

BANQUE POPULAIRE DU RWANDA ATLAS MARA Plc v NKUSI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00005/2020/SC
(NYIRINKWAYA., P.J., Hitiyaremye, Cyanzayire, Muhumuza na Rukundakuvuga, J.) 27
Ugushyingo 2020]

Amategeko agenga Imanza z'ubucuruzi – Gusubirishamo urubanza ku mpamvu z'akarengane– Kuba umuburanyi mu rubanza ruburanishwa ku rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane – Umuntu utarigeze yemererwa kuba umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntashobora kuba umuburanyi mu gihe ruri gusubirwamo keretse iyo uko kwangirwa kuba umuburanyi ariho akarengane gashingiye.

Amategeko agenga Imanza z'ubucuruzi – Gusubirishamo urubanza ku mpamvu z'akarengane– Gusubirishamo urubanza ku karengane gashingiye ku kuba urukiko rwaranze kwakira ubujurire bwa kabiri– Gusuzuma imizi y'urubanza – Iyo urubanza rwaciye mu mizi rujuririwe ntirwakirwe mu bujurire bwa kabiri, Urukiko rwashyikirijwe ikirego gisaba gusubirishamo urubanza, rusuzuma impamvu zatumye butakirwa, rukaba rwasuzuma imizi y'urubanza gusa ari uko rusanze harabaye ikosa mu kutakira ubwo bujurire.

Amategeko agenga Imanza z'ubucuruzi – Gusubirishamo urubanza ku mpamvu z'akarengane – Iyakirwa ry'ubujurire bw'uwigobokeshejwe mu bujurire–Uwigobokeshejwe mu bujurire yemerewe kujurira gusa iyo hari ibyo yaciye.

Incamake y'Ikibazo: Nkusi Evariste yaregeye Urukiko rw'Ubucuruzi rwa Nyarugenge arusaba ko rwategeka BPR ATLAS MARA Ltd kumwishyura amafaranga ari kuri sheki yahawe na SGES/ATT nyamara Banki yo ntiyamuhe ikaba itanagaragaza inenge yazibonyemo, Urukiko rwategetse BPR ATLAS MARA Ltd kwishyura Nkusi amafaranga yose agaragara kuri sheki yahawe hakaniyongeraho indishyi.

BPR ATLAS MARA Ltd ntiyemeye imikirize y'urwo rubanza irujuririra mu Rukiko Rukuru rw'Ubucuzi aho yagaragaje ko Urukiko rubanza rwirengagije ibimenyetso yatanze ndetse rukanga no guhamagaza uwasinye izo sheke. SGES/ATT yagobotse muri uru rubanza kubushake. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza ruvuga ko ubujurire bwa BPR ATLAS MARA Ltd nta shingiro bufite ko nta mpamvu n'imwe yari gutuma itishyura sheki zidafite inenge yemewe kandi zatanzwe mu buryo bukurikije amategeko. Ukugobokeshwa kwa SGES/ATT Ltd ntikwemewe.

BPR ATLAS MARA Plc na SGES/ATT Ltd bombi bajuririye Urukiko rw'Ubujurire bavuga ko Inkiko zabanje zanze gusuzuma nkana ibimenyetso zashyikirijwe ndetse ko Urukiko Rukuru rw'Ubucuruzi rwo rwananze ukugoboka mu rubanza kwa SGES/ATT Ltd kandi yarifite ibyo yashakaga gusobanura. Urukiko rw'Ubujurire rwanze kwakirwa ubwo bujurire ngo kuko BPR ATLAS MARA Plc yatsinzwe ku mpamvu zimwe mu nkiko zibanza zombi ariko ntirwagira icyemezo rufata ku bireba ubujurire bwa SGES/ATT Ltd.

BPR ATLAS MARA Plc yatanze ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane irabyemererwa inenga urubanza rwaciye n'Urukiko rw'Ubujurire kuba rwaranze kwakira ubujurire bwe bwa kabiri rwirengagije ko ikibazo cyo kugobokeshwa kwa SGES/ATT Ltd itagitsindiweho mu nkiko zombi kuko cyari cyaburanweho bwa mbere mu Rukiko Rukuru rw'Ubucuruzi ndetse rukanirengagiza ko SGES/ATT Ltd yari yajuriye kandi kuri yo bukaba bwari ubujurire bwa mbere.

Kuruhande rwa Nkusi Evariste, avuga ko BPR ATLAS MARA Plc nta karengane yagiriwe kuko kuva urubanza rwatangira yakomeje ivuga gusa ko kuba itarishyuye sheki yashyikirijwe bifite ishingiro ariko ntigaragaze ishingiro ryabyo. Naho kubusabe bwa SGES/ATT ho avuga ko idashobora kuba umuburanyi ku rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane ngo kuko nta hantu na hamwe yigeze iba umuburanyi ko ndetse naho yashatse kugoboka itabyemerewe.

Incamake y'Icyemezo: 1. Umuntu utarigeze yemererwa kuba umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ntashobora kuba umuburanyi mu gihe ruri gusubirwamo keretse iyo uko kwangirwa kuba umuburanyi ariho akarengane gashingiye.

2. Iyo urubanza rwaciwe mu mizi rujuririwe ntirwakirwe mu bujirire bwa kabiri, Urukiko rwashyikirijwe ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, rusuzuma impamvu zatumye butakirwa, rukaba rwasuzuma urubanza mu mizi ari uko gusa rusanze harabaye ikosa mu kutakira ubwo bujirire.

3. Ntawakwitwaza ibibazo byabyukijwebwa mbere mu bujirire ngo asabe ko bishingirwaho hemezwa ko umuburanyi atatsinzwe ku mpamvu zimwe. Gutsindwa ku mpamvu zimwe bigenzurwa hashingiwe ku ngingo zatumye umuburanyi ajurira, umwanzuro wazifashweho n'impamvu zashingiweho n'inkiko zombi.

4. Uwagobokeshejwe mu bujirire yemerewe kujurira gusa iyo hari ibyo yaciwe.

Ikirego cyo gusubirishamo urubanza nta shingiro gifite.

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 63, 52, igika 3
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 111

Itegeko N° 32/2009 ryo ku wa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa, ingingo ya 110.

Amabwiriza N° 04/2013 yo ku wa 27/08/2013 ya Banki Nkuru y'u Rwanda agenga ihererekanya koranamuhanga rya sheki, ingingo ya 4

Imanza zifashishijwe:

RS/REV/INJUST/CIV 0023/16/CS rwaciwe n'Urukiko rw'Ikirenga haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya 28.

RS/INJUST/RCOM 00002/2020/SC rwaciwe n'Urukiko rw'Ikirenga haburana Road Solution Pavement Product vs MAILCO Ltd, igika cya 24.

Urubanza

IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi, NKUSI Evariste asaba gutegeka BPR ATLAS MARA Plc kumwishyura 335.330.390 Frw kubera ko iyo banki yanze kumwishyura nta mpamvu yemewe n'amategeko amasheki yahawe n'umukiriya wayo SGES/ATT Ltd nk'ubwishyura bwa serivisi yayihaye zikomoka ku masezerano y'ibikomoka kuri

peteroli (carburant) yabaga yarafashe ku mwenda, ubukode bw'ibiro na parikingi, ndetse asaba n'indishyi zingana na 67.066.078 Frw.

[2] Mu rubanza RCOM 01401/2018/TC, rwaciwe ku wa 26/07/2018, Urukiko rw'Ubucuruzi rwemeje ko BPR ATLAS MARA Plc igomba kwishyura NKUSI Evariste 335.330.390 Frw ahwanye na sheki zose yashyikirijwe ntizishyure hiyongereyeho n'indishyi zose zihwanye na 61.359.470 Frw. Mu gufata icyo cyemezo, Urukiko rwashingiye ku mpamvu zikurikira:

- a. Kuba BPR ATLAS MARA Plc yaranze kwishyura sheki kandi ari inyandiko itavuguruzwa;
- b. Kuba banki itagaragaza inenge cyangwa impamvu zaba ziteganywa n'amategeko zafatwa nk'impamvu yo kutishyura sheki zatanzwe n'ubifitiye uburenganzira, kandi zitanzwe mu buryo bwemewe n'amategeko;
- c. Kuba ntawigeze atambamira izo sheki.

[3] BPR ATLAS MARA Plc ntiyishimiye imikirize y'urubanza ijuririra Urukiko Rukuru rw'Ubucuruzi inasaba ko hagobokeshwa SGES/ATT Ltd, maze ku wa 31/01/2019 mu rubanza N° RCOMA 00583/2018/HCC, urwo Rukiko rwemeza ko ukugobokeshwa ku gahato kwa SGES/ATT Ltd kutakiriwe; ko ubujurire bwa BPR ATLAS MARA Plc nta shingiro bufite, rutegeka ko imikirize y'urubanza rwajuririwe igumaho, BPR ATLAS MARA Plc igaha NKUSI Evariste indishyi mbonezamusaruro ku rwego rw'ubujurire zingana na 31.089.261 Frw na 1.000.000 Frw y'igihembo cya Avoka.

[4] Urukiko rwageze kuri uwo mwanzuro rushingiye ku mpamvu zikurikira:

- Ku byerekeye igobokeshwa rya SGES/ATT Ltd, Urukiko rwasanze itarebwa n'ikibazo kiri hagati ya BPR na NKUSI kuko icyo kibazo kidashingiye ku masezerano yabaye hagati ya SGES/ATT Ltd na NKUSI Evariste, kimwe n'uko kidashingiye ku masezerano yabaye hagati ya SGES/ATT LTD Ltd na BPR ATLAS MARA Plc. Rwasanze ahubwo ari ikibazo gishingiye ku mategeko agenga inyandiko zishobora gucuruzwa (effets de commerce), bityo SGES/ATT Ltd ikaba ntacyo yenda gutsindira cyangwa gutsindirwa;
- Ku bijyanye n'impamvu z'ubujurire za BPR ATLAS MARA Plc, Urukiko rwasobanuye ko itigeze igaragaza ko hari amakenga ayo ariyo yose yagize ashingiye ku nenge ziteganywa n'amategeko sheki SGES/ATT Ltd yahaye NKUSI Evariste yaba ifite; bityo ikaba yaragombaga kugendera mu murungo w'amategeko n'amabwiriza agenga sheki, ikazishyura.

[5] BPR ATLAS MARA PLC ntiyishimiye icyo cyemezo, ikijuririra mu Rukiko rw'Ubujurire kuri RCOMAA 00031/2019/CA ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amategeko ndetse n'ibimenyetso yatanze maze ruyitegeka kwishyura 335.330.390 Frw n'indishyi mbonezamusaruro zingana na 31.089.261 Frw ziyongera kuri 61.359.470 Frw yaciwe mu Rukiko rw'Ubucuruzi.

[6] SGES/ATT Ltd nayo yajuririye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi cyo kutayemerera kugobokeshwa, ahubwo rukayifata nk'umutangabumya. Nyuma y'itakamba rya SGES/ATT Ltd ku cyemezo cy'umwanditsi wari wanze kwakira ubujurire bwayo, Perezida w'Urukiko rw'Ubujurire yategetse ko ubujurire bwayo bwandikwa, bityo buhuzwa n'ubujurire bwa BPR ATLAS MARA Plc buhabwa numero RCOMAA 00051/2019/CA.

[7] Ku wa 06/03/2020, Urukiko rw'Ubujurire rwaciye urubanza RCOMAA 00031/2019/CA, ruburanisha ku nzitizi y'iburabubasha yatanzwe na NKUSI Evariste ishingiyeye ku kuba BPR ATLAS MARA Plc yaratsinzwe mu nkiko zombi zabanje ku mpamvu zimwe, rwemeza ko iyo nzitizi ifite ishingiro; rwemeza ko ikirego cya NKUSI Evariste gisaba amafaranga y'ibyakoreshejwe mu rubanza gifite ishingiro; rwemeza ko ubujurire bwa BPR ATLAS MARA Plc butari mu bubasha bw'Urukiko rw'Ubujurire, kuko BPR ATLAS MARA Plc yatsinzwe kabiri ku mpamvu zimwe.

[8] Ku bijyanye n'ubujurire bwa SGES/ATT Ltd, Urukiko rw'Ubujurire rwavuze ko ukugobokeshwa kwayo atari ikibazo cy'ingenzi muri urwo rubanza.

[9] BPR ATLAS MARA Plc yandikiye Perezida w'Urukiko rw'Ikirenga isaba gusuzuma akarengane kari mu rubanza RCOMAA 00031/2019/CA rwaciye ku wa 06/03/2020 n'Urukiko rw'Ubujurire, maze mu cyemezo cye N° 260/CJ/2020 cyo ku wa 18/05/2020, yemeza ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane; ruhabwa N° RS/INJUST/RCOM 00005/2020/SC.

[10] Urubanza rwahamagajwe ku wa 09/11/2020, BPR ATLAS MARA Plc yitaba ihagarariwe na Mugire Rwamfizi Joseph yunganiwe na Me Bugingo Jean Bosco hamwe na Me Uwamahoro Marie Grace; Nkusi Evariste ahagarariwe na Me Twiringiyemungu Joseph, naho SGES/ATT Ltd ihagarariwe na Me Nzirabatinyi Fidèle. Mbere yo kujya mu mizi y'urubanza urukiko rwabyukije ikibazo cyo kumenya niba SGES/ATT Ltd ari umuburanyi muri uru rubanza.

[11] Me Nzirabatinyi Fidèle avuga ko SGES/ATT Ltd yinjiye mu rubanza igobokeshwe na BPR ATLAS MARA Plc mu Rukiko Rukuru rw'Ubucuruzi, ariko ihageze ihabwa "qualité" y'umutangabuhamya. Avuga ko yajuririye icyo cyemezo mu Rukiko rw'Ubujurire ariko ikibazo cya "qualité" ya SGES/ATT Ltd nticyagarukwaho kuko ikirego cy'ubujurire bwa BPR ATLAS MARA Plc kitakiriwe. Me Nzirabatinyi Fidèle asoza avuga ko muri uru rubanza SGES/ATT Ltd yifuzaga gukomeza nk'umutangabuhamya kuko nta kibazo "grief" ifite.

[12] Abahagarariye BPR ATLAS MARA Plc bavugaga ko mu Rukiko Rukuru rw'Ubucuruzi SGES/ATT Ltd yari umuburanyi ariko Umucamanza akaba yarakoze amakosa yo kuyihindurira "qualité" nyamara hari ibyo iryozwa mu ireme ry'urubanza, ko n'Urukiko rw'Ubujurire rwabivuzeho mu buryo butera akarengane kuko rwirengagije ko ababuranyi bahindutse rukavugaga ko kugobokeshwa kwa SGES/ATT Ltd atari impamvu ikomeye ku buryo rwagira icyo ruyivugaho kandi yarajuririwe; ibyo akaba ari nabyo byabateye gusubirishamo urubanza ku mpamvu z'akarengane.

[13] Me Twiringiyemungu Joseph uhagarariye NKUSI Evariste avugaga ko Urukiko Rukuru rw'Ubucuruzi rwasanze rutakwita umuburanyi mu rubanza utazagira icyo arutsindiramo cyangwa ngo agire icyo arutsindirwamo, maze rufata SGES/ATT Ltd nk'umutangabuhamya; ko no mu Rukiko rw'Ubujurire SGES/ATT Ltd yagaragaye ivugaga ko itajurira kuko urubanza rw'Urukiko Rukuru rw'Ubucuruzi ntacyo rwayitwaye.

[14] Urukiko rumaze kumva impande zose kuri icyo kibazo cyo kumenya niba SGES/ATT Ltd ari umuburanyi, rwafatiye icyemezo mu ntebe y'abacamanza mu buryo bukurikira: "Rusanze BPR ATLAS MARA Plc yarajuririye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi ariko ubujurire bwayo ntibwasuzumwaga kuko Urukiko rw'Ubujurire rwasanze rudafite ububasha bwo kuburanisha urwo rubanza. Kubera izo mpamvu, Urukiko rusanga kugeza ubu SGES/ATT Ltd itafatwaga nk'umuburanyi kuko itigeze yemererwa kuba umuburanyi mu rubanza rusabirwa

gusubirwamo¹. Urukiko rusanga ibyo BPR ATLAS MARA Plc ivuga ko mu mpamvu zayo z'akarengane harimo kuba Urukiko rw'Ubujurire rutarasuzumye ikibazo cy'uko SGES/ATT Ltd yaba umuburanyi, ari ibyasuzumwa ari uko uru Rukiko rusanze Urukiko rw'Ubujurire rwariyambuye ububasha kandi rwari rubufite”.

[15] Iburanisha ryarakomeje, Urukiko rubanza gusuzuma inzitizi ijyanye no kumenya urubanza rwaregewe mu rwego rw'akarengane.

[16] Me Twiringiyemungu Joseph avuga ko inzira BPR ATLAS MARA Plc yakoresheje isaba isubirishwamo ry'urubanza atari yo kuko inenga urubanza rwaciwe n'Urukiko Rukuru, n'ubwo urubanza isaba ko rusubirwamo ari urubanza rwaciwe n'Urukiko rw'Ubujurire. Asobanura ko urubanza rwatumye BPR ATLAS MARA Plc yandikira Perezida w'Urukiko rw'Ikirenga imusaba gusubiramo urubanza ku mpamvu z'akarengane ari urubanza N° RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020, aho ivuga ko Urukiko rwayirenganyije mu kuvuga ko rudafite ububasha bwo kuburanisha urubanza ku mpamvu z'uko yatsinzwe mu nkiko zibanza ku mpamvu zimwe; ariko mu gusobanura akarengane kayo ikanenga ahubwo urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kandi atari rwo yasabiye gusubirishamo, kandi ntigire icyo isobanura ku rubanza yasabiye gusubirishwamo ku mpamvu z'akarengane.

[17] Abahagarariye BPR ATLAS MARA Plc bavuga ko banki yasabye ko hasubirishwamo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko rw'Ubujurire hajuririrwa urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kandi ko bagaragaje akarengane bagiriwe mu manza zose (mu rubanza rwa rw'Urukiko rw'Ubucuruzi, urw'Urukiko Rukuru rw'Ubucuruzi n'urw'Urukiko rw'Ubujurire) kuko ari uruhererekane. Ibivugwa na NKUSI Evariste ko iyo BPR ATLAS MARA Plc iba yararenganyijwe n'Urukiko Rukuru rw'Ubucuruzi iba yarandikiye Perezida w'Urukiko rw'Ubujurire, basanga ngo kwaba ari ukwiringagiza itegeko rigena ububasha bw'inkiko mu ngingo ya 58 agaka ka 1, iteganya ko umuburanyi ubonye ko hari urubanza rwamurenganyije yandikira Perezida w'Urukiko rukuriye urwamurenganyije akaba ariwe usuzuma iby'ako karengane.

[18] Urukiko rumaze kumva ibyo impande zombi zivuga ku kibazo cyo kumenya urubanza rwaregewe mu rwego rw'akarengane n'ibigomba kurusuzumwamo, rwongeye kwiherera rufata umwanzuro ukurikira: “Urukiko rusanga, nk'uko rwabitanzeho umurongo², iyo urubanza rwaciwe mu mizi rujuririwe ntirwakirwe, urukiko ruregewe akarengane gashingiye kuri uko kutakirwa k'ubujurire, rusuzuma ubwo busabe ku birebana n'impamvu zatumye urwo rukiko rutakira ubujurire bwa kabiri; rukaba rwaburanisha ibyerekeye imizi y'urubanza ari uko rusanze mu kutakira ubwo bujurire bwa kabiri, urwo rukiko rwarakoze amakosa. Rusanga rero ibigomba kubanza kuvugwaho muri uru rubanza ari inenge zaba zigaragara mu rubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire rwanze kwakira ubujurire.

¹ Ingingo ya 63 y'itegeko rigena ububasha bw'inkiko yumvikanisha ko abashobora kuba ababuranyi mu rubanza ruburanishwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane ari abari barabaye ababuranyi mu rubanza rusabirwa gusubirishwamo

² Reba urubanza N° RS/REV/INJUST/CIV 0023/16/CS rwaciwe kuwa 27/09/2019 haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya 28. Muri urwo rubanza, urukiko rwagize ruti “...bikaba byumvikana ko urubanza rushobora gusubirishwamo ku mpamvu z'akarengane ari urubanza rwafashe icyemezo kirenganya umuburanyi. Mu yandi magambo, urubanza rutakiriwe byafatwa ko rwarenganyije umuburanyi, iyo muri uko kutakirwa kwarwo ariho akarengane gashingiye.”

[19] Iburanisha ryakomereje muri uwo murongo, abahagarariye BPR ATLAS MARA Plc bagaragaza ko Urukiko rw'Ubujurire rwirengagije ko impamvu zayitsinze ku rwego rwa mbere n'urwa kabiri atari zimwe kuko mu rwego rwa kabiri ari ikiburanwa ari n'ababuranyi byari byahindutse kuko hari hagobokeshejwe SGES/ATT Ltd kandi ifite ibyo iregwamo bitari byaburanyweho mu rwego rwa mbere; ndetse ikanongeraho ko no kuba SGES/ATT Ltd yari yajuriye byagombaga gutuma urubanza ruburanishwa mu mizi.

[20] Me Twiringiyemungu Joseph wunganira NKUSI Evariste ntiyemeranya n'ibisobanuro bya BPR ATLAS MARA Plc kuri iyo ngingo kuko asanga ikiregerwa nk'uko cyatanzwe na NKUSI Evariste yunganira kitarigeze gihinduka, kandi BPR ATLAS MARA Plc ikaba yaragitsindiwe mu nkiko zombi: Urukiko rw'Ubucuruzi n'Urukiko Rukuru rw'Ubucuruzi.

[21] Urukiko rwasoje iburanisha kuri iki kibazo, rumenyeshya ababuranyi ko mbere y'uko urubanza rukomeza, ruzabanza kugifataho umwanzuro, runabaza ababuranyi niba hari ibyo bifuzaga kongera ku byo bavuze mu myanzuro ku birebana n'indishyi zinyuranye basabye, impande zombi zemeza ko ntacyo zongeraho.

[22] Urukiko rusanga ibibazo bigomba gusuzumwa ari ibi bikurikira:

- a. Kumenya niba Urukiko rw'Ubujurire rwarakoze ikosa mu kutakira ubujurire bwa kabiri bwa BPR ATLAS MARA Plc;
- b. Ibyerekeye indishyi zisabwa n'impande zombi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Urukiko rw'Ubujurire rwarakoze ikosa mu kutakira ubujurire bwa kabiri bwa BPR ATLAS MARA Plc

[23] Abahagarariye BPR ATLAS MARA Plc bavuga ko Urukiko rw'Ubujurire rwirengagije ko bagobokesheje SGES/ATT Ltd mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi bagira ngo igire ibyo iryozwa ariko urwo rukiko rukayigira umutangabuhamya, ibyo ndetse na SGES/ATT Ltd ikaba yari yarabijuririye, ubujurire bwayo bugahabwa nimeru RCOMAA 00051/2019/CA hanyuma bugahurizwa mu rubanza rwazanywe mu karengane. Bakomeza bavuga ko icyo kibazo cyo kugobokeshwa kwa SGES/ATT Ltd kitigeze kiburanwaho mu Rukiko rw'Ubucuruzi kuko cyaburanyweho bwa mbere mu Rukiko Rukuru rw'Ubucuruzi. Kubera izo mpamvu, bakaba basanga BPR ATLAS MARA Plc itaratsinzwe kabiri ku mpamvu zimwe kuko ibyaburanyweho mu nkiko zombi zabanjirije urw'ubujurire atari bimwe ndetse n'ababuranyi akaba atari bamwe. Bavuga ko n'ubwo ku rwego rwa mbere Urukiko rwavuze ko BPR ATLAS MARA Plc yagombaga kwishyura sheki yashyikirijwe na SGES ATT Ltd ngo zishyurwe Nkusi Evariste, n'urwa kabiri rukaba rwaragumye muri uwo murongo, Urukiko Rukuru rw'Ubucuruzi rwafashe n'ikindi cyemezo gishya kivugaga ko SGES/ATT Ltd itari umuburanyi; iki cyemezo ngo akaba ari nacyo cyatumye BPR ATLAS MARA Plc itsindwa.

[24] Me Twiringiyemungu Joseph wunganira Nkusi Evariste ntiyemeranya n'ibisobanuro bya BPR ATLAS MARA Plc kuri iyo ngingo. Asobanura ko umuburanyi watanze ikirego ari na we ugaragaza akanasobanura ibyo asaba, ko NKUSI Evariste yatanze ikirego anasobanura ibikigize ari byo kutishyurwa sheki yari yahawe na SGES/ATT Ltd nyamara zaratanzwe mu buryo bukurikije amategeko; ibi akaba ari nabyo yatsindiweho mu nkiko zombi, yongeraho ko igobokeshwa rya SGES/ATT Ltd ritari buhindure impamvu zashingiweho n'izo nkiko.

UKO URUKIKO RUBIBONA

[25] Urukiko rusanga ipfundo ry'ikibazo muri uru rubanza ari ukumenya niba hari amakosa Urukiko rw'Ubujurire rwakoze mu kwanga kuburanisha urubanza mu mizi rushingiye ku kuba BPR ATLAS MARA Plc yaratsinzwe ku mpamvu zimwe mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi rutitaye ku kuba hari icyemezo cyihariye cyafashwe mu Rukiko Rukuru rw'Ubucuruzi kirebana n'igobokeshwa rya SGES/ATT Ltd ndetse rukaba rutaritaye no ku bujurire bwa SGES/ATT Ltd. Mu gukemura iki kibazo, Urukiko rurasuzuma niba hari ingaruka icyemezo cyafashwe ku kibazo cyabyukijwe mu Rukiko rwaciye urubanza ku rwego rwa kabiri cyagira ku iyakirwa cyangwa kutakirwa k'ubujurire bwa kabiri hashingiwe ku kuba umuburanyi yaratsinzwe mu nkiko zombi ku mpamvu zimwe. Rurasuzuma kandi niba ubujurire bwa SGES/ATT Ltd ubwabwo, bwaragombaga gutuma urubanza ruburanishwa mu mizi.

a. Kumenya niba ikibazo kibyukijwe mu rwego rw'ubujurire cyaba impamvu yashingirwaho mu kwemeza ko umuburanyi atatsinzwe ku mpamvu zimwe.

[26] Ingingo ya 52 y'Itegeko no 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko mu gika cyayo cya 2, ivuga ko Urukiko rw'Ubujurire rufite (kandi) ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciwe n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, ikanarondora ibigomba kuzuzwa ngo ubwo bujurire bwakirwe. Mu gika cya gatatu ariko, yongeraho indi mpamvu igira iti:” Icyakora (kandi) ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe” Urukiko rusanga iyi ari impamvu yihariye ituma urubanza rutakirwa n'iyi ibindi bikenewe ngo ubujurire bwa kabiri bwakirwe byaba byuzuye.

[27] Muri uru rubanza, BPR ATLAS MARA PLC ntiyemera ko yatsinzwe ku mpamvu zimwe kuko hari ibyaburanwe bigafatwaho icyemezo mu Rukiko Rukuru rw'Ubucuruzi birebana no kugobokeshwa kwa SGES/ATT Ltd bitari byaraburanyweho ku rwego rwa mbere. Ku bijyanye n'igisobanuro cyo gutsindwa ku mpamvu zimwe, mu rubanza RS/INJUST/RCOM 00002/2020/SC3, uru Rukiko rwasobanuye ko “mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi 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 zaburanwe mbere arizo zagarusweho mu bujurire, kandi ko inkiko zombi zazishubijeho mu buryo bumwe”.

[28] Mu kugenzura ko ingingo zaburanwe mbere ari nazo zaburanwe mu bujurire, uru Rukiko rusanga hagomba kwitabwa ku isano remezo iri hagati y'imanza zombi kandi iyo sano ikaba igaragarira mu mpamvu z'ubujurire n'umwanzuro urubanza ku rwego rwa kabiri rwazifasheho, kuko nk'uko bigaragara mu ngingo ya 150, 5^o-7^o CPCCSA⁴ mu gusobanura izo mpamvu, aribwo umuburanyi watsinzwe urubanza ku rwego rwa mbere agaragaza ibyo arunenga, akaba ari nabyo, nyuma yo kumva ibisobanuro by'uregwa, bifatwaho icyemezo n'Urukiko ku rwego rw'ubujurire.

³Urubanza RS/INJUST/RCOM 00002/2020/SC rwaciye ku wa 25/09/2020 haburana Road Solution Pavement Product vs MAILCO Ltd, igika cya 24.

⁴Iyo ngingo igira iti: “Ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza ibi bikurikira:

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5^o urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa;

6^o ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragara amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko;

7^o ibisobanuro ku birego by'inyongera mu gihe ibyo birego bihari.

[29] Iyo kuri izo ngingo zajuririwe, urukiko ruciye urubanza ku rwego rwa kabiri ruhuje umwanzuro n'impamvu zashingiweho mu kuwufata, bikagaragara ko uwajuriye yongeye gutsindwa n'impamvu zari zatumye atsindwa mbere, nibwo bifatwa ko habaye gutsindwa ku mpamvu zimwe. Mu yandi magambo, gutsindwa ku mpamvu zimwe, bigenzurwa hashingiwe ku ngingo zatumye umuburanyi ajurira, umwanzuro wazifashweho n'impamvu zashingiweho n'inkiko zombi. Ibyo bivuze ko ibindi ababuranyi bemerewe gusaba mu rwego rw'ubujurire nk'uko biteganywa mu ngingo ya 154 CPCCSA -nk'inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse nk'indishyi z'igihombo umuburanyi yagize kuva urubanza ku rwego rwa mbere ruciwe; kimwe no kugobokesha umuburanyi mu bujurire- bidashobora gushingirwaho hasuzumwa ko umuburanyi yatsinzwe ku mpamvu zimwe, bityo hakaba nta n'uwakwitwaza umwanzuro wabifashweho ashaka kumvikanisha ko atatsinzwe ku mpamvu zimwe kuko nyine ibyo biba bitarasuzumwe ku rwego rwa mbere; ku bw'ibyo hakaba nta n'igereranya rishobora kubikorerwaho harebwa imanza zaciwe ku nzego zombi kuko ntawe ugereranya ibidafitanye isano.

[30] Muri uru rubanza, BPR ATLAS MARA Plc yagobokesheje SGES/ATT Ltd mu bujurire, urukiko rufata umwanzuro ko uko kugobokeshwa kutakiriwe. Nk'uko byasobanuwe mu gika kibanziriza iki, Urukiko rusanga uwo mwanzuro BPR ATLAS MARA Plc idashobora kuwushingiraho ngo ivuge ko itatsinzwe ku mpamvu zimwe yitwaje ko utari wafashwe mu rubanza rwajuririwe, bikaba byumvikana ko nta n'uburyo washingirwaho hasuzumwa ko yatsinzwe ku mpamvu zimwe kuko ntacyo ugereranywa nawo mu rubanza rwaciwe ku rwego rwa mbere.

[31] Hashingiwe kuri ibyo bisobanuro, Urukiko rusanga ibyo BPR ATLAS MARA Plc ivuga ko Urukiko rw'Ubujurire rwayirenganyije rwanga kwakira ubujurire bwa kabiri yarushyikirije kuko ikibazo cyo kugobokeshwa kwa SGES/ATT Ltd kitari mu byo yatsindiweho ku mpamvu zimwe, nta shingiro bifite.

Kumenya niba kuba SGES/ATT Ltd yarajuririye icyemezo yafatiwe ku kugobokeshwa kwayo byaragombaga gutuma Urukiko rw'Ubujurire ruburanisha mu mizi.

[32] Mu bisobanuro byayo, haba mu myanzuro cyangwa mu iburanisha, BPR ATLAS MARA Plc, igaragaza ko Urukiko rw'Ubujurire rwirengagije ko SGES/ATT Ltd nayo yari yajuriye; ibyo bikaba ngo byaragombaga gutuma Urukiko rw'Ubujurire ruburanisha urubanza mu mizi. Mu gusubiza kuri iyi ngingo, urukiko rusanga hagomba gusuzumwa niba ubujurire bwa SGES/ATT Ltd bwaragombaga kwakirwa n'ingaruka ibyo bifite ku karengane BPR ATLAS MARA Plc ivuga ko yagiriwe.

[33] Ku byerekeye iyakirwa ry'ubujurire bwa SGES/ATT Ltd, ingingo ya 116 a12 CPCCSA, igira iti: “Kabone n'aho urubanza rwaba ruciwe ku rwego rwa nyuma, umuburanyi yemerewe kujuririra urubanza yagobokeshejwemo inshuro imwe iyo hari ibyo yaciwe”. Nk'uko iyi ngingo ibigaragaza, uwagobokeshejwe ku gahato yemerewe kujurira iyo hari ibyo yaciwe. Mu yandi magambo iyo ntacyo yategetswe kwishyura ubujurire bwe ntibwakirwa.

[34] Nk'uko bigaragara mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, urukiko rwemeje ko SGES/ATT Ltd itaba umuburanyi mu rubanza idashobora kugira icyo isabamo cyangwa isabwa⁵; ko ahubwo urubanza irugumamo nk'umutangabuhamya; bikaba byumvikana

⁵Reba igika cya 6 cy'urubanza N° RCOMA 00583/2018/HCC

ko ntacyo yategetswe kwishyura icyo aricyo cyose; bityo ikaba itari yemerewe kuba yajuririra urwo rubanza.

[35] Kuba Urukiko rw'Ubujurire ntacyo rwavuze kuri ubwo bujurire, ahubwo rukavuga ko rusanga atari ikibazo cy'ingenzi⁶ uru Rukiko rusanga ntacyo rwabivugaho kuko SGES/ATT Ltd itigeze igaragaza ko hari icyo biyitwaye. Ikibazo gihari akaba ari ukumenya niba ibyo BPR ATLAS MARA Plc yabyuriraho igasaba ko urubanza rusubirwamo ku mpamvu z'akarengane.

[36] Uru rukiko rusanga impamvu ituma ikirego kitakirwa ari impamvu ireba umuburanyi urukiko rwangiye kwakira cyangwa gusuzuma ikirego, kuko urukiko rufite ububasha bwo kutakira ikirego/ubujurire bw'umuburanyi umwe ariko rukaba rwakwakira ikirego/ubujurire bw'undi cyangwa abandi. Kuba rero urukiko rwaba rwarakoze ikosa ku bireba SGES/ATT Ltd, ibyo ntibihesha BPR ATLAS MARA Plc ububasha bwo kubigira ikibazo cyatuma urubanza rusubirwamo ku mpamvu z'akarengane kuko itayihagarariye.

[37] Kubera izo mpamvu zose, uru rukiko rusanga nta karengane BPR ATLAS MARA Plc yatewe n'urubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire, bityo rukaba rudashobora gusuzuma akarengane ivuga ko kari mu rubanza RCOMA 00583/2018/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi.

2. Ibyerekeye indishyi

a. Indishyi zo gushorwa mu manza

[38] Me Twiringiyemungu Joseph uhagarariye NKUSI Evariste avuga ko ikirego cyatanzwe na BPR ATLAS MARA Plc kigamije gusa gukomeza kumuheza mu gihirahiro kugira ngo atabona ubwishyu bwe. Bityo akaba asaba Urukiko rw'Ikirenga kuyitegeka kwishyura uwo ahagarariye indishyi zo gushorwa mu manza ku maherere zingana na 10.000.000 Frw.

[39] Abahagarariye BPR ATLAS MARA Plc, bavuga ko banki yashowe mu manza z'amaherere, nyamara ko nta kosa yigeze ikora ahubwo yubahirije inshingano zayo uko yazisabwaga. Bityo bakaba basanga idakwiye kuryozwa ayo amafaranga. Basaba ko ahubwo NKUSI Evariste ari we wabyirengera kuko yari yasobanuriwe impamvu sheki zitishyuwe.

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga indishyi zo gushorwa mu manza zisabwa na NKUSI Evariste nta shingiro zifite kuko nta kigaragaza ku buryo budashidikanywaho ko BPR ATLAS MARA Plc yatanze ikirego mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane izi neza ko nta zindi nyungu ifitemo uretse kugira ngo NKUSI Evariste atishyurwa.

b. Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[41] Me Twiringiyemungu Joseph uhagarariye NKUSI Evariste asaba Urukiko gutegeka BPR ATLAS MARA Plc kumwishyura igihembo cya Avoka n'amafaranga y'ikurikiranarubanza bingana na 5.000.000 Frw.

[42] Abahagarariye BPR ATLAS MARA Plc na bo basaba Urukiko rw'Ikirenga gutegeka NKUSI Evariste kuyisubiza 5.000.000 Frw akubiyemo igihembo cy'Avoka kingana na 3.000.000

⁶ Reba igika cya 21 cy'urubanza N° RCOMAA 00031/2019/CA

Frw n'amafaranga y'ikurikiranarubanza angana na 2.000.000 Frw bashingiye ku ngingo ya 26 y'Amabwiriza N° 01/2014 akena ibihembo fatizo by'Abavoka mu Rwanda⁷ ndetse n'ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi⁸

UKO URUKIKO RUBIBONA

[43] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asabwa na BPR ATLAS MARA Plc nta shingiro afite kuko itsinzwe ibyo iburana. Rusanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka uhagarariye NKUSI Evariste asaba ayakwiye kuko ariwe utsinze uru rubanza, ariko kuko atagaragaza uburyo ayabaramo ngo anabigaragarize ibimenyetso, Urukiko rukaba rumugeneye mu bushishozi bwarwo amafaranga y'igihembo cy'Avoka ibihumbi magana atanu (500.000 Frw) n'ibihumbi magana atatu (300.000 Frw) y'ukurikiranarubanza kuri uru rwego, ni ukuvuga ibihumbi magana inani (800.000 Frw) yose hamwe.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020, cyatanzwe na BPR ATLAS MARA PLC nta shingiro gifite;

[45] Rwemeje ko nta karengane kari mu rubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020;

[46] Rwemeje ko imikirize y'urubanza RCOMAA 00031/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/03/2020 idahindutse;

[47] Rutegetse BPR ATLAS MARA PLC guha NKUSI Evariste amafaranga ibihumbi magana inani (800.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka kuri uru rwego.

⁷Iyo ngingo ivuga ko "Igihembo cy'Avoka kiri hagati ya 500.000 Frw na 5.000.000 Frw."

⁸Iyo ngingo igira iti: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza