

RWANDA / JUDGMENT

LETA Y'U RWANDA (MINADEF) vs. ALPHA PALACE Ltd

RADAA 00003/2023/CA

COURT

Court of Appeal

DECIDED

26 January 2024

CASE / FILE NUMBER

RADAA 00003/2023/CA

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LETA Y'U RWANDA (MINADEF) vs. ALPHA PALACE Ltd

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Text

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LETA Y'U RWANDA (MINADEF) vs. ALPHA PALACE Ltd [Rwanda URUKIKO RW'UBUJURIRE – RADAA 00003/2023/CA (Munyangeri, J.P.) 26 Mutarama 2024] Amategeko agenga imanza z'ubutegetsu – Kwimura abaturage ku mpamvu z'inyungu rusange – Ingurane ikwiye – Mu kugena ingurane ikwiye kubera kwimura abantu ku mpamvu z'inyungu rusange, hitabwa ku cyo ubutaka bugenewe n'ikiguzi cyabwo hashingiwe ku biciro biri ku isoko igihe cyo gutanga ingurane. Incamake y'ikibazo: Alpha Palace Ltd yareze mu Rukiko Rwisumbuye rwa Nyarugenge Leta y'u Rwanda (Minisiteri y'Ingabo) isaba guhabwa ingurane ikwiye ku mutungo wayo ugizwe n'ubutaka n'ibikorwa yashyizemo, buherereye mu Karere ka Karongi, umurenge wa Ruganda, akagari ka Gasura mu mudugudu wa Nyagahinga, igahabwa iyo ngurane ibazwe hashingiwe ku gaciro k'ubutaka gashingiye ku biciro biri ku isoko. Leta y'u Rwanda (Minisiteri y'Ingabo) yireguye ivuga ko, Alpha Palace Ltd nk'abandi baturage bari bafite imitungo muri uwo mudugudu bimuwe kubera ibikorwa by'inyungu rusange bahabwa ingurane ikwiye, aho igenagaciro ry'iyi mitungo ryakozwe n'umunyamwuga, ashingiye ku biciro byari ku isoko bityo, ikaba igomba kwemera

indishyi ikwiye yabariwe. Urukiko Rwisumbuye rwaciye urubanza rwemeza ko ikirego cy'Urega gifite ishingiro maze rumugera ingurane ikwiye ingana n'agaciro Urega yagaragaje mu igenagaciro yari yakoreye umutungo we, ndetse rumugenera n'izindi ndishyi zitandukanye. Urega yajuririye Urukiko Rukuru avuga ko Urukiko Rwisumbuye rwamugeneye ingurane ikwiye rudashingiye ku gaciro katanzwe n'abagenagaciro rwari rwashyizeho mu gukemura impaka ndetse ntwagaragaza ugomba kwishyura abo bagenagaciro. Leta y'u Rwanda nayo yajuririye icyo cyemezo cyafashwe muri urwo rubanza ivuga ko ubutaka bw'Urega bwabariwe ku giciro cy'umurenge ndetse ko hari n'ibyabazwe mu byo igomba kwishyura kandi bidateganyijwe mu Itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange. Urukiko Rukuru rwemeje ko ubujurire bw'impande zombi bufite ishingiro kuri bimwe. Uregwa yajuririye mu Rukiko rw'Ubujurire irusaba gusuzuma ingurane ikwiye igomba guhabwa Urega no gusuzuma niba yaragombaga gutegekwa kwishyura indishyi zinyuranye. Ku kibazo cyo kumenya igenagaciro rikwiye gushingirwaho hemezwa ingano nyakuri igomba gutangwa, Leta y'u Rwanda ivuga ko Urukiko Rukuru rwanze gushingira ku igenagaciro yari yakoze nyamara yarakozwe hashingiye ku biciro byari ku isoko, rukaba rwarayitesheje agaciro rutabanje kugaragaza intenge zaba ziyikubiyemo. Ikomeza ivuga ko Urukiko Rukuru rutari rukwiye gushingira ku igenagaciro ryakoreshejwe na Alpha Palace Ltd kubera ko ryashingiye ku giciro cy'ubutaka cyo hejuru cyane, bityo ikaba isaba ko yahabwa ingurane ikwiye ishingiyeye kuri iryo genciro yakoze. Kuri icyo kibazo, Alpha Palace Ltd yireguye ivuga ko raporo y'igenagaciro yakozwe n'abahanga batatu bashyizweho n'Urukiko Rwisumbuye ari yo ikwiye guhabwa agaciro kubera ko yakozwe mu rwego rwo kumara impaka ndetse na Leta y'u Rwanda (Minisiteri y'Ingabo) ikaba itarigeze iyijuririra.

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Incamake y'icyemezo: Mu kugena ingurane ikwiye kubera kwimura abantu ku mpamvu z'inyungu rusange, hitabwa ku cyo ubutaka bugenewe n'ikiguzi cyabwo hashingiye ku biciro biri ku isoko igihe cyo gutanga ingurane. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111. Itegeko No 32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, ingingo ya 28, 33 n'iya 34. Imanza zifashishijwe: RS/INJUST/RAD 00002/2022/CA, Leta y'u Rwanda (Minisiteri ya Siporo) na Rukarishya Ngenda Philémon na Nyiranshuti Miriam rwaciye n'Urukiko rw'Ubujurire ku wa 24/11/2023. RCOMAA 00009/2023/CA haburana Bhavani Electrical PVT Lts na GT Bank Rwanda Plc na Micon Real Line Ltd rwaciye n'Urukiko rw'Ubujurire ku wa 27/07/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Alpha Palace Ltd ivuga ko yakoze umushinga wo kubaka hoteli, imaze kuzuza ibisabwa ibabwaho uruhushya rwo gutangira ibikorwa byo kubaka ndetse iranatangira, ko ariko ku wa 30/01/2013, Akarere ka Gasabo kayandikiye ibaruwa nimero 578/03/0301 gahagarika uburenganzira yari yahawe, kakaba karavuze ko ngo ubuyobozi bwa Marine bwavuze ko ahantu icyo kibanza gihereyeho buhafiteho ikibazo. Ikomeza ivuga ko igihe cyageze ibwirwa ko hari amafaranga y'indishyi ikwiye ari kuri konti y'Akarere nyamara itarigeze imenyeshwa ko yahagarikiwe ibikorwa by'ubwubatsi kugira ngo yimurwe n'aho ibimenyeye

ntiyishimira indishyi ikwiye yagenewe. [2] Alpha Palace Ltd yatakambiye Umunyamabanga Uhoraho muri Minisiteri y'Ingabo ntiyagira icyo abikoraho, itakambira Minisitiri w'Ingabo na we yemeza ko indishyi yashyizwe kuri konti y'Akarere ari yo ikwiye kandi yari yatanze raporo y'igenagaciro mvuguruza (contre-expertise), ibibonye ityo ihitamo kuregera Urukiko Rwisumbuye rwa Nyarugenge isaba guhabwa indishyi ikwiye ingana n'amafaranga miliyoni ijana na mirongo itandatu n'icyenda, ibihumbi magana ane na bine na magana atatu n'abiri (169.404.302 Frw) ibaze mu buryo bukurikira: amafaranga miliyoni ijana na cumi n'umunani, ibihumbi magana atatu na mirongo irindwi na bibiri n'ijana na mirongo itandatu (118.372.160 Frw) y'agaciro k'ubutaka gashingiye ku biciro biri ku isoko, amafaranga miliyoni mirongo ine n'ebiri, ibihumbi magana acyenda na mirongo itandatu na bitanu na magana abiri na mirongo irindwi (42.965.270 Frw) y'agaciro k'ibikorwa byakozwe mu gutangiza umushinga wa hoteli (birimo avansi ku gutunganya ikibanza ingana n'amafaranga miliyoni icumi (10.000.000 Frw), avansi

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kuri architecture et surveillance des Travaux ingana n'amafaranga miliyoni icumi (10.000.000 Frw), n'avansi yatanze ku gutumiza ibikoreshe byo kubaka système yo gutunganya amazi mabi ingana n'amafaranga miliyoni makumyabiri n'ebiri, ibihumbi magana acyenda na mirongo itandatu na bitanu na magana abiri na mirongo irindwi (22.965.270 Frw), hari kandi amafaranga angana na miliyoni umunani, ibihumbi mirongo itandatu na bitandatu na magana inani na mirongo irindwi n'abiri (8.066.872 Frw) angana na 5% by'agaciro k'umutungo wose yimuweho (Frw 161,337,430*5%). [3] Uhagarariye Leta y'u Rwanda (Minisiteri y'Ingabo) yireguye avuga ko abaturage bo mu Mudugudu wa Nyagahinga, mu Kagari ka Gasura, mu Murenge wa Ruganda, mu Karere ka Karongi bagombaga kwimurwa ku mpamvu z'inyungu rusange, imitungo yabo ikorerwa igenagaciro, ko rero umutungo wa Alpha Palace Ltd wakorewe igenagaciro rikwiye kuko ryakozwe n'umunyamwuga kandi agendeye ku biciro byari ku isoko kandi ko abari bafite imitungo aho hantu bose babariwe kuri icyo giciro. Yavuze kandi ko kuba Alpha Palace Ltd yarasabwe gushyikiriza Leta y'u Rwanda (Minisiteri y'Ingabo) raporo y'igenagaciro igaragaza ibikorwa yavugaga ko bitabazwe ntibikore, asanga ari uburyo bwo kubangamira imishinga ya Leta igamije inyungu rusange. yasoje asaba ko Alpha Palace Ltd ikwiye kwemera indishyi ikwiye yabariwe ingana n'amafaranga miliyoni makumyabiri n'esheshatu, ibihumbi magana atandatu na mirongo itandatu n'icyenda na magana abiri na mirongo itandatu n'ane (26.669.264 Frw). [4] Umugore wa Bayingana Alex (Umuyobozi wa Alpha Palace Ltd) witwa Uwanyirigira Phaina n'abana babo Bayingana Uwase Alice na Bayingana Clément bagobotse urubanza ku bushake, basobanura ko Bayingana Alex na Uwanyirigira Phaina barimo baburana ubutane kandi ko bose bafite imigabane muri Alpha Palace Ltd aho Bayingana Alex afitemo 33.800 ingana n'ijanisha rya 99%, Uwanyirigira Phaina akagiramo imigabane ijana (100) ingana n'ijanisha rya 0,002%, indi isigaye ikaba iy'abana babo Bayingana Clément na Bayingana Uwase Alice, ko rero Bayingana Alex afite ijamba rikomeye kuri Alpha Palace Ltd ku buryo afata ibyemezo nta we agishije inama, bakaba bafite impungenge ko mu gihe Alpha Palace Ltd yaramuka ihawe ingurane ikwiye, Bayingana Alex ashobora kuyikubira kuko ari na we ucunga konti zayo, bakaba barasabye ko mu

gihe yaba itsinze, amafaranga y'ubwishyu yazashyirwa kuri konti abanyamigabane ba Alpha Palace Ltd bahuriyeho bose. [5] Mu rubanza RAD 00123/2019/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 10/09/2021, urwo Rukiko rushingiye ku ngingo ya 28 n'ya 33 z'Itegeko No 32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, rwasanze rutaha agaciro raporo y'igenagaciro yatanzwe na Leta y'u Rwanda (Minisiteri y'Ingabo) kubera ko iri hasi cyane n'izindi zakozwe, rusanga rutaha agaciro raporo y'igenagaciro yakozwe n'itsinda ry'abahanga batatu rwari rwashyizeho kubera ko yagaragaje agaciro karuta cyane akagaragajwe n'urega, mu bushishozi bwawo rusanga rugomba gutanga indishyi ikwiye hashingiwe kuri raporo y'igenagaciro yatanzwe n'urega, maze rwemeza ko: - ikirego cya Alpha Palace Ltd gifite ishingiro kuri bimwe; - ikirego cy'abagobotse mu rubanza ari bo Uwanyirigira Phaina, Bayingana Ishimwe Clement na Bayingana Uwase Alice gifite ishingiro;

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- Leta y'u Rwanda (Minisiteri y'Ingabo) yishyura Alpha Palace Ltd ingurane ku butaka bwayo buri kuri UPI: 3/01/02/06/958, buherereye mu Mudugudu wa Nyagahinga, mu Kagari ka Gasura, mu Murenge wa Ruganda, mu Karere ka Karongi, bufite ubuso bwa meterokare 9.780 mu buryo bukurikira: - ingurane ku butaka ingana n'amafaranga miliyoni ijana na mirongo itandatu n'imwe, ibihumbi magana atatu na mirongo itatu na birindwi na magana ane na mirongo itatu (161.337.430 Frw); 5% y'ingurane ingana n'amafaranga miliyoni umunani, ibihumbi mirongo itandatu na bitandatu na magana inani na mirongo irindwi na rimwe (8.066.871 Frw), yose hamwe akaba miliyoni ijana na mirongo itandatu n'icyenda, ibihumbi magana ane na bine na magana atatu n'abiri (169.404.302 Frw), akishyurwa kuri konti ihuriweho n'abanyamigabane bose barimo abagobotse ari bo Uwanyirigira Phaina, Bayingana Ishimwe Clement, Bayingana Uwase Alice na Bayingana Alex; amafaranga angana na miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka waburaniye Alpha Palace Ltd; - Leta y'u Rwanda (Minisiteri y'Ingabo) isubiza Alpha Palace Ltd amafaranga ibihumbi makumyabiri (20.000 Frw) yatanzeho ingwate y'amagarama irega. [6] Alpha Palace Ltd yajuririyemo urwo rubanza mu Rukiko Rukuru, ubujurire bwayo bwandikwa kuri RADA 00091/2021/HC/KIG, ivuga ko Urukiko Rwisumbuye rwa Nyarugenge rwagennye indishyi ikwiye rudashingiye ku gaciro katanzwe n'abagenagaciro rwari rwashyizeho mu gukemura impaka, rwibagirwa agaciro k'inzu yari kuri ubwo butaka, ndetse ntirwanagaragaza ugomba kwishyura igihembo cy'abagenagaciro rwari rwashyizeho. [7] Leta y'u Rwanda (Minisiteri y'Ingabo) na yo yajuririyemo urwo rubanza, ubujurire bwayo bwandikwa kuri RADA 00093/2021/HC/KIG, ivuga ko ubutaka bwa Alpha Palace Ltd bwabariwe ku giciro cy'umurenge ndetse ko hari n'ibyabazwe mu byo igomba kwishyura kandi bidateganyijwe mu Itegeko ryerekeye kwimura abantu ku mpamvu z'inyungu rusange. Izo manza zombi zarahujwe ziburanishirizwa hamwe kuri RADA 00091/2021/HC/KIG CMB RADA 00093/2021/HC/KIG. Kuri uru rwego Uwanyirigira Phaina yamenyesheje Urukiko ko atakiri mu rubanza, asobanura ko icyari cyaramuteye kurugobokamo cyarangiye. [8] Mu kwiregura ku bujurire bwa Alpha Palace Ltd, uhagarariye Leta y'u Rwanda (Minisiteri y'Ingabo) yavuze ko kuba Urukiko Rwisumbuye rwa Nyarugenge rwarageneye Alpha Palace Ltd indishyi ikwiye ingana

n'amafaranga miliyoni ijana na mirongo itandatu n'icyenda, ibihumbi magana ane na bine na magana atatu n'abiri (169.4040.302 Frw) nta kosa rwakoze kuko ari yo yari yagaragaje mu mwanzuro utanga ikirego, hanyuma nyuma ikajya igenda ishaka guhindagura ingano y'indishyi ikwiye. Yavuze kandi ko asanga kugeza ubwo urubanza rwaburanishwaga nta gaciro nyakuri k'umutungo ugibwaho impaka kagaragajwe kubera ko n'ako Urukiko rwashingiyeho nta muhanga wari wakemeje, akaba yarifuzaga ko Urukiko Rukuru rwashyiraho abagenagaciro bahuriwaho n'ababuranyi, agaciro bagaragaje akaba ariko kazashingirwaho kandi hakagenderwa ku biciro byo mu mwaka wa 2016 ngo kubera ko ari cyo gihe Alpha Palace Ltd yimuriwaho. [9] Mu kwiregura ku bujurire bwa Leta y'u Rwanda (Minisiteri y'Ingabo), Alpha Palace Ltd yavuze ko mu gihe cy'iburanisha ry'urubanza mu Rukiko Rwisumbuye rwa Nyarugenge, yagaragaje ko agaciro k'ingurane ikwiye kangana n'amafaranga miliyoni magana abiri na mirongo inani

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n'umunani, ibihumbi mirongo icyenda na bitandatu n'amafaranga icyenda (288.096.009 Frw) kandi ko harimo n'akagaragajwe n'abagenagaciro bari bashyizweho n'urwo Rukiko. [10] Mu rubanza RADA 00091/2021/HC/KIG CMB RADA 00093/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 08/03/2023, urwo Rukiko rushingiye ku ngingo ya 34, igika cya gatatu y'Itegeko No 32/2015 ryo ku wa 11/06/2015 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange, rwasanze atari ngombwa ko rushyiraho abandi bagenagaciro bo kugaragaza agaciro k'umutungo ugomba gutangirwa ingurane, kubera ko abari bashyizweho n'Urukiko Rwisumbuye rwa Nyarugenge bari bahagije, maze rwemeza ko: - ubujurire bwa Alpha Palace Ltd bufite ishingiro ku bijyanye n'amafaranga y'agaciro k'inzu yari ku butaka isabira ingurane ikwiye no ku bijyanye n'ugomba kwishyura abagenagaciro bakoze igenagaciro bashyizweho n'Urukiko Rwisumbuye, bukaba nta shingiro bufite ku bijyanye no kuba amafaranga yagenewe atari ayagaragajwe n'igenagaciro ryakoreshejwe n'Urukiko Rwisumbuye; - ubujurire bwa Leta y'u Rwanda bufite ishingiro ku bijyanye n'amafaranga miliyoni mirongo ine n'ebyiri, ibihumbi magana acyenda na mirongo itandatu na bitanu na magana abiri na mirongo irindwi (42.965.270 Frw) Alpha Palace Ltd yari yagenewe, ariko bukaba nta shingiro bufite ku bijyanye n'uburyo andi mafaranga agize indishyi ikwiye yagenewe Alpha Palace Ltd yabazwemo; - imikirize y'urubanza rwajuririwe ihindutse kuri bimwe nk'uko bigaragara mu bika bikurikira iki; - Leta y'u Rwanda (Minisiteri y'Ingabo) kwishyura Alpha Palace Ltd ingurane ku butaka bwayo buri kuri UPI: 3/01/02/06/958, buherereye mu Mudugudu wa Nyagahinga, mu Kagari ka Gasura, mu Murenge wa Ruganda, mu Karere ka Karongi, bufite ubuso bwa meterokare 9.780 mu buryo bukurikira: - ingurane ku butaka n'ibikorwa byabukozweho ingana n'amafaranga miliyoni ijana na makumyabiri n'enye, ibihumbi magana acyenda na mirongo irindwi na bine n'ijana na mirongo irindwi n'ane (124.974.174 Frw), mu mwanya w'amafaranga miliyoni ijana na mirongo itandatu n'imwe, ibihumbi magana atatu na mirongo itatu na birindwi na magana ane na mirongo itatu (161.337.430 Frw) yari yabazwe mu rubanza rwajuririwe; 5% y'ingurane ingana n'amafaranga miliyoni esheshatu, ibihumbi magana abiri na mirongo ine n'umunani na magana arindwi n'umunani (6.248.708 Frw) mu mwanya w'amafaranga miliyoni umunani, ibihumbi mirongo itandatu na bitandatu na magana inani na

mirongo irindwi na rimwe (8.066.871 Frw) yari yagenwe mu rubanza rwajuririwe; - Leta y'u Rwanda (Minisiteri y'Ingabo) yishyura Alpha Palace Ltd amafaranga angana na miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka (yari yemejwe mu rubanza rwajuririwe), amafaranga ibihumbi makumyabiri (20.000 Frw) yatanzweho ingwate y'amagarama mu Rukiko Rwisumbuye n'amafaranga ibihumbi mirongo ine (40.000 Frw) yatanzweho ingwate y'amagarama ku rwego rw'ubujurire;

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- Leta y'u Rwanda (Minisiteri y'Ingabo) yishyura amafaranga angana na miliyoni imwe n'ibihumbi magana atatu na mirongo ine n'umunani (1.348.000 Frw) y'igihembo cy'Abagenagaciro bashyizweho n'Urukiko Rwisumbuye; - amafaranga yatanzweho ingwate y'amagarama ahera ku Isanduku ya Leta nk'amagarama y'urwo rubanza. [11] Ku wa 04/04/2023, Leta y'u Rwanda (Minisiteri y'Ingabo) yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwayo bwandikwa kuri RADAA 00003/2023/CA, nyuma y'imihango y'inama ntegururubanza hemezwa ko ruzaburanishwa ku wa 11/12/2023, uwo munsu ntirwaburanishwa kubera ko umucamanza wari ugize inteko yagombaga kuruburanisha yari yapfushije umuvandimwe we, iburanisha ryimurirwa ku wa 18/12/2023. [12] Uwo munsu ababuranyi bose baritabye, Leta y'u Rwanda (Minisiteri y'Ingabo) ihagarariye na Me Kayitesi Petronille, Alpha Palace Ltd ihagarariye na Me Muhire Jean Marie Eugène, Urukiko rubagira inama yo gukemura ikibazo mu bwumvikane, impande zombi ziyemeza kujya kubigerageza, iburanisha rirasubikwa, bamenyeshwa ko ubwumvikane nibudashoboka urubanza ruzaburanishwa ku wa 10/01/2024, bwashoboka, uwo munsu Urukiko rugasoma icyemezo cyarwo. Uwo munsu warageze ababuranyi bitaba Urukiko Leta y'u Rwanda (Minisiteri y'Ingabo) ihagarariye nk'ubushize, Alpha Palace Ltd ihagarariye na Me Muhire Jean Marie Eugène afatanyije na Me Uwiduhaye Julienne, bamenyesha Urukiko ko Leta y'u Rwanda (Minisiteri y'Ingabo) itashoboye kuboneka ngo impande zombi zigirane ibiganiro byo gukemura ikibazo mu bwumvikane ndetse uyihagarariye arumenyesha ko abayobozi b'iyi Minisiteri bamusabye kuburana urubanza, Urukiko rufata umwanzuro wo kuruburanisha. [13] Mu myanzuro no mu miburanire, uhagarariye Leta y'u Rwanda (Minisiteri y'Ingabo) asaba Urukiko rw'Ubujurire gusuzuma ingurane ikwiye igomba guhabwa Alpha Palace Ltd ku mutungo wayo yimuwemo ku mpamvu z'inyungu rusange, no gusuzuma niba Leta y'u Rwanda (Minisiteri y'Ingabo) yaragombaga gutegekwa kwishyura indishyi zinyuranye. Asoza asaba ko Leta y'u Rwanda (Minisiteri y'Ingabo) igenerwa indishyi kuri uru rwego. [14] Abahagarariye Alpha Palace Ltd biregura bavuga ko impamvu z'ubujurire nta shingiro zahabwa kubera ko Urukiko Rwisumbuye rwa Nyarugenge rwasuzumye ikibazo cyo gutanga ingurane ikwiye hashingiwe kuri raporo y'igenagaciro yatanzwe na Leta y'u Rwanda (Minisiteri y'Ingabo) maze ku wa 30/10/2020 rugifataho icyemezo mu rubanza rubanziriza urundi, aho rwemeje ko rugomba gushyiraho abagenagaciro barwo akaba ari bo bagaragaza agaciro nyakuri k'umutungo ugomba gutangirwa ingurane ikwiye. Bavuga ko indishyi Leta y'u Rwanda (minisiteri y'Ingabo) yaciye zifite ishingiro, bagasoza nabo basaba Urukiko gutegeka uwajuriye kuyiha indishyi

zitandukanye zo kuri uru rwego. [15] Harebwe impaka ziri muri uru rubanza, harasuzumwa ibibazo bikurikira:

- a. Kumenya igenagaciro rikwiye gushingirwaho hemezwa ingano nyakuri y'indishyi ikwiye Leta y'u Rwanda (Minisiteri y'Ingabo) igomba guha Alpha Palace Ltd;

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- b. Kumenya niba indishyi Leta y'u Rwanda (Minisiteri y'Ingabo) yategetswe gutanga zari ngombwa;
- c. Ibyerekeye amafaranga ababuranyi basaba kuri uru rwego. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
1. Kumenya igenagaciro rikwiye gushingirwaho hemezwa ingano nyakuri y'indishyi ikwiye Leta y'u Rwanda (Minisiteri y'Ingabo) igomba guha Alpha Palace Ltd [16] Uhagarariye Leta y'u Rwanda (Minisiteri y'Ingabo) avuga ko urwego ahagarariye rwasabye Urukiko Rukuru gushingira ku igenagaciro rwakoresheje rigaragaza ko umutungo Alpha Palace Ltd yimuweho ufite agaciro kangana na miliyoni makumyabiri n'esheshstu, ibihumbi magana atandatu na mirongo itandatu n'icyenda na magana abiri na mirongo itandatu n'ane (26.669.264 Frw) kandi ko yari yabazwe hashingiwe ku biciro by'ubutaka buherereye mu Mudugudu wa Nyagahinga, Akagari ka Gasura, Umurenge wa Bwishyura, Akarere ka Karongi, ariko ko mu gika cya 21 cy'urubanza n° 00091/2021/HC/KIG CMB RADA 00093/2021/HC/KIG, rwavuze ko ibiciro by'ifatizo atari ibiciro bitajya munsu cyangwa ngo birenge, ko ahubwo abagenagaciro bagendera ku biciro biri ku isoko, ndetse ruvuga ko ubutaka buri mu Mudugudu umwe bushobora guhabwa ibiciro bitandukanye bitewe n'aho buherereye wenda bumwe buri ku muhanda wa kaburimbo, ubundi buri kure y'umuhanda. Avuga kandi ko Urukiko Rukuru rwatesheje agaciro iyo raporo y'igenagaciro yakoreshejwe na Leta y'u Rwanda (Minisiteri y'Ingabo), rudasobanuye inenge zaba ziyikubiyemo mu gihe na yo yakozwe hitawe ku biciro byari ku isoko ari nabyo byakoreshejwe ku bandi bantu bari bafite ubutaka muri uwo Mudugudu kandi ko asanga rutari kwanga iryo genagaciro ry'ubutaka ryakoreshejwe na Leta y'u Rwanda (Minisiteri y'Ingabo) ngo hanyuma ruhindukire rwemere iryo yakoresheje rirebana n'agaciro k'inzu Alpha Palace Ltd yari yarubatsemo. [17] Akomeza avuga ko Urukiko Rukuru rutari rukwiye gushingira ku igenagaciro ryakoreshejwe na Alpha Palace Ltd kubera ko ryashingiye ku giciro cy'ubutaka cyo hejuru cyane aho rwabariye metero kare ku mafaranga ibihumbi cumi na bibiri (12.000 Frw) mu gihe igitabo gikubiyemo ibiciro byifashishwa n'abagenagaciro, igiciro kuri metero kare y'ubutaka muri ako gace kitagomba kurenza amafaranga ibihumbi bitanu na magana atandatu na cumi n'umunani (5.618 Frw) ndetse ko asanga ubutaka bufite meterokare zigera ku bihumbi icyenda na magana arindwi na mirongo inani (9.780 sqm) butari bukwiye guhabwa agaciro k'amafaranga agera kuri miliyoni ijana na mirongo itanu (150.000.000 Frw). Asoza asaba Urukiko kwemeza ko ingano y'indishyi ikwiye Alpha Palace Ltd igomba guhabwa ku butaka bwayo yimuweho, ingana n'amafaranga miliyoni makumyabiri n'esheshatu, ibihumbi magana atandatu na mirongo itandatu n'icyenda na magana abiri na mirongo itandatu n'ane

(26.669.264 Frw). [18] Abahagarariye Alpha Palace Ltd bavuga ko raporo y'igenagaciro yakozwe n'abahanga batatu bashyizweho n'Urukiko Rwisumbuye rwa Nyarugenge ari yo ikwiye guhabwa agaciro kubera ko Leta y'u Rwanda (MINADEF) itigeze iyijuririra. Basobanura ko kuba Urukiko rwarafashe icyemezo cyo gushyiraho abagenagaciro barwo, aruko hari ugushidikanya ku zindi raporo z'igenagaciro zari zarakoreshejwe, ko rero iyo raporo yakozwe mu rwego rwo kumara impaka ndetse ko kuba ubutaka bwa Alpha Palace Ltd bwarakoraga ku mazi, butabarirwa agaciro kangana n'ak'ubudakora ku mazi,

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kandi ko Urukiko Rukuru rwasobanuye impamvu rutashingiye ku igenagaciro ryakoreshejwe na Leta y'u Rwanda (Minisiteri y'Ingabo). UKO URUKIKO RUBIBONA [19] Impaka kuri iyi ngingo zishingiye ku kumenya igenagaciro rikwiye gushingirwaho hagenwa ingurane ikwiye Leta y'u Rwanda (Minisiteri y'Ingabo) igomba guha Alpha Palace Ltd. [20] Impaka nk'izi zakemuwe mu rubanza RS/INJUST/RAD 00002/2022/CA haburana Leta y'u Rwanda (Minisiteri ya Siporo) na Rukarishya Ngenda Philémon na Nyiranshuti Miriam rwaciwe n'Urukiko rw'Ubujurire ku wa 24/11/2023. Muri urwo rubanza Leta y'u Rwanda (Minisiteri ya Siporo) yavugaga ko Rukarishya Ngenda Philémon na Nyiranshuti Miriam bakwiye guhabwa ingurane ikwiye hashingiwe kuri raporo y'igenagaciro Leta y'u Rwanda (Minisiteri ya Siporo) yakoresheje ubwo yashakaga kubimura mu mutungo wabo ku mpamvu z'inyungu rusange, na ho Rukarishya Ngenda Philémon na Nyiranshuti Miriam bakaba baravugaga ko ingurane ikwiye igomba kubarwa hashingiwe ku giciro kiri ku isoko ku muni w'icibwa ry'urubanza. [21] Urukiko rw'Ubujurire rwasobanuye ko mu kugena ingurane ikwiye kubera kwimura abantu ku mpamvu z'inyungu rusange, hitabwa ku cyo ubutaka bugenewe n'ikiguzi cyabwo hashingiwe ku biciro biri ku isoko igihe cyo gutanga ingurane¹, maze rwanzura ko raporo y'igenagaciro yakozwe n'itsinda ry'abahanga nta kosa ririmo kubera ko inguranr ikwiye ari ishingiyeye ku gaciro ubutaka bufite hakurikije icyo hagenewe ku muni igenagaciro ryakozweho². [22] No muri uru rubanza, Leta y'u Rwanda (Minisiteri y'Ingabo) yifuza ko Alpha Palace Ltd igenerwa ingurane ikwiye hashingiwe kuri raporo y'igenagaciro yakoresheje igaragaza ko umutungo wayo ufite agaciro k'amafaranga miliyoni makumyabiri n'esheshatu, ibihumbi magana atandatu na mirongo itandatu n'icyenda na magana abiri na mirongo itandatu n'ane (26.669.264 Frw), mu gihe Alpha Palace Ltd yo ivugaga ko hashingirwa kuri raporo y'igenagaciro yakozwe n'abahanga bashyizweho n'Urukiko Rwisumbuye rwa Nyarugenge. [23] Urukiko rw'Ubujurire rurasanga kuba Alpha Palace Ltd itaranyuzwe na raporo y'igenagaciro ryakoreshejwe na Leta y'u Rwanda (MINADEF) igakoresha igenagaciro mvuguruzwa (contre- expertise) ibyo yakoze ibyemererwa n'Itegeko nk'uko Urukiko Rukuru rwabisobanuye mu gika cya 16 cy'urubanza rujuririrwa. [24] Uru Rukiko rurasanga kandi ku byerekeranye no kuba raporo y'igenagaciro yakoreshejwe na Alpha Palace Ltd ari yo yashingiweho hagenwa ingurane ikwiye aho gushingira ku yakoreshejwe na Leta y'u Rwanda (Minisiteri y'Ingabo), Urukiko Rukuru rwasobanuye neza ko habayeho kugereranya igiciro kuri metero kare y'ubutaka, harebwa icyakoreshejwe na Leta y'u Rwanda (Minisiteri y'Ingabo), icyakoreshejwe na Alpha Palace Ltd n'icyakoreshejwe n'abahanga bari bashyizweho n'Urukiko Rwisumbuye rwa Nyarugenge, maze mu rwego rwo kwirinda ko hari uruhande

rwabihomberamo, rusanga igiciro Alpha Palace Ltd yakoresheje kuri meterokare y'ubutaka 1 Reba urubanza RS/INJUST/RAD 00002/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/11/2023, haburana Rukarishya Ngenda Philémon na Nyiranshuti Miriam vs. Leta y'u Rwanda, igika cya 39. 2 Idem, igika cya 41.

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ari cyo cyaba kiri mu rugero kuko icya Leta y'u Rwanda (Minisiteri y'Ingabo cyari hasi cyane, icy'abahanga bashyizweho n'Urukiko nacyo kikaba cyari gihanitse cyane. [25] Urukiko rurasanga kandi kuba Leta y'u Rwanda (Minisiteri y'Ingabo) itari yemeye raporo mvuguruza Alpha Palace Ltd yari yakoresheje, Urukiko Rwisumbuye rugashyiraho itsinda ry'abahanga bo kugaragaza agaciro k'umutungo ugomba gutangirwa indishyi ikwiye, noneho bo bakagaragaza agaciro kari hejuru cyane ugereranyije na raporo y'igenagaciro yakoreshejwe na Alpha Palace Ltd, yagombye gutuza ikemera ubushishozi Urukiko rwakoreshejwe mu kugena ingurane ikwiye na cyane ko mu kuyigena, hashingirwa ku cyo umutungo utangirwa ingurane ikwiye ugenewe ku munsu ingurane ikwiye itangiweho n'igiciro kiri ku isoko kuri uwo munsu, Leta y'u Rwanda (Minisiteri y'Ingabo) ikaba itabasha kugaragaza ko igiciro Urukiko Rukuru rwashingiyeho atari cyo cyari ku isoko ku munsu Alpha Palace Ltd yakoresheje raporo mvuguruza (contre expertise). [26] Kubera izo mpamvu, hashingiwe ku bisobanuro byatanzwe mu rubanza rwaciwe n'uru Rukiko rwavuzwe haruguru ndetse n'ibyatanze n'Urukiko Rukuru mu rubanza rujuririrwa, Urukiko rw'Ubujurire rurasanga kuri iyi ngingo, ubujurire bwa Leta y'u Rwanda nta shingiro bufite. [27] Ku byerekeranye n'ibyo kuba uhagarariye Leta y'u Rwanda (Minisiteri y'Ingabo) avuga ko kuba Urukiko Rukuru rwaremeye igenagaciro yakoresheje rirabana n'inzu yari mu kibanza cya Alpha Palace Ltd rwaragombaga no kwemera iryo yakoresheje rirebana n'ubutaka, Urukiko rurasanga nta shingiro bifite kubera ko impane zombi nta bwo zumvikanaga ku gaciro kahawe ubutaka Alpha Palace Ltd yimuweho, mu gihe ku birebana n'inzu, Alpha Palace Ltd yagiye gukoresha raporo mvuguruza yo ntiyayikorera igenagaciro ariho Urukiko Rukuru rwaharaye ruvuga ko kuba nta raporo mvuguruza yari yakoresheje ku nzu, hakwiye gufatwa ko yari yemeye iryakoreshejwe na Leta y'u Rwanda (Minisiteri y'Ingabo) kuri iyo nzu. [28] Ku byerekeranye n'ibyo kuba abahagarariye Alpha Palace Ltd bavuga ko mu kugena ingano y'ingurane ikwiye hakwiye gushingirwa ku gaciro kagaragajwe n'itsinda ry'abahanga bashyizweho n'Urukiko Rwisumbuye rwa Nyarugenge, ngo kubera ko bari bashyizweho hagamijwe kumara impaka ku gaciro nyakuri k'umutungo ugomba gutangirwa ingurane ikwiye, Urukiko rurasanga ibyo bavuga nta shingiro byahabwa kubera ko ingingo irebana na raporo y'igenagaciro ikwiye gushingirwaho, Alpha Palace Ltd itigeze iyijuririra muri uru Rukiko, kuba rero itarayijuririje byumvikanisha ko yemeye icyemezo cyafashwe n'Urukiko Rukuru kuri iyo ngingo kuko ho yari yarabijuririje.

2. Kumenya niba Leta y'u Rwanda (Minisiteri y'Ingabo) yaragombaga gutegekwa gutanga amafaranga y'igihembo cya Avoka n'icy'abagenagaciro, ay'ingwate y'amagarama [29] Uhagarariye Leta y'u Rwanda (Minisiteri y'Ingabo) avuga ko Urukiko Rukuru rwayitegetse kwishyura Alpha Palace Ltd amafaranga angana na miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka, amafaranga ibihumbi makumyabiri (20.000 Frw) n'amafaranga ibihumbi mirongo ine (40.000) yatanze ingwate y'amagarama mu Rukiko Rwisumbuye

no mu Rukiko Rukuru, no kuyishyura amafaranga angana na miliyoni imwe n'ibihumbi magana atatu na mirongo ine n'umunani (1.348.000 Frw) y'igihembo cy'abagenagaciro bashyizweho n'Urukiko Rwisumbuye rwa Nyarugenge, akaba asaba uru Rukiko gukuraho ayo mafaranga yategetswe kwishyura, kubera ko itigeze yanga gutanga indishyi ikwiye.

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- [30] Abahagarariye Alpha Palace Ltd biregura kuri iyi ngingo bavuga ko indishyi Leta y'u Rwanda (Minisiteri y'Ingabo) yategetswe gutanga zari zikwiye n'ubwo bwose zidahagije kubera ko yanze gutanga indishyi ikwiye kugeza ubwo nayo ubwayo yemeye ko hakorwa irindi genagaciro kandi ko kugeza ubu itagaragaza ubushake bwo kwishyura, ari yo mpamvu basaba ko ayo mafaranga agumaho. UKO URUKIKO RUBIBONA [31] Impaka kuri iyi ngingo zishingiye ku kumenya niba Leta y'u Rwanda (Minisiteri y'Ingabo) koko yaragombaga gutegekwa gutanga amafaranga amaze kuvugwa haruguru. [32] Impaka nk'izi zakemuwe n'urubanza RCOMAA 00009/2023/CA haburana Bhavani Electrical PVT Ltd na GT Bank Rwanda Plc na Micon Real Line Ltd rwaciwe n'Urukiko rw'Ubujurire ku wa 27/07/2023. Muri urwo rubanza, Bhavani Electrical PVT Ltd yasabaga uru Rukiko gukuraho amafaranga yetegetswe gutanga naho GT Bank Rwanda Plc ikavuga ko akwiye kugumaho kuko yatsinzwe urubanza, Urukiko rw'Ubujurire rusobanura ko kuba Urukiko Rukuru rw'Ubucuruzi rwaravuze ko amafaranga y'ibigenda ku rubanza atangwa n'uwatsinzwe, rukagaragaza ko Bhavani Electrical PVT Ltd itsinzwe, nta mpamvu yo kuvanaho amafaranga yategetswe gutanga kuko n'ubundi ubujurire yatanze mu Rukiko rw'Ubujurire nta shingiro bwari buhawe. [33] Kimwe no muri urwo rubanza, muri uru rubanza Urukiko Rukuru rwategetse Leta y'u Rwanda (Minisiteri y'Ingabo) guha Alpha Palace Ltd amafaranga y'ikurikiranarubanza, igihembo cya Avoka, amafaranga y'ingwate y'amagarama ndetse no kwishyura ikiguzi cy'imirimu yakozwe n'abagenagaciro bashyizweho n'Urukiko Rwisumbuye rwa Nyarugenge, rukaba rwarasobanuye ko igomba kuyatanga kubera ko itsinzwe ndetse ikaba ari yo yatumye Urukiko Rwisumbuye rwa Nyarugenge rushyiraho abahanga bo kugena agaciro k'umutungo ugomba gutangirwa ingurane ikwiye mu gihe yangaga kwemera raporo mvuguruzwa yakoreshejwe na Alpha Palace Ltd. [34] Urukiko rw'Ubujurire rurasanga hashingiwe ku murongo watanzwe mu rubanza rwavuzwe haruguru, kuba ubujurire bwa Leta y'u Rwanda (Minisiteri y'Ingabo) nta shingiro bwahawe, Urukiko Rukuru nta kosa rwakoze mu kuyitegeka gutanga amafaranga yagaragajwe mu bika byavuzwe hejuru, kuba rero n'ubujurire yatanze muri uru Rukiko nta shingiro bwahawe, ayo mafaranga akaba agomba kugumaho. Kubera izo mpamvu, iyi ngingo y'ubujurire nayo ikaba nta shingiro ifite.
3. Ibyerekeye amafaranga ababuranyi basaba kuri uru rwego [35] Abahagarariye Alpha Palace Ltd basaba Urukiko rw'Ubujurire gutegeka Leta y'u Rwanda (Minisiteri y'Ingabo) guha Alpha Palace Ltd amafaranga angana n'ibihumbi magana atanu (500.000 Frw) y'ikurikiranarubanza, amafaranga angana na miliyoni imwe n'ibihumbi magana atanu (1.500.000 Frw) y'igihembo cya Avoka kuri uru rwego n'amafaranga miliyoni eshanu (5.000.000 Frw) y'indishyi zo gusiragizwa mu manza. Ku mafaranga y'ikurikiranarubanza Leta y'u Rwanda isaba, bavuga ko nta shingiro afite kubera ko ari yo nyirabayazana

w'imanza. [36] Uhagarariye Leta y'u Rwanda (Minisiteri y'Ingabo) avuga ko amafaranga Alpha Palace Ltd isaba idakwiye kuyahabwa kubera ko Leta y'u Rwanda itigeze yanga kuyishyura indishyi ikwiye, 3 Reba urubanza ROMAA 00009/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 27/04/2023, haburana Bhavani Electrical PVT Ltd Vs GT Bank Rwanda Plc na Micon Real Line Ltd, igika cya 48.

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isaba ahubwo ko ariyo yishyura Leta y'u Rwanda (Minisiteri y'Ingabo) amafaranga angana na miliyoni imwe (1.000.000 Frw) y'ikurikiranarubanza. UKO URUKIKO RUBIBONA [37] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe. [38] Urukiko rurasanga kuba ubujurire bwa Leta y'u Rwanda (Minisiteri y'Ingabo) nta shingiro bufite, igomba guha Alpha Palace Ltd amafaranga yakoresheje ikurikirana urubanza inashaka Avoka wo kuyihagararira, akaba agomba kugenwa mu bushishozi bw'Urukiko kubera ko ayo isaba ari menshi, bityo Leta y'u Rwanda (Minisiteri y'Ingabo) igaha Alpha Palace Ltd amafaranga ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka kuri uru rwego. Ku byerekeye amafaranga Alpha Palace Ltd isaba guhabwa ivuga ko ari ay'indishyi zo gusiragizwa mu manza, Urukiko rurasanga itagomba kuyahabwa kubera ko nta shingiro ryayo kuko Leta y'u Rwanda (Minisiteri y'Ingabo) yari ifite uburenganzira bwo kujurira. [39] Ku byerekeye amafaranga y'ikurikiranarubanza Leta y'u Rwanda (Minisiteri y'Ingabo) isaba, Urukiko rurasanga itagomba kuyahabwa kubera ko ubujurire bwayo nta shingiro bwahawe. III. ICYEMEZO CY'URUKIKO [40] Rwemeje ko ubujurire bwa Leta y'u Rwanda (Minisiteri y'Ingabo), nta shingiro bufite. [41] Rwemeje ko urubanza RADA 00091/2021/HC/KIG CMB RADA 00093/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 08/03/2023, rudahindutse. [42] Rutegetse Leta y'u Rwanda (Minisiteri y'Ingabo) kwishyura Alpha Palace Ltd amafaranga ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka, yose hamwe akaba amafaranga ibihumbi magana inani (800.000 Frw) kuri uru rwego.

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