EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd(ECU) v. ROYAL HASKONING DHV(Pty) Ltd

[Rwanda URUKIKO RW'IKIRENGA – RCOMA00007/2017/SC (Rugege, P.J., Cyanzayire na Mutashya, J.) 07 Ukuboza 2018]

Amategeko agenga amasezerano – Amasezerano – Inenge y'imyandikire ntiyashingirwaho mu gutesha agaciro amasezerano impande zombi zumvikanyweho.

Amasezerano y'ubukemurampaka – Icyemezo cy'ubukemurampaka – Amasezerano y'Ubukemurampaka n'amasezerano yigenga nubwo aba agize zimwe mu ngingo zigize amasezerano muri rusange – Iyo icyumvikanyweho n'imapande zombi kidakurikijwe mu bijyanye n'imiburanishirize y'ubukemurampaka, iba ari imwe mu mpamvu zashingirwaho zatuma icyemezo cy'ubukemurampaka cyateshwa agaciro – Itegeko Nº005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, ingingo ya 9,31.

Incamake y'ikibazo: Royal Haskoning DHV (Pty) Ltd yagiranye amasezerano (sub consultancy) na Experts Consultants United INC, UGANDA Ltd yo kwishyira hamwe bapatana igice cy'imirimo Royal Haskoning DHV(Pty)Ltd yagombaga gukorera Minisiteri y'Ibikorwa remezo mu Rwanda. Murayo masezerano bumvikana ko mu gihe havutse impaka hagati yabo baziyambaza umukemurampaka umwe yabanje kumvikanwaho n'impande zombi, akashyirwaho hakurikijwe itegeko ryo muri Africa y'Epfo, kandi ko imiburanishirize mu Bukemurampaka izumvikanwaho n'impande zombi, bumvikana kandi ko mu gihe hatabayeho kumvikana, hazakoreshwa amategeko mu miburanishirize yatangajwe n'Ishyirahanwe ry'Abakemurampaka azaba akurikizwa igihe Umukemurampaka agiriyeho.

Nyuma yaho impaka zaravutse ku mpamvu yuko Experts Consultants United Inc, UGANDA Ltd itarishyuwe nk'uko amasezerano abiteganyaga, isaba Royal Haskoning DHV(Pty)Ltd kuyiha izina ry'umukemurampaka wafatanya nuwayo maze irabyanga, bityo itanga ikirego mu Rukiko rw'Ubucuruzi irusaba gushyiraho umukemurampaka wakemura icyo kibazo, maze uru rukiko rushyiraho umukemurampaka.

Royal Haskoning DHV (Pty) Ltd yatambamiye urwo rubanza, Urukiko rwemeza ko ikirego cyayo kitakiriwe kubera ko yagitanze akererewe, maze ijurira mu Rukiko Rukuru rw'Ubucuruzi, narwo rwemeza ko ubujurire bwayo nta shingiro bufite,

yongeye gutanga ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba gusubirishamo urubanza ingingo nshya, rwemeza ikirego cyayo nta shingiro gifite, uru Rukiko rwemeza nta shingiro gifite.

Mu bukemurampaka, inteko yemeje ko ikirego cya Experts Consultants United INC, Uganda, Ltd gifite ishingiro kuko Royal Haskoning DHV (Pty) Ltd yishe amasezerano, ategeka ko yishyura agaciro k'amasezerano yari asigaye gukorwa hamwe n'inyungu z'imyaka ine (4), indishyi z'akababaro z'ingendo n'icumbi hamwe n'igihembo cy'umukemurampaka.

Royal Haskoning DHV (Pty) Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko icyemezo cy'ubukemurampaka gikurwaho kuko kitakurikije amategeko**,** Urukiko rwemeza ko icyo cyemezo gikuweho kubera ko kitubahirije amasezerano ababuranyi bagiranye,

rwabishingiye ku kuba Umukemurampaka yarashyizweho n'Urukiko rw'Ubucuruzi kandi agakoresha amategeko atari ay'ishyirahamwe ry'Abakemurampaka mu gihe impande zombi zitumvikanye ku miburanishirize, bityo icyemezo inteko yafashe gikwiye kuvaho, rutegeka Experts Consultants United INC, Uganda, Ltd guha Royal Haskoning DHV (Pty) Ltd indishyi zikubiyeme igihembo cya Avoka hamwe n'ikurikiranarubanza.

Experts Consultants United INC, Uganda yajuriye mu Rukiko rw'Ikirenga ivuga ko umwanzuro w'Umukemurampaka utagombaga gukurwaho kubera ko wafashwe mu buryo bukurikije amategeko. Royal Haskoning DHV(Pty)Ltd yatanze inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga ariko Urukiko ruyisuzumye rusanga nta shingiro ifite.

Mbere y'iburanisha mu mizi, Royal Haskoning DHV(Pty)Ltd yatanze indi nzitizi ivuga ko n'ubwo nta ngingo yari ihari mu gihe ubujurire bwatangwaga yabuzaga kujuririra icyemezo gifashwe n'Urukiko Rukuru rw'Ubucuruzi ku mwanzuro w'Abakemurampaka, ariko kuba harasohotse itegeko ribuza kujurira icyo cyemezo kandi urubanza rukaba rugikomeza, icyemezo cyafashwe ku bubasha kigomba kuvaho kubera ko amategeko agenga imiburanishirize ahita ashyirwa mu bikorwa agisohoka. Naho Experts Consultants United ikavuga ko itegeko Royal Haskoning DHV Ltd ishingiraho, ryatangajwe urubanza rwararangije kujuririrwa, ko rero nta mpamvu yari gutuma ubujurire butakirwa, kuko itegeko ryakoreshwaga icyo gihe ritabibuzaga. Urukiko rwemeza ko nubwo amategeko y'imiburanishirize (actes de procédure) yubahirizwa ako kanya, ibyakozwe mbere bikurikije amategeko bigumana agaciro kabyo.

Ku bijyanye no kumenya niba "Arbitration Act" yo muri 1965 ivugwa mu masezerano ariyo muri Afrika y'Epfo, Experts Consultants United Inc, UGANDA Ltd ivuga ko impande zombi zitabisobanuye neza, ko kandi kuba batari bumvikanye ku mukemurampaka, itegeko ryari gukoreshwa ni iryo mu Rwanda nk'uko impande zombi zabyumvikanyeho mu ngingo ya 2.4 y'amasezerano. Ikomeza isobanura ko n'ubwo impande zombi zitavuze neza Itegeko rizakoreshwa, isanga harabayeho kwibeshya ku mwaka, kuko aho kwandika 2008 kubera ko Itegeko ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi mu Rwanda ari iryo muri uwo mwaka, banditse 1965. Isobanura ko yasabye Royal Haskoning DHV (Pty)Ltd ngo bumvikane iranga, icyari gisigaye kwari ugukurikiza amategeko yo mu Rwanda, ko kuba barakoresheje amategeko ya KIAC, ntaho binyuranye n'ibyo impande zombi zumvikanye, kuko aricyo kigo cyemewe mu Rwanda gikora ibijyanye n'Ubukemurampaka.

Royal Haskoning DHV (Pty) Ltd yiregura ivuga ko ikigomba kurebwa muri uru rubanza, ari uburyo ingingo ya 2.4 irebana n'ibijyanye n'ururimi no kuburanisha urubanza mu mizi hamwe n'iya 9.1 ivuga ku bijyanye n'uburyo bwo gukemura impaka z'amasezerano impande zombi zagiranye zumvikana, ivuga ko ibyo Experts Consultants United Inc, UGANDA Ltd ivuga ko atari Itegeko ryo muri Afurika y'Epfo ryagombaga gukoreshwa atari byo kuko hagombaga gukurikizwa "*Conduct of Association of Arbitrators"* nk'uko na KIAC ubwayo yabasubije ibabwira ko ibijyanye nayo bidateganyijwe ngo keretse bavuguruye amasezerano yabo bakayongeramo, bityo ibyakozwe rero bikaba binyuranyije n'ibyo impande zombi zumvikanyeho ariyo mpamvu Urukiko Rukuru rw'Ubucuruzi rwakuyeho icyemezo cy'Umukemurampaka kuko kitubahirije amategeko.

Incamake y'icyemezo:1. Nubwo amategeko y'imiburanishirize (actes de procédure) yubahirizwa ako kanya, ibyakozwe mbere bikurikije amategeko bigumana agaciro kabyo.

2. Amasezerano y'Ubukemurampaka n'amasezerano yigenga nubwo aba agize zimwe mu ngingo zigize amasezerano muri rusange.

3. Inenge y'imyandikire ntiyashingirwaho mu gutesha agaciro amasezerano impande zombi zumvikanyweho. Bityo kuba mu masezerano bataranditse ko itegeko rigenga Ubukemurampaka ryo muri 1965 (*Arbitration Act* of 1965) n'Ishyirahamwe ry'Abakemurampaka (*Association of Arbitrators*) byombi bivugwa mu ngingo ya 9.1 y'amasezerano ari ibyo muri Afurika y'Epfo, bitavanaho ko icyo abagiranye amasezerano bari bagamije ari uko hazakoreshwa amategeko n'imigendekere byo muri Afurika y'Epfo.

4. Iyo icyumvikanyweho n'imapande zombi kidakurikijwe mu bijyanye n'imiburanishirize y'ubukemurampaka, iba ari imwe mu mpamvu zashingirwaho zatuma icyemezo cy'ubukemurampaka cyateshwa agaciro.

Ubujurire nta shingiro bufite.
Icyemezo cy'ubukempurampaka cyari cyafashwe kivanyweho.
Amagarama y'urubanza yari yatanzwe ahwanye nibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko Nº45/2011 ryo ku wa 25/11/2011 rigenga amasezerano mu Rwanda, ingingo ya 64 ,66.
Itegeko Nº005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, ingingo ya 9,31.

Nta manza zifashishijwe.

Abahanga:
Larry A. DIMATTEO "International Business Law and the Legal Environment, A Transactional Approach."

Urubanza

I.IMITERERE Y'URUBANZA

[1] Ssi Engeneers and Environment Consultants (Pty) yaje guhinduka Royal Haskoning DHV (Pty) Ltd, ku wa 12/10/2010, yagiranye amasezerano (sub consultancy) na Experts Consultants United INC, Uganda Ltd yo kwishyira hamwe bagapatana igice cy'imirimo Royal Haskoning DHV(Pty)Ltd yagombaga gukorera Minisiteri y'Ibikorwa remezo mu Rwanda.

[2] Royal Haskoning DHV (Pty) Ltd ivuga ko muri ayo masezerano bumvikanye ko mu gihe havutse impaka zizashyikirizwa Umukemurampaka umwe uzashyirwaho hakurikijwe itegeko ry'Ubukemurampaka rya Afurika y'Epfo, kandi ko imiburanishirize mu Bukemurampaka izumvikanwaho n'impande zombi, ko mu gihe hatabayeho kumvikana, hazakoreshwa amategeko mu miburanishirize yatangajwe n'Ishyirahanwe ry'Abakemurampaka (Association of Arbitrators) azaba akurikizwa igihe Umukemurampaka agiriyeho.

[3] Nyuma impaka zaravutse zijyanye no kuba Experts Consultants United INC, Uganda Ltd itarishyuwe nk'uko amasezerano yabiteganyaga, Experts Consultants United INC, Uganda Ltd isaba Royal Haskoning DHV (Pty)Ltd kuyiha izina ry'umukemurampaka wafatanya n'uwayo, irabyanga**.** Experts Consultants United INC, Uganda Ltd itanga ikirego mu Rukiko rw'Ubucuruzi isaba ko rushyiraho Umukemurampaka wakemura ikibazo ifitanye na Royal Haskoning DHV(Pty)Ltd, urubanza ruhabwa RCOM 0610/15/TC/NYGE, rucibwa Urukiko ku wa 30/04/2015, Urukiko rwemeza ko hashyizweho Umukemurampaka witwa Me Rubasha Herbert.

[4] Royal Haskoning DHV (Pty) Ltd yatambamiye urwo rubanza, urubanza rwayo rwandikwa kuri RCOM 0619/15/TC/NYGE, Urukiko rw'Ubucuruzi rwemeza ko ikirego cyayo kitakiriwe kubera ko yagitanze igihe cy'ukwezi cyararangiye kuva aho imenyeye imikirize y'urubanza yatambamiraga.

[5] Royal Haskoning DHV (Pty) Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, rwandikwa kuri RCOMA 00122/2016/CHC/HCC rucibwa ku wa 29/07/2016, Urukiko rwemeza ko ubujurire bwa Royal Haskoning DHV(Pty)Ltd nta shingiro bufite, ruyitegeka kwishyura ECU Ltd 2.500.000Frw y'igihembo cy'Avoka n'ikurikiranarubanza.

[6] Royal Haskoning DHV(Pty) Ltd yongeye gutanga ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba gusubirishamo urubanza RCOMA00122/2016/CHC/HCC ingingo nshya, urubanza rucibwa ku wa 03/11/2016, Urukiko rwemeza ko impamvu Royal Haskoning DHV (Pty) Ltd ishingiraho isubirishamo urubanza ingingo nshya nta n'imwe ihura n'iziteganyijwe n'amategeko, ko rero ikirego cyayo kitakiriwe, ruyitegeka gutanga 600.000Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[7] Umukemurampaka washyizweho yaburanishije urubanza Royal Haskoning DHV (Pty) Ltd idahari, afata icyemezo ku wa 16/09/2016 yemeza ko ikirego cya Experts Consultants United INC, Uganda, Ltd gifite ishingiro kuko Royal Haskoning DHV (Pty) Ltd yishe amasezerano, rutegeka Royal Haskoning DHV (Pty) Ltd guha ECU Ltd USD 47.993 y'agaciro k'amasezerano yari asigaye gukorwa; inyungu z'imyaka ine(4) zingana na USD 34.556 ni ukuvuga 47.993x18/100=USD 8.639X4=USD 34.556, indishyi z'akababaro z'ingendo n' icumbi, bingana na 18.400 USD no kwishyura igihembo cy'ubukemurampaka kingana na 10.000 USD.

[8] Royal Haskoning DHV (Pty) Ltd yaregeye Urukiko Rukuru rw'Ubucuruzi isaba ko icyemezo cy'ubukemurampaka gikurwaho ngo kubera ko kitakurikije amategeko**.** Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza ku wa 29/09/2017, rwemeza ko icyemezo nkemurampaka gikuweho kubera ko kitubahirije amasezerano ababuranyi bagiranye, rutegeka Experts Consultants United INC, Uganda, Ltd guha Royal Haskoning DHV (Pty) Ltd indishyi zingana na 650.000Frw zikubiyemo igihembo cya Avoka n'ikurikiranarubanza.

[9] Urukiko mu gufata icyemezo, rwashingiye ku kuba ababuranyi barumvikanye mu masezerano bagiranye yiswe "*Association Agreement Document"* mu ngingo yayo ya 9, ko nihaba ubukemurampaka bizakorwa n'umukemurampaka umwe hakurikijwe Itegeko ryo muri Africa y'Epfo ryo muri 1965 nk'uko ryavuguruwe kugeza ubu, ko kandi imiburanishirize y'ubwo bukemurampaka izakurikiza ibyo impande zombi zizumvikanaho, hagakurikizwa imigendekere iteganyijwe mu mategeko y'imyitwarire y'abakemurampaka mu bukemurampaka.

Ko kandi mu gice cya kabiri cy'iyo ngingo, ababuranyi bumvikanye ko uwo mukemurampaka uzashyirwaho, azaba yabanje kumvikanwaho (kwemezwa) n'impande zombi.

[10] Rwasobanuye ko hashingiwe kuri iyo ngingo y'amasezerano impande zumvikanyeho, rwasanze haragombaga gushyirwaho umukemurampaka umwe kandi wumvikanyweho n'impande zombi, agakora ubwo bukemurampaka ashingiye ku mategeko y'ubukemurampaka yo muri Africa y'Epfo yo muri 1965 nk'uko yavuguruwe kugeza ubu, agakurikiza imiburanishirize yumvikanyweho bitashoboka agakurikiza amategeko y'imiburanishirize yatangajwe n'Ishyirahamwe ry'Abakemurampaka; ko ariko atari ko byagenze kuko uburyo umukemurampaka yashyizweho bitakurikije amategeko ya Afrika y'Epfo n'imiburanishirize yakurikije ikaba itarakurikije amategeko y'Ishyirahamwe ry'abakemurampaka yariho muri icyo gihe nk'uko impande zari zabyumvikanye mu masezerano.

[11] Rwasobanuye kandi ko, uretse no kuba uwo mukemurampaka yaragombaga gushyirwaho hakurikijwe itegeko ryo muri Africa y'epfo, yagombaga no gukemura impaka ashingiye kuri ayo mategeko haba mu miburanishirize no ku mpaka ubwazo, ko rero kuba Umukemurampaka yarashyizweho n'Urukiko rw'Ubucuruzi kandi agakoresha amategeko atari ay'ishyirahamwe ry'Abakemurampaka mu gihe impande zombi zitumvikanye ku miburanishirize, icyemezo yafashe gikwiye kuvaho kubera ko kitubahirije amasezerano ababuranyi bumvikanyeho.

[12] Experts Consultants United INC, Uganda yajuriye mu Rukiko rw'Ikirenga ku wa 28/10/2017 ivuga ko umwanzuro w'Umukemurampaka wo ku wa 16/09/2016 utagombaga gukurwaho kubera ko wafashwe mu buryo bukurikije amategeko.

[13] Royal Haskoning DHV(Pty)Ltd yatanze inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga ivuga ko Experts Consultants United INC, Uganda yajuriye nk'aho ari mu manza zisanzwe kandi atariko bimeze hirengagijwe ko ibyemezo by'Ubukemurampaka bitajuririrwa, ko ari nako Urukiko rw'Ikirenga rwa Canada rwabyemeje.

[14] Urukiko mu cyemezo cyarwo cyo ku wa 08/06/2018, rwasanze iyo nzitizi nta shingiro ifite rwemeza ko Urubanza ruzaburanishwa mu mizi.

[15] Iburanisha ryongeye gusubukurwa ku wa 06/11/2018 ribera mu ruhame, Experts Consultants United INC, Uganda Ltd iburanirwa na Me Munderere Léopold afatanyije na Me Mitsindo Tom, naho Royal Haskoning DHV (Pty) Ltd, iburanirwa na Me Bizimana Emmanuel.

[16] Mbere y'uko iburanisha ritangira mu mizi, Me Bizimana Emmanuel, ashingiye ku ngingo ya 74, igika cya 3, y'Itegeko Nº22/2018 ryo ku wa 22/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1] no ku ngingo ya 82 y'Itegeko Nº30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko[2], avuga ko ubwo inteko iburanisha ihindutse, yakongera igasuzuma icyemezo cyafashwe ku bubasha ikagihindura kubera

[1] Icyakora iyo asanze hari ibyakozwe binyuranyije n'amategeko, hashobora gufatwa icyemezo cyo gutangira iburanisha bundi bushya cyangwa kugira ibihindurwa, hamaze kumvwa ababuranyi, hagasobanurwa impamvu

[2] Urukiko Rukuru rw'Ubucuruzi ruburanisha kandi imanza zigamije gusuzuma niba ibyemezo byafashwe n'abakemurampaka byubahirije amategeko.

Imanza ziciwe n'Urukiko Rukuru rw'Ubucuruzi ku byemezo byavuzwe mu gika cya 4 cy'iyi ngingo ntizijuririrwa

ko kinyuranyije n'amategeko hakurikijwe ingingo zimaze kuvugwa, bityo, inteko yasanga ubujurire butari mu bubasha bw'Urukiko rw'Ikirenga, ikemeza ko butari bukwiye kwakirwa, n'icyo cyemezo ku bubasha cyafashwe n'inteko yabanje kikavaho. Yongeraho ko, kuba icyemezo cyarafashwe, bitabuza ko indi nteko nshya yakongera kubisuzuma.

[17] Avuga ko kandi, n'ubwo nta ngingo yari ihari mu gihe ubujurire bwatangwaga yabuzaga kujuririra icyemezo gifashwe n'Urukiko Rukuru rw'Ubucuruzi ku mwanzuro w'Abakemurampaka, uwabaga atawishimiye yawuregeraga ariko atemerewe kujuririra icyemezo gifashwe, ko rero kuba harasohotse itegeko ribisobanura neza kandi urubanza rukaba rugikomeza, icyemezo cyafashwe ku bubasha kigomba kuvaho kubera ko amategeko agenga imiburanishirize ahita ashyirwa mu bikorwa agisohoka.

[18] Me Munderere Léopold uburanira Experts Consultants United INC, Uganda Ltd, avuga ko ibyo Me Bizimana Emmanuel avuga bitumvikana kuko icyemezo cyafashwe, nta buryo Urukiko rwakongera kwisubiraho, ko Urukiko rwareba niba igihe urubanza rwajuririrwaga, hari itegeko ryabuzaga bene izo manza kujuririrwa, ko itegeko Me Bizimana Emmanuel avuga, rireba izindi manza zishobora kujuririrwa muri uru Rukiko ariko bitareba imanza zari zarajuririwe mbere y'uko risohoka.

[19] Me Mitsindo Tom avuga ko itegeko Me Bizimana Emmanuel ashingiraho, ryatangajwe ku wa 02/06/2018 urubanza rwararangije kujurirwa, ko rero nta mpamvu yari gutuma ubujurire butakirwa, kuko itegeko ryakoreshwaga icyo gihe ritabibuzaga.

[20] Urukiko rwarihererereye rufata icyemezo kuri iyo nzitizi, rwemeza ko nubwo amategeko y'imiburanishirize (actes de procédure) yubahirizwa ako kanya, ibyakozwe mbere bikurikije amategeko bigumana agaciro kabyo, ko kandi hashingiwe ku manza zaciwe n'Urukiko rw'Ikirenga, icyemezo cyafashwe ku wa 08/06/2018 ku bubasha bw'Urukiko ku bujurire bw'icyemezo cyerekeranye n'ubukemurampaka, cyari gikurikije amategeko, kikaba kigomba kugumana agaciro kacyo; rutegeka ko iburanisha rikomeza hasuzumwa impamvu z'ubujurire za Experts Consultants United INC, Uganda Ltd zijyanye no kureba niba umwanzuro w'Umukemurampaka wafashwe ku wa 16/09/2016, warafashwe mu buryo no mu nzira bikurikije amategeko.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba uburyo umukemurampaka yashyizweho n'uburyo yafashemo icyemezo haba mu mizi y'ikibazo n'imiburanishirize yarakurikije ibyo ababuranyi bumvikanyeho mu masezerano yabo (*Association Agreement Document)*

[21] Me Munderere Léopold uburanira Experts Consultants United INC, Uganda Ltd avuga ko ibyo Umucamanza yemeje mu gika cya 17 cy'urubanza RCOM0005/2017/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ko Umukemurampaka yakemuye impaka adashingiye ku mategeko yumvikanyweho, atari byo, kuko mu masezerano impande zombi zagiranye, ntaho biteganyijwe ko ari Itegeko ryo muri Afurika y'Epfo rizagenderwaho mu byerekeye imigendekere y'ubukemurampaka, iki kibazo kikaba cyarasuzumwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge rukemeza ko ntaho bigaragara ko ari Itegeko ryo muri South Africa rigomba gukurikizwa kandi uru rubanza rukaba rwarabaye itegeko, ari nayo mpamvu hashyizweho

Umukemurampaka hashingiwe ku Itegeko Nº005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi mu Rwanda.

[22] Avuga ko mu guca urubanza, ingingo ya 2.4 n'iya 9.1 z'amasezerano impande zombi zagiranye, zareberwa hamwe, ko mu ngingo ya 2.4 igika cya 1 impande zombi zumvikanye ku rurimi, naho mu gika cya 2 cyayo, impande zombi zumvikanye ko amategeko azakurikizwa ari ayo mu Rwanda; mu ngingo ya 9.1 ho, bumvikanye ko mu bukemurampaka hazakurikizwa "*Arbitration Act"* yo muri 1965 ariko ntaho bigeze bavuga ko ari iyo muri Afrika y'Epfo. Avuga ko Urukiko nirusuzuma neza ingingo ya 9.1 y'amasezerano ateganya Ubukemurampaka, ruzasanga impande zombi zaragombaga kumvikana ku mukemurampaka akaba aribwo hakoreshwa "*Arbitration Act "* yo muri 1965, ariko ko mu gihe batumvikanye, hazakoreshwa amategeko y'u Rwanda.

[23] Yongeraho ko imanza zose zabaye ku ishyirwaho ry'umukemurampaka, Royal Haskoning DHV (Pty) Ltd yazitsinzwe, ko n'ubwo bitagaragara ko "*Arbitration Act"* yo muri 1965 yavugwaga ari iyo muri Afurika y'Epfo, yagombaga gukurikizwa ari uko impande zombi zabyumvikanyeho, ko rero Umukemurampaka yashingiye ku mategeko ya KIAC[3] kubera ko impande zombi zitari zumvikanye kuri *"Arbitration Act*" yo muri 1965, kuko bavuze ko ibizakurikizwa ari amategeko ya "*Association ya Arbitration"* mu gihe impande zombi zabyumvikanaho.

[24] Avuga ko aya masosiyete yombi, nta n'imwe ifite icyicaro mu Rwanda, ariyo mpamvu bumvikanye ko bazakurikiza amategeko yo mu Rwanda mu gihe batumvikanye ku bijyanye na "*Arbitration Act"* yo muri 1965.

[25] Ku bijyanye no kumenya niba "*Arbitration Act"* yo muri 1965 ivugwa mu masezerano ariyo muri Afrika y'Epfo, Me Munderere Léopold yasubije ko atabitindaho kuko ishobora kuba ariyo muri Afrika y'Epfo cyangwa muri Uganda kuko impande zombi zitabisobanuye neza, ko kandi kuba batari bumvikanye ku mukemurampaka, itegeko ryari gukoreshwa ni iryo mu Rwanda nk'uko impande zombi zabyumvikanyeho mu ngingo ya 2.4 y'amasezerano.

[26] Me Mitsindo Tom, avuga ko n'ubwo impande zombi zitavuze neza Itegeko rizakoreshwa, asanga harabayeho kwibeshya ku mwaka, kuko aho kwandika 2008 kubera ko Itegeko dufite ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi mu Rwanda ari iryo muri uwo mwaka, banditse 1965. Avuga ko Experts Consultants United INC, Uganda Ltd yasabye Royal Haskoning DHV (Pty)Ltd ngo bumvikane iranga, icyari gisigaye kwari ugukurikiza amategeko yo mu Rwanda, ko kuba barakoresheje amategeko ya KIAC, ntaho binyuranye n'ibyo impande zombi zumvikanye, kuko aricyo kigo cyemewe mu Rwanda gikora ibijyanye n'Ubukemurampaka.

[27] Me Bizimana uburanira Royal Haskoning DHV (Pty) Ltd avuga ko ikigomba kurebwa muri uru rubanza, ari uburyo ingingo ya 2.4 n'iya 9.1 z'amasezerano impande zombi zagiranye zumvikana, ko ingingo ya 2.4 irebana n'ibijyanye n'ururimi no kuburanisha urubanza mu mizi, iya 9.1 ikavuga ku bijyanye n'uburyo bwo gukemura impaka; ko ibyo ababuranira Experts Consultants United INC, Uganda Ltd bavuga ko atari Itegeko ryo muri Afurika y'Epfo

[3] KIGALI INTERNATIONAL ARBITRATION CENTRE

ryagombaga gukoreshwa atari byo, ko kuri icyo kibazo harebwa inyandiko bagiranye cyane cyane ibaruwa yo ku wa 12.06.2014 Experts Consultants United INC, Uganda Ltd yandikiye KIAC, nayo ikabasubiza ko ibijyanye na KIAC bidateganyijwe ngo keretse bavuguruye amasezerano yabo bakayongeramo, ibi bikaba byerekana ko nabo ubwabo bari bazi ko mu gukemura ikibazo hazakoreshwa amategeko yo muri Afurika y'Epfo.

[28] Yongeraho ko ibyo ababuranira Experts Consultants United INC, Uganda Ltd bavuga ko nibatumvikana hazakoreshwa amategeko ya KIAC (KIAC Rules), atari byo kuko hagombaga gukurikizwa "*Conduct of Association of Arbitrators"* nk'uko na KIAC ubwayo yabasubije, ibyakozwe rero bikaba binyuranyije n'ibyo impande zombi zumvikanyeho ariyo mpamvu Urukiko Rukuru rw'Ubucuruzi rwakuyeho icyemezo cy'Umukemurampaka kuko kitubahirije amategeko.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 9 y'Itegeko Nº005/2018 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi iteganya ko: «Amasezerano y'ubukemurampaka ni amasezerano impande zombi zigirana yo gushyikiriza ubukemurampaka ibibazo byose cyangwa bimwe mu bibazo zifitanye cyangwa bishobora kuvuka kubera imikoranire hagati yazo mu byerekeranye n'amategeko byaba ari ibishingiye ku masezerano zagiranye cyangwa ntayo bishingiyeho**.** Amasezerano y'ubukemurampaka ashobora kuba akozwe n'ingingo ziteganya ubukemurampaka ziri mu masezerano bagiranye cyangwa akaba ari andi masezerano ukwayo», naho igika cya 2 cy'iyo ngingo, kigateganya ko ayo masezerano agomba kuba yanditse.

[30] Ingingo ya 31 y'iryo Tegeko rimaze kuvugwa haruguru, iteganya ko uretse ibiteganywa n'iri tegeko, abiyambaje ubukemurampaka bafite uburenganzira bwo kumvikana ku buryo bw'ikemurampaka bwakoreshwa n'Inteko y'Abakemurampaka mu gihe isuzuma ikibazo bayigejejeho.

[31] Ingingo ya 64 y'Itegeko Nº45/2011 ryo ku wa 25/11/2011 rigenga amasezerano mu Rwanda riteganya ko amasezerano akozwe neza abera itegeko abayagiranye ko kandi ayo masezerano agomba kubahirizwa nta buryarya[4].

[32] Mu gika cya 1 cy'ingingo ya 2.4 y'amasezerano Experts Consultants United INC, Uganda Ltd na Royal Haskoning DHV (Pty) Ltd bagiranye**,** impande zombi zumvikanye ko ururimi amasezerano akozwemo ari icyongereza, igika cya 2 cy'iyo ngingo kigateganya ko Amategeko azakurikizwa mu gushyira mu bikorwa amasezerano, ari Amategeko y'u Rwanda[5].

[33] Mu ngingo ya 9.1 y'ayo masezerano, impande zombi zumvikanye ko Ubukemurampaka buzakorwa n'Umukemurampaka umwe nk'uko biteganywa n'Itegeko ry'Ubukemurampaka ryo muri 1965 ryakoreshwaga igihe bakoraga amasezerano, imigendekere y'iburanisha ikumvikanwaho n'ababuranyi bitashoboka hagakurikizwa imigendekere y'Ubukemurampaka

[4] 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

[5] The Language of the Agreement shall be the English language

nkuko yatangajwe n'Ishyirahamwe ry'Abakemurampaka azaba arimo gukurikizwa igihe Umukemurampaka ashyiriweho[6].

[34] Urukiko rurasanga mu gusesengura amasezerano impande zombi zagiranye hagomba kurebwa icyo abayagiranye bari bagamije n'icyo basezeranye nk'uko ingingo ya 66 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano mu Rwanda[7] ibiteganya.

[35] Urukiko rurasanga nk'uko ingingo ya 9 y'Itegeko Nº005/2018 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi ibiteganya, amasezerano ateganya ubukemurampaka ashobora kuba mu masezerano ubwayo cyangwa akaba yakorerwa amasezerano yihariye, ibi bikaba byumvikanisha ko amasezerano ateganya ubukemurampaka aba yihariye ku buryo ashobora kugira agaciro n'igihe amasezerano azakoreshwamo yaba afite inenge yatuma ateshwa agaciro, ibivugwa muri iyi ngingo akaba ari nako umuhanga Larry A.DIMATTEO abivuga mu gitabo cye cyitwa "*International Business Law and the Legal Environment, A Transactional Approach",* ku rupapuro rwa 122, ko amasezerano ateganya Ubukemurampaka aba yigenga kandi yihariye[8].

[36] Urukiko rw'Ikirenga rushingiye kuri iyo ngingo imaze kuvugwa n'ibisobanuro bitangwa n'Umuhanga mu mategeko y'Ubukemurampaka, rwemeranya n'ibisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi by'uko icyo ababuranyi bari bagamije mu masezerano y'ubukemurampaka, ari uko Ubukemurampaka buzakorwa n'umukemurampaka umwe nk'uko biteganyijwe mu itegeko rigenga ubukemurampaka ryo muri 1965[9] , ababuranyi bakumvikana uko ubukemurampaka buzagenda ku bijyanye n'imiburanishirize (Procedure), mu gihe batabasha kumvikana ku miburanishirize hagakoreshwa amategeko y'imyitwarire y'abakemurampaka yatangajwe n'Ishyirahamwe ry'Abakemurampaka azaba akoreshwa igihe Umukemurampaka ashyiriweho[10], Umukemurampaka akagomba kwemerwa n'uwatsindiye isoko (Consultant) n'uwo yahaye akazi (Sub-Consultant).

[37] Urukiko rurasanga kandi, isesengura ry'ingingo ya 9.1 y'amasezerano impande zombi zagiranye, itagomba kureberwa hamwe n'ingingo ya 2.4 y'ayo masezerano nk'uko ababuranira Experts Consultants United INC, Uganda Ltd babiburanisha, kubera ko nk'uko byasobanuwe haruguru, amasezerano y'ubukemurampaka ari amasezerano yigenga nubwo aba agize zimwe mu ngingo zigize amasezerano muri rusange, bivuze ko mu gukemura ikibazo mu mizi,

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[6] Arbitration shall be by a single arbitrator in accordance with the provisions of Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the parties or, failing such agreement , in accordance with the rules for the conduct of Arbitrations published by the Association of Arbitrators current at the date the arbitrator is appointed.

[7] Gusesengura amasezerano cyangwa imwe mu ngingo zayo ni ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe

[8] The Severability principle recognizes the arbitration clause in a contract as a separate agreement independent of the contract. Therefore, a law is needed to determine the validity of the arbitration clause, Also , if viewed as a separate agreement, then It can be enforced even if the underlying of contract is determined to be invalid or unenforceable.

[9] Arbitration ACT 42 of 1965 as amended by Justice Laws Rationalisation Act 18 of 1996; General Law Amendment Act 49 of 1996 and Prevention and Combating of Corrupt Activities Act 12 of 2004, specifically in its provision 9 which provided that :« *Unless a contrary intention is expressed in the arbitration agreement, the reference shall be to a single arbitrator*»

[10] The Association of Arbitrators (Southern Africa) Rules for the Conduct of Arbitrations 2013 edition standard procedure rules

hazashingirwa ku ngingo ya 2.4 igika cya 2 y’ayo masezerano mpande zombi zagiranye ireba amategeko ababuranyi ubwabo bihitiyemo ku bijyanye no gukemura ibibazo mu gihe haba havutse ikibazo mu mizi (*Substantive Laws*), naho ibijyanye n’imigendekere (conduct) n’uburyo ubukemurampaka buzakorwamo (*Procedural rules*) bikaba ari byo bireberwa mu ngingo ya 9.1 y’amasezerano impande zombi zagiranye.

[38] Urukiko rurasanga, kuba ababuranyi bataranditse ko iri Tegeko rigenga Ubukemurampaka ryo muri 1965 (*Arbitration Act* of 1965) n’Ishyirahamwe ry’Abakemurampaka (*Association of Arbitrators*) byombi bivugwa mu ngingo ya 9.1 y’amasezerano ari ibyo muri Afurika y’Epfo, bitavanaho ko icyo abagiranye amasezerano bari bagamije ari uko hazakoreshwa amategeko n’imigendekere byo muri Afurika y’Epfo kubera ko SSI Engineers and Environment Consultants (Pty) Ltd yahindutse RoyaL Haskoning DHV (Pty) Ltd yatanze akazi, ari isosiyete yo muri Afurika y’Epfo, kandi n’aya mategeko yavuzwe mu masezerano akaba ari ayo muri Afurika y’Epfo, Experts Consultants United INC, Uganda Ltd ikaba itarabashije kwerekana ko aya mategeko ari ayo mu Rwanda cyangwa ahandi, mu gihe bizwi ko mu Rwanda ibijyanye n’Ubukemurampaka bigengwa y’Itegeko Nº005/2018 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n’ubwunzi mu bibazo by’ubucuruzi, naho urwego rureberera Ubukemurampaka akaba ari KIAC (Kigali International Arbitration Centre).

[39] Rushingiye ku ngingo ya 64 y’Itegeko Nº45/2011 ryo ku wa 25/11/2011 rigenga amasezerano mu Rwanda ryavuzwe haruguru no ku bisobanuro byatanzwe muri uru rubanza, Urukiko rurasanga Umukemurampaka Me Rubasha Herbert icyemezo yafashe kitarubahirije amasezerano impande zombi zagiranye, bityo icyo cyemezo kikaba kigomba kuvaho nk’uko Urukiko Rukuru rw’Ubucuruzi rwabyemeje.

[40] Experts Consultants United INC, Uganda Ltd ivuga ko mu gihe byagaragaraga ko Royal Haskoning DHV (Pty) Ltd yari yararegeye ubusa ihunga kuryozwa amakosa yayikoreye, Urukiko rukaba rwarabirenzeho rukayitegeka gutanga amafranga y’indishyi, igihembo cya Avoka n’amafranga yo gukurikirana urubanza, ko ibi bigomba guhinduka ku rwego rw’Urukiko rw’Ikirenga, Royal Haskoning DHV (Pty) Ltd ikishyura Experts Consultants United INC, Uganda Ltd 3.000.000Frw akubiyemo ayo guhemba ba Avoka, indishyi z’akababaro n’ayo gukurikirana urubanza.

[41] Royal Haskoning DHV (Pty) Ltd ivuga ko ibyo Urukiko Rukuru rw'Ubucuruzi rwakoze bikurikije amategeko kuko rwakuyeho icyemezo kandi mu by'ukuri kikaba cyari kibangamiye inyungu zayo kuko cyafashwe kidakurikije amasezerano impande zombi zagiranye, bityo ko amafaranga Experts Consultants United INC, Uganda Ltd yaciwe akaba agomba kugumaho hiyongereyeho 3.000.000Frw akubiyemo 2.000.000Frw y'igihembo cya Avoka na 1.000.000Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[42] Ingingo ya 258 yo mu gitabo cya gatatu cy’amategeko mbonezamubano, amasezerano n’imirimo nshinganwa iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse.

[43] Ku bijyanye n’uru rubanza, Urukiko rurasanga kuba Experts Consultants United INC, Uganda Ltd yarajuririye urubanza, byaratumye Royal Haskoning DHV (Pty) Ltd ishyiraho Abavoka bayiburaniye bikaba byarayiteje igihombo, icyo gihombo kibaba kigomba kwishyurwa na Experts Consultants United INC, Uganda Ltd itsinzwe urubanza, bityo Royal Haskoning DHV (Pty) Ltd ikaba igenewe 1.000.000Frw agenwe mu bushishozi bw’Urukiko, akubiyemo ay’ikurikiranarubanza n’ay’igihembo cya Avoka.

[44] Ku bijyanye n’indishyi zasabwe na Experts Consultants United INC, Uganda Ltd Urukiko rurasanga nta shingiro zifite kubera ko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY’URUKIKO

[45] Rwemeje ko ubujurire bwa Experts Consultants United INC, Uganda Ltd, nta shingiro bufite ;

[46] Rwemeje ko icyemezo cy’Umukemurampaka Me Rubasha Herbert cyafashwe ku wa 16/09/2016 kivuyeho ;

[47] Rwemeje ko imikirize y’urubanza RCOM 00005/2017/HCC/CHC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 29/09/2017 idahindutse ;

[48] Rutegetse Experts Consultants United, Inc Uganda, kwishyura Royal HASKONING DHV (Pty) Ltd 1.000.000Frw y’indishyi z’ikurikiranarubanza n’igihembo cya Avoka ;

[49] Rutegetse ko amagarama y’urubanza yatanzwe na Experts Consultants United INC,Uganda Ltd, ahwanye n’ibyakozwe mu rubanza.