku wa 16/11/2010 y'Umwanditsi Mukuru agenga ibyerekeye gukodesha, kugurisha muri cyamunara ndetse no kwegukana ingwate, ushinzwe kugurisha ingwate ariwe ufite inshingano zo gukoresha igenagaciro ry'umutungo watanzweho ingwate, akaba ariwe urishyikiriza Umwanditsi Mukuru kugirango abe ariwe uryemeza mu mabwiriza y'icyamunara, bivuze ko igenagaciro nyiri ugutanga ingwate aba yakoreshereje nta bubasha bw'itegeko ryagira kabone niyo ryaba ryarakozwe n'inzobere zabiherewe ububasha. Rwasobanuye kandi ko kuba Nyiranjangwe Zura atarerekanye ikimenyetso kidashidikanwaho cy'uko inzu ye yagurishijwe ku giciro gihabanye kure n'ibiciro biri ku isoko, icy'uko habonetse mu cyamunara umuguzi washoboraga gutanga ikiguzi kirenze icyo iyo ngwate yagurishijweho, n'icy'uko ku kagambane ka Ruganda Cryspin na B.P.R. Ltd iyo ngwate yagurishijwe ku giciro gito, Ruganda Cryspin na B.P.R. Ltd badashobora gukurikiranwaho gutesha agaciro ingwate yatanzwe na Nyiranjangwe Zura.

[30] Amabwiriza y'igurisha mu cyamunara y'inzu ya Nyiranjangwe Zura agaragaza ko igurishwa muri cyamunara rizaba ku wa 24/2/2014, kandi ko riramutse ritabye kubera kubura kw'abapiganwa cyangwa batanze igiciro gito, iyo cyamunara yakwimurirwa bwa mbere ku wa 3/3/2014, ubwa kabiri ku wa 10/3/2014, ubwa gatatu ku wa 17/3/2014 naho ubwa nyuma ku wa 24/3/2014.

[31] Ibaruwa y'Umwanditsi Mukuru yo ku wa 28/2/2014 igaragaza ko ku wa 5/2/2014, Nyiranjangwe Zura yamwandikiye asaba ko amabwiriza y'igurisha muri cyamunara y'inzu ye yateshwa agaciro kuko igenagaciro riri muri ayo mabwiriza ritesha agaciro umutungo we, maze Umwanditsi Mukuru amumenyesha ko kuba atishimira igenagaciro ryakozwe, ashobora gushyikiriza ikirego cye Urwego rw'abagenagaciro, hashingiwe ku ngingo ya 36 y'Itegeko N° 17/2010 ryo ku wa 12/5/2010 ryavuzwe haruguru.

[32] Dosiye y'urubanza igaragaza ko ku wa 20/3/2014, *Acting Chairperson of the regulatory Council of Real Property Valuation* yandikiye Umwanditsi Mukuru wa RDB ibaruwa yabonye ku wa 24/3/2014, agenera kopi *Institute of Real Property Valuers, Managing Director* of B.P.R. Ltd, Ruganda Cryspin na Nyiranjangwe Zura, amumenyesha ko raporo y'igenagaciro yakozwe ku mutungo utimukanwa wa Nyiranjangwe Zura, hashingiwe ku cyemezo N°14-003881 cyo kugurisha ingwate cyo ku wa 27/1/2014, nta gaciro ifite kuko ibimenyetso by'agaciro igaragaza

binyuranije n'amahame asanzwe akurikizwa mu igenagaciro ku mutungo utimukanwa, ko kuri uru rwego, mu nyungu z'abaturanyi bombi ku cyamunara cyakozwe, agaciro k'umutungo kadakwiye gufatwa nk'agaciro fatizo kuko bigoye kumenya niba ako gaciro gashingiye ku biciro biri ku isoko.

[33] Nk'uko bigaragara mu dosiye y'urubanza, Umwanditsi Mukuru wa RDB, asubiza ku ibaruwa yo ku wa 20/3/2014 yavuzwe haruguru, yandikiye *Regulatory Council of Real Property Valuation* ku wa 8/4/2014, agenera kopi Umuyobozi Mukuru wa B.P.R. Ltd, Ruganda Crispin na Nyiranjangwe Zura, amubwira ko ashingiye ku ngingo ya 24 y'Itegeko N°10/2009 ryo ku wa 14/4/2009 ryerekeye ubugwate ku mutungo utimukanwa, asaba umuntu wese bireba kwitabaza Inkiko zibifitiye ububasha, zikamurenangura.

[34] Urukiko rw'Ikirenga rurasanga isuzuma ry'urubanza rujuririrwa rigaragaza ko mu gutesha agaciro urubanza rwaciwe ku rwego rwa mbere, Urukiko Rukuru rw'Ubucuruzi rutasuzumye ikibazo nyamukuru cyatanzwe na Nyiranjangwe Zura cyo gutesha agaciro cyamunara cyabaye ku nzu ye ku wa 24/3/2014 kuko mu kugurisha ingwate iburanwa, Umuhesha w'Inkiko yashingiye kuri *expertise* yateshejwe agaciro n'Urwego rw'Abagenagaciro ku wa 20/3/2014, ahubwo ko rwasuzumye gusa ikibazo kirebana no kumenya niba Umuhesha w'Inkiko Ruganda Crispin yaba yaratesheje agaciro inzu ya Nyiranjangwe Zura mu gihe cya cyamunara.

[35] Urukiko rw'Ikirenga rurasanga urwo Rukiko rwaragombaga byanze bikunze gusuzuma icyo kibazo cyatanzwe na Nyiranjangwe Zura mu rwego rwa mbere, cyane cyane ko mu myanzuro yayo mu rwego rw'ubujurire, B.P.R. Ltd yajuriye, ivuga ko Urukiko rw'Ubucuruzi rutari kwemeza ko Nyiranjangwe Zura yari afite uburenganzira bwo kuregera urukiko, asaba gutesha agaciro cyamunara kuko nubwo yari afite ubwo burenganzira, bidakuraho ko cyamunara yakozwe mu buryo bukurikije amategeko.

[36] Urukiko rw'Ikirenga rurasanga isuzuma ry'ingingo ya 36 y'Itegeko N°17/2010 ryo ku wa 12/5/2010 ryavuzwe haruguru, hamwe n'ingingo ya 19, igika cya mbere, y'Itegeko N°10/2009 ryo ku wa 14/5/2009 ryavuzwe haruguru n'iya 267 y'Itegeko N°21/2012 ryo ku wa 14/6/2012 ryavuzwe haruguru, ryumvikanisha ko mu gihe bigaragaye ko ingwate ishobora kugurishwa ku giciro kiri hasi y'igiciro gikwiye kiri ku isoko, bisabwe n'uwatanze ingwate cyangwa n'uwahawe ingwate, ucunga ingwate afata icyemezo cyo guhagarika icyamunara, akayishyira ku wundi muni, kandi agakora ibishoboka byose kugirango hatagira urengana.

[37] Urukiko rw'Ikirenga rurasanga kuba kuwa ku wa 5/2/2014, Nyiranjangwe Zura yarandikiye Umwanditsi Mukuru asaba ko amabwiriza y'igurisha muri cyamunara y'inzu ye yateshwa agaciro kuko igenagaciro riri muri ayo mabwiriza ritesha agaciro umutungo we, nyuma akurikije ibyo Umwanditsi Mukuru yamubwiye, agatanga ikirego ku Rwego rw'Abagenaciro, maze mu ibaruwa yo ku wa 20/3/2014, urwo Rwego rukandikira Umwanditsi Mukuru, rukagera kopi *Institute of Real Property Valuers, Managing Director* of B.P.R. Ltd, Ruganda Crispin na Nyiranjangwe Zura, rumumenyesha ko raporo y'igenagaciro yakozwe ku mutungo utimukanwa wa Nyiranjangwe Zura, nta gaciro ifite bitewe n'uko ibimenyetso by'agaciro igaragaza binyuranije n'amahame asanzwe akurikizwa mu igenagaciro ku mutungo utimukanwa, rero aho guhagarika cyamunara yo ku wa 24/3/2014, Umuhesha w'Inkiko yabirenzeho, agurisha

ingwate ashingiye ku igenagaciro ryateshejwe agaciro, bityo iyo cyamunara ikaba igomba guteshwa agaciro kuko yakozwe mu buryo bunyuraniye n'amategeko.

[38] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rw'Ikirenga rurasanga ubujurire bwatanzwe na Nyiranjangwe Zura bufite ishingiro.

b. Kumenya niba ababuranyi bakwiye indishyi basaba muri uru rubanza

[39] Me Kabasenga Berthilde na Me Mugabo Pio bavuga ko Nyiranjangwe Zura bunganira, asaba indishyi zingana na 1.500.000Frw zo gushorwa mu manza n'igihembo cy' Abavoka yishyuye mu manza zabanje, 3.000.000Frw y'indishyi z'ikurikiranarubanza, na 12.960.000Frw y'igihombo yatewe no kuba ataba mu nzu ye, abayifite bayikodesha we acumbikiwe n'abagiraneza, ayo asaba akaba yarayabaze ashingiye ko inzu yakodeshwaga 270.000Frw ku kwezi, mu gihe cy'imyaka ine (4), ndetse akaba asaba na 10.000.000Frw y'indishyi z'akababaro.

[40] Me Kabasenga Berthilde na Me Mugabo Pio bakomeza bavuga ko Ruganda Cryspin ntacyo akwiye gusaba kuko uruhare runini ariwe warukoze agira ubushake buke mu kumva ikigenderewe, maze inzu yari ifite agaciro ka miliyoni mirongo itandatu n'umunani (68.000.000 Frw) mu kwandikisha ingwate, inzobere mu igenagaciro zikaza kwemeza ko ifite agaciro ka miliyoni mirongo ine n'ebyiri (42.000.000Frw), ndetse n'Umuhesha w'Inkiko yajya kugurisha iyo nzu akayivuga uko itari.

[41] Me Ntwali Justin, uhagarariye B.P.R. Ltd, avuga ko indishyi Nyiranjangwe Zura asaba, nta shingiro zifite cyane cyane ko atagaragaza uwo azisaba n'impamvu yazo, kandi ko Banki yo itazitanga mu gihe kugeza ubu yananiwe kwishyura umwenda kandi n'inyungu zikaba zarahagaritswe kuburwa kuva urubanza rugitangira, ku buryo byateye Banki igihombo, byongeye kandi ibyabaye akaba nta ruhare Banki yabigizemo. Avuga kandi ko impamvu nta ndishyi Banki yasabwa, ari uko mu gihe Urukiko rwakwemeza ko cyamunara isheshwe, inzu itaba iya Banki ahubwo ko yaba iya Nyiranjangwe Zura, ko rero ari we wakwishyura agaciro kiyongereye kuri iyo nzu.

[42] Me Ndagijimana Ignace, wunganira Ruganda Cryspin, avuga ko batanze ubujurire bwuririye ku bundi basaba indishyi zingana na 3.000.000Frw, harimo 1.000.000Frw y'igihembo cy'Avoka na 2.000.000Frw z'ikurikiranarubanza, ndetse bagahabwa na 2.500.000Frw y'igihembo cya Avoka mu manza zose zabaye. Avuga kandi ko ibyakozwe ku nzu bitabazwa Umuhesha w'Inkiko, ahubwo ko byabazwa uhawe inzu, cyane cyane ko habayeho gusubiza amafaranga, atazagaruka ku Muhesha w'Inkiko, ariyo mpamvu ntacyo Ruganda Cryspin yabazwa.

[43] Me Busogi Emmanuel, uhagarariye B.E.S. Supply Ltd, avuga ko inzu bayiguze miliyoni mirongo itatu n'eshanu (35.000.000Frw), barayivugurura, bashyiramo 16.735.800Frw, ku buryo raporo y'igenagaciro iheruka yagaragaje ko ubu ifite agaciro ka miliyoni mirongo irindwi n'icyenda ibihumbi magana biri n'imirongo itanu magana atandatu mirongo irindwi (79.250.670 Frw), ko rero basaba ko Ruganda Cryspin na B.P.R. Ltd bazabasubiza agaciro bayishyizeho, kandi uzagaragaraho amakosa muri bo akishyura igihembo cya Avoka cya 1.000.000Frw.

UKO RUKIKO RUBIBONA

[44] Ingingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[45] Ku birebana na 1.500.000Frw y'igihembo cya Abavoka yishyuye mu manza zabanje no kuri uru rwego, Nyiranjangwe Zura asaba kwishyurwa na B.P.R. Ltd na Ruganda Cryspin, Urukiko rw'Ikirenga rurasanga agomba kuyahabwa kuko byabaye ngombwa ko ashaka umuhagararira kuva mu rwego rwa mbere kugeza muri uru Rukiko.

[46] Ku birebana na 3.000.000Frw y'ukurikiranarubanza kuva mu rwego rwa mbere kugeza muri uru Rukiko, Nyiranjangwe Zura asaba kwishyurwa na B.P.R. Ltd na Ruganda Cryspin, Urukiko rw'Ikirenga rurasanga akwiye kuyahabwa kuko byabaye ngombwa ko akurikirana imanza ze, ariko kuba atagaragaza uko ayabara, mu bushishozi bw'urukiko rw'Urukiko Rukuru rw'Ubucuruzi na 500.000Frw kuri uru rwego, yose hamwe akaba 1.300.000Frw.

[47] Ku birebana na 10.000.000Frw y'indishyi z'akababaro Nyiranjangwe Zura asaba kwishyurwa na B.P.R. Ltd na Ruganda Cryspin, Urukiko rw'Ikirenga rurasanga akwiye kuyahabwa, ariko kuba ayo asaba ari ikirenga, akaba agomba kuyagenerwa mu bushishozi bw'Urukiko, agahabwa 2.000.000 Frw.

[48] Ku birebana na 12.960.000 Frw Nyiranjangwe Zura asaba kwishyurwa na B.P.R. Ltd na Ruganda Cryspin, y'igihombo yatewe no kuba ataba mu nzu ye, abayifite bakaba bayikodesha, nyamara we acumbikiwe n'abagiraneza, Urukiko rw'Ikirenga rurasanga nubwo bigaragara ko Nyiranjangwe Zura yakodeshaga inzu ivugwa mbere y'uko igurishwa mu cyamunara, kandi ko yayikodeshaga 120.000Frw buri kwezi nk'uko bigaragara mu masezerano y'ubukode yagiranye na Ecobank Rwanda Ltd yo ku wa 1/10/2012 na fagitiri N° 03/06/2013 yashyikirijwe iyo banki ku wa 8/6/2013, adakwiye guhabwa indishyi asaba kuko azisaba bwa mbere muri uru Rukiko.

[49] Ku birebana n'amafaranga B.P.R. Ltd na Ruganda Cryspin basaba Nyiranjangwe Zura, Urukiko rw'Ikirenga rurasanga batazihabwa kuko batsinzwe muri uru rubanza.

[50] Ku byerekeye indishyi B.E.S. Supply Ltd isaba zirebana n'amafaranga bakoresheje bavugurura inzu yagurishijwe mu cyamunara na 1.000.000Frw y'igihembo cya Avoka, Urukiko rw'Ikirenga rurasanga itazihabwa kuko yagobotse ku bushake muri uru rubanza mu rwego rwa kabiri igamije gusaba Urukiko Rukuru kwemeza ko ikirego cya Nyiranjangwe Zura kitagombaga kwakirwa mu rwego rwa mbere kubera ko impamvu zashingiweho zari zarafashweho ibyemezo mu manza zabaye itegeko no kwemeza ko ingwate iburanwa yagurishijwe mu buryo bukurikije amategeko, nyamara nk'uko bigaragara mu mwanzuro wayo wo kwiregura muri uru Rukiko, yashyigikiye imyiregurire ya B.P.R. Ltd na Ruganda Cryspin, bityo ikaba idashobora gusaba bwa mbere kuri uru rwego ko B.P.R. Ltd na Ruganda Cryspin bategekwa kuyiha ayo mafaranga kandi kuva na mbere yarashyigikiye imiburanire yabo.

III. ICYEMEZO CY'URUKIKO

[51] Rwemeje ko ubujurire bwa Nyiranjangwe Zura bufite ishingiro;

[52] Rwemeje ko cyamunara y'inzu ya Nyiranjangwe Zura yabaye ku wa 24/3/2014 n'amasezerano yose ashingiye kuri iyo cyamunara bisheshwe;

[53] Rutegetse B.P.R. Ltd na Ruganda Cryspin gufatanya kwishyura Nyiranjangwe Zura 1.500.000Frw y'igihembo cya Abavoka, 1.300.000Frw y'ikurikiranarubanza kuva ku rwego rwa mbere kugeza muri uru Rukiko na 2.000.000 Frw y'indishyi z'akababaro, yose hamwe akaba 4.800.000Frw;

[54] Rutegetse B.P.R. Ltd na Ruganda Cryspin gufatanya kwishyura 700.000Frw y'igenagaciro yategetswe n'uru Rukiko;

[55] Rutegetse B.P.R. Ltd na Ruganda Cryspin gufatanya kwishyura amagarama y'urubanza angana na 100.000Frw.