ROAD SOLUTIONS PAVEMENT PRODUCT v MAILCO LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00002/2020/SC (Nyirinkwaya.P. J; Cyanzayire, Hitiyaremye; Rukundakuvuga na Muhumuza.J) 25 Nzeri 2020

Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirwamo ku mpamvu z'akarengane – Inzitizi yatanzwe mu Nkiko zibanza zikanafatwaho umwanzuro – Mu rubanza rujyanye no gusubirishamo ku mpamvu z'akarengane, inzitizi zatanzwe mu Nkiko zibanza zikanafatwaho umwanzuro, ntizongera kuzamurwa cyeretse gusa iyo arizo akarengane gashingiyeho—Mu gihe haburanishwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, ibyo umuburanyi yatsinzwemo ariko akaba atarigeze asaba ko byasuzumwa mu rwego rw'akarengane abinyujije mu nzira ziteganywa n'amategeko, ntibishobora kwakirwa ngo bisuzumwe

Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirwamo ku mpamvu z'akarengane – Imbibi z'ikiburanwa z'urubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane – Mu gihe haburanishwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, ibyo umuburanyi yatsinzwemo ariko akaba atarigeze asaba ko byasuzumwa mu rwego rw'akarengane abinyujije mu nzira ziteganywa n'amategeko, ntibishobora kwakirwa ngo bisuzumwe.

Amategeko agenga ububasha bw'inkiko – Inzitizi y'iburabubasha – Ubujurire bwa kabiri – Gutsindwa mu nkiko zombi hashingiwe ku mpamvu zimwe – Mugusuzuma niba umuburanyi yaratsinzwe mu nkiko zabanje ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri Rukiko mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire, kandi ko inkiko zombi zazishubijeho mu buryo bumwe. – Impamvu zigomba gutandukanywa n'icyemezo cy'urukiko, kuko impamvu ariyo ishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye urukiko rufata icyemezo.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Road Solutions Pavement Products irega Mailco Ltd ko itubahirije amasezerano y'ubugure bagiranye. Uregwa yatanze inzitizi ijyanye n'iburabubasha avuga ko uwareze adafite ubuzima gatozi. Urukiko rwaciye urubanza ruvuga ko inzitizi nta shingiro ifite. Uregwa yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko Urega nta bubasha yari ifite, bityo ko urubanza rwaciwe ku rwego rwa mbere ruvuyeho. Road Solutions Pavement Products nayo yahise ijuririra mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko idafite ububasha bwo kuregera ibyayo kandi ari Sosiyete yanditse. Mailco Ltd yo ivuga ko nubwo koko Road Solutions Pavement Products yanditse ariko yanditswe yaramaze gutanga ikirego ko rero ibyo binyuranyije n'amategeko.

Urukiko rw'ikirenga mu guca urubanza rwemeje ko Urukiko Rukuru rw'Ubucuruzi rutari kwakira ngo rusuzume ikirego cy'ubujurire ku rubanza rubanziriza urundi rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, kuko cyatanzwe mu buryo bunyuranyije n'amategeko, rwemeje ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruvuyeho, ko urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge arirwo rugumyeho.

Mu guca urubanza mu mizi, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya Road Solutions Pavement Products gifite ishingiro, rutegeka Mailco Ltd kwishyura 109.23.433 Frw.

Mailco Ltd ntiyishimiye imikirize y'urubanza, ijurira mu Rukiko Rukuru rw'Ubucuruzi. Urukiko rwaciye urubanza rwemeza ko ubujurire budafite ishingiro, ko urubanza rwajuririwe

rudahindutse, rutegeka Mailco Ltd kwishyura Road Solutions Pavement Products inyungu z'ubukererwe ziyongera ku yategetswe mu rubanza rwaciwe mbere.

Mailco Ltd yongeye kutishimira imikirize y'urubanza, irujuririra mu Rukiko rw'Ikirenga nyuma y'ivugurura ry'Inzego z'Ubucamanza, urubanza rwoherejwe mu Rukiko rw'Ubujurire. Mu guca urubanza, Urukiko rw'Ubujurire rwemeje ko ubujurire bwa Mailco Ltd bufite ishingiro kuri bimwe, ko nta gihindutse ku rubanza rwajuririwe usibye ingano y'umwenda.

Nyuma y'uko Urukiko rw'Ubujurire rufashe icyo cyemezo, Road Solutions Pavement Products yandikiye Perezida w'Urukiko rw'Ikirenga isaba gusubirishamo uru rubanza ku mpamvu z'akarengane, amaze kubisuzuma yafashe icyemezo ko rusubirwamo ku mpamvu za karengane.

Mail Co yazamuye inzitizi y'iburabubasha ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rutagombaga kwakira ikirego cya Road Solutions Pavement Products, kuko cyatanzwe itarabona ubuzima gatozi, bityo nukuvuga ko nta bubasha (qualité) bwo kurega yari ifite.

Mu kwiregura kuri iyi nzitizi, Road Solutions Pavement Products ivuga ko igihe cyo kuburanisha no guca urubanza cyageze ibyangombwa by'uko yanditswe byarabonetse. Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko iyo nzitizi nta shingiro ifite.

Mu kusobanura impamvu za karengane yatewe n'urwo rubanza avuga ko iyambere nukwo MAILCO yaratsinzwe ku mpamvu zimwe mu rwego rwa mbere n'urwa kabiri ku buryo ubujurire bwayo butagombaga kwakirwa mu Rukiko rw'Ubujurire kuko kuva urubanza rwatangira ikiregerwa cyari umwenda remezo n'inyungu ziyakomokaho, bityo ibibazo ni bimwe byasuzumwe mu nkinko zombi kandi bikanafatwaho ibyemezo bimwe. Iyindi mpamvu avuga ko Urukiko rwarashingiye ku bimenyetso atari byo harimo nk'imvugo z'abiswe abakozi ba banki baje ku giti cyabo badahagarariye iyo banki maze rumugenera amafaranga atariyo.

Ku mpamvu ya mbere, Mailco Ltd yisobanura–ivuga ko ibibazo byasuzumwe mu rwego rwa mbere bitandukanye n'ibyasuzumwe mu bujurire, bityo n'impamvu zashingiweho mu manza zombi zikaba atari zimwe. Ku mpanyu ya kabiri isobanura ko abakozi ba Banki baje babiherewe uburenganzira kandi ko niyo baza ku giti cyabo ubuhamya bwose butanzwe, Urukiko arirwo rufite ububasha bwo kureba niba bwakwemerwa cyangwa bwakwangwa. Nayo yatanze ikirego kigamije kwiregura ariko Urukiko rusanga kidakwiye gusuzumwa kuko cyatanzwe mu buryo bunyuranije n'amategeko.

Incamake y'icyemezo: 1. Mu urubanza rujyanye no gusubirishamo ku mpamvu z'akarengane, inzitizi zatanzwe mu Nkiko zibanza zikanafatwaho umwanzuro, ntizongera kuzamurwa cyeretse gusa iyo arizo akarengane gashingiyeho, bityo nzitizi yatanzwe na MAILCO Ltd irebana no kuba Road Solutions Pavement Products yaratanze ikirego ku rwego rwa mbere idafite ububasha bwo kurega itagomba kwakirwa.

2. Mugusuzuwa niba umuburanyi yaratsinzwe mu nkiko zabanje ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri Rukiko mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire, kandi ko inkiko zombi zazishubijeho mu buryo bumwe, bityo MAILCO Ltd ntabwo yatsinzwe ku mpamvu zimwe mu rwego mbere n'urwa kabiri, ku buryo ntacyabuzaga ko ubujurire bwayo bwakirwa mu Rukiko rw'Ubujurire.

3. Impamvu zigomba gutandukanywa n'icyemezo cy'urukiko, kuko impamvu ariyo ishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye urukiko rufata icyemezo.

4. Mu gihe haburanishwa urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, ibyo umuburanyi yatsinzwemo ariko akaba atarigeze asaba ko byasuzumwa mu rwego rw'akarengane abinyujije mu nzira ziteganywa n'amategeko, ntibishobora kwakirwa ngo bisuzumwe.

Nta karengane kari mu rubanza rwaciwe n'Urukiko rw'Ubujurire.

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ingingo ya 12.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Ingingo ya 58

Itegeko Nº 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga (Ryakurikizwaga ikirego kiburanishwa). Ingingo ya 28, igika cya 5.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo

Imanza zashingiweho:

Urubanza RCOMAA 00034/2016/SC rwaciwe ku wa 23/03/2018 haburana Uwase Claudine na Banki ya Kigali, B&N GENERAL SUPPLY Company Ltd, Rwanda Development Board.

Urubanza RS/INJUST/RAD 00003/2018/SC rwaciwe ku wa 17/07/2020 haburana Mujawamariya Claire, Dusabeyezu Jeanne na Nyirandikubwimana Marie Goretti, Ikigo cy'Igihugu gishinzwe imicungire n'imikoreshereze y'ubutaka

Urubanza RCOMAA 0043/2016/CS-RCOMAA 0047/16/CS rwaciwe ku wa 23/02/2017 haburana Nzaramba Edouard na GT Bank Rwanda Ltd;

Urubanza RCOMAA 0012/13/CS rwaciwe ku wa 13/06/2014 haburana Entreprise Usengimana Richard na Nikobasanzwe Ntwari Gerard.

Urubanza RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, haburana PRIME Insurance Ltd na Kansiime James

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 15/02/2016, ibigo by'ubucuruzi Road Solutions Pavement Products (ihagarariwe na Mushayija Remy) na Mailco Ltd (ihagarariwe na Misago Gratien Wilson) byagiranye amasezerano y'ubugure bw'ingunguru 16 za claycrete product yifashishwa mu gukora imihanda ku giciro cya 160.000 USD. Mailco Ltd yishyuye ako kanya avansi ingana na 33.715 USD, yemera no gutanga chèque ingana na 126.285 USD izishyurwa mu byiciro 2 mu buryo bukurikira:

> Ingwate ya *Chèque* iriho amafaranga y'u Rwanda 78.502.300 yagombaga guhabwa Mushayija Remy bitarenze ku wa 27/02/2016;

Ingwate ya *Chèque* iriho amafaranga y'u Rwanda 20.000.000 yagombaga guhabwa Mushayija Remy nyuma y'uko Mailco Ltd yishyuwe na China Road and Bridges Corporation ku wa 15/03/2016.

[2] Nyuma yo kwishyurwa avansi ya 33.715 USD, Mushayija Remy yemera ko yakiriye mu bihe bibiri bitandukanye ubundi bwishyu bwa Mailco Ltd bungana na 25.260 USD, bityo umwenda remezo Road Solutions Pavement Products ivuga ko wasigaye ari nawo yaregeye ukaba ungana na 101.085 USD. Road Solutions Pavement Products yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kwishyurwa umwenda wari usigaye, inyungu zayo hamwe n'indishyi zinyuranye.

[3] Mailco Ltd yatanze inzitizi ijyanye n'iburabubasha ivuga ko uwareze adafite ubuzima gatozi hamwe n'inzitizi ijyanye n'ingwate itangwa n'abanyamahanga, Urukiko rw'Ubucuruzi rwemeza ko inzitizi y'iburabubasha idafite ishingiro, ariko ko Road Solutions Pavement Products igomba gutanga ingwate itangwa n'abanyamahanga. Ingwate imaze gutangwa, Mailco Ltd yanze kuburana mu mizi ivuga ko yajuririye icyemezo ku nzitizi y'iburabubasha, ndetse yihana umucamanza. Urukiko rwemeje ko nta mpamvu yo kwihana umucamanza, ariko biba ngombwa gutegereza icyemezo cy'Urukiko Rukuru rw'Ubucuruzi ku nzitizi yajuririwe. Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego kitagombaga kwakirwa ku rwego rwa mbere, kuko nta bubasha Road Solutions Pavement Products yari ifite bwo kugitanga, rwemeza kandi ko urubanza rwaciwe ku rwego rwa mbere ruvuyeho. Road Solutions Pavement Products nayo yahise ibijuririra mu Rukiko rw'Ikirenga.

[4] Ku wa 21/07/2017, Urukiko rw'Ikirenga rwaciye urubanza RCOMAA 00015/2017/SC, rwemeza ko Urukiko Rukuru rw'Ubucuruzi rutari kwakira ngo rusuzume ikirego cy'ubujurire ku rubanza rubanziriza urundi rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, kuko cyatanzwe mu buryo bunyuranyije n'amategeko, hashingiwe ku ngingo ya 143, igika cya kabiri, n'ingingo ya 162 z'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ziteganya ko ubujurire ku rubanza rubanziriza urundi bukorerwa hamwe n'ubw'urubanza rw'iremezo. Urukiko wemeje ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruvuyeho, ko urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge rugumyeho.

[5] Ku wa 14/09/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza mu mizi rufite RCOM 01115/2016/TC/NYGE, rwemeza ko ikirego cya Road Solutions Pavement Products gifite ishingiro, rutegeka Mailco Ltd kwishyura 109.23.433 Frw akubiyemo 85.462.546 Frw y'umwenda wari usigaye, 23.074.887 Frw y'inyungu z'ubukererwe, na 700.000 Frw y'igihembo cy'Avoka. Urukiko rwategetse ko Mailco Ltd isubiza amafaranga y'ingwate y'amagarama 50.000 ndetse runategeka ko uwareze asubizwa amafaranga ibihumbi 600.000 y'ingwate itangwa n'abanyamahanga.

[6] Mailco Ltd ntiyishimiye imikirize y'urubanza, ijurira mu Rukiko Rukuru rw'Ubucuruzi, ubujurire bwandikwa kuri RCOMA 00674/2017/CHC/HCC. MAILCO Ltd yajuriye ivuga ko ku rwego rwa mbere yimwe amahirwe yo kwiregura, kuko itigeze imenyeshwa umunsi w'iburanisha, yongera no kugarura inzitizi yari yaratanze mbere zijyanye no kuba Road Solutions Pavement Products idafite ububasha bwo kurega, inavuga ko yishyuye ingwate y'abanyamahanga ingana na 600.000 Frw nyamara Urukiko rw'Ikirenga rwaratanze umurongo w'uko urega yishyura 27% by'agaciro k'ikiregerwa. Indi mpamvu yatanze mu bujurire yari ishingiye ku kuba hari amafaranga yagombaga gukurwa mu mwenda remezo akaba atarakuwemo, ndetse n'amategeko yari gukurikizwa akaba ataritaweho.

[7] Ku wa 16/02/2018, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwatanzwe na Mailco Ltd budafite ishingiro, ko urubanza rwajuririwe rudahindutse, rutegeka Mailco Ltd kwishyura Road Solutions Pavement Products inyungu z'ubukererwe zingana na 6.409.691 Frw yiyongera ku yategetswe mu rubanza rwaciwe mbere. Rwategetse kandi ko urubanza rurangizwa by'agateganyo kuri 19.000 USD, ruvuga ko Mailco Ltd yemeraga ko iyabereyemo Road Solutions Pavement Products. Rwakosoye n'urubanza rwajuririwe nk'uko byari byasabwe na Road Solutions Pavement Products, ahanditswe ko inyungu z'ubukererwe zingana na 23.074.887 USD bikaba ari 23.074.887 Frw.

[8] Mailco Ltd ntiyishimiye imikirize y'urubanza, irujuririra mu Rukiko rw'Ikirenga ku wa 10/03/2018. Nyuma y'ivugurura ry'Inzego z'Ubucamanza, urubanza rwoherejwe mu Rukiko rw'Ubujurire, rwandikwa kuri RCOMAA 00023/2018/CA. Mu iburanisha, uhagarariye Road Solutions Pavement Products yatanze inzitizi y'iburabubasha bw'Urukiko, ivuga ko Mailco Ltd yatsinzwe mu nkiko ebyiri ku mpamvu zimwe. Ku wa 12/04/2019, Urukiko rwemeje ko iyo nzitizi nta shingiro ifite, ko urubanza rugomba gukomeza mu mizi.

[9] Ku wa 14/06/2019, Urukiko rw'Ubujurire rwaciye urubanza rubanziriza urundi, rwemeza ko hagomba gutumizwa mu rubanza abakozi 2 ba Banki ya Kigali kugira ngo barusobanurire iby'ibaruwa banditse ku wa 26/01/2019 iri muri dosiye. Ku wa 11/10/2019, Urukiko rw'Ubujurire rwaciye urubanza, rwemeza ko ubujurire bwa Mailco Ltd bufite ishingiro kuri bimwe, ko nta gihindutse ku rubanza rwajuririwe usibye ingano y'umwenda, rwemeza ko umwenda Mailco Ltd ifitiye Road Solutions Pavement Products ungana na 21.025 USD.

[10] Nyuma y'uko Urukiko rw'Ubujurire rufashe icyo cyemezo, Me Kayitare Dieudonné uhagarariye Road Solutions Pavement Products yandikiye ibaruwa Perezida w'Urukiko rw'Ikirenga asaba gusubirishamo ku mpamvu z'akarengane, urubanza RCOMAA 00023/2018/CA.

[11] Ku wa 04/05/2020, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo No 242/CJ/2020, yemeza ko urubanza RCOMAA 00023/2018/CA rusubirwamo ku mpamvu z'akarengane, ategeka ko rwoherezwa mu Bwanditsi bw'Urukiko kugira ngo rwandikwe mu bitabo byabugenewe.

[12] Iburanisha ry'urubanza ryashyizwe ku wa 08/09/2020, ribera mu ruhame, Road Solutions Pavement Products yitabye ihagarariwe na Me Kayitare Dieudonné na Me Ndamage Ferdinand, Mailco Ltd yitabye ihagarariwe na Misago Gratien Wilson yunganiwe na Me Kayitare Jean Pierre.

[13] Mbere yo kwinjira mu mizi y'urubanza, Urukiko rwabanje kuburanisha ku nzitizi yatanzwe na Mailco Ltd irebana no kuba Road Solutions Pavement Products yaratanze ikirego ku rwego rwa mbere idafite ububasha bwo kurega, ku buryo kitagombaga kwakirwa.

[14] Uhagarariye Mailco Ltd yasobanuye ko Urukiko rw'Ubucuruzi rwa Nyarugenge rutagombaga kwakira ikirego cya Road Solutions Pavement Products, kuko cyatanzwe itarabona ubuzima gatozi, bivuga ko nta bubasha (qualité) bwo kurega yari ifite, kandi iyo mpamvu ikaba ari ndemyagihugu isuzumwa aho urubanza rwaba rugeze hose.

[15] Uhagarariye Road Solutions Pavement Products avuga ko inzitizi yo kutagira ububasha Mailco LTD yazamuye nta shingiro yahabwa, kuko bigaragara ko igihe cyo kuburanisha no guca

urubanza cyageze ibyangombwa by'uko Road Solutions Pavement Products yanditswe byarabonetse.

[16] Nyuma yo kumva ibivugwa n'impande zombi kuri iyo nzitizi, Urukiko rwafatiye icyemezo mu ntebe, rwemeza ko iyo nzitizi nta shingiro ifite ku mpamvu z'uko imanza ziza mu karengane ziba zaraciwe burundu zifite abaziburanye akaba ari nabo bagaruka mu rubanza rw'akarengane, ko kandi ibyo byafashweho umurongo mu zindi manza aho Urukiko rwemeje ko bene iyo nzitizi yakirwa gusa iyo ariyo akarengane gashingiyeho[1], muri uru rubanza ikaba itaratanzwe nk'impamvu y'akarengane.

[17] Urukiko rwakomeje iburanisha mu mizi, rusuzuma impamvu z'akarengane zatanzwe na Road Solutions Pavement Products, arizo:

- Kuba Urukiko rw'Ubujurire rwaremeye kwakira ubujurire bwa kabiri bw'ikigo Mailco Ltd, mu gihe icyo kigo cyari cyaratsinzwe inshuro ebyiri ku mpamvu zimwe mu Rukiko rw'Ubucuruzi rwa Nyarugenge no mu Rukiko Rukuru rw'Ubucuruzi;

- Kuba Urukiko rwarashingiye ku mvugo z'abakozi ba Banki ya Kigali bemeje ko babonye Mailco Ltd ihagarariwe na Misago Gratien Wilson yishyura Road Solutions Pavement Products ihagarariwe na Mushayija Remy ari kumwe n'abazungu, 30.000 USD yazanywe n'umuvunjayi;

- Kuba Urukiko rwaremeje ko Road Solutions Pavement Products yishyuwe 50.000 USD hashingiwe ku nyandiko yiswe *Application for funds transfer*, mu gihe Mailco Ltd yemeza ko *facture* yahawe na Road Solutions Pavement Products yariho nimero ya konti itandukanye n'iyo bishyuyeho, kandi hakishyurwa umuntu Road Solutions Pavement Products itazi witwa VAN Dyke;

- Kuba kuva imanza zatangira, umwenda Mailco Ltd yemeraga ari 19.000 USD, ariko byagera mu Rukiko rw'Ubujurire amafaranga agahinduka 14.025 USD.

[18] Urukiko rwemeje ko impamvu y'akarengane ijyanye no kuba ubujurire bwa Mailco Ltd butagombaga kwakirwa mu Rukiko rw'Ubujurire, kubera ko yatsinzwe kabiri ku mpamvu zimwe, izafatirwaho icyemezo hamwe n'izindi mpamvu z'akarengane.

[19] Ku bijyanye n'ingano y'amafaranga Mailco Ltd isigaje kwishyura Road Solutions Pavement Products, ababuranyi ntibabyumvikanaho. Ku madolari 160.000 yumvikanyweho mu masezerano yasinywe ku wa 15/02/2016, impande zombi zemeranywa ko hishyuwe avansi ya 33.715 USD na 25.260 USD yishyuwe nyuma. Ayo batemeranywaho ni 101.085 USD Road Solutions Pavement Products yaregeye. Mailco Ltd ivuga ko kuri ayo 101.085 USD, yishyuye mu bihe bitandukanye 30.000 USD, 50.000 USD na 7.000 USD, hakaba hasigaye 14.025. USD Road Solutions Pavement Products ivuga ko itigeze yishyurwa amadolari avugwa na MAILCO Ltd, akaba ariyo mpamvu yaregeye akarengane. Mu kirego cy'akarengane, Road Solutions Pavement Products ntigaruka kuri 7.000 USD kuko Urukiko rw'Ubujurire rwemeje ko

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[1] Urubanza Nº RS/INJUST/RC 00002/2018/SC rwaciwe ku wa 21/02/2020, haburana Uwimana Marine na Kagitare Dancille
Urubanza No RS/INJUST/RAD 00003/2018/SC rwaciwe ku wa 17/07/2020 haburana Mujawamariya Claire, Dusabeyezu Jeanne na Nyirandikubwimana Marie Goretti, Ikigo cy'Igihugu gishinzwe imicungire n'imikoreshereze y'ubutaka

itayishyuwe. Igaruka gusa kuri 30.000 USD na 50.000 USD, ikanavuga ko Mailco Ltd yemereye mu Rukiko rw'Ubucuruzi ko ayo itarishyura ari 19.000 USD aho kuba 14.025 USD.

[20] Ibibazo nyamukuru rero byasuzumwe muri uru rubanza, ni ibi bikurikira

Kumenya niba Mailco Ltd yaratsinzwe ku mpamvu zimwe mu rwego rwa mbere n'urwa kabiri ku buryo ubujurire bwayo butagombaga kwakirwa mu Rukiko rw'Ubujurire;

Kumenya ingano y'umwenda Mailco Ltd igomba kwishyura Road Solutions Pavement Products.

Hasuzumwe kandi ikirego kiregera kwiregura cyatanzwe na Mailco Ltd, hamwe n'ikibazo cy'indishyi zasabwe muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba Mailco Ltd yaratsinzwe ku mpamvu zimwe mu rwego rwa mbere n'urwa kabiri ku buryo ubujurire bwayo butagombaga kwakirwa mu Rukiko rw'Ubujurire

[21] Abahagarariye Road Solutions Pavement Products bavuga ko kuva urubanza rwatangira ikiregerwa cyari umwenda remezo ungana na 101.085 USD n'inyungu ziyakomokaho. Bavuga ko basanga Urukiko rw'Ubujurire rutari kwemeza ko urubanza rujuririrwa bwa kabiri ku mpamvu zimwe, kuko ibibazo byasuzumwe mu Rukiko rw'Ubucuruzi, aribyo byongeye gusuzumwa mu bujurire, bikanafatwaho ibyemezo bimwe.

[22] Uhagarariye Mailco Ltd avuga ko asanga ibyo Road Solutions Pavement Products ivuga nta shingiro bifite, kuko ibibazo byasuzumwe mu rwego rwa mbere mu rubanza RCOM 01115/2016/TC/NYGE bitandukanye n'ibyasuzumwe mu bujurire mu rubanza RCOMA 00674/2017/CHC/HCC. Avuga ko hari bimwe byasuzumwe bwa mbere mu rwego rw'ubujurire, bityo na motivation mu manza zombi zikaba atari zimwe.

UKO URUKIKO RUBIBONA

[23] Ingingo ya 28, igika cya 5, y'Itegeko No 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakurikizwaga igihe Mailco Ltd yajuriraga, ryateganyaga ko urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, rudashobora kujuririrwa mu Rukiko rw'Ikirenga.

[24] Ibiteganywa n'iki gika byasobanuwe mu manza zinyuranye zaciwe n'Urukiko rw'Ikirenga[2], zagaragaje ko mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje

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[2]Zimwe muri izo manza:

- Urubanza RCOMAA 00034/2016/SC rwaciwe ku wa 23/03/2018 haburana Uwase Claudine na Banki ya Kigali, B&N GENERAL SUPPLY Company Ltd, Rwanda Development Board;
- Urubanza RCOMAA 0043/2016/CS-RCOMAA 0047/16/CS rwaciwe ku wa 23/02/2017 haburana Nzaramba Edouard na GT Bank Rwanda Ltd;
- Urubanza RCOMAA 0012/13/CS rwaciwe ku wa 13/06/2014 haburana Entreprise Usengimana Richard na Nikobasanzwe Ntwari Gerard.

ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (raisonnement juridique) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutsweho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe. Impamvu zigomba gutandukanywa n'icyemezo cy'urukiko, kuko impamvu ariyo ishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye urukiko rufata icyemezo.

[25] Muri uru rubanza, harasuzumwa impamvu zatumye Mailco Ltd itsindwa mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi, hitawe ku cyaburanwaga, no ku ngingo zasuzumwe mu nkiko zombi. Kubera ko ku rwego rwa mbere hari inzitizi zaburanyweho, zigafatwaho icyemezo mu rubanza rubanziriza urundi, nyuma zikajuririrwa hamwe n'urubanza mu mizi, ni ngombwa ko ku rwego rwa mbere harebwa urubanza rubanziriza urundi RCOM 01115/2016/TC/NYGE rwo ku wa 09/11/206 n'urubanza mu mizi RCOM 01115/2016/TC/NYGE rwo ku wa 14/09/2017. Ku rwego rw'ubujurire, hararebwa urubanza RCOMA 00674/2017/CHC/HCC rwo ku wa 16/02/2018.

[26] Ikibazo nyamukuru cyasuzumwe muri izi manza, ni umwenda Road Solutions Pavement Products ivuga ko Mailco Ltd iyibereyemo, hakaba n'izindi ngingo zishamikiyeho zagiye ziburanwaho muri buri Rukiko. Mu kugereranya impamvu zatumye Mailco Ltd itsindwa ku rwego rwa mbere n'urwa kabiri, hagaragara ibi bikurikira:

- Ku kibazo nyamukuru cyasuzumwe n'inkiko zombi, kirebana n'ingano y'umwenda Mailco Ltd ibereyemo Road Solutions Pavement Products hamwe n'inyungu zawo, Mailco Ltd yatsinzwe ku rwego rwa mbere n'urwa kabiri no kutabasha kugaragaza ibimenyetso by'uburyo yagabanyije umwenda remezo uvugwa mu masezerano bagiranye, ku buryo ugera ku wo yemera ko isigayemo, kandi ikaba iwumaranye igihe. Kuri iki kibazo, Mailco Ltd ikaba yaratsinzwe mu nkiko zombi ku mpamvu zimwe;

- Ku kibazo kirebana no kumenya niba Urukiko rw'Ubucuruzi rwarakiriye ikirego cya Road Solutions Pavement Products kandi nta buzima gatozi igira, ku rwego rwa mbere Mailco Ltd yatsinzwe n'uko Road Solutions Pavement Products igaragaza icyangombwa cy'uko yanditse muri Australia, naho ku rwego rwa kabiri itsindwa n'uko Urukiko Rukuku rw'Ubucuruzi rwavuze ko iyo nzitizi yafashweho icyemezo cya burundu n'Urukiko rw'Ikirenga mu rubanza RCOMAA 00015/2017/SC rwemeje ko Road Solutions Pavement Products ifite ububasha bwo kurega kandi ko iburanisha mu mizi ry'urubanza rigomba gukomeza. Impamvu zashingiweho n'Inkiko zombi kuri iki kibazo, zikaba rero zitandukanye;

- Ikibazo kirebana no kumenya niba mu guca urubanza ku rwego rwa mbere, Urukiko rwarashingiye ku mategeko rutagombaga gushingiraho, kimwe n'ikibazo kirebana n'irangizarubanza ry'agateganyo ryasabwe na Road Solutions Pavement Products, Mailco Ltd yabitsinzweho mu Rukiko Rukuru rw'Ubucuruzi, ariko ntibyigeze bisuzumwa n'Urukiko rw'Ubucuruzi. Ntihavugwa rero ko Mailco Ltd yabitsinzweho ku mpamvu zimwe mu nkiko zombi.

[27] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga Mailco Ltd itaratsinzwe ku mpamvu zimwe mu rwego mbere n'urwa kabiri, ku buryo ntacyabuzaga ko ubujurire bwayo bwakirwa mu Rukiko rw'Ubujurire.

Kumenya ingano y’umwenda Mailco Ltd igomba kwishyura Road Solutions Pavement Products

Ku bijyanye na 30.000 USD Mailco Ltd ivuga ko Misago Gratien Wilson yishyuriye Mushayija Remy kuri Banki ya Kigali (BK)

[28] Abahagarariye Road Solutions Pavement Products bavuga ko Urukiko rw’Ubujurire rutagombaga gushingira ku mvugo z’abakozi ba Banki ya Kigali ngo rwemeze ko Mailco Ltd yishyuye 30.000 USD kubera impamvu zikurikira:

- Abakozi ba Banki ya Kigali baje ku giti cyabo, badahagarariye Banki bakorera;
- Abo bakozi bemeza ko babonye Misago Gratien Wilson yishyura Mushayija Remy 30.000 USD yazanywe n’umuvunjayi uvuye hanze ya Banki, kandi baravuze ko batari bazi Mushayija Remy, ko bamubonye gusa uwo munsi ari kumwe n’abazungu babiri;
- Iby’abatangabuhamya byahimbwe na Mailco Ltd urubanza rugeze mu Rukiko rw’Ubujurire, ikaba itari yigeze ibyifashisha kuva imanza zatangira;
- Abatangabuhamya baje kuvuga ibyo bashyize mu nyandiko, barabifashe mu mutwe nk’aho bari bazi ko bazabibazwa;
- Ubuhamya batanze ni ubuhimbano nk’uko bigaragazwa n’ibaruwa Me Kayitare Jean Pierre yandikiye Banki ya Kigali ku wa 15/11/2018, ibiyikubiyemo akaba ari nabyo abatangabuhamya banditse banabivugira mu rukiko;
- Urukiko rw’Ubujurire rwirengagije ko abo bakozi badakora mu biro bimwe ku buryo bari kubona Misago Gratien Wilson aha amafaranga Mushayija Remy. Ubusanzwe amafaranga akaba atangirwa kuri *guichet* ariko bo bakaba barabwiye Urukiko ko bakora mu biro;
- Urukiko rwashingiye ku buhamya bwabo rwemeza ko hari 30.000 USD umuvunjayi yavanye hanze ya Banki ayaha Misago Gratien Wilson, nawe ayaha Mushayija Remy, ariko nta nyandiko y’imenyesha bwishyu Mushayija Remy yabahaye, bikaba bitashoboka ko umuntu yishyura undi amafaranga angana atyo nta nyandiko ibayeho.

[29] Abahagarariye Road Solutions Pavement Products bavuga kandi ko ubuhamya bw’abakozi ba Banki buvuguruzanya n’ubuhamya bwa Niringiyimana Pierre Canisius bivugwa ko ariwe wazanye ayo madolari, bakaba badahuza itariki kuko we avuga ko byabaye ku wa 25 mu gihe abakozi ba Banki bo bavuga ko byabaye ku wa 26.

[30] Uhagarariye Mailco Ltd avuga ko asanga ibyo abahagarariye Road Solutions Pavement Products bavuga nta nshingiro bifite kubera impamvu zikurikira:

- Abakozi ba Banki ya Kigali ntibaje mu rukiko ku giti cyabo, ahubwo bari babiherewe uburenganzira n’ubuyobozi bwabo nyuma y’ibaruwa yo ku wa 15/11/2018 bwandikiwe n’uburanira Mailco Ltd, uretse ko n’iyo baza kuza ku giti cyabo ntacyo byari kuba byishe, kuko ingingo ya 65 y’Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, iteganya ko Urukiko arirwo rwonyine ruha agaciro ubuhamya bw’abatangabuhamya, rureba ko buhuye n’ikiburanwa, rwita cyane cyane ku bumenyi bwabo bw’ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira;

- Abakozi ba Banki ya Kigali aribo Iyamuremye Jean Pierre na Dushime Geoffrey bemeza ko Mushayija Remy yishyuriwe imbere yabo muri Banki 30.000 USD, ayahawe n'umuvunjayi witwa Niringiyimana Pierre Canisius wari ubisabwe na Misago Gratien Wilson, nyuma y'uko uyu asabye *overdraft* ya 27.000.000 Frw ku mwenda wa 85.000.000 Frw Banki ya Kigali yari yaramwemereye. Kubera ko muri Banki nta madolari bari bafite, abo bakozi bemeza ko basabye Misago Gratien Wilson gushaka umuvunjayi ufite amadolari 30.000 USD kugira ngo ayazane, ayahe Mushayija Remy, Banki nayo ihe Misago Gratien Wilson amanyarwanda ahwanye na 30.000 USD yo kwishyura uwo muvunjayi. Ubwo buhamya buhura na *historique bancaire* ya MAILCO Ltd yo muri Banki ya Kigali, ishami rya Remera, igaragaza ko ku wa 26/02/2016 kuri konti yayo havuyeho 27.000.000 Frw.

[31] Misago Gratien Wilson avuga ko ikimenyetso cy'uko 30.000 USD yayishyuye koko ari amashusho yafashwe na camera za Banki, ariko ko Banki yanze gutanga ayo mashusho itabisabwe n'Urukiko. Avuga ko mu Nkiko zose yasabye ko icyo kimenyetso cyatumizwa ariko ntibikorwe. Asobanura kandi ko icyemeza ko ayo mafaranga yahaye Mushayija Remy afitanye isano n'amasezerano bagiranye, ari uko nta yandi masezerano bari bafitanye uretse arebana n'ubugure bwa Claycrete. Kuba nta kimenyetso yamuhaye cy'uko yakiriye ayo 30.000 USD, ngo n'uko yari ku gitutu cy'abazungu bashakaga kugenda nimugoroba, kandi amafaranga yahaye Mushayija Remy akaba ariyo bagombaga kuvanamo itike, bikaniyongeraho kuba yari amwizeye cyane.

[32] Misago Gratien Wilson yabajijwe impamvu 30.000 USD yahawe abazungu, kandi hari ubutumwa (message) banditse bemeza ko bishyuwe amafaranga yose, asobanura ko ayo yishyuye abazungu mbere angana na 50.000 USD, yari nka deposit kubera ko yari ategereje andi mafaranga muri Banki kugira ngo abashe kwishyura amafaranga yose uko ari 160.000 USD. Abajijwe impamvu avuga ko bakoranaga mu cyizere ku buryo atari kumusaba icyemezo ko yishyuye, kandi mbere yaragombye kumuha sheki za guarantie, yasubije ko transaction irebana na 50.000 USD yayikoze ku wa 04/02/2016, abazungu bakaza ku wa 06/02/2016, bakavuga ko batarabona ayo madolari, bituma bamusaba gutanga sheki za guarantie harimo n'ayo 50.000 USD.

[33] Avuga ko impamvu mu kwishyurana hazamo abazungu kandi batari mu masezerano, ari uko aribo ba nyir'igicuruzwa, Mushayija Remy akaba yari umuhuza (commissionnaire), kandi mu bucuruzi hakaba hishyurwa nyir'igicuruzwa, umuhuza agahabwa amafaranga ya komisiyo. Asobanura ko yakoranye amasezerano na Mushayija Remy atazi ko azakora amanyanga, kuko ingunguru abazungu bayimuheraga 3.000 USD, we akayimugurisha ku 10.000 USD, ko abazungu baje bagatangazwa n'uko ayitangira menshi; icyo giciro abazungu bakaba barakimenye babibwiwe na RTDA mu nama, kuko aribwo babonye ko ahera RTDA claycrete ku giciro cya 15.000 USD. yongeraho ko abazungu bavugaga ko itagombye kurenza 8.000 USD muri afrika.

Ku bijyanye na 50.000 USD Mailco Ltd yohereje muri Thailand ku mazina ya Van Dyke

[34] Abahagarariye Road Solutions Pavement products bahakana kuba uwo bahagarariye yarishyuwe 50.000 USD, Mailco ltd yohereje muri Thailand ku mazina ya Van Dyke, kubera impamvu zikurikira:

- Road Solutions Pavement Products ntiyigeze imenya umuntu witwa Van Dyke, ntiyari mu masezerano, nta na *procuration* isinywe na Road Solutions Pavement Products yahawe;

- Mailco Ltd ivuga ko yishyuye 50.000 USD ku wa 06/02/2016, mbere y'uko amasezerano asinywa ku wa 15/02/2016, ikaba itagaragaza ko yashyizweho kiboko ku buryo idashyira mu masezerano ko yatanze avansi ya 50.000 USD;
- Mailco Ltd yemera ko nimero bishyuriyeho itandukanye n'iri ku nyemezabuguzi (factures/invoices) nazo zitari umwimerere, ariko Urukiko rwarabyirengagije rwemeza ko ayo mafaranga yishyuwe Road Solutions Pavement Products.

[35] Abahagarariye Road Solutions Pavement Products bongeraho ko iyo 50.000 USD aza kuba yarishyuwe koko ku wa 15/02/2016, yagombaga guherwaho nka avansi igihe hakorwaga amasezerano, kubera ko Mailco Ltd itashoboraga kwibagirwa ko hari amadorari yatanze mbere. Bikaba rero byumvikana ko Mailco Ltd ishobora kuba yari ifite mikoranire n'abandi bantu, bakaba ari nabo bishyuwe 50.000 USD, bikitirirwa Mushayija Remy.

[36] Bavuga ko Misago Gratien Wilson adashobora kugaragaza aho yakuye konti yishyuriyeho, kuko mu nyandiko zose nta hantu iyo konti igaragara, akaba adashobora no kwerekana aho yakuye izina rya Van Dyke; bakaba basanga rero ingunguru za claycrete Mailco Ltd ivuga ko yishyuye nta sano zifitanye n'iziburanwa ubu. Bavuga ko inyemezabuguzi ziri muri dosiye zari izo kugira ngo Mailco Ltd yishyure, ariko bikaba bitarakozwe; izo nyemezabuguzi zikaba zigaragaza ko ayagombaga kwishyurwa ari 47.985 USD aho kuba 50.000 USD.

[37] Bakomeza bavuga ko nta mikoranire yigeze ibaho hagati ya Mailco Ltd n'abazungu, ko ahubwo imikoranire yari hagati ya Mushayija Remy n'abazungu, n'inyandiko zose ziri muri dosiye zikaba zigaragaza ko nta hantu na hamwe Mailco Ltd yigeze igirana imishyikirano (contact) na Road Pavement Products ihagarariwe na Brian Jackman, cyangwa Culture Bridge Australia Consulting (CBAC) ihagarariwe na Dr Victor Egan.

[38] Ku byavuzwe na Mailco Ltd ko Mushayija Remy yari commissionnaire, abamuhagarariye bavuga ko bitigeze bibaho, ko ahubwo ariwe wazaniraga Mailco Ltd Claycrete ayikuye ku ruganda, akishyura ku buryo afite n'impapuro yishyuriyeho, Mailco Ltd ikaba itarashoboraga kwishyura uruganda (manufacturer) kuko batari baziranye, nta n'amasezerano bari bafitanye. Basobanura ko nyiri Mailco Ltd yamenyanye na Brian Jackman ufite sosiyete yitwa Road Pavement Products, ari uko aje mu Rwanda kwerekana uko claycrete ikoreshwa. Ku bijyanye n'inyemezabwishyu ebyiri, imwe yanditseho Mushayija Remy n'indi yanditseho Mailco Ltd, basobanura ko iriho Mailco Ltd yakozwe Mushayija Remy amaze kumenyesha uruganda ko hari umukiriya bakorana mu Rwanda. Ku bijyanye n'ubutumwa (e mail na whatsapp) bwanditswe na Brian Jackman, bavuga ko batabwizera.

[39] Abahagarariye Road Solutions Pavement Products babajijwe impamvu y'inyemezabuguzi zo ku wa 28/01/2016, basobanura ko zari izo kugira ngo Mailco Ltd yishyure avansi, produit ibone kuza, ariko ko itigeze yishyura. Bongeraho ko izo nyemezabuguzi zari zifite agaciro ka 47.985 USD, ku buryo ayo Mailco Ltd yongeraho batazi aho iyakura.

[40] Misago Gratien Wilson uhagarariye Mailco Ltd avuga ko asanga ibimenyetso Urukiko rw'Ubujurire rwashingiyeho rwemeza ko yishyuye Road Solutions Pavement Products 50.000 USD bifite ishingiro. Ibyo bimenyetso bikaba ari ibi bikurikira:

- Inyandiko yiswe *Application for funds transfer* yo ku wa 06/02/2016 yo muri KCB Bank, yerekana ko uwitwa Hategekimana Innocent yohereje 50.000 USD kuri konti yahawe na Mushayija Remy ifite N^0 5403043569, ya Mr J.Van *Dyke*

Central Word 003, Thailand, impamvu yayo ari *supply of 16x200 litres of claycrete Ionic soil stabiliser, Payment by Mailco Ltd, ID:20160125-1*;

- Ubutumwa bwo kuri Whatsapp hagati ya Brian Jackman (nyiri *claycrete)* na Misago Gratien Wilson, bwemeza ko Misago Gratien Wilson yishyuye ingunguru 16 za *claycrete*;
- Ubutumwa Brian Jackman yohereje Me Safari Gahizi wari Avoka wa Mailco Ltd ku wa 11/02/2018, amubwira ko hari inyandiko amwoherereje zerekana ko Mailco Ltd yishyuye ingunguru 16 za *claycrete* binyuze muri UBON BHK;
- Inyandiko Mushayija Remy yohereje Misago Gratien Wilson, avuga ko amwoherereje inyemezabuguzi (invoices) imwe yo ku wa 28/01/2016, ifite N° 20160128-1, ya 23.265 USD y'ubwikorezi bwa *claycrete*; n'indi ifite N° 20160128-2 ya 24.000 USD y'ikiguzi cya *16x200 litres* za *claycrete*. Ikinyuranyo cy'amadolari 2.735 kiri hagati ya 50.000 USD na 47.265 USD kikaba ari ikiguzi cyo kuvana ibicuruzwa ku ruganda bijyanwa ku kibuga cy'indege;
- Inyandiko yo ku wa 09/02/2016 Brian Jackman yohereje Mushayija Remy amubwira ko amwoherereje *air waybill* Misago Gratien Wilson azakiriraho *claycrete*, iyo *air waybill* ifite N° 08-27009 4872 ikaba igaragaza ko haje ingunguru 16.

[41] Misago Gratien Wilson asobanura kandi ko:

- Nyuma y'uko Mushayija Remy agiranye amasezerano na Brian Jackman hamwe n'abo bakorana, bakumvikana ko Mushayija Remy azabafasha kugurisha *claycrete* mu Rwanda, uyu yamubwiye ko sosiyete ya Brian Jackman yitwa "Road Pavement Products" igiye kumwoherereza ingunguru 16 z'iyo *produit*, ku giciro cya 160.000 USD. Kubera ko sosiyete ya Brian Jackman yagombaga gutanga *produit* ntayo yari ifite muri icyo gihe, yiyambaje indi sosiyete bakorana mu gihugu cya Thailand, basaba ko Mailco Ltd ibanza kwishyura amadolari akenewe angana na 50.000 USD yo kwishyura *produit* na *transport*. Mushayija Remy yamwoherereje konti ubwo bwishyu bugomba kunyuzwaho, aribwo yahitaga akora *transfert* ya 50.000 USD nk'uko byemezwa na *Application for funds transfer* yo ku wa 06/02/2016, na *billet de transfert (Air waybill)* N° 082-70094872 ya Brussels Airlines yo ku wa 09/02/2016 igaragaza imizigo yikorewe, aho yavaga n'aho yajyaga, uwayohereje n'ugomba kuyakira;
- Inyemezabuguzi (factures) zigaragaza neza icyishyuwe, kandi kuba Mushayija Remy yaramuhaye konti iri muri Thailand ari uko ariho *Air waybill* yari iri, gusa akaba atarayishyize kuri izo nyemezabuguzi, ariko bigaragara neza ko abagombaga kwishyurwa aribo bishyuwe. Kuba Road Solutions Pavement Products ivuga ko ibiri ku nyemezabuguzi bitandukanye n'ibiri kuri *application for funds transfer* si ikibazo kuko icyitabwaho mu kwishyurana no gutanga ibicuruzwa ari *Air waybill* ivuga ko ibicuruzwa byaje;
- Iyo 50.000 USD aba yarishyuwe abandi bantu badafite aho bahurira na Mushayija Remy, ntihari kwishyurwa ibintu bimwe, ku kiguzi kimwe n'ibyanditswe mu masezerano bagiranye;
- Abazungu babonanye yaramaze gutanga avansi ya 50.000 USD ariko atarabageraho. Brian Jackman wari utarabona gihamya y'uko 50.000 USD yageze

kuri konti ye, yasabye Mushayija Remy kumubwira kubanza gutanga avansi ingana na 33.715 USD yo kugira ngo bashobore kubaho mu Rwanda, arayishyura, impande zombi (Mailco Ltd na Road Solutions Pavement Products) zihita zikora amasezerano y'ubugure tariki ya 15/02/2016. Abazungu basubiye muri Thailand aba aribwo bayabona, Brian Jackman ahita yemeza ko yayabonye;

- Inyemezabuguzi yishyuye yazohererejwe na Mushayija Remy; impamvu kuri *application for funds transfer* no kuri izo nyemezabuguzi hariho amazina na nimero za konti bitandukanye, bikaba ari amabanga y'abacuruzi kuko kwishyura kuri konti yo muri Thailand no ku mazina ya Van Dyke ari ugukwepa imisoro. Avuga ko Air waybill ariyo igaragaza ibyishyuwe n'uwishyuwe, kuba nta mazina y'uwishyurwa ariho bikaba byabazwa Mushayija Remy kuko ariwe wamuhaga konti yishyuraho n'uwo yishyura. Avuga kandi ko atari azi ikiguzi cy'ingunguru imwe, ko ari Mushayija Remy wamubwiraga ayo yishyura.

[42] Misago Gratien Wilson abajijwe impamvu 50.000 USD atakuwe mu mafaranga yagombaga kwishyurwa ubwo hakorwaga amasezerano yo ku wa 15/02/2016, yasubije ko ari uko amasezerano yanditswe Brian Jackman atarabona 50.000 USD yari yohererejwe, ko ndetse hari n'andi 7.000 USD yari yarahaye Mushayija Remy akamusaba kutabyandika kugira ngo abazungu batabibona. Asobanura ko Mushayija Remy yamubwiye ko Brian Jackman namara kubona ko 50.000 USD yageze kuri konti ye, amadolari yatanze mbere azakurwa mu madolari avugwa mu masezerano, akaba yaramwizeye nk'umwana yareze. Avuga kandi ko amasezerano yakoranye na Mushayija Remy yari ayo kwikiza abazungu, kubera ko Mushayija Remy yashakaga ko abo bazungu batamenya ko hari andi mafaranga amuha ku ruhande.

[43] Ku bijyanye n'ibyo Me Kayitare Jean Pierre yemeje mu nyandiko yatanze mu Rukiko rw'Ubujurire, avuga ko impamvu 50.000 USD atashyizwe mu masezerano yo ku wa 15/02/2016 ari uko yo yari yaramaze kwishyurwa ku buryo mu masezerano hashyizwemo ayari asigaye, Me Kayitare Jean Pierre yasobanuye ko bitagombye kwitirirwa umukiliya we kuko yabivuze nk'imiburanire atazi uko byagenze, ko rero ibyo Misago Gratien Wilson yabwiye Urukiko aribyo byahabwa agaciro.

[44] Misago Gratien Wilson akomeza avuga ko Brian Jackman ariwe nyir'uruganda, akaba afite sosiyete yitwa Culture Bridge Australia Consulting (CBAC) imucururiza produit, Mushayija Remy akaba yarajemo nk'umuntu wa 3, ariko icy'ingenzi akaba ari uko nyir'igicuruzwa (Manufacturer) yishyuwe. Avuga ko ubusanzwe uwo muntu wa gatatu aguha amakuru, ariko mu kwishyura ukishyura nyir'igicuruzwa, amasezerano yo ku wa 15/02/2016 akaba yari ayo kwemeza ko yabonye Produit gusa, ubundi ntacyo yari amaze.

UKO URUKIKO RUBIBONA

[45] Ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko urega agaragaza ibimenyetso by'ibyo aregera, yabibura uwo arega akamutsinda. Iyo ngingo iteganya kandi ko uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho, yabiburira ibimenyetso uwo baburana akamutsinda.

[46] Ibimenyetso Road Solutions Pavement Products ishingiraho ivuga ko MAILCO Ltd iyirimo 101.085 USD, ni amasezerano y'ubuguzi bagiranye ku wa 15/02/2016, MAILCO Ltd ikemeza ko yakiriye ingunguru 16 za claycrete ku giciro cya 160.000 USD, ikishyura avansi ya 33.715 USD, asigaye angana na 126.285 USD igatanga sheki 2 zo kuyishingira, bakumvikana ko itariki aya nyuma azishyurirwaho ari ku wa 15/03/2016. Ababuranyi bemeranya ko nyuma y'iyo avansi, hishyuwe andi 25.260 USD.

[47] Mailco Ltd yemeza ko uretse avansi ya 33.715 USD na 25.260 USD bemeranywaho, hari andi madolari yishyuye mu bihe bitandukanye agizwe na 30.000 USD yishyuwe ku wa 26/02/2016, 50.000 USD yishyuwe mbere y'uko amasezerano asinywa, na 7.000 USD yishyuwe ku wa 13/02/2016 ariko aya akaba atagarukwaho muri uru rubanza kuko atari mu yaregewe na Road Solutions Pavement Products mu rwego rw'akarengane. MAILCO Ltd ivuga ko amadolari yose yishyuye iyafitiye ibimenyetso, bikaba aribyo bisuzumwa mu ngingo zikurikira.

Ku bijyanye na 30.000 USD Mailco Ltd ivuga ko Misago Gratien Wilson yishyuriye Mushayija Remy kuri Banki ya Kigali (BK)

[48] Ibimenyetso Mailco Ltd ishingiraho ivuga ko yishyuye Road Solutions Pavement Products bigizwe n'ibi bikurikira:

- Ubuhamya bw'abakozi ba Banki ya Kigali babonye Misago GratienWilson yishyura ayo madolari, aribo Iyamuremye Jean Pierre na Dushime Geoffrey, hamwe n'umuvunjayi witwa Niringiyimana Pierre Canisius wayazanye;
- *Historique bancaire* ya konti ya Mailco Ltd yo muri Banki ya Kigali, ishami rya Remera, igaragaza ko ku wa 26/02/2016 kuri iyo konti havuyeho 27.000.000 Frw.
- Mailco Ltd yavugiye mu iburanisha ko hari amashusho yafashwe na *camera* za Banki ya Kigali Urukiko rushobora gusaba, ariko iyo Banki yavuze ko ntazo ifite nyuma yo kuzisabwa n'Urukiko.

[49] Ku bijyanye n'ubuhamya bw'abakozi ba Banki ya Kigali, mu nyandiko bakoze ku wa 04/12/2018, bemeza ko ku itariki ya 26/02/2016 bahaye Mailco Ltd ihagarariwe na Misago Gratien Wilson Overdraft ingana na 27.000.000 Frw yo kwishyura Bwana Mushayija Remy n'abazungu bari kumwe, Misago akaba yarababwiye ko abo bazungu bamuhaye products zo gukora imihanda.

[50] Abo bakozi ba Banki ya Kigali banahamagawe n'Urukiko rw'Ubujurire mu iburanisha ryo ku wa 26/06/2019. Iyamuremye Jean Pierre yasobanuye ko Banki ya Kigali yagurije amafaranga Mailco Ltd ivuga ko igiye kuyagura produits zo gukoresha umuhanda. Inguzanyo imaze kwemezwa, ngo haje abazungu babiri bagombaga gufatanya nayo, basaba ko uyihagarariye abishyura, ndetse bateza akavuyo muri Banki. Akomeza avuga ko abonye bigiye kuba bibi yahaye uhagarariye Mailco Ltd 27.000.000 Frw kugira ngo abishyure, kuko bavugaga ko bagomba kugenda uwo munsi nimugoroba. Uhagarariye Mailco Ltd ngo yahise ahamagara umuvunjayi, aramuvunjira nawe abireba, arabishyura. Dushime Geoffrey nawe yabwiye Urukiko ko Misago Gratien Wilson yaje gusaba inguzanyo yo gukora umuhanda arayemererwa, nyuma aza gusaba ko baba bamuhayeho make ngo yishyure, bamuha ibihumbi mirongo itatu by'amadolari (30.000 USD) ahamagara umuvunjayi, birangiye ayaha Mushayija Remy nawe ayahereza abazungu.

[51] Hashingiwe ku ngingo ya 65 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Urukiko arirwo rwonyine rupima ko

imikirize y’abatangabuhamya ihuye n’ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa, Urukiko rusanga nta mpamvu ifatika yagaragajwe, yatuma ubuhamya bw’abakozi ba Banki ya Kigali budahabwa agaciro.

[52] Ubuhamya bw’umuvunjayi Niringiyimana Pierre Canisius n’ubw’abakozi ba Banki ya Kigali, n’ubwo budahuza ku matariki ibintu byabereyeho, buhuriza ku kuba Misago Gratien Wilson yarahaye Mushayija Remy 30.000 USD ari kumwe n’abazungu, bikabera kuri Banki ya Kigali. Kwibeshya kw’itariki kandi byashoboka bitewe n’uko Niringiyimana Pierre Canisius yabutanze hashize amezi agera ku munani.

[53] Kuba Mailco Ltd yarishyuye amafaranga angana na 30.000 USD nta nyandiko ibayeho, Urukiko rusanga ingingo ya 64 y’Itegeko No 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru yemera ko inshingano z’ubucuruzi zishobora kugaragazwa n’ikimenyetso ntangabuhamya igihe cyose urukiko rwumva rushobora kucyemera.

[54] Ubwo buhamya kandi buhura n’ibigaragazwa na historique ya konti ya *Mailco Ltd* muri Banki ya kigali, ko ku wa 26/02/2016, Misago Gratien Wilson yavanyeho 27.000.000 Frw.

[55] Urukiko rukaba rusanga rero, 30.000 USD agomba kuvanwa mu madolari Mailco Ltd yari isigaje kwishyura Road Solutions Pavement Products hashingiwe ku masezerano yo ku wa 15/02/2016.

Ku bijyanye na 50.000 USD Mailco Ltd yohereje muri Thailand ku mazina ya Van Dyk

[56] Ibimenyetso Mailco Ltd ishingiraho yemeza ko yishyuye Road Solutions Pavement Products ni ibi bikurikira, nk’uko byasobanuwe mu gika cya 45 cy’uru rubanza:

- Application for funds transfer yo ku wa 06/02/2016;
- Ubutumwa bwo kuri Whatsapp hagati ya Brian Jackman na Misago Gratien Wilson;
- Ubutumwa Brian Jackman yohererej‌e Me Safari Gahizi wari Avoka wa Mailco Ltd ku wa 11/02/2018;
- Inyandiko Mushayija Remy yohereje Misago Gratien Wilson, avuga ko amwoherereje inyemezabuguzi 2 (invoices) zo ku wa 28/01/2016;
- *Air waybill* ifite N^{o} 082-7009 4872.

[57] Hakurikijwe *application for funds transfer* yo ku wa 06/02/2016, kimwe n’ubutumwa bwanditswe na Brian Jackman, bigaragara ko hari 50.000 USD Mailco Ltd yishyuye ingunguru 16 za claycrete, ikibazo kikaba kumenya niba ayo madolari agomba kuvanwa mu madolari 160.000 yagombaga kwishyurwa Road Solutions Pavement Products, hashingiwe ku masezerano yo ku wa 15/02/2016. Mu gusubiza icyo kibazo, ni ngombwa gusesengura inyandiko zinyuranye zashyikirijwe Urukiko.

[58] Amasezerano yasinywe ku wa 15/02/2016 hagati ya Mailco Ltd na Road Solutions Pavement Products, yavugaga ko Mailco Ltd yakiriye ingunguru 16 za claycrete product, zifite agaciro ka 160.000 USD. Mailco Ltd yatanze avansi ya 33.715 USD, itanga na sheki za guarantie zihwanye na 126.285 USD asigaye, imwe ifite agaciro ka 78.502.300 Frw, indi ifite agaciro ka 20.000.000 Frw, zagombaga kwishyurwa ku matariki avugwa muri ayo masezerano.

[59] Mbere y'uko ayo masezerano asinywa, bigaragara ko Mailco Ltd yishyuye ku wa 06/02/2016, ingunguru 16 za claycrete 50.000 USD agaragara kuri application for funds transfer yavuzwe haruguru. Ayo madolari yoherejwe kuri konti No 540 30 43569 ya MR J. Van Dyke ubarizwa Central Word 003, Thailand. Uyu MR J. Van Dyke bigaragara ko ari nyiri Ubon BHK Industrial Co. Ltd hakurikijwe ibiri ku nyandiko yitwa original invoice yo ku wa 20/08/2015 iri muri dosiye, Ubon BHK Industrial Co. Ltd yohereje Brian Jackman. Mailco Ltd ivuga ko yishyuye ishingiye ku nyemezabuguzi 2 yohererejwe na Mushayija Remy, zo ku wa 28/01/2016, ziriho 24.000 USD y'ikiguzi, na 23.285 USD y'ubwikorezi, yose hamwe akaba 47.285 USD.

[60] Road Solutions Pavement Products yemera ko ari Mushayija Remy wohereje Misago Gratien Wilson inyemezabuguzi zo ku wa 28/01/2016, ikavuga ko amadolari avugwamo ahwanye na 47.285 USD yari avansi, ariko ko Mailco Ltd itigeze iyishyura. Bigaragara ko izo nyemezabuguzi zakozwe na Road Pavement Products Pty Ltd ya Brian Jackman ari nayo nyiri claycrete, hakurikijwe ikirango kiriho, n'izina rya nyiri konti yanditseho. Mu cyitonderwa (comment) kiri kuri imwe mu nyemezabuguzi, handitse: « Goods supplied for export from Thailand to Republic of Rwanda. ». Bivuga ko Road Solutions Pavement Products yemera ko amadolari yita avansi yari kuri izo nyemezabuguzi, yari agenewe Road Pavement Products Pty Ltd kuko ariyo yazitanze, hishyurwa ibicuruzwa bivugwamo aribyo ingunguru 16 za claycrete, byagombaga guturuka muri Thailand.

[61] Mu butumwa Brian Jackman yandikiye Avoka wa Mailco Ltd, yemeje ko iyo sosiyete yishyuye Ubon BHK ingunguru 16 za claycrete, ashyiraho ku mugereka kopi ya application for funds transfer iteyeho kashe yemeza ko 50.000 USD yakiriwe. Ibyo Brian Jackman yongeye kubyemeza mu butumwa bwo kuri whatsapp yohereje Misago Gratien Wilson *(I can confirm that you paid for all 16 drums of claycrete and the delivery costs).* Ibyo kandi bigahura n'ibivugwa na Mailco Ltd ko yishyuye 50.000 USD nyiri claycrete hakoreshejwe *application for funds transfer* yo ku wa 06/02/2016. Ku bijyanye n'ikinyuranyo cya 2.735 USD kiri hagati ya 50.000 USD na 47.265 USD, uru Rukiko rwemeranya n'ibyasobanuwe n'Urukiko rw'Ubujurire ko gishobora kuba ikiguzi cyo kuvana ibicuruzwa ku ruganda bijyanwa ku kibuga cy'indege, n'ubwo nta nyandiko zibigaragaza. Ibyo abahagarariye Road Solutions Pavement Products bavuga ko batizeye ubutumwa (*e mail na whatsapp)* bwagiye butangwa na Brian Jackman, Urukiko rusanga uretse kubivuga ntacyo bagaragaza bashingiraho babunenga.

[62] Hakurikijwe amasezerano yabaye hagati ya *Culture Bridge Australia Consulting* (yari isanzwe ari *Distributor* wa *claycrete* ikorwa na *Road Pavement Products Pty Ltd)* na Mushayija Remy, yari afite agaciro guhera ku wa 01/08/2015, uyu yagombaga gukora nka *Distributor* wa *Claycrete* mu Rwanda. Bivuga ko yagombaga kugura Produit, nawe akayigurisha mu Rwanda. Niba *produit* yaroherejwe, ni uko yaguzwe, kandi *Road Solutions Pavement Products* ya Mushayija Remy, ntigaragaza aho yishyuriye iyo produit. Abayihagarariye bavugiye mu iburanisha ko bazageza ku Rukiko icyemeza ko bishyuye, ariko icyo barushyikirije ni invoice iriho 87.054 USD, bigaragara ko yatanzwe na *Culture Bridge Australia Consulting* (CBAC) ku wa 28/01/2016, ntabwo ari aho bishyuriye.

[63] Kuba rero bigaragara ko *Mailco Ltd* ariyo yishyuye 50.000 USD y'ikiguzi n'ubwikorezi kuva ku ruganda, by'ingunguru 16 za claycrete zivugwa mu masezerano yo ku wa 15/02/2016, kuko nta muburanyi uvuga ko claycrete yishyuwe n'ivugwa mu masezerano bitandukanye, Urukiko rusanga nta mpamvu yatuma 50.000 USD yishyuwe atavanwa muri 160.000 USD *Mailco Ltd* yagombaga kwishyura *Road Solutions Pavement Products*.

[64] Kuba 50.000 USD ataravanywe muri 160.000 USD igihe cyo gusinya amasezerano yo ku wa 15/02/2016, ntibivanaho kuba hari ibimenyetso bigaragaza ko yishyuwe na Mailco Ltd, kandi hishyurwa ingunguru 16 za *claycrete* zivugwa muri ayo masezerano. Kuba kandi atarishyuwe ku mazina na nimero ya konti biri ku nyemezabuguzi Mailco Ltd yari yashyikirijwe na Mushayija Remy, Urukiko rusanga uwari watanze izo nyemezabuguzi uboneka ku mutwe (entête) wazo ari nawe nyiri *claycrete*, ni ukuvuga Road Pavement Products Pty Ltd ya Brian Jackman, nta kibazo yabigizeho kuko yemeza ko ibicuruzwa bye byishyuwe binyuze kuri Ubon BHK. Iyi Ubon BHK ni nayo yohereje ibicuruzwa biva Bangkok, Thailand biza I Kigali, hakurikijwe *ai*r *waybill* N° 082-70094872.

[65] Hakurikijwe kandi inyandiko yo ku wa 09/02/2016 Brian Jackman yandikiye Mushayija Remy, amwoherereza kopi ya *air waybill* igenewe Misago Gratien Wilson kugira ngo yakire *claycrete*[3] yari yoherejwe na Ubon BHK Industrial Co. Ltd, bigaragara ko Mushayija Remy yari azi iby'iyo sosiyete iyobowe na Van Dyke, bitandukanye n'ibyo avuga ko atigeze amenya umuntu witwa Van Dyke.

[66] Hashingiwe ku bisobanuro byose byatanzwe, no ku Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Urukiko rurasanga mu madolari 160.000 USD yari yemeranyijweho mu masezerano yo ku wa 15/02/2016, hagomba kuvanwamo amadolari akurikira:

- 33.715 USD yishyuwe nka avansi;
- 25.260 USD ababuranyi bemeranywa ko yishyuwe mu bihe bibiri bitandukanye;
- 30.000 USD yishyuwe ku wa 26/02/2016;
- 50.000 USD yishyuwe hakurikijwe *application for funds transfer* yo ku wa 06/02/2016.

Ni ukuvuga ko asigaye kwishyurwa angana na 160.000 USD -33.715 USD - 25.260 USD -

30.000 USD – 50.000 USD = **21.025 USD**

- **Gusuzuma ikirego kiregera kwiregura cyatanzwe na Mailco Ltd Ibijyanye na 7.000 USD Mushayija Remy avuga ko atahawe**

[67] Mailco Ltd isobanura ko:

- Misago Gratien Wilson yagiye mu kazi mu Karere ka Nyamasheke, agasabwa na Mushayija Remy ko yamwoherereza 7000 USD, akamutumaho umuvunjayi basanzwe bakorana witwa Niringiyimana Pierre Canisius akayamushyira, uwo muvunjayi akaba yarabitangiye ubuhamya;
- Ikindi kimenyetso cyemeza ko umuvunjayi Niringiyimana Pierre Canisius yahaye Mushayija Remy 7000 USD, ni *historique bancaire* ya Mailco Ltd yo muri Banki ya Kigali, ishami rya Remera, igaragaza ko nyuma y'iminsi ibiri atanze ayo 7000 USD, ni ukuvuga ku wa 15/02/2016, yahise yishyurwa na Misago amafaranga 5.460.000 ahwanye na 7000 USD, hakurikijwe *taux de change* yo muri icyo gihe ya 780 Frw/USD.

[3]"Here is the air waybill copy for Gratien to receive the claycrete"

[68] Road Solutions Pavement Products ivuga ko:

- Ntaho Mailco Ltd igaragaza inyandiko y'ubwo bwishyu, uretse ubuhamya bwa Niringiyimana Pierre Canisius bunyuranye n'ibyo ivuga, kuko Niringiyimana Pierre Canisius avuga ko ku wa 13/02/2016, Misago Gratien Wilson yamuhaye 7.000 USD ngo ayashyire Mushayija Remy kuri Hotel chez Lando, naho Mailco Ltd ikavuga ko Misago Gratien Wilson yari hanze ya Kigali agatuma umuvunjayi;
- Guhuza 7.000 USD na *Historique* ya konti ya Mailco Ltd igaragaza ko Niringiyimana Pierre Canisius yabikuje 5.460.000 Frw ntibyafatwaho ukuri kuko bitagaragaza ko ari ubwishyu bwahawe Road Solutions Pavement Products, igihe cyose nta nyandiko ihari.

Ibijyanye n'inyungu z'ubukererwe Mailco Ltd ivuga ko ihatirwa kwishyura

[69] Mailco Ltd ivuga ko nta nyungu z'ubukererwe ikwiriye gucibwa, kuko itigeze igira ubushake buke (mauvaise foi) bwo kutishyura Road Solutions Pavement Products ku mpamvu zikurikira:

- Umuburanyi ategekwa gutanga inyungu z'ubukererwe iyo hari igihe runaka yagombaga kwishyuriraho, ariko ntabikore ku mpamvu z'ubushake buke. Ibi siko bimeze kuko kuba Mailco Ltd itarishyuye ku gihe cyari cyumvikanyweho (tariki ya 15/03/2020), yabitewe n'uko RTDA yari itarumvikana na Brian Jackman na bagenzi be ku bijyanye n'igiciro gishya bazajya bayiheraho *produi*t ya *claycrete*, batayihenze. Byatumye RTDA isaba China Road kuba iretse kwishyura Mailco Ltd umwenda wari usigaye ujyanye n'akazi yari yarayikoyere ka *sous traitance* yo gukora igice cy'umuhanda mu Karere ka Nyamasheke, kugeza igihe RTDA izumvikanira n'abazungu ku giciro gishya;
- Amasezerano hagati ya Mailco Ltd na Road Solutions Pavement Products aseswa ntibyaturutse kuri Mailco Ltd, ahubwo ni Mushayija Remy washeshe ayo masezerano;
- Kuva imanza zitangira kugeza ubu, Mailco Ltd yemera ko hari umwenda wa 14.025 USD ibereyemo Road Solutions Pavement Products, kandi ntiyahwemye kuyisaba kuyishyura ariko ikabyanga. No kuva aho urubanza ruciriwe bwa nyuma n'Urukiko bw'Ubujurire ku wa 11/10/2019, Mailco Ltd yandikiye Mushayija Remy ku wa 31/10/2019 imusaba nimero ya konti yamwishyuriraho amadolari yatsindiwe angana na 21.056 USD, ariko yanga gusubiza iyo baruwa;
- Mailco Ltd yongeye kwandikira Road Solutions Pavement Products ku wa 04/05/2020 iyisaba kuyiha konti yo kwishyuriraho amafaranga iyibereyemo yose nkuko yemejwe n'urukiko, ariko yanga gusubiza iyo baruwa.

ICYEMEZO CYAFATIWE MU NTEBE

[70] Urukiko rurasanga ibyo Mailco Ltd yita ikirego kigamije kwiregura ari ibyo yatsinzweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rwabaye itegeko, ariko ikaba itarigeze isaba ko byasuzumwa mu rwego rw'akarengane ibinyujije mu nzira ziteganywa n'amategeko. Urukiko rurasanga rero iki kirego kidakwiye gusuzumwa kuko iyo ibona hari

akarengane yagiriwe, yari gusaba ko urubanza rusubirwamo binyuze mu nzira isanzwe iteganywa n'itegeko[4]. Uwo murongo ukaba ariwo wafashwe n'uru Rukiko no mu zindi manza[5].

Gusuzuma ibijyanye n'indishyi zasabwe mu rubanza

[71] Road Solutions Pavement Products isaba Urukiko gutegeka Mailco Ltd kuyiha indishyi zingana na 20.000.000 Frw ziyongera ku mafaranga bari batsindiye mu Rukiko Rukuru rw'Ubucuruzi, kubera amafaranga yayo imaranye imyaka isaga 4, kuyishora mu manza z'amaherere, no gusiragizwa mu nkiko. Isaba kandi 2.000.000 Frw y'ibihembo by'Abavoka bakurikiranye urubanza, ikanavuga ko isaba gusubizwa 1.000.000 Frw kuko yiyambaje Avoka wa kabiri. Mu iburanisha, abahagarariye Road Solutions Pavement Products bavuze ko nta mpamvu yo gukomeza gusaba 1.000.000 Frw, kuko akubiye muri 2.000.000 Frw.

[72] Mailco Ltd ivuga ko indishyi n'amafaranga y'igihembo cy'Avoka Road Solutions Pavement Products isaba nta shingiro bifite, kuko intandaro y'izi manza ari amakosa Road Solutions Pavement Products yakoreye Brian Jackman, ikamukorera uburiganya bwatumye asesa amasezerano bari baragiranye. Ivuga kandi ko Road Solutions Pavement Products ariyo yasheshe amasezerano bari bagiranye, ndetse aba ari nayo ifata iya mbere mu kurega mu nkiko.

[73] Mailco Ltd ivuga kandi ko ishingiye ku ngingo 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, isaba Urukiko gutegeka Road Solutions Pavement Products kuyiha amafaranga y'igihembo cy'Avoka angana na 20.000.000 Frw, ahwanye n'inshuro 8 urubanza rwaburanishijwe mu nkiko zitandukanye, hakurikijwe amasezerano yagiranye n'Avoka. Isaba nanone 2.400.000 Frw y'ikurikiranarubanza, ahwanye na 300.000 Frw gukuba inshuro 8 urubanza rwaburanishijwe mu nkiko zitandukanye.

UKO URUKIKO RUBIBONA

[74] Urukiko rurasanga indishyi Road Solutions Pavement Products isaba ntazo yahabwa kuko ntacyo itsindiye mu rubanza.

[75] Ku bijyanye n'indishyi zisabwa na MAILCO Ltd, Urukiko rurasanga yagenerwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kuri uru rwego, kuko byabaye ngombwa gukurikirana urubanza no gushaka uyihagararira biturutse ku kirego cy'akarengane cyatanzwe na Road Solutions Pavement Products. Icyakora, kubera ko ayo isaba itayagaragarije ibimenyetso, Urukiko rurasanga rwayigenera mu bushishozi bwarwo 300.000 Frw y'ikurikiranarubanza, na 500.000 Frw y'igihembo cya Avoka, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[4] [4]Ingingo ya 58 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko iyo umuburanyi abonye hari akarengane kagaragara mu rubanza rwe, yandikira Perezida w'Urukiko rukuriye urwaciye urubanza ku rwego rwa nyuma, akaba ariwe usuzuma ako karengane.

Iyo urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ari urubanza rwaciwe n'Urukiko rw'Ubujurire, ubusabe bushyikirizwa Perezida w'Urukiko rw'Ikirenga. Icyemezo afashe ku isuzuma ry'akarengane kiba ari ndakuka, nta rundi rwego rugisuzuma

5 Urubanza Nº RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, haburana PRIME Insurance Ltd na Kansiime James

[76] Rwemeje kwakira ikirego cyatanzwe na Road Solutions Pavement Products kigamije gusubirishamo, ku mpamvu z'akarengane, urubanza RCOMAA 00023/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 11/10/2019;

[77] Rwemeje ko nta karengane kari mu rubanza RCOMAA 00023/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 11/10/2019;

[78] Rwemeje ko imikirize y'urubanza RCOMAA 00023/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 11/10/2019, idahindutse;

[79] Rwemeje ko umwenda Mailco Ltd ihagarariwe na Misago Gratien Wilson ibereyemo Road Solutions Pavement Products ihagarariwe na Mushayija Remy ungana na 21.025 USD;

[80] Rutegetse Mailco Ltd kwishyura Road Solutions Pavement Products 21.025 USD;

[81] Rutegetse Road Solutions Pavement Products kwishyura Mailco Ltd 800.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.