RUVUGABIGWI LTD v BPR LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00004/2019/SC (Ntezilyayo, P.J., Mukalisa, Nyirinkwaya, Cyanzayire na Rukundakuvuga, J.) 06 Ugushyingo 2020]

Amategeko agenga imanza z' ubucuruzi –-Ifatira ry'agateganyo –- Ingaruka zo gutesha agaciro ifatira ry'agateganyo –-Mu gihe ifatira ry'agateganyo riteshejwe agaciro, uwari wasabye ko ribaho aryozwa indishyi n'inyungu zishingiye ku byangiritse kubera iryo fatira.

Amategeko agenga imanza z' ubucuruzi – Ifatira ry'agateganyo – Kurinda ibyafatiriwe – Iyo icyemezo cy'ifatira kirangije igihe cyateganyirijwe, uwari warindishijweibyafatiriwe akomeza inshingano zo kubirinda hakurikijwe amabwiriza y'umuheshaw'inkiko wabimurindishije. Iyo byangiritse biryozwa uwabirindishijwe bikaba bitanabuza ko hanatangwa inyungu.

Incamake y'Ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'ubucuruzi rwa Huye, aho BPR Ltd yaregaga Ruvugabigwi Jean Paul ko yamuhaye inguzanyo ariko ntayishyure ku gihe nkuko amasezerano bari bagiranye yabiteganyaga ariko BPR Ltd ikimara gutanga icyo kirego cy'iremezo mu Rukiko rw'ubucuruzi yahise itanga ikirego cyihutirwa (référé), isaba ko ibikoresho by'ubwubatsi byari bimaze kugera mu bubiko bwa Magerwa bifatirwa Urukiko ruza no gufata icyemezo rwemeza ko ibyo bikoresho koko bifatirwa.Uru rubanza rw'ifatira rwakurikiwe n'izindi nazo zabaga zigamije gufatira ibikoresho bya Ruvugabigwi Jean Paul.

Nyuma y'izo manza, Urubanza rw'iremezo rwarakomeje, Urukiko rw'Ubucuruzi rwa Huye rwaciye urubanza rw'iremezo rwemeza ko Ruvugabigwi Jean Paul yishyura BPR Ltd umwenda remezo, inyungu zawo, indishyi n'igihembo cy'Avoka.

Ruvugabigwi Jean Paul ntiyishimye imikirize maze ajuririra urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, avuga ko amasezerano yagiranye na BPR Ltd itubahirijwe ngo kuko yateganyaga ko mu gihe ananiwe kwishyura hazagurishwa ingwate yahaye BPR Ltd, akaba ari yo ivamo ubwishyu bitarinze kujya mu nkiko. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko nta gihindutse ku mikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Huye aha rwavuze ko ntaho mu masezerano y'umwenda avuga ko byanga bikunze ko ingwate igurishwa hatabanje kwitabazwa inkiko.

Ruvugabigwi Jean Paul yajuririye Urukiko rw'Ikirenga, ariko mu gihe uru rubanza rwari rutaracibwa, BPR Ltd nayo, yahise itanga ikirego mu Rukiko rw'Ibanze rwa Nyarugenge, isaba icyemezo gitegeka ifatira ry'agateganyo ku bikoresho bya Ruvugabigwi Jean Paul byari mu bubiko bwe kugira ngo bizaherweho hishyurwa umwenda afitiye BPR Ltd, Urukiko runafata icyemezo gitaga uburenganzira bwo gufatira ibyo bikoresho.

Urukiko rw'Ikirenga mu guca urubanza ku kirego rwashyikirijwe na Ruvugabigwi Jean paul rwemeje ko ubujurire bwe bufite ishingiro, ko ndetse urubanza RCOMA 0125/13/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi n'urubanza RCOM 0260/12/TC/HYE rwaciwe n'Urukiko rw'Ubucuruzi rwa Huye ku wa zivanyweho,rutegeka ko ahubwo hakubahirizwa ibikubiye mu rwandiko rwo ku wa 17/12/2012 BPR Ltd yamwandikiwe imumenyesha umwenda ayibereyemo, inamwibutsa ko agomba kuwishyura mu gihe kitarenze iminsi 30, yaba atawishyuye ingwate yatanze zigatezwa cyamunara.

Nyuma y'izo manza, Ruvugabigwi Jean Paul nawe yareze BPR Ltd mu Rukiko rw'Ubucuruzi ibirego birimo indishyi zo kuba yarafatiriye ibikoresho bye, bimwe bikagurishwa cyamunara, ibindi bikangirika. Urwo rubanza rwakomeje kujya rujuririrwa ariko hose ariko Ruvugabigwi agenda atsindwa ruza kurangiririra mu Rukiko rw'Ubujurire ariko naho aratsindwa.

Nyuma yo gutsindwa hose ariko ntanyurwe, Ruvugabigwi Jean Paul yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCOMAA 00075/2018/CA rwaciwe n'Urukiko rw'Ubujurire rwasubirishwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubusabe bwe, yemeza ko rusubirishwamo ku mpamvu z'akarengane.

Mu gusobanura ibyo ashingiraho avuga ko yarenganye, Ruvugabigwi Jean Paul yavuze ko koko adahakana ko umwenda yahawe na BPR Ltd atananiwe kuwishyura ko ariko mu gihe yarananiwe kuwishyura BPR Ltd yagombaga kugurisha ingwate yari yarayihaye nk'uko amasezerano yabiteganyaga, ntiyihutiye kujya kumurega

mu Nkiko.Yongeraho ko kandi BPR Ltd yatanze ibirego bitandukanye byababaga bigamije gufatira ibikoresho bye ndetse koko bikanafatirwa bimwe ikaba ikinabifite hakiyongeraho n'ibyafatiriwe muri Magerwa hanyuma BPR Ltd ikananirwa kubikuramo bikarinda bigera ubwo RRA ibiteza cyamunara, bityo icyo gihombo akaba ariyo igomba kukiryozwa kuko we, kuva hafatwa icyemezo kibifatira atari akibifiteho uburenganzira.Akaba kandi asaba ko Urukiko rwategeka BPR Ltd kumuha inyungu yavukijwe yashoboraga kubona iyo Hoteli ye iza gukora kuko ibikoresho byose byafatiriwe byari bigeye gukora muri Hotel.

Kuruhande rwa BPR Ltd n'abayunganira bo bavuga ko batabona igihombo bamuteje ngo kuko ibyo bikoresho byafatiriwe ngo hishyurwe umwenda ayibereyemo, bakaba rero babona nta karengane Ruvugabigwi yagiriwe ngo kuko iyo aza kwishyura umwenda ku gihe nkuko bari barabyumvikanye, izi manza zose ndetse n'amafatira tandukanye yakozwe atagombaga gukorwa.

Incamake y'Icyemezo: 1. Mu gihe ifatira ry'agateganyo riteshejwe agaciro, uwari wasabye ko ribaho aryozwa indishyi n'inyungu zishingiye ku byangiritse kubera iryo fatira.

2. Iyo icyemezo cy'ifatira kirangije igihe cyateganyirijwe, uwari warindishijweibyafatiriwe akomeza inshingano zo kubirinda hakurikijwe amabwiriza y'umuheshaw'inkiko wabimurindishije. Iyo byangiritse biryozwa uwabirindishijwe bikaba bitanabuza ko hanatangwa inyungu.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane gifite ishingiro.
Urubanza rwasabiwe gusubirishwamo ruhindutse kuri bimwe.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ingingo ya 215, igika cya gatatu.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ruvugabigwi Jean Paul yahawe inguzanyo na BPR Ltd ingana n'amafaranga 271,161,419 Frw, nawe ayiha ingwate ebyiri arizo: inzu y'ubucuruzi iri mu kibanza No 330, kiri mu Kagari ka Gitwa, Umurenge wa Tumba, Akarere ka Huye, Intara y'Amajyepfo n'inzu irimo kubakwa mu kibanza No 85 giherereye mu Kagari ka Butare, Umurenge wa Ngoma, Akarere ka Huye, Intara y'Amajyepfo. Ruvugabigwi Jean Paul yananiwe kwishyura iyo nguzanyo, maze BPR Ltd imurega mu Rukiko rw'Ubucuruzi, irusaba kwemeza ko yananiwe kwishyura umwenda remezo wa 271,161,419 Frw.

[2] Mu gihe urubanza rwari rutegereje kuburanishwa, BPR Ltd yatanze ikirego cyihutirwa yuririye ku kirego cy'iremezo, isaba ko ibikoresho by'ubwubatsi byari bimaze kugera mu bubiko bwa MAGERWA bifatirwa. Ku wa 20/12/2012, Perezida w'urwo Rukiko yafashe icyemezo kibifatira mu kirego cyihutirwa RCOM 0261/12/TC/HYE.

[3] Ku wa 26/02/2013, Urukiko rwaciye urubanza rw'iremezo RCOM 0260/12/TC/HYE, rwemeza ko Ruvugabigwi Jean Paul yishyura BPR Ltd umwenda remezo, inyungu zawo, indishyi n'igihembo cy'Avoka bingana na 293,950,055 Frw.

[4] Ruvugabigwi Jean Paul yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, avuga ko ingingo ya 9 y'amasezerano yagiranye na BPR Ltd itubahirijwe, kuko yateganyaga ko mu gihe ananiwe kwishyura hazagurishwa ingwate yahaye BPR Ltd, akaba ari yo ivamo ubwishyu bitarinze kujya mu nkiko.

[5] Ku wa 10/06/2013, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 0125/13/HCC, rwemeza ko nta gihindutse ku mikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Huye, rushingiye ku kuba iyo ngingo ya 9 y'ayo masezerano itavuga byanga bikunze ko ingwate igurishwa hatabanje kwitabazwa inkiko.

[6] Ruvugabigwi Jean Paul yajuririye Urukiko rw'Ikirenga, urubanza rwandikwa kuri RCOMAA 0024/13/CS. Mu gihe uru rubanza rwari rutaracibwa, BPR Ltd nayo, yahise itanga ikirego mu Rukiko rw'Ibanze rwa Nyarugenge, isaba icyemezo gitegeka ifatira ry'agateganyo ku bikoresho bya Ruvugabigwi Jean Paul byari mu bubiko bwe buherereye mu nzu y'igorofa y'uwitwa Pontien iri mu Mudugudu wa Rwezamenyo, Akagari ka Nyabugogo, Umurenge wa Muhima, Akarere ka Nyarugenge mu Mujyi wa Kigali, kugira ngo bizaherweho hishyurwa umwenda afitiye BPR Ltd ungana na 271,161,419 Frw, rufata icyemezo gifatira ibyo bikoresho ku wa 22/07/2013.

[7] Ku wa 15/04/2016, Urukiko rw'Ikirenga rwaciye urubanza RCOMAA 0024/13/CS rwemeza ko ubujurire bwa Ruvugabigwi Jean Paul bufite ishingiro, ko urubanza RCOMA 0125/13/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 10/06/2013 n'urubanza RCOM 0260/12/TC/HYE rwaciwe n'Urukiko rw'Ubucuruzi rwa Huye ku wa 26/02/2013 zivanyweho, hakubahirizwa ibikubiye mu rwandiko rwo ku wa 17/12/2012 BPR Ltd yamwandikiwe imumenyesha umwenda ayibereyemo, inamwibutsa ko agomba kuwishyura mu gihe kitarenze iminsi 30, yaba atawishyuye ingwate yatanze zigatezwa cyamunara.

[8] Nyuma y'izo manza, Ruvugabigwi Jean Paul nawe yareze BPR Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge, mu rubanza RCOM 01852/2016/ TC/NYGE, arusaba:

a. kugena ingano y'umwenda abereyemo BPR Ltd;
b. kumwishyura ingano y'agaciro k'ibikoresho BPR Ltd yafatiriye bigatezwa cyamunara bifite agaciro ka USD 284 880;
c. kwishyura igihombo yamuteje ubwo yamufatiraga ibikoresho bya Hoteli bigatuma itakaza 211,822,007 Frw yari kunguka iyo iza gukora;
d. gutegeka ihwanya myenda.

Mu gihe urwo rubanza rwari rukiburanishwa, BPR Ltd yagurishije ingwate zayo ku wa 28/12/2016, zivamo amafaranga 181,000,000 Frw.

[9] Ku wa 10/03/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM 01852/2016/ TC/NYGE rwemeza ko ikirego cya Ruvugabigwi Jean Paul nta shingiro gifite. Ruvugabigwi yatsinzwe n'uko atabashije kugaragaza umwenda yemera ko abereyemo BPR Ltd. Ku kirebana n'igihombo avuga ko yatejwe na BPR Ltd kubera ifatira ry'ibikoresho bye, urukiko rwasanze nta sano iri hagati y'ibyatejwe cyamunara n'ifatira ryasabwe na BPR Ltd, kuko umuhesha w'inkiko wagiye guteza cyamunara nk'uko bigaragazwa na PV de constat yo ku wa 03/02/2013, yasanze ibicuruzwa byaramaze gusohorwa muri MAGERWA na Ruvugabigwi Jean Paul, bituma icyemezo cyo guteza cyamunara kidashyirwa mu bikorwa. Kubera izo mpamvu, Urukiko rw'Ubucuruzi rwa Nyarugene rwemeje ko nta hwanya ry'imyenda ryashoboka mu gihe nta mwenda BPR Ltd ibereyemo urega.

[10] Ruvugabigwi Jean Paul yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, uru narwo mu rubanza RCOMA 00218/2016/CHC/HCC rwaciwe ku wa 21/12/2017, rwemeza ko ubujurire bwe nta shingiro bufite, ko umwenda agomba kwishyura BPR Ltd ari 118,678,770 Frw aho kuba 107,192,876 Frw, ko ku bindi ntagihindutse ku rubanza yajuririye.

[11] Ruvugabigwi Jean Paul yajuririye Urukiko rw'Ikirenga, urubanza rwe ruza kwimurirwa mu Rukiko rw'Ubujurire, ruhabwa RCOMAA 00075/2018/CA. Ku wa 03/05/2019 urwo urubanza rwaraciwe, Urukiko rwemeza ko ubujurire bwa Ruvugabigwi Jean Paul nta shingiro bufite, kuko kuba ibikoresho bye byaratejwe cyamunara na RRA nta ruhare BPR Ltd yabigizemo, ikaba rero itaryozwa agaciro kabyo n'inyungu avuga ko yari kubikuramo; rumutegeka kwishyura BPR Ltd umwenda ayibereyemo ungana na 118,678,770 Frw na 1,000,000 Frw y'igihembo cy'Avoka n'ikurikiranarubanza.

[12] Ruvugabigwi Jean Paul yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCOMAA 00075/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/05/2019 rwasubirishwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubusabe bwe, yemeza ko rusubirishwamo ku mpamvu z'akarengane, ruhabwa Nº RS/INJUST/RCOM 00004/2019/SC. Ku wa 26/05/2020, urubanza rwahamagawe Ruvugabigwi Jean Paul yunganiwe na Me Munyandamutsa Jean Pierre, BPR Ltd ihagarariwe na Me Mubangizi Frank, urubanza ruraburanishwa.

[13] Mu gusobanura ikirego cye, Ruvugabigwi Jean Paul na Me Munyandamutsa Jean Pierre umwunganira bavuze ko nyuma yo guhabwa inguzanyo na BPR Ltd, akananirwa kuyishyura, iyo Banki, aho kugurisha ingwate

yari yarayihaye nk'uko amasezerano yabiteganyaga, yihutiye kujya kumurega mu nkiko, ndetse inatanga ibirego byihutirwa isaba urukiko ko rwafatira ibikoresho bya Hoteli yari yaratumije bifite agaciro ka 284 880 USD ahwanye na 176,750,000 Frw, maze Urukiko rw'Ubucuruzi rwa Huye rutegeka ko bifatirwa. Ruvugabigwi Jean Paul asobanura ko BPR Ltd yananiwe kubikura mu bubiko bwa Magerwa bikarinda bigera ubwo RRA ibiteza cyamunara, bityo icyo gihombo akaba ariyo igomba kukiryozwa kuko we, kuva hafatwa icyemezo kibifatira atari akibifiteho uburenganzira.

[14] Ruvugabigwi Jean Paul n'umwunganira bavuga ko ndetse n'ibikoresho bike yari yaravanye muri Magerwa mbere y'uko Urukiko rw'Ubucuruzi rwa Huye rutegeka ko bifatirwa, na byo byaje gufatirwa na BPR Ltd hashingiwe ku cyemezo No 0001/2013 cyafashwe n'Urukiko rw'Ibanze rwa Nyarugenge ku wa 22/07/2013, ubu akaba ariyo ibifite. Ruvugabigwi Jean Paul, ahera kuri icyo gihombo yatewe n'ifatira ry'ibikoresho bye, asaba agaciro kabyo kangana na 284,880USD ahwanye na 176,750,000 Frw n'inyungu zayo zihwanye na 307,370.4 USD; inyungu yavukijwe yashoboraga kubona iyo Hoteli ye iza gukora, indishyi zinyuranye, amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka.

[15] Me Mubangizi Frank avuga ko BPR Ltd yasabye koko ko ibyo bikoresho byari muri Magerwa bifatirwa ikabyemererwa, ariko ko Umuhesha w'inkiko ubwo yageraga kuri Magerwa kubifatira yasanze Ruvugabigwi Jean Paul yarabisohoye, bigatuma batanga ikindi kirego cyo kubifatira mu Rukiko rw'Ibanze rwa Nyarugenge. Avuga ko n'ubwo Ruvugabigwi Jean Paul yagiye abangamira ishyirwa mu bikorwa ry'ibyemezo by'inkiko, Umuhesha w'inkiko yaje kubifatira abisanze ahitwa GOODYEAR, bityo ko BPR Ltd nta gihombo yamuteje kuko ibyo bikoresho byafatiriwe ngo hishyurwe umwenda ayibereyemo. Me Mubangizi Frank asoza asaba amafaranga y'ikurikiranarubanza n'igihembo cy' Avoka.

[16] Urukiko rwapfundikiye iburanisha rwemeza ko urubanza ruzasomwa ku wa 19/06/2020, ariko mu kurusuzuma rusanga mbere yo kuruca, hari ibindi rukeneye, rwemeza ko:

- Ruvugabigwi Jean Paul agomba kugaragaza agaciro kihariye k'ibikoresho bye byafatiriwe muri Magerwa nk'uko bigaragazwa n'ibaruwa yandikiwe n'ubuyobozi wa Gasutamo ku wa 04/06/2016, akanabitangira ibimenyetso;

- RRA isabwa kugaragaza amafaranga ibikoresho bya Ruvugabigwi Jean Paul byaguzwe muri cyamunara; ayo yiyishyuye nyuma yo kubigurisha, ayasigaye imaze gukuramo ayayo n'aho yayashyize. Yasabwe kandi kugaragaza niba hari ibitaragurishijwe nabyo ikabimenyesha Urukiko

[17] Ku wa 30/07/2020, ubuyobozi bwa RRA/Ishami rya Gasutamo bwandikiye Urukiko burumenyesha ko ibicuruzwa bya Ruvugabigwi Jean Paul byinjiye mu bubiko rusange bwa Magerwa tariki ya 20/07/2012, bimwe byagurishijwe muri cyamunara yabaye ku wa 19/12/2015 mu ma lots abiri:

a. Lot ya 4 yagurishijwe amafaranga angana na 1,400,000 Frw;
b. Lot ya 53 yagurishijwe 1,180,000 Frw;

bityo igiteranyo cyayo akaba ari 2,580,000 Frw.

[18] RRA ivuga ko muri ayo mafaranga hakuwemo umusoro ungana na 1,011,143 Frw, hakurwaho n'aya Magerwa angana na 208,954 Frw, hagasigara 1,359,903 Frw agashyirwa mu isanduku ya Leta nk'uko biteganywa n' ingingo ya 57 (4) y' Itegeko rigenga za Gasutamo z'Ibihugu bigize Umuryango wa Afurika y'Iburasirazuba ryo muri 2005. RRA ivuga kandi ko ibikoresho byasigaye byagurishijwe ku wa 29/01/2017 kuri Lot ya 45 yagurishijwe 1,000,000 Frw; 219,360 Frw akishyurwa umusoro, 289,500 Frw akishyurwa Magerwa, ayasigaye 491,140 Frw agashyirwa mu isanduku ya Leta.

[19] Ruvugabigwi Jean Paul yohereje Urukiko *factures* yaguriyeho ibikoresho byagurishirijwe muri Magerwa, nk'uko bigaragara mu mbonerahamwe ikurikira:

	N° ya Facture	Umubare	Ikiguzi
MDF	272 639462	30	2700 Dhs
ARSTN Heater 50L	272 639462	10	2950 Dhs

Italyan WC	272 639462	10	1500 Dhs
Matrress	420201742	19	(625x19)= 11875 Dhs
Windows-Doors Glasses & Accessories	56789123	41 Colis	37,000$
Surfg Wave Bd (cabine telephonique)	272 639462	2 Cartons	660 Dhs

[20] Iburanisha ryapfunduwe ku wa 12/10/2020, Urukiko rugaruka gusa ku bibazo rwari rwasabyeho umucyo nk'uko byasobanuwe mu gika cya 16.

[21] Ruvugabigwi Jean Paul asobanura ko ibikoresho byatejwe cyamunara na RRA bifite agaciro kangana n'amadorali ibihumbi mirongo itanu n'umunani magana atanu na mirongo itandatu (58 560 $); akanavuga kandi ko hari n'ibindi bikoresho BPR Ltd yafatiriye kuri *GOODYEAR* na byo byari bifite agaciro ka 213365 $, akaba agomba kuyishyurwa hiyongereyeho n'ikiguzi cya *transport* cyishyuwe *company* yitwa JACAJO kingana n'amadorali ibihumbi cumi na mirongo irindwi (10 070 $). Asoza avuga ko agaciro k'ibikoresho bye byose bakurikije *factures* bashoboye kubona kangana na 269,925 $ bitandukanye n'agaciro baregeye kubera ko hari ibimenyetso adashobora kubona.

[22] Uhagarariye BPR Ltd avuga ko mu guca urubanza Urukiko rukwiye kubona ko ntacyo ikwiye kuryozwa kuko Ruvugabigwi Jean Paul ari we wagiye agora BPR Ltd ayibuza guteza cyamunara ibikoresho bye yasabye ko bifatirwa kugira ngo yiyishyure, kandi ko n'ibyafatiriwe muri Magerwa ikageza ubwo ibigurisha mu cyamunara byatewe n'uko Ruvugabigwi Jean Paul atabisoreye ngo abisohore muri Gasutamo ku gihe.

[23] Urukiko rurasanga ibibazo bigomba gusuzumwa muri uru rubanza ari ibi bikurikira:

a. Kumenya niba BPR Ltd ari yo nyirabayazana w'igihombo gikomoka ku ifatira ry'ibikoresho bya Ruvugabigwi Jean Paul;
b. Kumenya niba BPR Ltd igomba gusubiza Ruvugabigwi Jean Paul 269,925 $ y'ibikoresho bye byafatiriwe n'inyungu zayo zingana na 291,519 $;
c. Kumenya niba BPR Ltd igomba kumwishyura igihombo yamuteje kingana n'inyungu yari kubona iyo Hoteli ye iza gukora; Ibyerekeye indishyi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1) Kumenya niba BPR Ltd ari yo nyirabayazana w'igihombo gikomoka ku ifatira ry'ibikoresho bya Ruvugabigwi Jean Paul.

[24] Ruvugabigwi Jean Paul kimwe na Me Munyandamutsa Jean Pierre umwunganira bavuga ko ibikoresho bye byageze muri Magerwa biri muri *containers* ebyiri, bimwe bikaba bigaragara ku nyandiko yiswe *arrival notice* yo ku wa 20/07/2012, ibindi bikaba bigaragazwa na *declaration* iri ku mugereka w'inyandikomvugo y'Umuhesha w'inkiko wagiye kubifatira muri Magerwa ku wa 03/02/2013, hanyuma akavuga ko yasanze bitagihari. Bavuga kandi ko ibyo bikoresho byose byafatiriwe n'icyemezo RCOM 0261/ 12/ TC/HYE cy'Urukiko rw'Ubucuruzi rwa Huye, ariko mu kubisohora muri Magerwa bikaba byarabaye mu byiciro bibiri. Bavuga ko icyiciro cyabyo cya mbere cyasohowemo mbere y'uko icyemezo N° RCOM 0261/ 12/ TC/HYE

cyafashwe n’Urukiko rw’Ubucuruzi rwa Huye cyo ku wa 20/12/2012 gifatwa, ariko amaherezo nabyo BPR Ltd ikaza kubifatira yifashishije icyemezo N° 0001/2013 cyo ku wa 22/07/2013 cyafashwe n’Urukiko rw’Ibanze rwa Nyarugenge. Ikindi gice kikaba kigizwe n’ibindi bikoresho byatejwe cyamunara na RRA nyuma yo kumara igihe kirenga amezi atandatu mu bubiko bwayo, BPR Ltd yabifatiriye itabikuyemo. Bakaba basanga rero ibyo bikoresho byose Ruvugabigwi Jean Paul yarabyambuweho uburenganzira ku maherere, kuko ibyemezo bibifatira byaje guteshwa agaciro n’uko Urubanza bishamikiyeho ruteshejwe agaciro n’Urukiko rw’Ikirenga mu rubanza RCOMAA 0024/13/CS rwaciwe ku wa 15/04/2016.

[25] Me Mubangizi Frank uhagarariye BPR Ltd avuga ko nk’uko inkiko zitandukanye zabihurijeho, mu gihe Banki yari igiye gushyira mu bikorwa icyemezo cy'urukiko RCOM 0261/12/TC/HYE cyo ku wa 20/12/2012, ifatira ibikoresho bya Ruvugabigwi Jean Paul byari muri Magerwa bivugwa muri icyo cyemezo, yasanze bitakihabarizwa; Ruvugabigwi Jean Paul yaramaze kubisorera ndetse yaranabisohoye mu bubiko nk’uko bigaragazwa na PV y'Umuhesha w'inkiko yo ku wa 03/02/2013. Avuga ko byabaye ngombwa ko babikurikirana aho yari yabihishe, amaherezo bakabisanga ahitwa GOODYEAR. Avuga kandi ko n’ibyafatiriwe muri Magerwa bikagera ubwo bigurishwa byatewe no kuba Ruvugabigwi Jean Paul atarabisoreye ngo abisohore muri Gasutamo ku gihe. Ku bw’ibyo, Me Mubangizi Frank akaba asanga nta gihombo BPR Ltd yateje Ruvugabigwi Jean Paul kuko umutungo yafatiriye n’ubundi wagombaga gufatirwa ngo yishyure umwenda ayibereyemo.

UKO URUKIKO RUBIBONA

[26] Urukiko rusanga ipfundo ry’ikibazo kuri iyi ngingo rishingiye ku bintu bitatu:

a. Kumenya niba ibikoresho bya Ruvugabigwi Jean Paul byatejwe cyamunara na RRA biri mu byari byarafatiriwe na BPR Ltd;
b. Kumenya isano iri hagati y’iryo fatira n’igurisha muri cyamunara na RRA n’igihombo cya Ruvugabigwi Jean Paul;
c. Kumenya niba hari isano iri hagati y’ifatira ry’ibikoresho byafatiriwe kuri *GOODYEAR* n’igihombo cya Ruvugabigwi Jean Paul.

Kumenya niba ibikoresho bya Ruvugabigwi Jean Paul byatejwe cyamunara na RRA biri mu byari byarafatiriwe na BPR Ltd.

[27] Kuri iki kibazo, nk’uko impande zombi zibyemeranyaho, icyemezo RCOM 0261/12/TC/HYE cyo ku wa 20/12/2012 cyafashwe n’Urukiko rw’Ubucuruzi rwa Huye cyafashwe ku busabe bwa BPR Ltd kigamije gufatira ibikoresho bya Ruvugabigwi Jean Paul byari muri Magerwa. N’ubwo BPR Ltd yumvikanisha ko igihe yari yohereje Umuhesha w’inkiko muri Magerwa ngo abifatire yasanze bitagihari nk’uko ngo bigaragazwa n’inyandikomvugo ye yo ku wa 03/02/2013, ibyo ngo akaba ari nako inkiko zose zaburanishije uru rubanza zabibonye, Uru Rukiko rusanga nyamara hari ibikoresho bya Ruvugabigwi Jean Paul byari bikiri mu bubiko bwa Magerwa ubwo uwo muhesha w’inkiko yahageraga akagenda atabifatiriye, bikahaguma kugeza ubwo bitejwe cyamunara na RRA. Ibyo bigaragazwa n’uko, nk’uko ibaruwa ya RRA (Ubuyobozi bwa Gasutamo) yo ku wa 04/06/2016 ibigaragaza, hari ibikoresho bye byari byarageze muri Magerwa ku wa 20/07/2012 bigatezwa cyamunara ku wa 19/12/2015, ibindi bikaba byari biteganyirijwe kugurishwa muri cyamunara ku wa 25/06/2016.

[28] Uru Rukiko rusanga ahubwo ibikoresho BPR Ltd ivuga ko yasanze byarasohowe ari ikindi gice cy’ibikoresho bya Ruvugabigwi Jean Paul nawe adahakana ko yasohoye; byaje gufatirwa kuri *GOODYEAR* n’umuhesha w’inkiko wa BPR Ltd ku wa 29/07/2013 hashingiwe ku cyemezo No 0001/2013 cyo ku wa 22/07/2013 cyafashwe n’Urukiko rw’Ibanze rwa Nyarugenge, kuko nk’uko bigaragara mu nyandikomvugo y’ifatira yakoze icyo gihe, ibyafatiriwe n’icyo cyemezo cy’Urukiko rw’Ibanze rwa Nyarugenge ntaho bihuriye n’ibikoresho bindi byatejwe cyamunara na RRA byavuzwe mu gika kibanziriza iki.

[29] Koko rero, ibyasohowe ku wa 03/02/2013 ari nabyo byafatiriwe n’icyemezo cy’Urukiko rw’Ibanze rwa Nyarugenge, Umuhesha w’inkiko wa BPR Ltd akabisanga kuri *GOODYEAR*, nk’uko abivuga, bigizwe n’ibi bikurikira: *Six chaises en plastique; 12 chaises; 5 chaises en fer; 1 chaise très rouge ; 1 table en bois avec verre ; une grande table avec verre ; une petite table en verre ; une table (akameza karekare) ; six parapluies ; 13 lits complets ; 32 cartons pour chaises ; 16 televiseurs ; 4 couvre-lits ; 11 boites d’essui-main ; 2 boites de draps de lit.* Naho ibyatejwe cyamunara nk’uko byagaragajwe n’umuyobozi wa Gasutamo mu ibaruwa ye yo ku wa 04/06/2016 bigizwe n’ibi bikurikira : *Mattress, toilet cover, MDF boards, combines telephoniques, Windows-doors glasses & accessoires, water-heater.*

[30] Urukiko rukaba rusanga ibyo BPR Ltd ivuga ko nta bikoresho bya Ruvugabigwi Jean Paul yafatiriye byatejwe cyamunara na RRA ngo kuko yasanze yarabikuye muri Magerwa, nta shingiro bifite kuko ubwo BPR Ltd yasabaga icyemezo RCOM 0261/12/TC/HYE cyo ku wa 20/12/2012 gifatira ibikoresho bye muri Magerwa hari ibikoresho bye byari bihari, ndetse n'igihe yoherezaga Umuhesha w'inkiko kubifatira ku wa 03/02/2013 bikaba byari bigihari. Koko rero nk'uko *arrival notice* yo ku wa 20/7/2012 n'inyandiko y'umuyobozi wa Gasutamo yo ku wa 04/06/2016 ndetse n'iyo ku wa 30/07/2020 zibigaragaza, ibikoresho byatejwe cyamunara na RRA byageze muri Magerwa ku wa 20/7/2012, birahaguma kugera ubwo bitejwe cyamunara ku wa 19/12/2015 no ku wa 29/01/2017.

b. Kumenya isano iri hagati y'iryo fatira n'igurisha muri cyamunara na RRA n'igihombo cya Ruvugabigwi Jean Paul.

[31] Nk'uko byasobanuwe mu bika bibanziriza iki, ibikoresho bya Ruvugabigwi Jean Paul byatinze muri MAGERWA hanyuma bitezwa cyamunara na RRA kuko byari byarafatiriwe na BPR Ltd, ikananirwa kubihakura kugera ubwo bitezwa cyamunara nk'uko amategeko abiteganya. Urukiko rusanga ibyo bikoresho byaragurishijwe ku burangare bwa BPR Ltd kuko yananiwe gukurikirana ngo imenye ko ibikoresho bya Ruvugabigwi Jean Paul yafatiriye byari muri Magerwa byose, ngo inabikuremo bitararenza amezi atandatu, dore ko nk'uko bigaragara mu cyemezo kibifatira cyo ku wa 20/12/2012, BPR Ltd yari yavuze ko yiteguye kwishyura amafaranga yose kimwe n'amande yose y'igihe ibyo bikoresho bimaze muri gasutamo[1].

[32] Byongeye kandi, ibikoresho byatejwe cyamunara na RRA byafatiriwe binyuze mu cyemezo RCOM 0261/ 12/ TC/HYE cyafashwe n'Urukiko rw'Ubucuruzi rwa Huye hashingiwe ku kirego cyihutirwa (référé) gishamikiye ku rubanza RCOM 260/12/TC/HYE rwaciwe n'Urukiko rw'Ubucuruzi rwa Huye; urwo rubanza akaba ari narwo rwakomeje kujuririrwa kugeza ubwo ruteshejwe agaciro n'Urukiko rw'Ikirenga mu rubanza RCOMAA 0024/13/CS rwaciwe ku wa 15/04/2016. Urukiko rw'Ikirenga rukaba rusanga rero kuba icyo cyemezo cyaraje guteshwa agaciro, bivuze ko ibikoresho bya Ruvugabigwi Jean Paul byari byarafatiriwe ku maherere.

[33] Urukiko rusanga ariko ubwo iki cyemezo gifatira ibi bikoresho cyataga agaciro ku wa 15/04/2016 nk'uko bivuzwe mu gika kibanziriza iki, hari ibikoresho bya Ruvugabigwi Jean Paul bigizwe na *windows-doors glasses & accessories* byari bikiri muri Magerwa kuko byatejwe cyamunara ku wa 29/01/2017; nyamara Ruvugabigwi Jean Paul akaba ataragize ubushake bwo kubikuramo ngo abisubirane kandi nta cyari kikibizitiye; bityo igihombo cyabiturutseho kikaba kidashobora kuryozwa BPR Ltd.

[34] Kubera izo mpamvu, uru Rukiko rusanga BPR Ltd ari nyirabayazana w'igihombo gituruka ku bikoresho bya Ruvugabigwi Jean Paul byatejwe cyamunara na RRA, uvanyemo ibyatejwe cyamunara ku wa 29/01/2017.

c. Kumenya niba hari isano iri hagati y'ifatira ry'ibikoresho byafatiriwe kuri *GOODYEAR* n'igihombo cya Ruvugabigwi Jean Paul.

[35] Urukiko rusanga ibikoresho byafatiriwe kuri *GOODYEAR* byarafatiriwe hashingiwe ku cyemezo N° 0001/2013 cyo ku wa 22/07/2013 cy'Urukiko rw'Ibanze rwa Nyarugenge. Urukiko rusanga icyo cyemezo ari icyemezo kigenga kidashamikiye ku rubanza urwo ari rwo rwose mu zakuweho n'Urukiko rw'Ikirenga zavuzwe mu bika bibanziriza iki, kandi kikaba cyarafashwe hakurikijwe amategeko, cyane cyane ingingo za 223 na 224 CPCCSA (2012)2 ziha umuntu uberewemo umwenda uburenganzira bwo gufatira ibintu by'umubereyemo umwenda iyo hari impamvu zituma akeka ko urimo umwenda yarigisa cyangwa akonona ibintu bye byimukanwa, cyangwa yizera ko aribwo buryo bwiza bwo kwemeza nyir'umwenda kwishyura.

[36] Urukiko rurasanga ariko mu cyemezo N° 0001/2013 cyo ku wa 22/07/2013 cyafashwe n'Urukiko rw'Ibanze rwa Nyarugenge, urwo Rukiko rwaremeje ko BPR Ltd ifatira ibikoresho bya Ruvugabigwi Jean Paul byari byaregewe kugeza igihe urubanza RCOMA 0125/13/HCC ruzaba rubaye itegeko. Rusanga kandi uru rubanza rwarangije inzira zose z'ubujurire ubwo rwakurwagaho n'urubanza RCOMAA 0024/13/CS rwaciwe

[1] Reba urup.2 rw'icyo cyemezo

[2] Ingingo ya 223 igira iti: "Umuntu uberewemo umwenda n'iyo atagira inyandikompesha cyangwa icyemezo gihatira uwumubereyemo kumwishyura ariko afite icyemezo cya Perezida w'Urukiko rw'Ibanze, ashobora gushingana ibintu byimukanwa by'umubereyemo umwenda. Naho iya 224 al1 ikaviga ko "Icyemezo cyo gufatira by'agateganyo gitangwa na Perezida w'urukiko iyo hari impamvu zikomeye zatera gutinya ko urimo umwenda yarigisa cyangwa akonona ibintu bye byimukanwa cyangwa yizera ko ari bwo buryo bwiza bwo kwemeza nyir'umwenda kwishyura

n'Urukiko rw'Ikirenga ku wa 15/04/2016, bityo akaba ari nabwo icyo cyemezo gifatira ibyo bikoresho cyataye agaciro.

[37] Urukiko rusanga kuva aho iki cyemezo gitereye agaciro, BPR Ltd yarashoboraga gusaba ikindi cyemezo gifatira ibyo bikoresho ariko na Ruvugabigwi Jean Paul akaba yari afite uburenganzira bwo gusaba BPR Ltd gusubizwa ibikoresho bye. Nyamara muri ibyo byose ntacyakozwe. Urukiko rusanga icyakora n'ubu nta kibuza Ruvugabigwi Jean Paul kubisubirana kuko icyemezo cyabimubuzagaho uburenganzira kitakiriho. Ikibazo gihari kikaba ari ukumenya niba Ruvugabigwi Jean Paul afite uburenganzira bwo gusaba indishyi zabyo ku gaciro yabiguzeho, kuko ubu byononekaye nk'uko impande zombi zibyemeranyaho, akaba adashobora kubibona uko byahoze ngo abisubirane.

[38] Urukiko rusanga ingingo ya 215, igika cya gatatu y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko « Icyemezo cy'ifatira kigaragaza uburyo ibyafatiriwe bizacungwamo, ikiguzi cyo kubicunga n'uzishyura icyo kiguzi ndetse n'uzabiryozwa igihe byangiritse ». Rusanga kandi mu kubahiriza ibiteganywa n'iyi ngingo, Umuhesha w'inkiko Buregeya Aristide, mu nyandikomvugo y'ifatira ishyira mu bikorwa icyemezo cy'Urukiko rw'Ibanze rwa Nyarugenge N° 0001/2013, yaragize ati « mfatiriye mu izina rya BPR Ltd ibikoresho bya Ruvugabigwi Jean Paul, kandi BPR Ltd akaba ariyo ishinzwe ububiko bwabyo no kubimurika igihe byaba ngombwa ».

[39] Rushingiye ku bivugwa mu gika kibanziriza iki, uru Rukiko rusanga BPR Ltd ariyo yari ifite inshingano zo kubirinda ku bw'itegeko kugera ku wa 15/04/2016 ubwo icyemezo kibifatira cyari gitaye agaciro kuko ari yo yabirindishijwe. Rusanga ariko na nyuma y'aho, izo nshingano zo kurinda ibikoresho yari yafatiriye idashobora kuzivanwaho gusa n'uko icyemezo kibifatira gitaye agaciro, mu gihe ihisemo kubigumana ntibihe nyirabyo; kuko idashobora kwivanaho inshingano zo kurinda ibyo yarindishijwe no kubicunga ku buryo bitononekara igihe cyose itarabimurika nk'uko inyandikomvugo y'Umuhesha w'inkiko yabivugaga.

[40] Urukiko rukaba rusanga rero n'ubwo Ruvugabigwi Jean Paul yari afite uburenganzira bwo gutwara ibikoresho bye mu gihe nta cyari kikibifatiriye nk'uko byasobanuwe, ibyo bidakuraho BPR Ltd inshingano zo kubibika mu buryo bitononekara kugeza igihe bisubirijwe nyirabyo, bityo kuba byarononekaye akaba ariyo igomba kubiryozwa.

2) Kumenya niba BPR Ltd igomba gusubiza Ruvugabigwi Jean Paul 269925 $ y'ibikoresho bye byafatiriwe n'inyungu zayo zingana na 291519 $.

[41] Ruvugabigwi Jean Paul na Me munyandamutsa Jean Pierre umwunganira bavuga ko ibikoresho bya Ruvugabigwi Jean Paul byagurishirijwe muri Magerwa bigizwe na:

- *matelas* zifite agaciro kangana na 13 750 $; • *toilets cover* zifite agaciro kangana na 1500$; • *MDF Boord* zifite agaciro kangana na 2 700 $; • surfg wave bd (cabine téléphonique) zifite agaciro kangana na 660 $; Windows door and glasses & accessories zifite agaciro kangana na 37 000 $;
- *Water heater* zifite agaciro kangana na 2. 950 $ byose hamwe bikaba bifite agaciro kangana n'amadorali ibihumbi mirongo itanu n'umunani magana atanu na mirongo itandatu (58 560 $).

[42] Rubugabigwi Jean Paul avuga kandi ko hari n'ibindi bikoresho BPR Ltd yafatiriye kuri GOODYEAR bigizwe na Six chaises en plastique; 12 chaises; 5 chaises en fer; 1 chaise très rouge ; 1 table en bois avec verre ; une grande table avec verre ; une petite table en verre ; une table (akameza karekare) ; six parapluies ; 13 lits complets ; 32 cartons pour chaises ; 16 televiseurs ; 4 couvre-lits ; 11 boites d'essui-main ; 2 boites de draps de lit, na byo byari bifite agaciro ka 213 365$; hiyongereyeho n'amafaranga ya transport yishyuwe company yitwa JACAJO angana n'amadorali ibihumbi cumi na mirongo irindwi (10 070 $), ibikoresho byafatiriwe byose hamwe bikaba bifite agaciro kangana na 269 925$.

[43] Ruvugabigwi Jean Paul n'umwunganira basaba Urukiko gutegeka BPR Ltd kumusubiza agaciro k'ibyo bikoresho bye byafatiriwe byose, ndetse n'inyungu zibariye ku giciro cya 18% buri mwaka mu gihe cy'imyaka itandatu, kuko icyemezo gifatira ibi bikoresho cyafashwe mu mwaka wa 2013, kugeza ubu hakaba hashize imyaka itandatu (i.e 269 925 $ x 18%= 48 586,5 USD[3] x 6) bihwanye n'ibihumbi magana abiri mirongo icyenda

[3] Amafaranga y'amanyamahanga yahawe agaciro mu manyarwanda hashingiwe ku gaciro yari afite ubwo ibikoresho byagurwaga. Nk'uko bigaragara ku rubuga rwa Banki Nkuru y'Igihugu (BNR): https://www.bnr.rw/currency/exchange-

na kimwe na magana atanu na cumi n'icyenda by'amadolari ya Amerika (291 519 $), aho kuba 284 880 $ n'inyungu zayo (307 370.4 $) kuko aya batayaboneye ibimenyetso.

[44] Me Mubangizi Frank avuga ko ibisobonuro bya Ruvugabigwi Jean Paul atari ukuri kuko yemeza ko matelas zari 22 nyamara kuri *arrival notice* hakaba hagaragaraho matelas 19. Avuga kandi ko n'agaciro kazo kimwe n'ak'ibindi bikoresho bigaragara kuri iriya *arrival notice* yakabaze mu madolari nyamara byaraguzwe mu ma Dirham (AED), aya akaba yaravunjaga 167.4 Frw/1 Dirham, kandi ko kugeza ubu Ruvugabigwi Jean Paul atagaragaza icyamubujije gusorera ibyo bikoresho ngo bikurwe muri Magerwa. Akomeza avuga ko Ruvugabigwi Jean Paul yagaragaje agaciro k'ibikoresho byafatiriwe kuri *GOODYEAR* kandi atarabisabwe n'urukiko, bityo ko bitahabwa agaciro cyane ko ari nawe wagiye abangamira BPR Ltd ayishora mu manza ntibashe kugurisha ibyo bikoresho kugira ngo yiyishyure. Asaba Urukiko ko agaciro k'ibyo bikoresho kashingirwa ku mafaranga byagurishwaho kuko byatangiye no kwangirika aho gushingira ku gaciro kabyo igihe byagurwaga.

[45] Me Mubangizi Frank avuga ko icyo basaba Urukiko ari uko mu guca urubanza rukwiye kubona ko Ruvugabigwi Jean Paul ari we wagiye agora BPR Ltd ayibuza guteza cyamunara ibikoresho yasabye ko bifatirwa kugira ngo yiyishyure, kandi ko n'ibyafatiriwe muri Magerwa ikageza ubwo ibigurisha byatewe no kuba Ruvugabigwi Jean Paul atarabisoreye ngo abisohore muri Gasutamo ku gihe. Avuga ko nta kosa BPR Ltd yakoze, bityo ikaba nta n'igihombo yateje Ruvugabigwi Jean Paul, kuko ibikoresho yafatiriye n'ubundi byagombaga gufatirwa kugira ngo yishyure umwenda.

UKO URUKIKO RUBIBONA

[46] Urukiko rurasanga ibyo BPR Ltd ivuga ko nta gihombo yateje Ruvugabigwi Jean Paul nta shingiro bifite, kuko nk'uko byasobanuwe mu isesengura ry'ingingo ya mbere y'uru rubanza ariyo nyirabayazana w'igice cy'igihombo Ruvugabigwi Jean Paul yagize, bityo ikaba igomba kukiryozwa.

[47] Rushingiye kuri ibyo, Urukiko rusanga BPR Ltd igomba kwishyura Ruvugabigwi Jean Paul indishyi zihwanye n'agaciro k'igihombo yamuteje giturutse ku ifatira ry'ibikoresho byatejwe cyamunara na RRA mbere y'uko icyemezo kibifatira gitaye agaciro ku wa 15/04/2016 hamwe n'ibyafatiriwe kuri *GOODYEAR*, kabazwe mu buryo bugaragara mu mbonerahamwe ikurikira:

Ibyafatiriwe na RRA hanyuma bigatezwa cyamunara mbere yo ku wa 15/04/2016

	Items	Facture N°	Quantité	Prix en monnaie étrangère	FRW[3]
1	MDF	272 639462	30	2700 Dhs	**445,500**
2	ARSTN Heater 50L	272 639462	10	2950 Dhs	**486,750**
3	Italyan WC	272 639462	10	1500 Dhs	**247,500**
4	Matrress	420201742	19	(625x19)= 11875 Dhs	**1,959,375**
5	surfg wave bd (cabine téléphonique)	272 639462	1 Catron	330 Dhs	**54450**
Total					**3,193,575**
Ibyagurishijwe mu cyamunara nyuma yo ku wa 15/04/2016 (bitaryozwa BPR Ltd)					
6	Windows-Doors Glasses & Accessories	56789123	41 Colis	37,000$	**22,367,758**

rate/?tx_bnrcurrencymanager_master%5Baction%5D=archive&tx_bnrcurrencymanager_master%5Bcontroller%5D=Currency&cHash=9b3b8a3170a02e5876e4a1be17720fec, muri Kamena 2012, 1 Dhr ryamvunjaga 165 Frw (tuburungushuye) naho 1$ ryo rivunjwa 604.5Frw

		Agaciro k'ibyagurishijwe byose na RRA muri cyamunara			
7	Total				**25,561,333**

Ibikoresho byafatiriwe kuri *GOODYEAR*

	6 chaises en plastique, *6 chaises,* *6 chaises,* *5 chaises en fer, 1 Chaise tres rouge,* *1 Table en bois avec verre,* *1 grande table avec verre,* *1 petite table en verre,* *1 table(ndene),* *6 parapluies,* *32 cartons pour chaises*	16097		Dhrs 112.750	**18,603,750**
	13 lits complets	420201742	13	Dhrs 24.050	**3,968,250**
	16 Téléviseur	104212	16	Dhrs 7200	**1,188,288**
	4 Couvres lit				
	11 boites d'essuie-mains				
	2 Boites de draps de lits	420101015		Dhrs 1.950	**321,750**
	Total				**24,081,750**
	Agaciro k'ibikoresho byafatiriwe byose hamwe				
	Grand total				**49,643,083**

[48] Nk'uko bigaragara muri iyi mbonerahamwe, Urukiko rusanga Ruvugabigwi Jean Paul agomba guhabwa indishyi z'ibikoresho bye zihwanye na: 3,193,575Frw+24,081,750Frw=**27,275,325 Frw**

[49] Ku byerekeye amafaranga yatanze ku bwikorezi bw'ibikoresho angana na ($10070+112,200 Fw) bihwanye na **6,199,515 Frw**, Urukiko rusanga agomba kugira ayo asubizwa kuko agaciro k'ibicuruzwa byaguzwe mu mahanga kabarwa wongeyeho n'ibyabitanzweho kugeza bishyikirijwe nyirabyo mu gihe nta kigaragaza ko impande zombi (nyir'ibintu hamwe n'umwikorezi) zari zabyemeranyije ukundi. Rusanga ariko adashobora gusubizwa igiciro cy'ubwikorezi bw'ibikoresho byatejwe cyamunara bidaturutse ku makosa ya BPR Ltd, aribyo *Windows-Doors Glasses & Accessories* zifite agaciro ka **22,367,758 Frw**. Icyakora, kubera ko ubwikorezi bw'ibikoresho byose bwakorewe hamwe, hakaba nta buryo bwo kumenya ayatanzwe ku bikoresho runaka byihariye, Urukiko rurasanga igiciro cyabwo gikwiye kuryozwa BPR Ltd, cyabarirwa ku igereranywa ry'amafaranga y'ubwikorezi bw'ibikoresho biryozwa BPR Ltd n'igiciro cy'ubwikorezi bw'ibikoresho byose (*au prorata*); ni ukuvuga: 6,199,515 Frw x 27,275,325 Frw: 49,643,083Frw= **3,406,190 Frw.**

[50] Ku byerekeye inyungu Ruvugabigwi Jean Paul asaba, Urukiko rusanga akwiye guhabwa izishingiye ku gihombo cy'ibikoresho byafatiriwe muri Magerwa bikagurishwa mu cyamunara na RRA mbere y'uko icyemezo kibifatira gita agaciro ku wa 15/04/2016, zibazwe uhereye igihe ifatira ryabereye (ku wa 20/12/2012)[4] kugeza ubu, kuko kuva icyo gihe Ruvugabigwi Jean Paul yabibujijweho uburenganzira ku maherere nk'uko byasobanuwe; ariko kuko we yasabye ko zabarwa mu gihe cy'imyaka 6, akaba arizo agomba kugenerwa kuko Urukiko rutamugenera izirenze izo yasabye. Naho inyungu zishingiye ku gihombo cy'ibyafatiriwe kuri *GOODYEAR*, Urukiko rusanga nazo agomba kuzihabwa guhera ku wa 15/04/2016, kuko nyuma y'iyo tariki BPR Ltd yakomeje kubibika nta mpamvu.

[51] Ku byerekeye igiciro Ruvugabigwi Jean Paul asaba ko cyabarirwaho izo nyungu ku mwaka cya 18%, Urukiko rusanga ari umurengera kandi akaba atagaragaza icyo abishingiraho; ahubwo Urukiko rukaba rusanga izo nyungu zigomba kubarirwa ku giciro cya 16% kuko ari cyo yahereweho umwenda wo kugura ibyo bikoresho nk'uko bigaragara mu masezerano yo ku wa 10/11/2011 yagiranye na BPR Ltd. Hashingiwe kuri ibyo rero, Urukiko rusanga inyungu Ruvugabigwi Jean Paul agomba guhabwa zihwanye n'agaciro k'ibikoresho byagurishijwe mu cyamunara muri Magerwa (3,193,575Frw) mu gihe cy'imyaka itandatu wongeyeho 24,081,750Frw y'Ibikoresho byafatiriwe kuri *GOODYEAR* mu gihe cy'imyaka ine n'iminsi 241 n'amafaranga y'ubwikorezi (3,406,190 Frw), abariwe ku gaciro ka 16%, bihwanye na (3,193,575Frw x6) +(24,081,750Frw x 1641jrs/360) + 3,406,190 Frw) x 16% =**21,174,445 Frw**

[52] Rusanga rero amafaranga yose hamwe Ruvugabigwi Jean Paul agomba guhabwa ari 27,275,325 Frw y'agaciro k'ibikoresho bye yahombye, 3,406,190 Frw y'ubwikorezi bwabyo na 21,174,445 Frw y'inyungu, yose hamwe akaba **51,855,960 Frw.**

3) Kumenya niba BPR Ltd igomba kwishyura Ruvugabigwi Jean Paul igihombo kingana n'inyungu yari kubona iyo Hoteli ye iza gukora

[53] Ruvugabigwi Jean Paul na Me Munyandamutsa Jean Pierre umwunganira bavuga ko ajya kubaka hoteli yari yizeye kuzunguka, ariko BPR Ltd ntiyatuma ayikoresha ngo abone inyungu yagombaga kubona. Kuba rero BPR Ltd ariyo yatumye ibikoresho byo kuyubaka bitezwa cyamunara, asanga amafaranga Hoteli ye yagombaga kunguka, ikwiye gutegekwa kuyishyura.

[54] Me Mubangizi Frank uhagarariye BPR Ltd avuga ko BPR Ltd yahaye Ruvugabigwi Jean Paul inguzanyo ebyiri, imwe yo kubaka hoteli n'indi yo kugura ibikoresho byayo, ariko ko izo nguzanyo zombi, Ruvugabigwi Jean Paul yananiwe kuzishyura ari nayo mpamvu BPR Ltd yabifatiriye. Me Mubangizi Frank avuga ko Ruvugabigwi Jean Paul ariwe ahubwo wahombeje BPR Ltd kuko yasabye inguzanyo yo kubaka hoteli ntayubake ahubwo akubaka igihangari, ku buryo asanga n'ibikoresho avuga ntaho byari kuza bijya.

UKO URUKIKO RUBIBONA

[55] Ingingo ya 12, igika cya mbere, 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 agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda." Naho ingingo ya 3 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igateganya ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana (...)." Izi ngingo zumvikanisha ko urega afite inshingano zo gutanga ibimenyetso bigaragaza ukuri kw'ibyo aregera, yabibura akaba atsinzwe.

[56] Urukiko rurasanga igihombo Ruvugabigwi Jean Paul avuga ko BPR Ltd yamuteje kingana n'inyungu yari kubona iyo hoteli iza gukora, nta bimenyetso atanga zigaragaza ko koko haburaga gusa ibikoresho byafatiriwe ngo Hoteli ibashe gukora cyane cyane ko BPR Ltd ivuga ko nta n'aho byari kuza

[4] Ni ukuvuga igihe hafatiwe icyemezo no 0001/13/ gitegeka gufatira by'agateganyo imitungo ya RUVUGABIGWI Jean Paul

bijya kandi akaba atarabivuguruje. Byongeye kandi, Urukiko rusanga n'umubare w'izo nyungu Ruvugabigwi Jean Paul avuga ko yavukijwe ntaho yigeze awugaragaza kuri uru rwego, bityo rukaba rusanga ntaho rwahera ruzibara.

4) **Ibyerekeye izindi ndishyi zinyuranye.**

Indishyi z'akababaro zasabwe na Ruvugabigwi Jean Paul

[57] Ruvugabigwi Jean Paul kimwe na Me Munyandamutsa Jean Pierre umwunganira basaba ko BPR Ltd yategekwa kwishyura indishyi z'akababaro zingana na miliyoni ijana (100,000,000 Frw) kuko ari umucuruzi wari usanzwe afitiwe ikizere mu bandi bacuruzi bagenzi be, no mu muryango we, ariko kumufatira ibikoresho bya hoteli ye bitari no mu ngwate yari yahaye BPR Ltd no kubiteza cyamunara ku giciro gitoya cyane, bikaba byaramuteye igihombo gikabije.

[58] Me Mubangizi Frank uhagarariye BPR Ltd avuga ko ibisabwa na Ruvugabigwi Jean Paul nta nshingiro byahabwa kuko ari we wishoye mu manza ndetse akanazishoramo BPR Ltd, kandi ari nawe wakomeje kuba inkomyi y'ishyirwa mu bikorwa ry'ibyemezo by'inkiko bitandukanye.

UKO URUKIKO RUBIBONA

[59] Urukiko rusanga ibyo Ruvugabigwi Jean Paul avuga ari ukwirengagiza ko inkomoko y'uru rubanza ari uko yananiwe kwishyura imyenda yari abereyemo BPR Ltd, kuko iyo aza kuba yarishyuye neza kandi mu gihe, nta manza kimwe n'ibibazo bizikomokaho byari kubaho. Urukiko rukaba rusanga ntaho rwahera rumugenera izi ndishyi z'akababaro asaba kuko akababaro avuga ko yatewe yakagizemo uruhare.

b) Amafaranga y'ikurikiranarubanza

[60] Ruvugabigwi Jean Paul umwunganira bavuga ko basaba igihembo cya Avoka kingana n'amafaranga angana na 20,000,000 Frw yatakaje muri uru rubanza yishyura abavoka batandukanye kandi bitari ngombwa. Basaba kandi n'amafaranga y'ikurikirana rubanza kuko yatakaje umwanya munini yiruka ku bintu bye mu nzego zitandukanye, mu nkiko zitandukanye kuva mu birego byihutirwa, kugeza ubu mu Rukiko rw'Ikirenga mu rubanza rw'akarengane na byo akaba abisabira indishyi zingana na 20,000,000 Frw, yose hamwe akaba angana na 40,000,000Frw.

[61] Me Mubangizi Frank uhagarariye BPR Ltd avuga ko ibisabwa na Ruvugabigwi Jean Paul nta shingiro byahabwa kuko kuba yarasabye inguzanyo ntayishyure nk'uko byaribyemeranyijweho ndetse yarangiza agakomeza kubangamira BPR Ltd ngo itagira ubwishyu na bukeya yagaruza bigaragaza ko ari we nyirabayazana w'izi manza. Bityo ahubwo Ruvugabigwi Jean Paul akaba ariwe ukwiye kuryozwa amafaranga y'Ikurikiranarubanza n'igihembo cya avoka; bakaba basaba kwishyurwa 1,000,000 Frw y'ikurikiranarubanza na 1,000,000 Frw y'igihembo cy'Avoka, yose hamwe akaba 2,000,000 Frw.

UKO URUKIKO RUBIBONA

[62] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asabwa na BPR Ltd akaba nta shingiro afite kuko itsinzwe, naho ayo Ruvugabigwi Jean Paul asaba we ayakwiye kuko ariwe utsinze uru rubanza. Rusanga ariko Ruvugabigwi Jean Paul atagaragaza uburyo ayabaramo ngo abigaragarize n'ibimenyetso, bityo 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 buri rwego, ni ukuvuga miliyoni ebyiri n'ibumbi magana ane (3,200,000Frw) ahwanye na 800,000 Frw x4.

III. ICYEMEZO CY'URUKIKO

[63] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00075/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/05/2019 cyatanzwe na Ruvugabigwi Jean Paul gifite ishingiro.

[64] Rwemeje ko urubanza RCOMAA 00075/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/05/2019 ruhindutse kuri bimwe.

[65] Rwemeje ko BPR Ltd ari nyirabayazana w'igice cy'igihombo Ruvugabigwi Jean Paul yatejwe n'ifatira ry'ibikoresho bye;

[66] Rutegetse BBR Ltd guha Ruvugabigwi Jean miliyoni mirongo itanu n'imwe n'ibihumbi Magana inani mirongo itanu na bitanu Magana cyenda mirongo itandatu (51,855,960 Frw) y'indishyi z'igihombo yamuteje;

[67] Rutegetse BPR Ltd guha Ruvugabigwi Jean Paul amafaranga miliyoni eshatu n'ibumbi magana abiri (**3,200,000 Frw**) y'ikurikiranarubanza n'igihembo cy'Avoka.