

SMACORP v. BRALIRWA LTD

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 00032/2017/SC (Mutashya, P.J., Karimunda na Muhumuza, J.) 16/03/2018]

Amategeko agenga imanza z'ubucurizi – Ubujurire – Kwakira ubujurire – Uwajuririye ntategetswe byanze bikunze kugaragaza ibyakozwe mu iburanisha ku rubanza rwajuririwe mu gihe cyo gutanga ikirego, ashobora no kubigaragaza nyuma yo gutanga ikirego cy'ubujurire kugirango agisobanure byimbitse. Iyo uwajuririye amenyesheje umwanditsi w'Urukiko rw'Ikirenga ko ajuriye, agatanga umwirondoro wayo n'uw'uregwa, ikavuga urubanza ijuririye, urukiko rujuririwe n'impamvu z'ubujurire, ikabikora mu gihe giteganywa n'amategeko, ibi birahagije kugirango ubujurire bwe bwakirwe. Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsu, Ingingo ya 163 niya 165.

Amategeko agenga imanza z'ubucurizi – Kwakira ubujurire – Kugaragaza ingingo z'urubanza uwajuririye anenga mu bujurire bwe si ihame kuko iyo atabikoze atyo bifatwa ko yanenze urubanza mu ngingo zarwo zose, iyo uwajuririye yaragaragaje ko ajuririye urubanza rwose bihagije kugirango ubujurire bwayo bwakirwe. Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsu, Ingingo ya 163 niya 165.

Incamake y'ikibazo: SMACORP Ltd yareze BRALIRWA Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge ivuga ko impande zombi zagiranye amasezerano yo gukwirakwiza ibinyobwa bya BRALIRWA Ltd ahantu hatandukanye, isaba gusubizwa ingwate ya 40.746.440 Frw yayihaye ku makaziye n'amacupa yakoreshegaye, no guhabwa inyungu n'indishyi z'ubukode z'aho yabitswe. SMACORP Ltd yasabye kandi kwishyurwa ikiguzi cy'intera irenga kuri 20 km yagemuragamo ibinyobwa, inyungu zayo, indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

Ku ruhande rwayo, BRALIRWA Ltd yatanze ikirego kiregera kwiregura isaba Urukiko gutegeka SMACORP Ltd kuyishyura umwenda wa 4.598.416 Frw w'ibinyobwa yagemuriwe ntibyishyure; 57.879.360 Frw y'amakaziye yayo 7.128 arimo amacupa yayitije ntiyagarure; kuyigarurira amakaziye n'amacupa bifite agaciro ka 40.746.440 Frw, Kwishyura indishyi z'igihombo BRALIRWA Ltd ivuga yatewe n'uru rubanza.

Urukiko rwasanze BRALIRWA Ltd ariyo yagombaga kujya kuzana amakaziye ntiyabikora, rutegeka ko isubiza ingwate, ikajya gufata amakaziye n'amacupa byayo, ikishyura inyungu y'ayo mafaranga ndetse n'ubukode bw'aho bibitse. Urukiko rwanzuye kandi ko BRALIRWA Ltd yishyura 40.746.440 Frw y'ingwate, n'inyungu zikomoka kuri iyo ngwate. Urukiko rwanzuye kandi ko ikirego cya BRALIRWA Ltd kiregera kwiregura nta shingiro gifite kuko ibyo iregera by'amakaziye yatije SMACORP Ltd n'umwenda iyifitiye nta bimenyetso yabitangiye.

BRALIRWA Ltd ntiyishimiye imikirize y'urubanza, irujuririra mu Rukiko Rukuru rw'Ubucuruzi, isaba ko urubanza rwaciwe ruteshwa agaciro kubera ko rwaciwe n'umucamanza wari wihanwe, ivuga kandi ko uburenganzira bwayo bwo kwiregura butubahirijwe, kandi ko umucamanza yafashe icyemezo ku kitararegewe.

Ku bijyanye n'urubanza mu mizi, BRALIRWA Ltd yajuriye ku mpamvu yuko yategetswe kwishyura amafaranga y'ubwikorezi bw'aharenze 20 km kandi bitari mu masezerano; kandi ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwaraciye urubanza rushingiye ku bimenyetso SMACORP Ltd yihimbiye, kandi ko icyemezo cy'Urukiko cyarashingiye ku nyemezabuguzi zidafite aho zihuriye n'ikiburanwa; kandi ko Urukiko rwarategetse BRALIRWA Ltd kwishyura ubukode no kuba amakaziye atarataruwe byaturutse ku makosa ya SMACORP Ltd; kandi ko Urukiko rwaravuze ko ikirego kiregera kwiregura cya BRALIRWA Ltd nta shingiro gifite rwirengagije ibyumvikanyweho n'impande zombi.

Urukiko Rukuru rw'Ubucuruzi rwanzuye ko urubanza rwajuririwe rudateshejwe agaciro ahubwo ruhinduwe kuri bimwe, rwemeza ko hashingiwe ku masezerano BRALIRWA Ltd yagiranye na SMACORP yo gukwirakwiza ibicuruzwa byayo, nta bwishyu bw'ubwikorezi bw'aharenze 20 km BRALIRWA Ltd igomba guha SMACORP Ltd, kandi ko BRALIRWA Ltd izasubiza 40.746.440 Frw y'ingwate ari uko ibanje guhabwa amakaziye 5.320 yahaye SMACORP Ltd kandi ko ibirego biregera kwiregura BRALIRWA Ltd yari yatanze ku rwego rwa mbere ikanabijuririra nta shingiro bifite.

SMACORP Ltd ntiyanyuzwe n'icyo cyemezo, ijuririra mu rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwanze kuyigenera amafaranga y'ubwikorezi arenga kuri 20 km zumvikanyweho ngo kuko ntaho biteganyijwe mu masezerano, ikaba isaba n'indishyi zo gusiragizwa mu Nkiko ku maherere n'amafaranga y'ikurikiranarubanza.

BRALIRWA Ltd batanze inzitizi yo kutakira ubujurire bwa SMACORP Ltd ivuga ko yabikoze igihe cy'ubujurire cyararenze, ivuga ko mu gihe uru Rukiko rwasanga yarajuriye mu gihe, rukwiye kuguma mu mbibi z'ibyakozwe kugeza ku wa 02/04/2017, naho ibyakozwe guhera ku wa 09/04/2017 ntibihabwe agaciro kuko bitubahirije ibihe by'ijurira biteganywa n'amategeko.

SMACORP Ltd ivuga ko ubujurire buba bwatangiye igihe iyo urega mu bujurire abimenyesheje Umwanditsi w'Urukiko,ko mu buryo bw'ikoranabuhanga bukoreshwa mu Rukiko rw'Ikirenga, nta kibuzwa ko uwajuriye ku gihe yagira ibyo yuzuzwa, ikaba isanga bidakwiye ko BRALIRWA Ltd yemera ko SMACORP Ltd yajuriye ku wa 02/04/2017 ngo yongere yivuguruze ivuga ko itajuriye, bityo isaba uru Rukiko kwemeza ko nta shingiro ifite.

Incamake y'icyemezo: 1. Uwajuririye ntategetswe byanze bikunze kugaragaza ibyakozwe mu iburanisha ku rubanza rwajuririwe mu gihe cyo gutanga ikirego, ashobora no kubigaragaza nyuma yo gutanga ikirego cy'ubujurire kugirango agisobanure byimbitse.

2. Iyo uwajuririye amenyesheje umwanditsi w'Urukiko rw'Ikirenga ko ajuriye, agatanga umwirondoro wayo n'uw'uregwa, ikavuga urubanza ijuririye, urukiko rujuririwe n'impamvu z'ubujurire, ikabikora mu gihe giteganywa n'amategeko, ibi birahagije kugirango ubujurire bwe bwakirwe.

2. Kugaragaza ingingo z'urubanza uwajuriye anenga mu bujurire bwe si ihame kuko iyo atabikoze atyo bifatwa ko yanenze urubanza mu ngingo zarwo zose, iyo uwajuririye yaragaragaje ko ajuririye urubanza rwose bihagije kugirango ubujurire bwayo bwakirwe.

Inzitizi nta shingiro ifite.

**Ubujurire bwakiriwe, iburanisha rizakomeza.
Amagarama y'urubanza arasubitswe.**

Amategeko yashingiweho:

Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi, Ingingo ya 163 niya 165.

Nta manza zifashishijwe.

Urubanza

I.LIMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, SMACORP Ltd irega BRALIRWA Ltd ivuga ko kuva muri 2011 impande zombi zagiranye amasezerano yo gukwirakwiza ibinyobwa bya BRALIRWA Ltd ahantu hatandukanye mu Karere ka Muhanga, barangiza gukorana mu mpera za 2014 kuko BRALIRWA Ltd itashatse gukomeza amasezerano. SMACORP Ltd ikavuga ko nyuma yo kutongera amasezerano, BRALIRWA Ltd itashatse gusubiza ingwate yari yahawe ku makaziye n'amacupa yakoreshwaga ngo ibisubirane ari nayo mpamvu SMACORP Ltd yareze isaba gusubizwa iyo ngwate ya 40.746.440 Frw ku makaziye n'amacupa yakoreshaga no guhabwa inyungu zayo zibariwe kuri 18% ku mwaka, indishyi z'ubukode z'aho yabitswe n'uburinzi bwayo. SMACORP Ltd yasabye kandi kwishyurwa ikiguzi cy'intera irenga kuri 20 km yagemuragamo ibinyobwa, inyungu zayo, indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[2] Ku ruhande rwayo, BRALIRWA Ltd yatanze ikirego kiregera kwiregura (demande reconventionnelle) isaba Urukiko gutegeka SMACORP Ltd:

- kwishyura BRALIRWA Ltd umwenda wa 4.598.416 Frw w'ibinyobwa yagemuriwe ntibyishyure;
- Gutegeka SMACORP Ltd kwishyura BRALIRWA Ltd 57.879.360 Frw y'amakaziye yayo 7.128 arimo amacupa yayitije ntiyagarure;
- Gutegeka SMACORP Ltd kugarurira BRALIRWA Ltd amakaziye n'amacupa bifite agaciro ka 40.746.440 Frw yayitije batangira gukorana, bitaba ibyo bigahwanywa n'ingwate yayatanzeho;
- Kwishyura indishyi kubera igihombo BRALIRWA Ltd yatewe n'uru rubanza zingana na 2.000.000 Frw hamwe na 3.000.000 Frw y'igihembo cya Avoka.

[3] Mu rubanza no RCOM 1098/15/TC/NYGE rwaciwe ku wa 24/05/2016, Urukiko rwasanze BRALIRWA Ltd ariyo yagombaga kujya kuzana amakaziye ntiyabikora, rutegeka ko isubiza

ingwate, ikajya gufata amakaziye n'amacupa byayo, ikishyura inyungu y'ayo mafaranga ndetse n'ubukode bw'aho bibitse. Ku bijyanye n'ubwishyu ku burinzi, rwavuze ko izo ndishyi zitatangwa kuko zitagaragarijwe ibimenyetso, naho ku bijyanye n'intera yakozwe irenga 20 km, Urukiko rwategetse BRALIRWA Ltd kwishyura SMACORP Ltd 5.093.019.124 Frw.

[4] Urukiko rwanzuye ko BRALIRWA Ltd yishyura igiteranyo kingana na 5.462.278.677 Frw akubiyemo 40.746.440 Frw y'ingwate, 6.111.966 Frw y'inyungu zikomoka kuri iyo ngwate, 5.093019.124 Frw y'ubwikorezi (transport) aharengeje 20 km, 305.851.147 Frw y'inyungu zayo, 10.000.000 Frw y'indishyi z'akababaro, 4.200.000 Frw y'ubukode bw'aho amakaziye yabitswe amezi 14, na 2.350.000 Frw y'ikurikiranarubanza.

[5] Urukiko rwanzuye kandi ko ikirego cya BRALIRWA Ltd kiregera kwiregura nta shingiro gifite kuko ibyo iregera by'amakaziye yatije SMACORP Ltd n'umwenda iyifitiye nta bimenyetso ibitangira.

[6] BRALIRWA Ltd ntiyishimiye imikirize y'urubanza, irujuririra mu Rukiko Rukuru rw'Ubucuruzi, isaba ko urubanza rwaciwe ruteshwa agaciro kubera ko rwaciwe n'umucamanza wari wihanwe, ko uburenganzira bwayo bwo kwiregura butubahirijwe, kandi ko umucamanza yafashe icyemezo ku kitararegowe. Ku bijyanye n'urubanza mu mizi, BRALIRWA Ltd yajuriye ivuga ko itishimiye kuba:

- Yarategetswe kwishyura amafaranga y'ubwikorezi bw'aharenze 20 km kandi bitari mu masezerano;
- Urukiko rw'Ubucuruzi rwa Nyarugenge rwaraciye urubanza rushingiye ku bimenyetso SMACORP Ltd yihimbiye, icyemezo cy'Urukiko kikaba cyarashingiye ku nyemezabuguzi zidafite aho zihuriye n'ikiburanwa;
- Urukiko rwarategetse BRALIRWA Ltd kwishyura ubukode no kuba amakaziye atarataruwe byaturutse ku makosa ya SMACORP Ltd;
- Urukiko rwaravuze ko ikirego kiregera kwiregura cya BRALIRWA Ltd nta shingiro gifite rwirengagije ibyumvikanyweho n'impande zombi.

[7] Mu rubanza RCOMA 00400/2016/CHC/HCC rwaciwe ku wa 03/03/2017, Urukiko rwasanze ku bijyanye n'uko umucamanza yaciye urubanza kandi yarihanwe nta shingiro bifite kuko ubwo bwihane bwafashweho icyemezo n'Urukiko, rugaragaza ko impamvu zatanzwe zidasuzumwe kubera ko BRALIRWA Ltd yarengeje igihe yagombaga kuzitangaho, kandi mu bujurire ntiyagaragaza icyo inenga icyemezo cyafashwe n'Urukiko kuri iyo ngingo. Naho kubyo kuba BRALIRWA Ltd itarahawe umwanya wo kwiregura, rusanga nabyo nta shingiro bifite kuko Urukiko rwafashe icyemezo cyo gusubukura iburanisha kugira ngo ababuranyi bagire icyo bavuga ku bimenyetso byari byatanzwe na SMACORP Ltd, ariko BRALIRWA Ltd yanga kugira icyo ivuga muri iryo buranisha kuko itari yishimiye uburyo umucamanza yakiriye ibyo bimenyetso.

[8] Urukiko rwasanze nanone kuvuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza ku byo rutaregowe nabyo nta shingiro bifite kuko icyari cyaregowe ari ubwishyu bukomoka ku bwikorezi bw'ibicuruzwa aharenze kuri 20 km kandi ko ibyo bitigeze bihinduka, ko kuba uwaregaga yaratangiye asaba 967.673.634 Frw, akaza kuyongera agasaba 5.093.124.019 Frw

bitewe n'ibindi bimenyetso yagiye abona, bitafatwa nko guhindura ikirego, rwanzura ko ibyo BRALIRWA Ltd yaburanishaga ko urubanza rukwiye guteshwa agaciro nta shingiro bifite. Urukiko rwasanze kandi nta kimenyetso kidashidikanywaho BRALIRWA Ltd yabashije kurugaragariza gihama ko yaba iberewemo umwenda, ahubwo ko mu nama yabaye havuzwemo umwenda ariko icyemezo ndakuka kikaba cyari gufatirwa mu nama yo ku wa 11/06/2014, rwanzura ko ku bijyanye no kuvutswa uburenganzira bwo kwiregura, ubujurire bwa BRALIRWA Ltd nta shingiro bufite.

[9] Mu mizi y'urubanza, Urukiko rwasanze ku bijyanye n'ubwishyu bw'ubwikorezi bw'aharenze 20 km, amasezerano impande zombi zagiranye agaragaza inshingano za buri ruhande, ariko nta na hamwe havugwa ko ibicuruzwa nibigezwa aharenze 20 km, ubwikorezi buzishyurwa na BRALIRWA Ltd, impande zombi zikaba kandi zemeranywa ko ibyo ntabyashyizwe mu masezerano kandi ko ntaho byemejwe mu nama yo ku wa 3, ku wa 4 no ku wa 5/06/2014, rusanga na raporo yitwa "site report" yatanze na SMACORP Ltd nta gaciro igomba guhabwa kuko atariyo igaragaza ubwumvikane bw'impande zombi ku kiguzi cy'ubwikorezi bw'aharenze 20 km.

[10] Urukiko Rukuru rw'Ubucuruzi rwanzuye ko urubanza rwajuririwe rudateshejwe agaciro ahubwo ruhinduwe kuri bimwe, rwemeza ko hashingiwe ku masezerano BRALIRWA Ltd yagiranye na SMACORP yo gukwirakwiza ibicuruzwa byayo, nta bwishyu bw'ubwikorezi bw'aharenze 20 km BRALIRWA Ltd igomba guha SMACORP Ltd, rwemeza ko BRALIRWA Ltd izasubiza 40.746.440 Frw y'ingwate ari uko ibanje guhabwa amakaziye 5.320 yahaye SMACORP Ltd kandi ko ibirego biregera kwiregura BRALIRWA Ltd yari yatanze ku rwego rwa mbere ikanabijuririra nta shingiro bifite.

[11] SMACORP Ltd ntiyanyuzwe n'icyo cyemezo, ijuririra Urukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwanze kuyigenera amafaranga y'ubwikorezi arenga kuri 20 km zumvikanyweho ngo kuko ntaho biteganyijwe mu masezerano, rwirengagiza ibiganiro yagiranye na BRALIRWA Ltd n'intambwe byari bigezeho kuri icyo kibazo, ruvuga ko ingwate izatangwa ari uko isubije amakaziye, rwirengagiza ko afashwe neza kandi BRALIRWA Ltd nta bwira ifite bwo gusubiza ingwate ifite kuko ikiyicuruza. SMACORP Ltd yavuze kandi ko Urukiko rwavuze ko itagomba guhabwa amafaranga y'ubukode, rwirengagije ko ayo makaziye abitse muri "dépôt" yari kuba abazwa umusaruro, runarengaho ruvuga ko ubujurire bwa BRALIRWA Ltd bufite ishingiro aho gusanga ubwa SMACORP Ltd aribwo bufite ishingiro, bituma ruyitegeka kwishyura indishyi n'igihembo cya Avoka bidafite ishingiro, kuri uru rwego ikaba isaba indishyi zo gusiragizwa mu Nkiko ku maherere n'amafaranga y'ikurikiranarubanza.

[12] Iburanisha mu ruhame ryabaye ku wa 20/02/2018, SMACORP Ltd ihagarariwe n'umuyobozi wayo NSANZE Didier yunganiwe na Me NKUBA Munyandamutsa Milton na Me BUGINGO John Bosco, BRALIRWA Ltd ihagarariwe na Me MHAYIMANA Isaïe hamwe na Me ABIJURU Emmanuel.

[13] Iburanisha rigitangira, abahagarariye BRALIRWA Ltd batanze inzitizi yo kutakira ubujurire bwa SMACORP Ltd bitewe n'uko mu kujurira itatanze ngo inasobanure impamvu ishingiraho ubujurire bwayo ahubwo ikabikora igihe cy'ubujurire cyararenze.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba gutanga no gusobanura impamvu z'ubujurire nyuma y'ibihe by'ubujurire bikwiye gufatwa nko kujurira impitagihe.

[14] Me MPAYIMANA Isaïe hamwe na Me ABIJURU Emmanuel, baburanira BRALIRWA Ltd, bavuga ko urubanza SMACORP Ltd yajuririye rwaciwe ku wa 03/03/2017, ku wa 02/04/2017 yuzuzwa imyirondoro yayo n'iy'uregwa mu kirego cy'ubujurire ariko ntiyasobanura ibyo ijuririye, ku wa 09/04/2017 ibona gusobanura impamvu zayo z'ubujurire, bivuze ko ibyakozwe mbere y'iyi tariki byafatwa nk'ubujurire bwo kwikinira (appel fantaisiste), ariyo mpamvu basaba uru Rukiko kwemeza ko itajuriye mu gihe kuko itigeze igaragaza ibisobanuro by'ibyo ijuririye.

[15] Bavuga ko mu gihe uru Rukiko rwasanga yarajuriye mu gihe, rukwiye kuguma mu mbibi z'ibyakozwe kugeza ku wa 02/04/2017, naho ibyakozwe guhera ku wa 09/04/2017 ntibihabwe agaciro kuko bitubahirije ibihe by'ijurira biteganywa n'amategeko.

[16] Me NKUBA Munyandamutsa Milton na Me BUGINGO John Bosco, baburanira SMACORP Ltd, bavuga ko ababuranira BRALIRWA Ltd bashaka kuvugisha itegeko ibyo ritavugaga kuko ubujurire buba bwatangiye igihe iyo urega mu bujurire abimenyesheje Umwanditsi w'Urukiko, ko icyatumye impande zombi zitabira inama ntegurarubanza ari uko ubujurire bwari bwatangiye igihe kandi bwubahirije ibisabwa n'amategeko. Basobanura ko mu buryo bw'ikoranabuhanga bukoreshwa mu Rukiko rw'Ikirenga, nta kibuzwa ko uwajuriye ku gihe yagira ibyo yuzuzwa, bakaba basanga bidakwiye ko BRALIRWA Ltd yemera ko SMACORP Ltd yajuriye ku wa 02/04/2017 ngo yongere yivuguruzwe ivuga ko itajuriye, ariyo mpamvu basanga inzitizi igamije gusa gushyushya urubanza mbere yo kwinjira mu mizi yarwo, bakaba basaba uru Rukiko kwemeza ko nta shingiro ifite.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 163, igika cya mbere, y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsu iteganywa ko *“Igihe ntarengwa cyo kujurira ni ukwezi kumwe (1). Icyo gihe gitangira kuburwa, ku manza zaciwe ababuranyi bombi bahari cyangwa ku manza ababuranyi bamenyeshejwe umunsi w'isoma ntibitabe, kuva ku munsi zasomeweho.”* Naho ingingo ya 164, igika cya mbere n'icya kabiri, y'iryo tegeko iteganywa ko *“Hajurira umuburanyi, umuburanira cyangwa uwo yahaye urubanza abivuze mu magambo cyangwa abyanditse, akihitiramo kubinyuza ku mwanditsi cyangwa Perezida w'urukiko ajuririye cyangwa se b'urukiko rwamuciriye urubanza ajuririra. Umwanditsi w'urukiko wakiriye ubujurire bukoze mu mvugo abikorera inyandiko. Itariki y'ijurira ni umunsi umwanditsi cyangwa Perezida w'urukiko yakiriye ubujurire.”*

[18] Ingingo ya 165 y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsu iteganywa ko: *“Ubujurire bugomba kuba burimo umwirondoro w'ujurira, uw'uregwa mu bujurire, kugaragaza urubanza rujuririye n'Urukiko rwaruciye, kugaragaza urukiko rujuririye ndetse byaba ari ngombwa, n'ibikorwa byakozwe mu iburanisha byafasha mu kugena ikijuririrwa n'impamvu y'ijurira.”* Naho ingingo ya 170 y'iryo tegeko igateganywa ko: *“Urukiko rwajuririye ruburanisha gusa ubujurire mu mbibi z'icyajuririye. Rufata icyemezo ku ingingo zatumye uwatanze ubujurire ajurira cyangwa uwabwuriyeho na we akajurira.”*

[19] Dosiye y'urubanza igaragaza ko urubanza rujuririrwa rwasomwe ku wa 03/03/2017, SMACORP Ltd itanga ikirego cy'ubujurire ku wa 02/04/2017, cyandikwa mu gitabo cy'ibirego ku wa 13/04/2017, ikijuririrwa (subject matter) ari "imikirize y'urubanza RCOM 00400/CHC/HCC rwaciwe n' Urukiko Rukuru rw'Ubucuruzi ku wa 03/03/2017", impamvu z'ubujurire (grounds of claim) zigira ziti: "SMACORP Ltd ntabwo yishimiye imikirize y'urubanza RCOM 00400/2016/HCC rwaciwe n'Urukiko Rukuru rw' Ubucuruzi kuwa 03/03/2017 aho rwemeje ko ngo nta bwishyu bw'ubwikorezi bw'aharenze 20 Km BRALIRWA Ltd igomba guha SMACORP Ltd bujyanye n'amasezerano bagiranye yo gukwirakwiza ibicuruzwa byayo; ko ngo BRALIRWA Ltd igomba kubanza guhabwa amakaziye 5 320 yahaye SMACORP Ltd hanyuma nayo igahita isubiza 40, 746, 440Frw y'ingwate ndetse rukanavuga ko SMACORP Ltd itagomba guhabwa amafaranga y'ubukode bw'igihe SMACORP Ltd imaze ibitse amakaziye 5, 320 BRALIRWA Ltd guhera ku itariki ya 01/02/2015 ndetse rukanategeka SMACORP Ltd guha BRALIRWA Ltd indishyi ndetse no kwishyura igihembo cya Avocat".

[20] Dosiye y'urubanza igaragaza kandi ko ku wa 09/04/2017 aribwo Me NKUBA Munyandamutsa Milton, mu izina rya SMACORP Ltd, yatanze imiterere y'urubanza ndetse anagaragaza mu buryo burambuye ingingo z'ubujurire yifuza ko zisuzumwa, na BRALIRWA Ltd izisobanuraho ndetse itanga n'ubujurire bwuririye ku bundi ku wa 19/12/2017.

[21] Urukiko rurasanga SMACORP Ltd yaragejeje ikirego cyayo cy'ubujurire muri uru Rukiko ku wa 02/04/2017 ivuga ko ijuririye urubanza no RCOM 00400/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 03/03/2017, inagaragaza impamvu ishingiraho ijurira (grounds of claims), ibyo akaba aribyo biteganywa n'ingingo ya 165 y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru kugirango ibigize ubujurire byuzure, kuba ku wa 09/04/2017 yaragaragaje imiterere y'urubanza ndetse n'impamvu z'ubujurire ikazitondekanya mu bibazo akora ibyo uburyo bw'ikoranabuhanga bwa *Integrated Electronic Case Management System (IECMS)* bwita *list of issues* sibyo byangenderwaho havugwa ko yakerewe kujurira.

[22] Urukiko rurasanga kandi ibi bishimangirwa n'uko ingingo ya 165 y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru iteganya ko kugaragaza ibyakozwe mu iburanisha byafasha mu kugena ikijuririrwa n'impamvu y'ijurira bidatangirwa byanze bikunze rimwe n'ikirego cy'ubujurire ahubwo ko uwajuriye abigaragaza iyo asanga ari ngombwa, bivuze ko ashobora no kubikora nyuma yo gutanga ikirego cy'ubujurire kugirango agisobanure byimbitse, ariko yasanga atari ngombwa ntabikore, bityo kuba SMACORP Ltd yaramenyeshije umwanditsi w'Urukiko rw'Ikirenga ko ijuriye, igatanga umwirondoro wayo n'uw'uregwa, ikavuga urubanza ijuririye, urukiko rujuririwe n'impamvu z'ubujurire (grounds of claims), ikabikora mu gihe giteganywa n'amategeko birahagije kugirango ubujurire bwayo bwakirwe.

[23] Urukiko rurasanga kandi uyu murongo ari nawo wemezwa n'abahanga mu mategeko aho bavuga ko kugaragaza ingingo z'urubanza uwajuriye anenga mu bujurire bwe atari ihame, kuko iyo atabikoze atyo bifatwa ko yanenze urubanza mu ngingo zarwo zose,¹ nabyo bishimangira ko niyo SMACORP Ltd iba itaragaragaje icyo inenga urubanza rwajuririwe, uretse ko yagaragaje

¹ Les mentions qui doivent figurer à l'acte d'appel sous peine de nullité [...] sont les suivantes: ...le cas échéant, limitation de l'appel à certains chefs du jugement, à défaut, l'appel est général et défère à la cour tous les chefs du jugement...La déclaration d'appel **peut** porter mention des chefs du jugement que l'appelant

icyo irunenga mu gice cyitwa *grounds of claim*, kuba byonyine yaragaragaje ko ijuririye urubanza rwose byari byihagije kugirango ubujurire bwayo bwakirwe.

[24] Urukiko rurasanga hashingiwe ku bimaze gusobanurwa no ku ngingo z'amategeko zibukijwe haruguru, inzitizi yatanzwe na BRALIRWA Ltd yo kutakira ubujurire bwa SMACORP Ltd kubera ko bwatanzwe ibihe by'ijurira byarenze nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[25] **Rwemeje** ko inzitizi yatanzwe na BRALIRWA Ltd yo kutakira ubujurire bwa SMACORP Ltd nta shingiro ifite;

[26] **Rwemeje** ko ubujurire bwa SMACORP Ltd bwakiriwe kuko bwatanzwe mu buryo no mu bihe biteganywa n'amategeko;

[27] **Ruvuze** ko iburanisha ry'uru rubanza rizakomeza ku wa 08/05/2018;

[28] **Rutegetse** ko amagarama y'urubanza abaye asubitswe.